

16 CRR-NY 895.4NY-CRR
OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS
OF THE STATE OF NEW YORK
TITLE 16. DEPARTMENT OF PUBLIC SERVICE
CHAPTER VIII. CABLE TELEVISION
SUBCHAPTER B. GENERAL
PART 895. FRANCHISE STANDARDS

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895.4 Minimum standards for public, educational and
governmental (PEG) access.

(a) Definitions.

(1) The term *public access channel* means a channel designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis.

(2) The term *educational access channel* means a channel designated for noncommercial use by school districts and not-for-profit educational institutions chartered or licensed by the New York State Education Department or Board of Regents.

(3) The term *government access channel* means a channel designated for noncommercial use by municipal, county and State government, or agencies thereof.

(4) The term *public, educational, or governmental (PEG) access facilities* means:

(i) channel capacity designated for noncommercial public, educational or governmental use; and

(ii) facilities and equipment for the noncommercial use of such channel capacity.

(5) The term *local use* means use by residents of the State of New York including school districts and not-for-profit educational institutions and municipal, county and State governments, or agencies thereof.

(6) The term *access cablecast day* means a day or part thereof during which public, educational or governmental access facilities are available for PEG use.

(b) Designation of channels.

Every cable television franchisee shall designate channel capacity for PEG access as follows:

(1) The franchisee of a cable television system with a channel capacity of 36 or more channels shall designate (i) at least one full-time activated channel for public access use;

(ii) at least one full-time activated channel for educational and governmental use; and (iii) one additional full-time activated channel for educational/governmental use whenever the first channel so designated shall have been used for such educational and governmental programming on the average of at least 12 hours per day during any 90-day period; provided, however, that the calculation of such average shall not include any day when the unavailability of PEG access facilities precludes achieving such programming level. In the event that two channels for educational and governmental use are required by this subdivision, one channel shall be designated the educational access channel and one channel shall be designated the governmental access channel; provided, however, that either channel may be used for either purpose if necessary to satisfy the demand for channel time.

(2) The franchisee of a cable television system with a channel capacity less than 36 channels shall designate at least one full-time activated channel for public, educational and governmental use.

(c) Administration and use.

The use of the channel capacity for PEG access shall be administered as follows:

(1) The public access channel shall be operated and administered by the entity designated by the municipality or, until such designation is made, by the cable television franchisee; provided, however, that the municipality may designate such entity at any time throughout the term of a franchise.¹

(2) The educational and governmental access channel shall be operated and administered by a committee or a commission appointed by local government and shall include appropriate representation of local school districts within the service area of the cable television system and may include for purposes of coordination an employee or representative of the cable television franchisee.²

(3) The entity responsible for administering and operating the public access channel shall provide notice to the general public of the opportunity to use such channel which notice shall include:

(i) periodic messages transmitted on such channel; and

(ii) written notice to subscribers at least annually.

Notices shall include the name, address and telephone number of the entity to be contacted for use of the channel. All PEG access programming shall be identified as such.

(4) Channel time shall be scheduled on the public access channel by the entity responsible for the administration thereof on a first-come, first-served, nondiscriminatory basis.

(5) Local use of educational and governmental access channels shall have preferred status in the event of competing requests for channel time. Priority may be afforded to local governments within the service area of the system.

(6) Channel time for PEG access programming shall be without charge to the user.

(7) The designation of PEG access facilities shall include the provision by the cable television franchisee of the technical ability to play back prerecorded programming and to transmit programming information consistent with the designated uses of PEG access channels.

(8) The cable television franchisee shall not exercise any editorial control over any public, educational or governmental use of channel capacity designated for PEG purposes provided, however, that this paragraph shall not be applied to prevent a cable television company from taking such measures as may be authorized by Federal or State law to prohibit obscenity or other content unprotected by the First Amendment of the United States Constitution.

(9) A municipality shall not exercise any editorial control over any use by the public of a public access channel except as may be permitted by law.

