

Received & Inspected

MAR - 9 2009

FCC Mail Room

5532 Dunmore
West Bloomfield, Michigan 48322

March 4, 2009

MB 09-13

Commission Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: CSR-8126 (ACM et al.) - MB Docket No. 09-13

Dear Secretary:

I am writing to you as the former Township Supervisor of West Bloomfield, Michigan. During my term, the Township was able to work with AT&T in enacting the legislation to open up competition in the telecommunication business, and to offer alternatives to the only cable provider in the Township. Our dealings with AT&T personnel were always cordial, professional, and cooperative. The franchise agreement with AT&T is generating revenue to the Township's PEG channels, as well as other funds. This fills a need demanded by citizens for competition in this business.

Providing access to local governments in Michigan is important in today's era of transparency in government. For Many years, Public, Education, and Government (PEG) programming found on local cable systems has been an important window into local government. For many years, those channels broadcasted to just the residents in those specified municipal boundaries. They provided very local programs without, for the most part, broadcasts generated from the communities or school districts in the neighboring cities or towns. For example, there are seven school districts within the Township limits of West Bloomfield, not all of which broadcast their school channels on local cable.

With AT&T U-verse television available in our community and surrounding communities, there is a new ability to provide our residents with access to public programming from an entire region. Many of our residents own businesses, or send their children to schools in other communities, but have been without windows into those communities and the governments within. And for our community, we are thrilled with the possibility of having viewers from across the region tuning in to our local broadcasts to see what it is that makes our community a special place to live, work, and play. That marketing opportunity has real potential for our community to bring new residents to our community, and to attract new residents and visitors to town.

This new delivery method is definitely different than what we have been used to over the years, but with advances in technology, different is expected and, in this case, different means very positive benefits for our community and residents.

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List A B C D E

It is vital for the economic growth of all Michigan communities to keep encouraging the advancement of technology, the improvement of infrastructure, and the growth of our public access audiences.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Flaisher".

David Flaisher
Former Township Supervisor
West Bloomfield Township

OFFICE OF THE MAYOR

JACK E. KIRKSEY
MAYOR



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MB 09-13

FILED/ACCEPTED

MAR - 9 2009

Federal Communications Commission
Office of the Secretary

March 6, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Petitions for Declaratory Ruling Regarding Public, Educational and Governmental Access Channels, MB Docket No. 09-13, CSR-8126 (ACM *et al.*), CRS-8127 (City of Lansing, MI), and CSR-8128 (City of Dearborn, MI *et al.*)

Dear Ms. Dortch:

The City of Livonia supports and strongly urges the Commission to grant all three of the above-captioned petitions concerning public, educational and governmental ("PEG") access channels. The problems created by the AT&T channel platform and Comcast's selective digitization of PEG channels are different in many respects (the failure to comply with FCC rules by passing through closed captioning is unique to the AT&T platform). Both companies, however, are using their editorial control over their system to make it more difficult or expensive for program producers to use and for subscribers to access and watch PEG programming. Rather than repeat the legal arguments in the petitions, we file to explain PEG's role in our community, and why it is important to prevent operators from inhibiting access to these channels.

1. PEG Programming in the City of Livonia.

6 PEG channels are available to the residents of Livonia.

- A. Channel 3, maintained by Bright House networks (cable provider) as a free message board to advertise non-profit events and information.
- B. Channel 8, maintained and operated by the City of Livonia, provides the means to notify residents and dispense critical information during emergency situations, such as weather incidents, chemical mishaps, major road closures or other circumstances that would have a widespread impact on the community. When not being used for emergency purposes, Channel 8 provides municipal based programs including live City Council and Planning Commission meetings. Taped cablecast programming includes community ceremonies, numerous police, fire and public service safety and

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informational PSA's, health and fitness programs, library information and Noontime Concerts, performances by the Livonia Symphony Orchestra, sporting events and other various civic programming. During the hours when video programming is not available, informational screens inform Livonia residents of upcoming events, city programs and services. Many of these programs may be seen at the video link to the City's website at www.ci.livonia.mi.us.

