

To: The Honorable Mayor and City Council

From: Ricardo Castillo, IT Director *Ricardo Castillo*

Date: April 12th, 2016

RE: Community Access Preservation Act (CAP Act)

RECOMMENDATION

Staff is recommending that the Mayor and Council to urge the 114th Congress to support S. 1244 The Community Access Preservation Act, which addresses critical and immediate threats to local educational and government access channels.

BACKGROUND

Cities/Counties and other local government channels lost their funding during the damaging statewide/state issued franchising laws that passed since 2005 and that removed the funding that Cities/Counties used to receive. For City of North Miami that represented \$30,000 as evidenced in prior budget year reports. The Community Access and Preservation Act or CAP Act seeks to address the issues by focusing on six primary purposes: 1. Remove the distinction between capital and operating PEG support fees, 2. Provide PEG funding and channels in states with statewide/state-issued franchising laws, 3. Require cable operators to transmit the channel at no charge to the local government, 4. Require cable operators to carry the PEG channel on the Basic Tier of service so that every cable subscriber can receive them without need for additional equipment, 5. Allows access channels and municipalities, when they are ready to transmit in HD, to request HD Channels and gives cable operators 180 days to comply, 6. Allows access channels and municipalities, when they are ready to provide programming schedules, to request their programs be listed on the electronic programming guide and gives cable operators 180 days to comply.

Attachments

Resolution
S. 1244 Bill

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, URGING CONGRESS TO SUPPORT S. 1244, THE COMMUNITY ACCESS PRESERVATION ACT, WHICH ADDRESSES CRITICAL AND IMMEDIATE THREATS TO LOCAL, EDUCATIONAL AND GOVERNMENT ACCESS CHANNELS; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, public, educational and government (“PEG”) access channels are one of the last surviving sources for local television programming across the county and PEG channels play a significant role for Florida municipalities; and

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

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

WHEREAS, PEG channels are also utilized to communicate with citizens on municipal events and services and also provide advisories and preparation directions to residents for emergency purposes; and

WHEREAS, PEG channels provide a window through which residents can view the diversity of cultures, educational information, 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, funding for PEG channels and to ensure that they continue to be available to serve the residents of Florida municipalities and the entire community; and

WHEREAS, S. 1244, the Community Access Preservation (“CAP”) Act, addresses critical and immediate threats to PEG channels; and

WHEREAS, the CAP Act provides important solutions for critical and immediate threats to PEG channels and facilities across the country by removing use restrictions on PEG access fees,

restoring PEG revenue streams, and ending cable operators' discriminatory treatment of PEG channels; and

WHEREAS, the CAP Act would allow PEG fees to once again be used for any legitimate PEG expense, instead of restricting PEG fees to capital expenses only.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Mayor and City Council Recommendation. The Mayor and City Council of the City of North Miami, Florida, hereby urge the members of Florida's Congressional Delegation to take all actions in support of the immediate passage of S. 1244, including but not limited to, endorsing, co-sponsoring and voting for S. 1244.

Section 2. Direction to the City Clerk. The City Clerk is directed to forward a certified copy of this Resolution to the Florida congressional Delegation and the National League of Cities.

Section 3. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this ____ day of _____, 2016.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

ROLAND C. GALDOS, ESQ.
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Smith Joseph, D.O., Pharm. D.

Vice Mayor Alix Desulme

Councilman Scott Galvin

Councilwoman Carol Keys, Esq.

Councilman Philippe Bien-Aime

_____ (Yes) _____ (No)

114TH CONGRESS
1ST SESSION

S. 1244

To amend the Communications Act of 1934 to establish signal quality and content requirements for the carriage of public, educational, and governmental channels, to preserve support of such channels, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2015

Ms. BALDWIN (for herself and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to establish signal quality and content requirements for the carriage of public, educational, and governmental channels, to preserve support of such channels, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Community Access
5 Preservation Act”.

