

1 April 2009

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Commissioners:

This letter is in response to the FCC's, "In The Matter of Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral in City of Dearborn, et al. v. Comcast of Michigan III, Inc. et al." MB Docket No. 09-13.

In this letter IPI responds to the issue of whether "PEG channels" (public, educational, and governmental access channels) should be provided preferential treatment and the extent to which the federal government should be dictating operational procedures of video service companies.

The Institute for Policy Innovation (IPI) is a free market-oriented public policy think tank with headquarters in Lewisville, Texas. IPI is recognized by the IRS as a 501(c)(3) non-profit organization. IPI has been involved for several years with in-depth evaluation of the communications marketplace. Specifically, we have worked on policy development with regard to opening, expanding, and preserving markets for video, voice, and Internet access, including broadband.

The economy of the United States operates under a market framework, where providers and consumers transact business largely at will within a framework of property rights, consumer protection, and regulation. Generally speaking, government intervenes only when there is some perceived market failure or bad behavior on the part of providers of goods and services.

Within that framework, consumers have spoken regarding PEG channels. In virtually every market, PEG channels are barely utilized by the community, and for the most part serve only the purposes of local elected officials, local video hobbyists, and cranks. The abysmal viewership numbers and program offerings for PEG channels testify to the verdict of consumers and the marketplace on PEG channels.

That PEG channels are frequently a waste of bandwidth has been recognized by state legislatures, which have usually included reductions or at least restrictions on PEG channels as part of state-level video franchise streamlining legislation.

Therefore, there is no legal, economic, or market reason to give PEG channels premium placement on the video menu system of video providers. The required placement of PEG channels on the video menu, as well as the very existence of the PEG channels themselves, is simply a relic of the previous local franchise regime, where communities exerted almost total control over the

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offerings and behavior of local video franchisees willingly extorted all manner of “payment” for the “right” to provide video programming to a community.

Today, the only reason to give PEG channels premium placement **is the political and lobbying clout of local and community officials.**

However, through its rulings and proceedings designed to streamline the local video franchise system, **the FCC has explicitly chosen to reduce the control local and community officials have over their community video systems.** Furthermore, states themselves have, through their own legislative and regulatory processes, eliminated local control over video offerings through statewide video franchise legislation.

To our knowledge, no one is proposing eliminating or further reducing the number of available PEG channels. But video providers need to be able to manage their bandwidth efficiently, and forcing them to reserve a broad swath of technically important analog space for channels largely ignored by consumers is the kind of economic and technological inefficiency that almost only results from government mandate.

The FCC should allow video providers the reasonable flexibility to place PEG channels in accessible but appropriate places within their bandwidth and their program menu, and efforts to alter the efficient use of spectrum for local political purposes should be resisted.

Allow the Consumer to Choose, not the Government

Consumer preferences and behavior should guide the decisions of video content providers. Some have argued that PEG channels should not be moved from old analog technology to new digital delivery, and have further objected to the actual channel number, or numbers, as to where PEG content could be found. Yet, while these few have objected, consumers have not.

The mere handful of consumers that ever tune in a PEG channel and the digital conversion all argue against imposing this government mandated and regulated discrimination.

There is no reason to impose upon consumers and video providers a less-efficient channel selection via government imposed discrimination. If consumers are inclined to use the PEG channels they will do so regardless of the “channel” on which such content is displayed. Ironically, of course, it is the video consumer who pays for both the efficiencies and inefficiencies of the video provider, so if government mandate forces inefficient use of bandwidth upon video providers, consumers pay more or receive less than they otherwise would.

Digital Convergence is Here

While some may want to freeze innovation in place by not allowing for “digital transition,” they are fighting against history, and current federal government policy.

In just 73 days over the air analog broadcast comes to an end. Why? Because of efficiency gains which will free more spectrum for other uses, and the quality improvements of a digital format in both picture and sound. This same logic should apply to the placement of PEG channels, and analog arguments are no longer appropriate.

Convergence also means that most or all of our video offerings will come to resemble video-on-demand. One argument against video providers making changes to how PEG channels are placed or displayed would seem to be raging against this clear and inevitable move in video provision. Indeed, closer examination would suggest that a video-on-demand model is actually much more appropriate for PEG content than the current PEG availability model.

Video-on-demand implies the “look and feel” of the Internet and of web sites. This convergence between the web and traditional video offerings should be encouraged, or at least tolerated, rather than resisted by those uncomfortable with the new model, or those resistant to change. Content providers must be free to experiment with new products, new services, and new modes of delivery. This is how markets process information about consumer desires and preferences.

Fearing this change and instituting regulatory barriers to this sort of experimentation is counterproductive and ultimately harms consumers and freezes innovation.

Resist the Call to Apply Concessions and Conditions to One Actor

To deprive certain consumers of the benefits of ever advancing innovation because of arbitrary regulatory rules is the poorest use of government power. Instead regulators and legislators must acknowledge that neither legislation nor regulation can possibly keep up with innovation.

While some would stand in the way of, in this case, Comcast moving to digital delivery they seem to ignore that Dish Network, DirecTV, Verizon FiOS, and at&t U-verse are all currently digital or rapidly headed there.

Today those who compete in the communications marketplace look increasingly similar, increasingly converged.

Convergence in communications continues to bring extensive competition between new and old firms using very different technologies—transmission technologies may differ but the “content” sent across them is indistinguishable

Regulatory policy should be technologically neutral. Why should one method for accessing the Internet be highly regulated while others are not? In the same vein,

regulatory policy should be entity neutral, not regulating one competitor in a different way than the rest of the market.

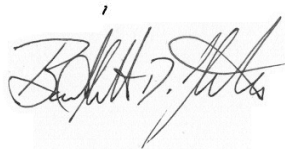
Government policy should not favor one communications technology over another, and it follows that government policy should not bias in favor of certain types of content over other types of content. Specifically, **government policy should not favor PEG channel content over other types of content demonstrably favored by consumers.**

Thank you for your attention to these comments. If you have any questions, please do not hesitate to call upon IPI.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Giovanetti".

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Dallas, Texas

A handwritten signature in cursive script that reads "Bartlett D. Cleland".

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