- C. Channel 10 is maintained and operated by Clarenceville School District. Video programming includes classroom competitions and discussions, concerts, graduation ceremonies, student produced interview programs, PSA's, classroom field trips, guest speakers and League of Women Voter school board candidate forums. When video programming is not provided, a message board informs residents of important Clarenceville School District information
- D. Community Access Channel 12 is provided by Bright House networks (cable provider) and is a vehicle for Community Access programming and State of Michigan government TV. Besides local public access productions, Bright House networks produces several community programs including the annual SPREE celebration, Youth Drug Prevention forums, League of Women Voter's candidate forums and other community events that are cablecast on Channel 12.
- E. Channel 13 is shared by two local institutions of higher learning in Livonia, Madonna University and Schoolcraft College. Programming covers events from both campuses and includes: Madonna Magazine, student news programs, guest speakers, sports events and League of Women Voters candidate forums. When video programming is not available, a message board informs students and residents of upcoming campus events and class information.
- F. Channel 15 is maintained and operated by Livonia Public Schools. Video programming includes cablecasting live School Board meetings, taped classroom competitions and discussions, plays, concerts, sports events, dance recitals and graduation ceremonies. When video programming is not provided, a message board informs residents of important Livonia School District information.

Thus, PEG programming in the City of Livonia provides local residents with informational, public safety, educational, cultural and local opinion programming of uniquely local interest that they cannot obtain elsewhere.

2. The Situation in Our Community

On May 1, 2007, AT&T became a second cable provider for the residents of Livonia. The City of Livonia has elected not to carry local PEG programming on the AT&T system due to the problems with its PEG platform and AT&T's refusal to provide PEG providers (even at our own expense) with their UVerse service at sites where programming originates. The ability for the PEG providers to monitor programming is paramount to insuring video and audio quality. Without the ability to see what is going out on the channel, it is difficult to identify and correct a

problem if it occurs. The local PEG providers have worked hard to provide quality video and audio and it is not unreasonable to expect the means to continue to deliver that quality.

We rely upon our PEG channels to convey important public information throughout our community. People in our community rely on the channels to receive information. If the channels are less accessible for technical reasons, or because one must effectively pay extra to receive the channels, the PEG channels would become a much less effective avenue for community communications, and some subscribers we now reach would not receive the information at all. While we do not currently face the problems caused by PEG digitization, if the Commission were to endorse the actions of AT&T and Comcast at issue in this proceeding, we have little doubt that the other cable operator serving our community would adopt those approaches to marginalize or effectively eliminate PEG access.

3. The Commission Should Grant the Petitions Concerning AT&T's PEG Product (CSR-8126 & CSR-8127)

Our experience confirms many of the deficiencies identified in the petitions. In virtually every conceivable way that matters to a viewer, the AT&T PEG product is markedly inferior to broadcast channels carried on AT&T's U-verse system: Ease of finding in the menu system, ease of access, the time it takes to reach the PEG programming, the ability to switch back and forth between local PEG programming and other channels, ability to record using DVR, closed captioning capability, and secondary audio ("SAP") capability.

Accordingly, to preserve PEG as envisioned in the Cable Act, the Commission should grant the petitions in CSR-8126 and CSR-8127.

4. The Dearborn Petition and Comcast's PEG Digital Channel-Slamming (CSR-8128)

The City of Livonia also supports Dearborn's petition in CSR-8128. Dearborn is clearly correct that Comcast's proposed treatment of PEG violates the Cable Act and would have impermissibly removed PEG channels from the basic tier.

Conclusion.

PEG channels are a critical and irreplaceable resource for our community. They are the key medium of communication for our local government to communicate with residents, for local educational institutions to communicate with our residents, and for residents to communicate among themselves and to watch and participate in a dialogue about our community. In light of the decreasing amount of truly local programming available on broadcast and other commercial channels, PEG is the only full-time, genuinely local source of television programming available to our residents. We therefore strongly urge the Commission to grant all three petitions.

