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PUBLIC, EDUCATIONAL, AND GOVERNMENTAL (PEG) SERVICES IN THE DIGITAL TV AGE

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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TUESDAY, JANUARY 29, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 1:00 p.m., in room 2322 of the Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Members present: Representatives Markey, Harman, Gonzalez, Inslee, Rush, Eshoo, Green, Capps, Solis, Dingell (ex officio), Stearns, Upton, and Barton (ex officio).

Staff present: Amy Levine, Tim Powderly, Mark Seifert, Colin Crowell, Maureen Flood, Philip Murphy, Neil Fried, and Garrett Golding.

Mr. MARKEY. Ladies and gentlemen, welcome to the Subcommittee on Telecommunications and the Internet. Today we are going to have a hearing which examines the issues related to public, educational, and governmental services on cable systems. I want to begin by welcoming my good friend, Cliff Stearns, from Florida as the new ranking member of the Telecommunications Committee. Cliff and I have been friends since the first day that he came to Congress and came immediately down to the House gym and began blocking my shots, and so that has been a—I thought I would make that honest disclosure up front, Cliff. And I think we are going to have a great relationship as the years go by.

What I would like to do though is first, because Anna Eshoo just absolutely has an urgent reason to leave, to recognize her to make an opening statement first, and then I will recognize Cliff Stearns and then make my own opening statement. The chair recognizes the gentlelady from California.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman. I really appreciate it and to the ranking member, Mr. Stearns, for allowing me to just make a brief opening statement and kind of leap frog over others. The House Intelligence Committee is beginning a very important hearing right now, and so as a member I really need to get there. But let me just say a few words and thank the witnesses for being here.

Certainly to Ms. Folger, Annie Folger, who is here from Palo Alto, California, which is the heart of my district, as the Executive Director of the Midpeninsula Community Media Center. They provide a wonderful service to our community. The mission of that organization, as it is for others like hers, is to use television and the Internet to create and distribute programs that promote and celebrate individual expression, local achievements, education, local cultural exchanges, arts appreciation, and civic engagement. Those are very, very important things in our communities across our country.

In fact, it is a snapshot of civic life in America. Her organization and others also provide the most local programming on television. They cover all the city councils, all the meetings, all the things that go on in the public square that the public really needs to be included in in all the areas that I just mentioned. Now the PEG channels are a vital first class function for communities across the country, and I think that they are being threatened by second class treatment on AT&T's video service. Ms. Folger is going to testify today about AT&T's U-Verse product, which is new to my congressional district. And I hope that we can get the kinks out of this, that it doesn't carry the characteristics that seem to be part of it now.

Now AT&T recently received a statewide license in California to provide video service, but unfortunately they are televising PEG channels in such a cumbersome way that it threatens access to those channels nationally. There is going to be a short demonstration that Ms. Folger is going to put on. I think it will be of great interest to the subcommittee and will underscore how U-Verse doesn't permit viewers to record PEG channels on their DVRs, that the picture quality is a quarter of the quality of a normal channel, and closed captioning is not provided. I think we have to do much better. I think that when a state license, a statewide franchisee license is issued, that there are public obligations to that. So, Mr. Chairman, I am sure that part of the regular order will be that we can write letters for the record to our witnesses and have them respond.

And again, Ms. Folger, thank you for being here. Thank you to my colleagues for allowing me to move in front of you. I hope that we can get past these issues, and I am sure the witnesses will address the points that I am irritated about and help us to have a comfort level and that it will no longer be the case. So thank you, Mr. Chairman, and to all my colleagues. I very much appreciate it.

Mr. MARKEY. The gentlelady's time has expired, and we welcome you, Ms. Folger. My wife grew up in Palo Alto, and she believes that her marriage to me is proof that there is such a thing as downward social mobility leaving Palo Alto, so we welcome you. The chair recognizes the ranking member, the gentleman from Florida, Mr. Stearns.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Mr. Chairman, thank you very much, and thank you for that generous introduction. You and I have been friends, and we share interest in sports across the board. And I have been

an admirer of yours, and also you and I have debated many times, and you are very skillful, so I have a great deal of admiration for you. And I welcome the opportunity to be the ranking member and also to compliment my predecessor, Mr. Upton of Michigan, who did an excellent job, and he is helping me, and I look forward to this transition with his help and yours, Mr. Chairman, and I am so pleased to be here. And I would say to the witnesses we appreciate your time. I would say though to the gentlelady from California that perhaps my take on this issue is perhaps a little bit different than hers. I think there is a way to balance out the need for innovation and let the cable companies have a little bit of an opportunity to provide innovation and to provide more channels through the digital rather than the analog spectrum, with also providing access to the consumers to PEG channels, so I perhaps will give a different perspective, which I think would be healthy, Mr. Chairman, in a hearing of this nature.

Mr. MARKEY. You just have to be careful today when you say the gentlelady from California, because that is all we have today. You have to be more specific today.

Mr. STEARNS. Okay. Well, I am speaking of Anna Eshoo, of course, who previously spoke and opened up the hearing. But I do welcome the gentleladies from California, too. Mr. Chairman, we now have a marketplace of convergence where labels don't matter anymore, where there are other—there was one separate to phone, cable and wireless, and so forth, and now it is all blurring together, and the convergence is coming. And in order for this innovation to continue, we have got to allow the companies to innovate and not put handcuffs on them. Cable operators may need to convert certain channels to digital format. This conversion allows cable operators to save capacity for faste, broadband service and more channels, including more high definition content, so going digital also enables advanced features such as video on demand and interactivity.

In fact, each analog PEG channel uses the same space as 3 high definition channels, 10 video on demand channels, 15 standard definition channels or 42 megabits per second broadband service. So the purpose of this hearing is to examine the digitization of PEG channels, what that means to the consumer and the innovation I talked about earlier. Now the Communications Act allows municipalities to require cable operators to carry PEG channels. Some cities are concerned that digitizing PEG content will make it less accessible to consumers. I understand their concern. Comcast in Michigan announced plans this past November to offer PEG channels only in digital format.

As a result of Comcast's change, a subscriber with an analog television would need a digital cable set top box to continue receiving the PEG channels. Comcast has offered to provide such a consumer one set top box per household at no cost for 1 year. Additional boxes after the first year would cost $4.20 per month. Cable companies like our television broadcasters are in the process of converting their transmission to digital format. Because the cable transition does not directly implicate the public airwaves or the availability of spectrum for emergency responders, no transition deadline has been mandated for cable operators. Instead, they are

making individual decisions on when and how to transition to digital based on capacity constraints, consumer demand and the availability of their investment capital.

Most cable systems today have some subscribers receiving analog channels and some receiving digital channels; thus, they are currently simulcasting the local broadcast channels and PEG channels in both analog format and standard definition digital format. So my colleagues, so long as cable operators meet their legal obligations regarding carriage of particular content, we should allow the free market, not the heavy handed regulation, to determine how and when to convert to digital. Congress had been pushing cable operators to carry more content as well as increased broadband speeds and penetration. Cable operators are attempting to balance these sometimes competing forces. Cable providers are in a better position, my colleagues, than regulators to determine how to maximize service for their consumers. If they calculate wrong obviously they are going to lose business. Let them do it, but I believe this hearing is very important to hold, and I look forward to hearing from our witnesses. Thank you, Mr. Chairman.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. I thank the gentleman. The chair will now recognize himself for his opening statement. And I will begin just by saying that we do have a busy agenda ahead for this year that will address many telecommunications policies topics on both the legislative and oversight fronts, with our next significant oversight hearing scheduled for February 13 on the status of the digital television transition. Just 4 weeks into the consumer converter box program, the Commerce Department has almost 4 million requests for coupons worth about $160 million, so it is off to a brisk start. We are also following very closely the ongoing auctions at the Federal Communications Commission of the licenses to the frequencies the broadcasters will be relinquishing as part of the digital television transition.

I am eager to see the extent to which the auction actually results in the introduction of new competitors into the marketplace in different regions around the country, as well as the advent of new wireless services, devices, and applications. Initial reports of lagging interest thus far in the so-called D block license, a commercial wireless opportunity with a unique public safety mission, is discouraging. The auction is obviously not over yet, and it is still possible for a successful auction of the D block license. However, if the auction ends and the D block has not met its reserve price, the subcommittee will actively review the parameters of that auction, including an assessment of its various conditions, the reserve price, and the structure of the public safety trust, and it would be my intention should events at the auction require it to work closely with FCC Chairman Martin and his colleagues to develop a plan for reauctioning these frequencies in a way that will foster new wireless competition and enhance interoperable public safety communications across the country.

It is an issue that I know that Ms. Harman and other members of the committee have an intense interest in. Today's hearing focuses upon public, educational, and governmental services. Historically the Congress has supported this, ensuring that a portion of capacity on cable systems be reserved for such services, and thousands of communities around the country have used such rights to access cable system capability to develop and offer television channels for their local communities. With the backdrop of our recent debate last night on media ownership, it is important to keep in mind that these PEG channels represent vital and vibrant voices for localism and diversity in our national media mix.

PEG channels today offer citizens the chance to view local government proceedings, local high school plays and sporting events, educational courses, foreign language programming, local civil news and information, programming distributed by Armed Forces, charities and local community groups, and other fare. The vast majority of this programming would otherwise not exist on the dial because neither traditional broadcasters nor cable programmers typically develop programming on such a local level or open access to community groups to program time and capacity. As the nation continues to transition to digital television and the march of technology moves ever forward, it is important that cable operators, programmers and communities work together to ensure that consumer welfare is protected.

As we have seen in recent weeks, many cable operators are moving channels, including PEG channels and CSPAN in a manner that is drawing consumer complaints. The Congress has a longstanding policy interest in safeguarding and fostering diversity and localism, even as we seek to promote more broadband deployment, greater affordability, and the advent of other new services and equipment in the marketplace. Today we have an opportunity to hear from witnesses about what is happening in the marketplace and obtain suggestions as to how these important policy objectives can be met with the least amount of disruption to consumers. So I look forward to hearing from our witnesses and working with them in the months ahead to ensure that we do in fact have a good policy on these issues.

And so now the chair will turn, and almost in a Dickensian way, and only in Congress can this work, because here as well, here as in Dickens, there is life after death. And so I have the privilege now of introducing the ranking member of telecom subcommittee past, Christmas past, Fred Upton, to make his opening statement. And we welcome you back and hope that we see you here frequently, Fred.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. I promise you I will be here a lot, and I appreciate the opportunity to serve now as a mere member of this powerful and important subcommittee as the former chairman and ranking member. And, Cliff, you have big shoes to fill. It is nice to be back. There was a time that in Michigan we had only cable, and now we have other video competitors such as AT&T, as well as satellite. And AT&T's service is new and innovative, and it will take a com-

mitment on both the part of AT&T and the cities to work together to develop the best PEG programming that they can. And I certainly count myself as a supporter of PEG. I am sure AT&T would like to attract customers to its new service. Consumers want a choice of providers, and this pushes cable to provide a better product as well or it will lose its customers to the competition.

And as we have seen, the more competition the better it is for consumers. That is the competitive environment that many of us have always imagined for this technology. Certainly there are going to be growing pains along the way. That isn't surprising. When you get a new cell phone, for example, or any other technology product, you are going to have to learn it and all of its features. I believe the same to be true for the latest iteration of video service being offered by AT&T, that there may be a bit of a learning curve, but the potential benefits are great to the consumers that will use it. In 1996 we amended Title VI of the Communications Act to ensure that cable technology and the deployment of set top boxes would not be unduly hampered by local franchise authorities.

The provision plainly states, and I quote, "No state or franchising authority may prohibit, condition or restrict the cable system's use of any type of subscriber equipment or any transmission technology." We adopted that provision for a reason. We believed that private companies rather than public officials could best chart technological advancement. Given the challenges that cable operators face in the current competitive landscape against other multi-channel video programming distributors who are already widely offering all digital services, it hardly seems the time for us to backtrack on our commitment to provide cable operators with discretion over their technical development. Local officials, even when well intentioned, should not be dictating necessarily how much of a cable system is analog or how much of it is digital.

I understand that there might be some disruption among the transition period that may be a cause of concern to the PEG viewers as well as their providers, but I would encourage local governments and PEG programmers to embrace the digital age and work cooperatively to minimize any transitional disruption. If the FCC imposes dual carriage requirements and we want a broadband provider to provide as much as 100 megabytes per second speeds to compete, then cable has to carry all of the PEG channels and something is going to have to give. I have always believed in regulatory parity. Cable and other terrestrial carriers are mandated to carry PEG channels while satellite providers that serve over 30 million households have no such mandate.

The bottom line is this. Consumers want HD, more HD. Otherwise, they are going to leave that provider. Our goal is to try to make sure that competition works as best that it can so in fact they will have those services if they want them. I yield back my time to the gentlelady from California.

Ms. HARMAN [presiding]. I thank the gentleman for yielding and would note for the record that the gentlewomen from California have now taken over the committee, which I declare to be a good start. It is now my pleasure and privilege to yield to the chairman of the full committee for an opening statement.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Madam Chairman, thank you for the recognition. I commend you and Chairman Markey for holding this very important hearing. I want to begin by welcoming a number of friends here today, including my very dear friend, Mayor O'Reilly of Dearborn, Michigan, and also Ms. Gail Torreano. I want to thank them and our other witnesses for their time and efforts in participating in this day's hearings. The committee today will hear testimony concerning the current treatment of public, educational and government, or PEG, programming by video programming providers. Local communities would use PEG programming to cover town meetings and to air educational programs and even to cover local high school sports events. These are very important programming and very important matters of concerns to the communities. It constitutes a crucial aspect of political discourse in communities across the United States and promotes important goals of localism and diversity, and in many instances, if not in all, in some way or other it is enshrined in the agreements originally adopted between the communities and the providers of cable service.

The committee recently learned that some providers are changing how consumers receive PEG programming. In other cases, these changes could impose additional costs on consumers or make it difficult for them to locate PEG programming. In other instances, changes may prevent consumers from digitally recording PEG programming. These are matters of grave concern to the communities, to the listeners, and also to the committee. I wish to be clear. I am not opposed to any effort that could address the problem of the underlying cable operators' obligation to make PEG programming available to consumers. It matters little to me if such efforts are driven by technological change, the need for more network capacity or the desire to compete with new entrants or enter as a new entrant.

PEG programming deserves first-class treatment, not second-class billing. That is why the Congress requires cable operators to provide PEG programming on the most basic tier of service and why this committee has stated that it should be available to subscribers at the lowest reasonable rate. I am pleased that Comcast, which had announced changes detrimental to the way it delivers PEG services in Michigan, has agreed to make a good faith effort to work out a settlement with affected communities. I want to commend them for that. I am optimistic that these discussions will lead to a result that leaves all parties better off. And one of the functions of this committee in hearings of this kind is to find out what are the problems and how those problems could best be worked out to the satisfaction of all concerned.

I recognize that all types of communications networks are being upgraded with the latest technologies. This committee and I support that. These upgrades often require Congress to consider how existing policy priorities will be accommodated by the new networks of the future. This committee has examined such efforts and such issues closely in the past, and I look forward to doing so now for PEG services. I want to thank you, Madam Chairman, and I

want to thank the committee for this time and for their effort and leadership in this matter. I look forward to the testimony of today's distinguished witnesses. I have the unanimous consent request that certain matters be inserted into the record.

First of all, a letter from Mr. Jeff Trudell, Director of Technology, Wyandotte Public Schools, a letter from Elaine McClain of Birmingham, Michigan to the committee, a letter from Linda Badamo, Director of Cable TV and Telecommunications for Clinton Township, Michigan to Gail Torreano of AT&T.

[The information appears at the conclusion of the hearing.]

Ms. HARMAN. Without objection.

Mr. DINGELL. Thank you, Madam Chairman, for your courtesy to me.

[The prepared statement of Mr. Dingell follows:]

STATEMENT OF HON. JOHN D. DINGELL

Mr. Chairman, thank you for holding this very important hearing. Let me begin by welcoming several friends here today, including my dear friend Mayor O'Reilly of Dearborn, Michigan. Thank you for your time and efforts to participate in today's hearing.

