

ALLIANCE FOR COMMUNICATIONS DEMOCRACY
EX PARTE ON COMCAST-NBCU APPLICATION
MB DN 10-56

- As ACD and other commenters have noted, a combined Comcast-NBCU, which will merge the nation's largest cable operator with a television network/cable programming library of content far larger than Comcast currently has, will have greatly increased incentives to favor its own proprietary content over non-affiliated content.
- In almost all localities where Comcast is the cable operator, the Comcast-NBCU merger will eliminate one significant voice (the local NBC affiliate) in the *local* video viewing marketplace. The merged Comcast-NBCU will therefore have an added incentive to favor its own local outlet (the NBC affiliate) over local PEG programming that may compete for viewers of locally-oriented programming. This amplifies the need to ensure that the uniquely local and diverse outlet of PEG is protected and preserved.
- Thus, although the proposed Comcast-NBCU merger poses risks to all non-affiliated content providers on Comcast systems, it poses an especially acute, and unique, threat to PEG programming. That threat should be of particular concern to the FCC, as PEG is the one vehicle sanctioned by the Cable Act with a specific and enduring mission to encourage public participation and to foster diversity and localism.
- PEG fulfills that mission. Research shows that, while less than 0.5% of commercial television media programming is devoted to local public affairs, the vast majority of PEG programming is so devoted. Research further shows that viewers value PEG programming highly. A recent survey reveals that (1) 74% of subscribers say PEG programming is "very or somewhat important to them;" (2) 59% say that more than \$1.00/month/sub should be devoted to PEG; (3) PEG channel locations matter, because

channel surfing decreases dramatically as the channel number increases, especially above channel 100; and (4) older and lower income subscribers are less likely to access the Internet and therefore rely more heavily on cable video channel options for information.

- The merged entity could substantially reduce PEG viewership by making PEG channels more difficult for subscribers to find, access and have the same functionalities available that they have with other linear channels, and/or by compressing or degrading PEG channels so that they have reduced quality, accessibility or functionality vis-à-vis other channels. That reduction in PEG viewership would likely reduce PEG viewership, making it more likely that the merged entity can limit or reduce the capacity now designated for PEG use. That, in turn, would free up more system capacity for the merged entity's content as well as broadband Internet access applications.
- As discussed below, the Commission cannot realistically assume that existing state laws or local franchises will adequately protect PEG from potential abuses arising from the merger. Those laws and franchises were written before the transaction was announced, and without any consideration of its impact. Because most localities have no ability unilaterally to impose additional conditions in response to the merger, it is necessary for the Commission to protect PEG from potential abuses arising from the merger.
- Comcast-NBCU has conceded the relevance and importance of PEG issues by volunteering 2 PEG-related conditions. But those conditions are inadequate.
 - ▶ The first condition – that Comcast will not migrate PEG to digital until a cable system is converted to all digital, or until a community agrees to PEG digital carriage, whichever occurs first – would leave Comcast free to “channel slam” PEG programming and also ignores that local franchises and state video

franchising laws permitting PEG digital conversion before local broadcast digital conversion were not adopted in contemplation of the cable operator acquiring a television broadcast network. Moreover, once Comcast converts to all-digital (as it soon will), its proposed condition would leave it free to discriminate against PEG vis-à-vis its proprietary programming, in terms of accessibility, signal quality and functionality. And, unless the Commission grants the Petition for Declaratory Ruling of ACM, *et al.* in MB Docket No. 09-13, Comcast's commitment would leave Comcast free to relegate PEG to a substandard IP application as AT&T has done with its "PEG Product."

- ▶ Comcast-NBCU's second proposed PEG condition – that it will develop a platform to host some PEG content on VOD and On Demand Online within 3 years, which Comcast claims is “an enhancement and not a replacement for existing PEG franchise commitments” – would be meaningful only if Comcast is required to maintain its existing commitments, if Comcast's second proposed PEG condition is extended to include public access, and if its commitment is applied non-discriminatorily. As noted in ACD's Comments and Merger conditions, and not denied by Comcast in its Response to Comments, Comcast omits public access from this commitment, limiting it only to “educational and governmental access programming”. Moreover, as drafted by Comcast, the proposed PEG condition would leave Comcast free to discriminate against PEG in VOD and online platforms – something its increased program library resulting from the merger would give it an incentive to do.

- The Commission should therefore impose the following 4 PEG-related conditions on any consent to the Comcast-NBCU transaction:

PEG Merger Condition No. 1: As a condition of the Comcast-NBCU merger, Comcast should be required to make all PEG channels on all of its cable systems universally available on the basic service tier, in the same format as local broadcast channels, unless the local government specifically agrees otherwise.

PEG Merger Condition No. 2: As a merger condition, the Commission should protect PEG channel positions.

PEG Merger Condition No. 3: As a merger condition, the Commission should prohibit discrimination against PEG channels, and ensure that PEG channels will have the same features and functionality, the same signal quality, and the same accessibility as that provided to local broadcast channels.

PEG Merger Condition No. 4: As a merger condition, the Commission should require that PEG-related conditions apply to public access, and that all PEG programming is easily accessed on menus and easily and non-discriminatorily accessible on all Comcast platforms.