Ms. Marlene Dortch
March 6, 2009
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Respectfully submitted,


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City of Livonia

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In The Matter Of:

MB Docket No. 09-13

Petition for Declaratory Ruling that AT&T's
Method of Delivering Public, Educational
and Government Access Channels Over Its
U-Verse System is Contrary to the
Communications Act of 1934, As Amended,
and Applicable Commission Rules

CSR-8126
CSR-8127
CSR-8128

COMMENTS OF SCAN NATOA, INC., CITY OF IRVINE, CALIFORNIA, CITY OF
SAN CLEMENTE, CALIFORNIA, CITY OF SANTA CRUZ, CALIFORNIA, COUNTY
OF SANTA CRUZ, CALIFORNIA AND PUBLIC CABLE TELEVISION AUTHORITY
IN SUPPORT OF PETITIONS FOR DECLARATORY RULING

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County of Santa Cruz, and Public
Cable Television Authority

1 To: The Commission

2 I. INTRODUCTION AND SUMMARY.

3 These comments are filed by SCAN NATOA, Inc. ("SCAN NATOA"), which is
4 the California and Nevada Chapter of the National Association of Telecommunications
5 Officers and Advisors ("NATOA"), the City of Irvine, California, the City of San
6 Clemente, California, the City of Santa Cruz, California, the County of Santa Cruz,
7 California, and the Public Cable Television Authority ("PCTA") (collectively, the
8 "California Communities").

9 SCAN NATOA is a professional organization representing the cable television and
10 telecommunications interests of over 400 members, primarily consisting of government
11 officials and advisors within the States of California and Nevada, as well as the interests of
12 dozens of local governmental entities in California and Nevada. The City of Irvine, the
13 City of San Clemente, the City of Santa Cruz, and the County of Santa Cruz are local
14 governmental entities which actively provide, or cause to be provided, public, educational,
15 and governmental ("PEG") programming, or a subset thereof, to their residents. Likewise,
16 the Public Cable Television Authority ("PCTA") is a joint powers authority, organized
17 under the laws of the State of California, consisting of the Cities of Fountain Valley,
18 Huntington Beach, Stanton, and Westminster. The PCTA is currently embarking upon a
19 bold program to invest significant dollars in the capital facilities necessary to produce first-
20 rate community interest programming. Collectively, the California Communities have
21 invested millions of dollars in the production of PEG programming over the years.

22 The California Communities support the Petition for Declaratory Ruling of the
23 Alliance for Community Media, Alliance for Communications Democracy, Sacramento
24 (California), Metropolitan Cable Television Commission, Foothill-DeAnza Community
25 College District, California, Chicago Access Network Television, Illinois NATOA,
26 Manhattan (New York) Neighborhood Network, Bronx Net (N.Y.), Brooklyn (N.Y.)
27 Community Access Television, City of Raleigh, North Carolina, ACM Western Region,
28 ACM Central States Region, ACM Midwest Region, ACM Northwest Region, ACM

1 Northeast Region, and SETOA; the Petition for Declaratory Ruling of the City of Lansing,
2 Michigan, and the Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral
3 in City of Dearborn, et al, v. Comcast of Michigan III, Inc., et al. of the City of Dearborn,
4 Michigan; the Charter Township of Meridian, Michigan; the Charter Township of
5 Bloomfield, Michigan; and the City of Warren, Michigan (collectively, the "PEG
6 Petitions").

7 II. AT&T'S CARRIAGE OF ITS PEG PRODUCT AS A "WEB CAST
8 APPLICATION" DOES NOT SATISFY THE STATUTORY REQUIREMENTS
9 OF FEDERAL LAW.

10 The 1984 and 1992 Cable Acts require the provision of "channels" or "channel
11 capacity," which AT&T simply does not provide.¹ The 1984 Cable Act defines the term
12 "channel" to mean "... a portion of the electronic frequency spectrum that is used in a
13 cable television system which is capable of delivering a television channel (as television
14 channel is defined by the Commission by regulation)." (Cable Act, Communications Act,
15 § 602(3), 47 U.S.C. § 522(3)) In relation to "public, education, or government access
16 facilities," the 1984 Cable Act also expressly defines that phrase to include "channel
17 capacity designated for public, educational, or governmental use." (Cable Act,
18 Communications Act, § 602(13)(A), 47 U.S.C. § 522(13)). The concept of PEG channel
19 capacity is utilized repeatedly in Section 611 (Cable Act, Communications Act, §§ 611(a),
20 (b), (c), (d), & (e), 47 U.S.C. §§ 531(a), (b), (c), (d), & (e)). In relation to cable channels
21 for commercial use, the concepts of "channel capacity" and "channels" appears to be
22 utilized interchangeably with the notion of a "channel" simply being an identified subset of
23 channel capacity. (Cable Act, Communications Act, § 612(b)(1), 47 U.S.C. § 532(b)(1)).²
24