The Committee will hear testimony today concerning the current treatment of Public, Educational, and Governmental or ″PEG″ programming by video programming providers. Local communities use PEG programming to cover town meetings and air educational programs and even to cover local high school sports events. This programming constitutes a crucial aspect of political discourse in communities across America and promotes the important goals of localism and diversity.

The Committee recently learned that some providers are changing how consumers receive PEG programming. In some cases, these changes could impose additional costs on consumers or make it more difficult for them to locate PEG programming. In other instances, the changes may prevent consumers from digitally recording PEG programming. These are matters of grave concern.

Let me be clear—I am opposed to any effort that would thwart the goals underlying a cable operator's obligation to make PEG programming available to consumers. It matters little to me if such efforts are driven by technological change, the need for more network capacity, or the desire to compete with new entrants. PEG programming deserves first-class treatment, not second-class billing. That is why Congress requires cable operators to provide PEG programming on the most basic tier of service and why this Committee has stated that it should be available to subscribers at the ″lowest reasonable rate.″

I am pleased that Comcast, which had announced changes detrimental to the way it delivers PEG services in Michigan, has agreed to make a good faith effort to work out a settlement with affected communities. I am optimistic that these discussions will lead to a result that leaves all parties better off.

I recognize that all types of communications networks are being upgraded with the latest technologies. These upgrades often require Congress to consider how existing policy priorities will be accommodated by the new networks of the future. This Committee has examined such issues closely in the past, and I look forward to doing so now for PEG services.

I thank you for this time and look forward to the testimony of today's distinguished witnesses.

OPENING STATEMENT OF HON. JANE HARMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. HARMAN. Thank you, Mr. Chairman, for your leadership on this issue and so many other issues on this committee. I love being back. I also enjoy so much serving on this subcommittee and would like to welcome Mr. Stearns to the ranking member position and to say to his predecessor who just left the room that we all know he has become a world renowned expert on efficient light bulbs,

and for that reason he needs to be ranking member on the energy subcommittee. But both of you try, and I appreciate this, to join with the majority on this committee to fashion responsible, bipartisan legislation. It makes a difference. This committee is a critically important committee in Congress, and this issue is a very important issue too. I yield myself a few minutes to make my opening remarks and would like to comment about the issue raised by Chairman Markey, and that is the ongoing auction for the 700 megahertz space at the FCC.

I want to thank him, he is back, for agreeing to hold hearings immediately following the conclusion of the auction and for making certain that this committee is a partner with the FCC in what happens next. Hopefully this auction will be successful. I am watching closely the D block portion of it, because I think the most important reason to do this auction is to make certain that we finally solve our problem with interoperable communications in the event of a terrorist attack or a natural disaster. But nonetheless it is important that this committee be a player here and that we prevent any change of rules in mid-course should the bids not come in in regular fashion and that we help structure with the FCC something else if the D block of the auction is not successful.

I have written to Chairman Martin about this. I also wrote a letter to Chairman Markey and Ranking Member Stearns about this, and just want to close with this point, that this DTV transition may be the last chance for decades to leverage private sector interest in spectrum with first responders' need for a network. It is unfathomable to me that 6 years after 9/11, in fact almost 7 years after 9/11, we haven't solved this problem. A big piece of the solution is spectrum, spectrum built out by the private sector to accommodate a range of needs that our first responders have and some of which they don't even know they have. But this is the place to do it, this is the time to do it. The deadline cannot slip, and as we think about this DTV transition, which is very important, we must think first about making our communities safer. So I yield back the balance of my time, and I yield back the chair to Chairman Markey. And thank you all for coming.

Mr. MARKEY. The chair recognizes the gentlelady from California, Ms. Capps, for her opening statement.

OPENING STATEMENT OF HON. LOIS CAPPS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. CAPPS. Thank you, Mr. Chairman. I want to thank you and also Chairman Dingell. It is because of the two of you, your leadership, that we are having this hearing today and this issue comes before this committee. I am going to be brief in my opening remarks. I have been preceded by two important women members from California, and there is yet another one to speak, so I can be one in the line of speakers here. But this hearing does provide us all an excellent opportunity to examine some important issues and choices we will have to make in the transition from analog to digital television. It highlights also our responsibility to stay true to the principle and spirit of localism that is currently captured in our telecommunications laws.

I understand that advances in technology allow us to do more with less space, but I also caution that this should not come at the expense or cost of our public, educational, and government channels and local voices. It shouldn't have to come also at the cost of equality and accessibility of PEG channels to all of our constituents. Growing the consolidation already threatens to crowd out local content. This is, I believe, a perennial threat, and that is why we should be involved, so that we can speak for some of our local groups who have very few voices besides ours to represent them. We have to continue to do what we need to do to ensure that this consolidation doesn't happen again. And I want to also echo and am thankful for our colleague Jane Harman, who everytime she has a chance speaks to the issue of what we need to provide for first responders. And everytime there is an opportunity to discuss the spectrum that we should keep that in mind. They also don't have a lot of powerful voices on their side except for those of us here who remember 9/11 so clearly the interoperability that we want to provide for our first responders. So thank you again, Mr. Markey. I yield back. I am looking forward to the expert testimony that we are about to hear.

Mr. MARKEY. The gentlelady's time has expired. The chair recognizes the gentleman from Texas, Mr. Gonzalez.

Mr. GONZALEZ. I waive opening.

Mr. MARKEY. The chair recognizes the gentlelady from California, Ms. Solis.

OPENING STATEMENT OF HON. HILDA SOLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. SOLIS. Thank you, Mr. Chairman. I just want to applaud you and the ranking member for having this important hearing. So much has already been said about the need to continue to provide this very vital service. PEG channels play a really important role in communities like mine. We just met with some of our local cable folks and heard a great deal about the educational benefits that we see in areas like East Los Angeles, where not everyone has the luxury of having the Internet at home and vice versa, so it is a very important part of what I think our committee can do to help oversee this that we see that this support is there and that we continue this very vital service. Thank you, and I yield back.

Mr. MARKEY. The gentlelady's time has expired. The gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I would like to have my full statement placed in the record. And following my colleagues from California, in our district in Houston there is a lot of programming on our public, educational, and governmental services that just wouldn't be available to our communities without it, and that is why I look forward to the hearing, and hopefully we will see that continuation if not an expansion particularly as we head into the all digital effort that we are doing. And with that, Mr. Chairman, I ask that my full statement be in the record.

[The prepared statement of Mr. Green follows:]

STATEMENT OF HON. GENE GREEN

Mr. Chairman, thank you for holding this hearing on the effects on PEG services as we transition to the age of digital television.

PEG stations provide an important service to the public - they provide diversity and keep the public informed of local news and events with locally produced programming.

That is why Congress in 1984, and again in 1992, defined and limited what PEG services local franchising authorities could require and required that PEG channels be carried on the basic tier along with all local broadcast signals the system carries.

PEG channels provide local programming that would not otherwise exist.

At the same time the move to digital television, in broadcast and by video service providers, has enormous benefits for the public.

The digital transition in broadcast has freed up spectrum that will be used to improve public safety communications and expand broadband offerings for the public.

Similarly, moving to digital platforms on cable and other video services is a move toward more efficient delivery of content and provides benefits by increasing capacity for providers to offer additional programming and improved broadband speeds for consumers.

In my hometown of Houston, I know at least one of Comcast's headend facilities is all-digital, and it is by far the most state of the art facility they have in the area and provides the most advanced services customers want.

I think the benefits of digital video are undeniable, and I strongly believe the cable industry needs to move to a digital platform to stay competitive and to improve services, especially broadband speeds.

But, like many of my colleagues here today, I also want to know when the industry moves to digital that cable customers in Houston aren't going to have to pay more to see the Houston Community College or the City of Houston's PEG channels.

I would like to hear from Mr. Cohen how Comcast plans to make that transition while minimizing the impact on customers' ability to view PEG channels and minimizing the impact on their pocketbooks.

From our other panel member today representing a video service provider, I hope to hear more about how the IP based U-verse service is offering PEG programming, as I know it is significantly different than cable.

I understand customers can often access PEG programming from their hometown and from surrounding towns and that it is offered more like on-demand programming and not included in the regular program guide.

I would be interested to learn if customers have expressed opinions one way or the other on this, and I also would like to hear from Mr. O'Reilly and Ms. Folger about their experience with this service.

Thank you again Mr. Chairman for holding this hearing, and I thank the witnesses for being here and look forward to their testimony.

Mr. MARKEY. Without objection, it will be included, and that concludes all statements from members of the subcommittee. We will turn to our witnesses, and we will begin by hearing from John B. O'Reilly, Jr., the Mayor of the City of Dearborn in Michigan. We welcome you, sir. Whenever you are ready, please begin.

OPENING STATEMENT OF JOHN B. O'REILLY, JR., MAYOR, CITY OF DEARBORN, MICHIGAN

Mr. O'REILLY. Thank you, Chairman Markey. My message today is simple, and that is when it comes to PEG, Congress got it right in 1984, and that is not just because I was working here at the committee at that time, and they got it right again in 1992, and that is that the local interest of cable, the way it serves local constituents, is something that brought it to a level where it was warranted to grant them as a private enterprise the right to use the easements and rights of ways in public areas in order to put this forward. So they were given the status of utilities like gas and electric because it was important that this brought that local voice, that local opportunity, and PEG is the example of that local oppor-

tunity. That is what made the compelling argument for extending some of the privileges that have been offered at cable.

And so when we contrast with other mediums, we have to remember that that was a unique element of that. And another thing I want to talk about is that Dearborn and all local governments welcome broadband competition. We are lucky we have two wire-to-wire competitors, WOW and Comcast, in our community, and they are going at it head to head. We have a wide diversity of satellite dish providers. We have now AT&T entering the marketplace. We have given over seven licenses to broadband and bundled carriers along our major rights of way. We have approved point-to-point communication that has to be strung up. So we have been out there promoting and accepting a wide range of different models within the area of competition. We are not afraid of digital. We shoot in digital, edit in digital. We show our stuff in digital. Digital is a format we use and we are happy with and that is on our local cable. We have a robust local cable operation. We have every voice in the community represented. We have a lot of special programs, and that goes back to something unique.

Dearborn has an interesting place in cable legislation history because in 1984 when Senator Goldwater was promoting S. 66, his version of the cable legislation at that time, he singled out Dearborn in his remarks on the floor as an example of the onerous imposition that powerful cities were exercising over the four cable companies. He didn't have the facts right, so I am going to take this liberty to represent us well. What happened is in those days in 1980 and 1981, cable providers were going out and doing rent a citizen. Prominent citizens were put as a frontage piece to get the cable contracts. There were a lot of aggressive promotions offered to get the cable contracts. It was a wild time.

Dearborn chose a different path. Dearborn established a blue ribbon commission that appointed technicians, engineers, educators, lawyers, who went out and researched everything that was going on in the marketplace at that time, and it brought it all back to the table and put together an RFP for cable that was extraordinary, in fact, so extraordinary that no provider should have been on it. And I agreed with Senator Goldwater at the time that what it is is a good example of what should not have been done, but this was a private marketplace, arm's length. The cable providers had no gun to their head. They wanted it. They went after it with some concessions. And again that is what I am pointing out is no one should, save in a marketplace environment, no one should save someone from their own bad decision, and I think that is the case, and I make that case very well for Dearborn.

We asked for everything. In fact, one of the things that they negotiated out was 24-hour monitoring of school buildings with infrared cameras. That was in our cable franchise in 1981. We had an extraordinary array of things that were local interest that would have served greatly our community, and many of those things still remain in some message. But the point is that was arm's length. Now as we move forward, we look at what has happened. In our contract it is very clear. We have that no channel location changes can occur unless by mutual agreement. That is in the contract. That has not been abrogated by either the 1984 or the 1992 legisla-

tion or subsequent 1996 legislation, so that still stands, and that is one of the things we stand on.

Last year in Michigan, and I think it is happening around, and this is something that we are asking you to look into, Michigan legislation moved into the cable regulations with strong support of some of the parties here, and it seems that maybe the result didn't make people happy. So beginning in January of 2007, Michigan had what they believed was a new regulatory environment. The first contact we had from Comcast was that we were going to lose the free cable that had been included in our contract to the three fire stations and other city buildings in our community. We said okay. We understand it is a marketplace decision. They were the only ones doing it. We made no objection because we understood to be competitive they had to shed some things that needed to be shed.

The next communication we got in 2007 was close all the local cable TV production studios. There were nine in the State of Michigan. That is down from one in every community, by the way. When cable first came in every community was asking for one. It had gone down to nine statewide. This is not where cities produce their cable. This is where the local things, our Rotary Good Company program was there. Our Kiwanis Talk Program was there, a lot of programming that is locally based by local public groups was produced there. Those were gone. The city is now forwarding our equipment on to help produce those programs to continue it.

Mr. MARKEY. Mr. O'Reilly, if you could summarize, please.

Mr. O'REILLY. Okay. I am sorry. We made no objection. Anyway, the last one was that PEG was moved from basic service into tier of digital. What we are saying—and we went to court, and you have this, the Eastern District judge, Judge Roberts, agreed that a federal exemption would apply and decided on our behalf in terms of a stay, temporary restraining order. But we just want to say that we think that PEG needs to be in the basic service tier, that they need to be bundled together. I don't object to moving to digital, but they should not be separated. They are part of that commitment. Local must carry and PEG should be bundled together. Thank you.

[The prepared statement of Mr. O'Reilly follows:]

Testimony
of the

Honorable John B. O'Reilly, Jr.,
Mayor of Dearborn, Michigan.

on behalf of

Before the

Subcommittee on
Telecommunications and the Internet
Energy and Commerce Committee
United States House of
Representatives

January 29, 2008
Washington, DC

I. INTRODUCTION

Good afternoon, Chairman Markey and members of the Subcommittee, I am John B. O'Reilly, Jr., the Mayor of Dearborn, Michigan. While I will be providing details on what is happening in my city with respect to Comcast's provision of public, education and government ("PEG") channels, the same challenges are, or will be, faced by my local government colleagues across the nation.[1] For that reason, I am pleased to offer my comments today for Dearborn, but also on behalf of local governments across the nation, as I have been asked to speak on behalf of the United States Conference of Mayors[2], the National League of Cities[3], the National Association of Telecommunications Officers and Advisors[4], the National Association of Counties[5], TeleCommUnity[6] and the Michigan Coalition to Protect Public Rights of Way ("PROTEC")[7].

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[1] For example, it is my understanding that Bright House Communications is digitizing and moving PEG channels in Florida in much the same way that Comcast plans in Michigan.

[2] The U.S. Conference of Mayors (USCM) is the official nonpartisan organization of cities with populations of 30,000 or more. There are 1,139 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor.

[3] NLC is the nation's oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership and governance. NLC is a resource and advocate for more than 1,600 member cities and the 49 state municipal leagues, representing 19,000 cities and towns and more than 218 million Americans.

[4] NATOA's membership includes local government officials and staff members from across the nation whose responsibility is to develop and administer communications policy and the provision of services for the nation's local governments.

[5] "The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,066 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research, and provides value-added services to save counties and taxpayers money." For more information about NACo, visit www.naco.org.

[6] **TeleCommUnity** is an alliance of local governments and their associations which are attempting to refocus attention in Washington on the principles of federalism and comity for local government interests in telecommunications.

[7] The Michigan Coalition To Protect Public Rights-Of-Way was formed in 1996 by several Michigan cities interested in protecting their citizens' control over public rights-of-way, and their right to receive fair compensation from the telecommunications companies that use public property.

I would also like to acknowledge the leadership of Meridian Township, Michigan on these issues. Meridian is our co-plaintiff in our federal litigation against Comcast. It was also Meridian Township that traveled to Washington in late December to brief your staff and the FCC on this issue.

My message today is simple. When it comes to PEG, Congress got it right in 1984, and again in 1992. And I am not saying that only because I worked for the Committee at that time. On both occasions you concluded that PEG channels serve substantial and compelling government interests in fostering diversity, promoting a free marketplace of ideas, and creating an informed and well-educated citizenry.[8] For these reasons you mandated that PEG channels *be available to all cable subscribers on the basic service tier and at the lowest reasonable rate.* Today, Comcast and AT&T, and other video service providers, cloaked in the guise of "digital advancement," seek to rid themselves of these congressionally-mandated public interest obligations. I am here today to ask Congress to reiterate its commitment to PEG and ensure that the telephone and cable industries are not permitted to undercut these congressional mandates, which have given the nation an explosion in vital local programming.

