

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: November 23, 2009
Item No.: 7.f

Department Approval

City Manager Approval

W. J. Mahonen

Item Description: Resolution Supporting Federal HR 3745, The Community Access Preservation Act of 2009

1 **BACKGROUND**

2 Public, Educational and Governmental (PEG) channels play an important role in the City of
3 Roseville, making community information and meetings accessible to all residents. Funding for
4 PEG channels may be in jeopardy.

5 Historically, funding for and broadcast of PPEG TV channels have been negotiated as part of
6 local franchise agreements between cable companies and local franchise authorities. However,
7 23 states have enacted new telecommunication laws that establish state-level franchise authority
8 that lack federal protection. This presents significant broadcast and funding obstacles for some
9 PEG channels.

10 Congresswoman Tammy Baldwin has introduced a bill that would

- 11 • Allow PEG fees to be used for any PEG-related purposes;
- 12 • Require PEG channels to be carried in the same manner as local broadcast channels;
- 13 • Require the FCC to study the effect state video franchise laws have had on PEG
14 channels, and require operators to provide the greater of the support required under state
15 laws or support historically provided for PEG; and
- 16 • Make cable television-related laws and regulations applicable to all landline video
17 providers.

18 **POLICY OBJECTIVE**

19 Ensure that the citizens of Roseville continue to receive PEG channel cablevision.

20 **FINANCIAL IMPACTS**

21 None

22 **STAFF RECOMMENDATION**

23 Consider the resolution supporting Federal HR 3745, The Community Access Preservation Act
24 of 2009.

25 **REQUESTED COUNCIL ACTION**

26 Consider the resolution supporting Federal HR 3745, The Community Access Preservation Act
27 of 2009.

28

Prepared by: William J. Malinen, City Manager

29 Attachments: A: Baldwin Press Release
30 B: CAP Act Summary
31 C: CAP Act Resolution Passed by NSAC
D. Resolution



Press Release

Congresswoman Tammy Baldwin

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October 8, 2009

Baldwin Advocates for Community Access TV *Public, Educational, Governmental Channels Need Support*

Congresswoman Tammy Baldwin has introduced the Community Access Preservation (CAP) Act of 2009 (H.R. 3745) to address the challenges faced by public, educational, and governmental (PEG) TV channels and community access television stations.

Historically, the funding for and broadcast of PEG channels have been negotiated as part of local franchise agreements between cable companies and local franchise authorities. However, twenty-three states have enacted new telecommunication laws that establish state-level franchise authorities. As a result of these recent state-wide agreements and a lack of adequate federal protection, some PEG channels now face significant broadcast and funding obstacles.

“Local access channels bring unique voices, perspectives, and programming to television,” said Congresswoman Baldwin. “The nature of television programming is changing, as are the methods in which that programming is delivered. These changes should not come at the expense of the diversity and vibrancy of local voices,” Baldwin said.

PEG channels connect residents with their local government in much the same way C-SPAN connects people to activities in Congress. Local school districts operate channels to feature school board meetings and forums, interviews, lectures, and sporting events not otherwise broadcast on television. Additionally, communities adopt various genres of PEG programming to reflect local interests. According to a survey conducted by National Association of Telecommunications Officers and Advisors, religious shows represent 20-40% of local access programming.

PEG stations and channels are locally funded, produced, and viewed and current federal law and a number of state laws are silent as to the basic requirements for PEG broadcasts or do not require dedicated funding beyond an “adequate assurance of financial support.” Some franchised cable operators carry PEG channels differently

than commercial channels, broadcasting them in reduced resolution, displaying them in menu-format, or simply moving them to a digital-only tier where they are inaccessible to analog cable customers. In some cases, customers must now pay extra fees in order to receive PEG channels. In other cases, operators are refusing to pass through PEG closed captioning unless a special request is made. This treatment undervalues PEG channels and their viewers.