25 ¹ Cable Communications Policy Act of 1984, as amended 47 U.S.C. §§ 521, *et seq.*
26 ("1984 Cable Act"); Cable Television Consumer Protection and Competition Act of 1992,
27 47 U.S.C. §§ 325, *et seq.* ("1992 Cable Act") (collectively, the "Cable Act").
28 ² The Cable Act also introduces the concept of "activated channels" which are defined to
mean "... those channels engineered at the headend of the Cable System for the
provision of services generally available to residential subscribers actually are provided,
including any channel designated for Public, Educational, or Governmental use. . . ." (Cable Act, Communications Act, § 612(b)(5)(A), 47 U.S.C. § 532(b)(5)(A)).

1 Under the federal regulatory scheme, PEG Channels are deemed a "Class II Cable
2 Television Channel" within the meaning of 47 C.F.R. § 76.5(s) and the transmission and
3 delivery of PEG programming is deemed "Cable Casting" within the meaning of 47 C.F.R.
4 § 76.5(o). Likewise, PEG Channels, if delivered, are deemed "activated channels" within
5 the meaning of 47 C.F.R. § 76.5(n). PEG Channels are subject to the same technical
6 requirements as other NTSC or similar video channels of that system. (47 C.F.R.
7 § 76.601(b)(2)). The guiding principle of the Cable Act, and its implementing federal
8 regulations, is that PEG Channels are true "channels" (i.e., identifiable portion of the
9 electromagnetic frequency spectrum capable of delivering a television channel) and are
10 subject, in general, to the same technical requirements as other Cable Casting.

11 AT&T's PEG Product is simply not a channel or channel capacity within the
12 meaning of applicable federal law, but rather an "application" by which PEG programming
13 is webcast in much the same way as YouTube delivers video product to the home via the
14 Internet. As AT&T says itself:

15 For the first time, with AT&T's PEG Product, viewers will
16 receive televised content through a computer application
17 resident in the provider's servers and accessed by the viewer's
18 set top box. (AT&T PEG White Paper, p. 2, Exhibit A).³

18 AT&T's PEG Product, as compared to the baseline set by commercial channels
19 within U-Verse itself, simply fails to meet the non-discrimination requirements as set forth
20 in federal law for the following reasons:

- 21 • AT&T Specifications for Commercial Channels
 - 22 ○ H.264Codec at 2Mb/sec
 - 23 ○ Full Screen Video, resolution standard definition
 - 24 ○ Appear in standard U-Verse line up for channel surfing

25 ³ AT&T White Paper on PEG Programming ("AT&T White Paper") states that
26 "AT&T's PEG product operates as an application that integrates content obtained via a
27 secured internet-based link, for example, 'stream' of live community video, and delivers
28 that content to the end user's television via the U-Verse set top box ("STB")." (AT&T
PEG White Paper, p. 2, Exhibit A). Unlike its commercial channels, including, for
example, over-the-air broadcast, premium channels and video on demand channels, the
AT&T PEG Product is simply not a "channel" within any meaning of the word.

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- Have all U-Verse features including Picture in Picture and DVR
- Each channel has a separate location
- Each channel's listings are in "TV Guide" detailed listing
- Close captioning provided on program services that deliver programs to video provider that include close captioning
- Instantaneous channel transition
- AT&T Specifications for PEG Product.
 - Windows Media Codec at 1.3Mb/sec (1Mb for Video, 0.3Mb for Audio, Captioning, Overhead)
 - Partial Screen Video – 320 x 240 resolution (iPod or Internet video quality)
 - PEG applications do **NOT** appear in standard U-Verse line up for channel surfing, but in a separate "Media Player"
 - Standard U-Verse features including Picture in Picture and DVR are **NOT** supported for PEG applications
 - All PEG applications for many adjacent communities are lumped together in the misnamed Channel "99" and do **NOT** have separate channel locations
 - PEG applications do **NOT** appear in U-Verse "TV Guide" detailed listings
 - Subscribers **CANNOT** enter individual PEG applications numbers into a remote control
 - Subscribers **MUST** pass through a series of **5 steps** to find a particular PEG applications and then expand that transmission to full size screen (all of which happens automatically in the case of commercial channels)
 - PEG applications are **NOT** capable of transmitting closed captions or EAS messages

- 1 ○ PEG applications are NOT capable of transmitting SAP
- 2 ○ Delayed application-to-application transition
- 3 ○ Incapable of programmed VCR/DVR recording
- 4 ○ Automatic signal cut-off.