[8] The basis for these claims may be found in detail in the successful Dearborn and Meridian Township brief filed in support of a preliminary injunction that has been attached as Appendix A.

II. LOCAL GOVERNMENTS WANT BROADBAND COMPETITION AND WELCOME THE DIGITAL AGE

Before addressing the PEG challenges we face today in Michigan, allow me to make two points very clear.

- Dearborn, like every other local government, welcomes broadband competition. The GAO and FCC have both documented that only wireline competition leads to lower cable rates. Before AT&T even entered the market, Dearborn had wire to wire competition and substantial satellite penetration.[9]
- Dearborn, like other communities across the country, wants more broadband competition as well - a feature that seems to go hand in hand with video these days. We want faster speeds and better services; and we want as many new providers as the market will support.
- And, Dearborn and its citizens want to be active participants in the Digital Age. You may hear from witnesses today that local government is seeking to hold back progress. Nothing could be further from the truth. We just refuse to allow the conversion to the digital age to serve as an excuse for treating local PEG channels in a way that burdens both subscribers and PEG programmers, while breaching existing obligations.

So while you will hear me question Comcast's and AT&T's commitment to providing PEG services to my community, please do not mistake that message for any

[9] In my community, we have approximately 40,000 homes passed by video providers -- 15,000 homes are served by Comcast, 7,500 homes are served by WOW. The remaining homes are served by satellite or choose to limit their video entertainment to over-the-air broadcast signals.

lack of commitment by my community to the broadband digital competition we seek. Dearborn, just like local communities across the country, welcomes and encourages broadband providers that might like to make Dearborn their home.

III. THE DEARBORN STORY

PEG programming has been an unqualified success in Dearborn.

Cable, with its promise of clear transmission of local broadcast television and local PEG programming, arrived in Dearborn in the early 1980s. Cable offered consumers not only local broadcast stations, but also community-based PEG programming. Our schools, community colleges, service clubs, and the City itself have produced over 25 years of original local programming, including public access programming in Arabic, to serve Dearborn's large Arab-American population.[10]

Comcast's franchise with the City of Dearborn today requires the operator to carry six PEG channels. The franchise also requires that the channel locations "shall be by mutual agreement of the City" and the franchisee. The federal law requirement for PEG to be placed on the basic service tier with other broadcast channels, as well as the specific terms of the city's franchise agreement, has ensured that the PEG channels were kept on the lower numbers of the dial near their network broadcast peers. This placement has resulted in the widest possible audience, a result vitally important to us because we employ our PEG channels as part of our emergency response plan. The city also provides public safety alerts and appropriate related directions on our PEG channel. We believe

[10] One example of this local diverse programming is "Bible Time Quiz," a show in which young people of all faiths are tested on their knowledge of the Bible. The show has thrived on local cable for over twenty years.

that channel placement on the lower channels aids in citizens' discovering our programming through their viewing habits, and consequently allows us to reach more members within our community with this vital information. As importantly, because the channels are provided in the same format as the broadcast channels, subscribers to the lowest level of service can view these channels without the need for any special equipment, on any standard television set, and without any special charges. This means that we are able to communicate with people in our community who cannot afford the best available televisions, or the highest levels of service. This is the "lifeline" video service that cable offers to the community.

Against this backdrop of success, you can well imagine how shocked we were to receive a notice from Comcast last Thanksgiving advising us of their plan to digitize the format of our PEG channels, move them to the 900 tier, and require all consumers who wished to continue to view PEG programming to obtain a digital converter.[11] Under the Comcast proposal, other basic tier channels, including standard broadcast channels, would continue to be provided in analog format and would continue to reside on their present channel number.

Comcast did offer each basic subscriber household that was not already subscribing to digital service a digital converter rent-free for one year. But it never

[11] During court testimony, we learned that there are over 400,000 Comcast subscribers in Michigan who take only analog services. These subscribers would have been required to obtain converters at additional cost in order to continue to watch PEG channels. We also learned that many homes receive digital service at one set, but analog services at other sets in the home. In these homes, the subscriber would be restricted to watching the PEG channels on one set in the home, or incur substantial additional costs. The result is that most, if not all, Comcast subscribers would have been adversely affected.

conveyed this message clearly to subscribers, and the offer had several limitations. Perhaps most importantly, the proposal was only for one year, and for one converter box per home, meaning that homes with multiple televisions would receive PEG signals on only that one set. All other televisions would require a converter box with a monthly charge of $4.20. For many households, especially those on fixed incomes, such charges are not insignificant. Additionally, the plan made no accommodations for our schools where PEG programming is employed for educational purposes. Most schools have a television in every classroom, as cable can attest as a result of their "Cable in the Classroom" initiative that is now many years old. However, in Dearborn, in order to receive PEG programming under Comcast's proposal, schools would have been required to rent a converter for each classroom. I need not tell you that Michigan is facing some fiscal challenges and it is not safe to assume that cash-strapped school systems will have the money to obtain digital converters so that their students might watch the very programming they themselves crafted.

My City was alarmed by Comcast's proposal. We asked Chairman Dingell for assistance and he contacted Comcast on behalf of Dearborn and others. When Comcast declined Chairman Dingell's request to modify its proposal, we were left with no choice but to initiate litigation. On January 14, 2008, hours before Comcast's plan was to take effect, the Honorable Victoria A. Roberts, United States District Judge for the Eastern District of Michigan, issued a Temporary Restraining Order and Preliminary Injunction

blocking Comcast's plan.[12] In her decision, Judge Roberts specifically referred to this committee's conference report when it passed the 1992 Cable Act.

IV. CONGRESS GOT IT RIGHT IN 1984 AND AGAIN IN 1992

Under Chairman Dingell, and your leadership Mr. Markey, Congress got it right in 1984 and again in 1992. The Federal Cable Act, 47 U.S.C. § 521 *et seq.*, permits local governments to require cable operators to set aside channel capacity for PEG use. 47 U.S.C. § 531. Congress intended PEG channels to be "the video equivalent of the speaker's soap box or the electronic PEG access channels [and that they] belong on the basic service tier, alongside broadcast channels." H.R. Rep. No. 98-934, *as reprinted in* 1984 U.S.C.C.A.N. 4655, 4667 (1984).

In 1992, the House again emphasized the importance of the PEG channels, and reiterated that Congress intended that PEG channels "...be available to all cable subscribers on the basic service tier and at the lowest reasonable rate."[13] Relying in part on the statute and its legislative history, in 1996, the Supreme Court affirmed, among other things, that PEG channels are subject to the exclusive control of the local community.[14]

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[12] A copy of the Order is attached hereto as Appendix B.

[13] PEG programming is delivered on channels set aside for community use in many cable systems, and these channels are available to all community members on a nondiscriminatory basis, usually without charge....PEG channels serve a substantial and compelling government interest in diversity, a free market of ideas, and an informed and well-educated citizenry....Because of the interests served by PEG channels, the Committee believes that it is appropriate that such channels be available to all cable subscribers on the basic service tier and at the lowest reasonable rate. H.R. Rep. No. 102-628 at 85 (1992) (emphasis added).

[14] The Supreme Court in *Denver Area Educational Telecommunications Consortium v. F.C.C.*, 518 U.S. 727, 760-61 (1996)concluded:

> ...the requirement to reserve capacity for public access channels is similar to the reservation of a public easement, or a dedication of land for streets and parks, as part of a municipality's approval

While the Cable Act and its legislative history clearly demonstrate Congress's intent to protect PEG programming, this has not stopped the industry from undercutting Congress's vision. In our case, Comcast asserted that it has the right under the Cable Act: to format the PEG channels however it wanted; charge whatever it wanted for them; and place them wherever it chooses to place them, because the Act does not specifically state that an operator is prohibited from doing so.

Comcast was blunt on this point in oral argument before the Court. As a technical matter, Comcast argues that it is only required to provide PEG as part of basic service in the communities where rates remain subject to rate regulation (because the basic service requirement appears in the rate regulation section of the Act). We think that Comcast's treatment of PEG is unlawful under the Act given the legislative history and given the nature of PEG channels, but we are now facing significant litigation and litigation costs in order to protect PEG.

But at least of Comcast, it can be said that they were simply acting in accord with their view of federal law, however mistaken that might be. In other cases, companies are asking state legislatures to undercut PEG commitments and allow operators to ignore local needs. In other cases, providers such as AT&T refuse to acknowledge that they are a cable operator subject to the terms of the Cable Act – so that no federal PEG

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of a subdivision of land. Cf. post, at 2410 (opinion of KENNEDY, J.). Significantly, these are channels over which cable operators have not historically exercised editorial control.

See also 518 U.S. at 734 (referring to PEG channels as "special channels" available to those to whom the Cable Act gives "special cable system access rights").

obligations apply to them. And yet, AT&T relies on the Cable Act to assert that no state or local government may dictate the form of transmission technology they use.

V. AT&T Pull Down Version of PEG

While I object to Comcast shifting our PEG channels to the 900 level, at least Comcast is providing us with channels. AT&T offers the American public much less.[15]

AT&T's U-Verse "PEG solution" is to place all PEG channels from a given region in a single location on their system, on a single channel, number 99. Under AT&T's provision of service, consumers go to Channel 99, where they will find a submenu that lists various PEG channels. I am led to believe that list might well include over one hundred such submenu choices. So it is clear that finding Dearborn's PEG stations will not be easy.

Worse, there are technical, financial and signal shortcomings in their plan. PEG is delivered to AT&T's headends via a Windows media stream. In order to provide that stream, the local franchising authority must purchase new equipment required by AT&T, but paid for by the local community. The signal is inferior in strength compared to that of commercial broadcast; it does not pass through closed captioning contained within the programming; and the system does not pass through live public safety or emergency alerts that are sent out by the City. It is my understanding that my colleague from Palo

[15] While AT&T has commenced marketing its U-Verse service in portions of Dearborn, they have not yet begun to provide PEG. This portion of my testimony relies upon the PEG issues we anticipate based upon AT&T's PEG performance in other communities.

Alto will address the shortcoming of the AT&T program in greater detail, so I will move on.

VI. WHAT CAN CONGRESS DO

We believe that the law is clear that Comcast's proposed action in Michigan, and AT&T's current delivery of PEG programming with its pull down channel nationwide, are not consistent with the letter, let alone spirit, of the Cable Act. Nevertheless, it is plain that many in the industry are willing to treat PEG as a second-class service. As a result, unless Congress removes any doubt as to how PEG is to be carried, there could be years of expensive litigation during which the public and PEG access will suffer.

There is a need to reiterate the congressionally established national standard, so that the goals Congress intended to achieve by allowing channels to be set aside for PEG are realized and protected. Let me repeat what those goals are:

- Congress thought PEG could contribute to an informed citizenry, by bringing government and schools into the home. This remains a valid concern even in a digital age.
- Congress thought that it was important to ensure that every subscriber to cable have access to a basic level of local information, consisting of the PEG channels and the broadcast channels. This remains a valid concern even in a digital age.
- Congress understood that operators were not likely to produce local programming or provide the resources necessary to serve the needs of individual, local communities. This interest in promoting localism and locally tailored services remains important in the digital age.

Some operators argue that PEG is not needed in an Internet age. That is not the case, as the behavior of broadcasters and commercial programmers shows. The Internet is an additional and important way to communicate. It is not now, and may never be, a complete substitute for television. Certainly at this point, there are many Americans who

do not have and cannot afford both traditional cable and high-speed Internet. PEG channels provide an electronic and easily accessible forum for communications that we cannot easily duplicate.

Some operators argue that PEG channels prevent them from rolling out services that consumers want: high definition channels, for example. There are two answers to this claim: first, operators can provide more services and channels by investing to create additional broadband capacity. We should not be encouraging companies to limit investment by allowing them to take away PEG channels that are intended to benefit the public. Second, no operator asked us or our subscribers what we wanted. They did not give subscribers the option of receiving educational access in analog, rather than Spike TV. What Comcast did was to focus on its own narrow commercial interests. The Cable Act recognized that left to their devices operators would do just that, and that local governments had to be able to establish requirements to meet local needs. That was the right choice to make and it should be reaffirmed now.

Specifically, we believe this Committee should examine PEG in the digital age and clarify:

1. The existence of a basic service tier is not limited to rate regulated communities, but is an obligation of every video provider utilizing public property for the delivery of its services.
2. PEG channels must appear on the basic service tier or the same level of service as that of commercial broadcast channels.

3. PEG programming must be delivered with the same visual and audio quality and technical functionality (including closed captioning) as that provided for commercial broadcast channels, without the need for any equipment other than that necessary to receive the provider's basic cable or video service offering.
4. A single tier of service may not be technically divided such that the subscriber must employ any additional equipment to view all programming on that tier.

With the increase in consolidation of media interests, and the unprecedented attack on local interests in the provision of video services, it is critical that PEG programming -- this fundamental element of localism -- be protected and preserved. I am here today to ask you to do just that.

Thank you for the opportunity to testify and I look forward to your questions.

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARTER TWP. OF MERIDIAN,
a Municipal corporation, and
CITY OF DEARBORN, a Municipal corporation,
and SHARON GILLETTE,

Plaintiffs,

vs.

COMCAST OF MICHIGAN III, INC.,
a Delaware corporation, and COMCAST OF
THE SOUTH, INC., a Colorado corporation,

Defendants.

Case No.: _____

Hon. _____
Magistrate _____

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MEMORANDUM OF LAW IN SUPPORT OF MOTIONS FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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CONCISE STATEMENT OF ISSUES

1. Whether the Court should temporarily or preliminarily enjoin Defendants from violating federal laws and regulations, and local franchise requirements, governing the carriage of public, educational and governmental ("PEG") channels.

2. Whether the Court should temporarily or preliminarily enjoin Defendants from changing the manner in which PEG signals are carried without complete and accurate notice to subscribers as required by law.

CONTROLLING AUTHORITY

1. With respect to the standard for preliminary injunctions and temporary restraining orders: *Rock & Roll Hall of Fame & Museum, Inc. v. Gentile Prods.*, 134 F.3d 749, 753 (6th Cir.1998).
2. With respect to Defendants' obligations to provide PEG channels: 47 U.S.C. §§531 and 541 (obligation to carry PEG signals); 47 U.S.C. § 543(b)(7) (PEG on basic service); 47 C.F.R. § 76.630 and 47 U.S.C. § 544a (provision of signals without unnecessary equipment); and the legislative history with respect to those provisions.
3. With respect to the failure to provide notice, 47 C.F.R. § 76.309.
4. With respect to the nature of PEG channels and how Defendants' obligations are to be interpreted, *Denver Area Educational Telecommunications Consortium v. F.C.C.*, 518 U.S. 727, 760-61 (1996); *City of Benton Harbor v. Michigan Fuel & Light Co.*, 250 Mich. 614 (1930) (franchises interpreted in favor of public).

INTRODUCTION

The Federal Cable Act, 47 U.S.C. § 521 *et seq.*, permits local governments to require cable operators to set aside channel capacity for public, educational and governmental ("PEG") use. 47 U.S.C. § 531. Congress intended PEG channels to foster important First Amendment values by serving as "the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet." H.R. Rep. No. 98-934, *as reprinted in* 1984 U.S.C.C.A.N. 4655, 4667 (1984).

These channels are not subject to the editorial control of the cable operator. 47 U.S.C. § 531(e). The channels are subject instead to control by the local community. As the Supreme Court concluded:

> ...the requirement to reserve capacity for public access channels is similar to the reservation of a public easement, or a dedication of land for streets and parks, as part of a municipality's approval of a subdivision of land. Cf. post, at 2410 (opinion of KENNEDY, J.). Significantly, these are channels over which cable operators have not historically exercised editorial control.