(10) The entity responsible for the administration of a public access channel shall maintain a record of the use of such channel which shall include the names and addresses of all persons using or requesting the use of any such channel and which record shall be available for public inspection for a minimum of two years.

(11) Channels designated for PEG use shall be included in the lowest level of service offered by the cable television franchisee, provided, however, if the number of PEG channels exceeds the minimum number of channels required by this Part, then the cable television franchisee and the local franchising authority may agree to carriage of additional PEG channels on a tier other than the lowest level of service; where a system does not include sufficient unused channel capacity to accommodate a second educational/governmental access channel resulting from the operation of subdivision (b) of this section, the cable television franchisee may elect one time to defer the obligation to provide such additional channel until additional channel capacity becomes available.

(12) A cable television franchisee shall be permitted to use time on one or more PEG access channels whenever there are no blank channels available on the same level of service which includes the PEG channel(s) and whenever such PEG channel(s) is not scheduled for use at least 72 hours in advance of such time or times desired by the cable television franchisee; provided that any use of such PEG channel(s) by the franchisee shall at all times be subordinate to designated PEG use and shall terminate or be preempted by PEG programming scheduled at least 72 hours in advance. All non-access programming on PEG channels shall be identified as such by an appropriate

announcement made prior to and following each non-access use. Notwithstanding the foregoing, at such time as any PEG channel on a cable television system with a channel capacity in excess of 40 channels has been programmed for a daily average of eight hours or 50 percent of the hours of access cablecast days, whichever is less, during any 90-day period, use of such channel by the cable television franchisee shall be suspended for such time as such minimum PEG use of such channel is maintained.

(d) Applicability.

(1) Subdivisions (a), (c) and (f) of this section shall apply to the use of channel capacity designated for PEG access as of September 9, 1990.

(2) The minimum channel designation requirements in subdivision (b) of this section shall be required by, and shall be a condition to, the exercise of every franchise and certificate of confirmation granted or renewed after September 9, 1990.

(3) Notwithstanding the foregoing, nothing contained herein shall impair the enforcement of any provision of any franchise in effect on September 9, 1990 concerning the designation and use of channel capacity, facilities and equipment for PEG access or otherwise diminish the obligations of a cable television franchisee with respect to PEG access.

(e) General.

Any cable television franchise may include additional provisions concerning the designation and use of public, educational and governmental access facilities as follows:

(1) a provision specifying facilities and equipment to be made available by the franchisee for use in connection with the designated PEG channels; and

(2) any other provision concerning the designation and use of channel capacity for public, educational and governmental access consistent with Federal and State law.

(f) Waivers and rulings.

(1) A cable television franchisee, a municipality or an entity designated to administer a public access channel may seek a waiver of one or more provisions of this section.

(2) Any interested person may seek a ruling from the commission concerning the applicability or implementation of any provision of this section or any provision of a franchise concerning PEG access upon the filing of a petition.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision, the commission shall not grant any waiver or ruling, or enter any order that constitutes the exercise of editorial control over the content of public access programming that would have the effect

requiring the carriage by a franchised cable television company of programming distributed as the New York State and Community Affairs Network (NY-SCAN) except as may be permitted by law.

(4) Waiver requests regarding paragraph (b)(1) of this section shall be submitted by joint petition of the franchising authority and the cable television franchisee. Any such petition may seek permission to substitute a commitment not required by this Part in lieu of one or more standards that are required.

(g) Severability.

If any provision of this section or the application of such provision is held invalid by a court of competent jurisdiction, the remainder of this section or the application of the provision to other circumstances shall not be affected thereby.

Footnotes

1. If a single public access channel is shared by two or more municipalities, the joint designation of a single entity is encouraged.
2. Where an educational or a governmental channel is shared by more than one school district or local government or combination thereof, administration of such channel(s) on a cooperative basis is encouraged.

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