5 III. LOCAL PEG CHANNELS SERVE THE PUBLIC INTEREST BY UNIQUELY
6 MEETING THE NEEDS OF LOCAL GOVERNMENT, OUR EDUCATORS,
7 PUBLIC SAFETY AND THE COMMUNITY.

8 Because PEG Channels have developed primarily to meet local needs and interests,
9 there is no “one-size-fits-all” model for community access channel programming. In fact,
10 the content and services provided by these channels will, and should, vary widely from city
11 to city. Although the specific examples may differ in every jurisdiction, local PEG
12 Channels serve at least four critical functions that serve the public interest, but that are not
13 provided by commercial broadcasters or national networks:

- 14 • PEG Channels Provide Essential Government and Education Services. Local
15 PEG channels foster transparency in local government by cablecasting public
16 meetings and events. In addition, they provide information about vital
17 government services, such as voter registration, public health and low-
18 income assistance. Local agencies will often use PEG Channels to promote
19 important initiatives and public services, such as fitness programs for
20 seniors, healthy food and nutrition tips for low income families and
21 information about free parks and recreation programs.
22 Education access channels provide vital programs related to primary and
23 secondary education, such as distance learning classes for GED and college
24 students, regional occupational programs (ROP) training, and “homework
25 hotline” programs for middle and high school students.
- 26 • PEG Channels Convey Critical Emergency Response and Recovery
27 Information. Many of the California Communities include local PEG
28 Channels as a vital component of our emergency operations planning. PEG

1 Channels are used to distribute disaster preparation programming, to provide
2 real-time information on evacuations, road closures and service outages
3 during an emergency, and to publicize recovery efforts to inform victims
4 about assistance centers and relief services after the fact. In an emergency,
5 viewers must have quick and simple access to local PEG Channels in order
6 to obtain this critical information.

- 7 • PEG Channels Add Diversity to the "Marketplace of Ideas." Local PEG
8 channels, and particularly public access channels, play a unique role in many
9 cities, as an "electronic soapbox" to encourage expression of a wide range of
10 local viewpoints. These channels provide free airtime and access to video
11 production facilities to any member of the public, regardless of the speaker's
12 message. This unique characteristic was specifically envisioned by
13 Congress:

14 "PEG programming is delivered on channels set aside for
15 community use in many cable systems, and these channels are
16 available to all community members on a nondiscriminatory
17 basis, usually without charge . . . *PEG channels serve a*
18 *substantial and compelling government interest in diversity, a*
19 *free market of [ideas] and an informed and well-educated*
20 *citizenry. . . Because of the interests served by PEG channels, the*
21 *Committee believes that it is appropriate that such channels be*
22 *available to all cable subscribers on the basic service tier and at*
23 *the lowest reasonable rate."* (H.R. Rep. No. 102-628 at 85
24 (1992) (emphasis added)).
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1 IV. DISCRIMINATORY PLACEMENT OF LOCAL PEG CHANNELS ON A
2 SECONDARY AND INFERIOR CHANNEL TIER WILL FRUSTRATE THE
3 PUBLIC INTEREST BY RESTRICTING ACCESS TO THE VALUABLE AND
4 BENEFICIAL CONTENT AVAILABLE ONLY ON THE CHANNELS.

5 Slamming local PEG channels to high-numbered tiers, or relegating them to a
6 Channel 99 maze of menus, will make the channels difficult for viewers to find. Unlike
7 the commercial channels, PEG operators have virtually no resources to market the
8 channels or channel locations, and are unable to benefit from national or regional branding
9 campaigns to help direct viewers to the channel numbers. PEG operators rely on "channel
10 surfing" for viewers to discover the content on these channels, and for channel number
11 recognition to allow viewers to locate the information required easily and quickly.

12 In the case of AT&T's Channel 99, the process of finding the PEG channels is
13 physically cumbersome, time consuming and frustrating for the viewer. PEG Channels
14 relegated to this tier lack the basic functionality expected with today's video services, such
15 as the inability to record on DVR, locate the channels on an interactive program guide or
16 toggle back and forth from a PEG channel back to a commercial channel. The inability to
17 provide closed captioning and secondary audio channels frustrates viewers with these
18 special needs.