Denver Area Educational Telecommunications Consortium v. F.C.C., 518 U.S. 727, 760-61 (1996); *see also* 518 U.S. at 734 (referring to PEG channels as "special channels" available to those to whom the Cable Act gives "special cable system access rights"). Comcast's obligation, in other words, is to deliver these channels to the subscriber. The operator has no right to package and bundle these channels as it sees fit, much less design its system so that the channels are less accessible. Moreover, the Cable Act and federal regulations are designed to ensure that the channels can be received and viewed by all subscribers, even those that take the lowest levels of service, without additional charge. Despite this, Defendant Comcast of Michigan III, Inc. ("Comcast III") has informed Plaintiff Charter Township of Meridian (the "Township") that on January 15, 2008, it intends to move the PEG programming now carried on channels 21-24 and

27-31 to what Comcast III calls "channels" 902-906, 912, 913, 915 and 916 and to provide the PEG signals only in a digital format. Defendant Comcast of the South Inc. ("Comcast South") similarly notified the City of Dearborn, Michigan ("City") that as of January 15, 2008 it would no longer provide PEG channels as part of the analog basic service tier, and would instead provide them only in a digital format, and also in the 900-series of "channels."[1] As now provided, the channels are viewable by subscribers to basic service without the need for a converter or any special equipment beyond the connection to the cable system. As a result of this action, Comcast will force local subscribers to pay more to receive PEG signals -- "the electronic parallel to the printed leaflet" -- than the subscribers are required to pay to receive other basic service programming, including standard local broadcast channels. Comcast's action will require subscribers such as Plaintiff Sharon Gillette to install extra equipment and to pay the accompanying extra fee in order to receive the PEG programming. It will also undermine the ability of the Township and the City to disseminate basic governmental programming to members of the public in the local community (and also, of course, affect the ability of the schools and members of the public to use the public and educational access channels). The actions are not unique to these Comcast subsidiaries and are being implemented uniformly statewide for Comcast cable systems.[2] Because this action violates federal law and regulations, as well as Defendants' obligations under their respective cable franchises, Plaintiffs have this date filed a Complaint for Declaratory and Injunctive Relief with this Court.

However, if Comcast is permitted to change the *status quo* as it plans to do on January 15, while this Court considers the Complaint, Plaintiffs, and their ability to speak and to receive

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[1] Complaint, **Exhs. E-G.** Both Defendants are subsidiaries of the same ultimate parent, and actions taken by them or by their parent collectively are referred to as the actions of "Comcast."

[2] Complaint, **Exh. E.**

information, will be irreparably harmed. Plaintiffs file this Memorandum of Law in support of their *Motion for a Temporary Restraining Order* and their separately filed *Motion for a Preliminary Injunction* to enjoin Comcast from altering the format of the PEG channels and moving the PEG channels from their current location while this matter is pending.

ARGUMENT

I. COMCAST PLANS TO MAKE PEG CHANNELS MORE EXPENSIVE AND LESS ACCESSIBLE ON JANUARY 15, 2008.

A. History of PEG Channels in the Township and the City.

Under its franchise with the Township, Comcast III is required to provide at least eight PEG channels: one for governmental use; one for public use; four for use by the public school districts and community colleges serving the Township; and two for use by the state university system. Franchise, ¶ 14-16.[3] Comcast III has designated Channels 21-24 and 27-31 as PEG Channels for the Township. Sections 14-16 of the franchise require Comcast III to carry these channels on the basic service tier – the service tier that includes standard broadcast channels. The Township Code also requires Comcast III to comply with federal law and FCC regulations applicable to the carriage of the channels. Township Code § 70-91.[4] Finally, as a matter of law the company must have affirmative authority from the locality to treat PEG channels in a discriminatory manner.[5] Nothing in the franchise authorizes Comcast III to treat PEG channels differently than broadcast channels, and nothing authorizes Comcast III to carry the channels on any tier other than the basic service tier.

Likewise, the Dearborn cable franchise at Section 3.4 requires Comcast South to comply

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[3] Complaint, **Exh. A**.

[4] Complaint, **Exh. B**.

[5] *See, infra* pp. 7-10.

with "all laws and regulations of the State and Federal government or any administrative agency." The franchise requires Comcast South to provide six channels for PEG use, and makes it clear that once the channels capacity is assigned, it may not to be changed unilaterally by Comcast. Section 3.12 provides, for example, that channel locations "shall be by mutual agreement of the City" and the franchisee.[6]

Currently, subscribers in both communities are able to receive the PEG channels in the same way that they receive standard broadcast channels. Subscribers are not required to obtain or pay for any extra equipment to receive the PEG channels. Nor has Comcast imposed any additional charge to view the PEG channels. Nor have the PEG signals been located in a segment of the spectrum that would make it difficult for subscribers to locate them or view them.

In contrast, some signals carried on Comcast cable systems can only be received if a subscriber leases or purchases a converter box. For example, a "premium" service, such as HBO, can only be viewed if a subscriber has a converter box. Comcast's interactive programming guide and many of its digital services can only be used if a subscriber leases a box from Comcast, at a substantial additional monthly charge per television set. A separate box is required for each set where the subscriber wishes to receive service, and there is a corresponding increase in the monthly charges owed to Comcast for the boxes.[7]

B. Comcast's Planned Actions.

On or about November 15, 2007, Comcast III advised the Township that as of January 15, 2008 it intends to carry the PEG channels now being provided in the Township only on what

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[6] Complaint, **Exh. C**.

[7] **Attachment 1,** Affidavit of Andrew Afflerbach, ¶ 5

it calls "channels" 902-906, 911-913 and 916 and to provide those "channels" only in a digital format.[8] A subscriber notice advised Comcast III customers that they could only continue to receive PEG programming "by acquiring a digital converter, digital service, or compatible equipment."[9] Dearborn was sent almost identical notices with respect to its PEG channels.[10] As a result, among other things, in order to view the PEG channels, many subscribers who now receive basic service without a converter box will need to obtain a converter box for each television set on which they seek to view the PEG channels. A converter box will not be required to receive standard broadcast channels on the basic service tier, or other basic service channels such as TBS. Moreover, the PEG channels will no longer be as easily accessible either through the standard program guide or by "channel surfing."[11] This is particularly important as PEG programmers do not have the resources available to traditional broadcasters to advertise the content of the programming being carried at any particular time.[12]

Comcast will have segregated the PEG programming, providing the signals so that they will cost more to receive and will be less accessible to subscribers. What is now a single, basic tier that includes standard broadcast channels and PEG channels will be two tiers, one consisting of channels that can be received on any cable-ready television set without additional expense beyond the basic service fee, and easily accessible to all; and another including the PEG signals. Subscribers, including Plaintiff Sharon Gillette, will have to pay substantially more to Comcast,

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[8] Complaint, **Exh. E.** Subsequently, Comcast announced that location 911 would not be used, and 915 would be used instead.

[9] Complaint, **Exh. F.**

[10] Complaint, **Exh. G.**

[11] **Attachment 1,** Affidavit of Andrew Afflerbach, ¶¶ 4-8.

[12] **Attachment 2**, Affidavit of Deborah Guthrie, ¶ 7.

or obtain special equipment in order to receive the PEG signals that Comcast is obligated to deliver.[13]

As a result, many subscribers will be denied access to basic public information as well as the opportunity to view and participate in the political process in action through coverage of meetings and events. The Township's award-winning Channel 21, for example, provides unique and extensive coverage of local elections. Likewise, educational and public channels in the Township provide vital information and provide the public, students, and teachers unique opportunities as both producers and recipients of programming.[14] The same is true in Dearborn, and there is an additional concern: in both communities, the government access channel is used to distribute to transmit time-sensitive information, such as snow emergency declarations, and information about other emergencies.[15] At a time and in a season when public safety concerns are obviously high, Comcast will make it more difficult for public safety officials to communicate with the public.

C. Efforts to Resolve the Dispute.

Michigan cities, including Plaintiffs, took immediate action to discuss the proposed change with Comcast. For example, on November 29, Township Supervisor Susan McGillicuddy wrote Comcast III noting that the move "will force many of our residents," including seniors "to obtain a converter box," and asking Comcast III to identify any place in its franchise with the Township that authorized it to act as it planned.[16] The Township requested

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[13] **Attachment 3**, Affidavit of Sharon Gillette.

[14] **Attachment 2**, Affidavit of Deborah Guthrie, ¶¶ 6-8, 10-12.

[15] Complaint, ¶ 28; **Attachment 2**, Affidavit of Deborah Guthrie, ¶ 6.

[16] Complaint, **Exh. I**.

that Comcast not proceed with the plan. On December 4, Comcast III responded, making it clear that it intended to move forward with its plan; accordingly on December 18, 2008, the Township provided a formal notice to Comcast III that its actions violated the franchise and applicable law and gave Comcast the opportunity to cure. The company did not respond until after the close of business on January 8, 2008, and refused to reconsider its proposed actions.[17]

Meanwhile, Michigan cities including Plaintiffs, via their membership in Michigan chapter of the National Association of Telecommunications Officers and Advisors ("MI-NATOA"), submitted a series of questions to Comcast regarding the proposed change. On December 7, 2007, Comcast responded to MI-NATOA, again refusing to reconsider the proposed move. The letter emphasized that (a) "Michigan is the first state" in which Comcast is taking the steps described above; (b) other basic service channels are not being digitized and moved; and (c) it is not clear when, if ever, other channels will be digitized and moved. Comcast also explained the grounds on which it claimed the right to move the channels – which amounted to the assertion that it can move the channels because nothing expressly prevents it from doing so. The company did not explain or show why the move is necessary.[18]

Finally, Rep. John Dingell wrote to Comcast on December 21, 2007, notifying the company that its "intent to charge consumers as much as an additional $4.20 a month per television set to receive PEG channels is plainly inconsistent with Congressional intent that PEG channels be made available "at the lowest reasonable rate." Rep. Dingell gave Comcast until January 7, 2008 to address the issue. Comcast responded that it intended to move the PEG

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[17] Complaint, **Exhs. J-L.**

[18] Complaint, **Exh. H.**

channels effective January 15, 2008.[19] The Plaintiffs' Complaint and Motions followed.

II. PRELIMINARY INJUNCTIVE RELIEF IS APPROPRIATE TO PREVENT COMCAST FROM ALTERING THE STATUS QUO.

A district court exercising discretion with respect to a motion for a temporary restraining order and preliminary injunction must consider four factors:

(1) whether the movant has a strong likelihood of success on the merits;

(2) whether the movant would suffer irreparable injury without the injunction;

(3) whether issuance of the injunction would cause substantial harm to others; and

(4) whether the public interest would be served by issuance of the injunction.

Rock & Roll Hall of Fame & Museum, Inc. v. Gentile Prods., 134 F.3d 749, 753 (6th Cir.1998); *Summit County Democratic Central and Executive Committee v. Blackwell*, 388 F.3d 547, 550-551 (6th Cir. 2004). In this circuit, the four considerations "are factors to be balanced, not prerequisites that must be met." *Mascio v. Public Employees Retirement System of Ohio*, 160 F.3d 310, 312 -313 (6th Cir. 1998); *see also Christian Schmidt Brewing Co. v. G. Heileman Brewing Co.*, 753 F.2d 1354, 1356 (6th Cir. 1985) ("four factors do not establish a rigid and comprehensive test for determining the appropriateness of preliminary injunctive relief. Instead, the district court must engage in a realistic appraisal of all the traditional factors weighed by a court of equity.").

A. Plaintiffs Have a Strong Likelihood of Success on the Merits.

Comcast III argues in its December 4 letter, Complaint, **Exh. J** that it can proceed with its plan because nothing directly prohibits it from doing so. That contention shows that Comcast

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[19] Complaint, **Exhs. M-N.**

fundamentally misunderstands franchise law and nature of PEG channels. It is black letter law that franchises "are to be construed strictly against the grantee and liberally in favor of the public." McQuillin, *Municipal Corporations*, Section 34:62; *see City of Benton Harbor v. Michigan Fuel & Light Co.*, 250 Mich. 614, 622 (1930) ("We are mindful of the rule of construction applicable to grants of this character. They should be construed most strongly against the grantee and in favor of the public."). Hence the proper question is whether anything *authorizes* Comcast to move, bundle, and provide PEG channels as it sees fit.

So understood, Comcast's planned actions violate federal laws and regulations in at least three ways. *First,* Comcast is violating its obligation to deliver PEG channels to subscribers without unnecessary interference. *Second,* federal law requires Comcast to provide PEG channels as part of the basic service tier, and further prohibits Comcast from taking any action that would evade this obligation. Comcast's segregation and placement of the PEG programming in what Comcast calls the 900-series of digital channels violates this obligation. *Third,* Comcast failed to provide required notice to subscribers. *Fourth,* Comcast is violating requirements that it provide PEG channels "in the clear," so that subscribers can receive them without unnecessary equipment.

In addition, Comcast III's proposed actions violate its franchise with the Township, which requires that PEG channels be provided as part of the basic service tier, and which requires compliance with federal laws and regulations, and Comcast South's actions likewise violate its franchise with the City, which contains similar requirements.

1.The planned actions violate Defendants' obligation to deliver PEG channels.

When it adopted the Cable Act in 1984, Congress emphasized the importance of PEG channels to the advancement of basic First Amendment principles:

> The development of cable television, with its abundance of channels, can provide the public and program providers the meaningful access that, up until now, has been difficult to obtain. A requirement of reasonable third-party access to cable systems will mean a wide diversity of information sources for the public – the fundamental goal of the First Amendment – without the need to regulate the content of programming provided over cable.

H.R. Rep. No. 98-934, 1984 U.S.C.C.A.N. at 4667 (1984). Congress noted that the PEG channels would

> provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. PEG channels also contribute to an informed citizenry by bringing local schools into the home, and by showing the public local government at work.

Id. Accordingly, the 1984 Report stressed that: "Local governments, school systems, and community groups, for instance, will have *ample opportunity to reach the public* under H.R. 4103's grant of authority to cities to require public, educational, and governmental (PEG) access channels." *Id.* at 4656 (emphasis added). The Report further stressed that "[p]ublic access channels available under H.R. 4103 *would be available to all, poor and wealthy alike* . . .," *Id.* at 4673 (emphasis added). When Congress amended the Cable Act in 1992, the House again emphasized the importance of the PEG channels, and reiterated that Congress intended for the channels to be easily viewable throughout a community:

> PEG programming is delivered on channels set aside for community use in many cable systems, and *these channels are available to all community members* on a nondiscriminatory basis, usually without charge....PEG channels serve a substantial and compelling government interest in diversity, a free market of ideas, and an informed and well-educated citizenry....Because of the interests served by PEG channels, the Committee believes that *it is appropriate that such channels be available to all cable subscribers on the basic service tier and at the lowest reasonable rate.*

H.R. Rep. No. 102-628 at 85 (1992) (emphasis added). Even members of the Committee who objected to the bill as reported agreed that it was essential that PEG access channels be available

to all subscribers: "Making over-the-air broadcast and PEG access channels available on a separate [basic service] tier promotes the time-honored principle of localism." *Id.* at 183.

As discussed *supra* pp. 1-2, PEG channels are under the control of the community, not the operator. Comcast's obligation with respect to PEG channels is thus one of delivery. Or, as the FCC put it after reviewing the 1992 legislative history, "[g]iven this clear congressional direction and the evidence of the importance attached to PEG channels, we require a cable operator to carry PEG channels on the basic tier *unless the franchising agreement explicitly permits carriage on another tier.*" *In the Matter of Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation,* Report and Order and Further Notice of Proposed Rulemaking, 8 F.C.C.R. 5631, 5737-38, MM Docket No. 92–266 (1993)(emphasis supplied).[20] A cable operator has no more inherent right to require subscribers to obtain special and unnecessary equipment to receive PEG channels, or to make it more difficult to receive PEG channels than other channels delivered to any class of subscribers than a telephone company would have to require customers to purchase a special phone to call City Hall, or to dial an extra set of numbers.

