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Future of public access TV in question

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Summary:

Is This the Future of Fort Collins Public Access TV? Under-funded and under-equipped, the city's fledgling public access channel could get switched off, thanks to the FCC.

Full Story:

by Greg Campbell, Fort Collins Weekly

Barely off the ground, the longevity of Fort Collins Public Access Network's Channel 22 is in question thanks to none other than the Federal Communications Commission.

The biggest threat to Fort Collins' nascent public access television channel isn't it's lack of a studio or any real equipment. It's not that only two of its three DVD players works, or that the DVD players are temporarily run from borrowed space at the city's television facility in the basement of city hall.

It's not even so much that, like public access authorities around the country, Fort Collins Public Access Network (FCPAN) faces a steep uphill battle to raise the sorts of finances that will allow it to fulfill the dream of becoming a comprehensive, publicly run television station with an intense focus on local issues that can't be found anywhere else on the dial.

What threatens Channel 22 the most is a recent decision by the Federal Communications Commission changing how municipalities like Fort Collins enter into franchise agreements with companies like Comcast, which is the sole provider of cable television in the city.

Comcast and other video providers hold the purse strings for public access channels across the country. Because of requirements built into franchise agreements with cities like Fort Collins, providers levy a fee on their subscribers that is used for public access equipment and other capital costs. In telecom jargon, this is called the Public, Educational and Governmental access fee, or PEG fee for short. In Fort Collins, that amounts to 50 cents per subscriber for a total of about \$90,000 annually.

Among other changes, the FCC's new rules eliminate this requirement and along with it, Channel 22's only guaranteed revenue stream.

The money generated by the fee is split between four public access entities: the city's Cable 14, which broadcasts City Council meetings, and videos produced by various departments on topics as diverse as local safety and how to properly recycle your trash; Colorado State University's CSU-TV Channel 11, the highlight of which is "Insight Colorado," a show that most recently discussed clean energy technology; Poudre School District's Channel 10, which features educational programming about topics like science and art; and FCPAN's Channel 22.

To date, Channel 22's offerings have been a little scattershot.

"It's not quite the representative collage we're aiming for," says FCPAN programming manager Eddie Arthur. There have been shows about 9/11, locally produced shows about the Veteran's Day celebration, a broadcast of David Barsamian's October speech at Colorado State University and some election coverage, among other offerings.

But FCPAN can be forgiven for not yet wowing TV audiences with unique and thought-provoking local content—the organization was formed in 2004 but it was only since the franchise was renewed with Comcast a year ago that it became the city's official public access provider responsible for the programming on Channel 22. And it was taking on that responsibility at an extreme disadvantage; unlike the other channels, Channel 22 has no institutional financial support.

As part of the negotiation for the franchise, Comcast agreed to front a year's worth of the money from its public access fees to the four stations, but not to provide or maintain a studio for use of would-be community television producers. For channels 10, 11 and 14, the concession wasn't a problem; they have their own studio spaces.

Channel 22 is the only one that was left out in the cold. Its portion of the front money—president Gerri Becher says they got about a third of the total since their needs were the greatest—will be spent of cameras, a server and other capital equipment necessary for a television station. Funding from Comcast will resume once it has recouped from subscribers the money it has already fronted. Studio space and other necessities, Becher says, will have to come from donations, grants, underwriting and other forms of fundraising that characterize many grassroots media efforts, but she's confident of clearing the initial hurdles, as imposing as they may be.

"We're going to overcome it," she says, "but we've really been set back."

The worst of it all, however, is the blow dealt by the FCC last month that drastically changes franchise rules. Becher says that if Congress allows the new rules to stand, it won't matter how high-tech a studio Channel 22 can find or how well it delivers top-notch programming.

"We'll cease to exist," she says.

At the prodding of telecom companies and their lobbyists, Congress has for some time considered changes to how local cable franchises are awarded. The primary complaint is that municipalities drag out the open-ended negotiation process haggling over unreasonable demands upon those competing to offer cable service to residents. During the last session of Congress, a bill to change franchise rules passed the House, but died in the Senate.

But those seeking the change were undaunted—the telecoms simply switched venues and appealed to the Federal Communications Commission itself. They were handsomely rewarded.

On Dec. 6, the commission, which is composed of a Republican-dominated five member panel, voted 3-2 along party lines in favor of a slate of far-reaching changes that vastly change how cable television contracts are awarded.

The changes include:

- Instituting a 90-day deadline for negotiations with service providers that already have right-of-way to local infrastructure, usually those companies that are seeking to renew their contracts in a particular town, or companies that provide phone or data service but which also want to offer video. The FCC considers negotiations that extend beyond 90 days as evidence of a municipality's "unreasonable" refusal to grant a contract. If a contract cannot be agreed within 90 days, the new rules require municipalities to accept the applicant's offer. Critics of this requirement call the 90-day timeframe a "shot clock" that the cable company only has to wait out before its application is approved. They also say it's in clear violation of the law it's meant to interpret, the 1984 Cable Communications Act, which specifically does not institute a timeframe for negotiations;
- Allowing cable companies to pay for infrastructure expansion to new homes—called "build-out" in industry lingo—from the 5 percent franchise fee that it pays to municipalities. Currently, that fee is untouchable and is unchanged regardless of the expenses incurred by the cable company to meet the terms of its contract. Under the new rules, if a build-out or other investment is required, the cable company can deduct the expense from the 5 percent fee. In Fort Collins, that fee goes directly into the General Fund;
- Eliminating support for institutional networks, called I-Nets, that link safety services like healthcare and law enforcement;
- And most devastating to Channel 22 and similar public access channels across the country, eliminating the required PEG fee charged to subscribers for the benefit of public access television.