19 As we stated above, the California Communities have invested significant time and
20 resources into developing the public, education and government channels in their
21 respective jurisdictions. Now, the discriminatory practices affected by AT&T threatens to
22 destroy the PEG model. If allowed to wither and die, these channels will take with them
23 the last vestiges of localism and diversity that remain in our electronic mass media.

24 V. CONCLUSION.

25 AT&T's PEG Product appears to be designed to serve the economic interests of
26 AT&T to conserve dedicated channel capacity and avoid the cost of local insertion rather
27 than being based upon any structural technology limitation.⁴ Although the California

28 ⁴ The fact that large digital video providers, such as Verizon, and small upstarts, such as

1 Communities understand that it is AT&T's business desire to leverage its legacy twisted
2 copper plant with as few capital improvements as possible, since this approach works best
3 for AT&T shareholders, it is an approach which is simply inconsistent with federal law, at
4 least as applied to PEG Channels. The legislative mantra of federal law, as well articulated
5 in the PEG Petitions, in relation to PEG is: "thou shalt not discriminate." As articulated in
6 greater detail in these comments and the PEG Petitions, AT&T through its PEG Product
7 has, and continues to, discriminate against PEG Channels. This result is simply
8 inescapable.

9 In summary and conclusion, the California Communities strongly support the PEG
10 Petitions and urge their grant based upon the federal law provisions set forth therein.

11 Dated: March 6, 2009

Respectfully submitted

12 RUTAN & TUCKER, LLP
13 WILLIAM M. MARTICORENA

14 By: 
15 William M. Marticorena
16 ATTORNEYS FOR THE CALIFORNIA
17 COMMUNITIES
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28 Sure West, have managed to deliver PEG Programming on a channel as opposed to upon
an application basis through local insertion, interconnection, or a combination thereof,
certainly argues in favor of technological feasibility.

U-VERSE DELIVERY OF PEG PROGRAMMING

The Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") envisions that competitive providers will use a variety of technologies to provide video service. Specifically, to promote competition, the statewide franchising process is designed to "allow[] market participants to use their networks and systems to provide video, voice, and broadband service." §5810(a)(1)(C). Thus, DIVCA presupposes that statewide franchise holders will put their existing networks to new uses. DIVCA recognizes that the networks of new video service providers developed differently from those of incumbent cable operators, and that new entrants' provision of PEG programming may not be identical to what is provided by cable.

AT&T is a new entrant and our PEG product is different from traditional cable PEG products. AT&T has designed a PEG product that distributes PEG content to its viewers over a much larger geographical region than does a traditional cable system. But with this new design and the supporting technology comes a different presentation of the PEG content and a different viewer experience. Because AT&T's U-verse system does not insert content physically into its network at the local level, as is currently done by incumbent cable operators, the look and feel of AT&T's PEG product does not mirror the cable PEG presentation. But DIVCA does not require that a new entrant's provision of PEG be identical to that of the cable operator, and for the reasons detailed below, AT&T's PEG product provides the quality and functionality the law requires while satisfying the public objectives behind PEG programming.

Before specifically addressing AT&T's compliance with the technical requirements of DIVCA, this paper offers important background information regarding the Lightspeed network upgrade and a description of AT&T's PEG product as it now exists and as it may evolve. This background information will explain the technological differences between AT&T's U-verse product and a traditional cable system, and the reasons why AT&T is delivering PEG content to U-verse TV customers using a software application instead of a linear channel (as cable provides).

Background on Lightspeed

AT&T is investing up to \$1 billion by mid-2009 upgrading its telecommunications network in California. Attracting such capital improvements to California was one of the Legislature's enumerated goals in enacting DIVCA. Section 5810(a)(1)(B) states that "[i]ncreased competition in the cable and video service sector provides consumers with more choice, lower prices, speeds the deployment of new communication and broadband technologies, creates jobs, and benefits California's economy." This investment will bring fiber closer to AT&T customers' homes, continuing the company's aggressive network build in California. More fiber in the ground, closer to customers, will make it possible for AT&T to provide new, next-generation IP-based services over its existing network. These services will include High Speed Internet, IP telephony (VoIP), and AT&T's IP-based television service called AT&T U-verse TV.