Comcast's planned actions are based on an assumption of control over PEG channels that Defendants do not possess. Here there is segregation, discrimination, and undeniably an effort to treat PEG differently than other standard local broadcast channels. That in itself is a violation of the Cable Act. If Comcast can move and bundle the delivery of PEG channels with the sale or lease of its digital converter boxes, what is to stop the company from bundling the delivery of the channels with even more expensive equipment and services in the future, or to offer them only

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[20] *See also,* 47 U.S.C. § 541(b)(3)(D)(comparing PEG obligations to carriage obligations for telecommunications services).

for an extra charge? Under the Cable Act, Defendants lacks such power, and must instead make the channels accessible to all.

2.Def endants will not provide the PEG channels as part of the basic service tier as required by 47 U.S.C. § 543(b).

Based on the dual concerns of ensuring that basic services be available at reasonable rates, and that the channels be accessible to all, the House adopted language (included in the final legislation) that "requires cable operators to offer a basic service tier, consisting, at a minimum, of all broadcast signals carried on the cable system and public, educational, and governmental (PEG) access channels." H.R. Rep. No. 102-628 at 26-27.

The statute accordingly provides that every cable operator must "provide its subscribers a separately available basic service tier" that contains, at a minimum, any PEG programming "required by the franchise of the cable system to be provided to subscribers." 47 U.S.C. § 543(b). To be sure – as is apparent from Comcast III's December 4 letter – Defendants have told regulators and legislators that even after January 15, it will be providing the PEG signals as part of basic service.[21] However, the concept of a tier at least implies that services on the tier are available on the same, or roughly the same basis. A "service tier" is defined by the Cable Act as a "*category* of cable service or other services provided by a cable operator and for which a *separate rate* is charged by the cable operator." 47 U.S.C. § 522(17) (emphasis added).[22] If

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[21] However, subscriber complaints received by the Township suggest that the same message is not being conveyed to subscribers. **Attachment 2**, Affidavit of Deborah Guthrie, ¶ 10.

[22] *Statistical Report On Average Rates For Basic Service, Cable Programming Service, And Equipment*, 21 F.C.C.R. 15087, MM Docket No. 92-266 (2006) (noting that the term "service tier" generally refers to a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator); *see, In The Matter Of Annual Assessment Of The Status Of Competition In The Market For The Delivery of Video Programming*, 21 F.C.C.R. 2503, MB Docket No. 05-255 (2006)(operator required to provide

Defendants take the proposed actions, the PEG signals would no longer be available to subscribers on the same basis as standard broadcast channels. Instead, because PEG signals would require additional equipment in order to be viewed, Comcast would charge subscribers additional fees for PEG channels that Comcast would not charge subscribers for standard broadcast channels or other channels on the basic service tier such as TBS. Two channels are not on the same "tier" if one requires payment of significant additional fees, and the other does not. Comcast's proposed actions would treat PEG channels so differently from standard broadcast channels that no matter how Comcast characterizes them, the PEG signals would no longer be part of the basic tier of service, as required by the franchise and by federal law.

3.Def endants have failed to provide required notice of the proposed change.

Defendants are required to provide accurate notice to subscribers of any proposed change in channel location to subscribers at least thirty days prior to the change under the FCC's minimum customer service standards, 47 C.F.R. § 76.309(c)(3)(i)(B). Under FCC rules, the Township and the City are, respectively, responsible for enforcing the regulation. The notice provided to subscribers was deficient. Subscribers were told that PEG signals could now be found in what Comcast calls the 900-series of "channels." In fact, however, only subscribers that have a converter or card capable of "reading" a special signal transmitted by Defendants will be able to find the signals at those locations; on QAM tuners, which Defendants say can view the PEG signals without a converter, the signals would appear at entirely different locations, if they appear at all. Thus, the notice failed to give complete or accurate notice of the PEG change, and

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basic service tier including PEG); *In the Matter of Social Contract for Comcast Cable Communications, Inc.*, 13 F.C.C.R. 3612 (1997) (unnecessary to protect against movement of PEG channels from basic because rules and statute require maintenance of PEG on basic tier).

failed to satisfy minimum requirements of law.[23]

4.Com cast is failing to ensure that all basic service channels are available without the need for unnecessary equipment as required by 47 C.F.R. § 76.630 and 47 U.S.C. § 544A.

Even if Defendants were providing the PEG channels on the basic service tier, the planned actions would run afoul of 47 U.S.C. § 544A and 47 C.F.R. § 76.630.

Section 544A is designed, *inter alia*, to prevent operators from requiring consumers to obtain unnecessary equipment that may interfere with the operation of consumer electronic equipment. 47 C.F.R. § 76.630 specifically prohibits scrambling or otherwise encrypting signals on the basic service tier. The FCC Order prohibiting scrambling or encryption stated:

> Many parties representing cable interests argue that, at a minimum, we should exempt from the scrambling prohibition all channels carried on the basic tier beyond those required to be carried there....We...conclude that the prohibition on scrambling of basic signals should include both signals carried on the basic tier and any other signals that cable operators may choose to add to that tier. **This rule will significantly advance compatibility by ensuring that all subscribers are able to receive basic tier signals "in the clear" and that basic-only subscribers will not need set-top devices at all....**

In the Matter of Implementation of Section 17 of the Cable Television Consumer Protection Act of 1992, First Report and Order, 9 F.C.C.R. 1981, 1991 (1994) (emphasis added). The FCC thus endorsed the notion that channels on the basic service tier must be offered in a manner that minimizes the need for unnecessary equipment.[24] Under the Act, this is

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[23] **Attachment 1,** Affidavit of Andrew Afflerbach, ¶¶ 9-10; **Attachment 2,** Affidavit of Deborah Guthrie, ▯ 9.

[24] It is certainly the case that the digital signals can be provided in a manner such that they are receivable by advanced televisions with QAM tuners. This is what Comcast says it will do in its letters. Plaintiffs have reason to believe that Comcast is not providing the PEG signals in the manner it claims. **Attachment 2,** Affidavit of Deborah Guthrie, ▯ 9. However, the Township's motion at this time does not depend on whether the signals are "scrambled or encrypted" within

mandatory: 47 U.S.C. § 544A(c)(2)(B)(ii) requires operators "to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers...without passing through the converter box." Providing the PEG signals in a way that *requires* a converter box is inconsistent with the FCC's rules.

5.The proposed action s violate Defendants' franchises.

As noted above, the Township and Dearborn franchises require Defendants to comply with federal laws and regulations, and include requirements for carriage of the channels. The violations of federal law, described above, are also violations of each franchise.

There is nothing in Michigan law that renders these provisions unenforceable or irrelevant, as Comcast's responses to the Township have claimed. To the contrary, Michigan law specifically permits localities to require compliance with federal laws and regulations. M.C.L. 484.3302(3)(h). Nor could Michigan law do otherwise. The Cable Act provides specifically that "a franchising authority may enforce any requirement" in a franchise regarding the provision of PEG channels. 47 U.S.C. § 531(c). Hence, a state law that purported to prevent enforcement of PEG requirements in a local franchise would necessarily be preempted.

B. Plaintiffs Would Suffer Irreparable Injury Without the Temporary Restraining Order and the Preliminary Injunction.

The Township actively programs the government channel, Channel 21, HOM-TV. HOM-TV is an award-winning government access station that cablecasts out of the Meridian

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the meaning of 47 C.F.R. § 76.630. Rather, the Township contends that the regulation protects subscribers against being required to obtain unnecessary equipment to receive PEG on a service tier, as indicated in the FCC *Order*.

Township Municipal Building. Among other things, it cablecasts gavel to gavel coverage of township meetings and also produces programs about the community, *see supra,* p. 5.

After Comcast's planned action, the Township's ability to use HOM-TV as a communications tool would be substantially and adversely affected on an immediate basis. The Township would immediately lose a number of viewers of HOM-TV because the viewers: (a) are unable to receive HOM-TV Channel 21 on their televisions; (b) cannot afford to pay the higher cost of HOM-TV Channel 21 vis-à-vis standard broadcast channels; or (c) are unable to locate the PEG signals after they are moved. In addition, HOM-TV Channel 21 will no longer be as easily accessible to subscribers either through the standard program guide or by "channel surfing." This is particularly important because the Township lacks the resources available to traditional broadcasters to advertise the content of the programming being carried on HOM-TV Channel 21. The same is true for Plaintiff Dearborn. In addition, the ability to convey emergency messages will be impaired.

The City and Township, as franchising authorities, also have an interest in ensuring that the educational and public PEG programming is available to the community as Congress intended. That interest is significant, and is irreparably harmed if the channels are moved: among other things, the movement would significantly disrupt use of the educational access channels by the school districts. The disruption of speech, and the attendant loss of access to subscribers, is immediate and irreparable.[25] The harm to subscribers and to speakers cannot be remedied later through a damages action – Comcast has never claimed otherwise.

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[25] See, generally, **Attachment 2**, Affidavit of Deborah Guthrie; **Attachment 3**, Affidavit of Sharon Gillette.

C. The Issuance of the Temporary Restraining Order and the Preliminary Injunction Would Not Cause Substantial Harm to Comcast or to Others.

There is no significant harm to Defendants from maintaining the status quo. Comcast provides the PEG channels as part of the basic service tier in most of the country, and the maintenance of the status quo in the Township would merely continue that practice.[26] There is no apparent technical barrier to maintaining the status quo.[27] Moreover, reversing the change later would cause far more confusion and than delaying it now. Subscribers would be benefited by the stay, as suggested above.

D. The Public Interest Would Be Served By Issuance of the Temporary Restraining Order and the Preliminary Injunction.

Maintaining the status quo will serve the public by maintaining access to vital public information, by ensuring subscribers are not unjustly charged for equipment, and by avoiding the burden required to obtain and configure a box for each television. As Rep. Dingell points out, it would advance the public interest that Congress sought to protect through the Cable Act.

CONCLUSION

This Court should grant Plaintiffs' Motions and enter a temporary restraining order and a preliminary injunction restraining Defendants from altering the format of the channels and moving PEG channels from their current location while this matter is pending.

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[26] Complaint, **Exh. H**; Attachment **1,** Affidavit of Andrew Afflerbach, ¶ 11.

[27] *Id.*

Respectfully submitted,

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By:_____

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Dated: January 10, 2008

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DEARBORN, ET AL,

Plaintiffs,

vs.

Case No: 08-10156
Honorable Victoria A. Roberts

COMCAST OF MICHIGAN, ET AL,

Defendants.
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OPINION AND ORDER

I. INTRODUCTION

Before the Court is Plaintiffs' Motion for a Temporary Restraining Order and Motion for Preliminary Injunction (Doc. #2).

II. BACKGROUND

This matter involves a dispute over channels for public, educational and governmental use ("PEG channels"). Under the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), 47 U.S.C. § 521 *et seq.*, local government franchising authorities may require cable operators to designate channel capacity for PEG channels.

Defendants Comcast of Michigan III, Inc., and Comcast of the South, Inc. ("Defendants") entered into cable franchise agreements ("Agreements") with the Charter Township of Meridian and the City of Dearborn ("Municipal Plaintiffs"). These

Agreements require Defendants to provide PEG channels to customers in Meridian and Dearborn. The Municipal Plaintiffs have two distinct sets of PEG channels. Dearborn's franchise agreement requires that Defendants provide six PEG channels, while Meridian's franchise agreement requires eight. These channels are for public governmental use, for use by the public school districts and community colleges, and for the state university system.

Plaintiff Sharon Gillette ("Gillette"), a resident of Meridian, subscribes to limited basic cable service from Defendants. Her package currently provides access to PEG channels, in analog format, and does not require the use of a digital converter box.

But, on January 15, 2008, Defendants plan to convert the analog PEG channels into digital format. With this change, PEGs will no longer be accessible through Defendants' limited basic service package without a converter box. Current limited basic service tier subscribers, including Gillette, will only be able to view PEG channels if they lease or purchase a converter box, own a more advanced television that is equipped with a QAM tuner (a device that Defendants maintain allows viewing of the PEGs without a converter), or purchase a digital television. Limited basic service subscribers will no longer be able to see PEG channels on a common, cable-ready, analog television without a converter box.

There is no disagreement that digital delivery enhances the signal quality, reliability for programmers, and will make Defendants more competitive. There is also no disagreement that digitizing channels frees up broadband width on the cable system, which can be used to provide additional high-definition digital channels.

Importantly, converter boxes will not be necessary after January 15, 2008 for customers to continue viewing broadcast channels on the current limited basic service tier; they will remain analog. Defendants say they may create a basic service tier in which some channels are provided in digital and others in analog format. Plaintiffs don't disagree, but say the law requires that Defendants provide PEG channels on the same basis as broadcast channels.

To ease the pending transition, Defendants offer to provide one free digital converter box per household for a year. But, Defendants acknowledge a converter box is needed for every television on which a customer wishes to view PEG channels.

Customers living in Meridian and Dearborn will be affected by this change. Municipal Plaintiffs say the change will affect more than 50,000 households within their territory. Defendants say only 50% of its statewide customers subscribe to the limited basic tier of service, and estimate that the change will only affect 15,000 households.

Plaintiffs filed their motions on January 11, 2008, and claim Defendants' scheduled January 15, 2008 transition violates federal law and their Agreements for the following reasons:

1. Defendants' actions will no longer keep PEGs on par with the lowest commercial service (i.e., broadcast channels) available, because people who want to use PEGs must invest in additional equipment.

2. Low income and senior citizens -- those who can least afford it -- will not have the same access to PEG channels as Defendants' "high-end" customers.

3. Legislative history indicates a strong congressional intent that PEG channels be provided on a non-discriminatory basis.

4. Defendants failed to give proper notice under the Agreements of these changes.

5. The easement granted to Defendants does not give them control over PEG channels that they don't otherwise possess.

Defendants responded by arguing state law preempts any federal law Plaintiffs rely upon. Defendants also contend that local governments have no authority to dictate cable technology and channel placement, and that Plaintiffs interfere with their ability to be competitive.

A hearing was held on January 14, 2008.

III. STANDARD OF REVIEW

This Court must determine whether Plaintiffs meet their burden for entitlement to equitable relief. When deciding motions for temporary restraining orders or for preliminary injunctions, a district court must consider: (1) the plaintiffs' likelihood of success on the merits; (2) whether the plaintiffs could suffer irreparable harm without the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest. *Summit County Democratic Cent. & Executive Co., v. Blackwell*, 388 F.3d 547, 550-51 (6th Cir. 2004); *see also Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998), *cert den.*, 526 U.S. 1087 (1999). No single factor is dispositive. The court must balance each factor to determine whether they weigh in favor of an injunction. *Blackwell,* 388 F.3d at 550-51.

For the following reasons, the Court finds that the majority of the factors weigh in favor of Plaintiffs. The Court **GRANTS** Plaintiffs' Motion for a Temporary Restraining

Order and Preliminary Injunction.

IV. ANALYSIS

A. Plaintiffs' Likelihood of Success on the Merits

1. Defendants Are Obligated to Carry PEG Signals In Compliance With Federal Law, And That Law Is Not Preempted By State Law

The Cable Act permits local governments to impose "designation" or "use" requirements on cable operators, with respect to channel capacity for PEGs. Section 531 states:

> **(a) Authority to establish requirements with respect to designation or use of channel capacity**
>
> A franchising authority *may* establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use *only to the extent provided in this section.*
>
> **(b) Authority to require designation for public, educational, or governmental use**
>
> A franchising authority *may* in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 546 of this title, that channel capacity be designated for public, educational or governmental [PEG] use, and channel capacity on institutional networks be designated for educational or governmental use, and *may* require rules and procedures for the use of the channel capacity designated pursuant to this section.
>
> **(c) Enforcement authority**
>
> A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, *whether or not required by the franchising authority* pursuant to subsection (b).
>
> ****

47 U.S.C. § 531 (emphasis added).

Defendants argue that Plaintiffs improperly apply the Cable Act to their planned actions. Pointing to Michigan's Uniform Video Services Local Franchise Act of 2006 ("Franchise Act") M.C.L. § 484.3301 *et seq.*, which became effective January 1, 2007, Defendants maintain that relevant provisions of Plaintiffs' Agreements were invalidated by the Michigan Uniform Video Service Local Franchise Agreement ("Michigan Franchise Agreement"). Defendants say the only PEG requirement contained within the Michigan Franchise Agreement is that "new video service providers provide the same number of PEG channels as provided by the incumbent" before the effective date of the Franchise Act. Defendants' Response at p. 7 (citing M.C.L. § 484.3305(2)). Plaintiffs respond that Michigan law is preempted by the Cable Act.

