

MEMORANDUM

TO: City Council
FROM: John Nephew, Councilmember and Cable Commission Alternate
SUBJECT: **Resolution in Support of the Community Access Preservation Act**
DATE: November 13, 2009 for the November 23 regular council meeting

H.R. 3745, the Community Access Preservation Act ("CAP Act"), was recently introduced in the House of Representatives. The CAP Act would do several things that are vital to protecting public, educational, and government ("PEG") programming, including the cable broadcasting of city meetings and notices as we currently do in Maplewood on Channel 16.

On Thursday, November 12th, the Ramsey/Washington Suburban Cable Commission unanimously passed a resolution in support of the CAP Act. In addition, the League of Minnesota Cities has urged member cities to pass resolutions and contact our congressional representatives in support of this bill.

The following attachments provide more information about the bill:

- A) A proposed resolution in support of H.R. 3745
- B) An "Action Alert" from the League of Minnesota Cities explaining the importance of this bill
- C) The text of H.R. 3745
- D) A one-page summary of the Act
- E) A section-by-section explanation of the bill

REQUESTED ACTION

Approve the attached resolution in support of the Community Access Preservation Act, and direct staff to forward the resolution to the offices of Senators Klobuchar and Franken, and Representative McCollum.

**RESOLUTION IN SUPPORT OF H.R. 3745,
THE COMMUNITY ACCESS PRESERVATION ACT**

WHEREAS, public, educational and government (PEG) channels play a significant role in Maplewood; and

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

WHEREAS, PEG channels televise local government meetings, including city council, city advisory boards and commissions, 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 Maplewood; and

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

NOW THEREFORE BE IT RESOLVED:

The City Council of the City of Maplewood supports immediate passage of HR 3745; and

The City Council of the City of Maplewood 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.

Passed and adopted this 23rd day of November, 2009.

Mayor:

Attest:

City Clerk



Action Alert: Ask members of Congress to co-sponsor Community Access Preservation Act

Issue 32

Published: November 4, 2009

By [Ann Higgins](#)

The League of Minnesota Cities (LMC) strongly encourages cities to contact members of the Minnesota congressional delegation and ask them to co-sponsor [HR 3745](#), the federal Community Access Preservation (CAP) Act, authored by [Rep. Tammy Baldwin](#) (D-Wis.). The legislation should be of particular interest to cities with cable franchise agreements requiring local cable companies to make available channels and funding to support facilities and equipment to produce public, educational, and government (PEG) video programming originated at the local level.

The legislation is intended to:

- Put a stop to discriminatory treatment of PEG channel placement and transmissions.
- Prohibit cable companies from restricting cities' use of PEG access fees to support the cost of operating PEG facilities.
- Direct the Federal Communications Commission to conduct a study and report to Congress on the impact of the recent adoption of laws that have replaced local franchising with a state-administered franchising process.

In 2008, the League encouraged and helped draft legislation that led to a similar study done by the University of Minnesota that demonstrated serious drawbacks that had taken place in a number of states where new state franchising laws had been implemented. That study was presented to state lawmakers during the 2009 legislative session.

The study also examined claims by cable companies that state franchising would result in competitive franchising as well as lower prices for cable service. It is now an idea that is being carried to the national level by the [Alliance for Community Media](#) (ACM) and the [National Association of Telecommunications Officers and Advisors](#) (NATOA), professional and trade associations representing local PEG organizations, cable franchise administrators, and cable commissions. The [Minnesota Association of Community Telecommunications Administrators](#) (MACTA), a League affiliate, and the [Minnesota chapter of ACM](#) have been directly involved in the development of the legislation and are actively urging their members to encourage broad support of the CAP Act.

The legislation is aimed at making deliberate and critical changes to the federal Cable Act to address some of the serious adverse effects of state franchising laws that have already taken place and to end the threat of similar actions during renewal of existing cable franchises, which in Minnesota will occur over the next several years.

Cities are urged to take the following immediate actions:

- Contact your [Congress member](#) and Sens. [Amy Klobuchar](#) and [Al Franken](#) to urge them to sponsor and support the CAP Act, HR 3745. Include information about the PEG channel programming and services in the community.
- Adopt a resolution supporting action by Congress to pass HR 3745 and urging your Congress member to sponsor and vote for HR 3745 and work for its enactment.
- Visit the [ACM website](#) to learn more about the bill and access a model resolution and sample letters to members of Congress.