AT&T's U-verse service is an unprecedented deployment of new communication and broadband technology. Using a client-server delivery model and proprietary compression and modem technology developed specifically for U-verse, AT&T will deliver hundreds of television

channels (dozens of them in high definition) to California consumers over a largely copper wire network originally designed to carry telecommunications service only. The possibilities presented by this breakthrough achievement are enormous, and U-verse TV at its current stage of development has only begun to realize its potential.

Moreover, AT&T's PEG product itself deploys new communication and broadband technology in keeping with the Legislature's goals. For the first time, with AT&T's PEG product, viewers will receive televised content through a computer application resident in the provider's servers and accessed by the viewer's set top box. Again, the potential of this new technology is vast. Today viewers will receive all PEG content that originates in their designated market area (which is itself a significant improvement over cable's typical PEG system); tomorrow, this technology may be deployed to offer access to even broader PEG content choices.

The \$1 billion earmarked for California includes a portion of the \$4.5-\$5 billion AT&T plans to spend nationwide on its Lightspeed initiative before the end of 2008. To put this investment in perspective, Lightspeed and the deployment of U-verse TV within California alone represents the largest rollout of IPTV to date in the *world*.

AT&T's PEG Product

AT&T's PEG product operates as an application that integrates content obtained via a secure Internet-based link, for example a "stream" of live community video, and delivers that content to the end user's television via the U-verse set top box ("STB"). In addition to delivering municipal content, AT&T intends to use the same technology to support the delivery and introduction of new or "specialized" commercial video content sources that hopefully will appeal to California's diverse communities. See §5810(a)(1)(D) which states that video competition "should increase opportunities for programming that appeals to California's diverse population and many cultural communities."

AT&T has designated Channel 99 as the location on its U-verse channel guide dedicated exclusively to PEG programming. The choice of Channel 99 was deliberate. Channel 99 is a prime location – it bridges the local station line up with the national channel line up, which begins at Channel 100. Customers who subscribe to *any* U-verse TV package can tune to Channel 99 to access PEG programming or can go straight to PEG programming from their main menu by selecting the Local Public Education and Government button. A new enhancement stores the last PEG channel watched and allows a viewer even faster access to his or her favorite PEG content.

After selecting Channel 99, a customer presses the 'ok' button to access all of the PEG channels available in the Designated Market Area ("DMA"). The selection of Channel 99 launches a Remote Desktop Protocol, an application running on the AT&T network which organizes and displays the PEG content via the STB that connects to the customer's television. Customers will see an alphabetical listing of all the cities with PEG programming available in their area. Once a city is selected from that menu, customers then are able to choose from a list of channels available for that city. While watching, customers can choose to display a navigational bar on screen to select different PEG programming at any time. This allows a

straightforward change from one PEG channel to another. Alternatively, customers can choose to "hide" the navigational bar and watch full screen PEG programming.

The source content from a local community is connected to a VC-1 (WM9)¹ encoder that streams the live content via Hypertext Transfer Protocol to a device in AT&T's Video Hub Office ("VHO") referred to as the Internet Mediation Device. Once the subscriber selects the PEG content, an application is launched and an Internet Group Management Protocol join message is issued for the relevant multicast stream. AT&T's PEG product includes an administrative tool that allows the city or its designee to create text (e.g., titles or labels) describing each stream of PEG content for display in AT&T's PEG application. In other words, cities can describe their programming how they choose, including by using the channel number that may appear on the incumbent cable operator's program guide (e.g., "Channel 26 - City Council").

It is important to understand why AT&T designed its PEG product as it did and, in particular, how AT&T's IP network differs from a traditional cable network. AT&T designed its PEG product based on several practical, technical, and economic considerations. While legacy PEG evolved to fit cable networks, AT&T is using its traditional *telecommunications* network to carry video and its PEG product must ride on this network. There are fundamental differences in network design that presently make it infeasible for AT&T to "mirror" the cable delivery of PEG channeling.

In a cable network, PEG is generally provided as an analog signal inserted locally in each municipality at a point downstream from the cable headend. This enables the cable operators to provide differing content on the same channel number within a DMA (i.e., viewable content on a given channel can vary by area within the DMA).