Plaintiffs are correct. Further, M.C.L. § 484.3302(3)(h) requires that "[t]he uniform video service local franchise agreement . . . include . . . a requirement that the provider agrees to comply with all valid and enforceable federal and state statutes and regulations." And, contrary to Defendants' position, the requirements of § 531 and other federal statutory requirements, are not, "in addition to . . . the provisions of [the] uniform video service local franchise agreement . . . ." By its terms, the Michigan Franchise Agreement requires compliance "with all valid and enforceable federal and state statutes and regulations," and this compliance is not "additional" to anything in the franchise agreement. M.C.L. § 484.3302(3)(h).

Plaintiffs are likely to prevail on this issue.

2. <u>PEG Channel Easement Does Not Prohibit Defendants' Actions</u>

The Supreme Court described "the requirement to reserve capacity for [PEG] channels [as] similar to the reservation of a public easement, or a dedication of land for streets and parks, as part of a municipality's approval of a subdivision of land." *Denver Area Educ. Telcoms. Consortium v. FCC*, 518 U.S. 727, 760-61 (1996). Even if PEG channels enjoy a public right of way, the Court is not convinced that their "public right of way," without more, prohibits their relocation or transition from analog to digital format. Plaintiffs are not likely to succeed on the merits of this claim.

3. Federal Law Does Not Prohibit Defendants From Offering Digital And Analog On the Basic Service Tier

Michigan law is silent on the placement of PEGs. In contrast, federal law explicitly requires that a cable operator provide PEGs on a basic service tier containing:

> (1) a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following;
>
> (2) Statutorily required broadcast channels;
>
> (3) PEG channels;
>
> (4) Statutorily required noncommercial educational television stations.

47 U.S.C. §543(b)(7).

Plaintiffs seem to rely on this and legislative history to support their argument that Defendants cannot differentiate between formats they use for PEGs and broadcast channels.

Plaintiffs cite legislative history supporting the importance of delivery of PEG channels. *See* H.R. Rep. No. 98-934, 1984 U.S.C.C.A.N. at 4667 (1984); H.R. Rep. No. 102-628 (1992); *see also* 8 FCC Rcd 5631, 5738 (FCC 1993) ("The House provision was enacted into law, so the House Report is relevant in determining congressional intent."). Pointedly, one portion of the House Report states "PEG . . . [channels] are available to all community members on a nondiscriminatory basis . . . . [T]he Committee believes that it is appropriate that such *channels be available to all cable subscribers on the basic service tier and at the lowest reasonable rate.*" H.R. Rep. No. 102-628 at 85 (1992) (emphasis added). In addition, Plaintiffs note the FCC held that the Cable Act "require[s] a cable operator . . . to carry PEG channels on the basic tier unless the franchising authority explicitly permits carriage on another tier." *In the Matter of the Implementation of the Section of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, 8 F.C.C.R. 5631, 5737-38.

Nothing in the statute or legislative history prohibits a cable provider from including both digital and analog channels on the basic service tier, or from providing PEGs in one format and broadcast channels in a different format. In fact, Plaintiffs concede this, and it is unlikely they will prevail on the merits of this claim.

4. Additional Equipment Costs May Be Unreasonable

No additional equipment is currently needed to view PEGs at the basic service tier. After January 15, 2008, basic service tier customers who want to see PEGs must invest in additional equipment (beyond the one free converter box) because signals will only be digital and no longer available in analog. Defendants will impose additional

equipment costs on the basic service tier, and burden those basic service tier customers who want to view the PEG channels. Customers similarly situated – whose subscription says they are receiving the same service --will have different equipment costs imposed on them.

Federal law does not require that the basic service tier be the lowest priced tier. However, the total cost for the basic service tier (including service and equipment), must be reasonable, taking into account the cost of equipment for the basic service tier. 47 U.S.C. §§ 543(b)(3), 543(b)(1). The question becomes whether it is "reasonable" to burden some customers and not others, who subscribe to the same basic service tier, with the requirement to purchase additional equipment to access services they are similarly charged for. Defendants plan to charge a uniform rate for a basic service tier selection of channels, only a portion of which can be viewed without additional equipment at additional cost. Customers similarly situated -- whose subscription says they are receiving the same service -- will have different equipment costs imposed on them, and those who choose not to incur additional cost will pay for channels they are not able to access. These costs may be unreasonable, and may support a likelihood of success on the merits for Plaintiffs on this issue.

5. Defendants May Have Provided Insufficient Notice

Plaintiffs argue Defendants' notice of the proposed changes is defective under the FCC's minimum customer service standards. 47 C.F.R. 76.309(c)(3)(i)(B). It does not appear that this subsection Plaintiffs cite governs anything but "refunds," a concern not present here. *See* 47 C.F.R. 76.309(c)(3)(i)(B) ("(i) Refunds – Refund checks will be

issued promptly . . .").

Despite this shortcoming, the parties referenced additional bases for notice requirements in oral argument, and the expectation that notice be accurate is fundamental. Defendants gave notice within the required 30 days, but their notice was inaccurate. Contrary to the notice provided by Defendants, not all current limited basic service tier customers will be able to find the PEG channels in the 900 channel range in which Defendants intend to relocate them. Evidence presented demonstrates customers who have more advanced television sets and intend to use their equipment's QAM tuners to access PEGs, may not be able to locate the PEGs in the 900 channel range. Customers with third-party equipment may face the same difficulties.

Defendants say they could not accurately state where these channels will show up after the transition for those customers using third-party equipment. At the hearing it became clear that Defendants could have easily indicated where the great majority of these QAM channels would be after the transition.

Further, Plaintiffs state that the notices failed to inform customers of the free converter box availability or that installation would be provided at no charge. Defendants did not rebut this at the hearing.

It is likely Plaintiff will prevail on the merits of this claim. Defendants' customers in Dearborn and Meridian did not receive accurate and sufficient notice.

6. Defendants Have Not Impermissibly Scrambled or Encrypted Signals

The Federal Communications Commission rules state that "[c]able system operators shall not scramble or otherwise encrypt signals carried on the basic service

tier." 47 C.F.R. § 76.630(a). Plaintiffs say they have reason to doubt that Defendants are in compliance with this requirement. A recent test conducted by Plaintiffs did not confirm that advanced televisions with QAM capability could receive the PEG channels. In any event, Plaintiffs do not rely heavily upon the explicit requirements in 47 C.F.R. § 76.630(a). Instead, they read it in light of the FCC's commentary, which states that 47 C.F.R. § 76.630(a) supports "significantly advanc[ing] compatability by ensuring that all subscribers are able to receive basic tier signals 'in the clear' and that basic-only subscribers will not need set-top devices at all." *In the Matter of Implementation of Section 17 of the cable Television Consumer Protection Act of 1992*, First Report and Order, 9 F.C.C.R. 1981, 1991 (1994). Relying on this interpretation, Plaintiffs argue that the basic service tier must be offered in a manner that minimizes the need for unnecessary equipment.

Plaintiffs also invoke 47 U.S.C. § 544A(c)(2)(B)(ii) to support the same argument. 47 U.S.C. § 544A(c)(2)(B)(ii) establishes a regulatory goal. This goal is "to require cable operators offering channels whose reception requires a convertor box . . . to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly . . . without passing through the convertor box." 47 U.S.C. § 544a (c)(2)(B)(ii). The statement is only a regulatory goal. The provision establishes factors to be considered in the promulgation of regulations, but does not create regulations. In addition, 9 F.C.C.R. 1981, 1991 do no more than state what 47 C.F.R.§ 76.630 requires, which is that basic tier signals be provided in the clear. The Court is unable to cobble these provisions together to create an affirmative obligation upon cable providers where none currently exists.

Even if the Court were to consider the argument, it does not have a substantial likelihood of success on the merits.

7. The Franchise Agreement

Although Plaintiff Dearborn says a specific provision of its franchise agreement prohibits the unilateral change of PEG channel locations, Plaintiff Meridian's agreement appears to significantly differ. That agreement states that Defendants will be permitted to change the location of PEG stations after paying a small penalty. *See* Meridian Franchise Agreement § 17. Under the Meridian agreement, Defendants may unilaterally change the location of PEG channels. Plaintiff Meridian cannot succeed on the merits of its franchise claim.

Plaintiff Dearborn represents that its franchise agreement explicitly prohibits the unilateral relocation of PEG channels, and would be violated by Defendants' proposed actions. Defendants did not rebut this argument, and it is likely Dearborn will prevail on the merits.

B. Municipal Plaintiffs Will Suffer Irreparable Harm If the Status Quo Is Not Maintained

Municipal Plaintiffs and Gillette argue denial of their motion will result in irreparable harm.

The Court finds that any injury Gillette will suffer is not irreparable. She could request and receive Defendants' converter free of charge for one year. If she has more than one television she can be compensated in money damages for any rental fees she pays, if Plaintiffs ultimately wins this litigation.

Municipal Plaintiffs have more at stake. They argue that denial of this motion will result in their inability to communicate with the public through governmental PEG channels. According to the Municipal Plaintiffs, during the time the PEGs are not available in analog, Plaintiffs would lose a large portion of their audience because these viewers would be unable to: (1) receive the government access channel; (2) afford to pay the higher equipment cost; and (3) locate the PEG channel after they are moved. In addition, the Municipal Plaintiffs allege they may even lose current digital cable subscribers because the channels will be more difficult to find by channel surfing or through the use of the cable program guide. Plaintiffs also argue their educational programming will suffer irreparable harm through lost viewership, and the disruption of the educational uses these channels serve in school districts.

Defendants argue the harm will be minimal because they will provide a free converter for a year to each customer. Although this free converter box addresses harm to Gillette, it leaves unanswered Municipal Plaintiffs' argument that they will be injured because of disruptions to their viewership.

The Court finds that the effect of the additional inconvenience of requesting a new box, the relocation of the channels, and lost viewers cannot be adequately calculated and compensated through monetary damages.

Defendants question the delay in bringing this motion. Defendants notified Municipal Plaintiffs on November 15, 2007 of their plan. Plaintiffs assert they attempted to get information and mediate the controversy before filing these motions. Indeed, a member of Congress is involved in the dispute and, has scheduled a legislative hearing.

Because of these efforts the two month delay does not undercut the Municipal Plaintiffs' claim of irreparable harm.

C. Defendants and Others will not be Significantly Harmed and the Public Interest will be Served if the Status Quo is Maintained

Plaintiffs argue that Defendants will not be significantly harmed if their motion is granted. They say there is no reason why Defendants must transfer the PEG channels on January 15, 2008. Conversely, Defendants maintain they will face financial hardship if the Court grants Plaintiffs' motion because it will reduce their ability to introduce new products and remain competitive. According to Defendants, they must "meet [their] customers' needs" by digitizing channels to free up space and provide new channels and services. Witness David Bruhl testified that a grant of Plaintiffs' motion would hinder the ability to add four high-definition stations on January 15, 2008 as planned. Defendants also say the public has an interest in the transition from analog to digital.

To the extent the Court accepts Defendants' argument that it must digitize channels, it does not agree that the transition must occur on January 15, 2008. Indeed, Defendants indicated at the hearing they could go forward on January 15, 2008 with the addition of these new channels in most areas. Further, while the Court agrees there are some general benefits with digitizing channels, it finds the public interest is better served by the temporary preservation of the PEG channels in their analog format so the public may maintain access to vital information. Therefore, although consumers looking forward to Defendants' new channels and services may be inconvenienced by a delay, any harm they may suffer does not outweigh the harm to Plaintiffs and to the public.

V. CONCLUSION

Both sides in this dispute have substantive arguments on the merits which weigh in their favor. Until the merits of this case can be fully sorted, the Court finds the balance of the equities -- substantial harm to others, the public interest and harm to the municipal Plaintiffs -- weigh in favor of the relief sought by Plaintiffs. The status quo will be maintained.

Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction is **GRANTED**.

VI. ORDER

IT IS ORDERED that Defendants are prohibited, without the permission of the Court, from moving channels for public, educational and governmental use ("the PEG channels") from their current location or changing the format in which they are delivered to subscribers until further Order of the Court.

IT IS FURTHER ORDERED that Plaintiffs are not required to provide security since Defendants acknowledge that any damage claims they have against the Municipal Plaintiffs for their regulation of cable service are limited by 47 U.S.C. §555a(a) to injunctive or declaratory relief. *See also Time Warner Entertainment Co., L.P. v F.C.C.*, 93 F.3d 957, 980 (D.C. Cir. 1996)(noting franchising authorities' immunity from monetary damages); *Jones Intercable of San Diego, Inc. v City of Chula Vista*, 80 F.3d 320, 326 (9th Cir. 1996)(same).

IT IS ORDERED.

/s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: January 14, 2008

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on January 14, 2008.

s/Linda Vertriest
Deputy Clerk

Mr. MARKEY. Thank you, Mr. Mayor, very much. We appreciate it. Our next witness is David Cohen, who is the Executive Vice President of the Comcast Corporation, a frequent visitor before our committee. We welcome you back. Whenever you are ready, please begin.

STATEMENT OF DAVID L. COHEN, EXECUTIVE VICE PRESIDENT, COMCAST CORPORATION, PHILADELPHIA, PA

Mr. COHEN. Mr. Chairman and members of the committee, thank you for inviting me to testify today, and it is truly always a pleasure to appear before this committee, and I welcome the opportunity today to discuss Comcast's plans for carrying PEG programming in the digital TV age. Let me start by saying that Comcast and the cable industry have a long history of supporting PEG programming, and we recognize its value to our customers and our local government partners similar to the way that many members talked about it in their opening statements. It is also important to note that the issues raised by this hearing are temporary transitional issues. In the relatively near future it is likely that all cable video services will be delivered in a digital format, and all of our customers will need some form of digital equipment. That is already the case with our major competitors.

During this transitional period, we are working hard to accommodate consumer demand for more bandwidth intensive services such as high definition television, video on demand, and faster broadband speeds. We have wonderful technologies including signal compression and switched digital video, but we also need to use our bandwidth more efficiently, and that means delivering in a digital format channels that previously were delivered in analog. Given the genesis of this hearing, I want to say that our recent experience in Michigan is atypical in two important respects. First, in the vast majority of our cable systems PEG channels remain in analog, and we have no plans to change that. In fact, we have voluntarily increased our PEG carriage in many systems by adding a digital simulcast to accompany the traditional analog version.

In light of the relatively large number of PEG channels in certain Michigan communities, however, we need to work out different arrangements for PEG to help us accommodate consumer demand for those other services, and that leads me to the second way in which our Michigan digital initiative differs from our standard practice. In retrospect, we failed to communicate adequately our goals and to work cooperatively with our local partners to produce a win for everyone, for the consumer, the local government, the PEG community, and for Comcast. That is not the way we want to do business in Michigan or in the rest of the country, and I want to apologize for that. I am pleased to say that we are now engaged in friendly, and what I am sure ultimately will be fruitful, discussions with the local governments in Michigan, including Mayor O'Reilly of Dearborn, who is testifying here with me today.

With this background, let me quickly highlight three key points about the digital delivery of PEG. One, the delivery of PEG channels in a digital format is a small part of a much larger transition from analog to digital television. The spectrum efficiency of digital technology enables video providers like Comcast to vastly expand

our service offerings. Second, today's intensely competitive video environment compels cable operators to offer PEG channels in a digital format. Our major competitors are already all digital, and they widely tap that fact in their consumer marketing. The two national DBS providers offer no local PEG programming whatsoever, and our telephone competitors generally seek to offer less than we do. If established cable operators are unduly restrained in our digital transition it will weaken our competitive posture, and ironically it will ultimately harm PEG programmers whose primary distribution is on cable.

