# Public, Educational and Government Channels in the Digital Age

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# The Situation

- Under Cable Act (Section 611), franchising authorities can require cable ops to
  - designate channel capacity
  - provide facilities and equipment ($ or in-kind) for public, educational and government (PEG) use.
- Traditionally, ops provided as part of basic service, at same quality as standard definition broadcast channels.
- Channels used for communication of basic G & E info to public, including emergency messages



# The Situation

- BUT: unclear whether must provide channels as part of basic
- Is there an obligation to provide PEG channels of the same quality as broadcast channels?
- Do channels have to be as accessible/functional as broadcast channels?

  -similar menu system?

  -channel location?
- Can operator set the price for PEG channels?
- Can operator "edit" the PEG signal by:
  - refusing to pass through closed captioning
  - refusing to pass through secondary audio
  - (PEG) use



# The Situation

- In digital environment, quality, accessibility, functionality can vary from channel to channel
- State laws that limited local franchising authority generally were not well-designed to deal with challenges or opportunities of digital world
- Many, many operators have significant bandwidth problems



# Key Cases

- **City of Dearborn v. Comcast of Michigan,** No. 08-10156,
  - See esp. Opinion on Motion to Dismiss (E.D. Mich. Oct. 3, 2008)
- **In the Matter of Petitions for Declaratory Ruling Regarding Public, Educational, and Governmental Programming**, MB Docket No. 09-13 CSR-8126, CSR-8127, CSR-8128
  - pending at Federal Communications Commission



# Dearborn/Meridian Township

- Comcast planned to digitize PEG channels while providing bcast in analog
- Effect: consumers with analog TVs had to pay extra to receive PEG
- Question: was PEG still part of basic?
- PEG moved to 900-series channels (not visible at those numbers on digital TV)
- Comcast claimed actions lawful because MI franchising law only required provision of channels, and local franchise provisions preempted by state law



# Status of Case

- Localities contended action violated fed law and existing local franchises
- District court granted TRO
- Ruled Michigan law was preempted by Section 531(c) of Cable Act, to extent it prevented localities from enforcing PEG requirements in local franchises
- Under primary jurisdiction doctrine, referred other fed questions to FCC



# AT&T

- Channel 99 PEG solution
- Not a channel at all – an “application”
- Hard to access
- Hard to find local programming
- Lower quality
- Missing basic functionality
  - secondary audio
  - closed captioning
  - ability to surf
  - ability to record



# Petitions filed at FCC

- Alliance for Community Media and Lansing claim:
- Channel 99 does not satisfy requirements of Section 631 of Cable Act
- AT&T engaged in unlawful censorship (631(e))
- Technical standards not satisfied
- *Petitions do not address state law issues**
- *Raise issue of whether AT&T is cable system*



# Status of Petition

- AT&T petitions consolidated with Dearborn referral
- FCC sought public comment (over 500 submissions)
- Now awaiting decision from FCC



# Significance

- May determine whether AT&T is a cable system – if AT&T loses, may have material adverse effect on company according to SEC filings
- May determine what federal standards apply to PEG
- Underlines weaknesses of state laws
- May set stage for challenges, changes, to state laws
- Underlines significance of absence of broadband policy
- Underlines significance of infrastructure control