1 **SEC. 2. PEG SIGNAL QUALITY AND CONTENT; PRESERVA-**
2 **TION OF SUPPORT OF PEG USE.**

3 (a) IN GENERAL.—Section 611 of the Communica-
4 tions Act of 1934 (47 U.S.C. 531) is amended—

5 (1) by redesignating subsection (f) as sub-
6 section (h); and

7 (2) by inserting after subsection (e) the fol-
8 lowing:

9 “(f) SIGNAL QUALITY AND CONTENT.—

10 “(1) IN GENERAL.—A cable operator that oper-
11 ates a cable system with channel capacity designated
12 under subsection (b) or that is required to provide
13 channel capacity under subsection (g)(6) shall, with
14 respect to such channel capacity—

15 “(A) carry signals for public, educational,
16 or governmental use from the point of origin of
17 such signals to subscribers without material
18 degradation and without altering or removing
19 content or data provided as part of the public,
20 educational, or governmental use;

21 “(B) provide such signals to, and make
22 such signals viewable by, every subscriber of the
23 cable system without additional service or
24 equipment charges;

25 “(C) provide to the appropriate local gov-
26 ernment subdivision, free of charge, any trans-

1 mission services and the use of any trans-
2 mission facilities that are necessary to meet the
3 requirements of subparagraph (A);

4 “(D) upon request by the appropriate local
5 government subdivision, provide, not later than
6 180 days after the date of the request, for the
7 transmission of such signals in—

8 “(i) high definition format; or

9 “(ii) the highest quality format that is
10 provided by a majority of local television
11 broadcast stations in the applicable des-
12 ignated market area, if the quality of that
13 format is better than high definition; and

14 “(E) upon request by the appropriate local
15 government subdivision, provide, not later than
16 180 days after the date of the request, the abil-
17 ity for the programming schedules of such sig-
18 nals to be present and updated on the electronic
19 program guide of the cable operator in the
20 same manner and with the same functionality
21 as television broadcast stations in the applicable
22 designated market area—

23 “(i) through the cable operator di-
24 rectly; or

1 “(ii) by the cable operator facilitating
 2 the inclusion of the programming schedules
 3 through a third party vendor, at a rate not
 4 to exceed the actual incremental cost of the
 5 inclusion.

6 “(2) RULE OF CONSTRUCTION.—Nothing in
 7 paragraph (1)(D) shall be construed to—

8 “(A) remove other obligations of a cable
 9 operator that are not specified under this Act;

10 “(B) require a cable operator to upgrade
 11 the quality of a signal to comply with para-
 12 graph (1)(D) if the appropriate local govern-
 13 ment subdivision determines that it is not capa-
 14 ble of producing and transmitting programming
 15 in the required format; or

16 “(C) prohibit a cable operator from volun-
 17 tarily upgrading the quality of a signal to com-
 18 ply with paragraph (1)(D).

19 “(3) ENFORCEMENT.—The requirements of this
 20 subsection may be enforced by—

21 “(A) a local government subdivision; or

22 “(B) a State.

23 “(g) PRESERVATION OF SUPPORT OF PUBLIC, EDU-
 24 CATIONAL, AND GOVERNMENTAL USE.—

1 “(1) LEVEL OF SUPPORT REQUIRED.—In a
2 State that adopts legislation affecting cable system
3 franchising requirements relating to support for
4 public, educational, or governmental use of a cable
5 system that becomes effective after May 31, 2005,
6 notwithstanding such legislation, a cable operator
7 owes to any local government subdivision in which
8 the operator provides cable service during a year be-
9 ginning after the date of enactment of this sub-
10 section an amount for such year to be determined by
11 the local government subdivision, but not to exceed
12 the greatest of the following:

13 “(A) The amount of support provided in
14 the last calendar year ending before the effec-
15 tive date of such State legislation.

16 “(B) The average annual amount of sup-
17 port provided over the term of the franchise
18 under which the cable operator was operating
19 on the day before the effective date of such
20 State legislation.

21 “(C) The amount of support that the cable
22 operator is required to provide to such local
23 government subdivision under such State legis-
24 lation during the year involved.

1 “(D) An amount of support equal to 2 per-
2 cent of the gross revenues of the cable operator
3 from the operation of the cable system to pro-
4 vide cable services in such local government
5 subdivision during the year involved.

6 “(2) FORMS OF SUPPORT.—For purposes of
7 paragraph (1), support for public, educational, or
8 governmental use of a cable system means all cash
9 payments, in-kind support, and free services that the
10 operator of the cable system, or its predecessor, pro-
11 vides to the local government subdivision for such
12 use of the cable system.

13 “(3) ADJUSTMENT FOR INFLATION.—For a
14 year beginning on or after the effective date de-
15 scribed in subparagraphs (A) and (B) of paragraph
16 (1), on the date that the Gross National Product
17 Price Index is first published by the Bureau of Eco-
18 nomic Analysis after the end of June of such year,
19 the amounts specified in such subparagraphs shall
20 be increased by the percentage increase, if any, in
21 the Index published on such date from the Index
22 first published after the end of June of the pre-
23 ceding year.

24 “(4) CASH PAYMENTS.—A cable operator that
25 owes amounts under paragraph (1) shall, beginning

1 not later than 30 days after the date of enactment
2 of this subsection, pay such amounts in cash—

3 “(A) in accordance with the schedule for
4 payment of franchise fees, communications
5 taxes, or other similar assessments under any
6 applicable franchise; or

7 “(B) if there is no payment schedule for
8 such assessments under an applicable franchise,
9 in accordance with the most frequent payment
10 schedule for such assessments under applicable
11 State or local law.

12 “(5) USES; DISPUTES.—

13 “(A) USES.—Support provided to any local
14 government subdivision under this subsection
15 shall be dedicated to public, educational, or gov-
16 ernmental use of channel capacity.

17 “(B) DISPUTES.—

18 “(i) MEDIATION.—If there is a dis-
19 pute as to amounts owed under this sub-
20 section, undisputed amounts shall be paid
21 to the local government subdivision, dis-
22 puted amounts shall be paid into an escrow
23 account, and the parties shall submit to
24 nonbinding mediation.

1 “(ii) COURT PROCEEDINGS.—If the
2 dispute cannot be settled using mediation,
3 either party may seek relief from a court
4 of competent jurisdiction.

5 “(6) CHANNELS.—In a State that adopts legis-
6 lation affecting cable system franchising require-
7 ments relating to the number of channels for public,
8 educational, or governmental use of a cable system
9 that becomes effective after May 31, 2005, a cable
10 operator shall, notwithstanding such legislation, pro-
11 vide in a local government subdivision at least the
12 greater of the following number of channels for such
13 use:

14 “(A) The number of channels for such use
15 that the operator was providing in the local gov-
16 ernment subdivision on the day before the effec-
17 tive date of such State legislation.

18 “(B) If the operator provided fewer than 3
19 channels for such use in the local government
20 subdivision on the day before the effective date
21 of such State legislation, a number specified by
22 the local government subdivision, but not to ex-
23 ceed 3.

24 “(7) ENFORCEMENT.—The requirements of this
25 subsection may be enforced by—

1 “(A) a local government subdivision; or

2 “(B) a State.”.

3 (b) DEFINITIONS.—

4 (1) CABLE SERVICE.—Section 602(6) of the
5 Communications Act of 1934 (47 U.S.C. 522(6)) is
6 amended by striking “means” and inserting “means,
7 regardless of the technology or transmission protocol
8 used in the provision of service”.

9 (2) LOCAL GOVERNMENT SUBDIVISION.—Sec-
10 tion 602 of the Communications Act of 1934 (47
11 U.S.C. 522) is amended—

12 (A) by redesignating paragraphs (13)
13 through (20) as paragraphs (14) through (21),
14 respectively; and

15 (B) by inserting after paragraph (12) the
16 following:

17 “(13) the term ‘local government subdivision’
18 means—

19 “(A) except as provided in subparagraph
20 (B), a franchising authority that derives its
21 power to grant a franchise from State or local
22 law; and

23 “(B) in a State that adopts legislation af-
24 fecting cable system franchising requirements
25 relating to support for public, educational, or

1 governmental use of a cable system that be-
2 comes effective after May 31, 2005, an entity
3 that was considered a franchising authority de-
4 riving its power to grant a franchise from State
5 or local law as of the day before the effective
6 date of such State legislation;”.

7 (3) FRANCHISE FEE.—Section 622(g)(2) of the
8 Communications Act of 1934 (47 U.S.C. 542(g)(2))
9 is amended—

10 (A) in subparagraph (B), by striking “in
11 the case of any franchise in effect on the date
12 of enactment of this title,”;

13 (B) by striking subparagraph (C); and

14 (C) by redesignating subparagraphs (D)
15 and (E) as subparagraphs (C) and (D), respec-
16 tively.

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