The Community Access Preservation (CAP) Act would address the immediate issues facing PEG channels by:

- Allowing PEG fees to be used for any PEG-related purposes;
- Requiring PEG channels to be carried in the same manner as local broadcast channels;
- Requiring the FCC to study the effect state video franchise laws have had on PEG channels, and requiring operators to provide the greater of the support required under state laws, or the support historically provided for PEG; and
- Making cable television-related laws and regulations applicable to all landline video providers.

“Decisions at the state and federal level have combined to create a crisis for PEG. With the CAP Act, Rep. Baldwin effectively addresses the most immediate problems and opens the door to the future by preserving support for PEG while the FCC conducts its study. This bill is critical to us. Wisconsin’s rich community access heritage is on the line,” said Mary Cardona, Executive Director of the Wisconsin Association of PEG Channels.

“Community Media has a four decade history of connecting communities with their governments, schools, churches, friends and neighbors. The future existence of community media is being threatened against the intent of Congress for localism and diversity of voices in media. With the CAP Act, Rep. Baldwin addresses immediate needs to preserve and protect the important role PEG channels play in advancing democratic ideals through community uses of media,” said Matt Schuster, Chair, Alliance for Community Media.

The Community Access Preservation (CAP) Act does not assume a “one size fits all” PEG structure, instead leaving the decision to negotiate for PEG channels to franchising authorities and the local communities they represent.

Baldwin’s legislation is supported by the Alliance for Community Media (ACM) and the National Association of Telecommunication Operators and Advisors (NATOA).

###

CAP Act (Introduced in House)

HR 3745 IH

111th CONGRESS
1st Session
H. R. 3745

To amend the Communications Act of 1934 to provide for carriage and display of public, educational, and government channels in a manner consistent with commercial channels, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

October 7, 2009

Ms. BALDWIN introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to provide for carriage and display of public, educational, and government channels in a manner consistent with commercial channels, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Community Access Preservation Act' or the 'CAP Act'.

SEC. 2. AMENDMENTS.

(a) In General- Section 611 of the Communications Act of 1934 (47 U.S.C. 531) is amended--

- (1) by redesignating subsection (f) as subsection (h); and
- (2) by inserting after subsection (e) the following new subsections:

(f) Equivalence-

(1) IN GENERAL- In the case of any franchise under which channel capacity is designated under subsection (b), such channel capacity shall be--

(A) at least equivalent in quality, accessibility, functionality, and placement to--

(i) channel capacity used for required carriage of local commercial television stations, as defined in section 614(h)(1); or

(ii) if no such stations are required to be carried, the channel capacity used to carry the primary signal of the network-affiliated commercial television stations carried on the cable system; and

(B) provided to and viewable by every subscriber of a cable system without additional service or equipment charges.

(2) SIGNAL QUALITY AND CONTENT- A cable operator shall--

(A) carry signals for public, educational, or governmental use from the point of origin of such signals to subscribers without material degradation and without altering or removing content provided as part of the public, educational, or governmental use; and

(B) provide facilities adequate to fulfill such requirements.

(3) WAIVER- The requirements of paragraph (1) may be waived by a franchising authority if the franchise contains an explicit provision that such requirements shall not apply and such provision was adopted after a proceeding the conduct of which afforded the public adequate notice and an opportunity to participate.

(4) ENFORCEMENT- The requirements of this subsection may be enforced by a franchising authority or by the Commission.

(5) ADDITIONAL REQUIREMENTS- Nothing in this subsection prevents a franchising authority from establishing additional requirements with respect to the quality, accessibility, functionality, placement, and provision of channel capacity designated for public, educational, or governmental use.

(g) Preservation of Public, Educational, and Governmental Use-

(1) STUDY- Within 180 days after the date of enactment of the Community Access Preservation Act, the Commission shall submit to Congress a report containing--

- `(A) an analysis of the impact of the enactment of State video service franchising laws since 2005 on public, educational, and governmental use of cable systems;
- `(B) an analysis of the impact of the conversion from analog to digital transmission technologies on public, educational, and governmental use of cable systems; and
- `(C) recommendations for changes required to this Act to preserve and advance localism and public, educational, and governmental use of advanced communications systems.