Third, I want to clearly state that we are not discriminating against PEG channels. In most of our cable systems the vast majority of commercial programming services are already transmitting exclusively in digital format. Importantly, even when we digitize PEG channels, those channels remain part of the basic service tier, which means that no additional service fee is required to view digitally delivered PEG channels. And while some customers may need digital equipment to view these channels, a rapidly growing majority of our customers already have this digital capability. The bottom line is that we believe that digital delivery of PEG channels is fair, it is appropriate, it is pro-consumer, it is key to our ability to respond to competition, and that it is lawful, but as I said earlier, and this is the most important statement, given the strong commitment that we have to PEG programming and given the strong relationships we enjoy with our local government partners, Comcast is committed to working cooperatively with those local partners to ensure efficient PEG delivery through the digital transition.

Thank you again for the opportunity to testify, and I look forward to taking your questions.

[The prepared statement of Mr. Cohen follows:]

SUMMARY
TESTIMONY OF DAVID L. COHEN, COMCAST CORPORATION

Comcast and the cable industry have a long history of supporting PEG programming, and we recognize its value to our customers and our local government partners. Comcast is committed to working cooperatively with our local partners to ensure efficient PEG delivery through the digital transition.

The issues raised by this hearing involving Comcast are temporary, transitional issues. In the relatively near future, it is likely that all cable video services will be delivered in a digital format.

The delivery of PEG channels in a digital format is a small part of a much larger transition from analog television to digital television. Digital technology improves video quality, and its inherent spectrum efficiency enables video providers, like Comcast, to vastly expand our service offerings.

Today's intensely competitive video environment compels established cable operators, like Comcast, to offer PEG channels in a digital format. Our major competitors are already all-digital. If established cable operators are unduly restrained in our digital transition, it will weaken our competitive posture – and, ironically, it will ultimately harm PEG programmers, whose primary distribution is on cable.

Comcast is not discriminating against PEG channels as it transitions to a digital platform. In most of our cable systems, the vast majority of commercial programming services are already transmitted in a digital format. Even when we digitize PEG channels, those channels remain part of the basic service tier, which means that no additional service fee is required to view digitally delivered PEG channels. Some customers may need digital equipment to view these channels, but a rapidly growing majority of our customers already have this digital capability.

TESTIMONY OF DAVID L. COHEN
EXECUTIVE VICE PRESIDENT
COMCAST CORPORATION

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

HEARING ON
"PUBLIC, EDUCATIONAL, AND GOVERNMENTAL SERVICES
IN THE DIGITAL TV AGE"

JANUARY 29, 2008

Mr. Chairman and Members of the Committee:

Thank you for inviting me to testify today. It's always a pleasure to appear before this Committee, and I welcome the opportunity to discuss Comcast's plans for carrying local Public, Educational, and Governmental channels ("PEG") in the digital TV age. I appreciate this Committee's interest in our recent efforts to deliver PEG channels in a digital format, and I am happy to explain the reasons supporting this technical transition.

Let me start by saying that Comcast and the cable industry have a long history of supporting PEG programming, and we recognize its value to our customers and our local government partners. We provide the means to distribute PEG programming and the support that makes it possible. We understand the value of PEG programming, and we try to be good partners with our local governments in our support.

To a large extent the issues raised by this hearing are temporary, transitional issues. In the relatively near future, it is likely that all cable video services will be delivered in a digital format, and all of our customers will need a digital set-top box, a digital television set, or some other digital receiving device. That is already the case with our major competitors – DirecTV, Dish, AT&T, and Verizon – who all operate in a digital-only format.

Although our cable plant is enormously flexible, we are increasingly putting demands on the capacity of that plant. During this transitional period, we must juggle consumer demand for more services, such as high definition television, video-on-demand ("VOD"), and faster broadband speeds, with the capacity of our network. Part of that juggling involves the digital delivery of channels previously were delivered in analog. At the same time, we are actively exploring a variety of technical solutions that go far beyond the digitization of analog channels. Digital compression and switched digital delivery, for example, both promise significant bandwidth efficiencies.

Given the genesis of this hearing, I want to say that our recent digital initiative in Michigan is atypical in two important respects. First, in the vast majority of our cable systems, PEG channels remain in analog, and we have no current plans to change that. In fact, we have voluntarily increased our PEG carriage in many systems by adding a digital simulcast to accompany the traditional analog version. In light of the relatively large number of PEG channels in certain Michigan communities, however, we need to work out different arrangements to help us accommodate consumer demand for other services.

And that leads me to the second way in which our Michigan digital initiative differs from our standard practice. In retrospect, we failed to communicate adequately our goals and to work cooperatively with our local partners to produce a "win" for everyone – for the consumer, the franchising authority, the PEG community, and the cable company. That is not the way we want to do business – in Michigan or in the rest of the country – and I want to apologize for that. I am pleased to say that we are now engaged in friendly, and what I am sure ultimately will be fruitful, discussions with local government officials in Michigan, including Mayor O'Reilly of Dearborn, who is testifying here with me today.

With this background, let me begin with four key points about the digital delivery of PEG channels:

First, the delivery of PEG channels in a digital format is a small part of a much larger national – in fact, global – transition from analog television to digital television. Digital technology improves video quality, and its inherent spectrum efficiency enables video providers, like Comcast, to vastly expand our service offerings. The switch to digital technology has been widely and understandably encouraged by government officials. Consumers today clearly want the enhanced video and audio quality of digital, as well as the many new services that digital technology makes possible.

Second, today's intensely competitive video environment compels established cable operators, like Comcast, to offer PEG channels in a digital format. As I just mentioned, our major competitors (DirecTV, Dish Network, Verizon, and AT&T) are already all-digital, and they widely tout that fact in their consumer marketing. The two national DBS providers, who are now the second and third largest multi-channel video providers in the country, with over 30 million combined customers,[1] offer no local PEG programming whatsoever, and our telephone competitors generally seek to offer much less than we do. If established cable operators are unduly restrained in our digital transition, it will weaken our competitive posture and, ironically, it will ultimately harm PEG programmers, whose primary distribution is on cable (because the government has not placed similar PEG obligations on our competitors). Even if our transition of PEG channels to digital causes some temporary, minor inconvenience for some of our customers, it is important to understand that these citizens will receive little or no PEG programming if they move from their local cable system to the all-digital line-up provided by our

[1] *See Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 21 FCC Rcd. 2503, ¶ 73 (2006).

telephone and DBS competitors. And as our digital transition moves forward, ultimately, our customers will be receiving all of their programming – including their PEG programming – in digital form.

Third, as Comcast proceeds with the challenging and critical transition to a digital platform, I want to clearly state that we are not discriminating against PEG channels and are, in fact, taking special care to ensure that the public can access them. In most of our cable systems, the vast majority of commercial programming services are already transmitted exclusively in a digital format, yet PEG channels remain almost uniformly in an analog format (often with a digital simulcast).

It is important to note that digital delivery will actually enhance, not degrade, the signal quality of PEG channels. Moreover, even when Comcast digitizes PEG channels, those channels remain part of the basic service tier. Comcast does not impose any additional service fee to receive digitally delivered PEG channels. And while some customers may need digital equipment to view these PEG channels, a rapidly growing majority of our customers already have this digital capability.

Fourth, we believe the digital delivery of PEG programming is consistent with the Communications Act of 1934, as amended (the "Act"), and the legislative history of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"). The Act did not explicitly address the format (analog or digital) by which cable operators must deliver PEG programming, and the Act specifically protects a cable operator's choice of transmission technology.

The bottom line is that we believe that digital delivery of PEG channels is fair, it is appropriate, it is pro-consumer, it is key to our ability to respond to competition, and we believe

that it is lawful. But as I said earlier, given the strong commitment that we have to PEG programming – a commitment that is not shared by all of our competitors – and given the strong relationships we enjoy with our local government partners, Comcast is committed to working cooperatively with those local partners to ensure efficient PEG delivery.

I. THE FUTURE OF TELEVISION IS DIGITAL

As this Committee is well aware, the future of television is digital, and that future is now. Analog television, which served America well in the twentieth century, is quickly being replaced by superior digital technology. The nation's established broadcast television and cable television industries are both racing to an all-digital universe. Comcast's chief competitors, including DBS providers DirecTV and Dish Network, as well as Verizon and AT&T, entered the television business comparatively recently and skipped over analog technology entirely. Because their video services are already offered exclusively in digital, a subscriber to these services has no choice but to obtain and use digital equipment.

Consumers today are clamoring for the superior quality that digital technology provides. Just as an earlier generation of Americans abandoned black and white television in favor of color television, this generation of Americans is now rapidly abandoning analog television in favor of digital television. Digital signals are crystal clear, and the visual appeal of high definition digital signals is undeniable.

Video providers are enthusiastic about digital technology because it is so much more efficient than conventional analog technology. Delivering a video signal in analog consumes many times the amount of spectrum or bandwidth as delivering the same programming in digital. Indeed, as illustrated in Attachment 1, approximately three high definition channels and 15 standard definition digital channels can now be delivered in the same bandwidth as a single

analog channel. Simply put, the delivery of television in analog is wasteful and inefficient. That is precisely why our competitors are already operating with all-digital technology.

Congress has itself recognized the vast superiority of digital in establishing February 2009 as the deadline for all domestic broadcast stations to terminate analog transmission in favor of digital transmission.[2] The costs and confusion associated with this broadcast conversion are considerable, but Congress has clearly recognized that the reclaimed broadcast spectrum is of tremendous value and can be used far more productively.

Cable operators have also recognized the superiority of digital technology. Comcast increasingly relies on digital technology to deliver video services to its customers. A typical Comcast system today has a far greater number of programming services delivered in digital than in analog. In Dearborn, for example, we currently provide fewer than 70 analog channels and more than 220 digital channels. Our Washington, D.C. system has a similar ratio of analog to digital channels. We offer fewer than 80 analog channels here and more than 230 digital channels.[3] And this digital tally does not even include the vast digital VOD library available to our customers through our On Demand service.

The digitization of our line-up has allowed Comcast to launch scores of new digital programming channels, including popular high definition and VOD offerings. In Dearborn, the services available only in digital today include many popular channels like ESPN News, Discovery Home, National Geographic, Biography, SOAPNet, Nicktoon, Discovery Kids, Sprout, CMT, GSN, IFC, LOGO, and TV One. The list goes on. It is a similar story elsewhere. In Washington, D.C., for example, we provide a wide variety of popular digital-only channels, such as BBC America, Current TV, Fox Reality, Sundance, and WE. If we had not introduced a

[2] *See* 47 U.S.C. § 337(e).

[3] *See* Attachment 2.

digital platform, it simply would not be possible to deliver the range and diversity of product our customers desire.

Not surprisingly, the percentage of our customers subscribing to digital services is increasing rapidly. At the end of 2006, our digital penetration figure had grown to 52%. By the end of the third quarter of 2007, it had increased to over 60%. In many markets, such as Boston and Chicago, our digital penetration exceeds 80%. This trend is sure to continue as Comcast increasingly relies on digital technology to deliver video services.

Our ability to take full advantage of digital technology requires us to reclaim bandwidth currently devoted to outmoded analog technology. If we cannot reclaim that bandwidth, the amazing products we are anxious to offer our customers will be delayed. In Dearborn, for example, we currently offer 33 linear HDTV channels. Transitioning additional analog channels to digital would liberate the capacity needed to substantially increase our HDTV offerings and accommodate the existing backlog of popular HDTV channels. For each analog channel we migrate to digital, we pick up the capacity needed to launch approximately three new high definition channels. The popular HDTV channels we could launch in Dearborn if there were more digital capacity available include such popular services as AMC HD, Cartoon HD, Nickelodeon HD, and Speed HD. Indeed, additional digital capacity is essential to proceeding with our newly announced "Project Infinity," which could deliver more than one thousand high definition choices to virtually every Comcast HD home by the end of 2008.[4]

Moreover, digitizing video channels provides customer benefits beyond just "more TV." The reclaimed bandwidth allows us to offer improved high speed internet and digital voice services. In particular, reclaimed bandwidth will facilitate Comcast rolling out DOCSIS 3.0 this

[4] Brian L. Roberts, Keynote Remarks, 2008 Consumer Electronics Show, Las Vegas, NV, January 8, 2008.

year. This amazing technology will allow us to deliver data at speeds of up to 100 megabits per second or greater.[5]

Offering PEG programming in a digital format improves its picture quality. That is why we increasingly simulcast PEG channels in digital where we have the capacity to do so. Delivering PEG channels in a digital format also makes it much easier to group PEG channels together, possibly with other public interest programming, in a standardized "neighborhood" across multiple cable systems. This standardization will make it easier for consumers to find local PEG channels. The new digital location will be increasingly important as more and more of our customers look to our digital program guide line-up for their viewing choices and venture back to our analog channels less frequently.

The simple truth is that the transition to a digital platform is inevitable. The majority of Comcast customers are already digitally equipped, and that figure is increasing at a dramatic rate. Customers interested in PEG programming will not find a significant inconvenience in needing to "go digital," and, in fact, all of them will very soon *expect* digital delivery. Frankly, if we do not deliver PEG programming in a digital format, it will not be long before PEG programmers complain about being abandoned in an analog wasteland.

II. THE DIGITAL DELIVERY OF PEG PROGRAMMING IS COMPELLED BY THE COMPETITIVE VIDEO MARKETPLACE

In analyzing Comcast's PEG carriage, it is important to consider the intensely competitive marketplace in which we operate. One cannot evaluate PEG obligations as if cable companies still held their multi-channel video "monopoly" of 20 years ago. In Dearborn, Michigan, for example, Comcast serves just 38% of local television households. As a result, whether Comcast transmits PEG channels in analog or digital, it cannot itself ensure that every

[5] *Id.*

Dearborn household, or even the majority of Dearborn households, receives PEG programming. In this highly competitive landscape, it is also essential that Comcast make business decisions that maximize our appeal to local consumers.

On a nationwide basis, DBS companies are currently our largest direct competitors, serving almost 30% of the nation's television households, and DirecTV and Echostar are the number 2 and the number 3 multi-channel video providers in the country, respectively. Their marketing material emphasizes their all-digital format.[6] Yet DBS has no PEG carriage obligations. While DBS has a federal obligation, under Section 335 of the Act, to carry certain "noncommercial, educational, and informational programming,"[7] that "public interest" obligation is not remotely comparable to cable's PEG requirements.

First, DBS does not carry any *local* PEG programming. The *national* services that fill DBS' "public interest" set-aside are very different than the local PEG channels carried by cable. Unlike cable's carriage of PEG channels, DBS providers are free to select from among multiple eligible programmers to fill their "public interest" allocation. Because these DBS services are national in scope, they contain programming that is much more akin to the programming seen on popular commercial networks than is the case with typical PEG channels. Comcast voluntarily carries several of these same networks (including the Pentagon Channel, Three Angels Broadcasting Network, BYUTV, and HITN) on some of its cable systems.

Second, DBS' "noncommercial' set-aside is limited to 4% of its video channels.[8] In contrast, PEG obligations can far exceed 4% of a cable system's video capacity. In Meridian,

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[6] *See* Attachment 3 (DBS advertisements).

[7] *See* 47 U.S.C. § 335(b).

[8] *See* 47 C.F.R. § 25.701(a). Significantly, Congress suggested a range of 4% and 7%, and the FCC concluded the lowest number was sufficient. *See* 47 U.S.C. § 335(b)(1).

Michigan, for example, Comcast currently carries nine PEG access channels.[9] This represents almost 12% of the video capacity available to most of Comcast's local customers. Even in Washington, D.C., where the system has greater total bandwidth, the percentage of video capacity devoted to PEG exceeds DBS' 4% obligation.

Third, DBS companies are allowed to collect fees *from* their "public interest" programmers. DirecTV and Dish can recover up to 50% of their direct costs associated with accommodating these programmers.[10] In contrast, cable franchise agreements not only require cable systems to provide carriage at no charge, but they also typically require operators to provide financial support *to* PEG.

Finally, DBS companies do not offer any of their "public interest" programming in analog. Such programming cannot be accessed without first obtaining a digital converter.[11] Indeed, the requirement to obtain digital equipment is a necessary precondition to becoming a DBS customer.