For more information, contact **Ann Higgins**, LMC, at ahiggins@lmc.org or (651) 281-1257.

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'.

Summary of the Community Access Preservation (CAP) Act

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: Immediate action is needed to preserve PEG 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.

The Community Access Preservation (CAP) Act

Section-by-Section

Sec. 1, Short Title

Section 1 sets forth the short title of the bill as the ‘Community Access Preservation Act or CAP Act.’

Sec. 2, Amendments

Section 2 amends Section 611 of the Communications Act of 1934 (47 U.S.C. 531) to create two new subsections:

Equivalence

Public, educational, and governmental (PEG) access channels are those cable television channels that are set aside for use by the general public, by local schools, colleges, and universities, and by elements of local government. PEG access channels are not mandated by federal law. But the Cable Communications Policy Act of 1984 amended the Communications Act to explicitly allow cable franchising authorities to require cable operators to set aside channel capacity for PEG use and to provide adequate facilities or financial support for those channels.

This section clarifies long-standing federal standards for cable operator carriage of capacity and channels for PEG use. The PEG capacity would have to be:

- At least equivalent in quality, accessibility, functionality, and placement to channel capacity used for local commercial television stations. In case there are no local commercial stations, the equivalence standard would be the primary signal of the network-affiliate carried on the cable system.
- Provided to and viewable by every subscriber of a cable system without additional service or equipment charges.
- Carried without material degradation or loss of content from the point of origin to cable system subscribers.

Consistent with existing federal laws and regulations, which permit local franchising authorities to expressly waive certain federal requirements for carriage of PEG channels, this section provides that a franchising authority could expressly waive these requirements in a franchise agreement after conducting a public proceeding to determine if such a waiver is appropriate and supported by the community.

The equivalence standard could be enforced by either the franchising authority or the Federal Communications Commission (FCC).

Preservation of Public, Educational, and Governmental Use

The Communications Act of 1934 stipulates that cable franchise requirements, including PEG requirements, would generally be established based on an individualized assessment of local needs, so that cable systems would be responsive to the needs of local communities. However, several states have adopted statewide video franchising standards without regard to existing or future individualized local needs and interests.

This section directs the FCC to submit a report to Congress on the impact of state video service franchising laws since 2005 on PEG use of cable systems.

The section also requires that in states that have enacted state-level franchising laws since May 31, 2005, PEG channels would continue to receive financial and infrastructure support and channel capacity based on the support historically provided by the cable provider. Specifically:

- Financial support would be calculated as the greater of the support provided in the calendar year prior to the state video service franchising law, or the average annual support over the term of the franchise agreement.
- Infrastructure support would be the facilities required to continue to carry the PEG channels from their point of origin to subscribers without material degradation or loss of content.
- Each operator would provide at least the same amount of PEG channel capacity that it was required to provide as of May 31, 2005. If there were no PEG channel capacity requirements in a particular locality as of that date, the State law requirements would apply.

[Possible addition: Support means all support, including in-kind support to the extent an operator is no longer providing in-kind support on the same basis it was being provided before the state-level franchising law went into effect.] The FCC would be responsible for settling disputes over amounts owed.

Franchise Fee Definition

Section 622(g)(2)(C) of the Communications Act of 1934 makes clear that cash paid to a franchising authority for PEG “capital costs” are not counted against the franchise fee. On December 20, 2006, the FCC issued a rule that found that cash paid by an operator and paid to a franchising authority to support the use of PEG facilities, such as staff salaries is counted against the franchise fee. .

To prevent this limited interpretation for the use of financial support, this section overturns the FCC interpretation, and makes clear that financial support provided for PEG is not to be counted, or offset, against the franchise fee, whether used for PEG capital or operating costs.

Cable Service Definition

This section amends Section 602(6) of the Communications Act to clarify that the definition of cable service is technology and transmission-protocol neutral. As a result, it makes it clear that the requirements of the Cable Act apply to systems that use traditional cable transmission technologies, as well as those that use digital transmission protocols, including, but not limited to, IP protocols, to deliver video programming or other programming services to subscribers.