`(2) SUPPORT- In States that adopted legislation affecting cable system franchising requirements relating to support for public, educational, or governmental use of a cable system that became effective after May 31, 2005, a cable operator shall, notwithstanding such legislation--

`(A) pay to any political subdivision in which the operator provides service the greater of--

`(i) the historical support that the operator, or its predecessor, provided for public, educational, or governmental use of the cable system in such subdivision in accordance with this subsection; or

`(ii) the amount of any cash payment that the operator is required to pay to such subdivision under such State legislation affecting cable system franchising requirements;

`(B) carry signals for public, educational, or governmental use from the point of origin of such signals to subscribers and provide facilities adequate to fulfill such requirements in accordance with subsection (f)(2); and

`(C) provide at least the number of channels for public, educational, or governmental use that it was providing as of May 31, 2005.

`(3) CALCULATION OF HISTORICAL SUPPORT- Historical support includes the value of all support provided for public, educational, or governmental use, including in-kind support and free services. The cable operator shall pay support equal to the greater of--

`(A) the value of the support provided in the most recent calendar year prior to the effective date of such State legislation affecting cable system franchising requirements; or

`(B) the value of the annual average support provided over the term of the franchise pursuant to which it operated prior to such effective date, taking into account the time value of money.

`(4) PAYMENTS- The amounts owed to the political subdivision under paragraph (2)(A) shall be paid annually, in quarterly installments, with the first payment being due 30 days after the date of enactment of the Community Access Preservation Act.

`(5) USES; DISPUTES-

`(A) USES- Support provided to any State or local political subdivision under this subsection shall be dedicated to public, educational, or governmental use of channel capacity.

`(B) DISPUTES- If there is a dispute as to amounts owed under this subsection, undisputed amounts shall be paid, and the Commission shall determine on an expedited basis what, if any, additional amounts are owed.'

(b) Franchise Fee Definition- Section 622(g)(2) of such Act (47 U.S.C. 542(g)(2)) is amended--

(1) in subparagraph (B), by striking 'in the case of any franchise in effect on the date of the enactment of this title,';

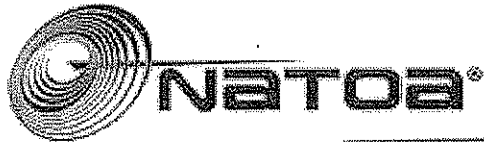
(2) by striking subparagraph (C); and

(3) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(c) Cable Service Definition- Section 602(6) of such Act (47 U.S.C. 522(6)) is amended by striking 'means' and inserting 'means, regardless of the technology or transmission protocol used in the provision of service'.

Cor Wilson

From: members-bounces@lists.natoa.org on behalf of Matt Johnson [mjohnson@hq.natoa.org]
Sent: Thursday, October 08, 2009 12:21 PM
To: NATOA Members
Subject: [Members] Rep. Baldwin Introduces the CAP Act in Effort to Protect PEG Channels
Attachments: image001.jpg; image002.gif; Summary of the Community Access Preservation (CAP) Act.pdf



Rep. Baldwin Introduces the CAP Act in Effort to Protect PEG Channels

Representative Tammy Baldwin (D-WI) introduced today the Community Access Preservation (CAP) Act of 2009 (H.R. 3745). The CAP Act addresses some of the most crucial issues currently facing public, educational, and government (PEG) channels. NATOA, along with the Alliance for Community Media (ACM), has been a strong supporter of Rep. Baldwin in her actions fighting to protect PEG channels.

Below the text of this email you will find the Press Release from Rep. Baldwin's Office as well as the full text of the CAP Act. Additionally, a one page summary of the bill is attached to this email. More information will follow.

