

AGENDA REPORT

TO: Mayor & City Commission
FROM: Ken Hibel, City Manager
DATE: October 28, 2009
RE: Support of H.R. 3745



For the Agenda of November 2, 2009

Background. The City relies on its Public, Educational, & Government (PEG) Channel 26 as a means of communicating with community residents. Wisconsin Representative Tammy Baldwin has introduced House Resolution (H.R.) 3745 (*see copy of att'd press release and legislation synopsis*) and as a means to protect the continued use of PEG channels throughout the United States. Our MAC 3 TV Cable Consortium has asked all of its member communities to consider adopting a resolution of support for this proposed legislation.

Issues & Questions Specified. Should the City Commission approve a support resolution for HR 2745?

Alternatives.

1. Approve the resolution of support.
2. Do not approve a resolution of support
3. Set aside decision regarding this matter to a later date.

Financial Impact. There is no direct fiscal impact to the City.

Recommendation. I recommend that the City Commission adopt the proposed Resolution 2009-110 (*copy att'd*), thereby formally supporting the proposed legislation presented by Congresswoman Baldwin.

Attachments.

1. Press Release & Synopsis.
2. Resolution 2009-110.



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.

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Press Release

Congresswoman Tammy Baldwin

Wisconsin's Second District

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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).

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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'.

RESOLUTION 2009-110

A RESOLUTION OF THE CLARE CITY COMMISSION SUPPORTING THE PASSAGE OF HR 3745, THE COMMUNITY ACCESS PRESERVATION ACT.

WHEREAS, public, educational and government (PEG) channels play a significant role in the City of Clare; and

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

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

NOW THEREFORE BE IT RESOLVED THAT The City of Clare City Commission supports immediate passage of HR 3745; and

BE IT FURTHER RESOLVED THAT The City Commission 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 was introduced by Commissioner _____ and supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 2nd day of November 2009.

Diane Schmidt, City Clerk