"This PEG money is extremely important to us," says Blue Hovater, FCPAN's vice president. Although it's possible that when Comcast's contract comes up for renewal in seven years the company could voluntarily agree to continue funding Channel 22 through a fee, it's not likely. "Prior to us (running programming on Channel 22), they were selling time to the Jewelry Network and Christian programming," Hovater says.

"We wouldn't stand a chance."

The FCC's late December order got a strong reaction from watchdog groups, one of the most colorful of which was Anthony Riddle, the director of the Alliance for Community Media, who posted comments on the group's Web site.

"The FCC, in the spirit of Christmas, has given the biggest gift of all to the giant telephone companies while the children of our cities and towns get a lump of coal in their torn stockings," he wrote. "The telephone industry could not get a law passed through the 535 legislators answerable to the public. So they anointed a 'Super Legislature' where they only needed three unelected regulators to pass a law."

The three commissioners who voted in favor of the changes each cite the need for more competition in the cable/video market. In a written statement released after the vote, FCC Chairman Kevin Martin notes that cable TV rates have risen 93 percent since 1995. As telephone companies begin offering video products to compete with cable companies—and invest billions in infrastructure to do so—they've run into the brick wall of obstinate municipalities that demand they pay for such amenities as new community swimming pools and recreation centers, he says in his statement.

Martin adds, however, that cable bills are only part of the reason he supports the changes—his No. 1 priority is widespread deployment of broadband technology, and he notes proudly that high-speed Internet

connections have grown more than 400 percent since he was appointed FCC chairman by President Bush in 2001. What often drives the construction of the fiber network needed for broadband is demand for video. Email, phone calls and the ability to watch *Flags of Our Fathers* on demand can all exist on the same network, and regardless if a company's primary business is connecting phone calls, the ability to also deliver video products gives such companies more of an ability to recoup their investment costs of laying fiber. If a company cannot sell video because of what the FCC deems "unreasonable" barriers to competitive negotiation, some fiber networks may not be built at all, hampering widespread broadband deployment.

The trouble, argues dissenting commissioner Jonathan Adelstein, is that the FCC abused its power and effectively created a federal law that trumps local laws, an authority that lies with Congress, not a politically-appointed panel of five.

"I cannot support this ... because the FCC is a regulatory agency, not a legislative body," Adelstein writes in his opinion. "In my years working on Capitol Hill, I learned enough to know that this is legislation disguised as regulation."

Furthermore, he writes, the evidence that municipalities are creating roadblocks for the telecom companies—which was provided by the companies that were lobbying for the change, with no independent fact-finding done by the FCC—was "wholly insufficient to justify" federalizing the nation's local franchising process. The Telecommunications Industry Association, a lobbying group, provided the FCC with only five examples of shady dealings by cities and towns, none more recent than 2004, and what Adelstein called "generalized complaints" of local foot-dragging to the detriment of timely negotiations.

"Nothing here rises to the level that warrants the drastic measures adopted by the commission," he wrote. "The commission's blind acceptance of a few alleged instances as illustrative of a much broader problem is telling. The commission did not conduct any independent fact-finding, nor did it attempt to verify the allegations made by parties who have a vested interest in the outcome of this proceeding. Even more shocking, the commission and the commenters fail to cite to an actual, present day problem with any specific (franchising municipality)."

But clearly Adelstein was in the minority. Another commissioner who voted in favor of the changes, Robert McDowell, made the new rules sound like the regulatory equivalent of the Age of Aquarius: "(C)reating a de-regulatory environment where competition is given the chance to flourish kicks off a virtuous cycle of hope, investment, growth and opportunity. ... Perhaps President Ronald Reagan foresaw an issue like this one when he said, 'We have a healthy skepticism of government, checking its excesses at the same time we're willing to harness its energy when it helps improve the lives of our citizens.' That is precisely what we are doing today: checking any government excesses at the local level to unleash free markets which will help improve the lives of all Americans."

The leaders of FCPAN are quite certain the opposite is true. Although there are several years remaining on the current franchise contract—meaning several more years of PEG funding and, hopefully soon, the sort programming FCPAN envisions—they worry that a new contract with Comcast or a competitor will cut off that funding for good. It remains to be seen how or if cable customers will benefit from the rules in terms of competitive offerings and lower prices, but it's almost a certainty that they won't benefit in terms of local programming. Telecom companies aren't exactly beating down the door to offer perks for local producers when they can sell time on an empty channel to infomercials and shopping networks.

“If somehow we get written out of the franchise, we’ll cease to exist,” Becher says. “I have a vision for Channel 22. We want to be something that’s a value to the community, where people can find out about stuff in the community. We want to be that place where people can come and find out what’s going on in Fort Collins.”

Hovater agrees.

“We just want a fair shot to get our base under us and show what we can provide,” he says.

Whether Channel 22 gets that chance is seriously in question—one of the watchdog groups is likely to sue to overturn the rules on the basis that the FCC lacked the authority to make the changes, and pressure from Congress—if it decides FCC overstepped its authority—may also reverse the decision. But there’s little question that Channel 22’s already uphill battle just steepened by a few significant degrees.

“It’s not totally bleak,” Becher says, “but it’s pretty bleak.”

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