If you have any questions or require any additional information, please contact me at mjohnson@natoa.org.

Matt Johnson
NATO A Legal Fellow
mjohnson@natoa.org

**Summary of the Community Access Preservation (CAP) Act
(H.R. 3745)**

Sponsor: Rep. Tammy Baldwin (D-WI)

Public, educational and government (“PEG”) channels permit schools, governments, individuals and groups to provide and receive information about local events, emergencies, and issues. The channels encourage creation of local programming by civic groups and non-profits, cover government and school meetings, and promote localism and civic engagement. The CAP Act responds to four immediate threats to PEG and these critical local communications.

1. Unnecessary Limits on the Use of PEG funds.

Issue: Under federal law, a cable operator and a local community may negotiate for support for PEG use in addition to the franchise fee payments for use of public rights of way. The FCC recently ruled, subject to some important exceptions, that this PEG support may only be used for facilities and equipment, and not for PEG operating expenses.

Effect: Some communities are closing PEG facilities because there are no funds to operate them.

Solution: The bill amends the Cable Act to ensure that PEG fees can be used for any PEG purpose.

2. Discriminatory Treatment of PEG channels.

Issue: The Cable Act provides that PEG channels should be free from cable operator interference and generally available to all cable subscribers. Accordingly, operators historically have provided local commercial television signals and PEG in the same manner, to all subscribers, and without additional charges. Some operators are now providing PEG channels that are less accessible, lower quality, missing basic functionality and more costly. Three complaints about mistreatment of PEG are before the FCC, but PEG is suffering in the meantime.

Effect: PEG is less accessible to all subscribers, and the most vulnerable viewers may lose access to basic local information altogether.

Solution: The bill reaffirms that operators must deliver PEG channels to subscribers without additional charges, and via channels whose quality, accessibility, functionality, and placement is equivalent to local commercial television stations.

3. Preservation of PEG Support and Localism.

Issue: Federal law envisioned that PEG requirements would be established on a community-by-community basis. Several States, while intending to preserve PEG, adopted statewide video franchising standards without regard to local needs and interests.

Effect: Statewide standards are resulting in widespread *elimination* of PEG.

Solution: To preserve PEG, immediate action is needed to permit Congress to review the impact of these changes on local programming. The FCC is directed to investigate and to report to Congress on the impact of State video service franchising laws since 2005 on PEG. To ensure PEG is preserved, each cable operator must provide the channels and critical facilities it had been providing historically. Operators must make ongoing PEG support payments equal to the greater of the cash payment required under State law, or the value of the PEG support it historically provided.

4. Definition of Cable System.

Issue: Entities that provide video services via wired facilities in the rights of way are intended to be subject to Cable Act rules, regardless of the transmission protocol used to deliver service, but some claim that the law is unclear, creating doubt as to where the rules apply.

Solution: The Act is amended to ensure it is technologically neutral. Providers using wired facilities in the rights of way are treated similarly and are subject to similar PEG requirements.

A RESOLUTION SUPPORTING HR 3745, THE COMMUNITY ACCESS
PRESERVATION ACT OF 2009

WHEREAS, public, educational and government (PEG) channels play a significant role in the Cities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony and Shoreview, MN;

WHEREAS, PEG channels are a unique and valuable resource for local information and discourse for the residents of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony and Shoreview, MN; and

WHEREAS, PEG channels televise local government meetings, including city council, planning commission, county board and school board meetings, so that citizens are informed about the actions taken by local elected officials; and

WHEREAS, PEG channels contribute to the democratic process by providing opportunities for candidates and others, such as the League of Women Voters, to discuss local issues during election campaigns; and

WHEREAS, PEG channels provide a window through which residents can view the diversity of cultures, recreational activities and artistic endeavors in their local community; and

WHEREAS, PEG channels reflect the unique identity of the communities they serve; and

WHEREAS, it is important to preserve PEG channels and funding for PEG channels, and to ensure that the channels continue to be available to the entire community to serve the residents of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony and Shoreview, MN; and

WHEREAS, HR 3745, the Community Access Preservation Act, addresses critical and immediate threats to PEG.

