



November 14, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
455 12th Street, Southwest
Washington, DC, 20544

Dear Chairman Pai,

Wisconsin Community Media (WCM) and the League of Wisconsin Municipalities (LWM) jointly submit the following comments on the proposals and tentative conclusions set forth in the FCC's September 25 Further Notice of Proposed Rulemaking in *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket 05-311.

WCM is a professional association for PEG access station staff and producers; it was founded in 1998. LWM is a voluntary association of Wisconsin cities and villages working to advance municipal government. First established in 1898, its membership consists of 590 incorporated municipalities.

WCM and LWM both support the Comments submitted by the Alliance for Community Media (as part of the Cable Act Preservation Alliance) in this rulemaking. This letter offers additional detail about Wisconsin, which has a state franchise law.

Wisconsin 2007 Act 42, which was passed in 2007, abrogated all local cable franchise contracts in effect at the time, unless the cable operator wanted to continue under the current agreement until expiration. No cable operators chose that path. Today, the state statute governs the relationship between cable operators and local communities.

Under Wisconsin 2007 Act 42, cable operators (called video service providers in Wisconsin law) apply for renewal with the State every ten years and report the service territory they are seeking permission to serve. If the Wisconsin Department of Financial Institutions (DFI) finds an operator is legally, financially, and technically qualified, the application for renewal is approved. While cable operators must provide a description of their service territories, Wisconsin DFI does not keep records of where build-out has actually occurred, nor does state law require cable operators and other video providers to serve whole communities. Currently, for example, Charter has refused to build out into a portion of the City of Waupaca.

No cable operators are subjected to a local needs assessment process at renewal, which normally would ensure the cable system is serving community needs and interests. Wisconsin law banned Institutional Networks, free cable service to schools and other public buildings, all in-kind

support to PEG and the PEG Fee. All PEG fees in effect at the time of passage sunsetted in 2011. Local franchising authorities do not hold any letters of credit and there is no mechanism to hold cable operators responsible for problems with customer service or PEG access channel transmission.

Cable operators are required to continue to provide the PEG access channels that communities once negotiated for under now defunct local agreements, as long as they continue to be “substantially utilized.” Cable operators are able to reclaim the channel space if this threshold is not met. Language in the statute makes it nearly impossible for any community to add an access channel. Local communities are required to pay for any hardware required to transmit the channel and must pay for moving upstream origination lines or building upstream origination lines from new locations.

Under Wisconsin law, franchise fees are frozen at the percentage cities were collecting at the time the law took effect. Any municipality not collecting a fee at that time could assess a 5% franchise fee going forward.

In sum, the only support for public, education, and government access channels remaining in Wisconsin after passage of 2007 WI Act 42 is the requirement that video providers transmit programming on PEG access channels and franchise fees. Consequently, we have significant concerns about the proposal in the *Second Further Notice of Proposed Rulemaking* that franchise fees be reduced by the value of monetized access channels. PEG stations in Wisconsin will not survive further reductions in franchise fees. Moreover, as explained below in more detail, Wisconsin municipalities are unable to turn to property taxes or other revenue sources to make up for the loss in franchise fee revenue.

Cable franchise fees (called video service provider fees in Wisconsin law) can be used for any municipal purpose, and indeed Wisconsin municipalities often use franchise fee revenue to help fund police, fire, street maintenance, and other critical municipal services. Any reduction in franchise fees will cause significant financial challenges for communities that rely on them to help supplement property tax revenues. Since 2005, the State of Wisconsin has imposed strict limits on how much a municipality can increase its property tax levy from one year to the next. The main source of revenue for Wisconsin municipalities is property taxes. Property tax growth is limited to the rate of new construction that has occurred in a community. If no new construction has occurred, property taxes remain frozen. Many communities in Wisconsin are not experiencing growth and as a result are not able to increase their property tax levy even though the cost of providing municipal services continues to rise. When cable franchise fees are reduced there is no way for a community to make up the difference by increasing property taxes.

Many Wisconsin municipalities believe in the importance of local PEG programming and choose to use part or all of the franchise fees to fund PEG access television capital and operating costs. If in addition, municipalities are required by the FCC to use this fee to pay for the channels themselves, the burden will be much too great. The reduction in franchise fees called for in the *Second Further Notice of Proposed Rulemaking* will decimate PEG access channels in Wisconsin because communities will no longer be able to afford the cost.

Cable television customers will be the most negatively impacted by the loss of local PEG channels, since they will no longer receive programming specific to their community and will, most likely, pay the same amount for cable TV service. Customers who might have subscribed to cable television instead of satellite television to receive locally-produced programs will no longer have this reason to choose cable.

We cannot think of a more draconian way to eliminate the PEG access channels operators are required to carry than the FCC plan that would place a monetary value on these channels and deduct that value from the franchise fees cable operators pay for the use of municipal rights-of-way. Accordingly, we believe that taking this step would directly violate the intent of the federal Cable Act, which seeks to encourage local programming by allowing local franchising authorities to request PEG access channels and assess franchise fees and PEG fees to support them.

Wisconsin Community Media recently surveyed our 51 PEG access station members* and received complete data on franchise fees collected in 2015, 2016 and 2017 from 22 of them. Fourteen communities are receiving 95% to 115% of the fees in 2017 that they received in 2015. Based on these figures, the cable industry in Wisconsin is apparently doing well financially. Of those who reported lower franchise fees, three showed a sharp decline from AT&T, which for many years has been encouraging customers to migrate from its U-Verse cable-like service to DIRECTV, the satellite service it owns.