In AT&T's case, all traffic is acquired at the VHO that serves the entire DMA. AT&T's IP network does not have physical insertion points in its network downstream from its VHO given that AT&T does not distribute content using analog RF spectrum that can be layered onto its service at various points in the field. Therefore, AT&T cannot simply allocate three channel numbers for PEG (for example) and reuse them throughout the DMA relying upon local insertion of the RF signal as is the case on a typical cable network. The last physical insertion point on AT&T's IP network is at the VHO. As a result of this network difference, AT&T is not able to provide PEG programming only to the locality in which it was produced.

AT&T's network design and software provide a different experience for the PEG viewer, and AT&T cannot replicate the cable PEG experience exactly without significantly reengineering its network. To reengineer the AT&T network for an identical PEG experience would be very expensive and delay AT&T's ability to offer competitive video services. In addition, the practical impact very likely would be undesirable to AT&T's viewers. As noted, a cable operator locally inserts PEG content so that a viewer only sees on his or her program guide the channels offered in their municipality. AT&T, were it to mimic cable in its PEG solution, would be forced to send viewers many more channel numbers on the electronic program guide ("EPG") and a very large number of these would be consumed by PEG. In larger DMAs, such as

¹ VC-1 is the informal name for the Windows Media Video 9 video codec initially developed by Microsoft.

San Francisco, Los Angeles, and Chicago, this could mean literally 100 (or more) separate PEG channels would be presented to AT&T's subscribers as individually mapped channels appearing on the EPG. We believe that allocating such a high percentage of available channel numbers to PEG would frustrate viewers, cause confusion for AT&T's customer base and would detract from the consumer appeal of what AT&T intends -- and DIVCA expects -- will be a competitive offering.

While AT&T's method for PEG carriage differs from legacy cable, it has several inherent benefits. First, PEG programs are available to much larger audiences because distribution is not limited to town borders. This is not only a major public benefit; it also furthers the explicit purposes of DIVCA. In particular, §5810(a)(1)(A) states that "access to a variety of news, public information, education, and entertainment programming" benefits all Californians. AT&T's PEG product promotes variety of PEG programming by greatly increasing the amount of PEG content available to subscribers. Unlike most typical cable customers, U-verse subscribers will be able to keep track of events in surrounding communities, where they might work or family members might live. Second, since PEG programming from multiple municipalities in a geographical area can be viewed, the new service brings them together in an easy-to-remember channel location -- Channel 99. AT&T has assembled a very robust promotional campaign to notify AT&T subscribers that PEG content will be found on Channel 99 so that subscribers will quickly know where to go to find PEG programming. AT&T will promote Channel 99 *on the air* on Buzz Channel 300 and the Help Channel (Channel 411) on the U-verse Service; *online* through the U-connect web site (uverse.att.com/uconnect) and the U-talk discussion board (utalk.att.com); and *in print* through promotional flyers and AT&T U-guide updates.

In short, through Channel 99, AT&T subscribers get the ability to see PEG content from neighboring communities and the convenience of having it all in one place. In addition, AT&T's PEG product potentially enables cities, at marginal cost, to provide PEG content over the web because all of the city's PEG content will be in the digital form widely used for delivery over the public Internet. Thus, if a city chooses to do so, it can present digitized PEG content on its municipal web site so that anyone (anywhere) with access to the public Internet can view it. Use of this technology will empower cities by enabling more viewers to access their PEG.

Specific DIVCA Compliance Concerns

1. Channel designation requirements (DIVCA §5870(b))

Section 5870(b) requires that "to the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law." The "extent feasible" clause modifies both the numerical separation requirement *and* the same channel number requirement. Therefore, AT&T must meet both the numerical separation requirement and the same channel number requirement of §5870(b) *only* to the extent feasible considering technological, legal, economic and other factors. As discussed above, the lack of local insertion points in AT&T's network make it infeasible for AT&T to provide PEG in the form of linear channels listed individually on its programming guide.

CERTIFICATE OF SERVICE

I, Valerie Bloom, hereby certify that I have on this 5th day of March, 2009, caused a true and correct copy of the foregoing COMMENTS OF SCAN NATOA, I NC., CITY OF IRVINE, CALIFORNIA, CITY OF SAN CLEMENTE, CALIFORNIA, CITY OF SANTA CRUZ, CALIFORNIA, COUNTY OF SANTA CRUZ, CALIFORNIA AND PUBLIC CABLE TELEVISION AUTHORITY IN SUPPORT OF PETITIONS FOR DECLARATORY RULING to be served on the following interested parties via U.S. mail, postage prepaid:

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