NOW THEREFORE BE IT RESOLVED:

1. The Board of Directors of The North Suburban Access Corporation, DBA CTV North Suburbs, a public access facility serving the Cities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony and Shoreview, MN, supports immediate passage of HR 3745; and
2. The Board of Directors of The North Suburban Access Corporation, DBA CTV North Suburbs, calls on our Congressional delegation to take all possible actions in support of the passage of HR 3745, including but not limited to endorsing, co-sponsoring and voting for HR 3745, and to work for its rapid passage.

This Resolution is passed, adopted and issued by the North Suburban Access Corporation,
DBA CTV North Suburbs, this 5th day of November, 2009.

NORTH SUBURBAN ACCESS CORPORATION

By: _____
Its President

Attest: _____
Its Secretary

**EXTRACT OF MINUTES OF MEETING
OF THE
CITY COUNCIL OF THE CITY OF ROSEVILLE**

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota was duly held on the ____ day of _____, 2009, at 6:00 p.m.

The following members were present:

and the following were absent: .

Member _____ introduced the following resolution and moved its adoption:

RESOLUTION No.

**Resolution Supporting Federal HR 3745,
The Community Access Preservation Act of 2009**

WHEREAS, public, educational, and government (PEG) channels play an important role in the City of Roseville; and

WHEREAS, PEG channels are a unique and valuable resource for local information and discourse for residents of the City of Roseville; and

WHEREAS, PEG channels televise local government meetings, including the Roseville City Council and City advisory commissions; and

WHEREAS, PEG channels contribute to the democratic process by providing open opportunities and forums for candidates, government officials, and citizens to discuss local issues, both during election campaigns and at other times; and

WHEREAS, PEG channels provide a window through which residents can view the diversity of cultures, recreational activities, and artistic endeavors in their local community; and

WHEREAS, PEG channels reflect the unique identities of the communities they serve; and

WHEREAS, it is important to preserve PEG channels and funding for PEG channels, and to ensure that the channels continue to be generally available to serve the residents of the City of Roseville; and

1 WHEREAS, various changes in the regulation of PEG channels, as well as actions of
2 cable operators, threaten to limit the funding options for PEG channels, limit PEG
3 channels' availability to the public, eliminate or significantly curtail local control of PEG
4 channels, and potentially eliminate the requirement for PEG channels by some providers;
5 and

6
7 WHEREAS, Federal HR 3745, the Community Access Preservation Act, addresses these
8 critical and immediate threats to PEG channels.

9
10 NOW, THEREFORE, BE IT RESOLVED:

- 11
12 1. The City of Roseville supports immediate passage of HR 3745; and
13
14 2. The City of Roseville calls upon our Congressional delegation to take all possible
15 actions in support of the passage of HR 3745, including endorsing, co-sponsoring,
16 and voting for HR 3745, and to work for its rapid passage.

17
18 The motion for the adoption of the foregoing resolution was duly seconded by Member

19
20 , and upon a vote being taken thereon, the following voted in favor thereof:

21
22 and the following voted against the same:

23
24 WHEREUPON said resolution was declared duly passed and adopted.

25
26
27 STATE OF MINNESOTA)
28) ss
29 COUNTY OF RAMSEY)

30
31
32 I, the undersigned, being the duly qualified City Manager of the City of Roseville,
33 County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared
34 the attached and foregoing extract of minutes of a regular meeting of said City Council
35 held on the ____ day of _____, 2009 with the original thereof on file in my office.

36
37 WITNESS MY HAND officially as such Manager this ____th day of _____, 2009.

38
39
40
41 _____
42 William J. Malinen, City Manager

43
44 (Seal)