The idea of monetizing an access channel is fraught with difficulty. The amount of franchise fees the City of Deerfield collects from Charter Communications/Spectrum (Charter) is 1.5% of the franchise fees the City of Madison receives, yet both are on similar channel numbers in the 980s and 990s and both are viewable by the same number of people due to the “neighborhood” system used by Charter, which enables about a dozen communities to see the access channels of other communities in the area.

What kind of pricing formula would be fair for Charter to use to charge the City of Deerfield and the City of Madison for access channels, when Deerfield receives less than \$30,000 in franchise

*WCM PEG Station Members: City of Algoma, Beloit Access Television, Columbus Cable, De Pere TV, Deerfield Community Access TV, Dodgeville Community Access TV, Eau Claire Valley Media Works, Fitchburg Access Community Television, City of Green Bay Public Television, Village of Hartland Cable Television, Hudson-North Hudson River Channel, Janesville JATV Media Services, Jefferson Community Television, Juneau Cable Access Television, Kenosha Community Media, Lake Mills Community and Government Television, Madison City Channel, Madison WYOU, Marshfield Community Television, City of Mauston Channel 6, WCMF Village of McFarland, Merrill Productions/Merrill High School, City of Milwaukee Channel 25, Monona Community Media, Mount Horeb Trollway TV, Oregon Cable Access, Oshkosh Media, UW-Oshkosh Titan TV, Pleasant Prairie Media, Howards Grove Community Cable TV, Plymouth Community TV, Portage Access, Rice Lake Community Media, The Ripon Channel, City of River Falls, Sheboygan WSCS, Stevens Point Community TV, WSTO TV Stoughton, Town of Sevastopol TV, Sun Prairie Media Center, Superior Community Television, Waterloo Community Access TV, Watertown TV, WIN-TV/Waupaca Radio, Wausau Area Access Media, West Allis City Channel, West Bend Community Television, Trempealeau County Community TV, UW-Whitewater UWW-TV, Whitewater Community TV, Wisconsin Rapids Community Media.

fees and out of this amount funds the capital and operating costs of a PEG access station (since state law outlaws PEG fees)? And how could any pricing formula result in anything but the elimination of PEG access channels on the lineup, depriving cable customers of this service that they have long paid for through franchise fees?

When 2007 WI Act 42 was passed in Wisconsin, it was touted as a way to bring down cable TV prices and encourage competition in the marketplace. Prices have not gone down. Charter has bought out Time Warner; as a result, about 90% of Wisconsin cable subscribers are now served by Charter. AT&T, which instigated state franchise legislation in order to easily overbuild with its U-Verse product in mostly Time Warner areas, has, for the last several years, been encouraging its customers to switch to its satellite company, DIRECTV. There is now less competition in the state.

2007 WI Act 42 caused the closure of PEG access stations across Wisconsin due to the loss of funding once provided by the PEG fee. The City of Milwaukee has lost its public access station, the City of West Allis has lost its public access station, the City of Madison has lost its public access facility and programs the public access channel with volunteers, and the City of River Falls recently returned its public and government access channels to the cable operator. Many small cities have closed down their modest stations and returned their access channels and nearly all PEG access stations have seen their budgets cut, several by more than half.

Charter makes it difficult to operate a successful PEG access channel in Wisconsin. Besides placing the access channels in the 980s and 990s, it refuses to carry PEG access channels in HD, even though nearly all municipalities and non-profit public access centers we surveyed have invested thousands of dollars in HD equipment and produce their programming in HD. Charter also refuses to put the program schedule of the PEG access channels in the Electronic Program Guide so its customers can select PEG access programming for viewing or for recording and viewing later. Only nine out of the forty stations who responded to our survey have managed over the last thirty years to get their programming listed on the Electronic Program Guide, even though 90% of our survey respondents want their schedule in it. In short, Charter has relentlessly acted to inhibit viewership of PEG channels by its customers.

It is clear to us that the cable industry is trying to rid itself of all public interest obligations and does not want to pay municipalities for the use of rights-of-way either. This stance is understandable. Cable operators are corporations and are interested in maximizing their profits. Government's role, however, is to temper that drive by looking out for the interests and welfare of the public. During the last session of the Wisconsin legislature, the cable industry lobbied to sunset cable franchise fees over a period of a few years, but legislators did not move the provision forward to a floor vote. Should the industry be successful next session, municipalities will have no funds to pay for PEG facility operating and capital expenses and they ultimately won't have any funds to pay for the PEG access channels either.

Wisconsin Community Media and the League of Wisconsin Municipalities believe there is intrinsic worth to having PEG access channels and believe that the public interest far outweighs any private interest expressed by the industry. As we all know, newspapers keep closing down and local broadcasters do not cover all the news in their service areas in their brief newscasts.

Citizens currently have the opportunity to sit in their livingrooms and kitchens and watch public meetings, local events, church services, local business leaders, school sports, area musicians and more. When residents are able to see people like themselves and their neighbors and friends on television, it helps define and bind communities together. PEG channels are the only entrée “regular” people have to use the broadband medium of television to speak to their communities. PEG channels perfectly serve the long-held principles of broadcast and cable regulation – localism and diversity of sources.

We believe PEG access channels have considerable merit. We urge you to rethink this rulemaking to preserve in-kind contributions made by cable operators to PEG access stations. The proposed rulemaking favors maximizing cable industry profits and unless changed, will result in Wisconsin losing all of its PEG access channels.

Thank you for your consideration.

Sincerely,



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CC: The Honorable Michael O’Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner