

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: November 3, 2009  Consent  Regular

Ordinance  Public Hearing

Department:  
Submitted By: Public Affairs

Submitted For: Legislative Affairs

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I. EXECUTIVE BRIEF

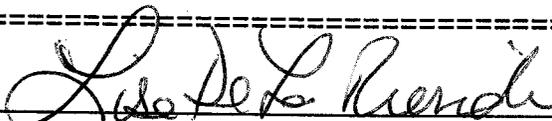
**Motion and Title:** Staff recommends motion to adopt: a Resolution of the Board of County Commissioners of Palm Beach County supporting H.R. 3745, the Community Access Preservation (CAP) Act, which addresses critical and immediate threats to local public, educational and government (PEG) access channels, and directing staff to forward this Resolution to appropriate members of Congress and to other appropriate organizations.

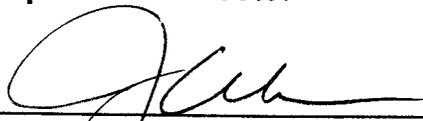
**Summary:** At the request of Commissioner Burt Aaronson, staff was directed to draft this resolution, which sets forth the County's support for the CAP Act, which is currently pending before Congress. This bill seeks to stop discriminatory treatment of PEG channels by cable operators and other video service providers; preserve PEG support and funding mechanisms; and revises the Federal definition of what constitutes a "cable system," in order to ensure a level playing field for all providers. Countywide (MJ)

**Background and Policy Issues:** County residents directly benefit from the programming provided by our PEG channels, PBC-TV Channel 20 and The Education Network (Comcast Ch. 97). The pending Federal legislation clarifies and strengthens the statutes regulating the carriage and delivery of PEG channels to residents, among other issues.

- Attachments:**
1. Resolution
  2. H.R. 3745
  3. H.R. 3745 summary

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Recommended by:  10/22/09  
Department Director Date

Approved By:  10/22/09  
Assistant County Administrator Date



**RESOLUTION NO. R-2009-**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, SUPPORTING H.R. 3745, THE COMMUNITY ACCESS PRESERVATION ACT, WHICH ADDRESSES CRITICAL AND IMMEDIATE THREATS TO LOCAL PUBLIC, EDUCATION AND GOVERNMENT ACCESS CHANNELS AND DIRECTING STAFF TO FORWARD THIS RESOLUTION TO APPROPRIATE MEMBERS OF CONGRESS AND TO OTHER APPROPRIATE ORGANIZATIONS.**

**WHEREAS**, public, educational and government (PEG) channels, such as PBC-TV Channel 20 and The Education Network, play a significant role in Palm Beach County; and

**WHEREAS**, PEG channels are a unique and valuable resource for local information and discourse for the residents of Palm Beach County; and

**WHEREAS**, PEG channels televise local government meetings, including those of this Board, among others, so that citizens are informed about both the actions taken by their local elected officials as well as the programs and services provided by their local government; 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 these channels continue to be available to the entire community to serve the residents of Palm Beach County; and

**WHEREAS**, H.R. 3745, the Community Access Preservation Act, addresses critical and immediate threats to these PEG channels.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:**

**Section 1:** The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon its adoption.

**Section 2:** The Palm Beach County Board of County Commissioners supports immediate passage of H.R. 3745, and calls on our Congressional delegation to take all possible actions in support of the passage of H.R. 3745, including, but not limited to, endorsing, co-sponsoring and voting for H.R. 3745, and to work for its rapid passage.

**Section 3:** County staff is hereby directed to distribute this Resolution to the Florida Congressional Delegation, other members of Congress, and other appropriate organizations.

The foregoing Resolution was offered by Commissioner who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Commissioner Jeff Koons, Chairman  
Commissioner Burt Aaronson, Vice Chairman  
Commissioner Karen T. Marcus  
Commissioner Shelley Vana  
Commissioner Steven L. Abrams  
Commissioner Jess R. Santamaria  
Commissioner Priscilla A. Taylor

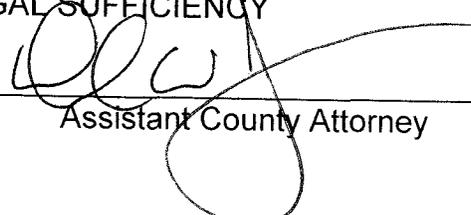
The Chairman thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:   
Assistant County Attorney

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.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Ms. BALDWIN introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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.

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” or the “CAP Act”.

6 **SEC. 2. AMENDMENTS.**

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

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

3 (2) by inserting after subsection (e) the fol-  
4 lowing new subsections:

5 “(f) EQUIVALENCE.—

6 “(1) IN GENERAL.—In the case of any fran-  
7 chise under which channel capacity is designated  
8 under subsection (b), such channel capacity shall  
9 be—

10 “(A) at least equivalent in quality, accessi-  
11 bility, functionality, and placement to—

12 “(i) channel capacity used for re-  
13 quired carriage of local commercial tele-  
14 vision stations, as defined in section  
15 614(h)(1); or

16 “(ii) if no such stations are required  
17 to be carried, the channel capacity used to  
18 carry the primary signal of the network-af-  
19 filiated commercial television stations car-  
20 ried on the cable system; and

21 “(B) provided to and viewable by every  
22 subscriber of a cable system without additional  
23 service or equipment charges.

24 “(2) SIGNAL QUALITY AND CONTENT.—A cable  
25 operator shall—

1           “(A) carry signals for public, educational,  
2           or governmental use from the point of origin of  
3           such signals to subscribers without material  
4           degradation and without altering or removing  
5           content provided as part of the public, edu-  
6           cational, or governmental use; and

7           “(B) provide facilities adequate to fulfill  
8           such requirements.

9           “(3) WAIVER.—The requirements of paragraph  
10          (1) may be waived by a franchising authority if the  
11          franchise contains an explicit provision that such re-  
12          quirements shall not apply and such provision was  
13          adopted after a proceeding the conduct of which af-  
14          forded the public adequate notice and an oppor-  
15          tunity to participate.

16          “(4) ENFORCEMENT.—The requirements of this  
17          subsection may be enforced by a franchising author-  
18          ity or by the Commission.

19          “(5) ADDITIONAL REQUIREMENTS.—Nothing in  
20          this subsection prevents a franchising authority from  
21          establishing additional requirements with respect to  
22          the quality, accessibility, functionality, placement,  
23          and provision of channel capacity designated for  
24          public, educational, or governmental use.

1       “(g) PRESERVATION OF PUBLIC, EDUCATIONAL, AND  
2 GOVERNMENTAL USE.—

3           “(1) STUDY.—Within 180 days after the date  
4 of enactment of the Community Access Preservation  
5 Act, the Commission shall submit to Congress a re-  
6 port containing—

7           “(A) an analysis of the impact of the en-  
8 actment of State video service franchising laws  
9 since 2005 on public, educational, and govern-  
10 mental use of cable systems;

11           “(B) an analysis of the impact of the con-  
12 version from analog to digital transmission  
13 technologies on public, educational, and govern-  
14 mental use of cable systems; and

15           “(C) recommendations for changes re-  
16 quired to this Act to preserve and advance lo-  
17 calism and public, educational, and govern-  
18 mental use of advanced communications sys-  
19 tems.

20           “(2) SUPPORT.—In States that adopted legisla-  
21 tion affecting cable system franchising requirements  
22 relating to support for public, educational, or gov-  
23 ernmental use of a cable system that became effec-  
24 tive after May 31, 2005, a cable operator shall, not-  
25 withstanding such legislation—

1           “(A) pay to any political subdivision in  
2           which the operator provides service the greater  
3           of—

4                     “(i) the historical support that the op-  
5                     erator, or its predecessor, provided for  
6                     public, educational, or governmental use of  
7                     the cable system in such subdivision in ac-  
8                     cordance with this subsection; or

9                     “(ii) the amount of any cash payment  
10                    that the operator is required to pay to  
11                    such subdivision under such State legisla-  
12                    tion affecting cable system franchising re-  
13                    quirements;

14           “(B) carry signals for public, educational,  
15           or governmental use from the point of origin of  
16           such signals to subscribers and provide facilities  
17           adequate to fulfill such requirements in accord-  
18           ance with subsection (f)(2); and

19                     “(C) provide at least the number of chan-  
20                     nels for public, educational, or governmental  
21                     use that it was providing as of May 31, 2005.

22           “(3) CALCULATION OF HISTORICAL SUPPORT.—  
23           Historical support includes the value of all support  
24           provided for public, educational, or governmental  
25           use, including in-kind support and free services. The

1 cable operator shall pay support equal to the greater  
2 of—

3 “(A) the value of the support provided in  
4 the most recent calendar year prior to the effec-  
5 tive date of such State legislation affecting  
6 cable system franchising requirements; or

7 “(B) the value of the annual average sup-  
8 port provided over the term of the franchise  
9 pursuant to which it operated prior to such ef-  
10 fective date, taking into account the time value  
11 of money.

12 “(4) PAYMENTS.—The amounts owed to the po-  
13 litical subdivision under paragraph (2)(A) shall be  
14 paid annually, in quarterly installments, with the  
15 first payment being due 30 days after the date of  
16 enactment of the Community Access Preservation  
17 Act.

18 “(5) USES; DISPUTES.—

19 “(A) USES.—Support provided to any  
20 State or local political subdivision under this  
21 subsection shall be dedicated to public, edu-  
22 cational, or governmental use of channel capac-  
23 ity.

24 “(B) DISPUTES.—If there is a dispute as  
25 to amounts owed under this subsection, undis-

1           puted amounts shall be paid, and the Commis-  
2           sion shall determine on an expedited basis what,  
3           if any, additional amounts are owed.”.

4           (b)   FRANCHISE   FEE   DEFINITION.—Section  
5 622(g)(2) of such Act (47 U.S.C. 542(g)(2)) is amend-  
6 ed—

7           (1) in subparagraph (B), by striking “in the  
8           case of any franchise in effect on the date of the en-  
9           actment of this title,”;

10          (2) by striking subparagraph (C); and

11          (3) by redesignating subparagraphs (D) and  
12          (E) as subparagraphs (C) and (D), respectively.

13          (c) CABLE SERVICE DEFINITION.—Section 602(6) of  
14 such Act (47 U.S.C. 522(6)) is amended by striking  
15 “means” and inserting “means, regardless of the tech-  
16 nology or transmission protocol used in the provision of  
17 service”.

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**Summary of the Community Access Preservation (CAP) Act  
(H.R. 3745)**

**Sponsor: Rep. Tammy Baldwin (D-WI)**

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:* To preserve PEG, immediate action is needed 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.