Of course, DBS is not our only direct competitor. We are increasingly facing competition from Verizon and AT&T. It should be noted, once again, that these new competitors already operate exclusively in digital and, therefore, require their customers to rent or buy digital equipment for their homes. In fact, AT&T offers digital PEG channels in a controversial manner that bears no resemblance to Comcast's PEG delivery.[12]

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[9] Significantly, three of these "local" PEG channels (representing 18 Mhz of valuable bandwidth) simply provide alternative feeds of PBS station, WKAR. Broadcast station WKAR has its own "must carry" rights and is already carried on the Meridian cable system.

[10] 47 C.F.R. § 25.701(f)(5); 47 U.S.C. § 335(b)(4).

[11] Dish's website even admits that customers "may require additional dish antenna to view this programming." *See* http://www.dishnetwork.com/content/whats_on_dish/programming_packages/channels/index.asp?NetwID=50414.

[12] It is worth noting that AT&T has taken the position that its video operations do not even constitute a "cable system" and, therefore, are not subject to a variety of federal, state, and local requirements applicable to a "cable operator," including critical channel carriage obligations such as commercial leased access, must carry, and PEG.

As we understand it, AT&T treats PEG programming very differently than it treats commercial programming services, and, as a result, PEG programming on AT&T is not easily found by consumers. AT&T's PEG programming is accessed only by first going to one specified site and then working through multiple ancillary menus to find the particular PEG programming desired.[13] Also, not only does AT&T fail to provide a single exclusive linear channel for the limited PEG programming it offers, but the quality of its PEG streaming video is well below that of AT&T's commercial channels.[14] AT&T's PEG delivery approach apparently creates other viewing problems – including a delay in the video loading and an inability to record programming – that are likely to frustrate the PEG audience.[15] In short, AT&T's approach raises a host of concerns far more serious than the simple transition of PEG delivery from an analog to a digital format.

III. COMCAST'S TRANSITION TO DIGITAL DELIVERY IS WIDESPREAD AMONG ITS PROGRAMMING SERVICES

It is critical that the Committee understand that our transition to digital delivery is widespread. As noted above, an overwhelming majority of Comcast's programming services are now offered to our customers exclusively in digital.[16] We have enhanced our video platform by

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See Office of Consumer Council v. Southern New England Tel. Co., 2007 U.S. Dist. LEXIS 53675 (D. Conn. July 26, 2007).

[13] *See In the Matter of the Complaint of the Michigan Chapter of the National Alliance for Community Media Seeking Declaratory Ruling relating to a dispute with AT&T – Michigan under the Uniform Video Services Local Franchise Act*, Michigan PSC Case No. U-15366 (filed Aug. 13, 2007). *See also* "Briefing Paper on PEG Support Fees and PEG Channel Requirements," submitted on behalf of the League of Minnesota Cities and Minnesota Association of Cable Telecommunications Administrators, at 16-17 (dated Jan. 4, 2008), available at www.mactamn.org/Articles/FINAL%20MACTA%20LMC%20PEG%20briefing%20paper%201-4-08.pdf. *See also* Kristina Peterson, *Access is difficult on AT&T Cable*, Palo Alto Daily News, http://www.paloaltodailynews.com/article/2007-12-23-pa-cable-fight, (Dec. 23, 2007).

[14] Peterson, *supra* note 13.

[15] *Id.*

[16] The number of digital channels on Comcast's Dearborn system today is more than three times the number of analog channels.

launching new services in digital, but we also need to reclaim bandwidth devoted to existing analog services. This process is essential if we are going to offer all of the video products that consumers demand, and if we are going to expand and improve broadband Internet and voice services. Additional capacity is needed for these advanced services to operate at higher speeds and accommodate more customers.

We are, of course, actively exploring a variety of alternate ways to improve our digital performance. Continual improvements in compression technology allow us to push more and more digital product through a fixed amount of digital bandwidth. Switched digital technology promises even greater efficiencies. By limiting the delivery of programming channels to those particular channels being watched by customers within a given node at any given time, switched digital delivery creates a dynamic management structure that promises to maximize bandwidth efficiency. These technologies hold great promise, and Comcast is investing substantial resources to develop and implement them. But these advancements take time. In the meantime, reclaiming analog spectrum is the best means available to maximize our capacity in order to deliver the services that consumers are demanding from us. In any event, the technical improvements being made to digital delivery simply dramatize the superiority of digital delivery and the need to phase out antiquated analog technology.

In 2007, more than two dozen cable networks were moved from analog to digital delivery on various Comcast cable systems. The impact of these digital migrations varied. One network migration affected only 30,000 customers, while another network migration affected 13 million customers. These moves, cumulatively affecting many millions of Comcast subscribers, involved such popular channels as ESPN Classic, Oxygen, MSNBC, Hallmark, MTV2, and C-SPAN2. We face difficult business decisions every day as we reconfigure our line-up to

maximize overall customer satisfaction, but we do our very best to balance competing interests as we make these essential changes. The relative paucity of customer complaints is testament to the extremely high value that our customers place on the extra services that they are receiving as a result of these digital migrations.

At this point, analog PEG channels (which traditionally have a comparatively small – albeit passionate – audience) consume a disproportionately large amount of bandwidth on some of our cable systems. On cable systems where the number of PEG channels is relatively small, this is more manageable. In fact, in these cases, we have even voluntarily increased our existing PEG commitment by *adding* a digital simulcast of the existing analog channels. In most of our cable systems, we have no current plans to change that arrangement.

In those cases where the number of PEG channels is relatively large, however, this is not a viable option. The logical choice in those cases is to replace the analog PEG channels – or at least some of them – with a digital substitute. Even where this may occur, the PEG channels would remain part of the basic service tier and would be available without any additional service fee. We can also work with our local partners both to promote PEG channel changes as a means of increasing viewership and accessibility, and to discuss delivering PEG programming in new and different ways that will interest consumers. We might, for example, explore the option of providing some PEG programming through the use of our popular On Demand platform.

Our operational task is further complicated by a variety of federal laws that limit our ability to manage our bandwidth. Cable systems are now required by law to carry "must carry" broadcast signals.[17] As a result of the FCC's recent "dual must carry" order, our hybrid analog/digital systems will soon be required to devote even more channel capacity to broadcast

[17] *See* 47 C.F.R. § 76.56.

programming.[18] These systems will be obligated to offer must carry signals in both digital and analog for a three-year period following the February 2009 broadcast conversion.[19] The FCC also recently announced a dramatic reduction in the rates cable operators can charge unaffiliated "commercial leased access" ("CLA") programmers who lease channel space on cable systems pursuant to the Act.[20] The FCC made it clear that it was deliberately trying to spur commercial leased access activity, which so far has been relatively modest.[21] CLA programmers, whose programming is not highly desired by our customers, can claim up to 15% of our capacity under current law.[22]

These federal carriage mandates, coupled with local PEG requirements, place additional demands on our channel capacity, and, frankly, interfere with our bandwidth efficiency goals. Significantly, we are not trying to solve that problem by unilaterally reducing the number of PEG channels we carry. Rather, we are simply trying to transition some existing PEG channels from analog to digital, while keeping them as part of the basic service tier. This technical conversion promises to preserve the accessibility of PEG channels while also expanding our ability to offer desirable new programming and services.

IV. THE DIGITAL DELIVERY OF PEG CHANNELS IS CONSISTENT WITH FEDERAL LAW

Comcast believes that the digital delivery of PEG channels is consistent with the Act and the legislative history of the 1992 Cable Act. The Act does not explicitly address digital delivery, but federal authorities have encouraged the cable industry's current migration from

[18] *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules (Third Report and Order)*, FCC 07-170 (rel. Nov. 30, 2007).

[19] *Id.* at ¶ 16.

[20] "FCC Adopts Rules to Promote Video Programming Diversity," FCC News (released November 27, 2007).

[21] *Id.*

[22] *See* 47 U.S.C. § 532(b)(1).

analog to digital. Indeed, the FCC recently found that "an all-digital [cable system] would produce clear, non-speculative public benefits," including "facilitat[ing] the DTV transition by creating greater incentives for its subscribers to acquire digital television sets" and allowing a cable operator "to reclaim a considerable amount of spectrum within a clearly defined timeframe, which would enable it to provide consumers with advanced telecommunication capabilities, thereby furthering the goals of Section 706."[23] Moreover, Section 624(e) of the Act expressly precludes state and local authorities from intruding on a cable operator's discretion regarding transmission technology and the associated use of customer equipment.[24]

Comcast recognizes that, at least in rate-regulated communities, it has a legal obligation to carry PEG channels on the basic service tier. Section 623(b)(7) of the Act sets forth "minimum contents" of the basic service tier and specifically includes "any public, educational, and governmental access programming required by the franchise."[25] As indicated, digitized PEG channels will remain part of the basic service tier. There will be no additional service fee to obtain this programming.

What may change for a rapidly shrinking minority of Comcast's customers is that they may need to acquire digital equipment (whether from Comcast or a third party) to view newly digitized PEG programming. Congress has long recognized that cable equipment will sometimes be required to access portions of the basic service tier. Indeed, the rate regulation provisions established in Title VI of the Act expressly require the FCC to prescribe rate regulations

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[23] *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 209, ¶¶ 27, 24-25 (2007) (granting a waiver of the Commission's integration ban to an operator that committed to transition to an all-digital network by February 17, 2009); *see also Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CS Docket No. 97-80, Memorandum Opinion and Order, DA 07-2921 (2007) (granting same waiver of the Commission's integration ban to more than 100 additional cable operators and telephone companies).

[24] 47 U.S.C. § 544(e).

[25] 47 U.S.C. § 543(b)(7).

applicable to "equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit."[26] The FCC's implementing rate regulations reflect the fact that separate equipment charges may apply in connection with the receipt of basic service.[27]

We also note that Comcast has no plans to "scramble" the PEG channels that it delivers with digital technology. This programming will be transmitted in the clear as part of the basic service. If the customer has a digital television set or other digital equipment, no additional set-top boxes will be necessary.

IV. COMCAST IS COMMITTED TO WORKING WITH LOCAL GOVERNMENTS AND PEG PROVIDERS

Our legal rights notwithstanding, we want to assure the Members of this Committee that Comcast is committed to working cooperatively with local governments, as we have done successfully for nearly 45 years. Comcast has a long history of supporting PEG programming. We devote substantial channel capacity to PEG programming and other support as well. In the current marketplace, we recognize that our ability to deliver high quality PEG programming in a high quality manner to our customers can actually be a competitive benefit.

The pending transition of PEG channels to digital delivery does not reflect a loss of support by Comcast for PEG programming. Digitizing PEG channels does not reduce the number of PEG channels we offer. And where we can, we are voluntarily adding a digital PEG simulcast and retaining the original analog PEG channel.

At issue here is whether there is a legal or policy rationale for the government to interfere with the orderly transition of PEG channels from an increasingly outmoded analog technology to

[26] 47 U.S.C. § 543(b)(3).

[27] *See* 47 C.F.R. § 76.923 "Rates for equipment and installation used to receive basic service tier."

state-of-the art digital technology in the most consumer-friendly manner possible, given obvious bandwidth inefficiencies and a highly competitive marketplace.

We appreciate that the transition to a digital-only format might temporarily disrupt the distribution of PEG programming to a shrinking minority of Comcast customers. We are committed to working with our local partners to minimize this disruption and to attempt to provide even greater value PEG programming for our customers. In the end, we are confident that the transition will leave Comcast and PEG providers better situated to serve twenty-first century consumers.

Despite the recent controversy in certain Michigan communities over our digital initiative, Comcast's practice is to meet with local authorities, where necessary, to discuss the digital delivery of PEG channels. Significantly, federal law does *not* compel a particular designation of PEG channels, but leaves that designation to the franchising process.[28] In fact, we already have successfully negotiated to transition certain PEG channels to digital in several communities. In Philadelphia, for example, we negotiated an agreement to transition five PEG analog channels to a single analog channel, four digital channels, and some VOD capability. Similarly, in Cook County, Illinois, we negotiated an agreement to deliver a PEG channel exclusively in digital (rather than in analog) to allow for a broader geographic distribution. As a general matter, we are able to resolve these PEG matters on a cooperative basis with local authorities, who increasingly recognize the benefits inherent to digital technology.

It has always been Comcast's intention to address the digital delivery of PEG programming in a reasonable and cooperative manner. In Michigan, our challenge was daunting, as there were certain cable systems with an unusually high number of PEG channels. This fact

[28] 47 U.S.C. § 531.

limited our ability to maintain the existing analog delivery. We engaged in an extensive public information campaign this winter to inform customers about our plans to transition PEG channels to a digital format, including individual subscriber notices and more than 50,000 public service announcements. We also committed to providing a free digital set-top box to affected customers for one year. We thought that this voluntary equipment offer would mitigate potential concerns regarding the temporary disruption to PEG delivery.

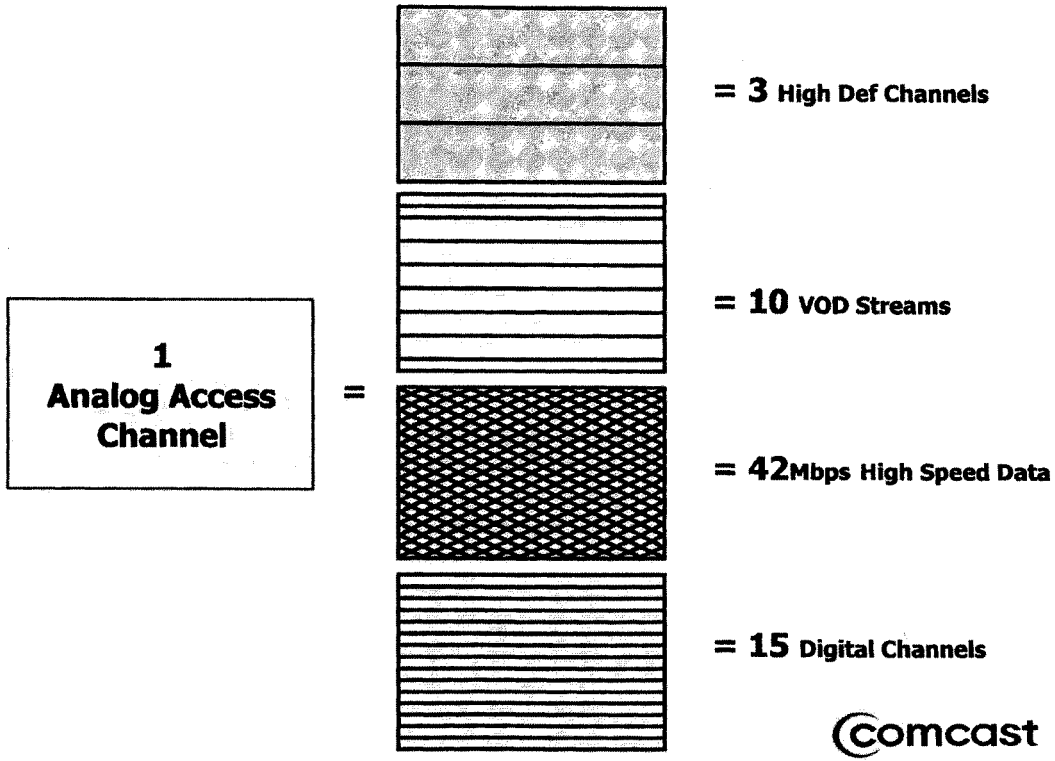
Unfortunately, there was confusion and misunderstanding regarding our digital initiative in Michigan. I sincerely wish we had been able to better communicate our goals and devise a more cooperative transition. As I said earlier, we did not do what we should have done and for that I apologize. As previously noted, we are extremely happy to now be in discussions with local officials in Michigan, and Comcast hopes to quickly resolve this dispute in a way that benefits their citizens and our customers.

CONCLUSION

Thank you again for the opportunity to testify today. I look forward to answering any of your questions.

ATTACHMENT 1

Migration Impact on Customers



comcast

ATTACHMENT 2

COMCAST OF THE DISTRICT
900 MICHIGAN AVE. NE
WASHINGTON, DC 20017
(202) 635-5100
www.comcast.com

Payment Center Location:
900 MICHIGAN AVE. NE
WASHINGTON, DC 20017
Hours:
Mon / Wed / Fri: 8am to 6:30pm
Tues / Thurs: 8am to 8pm
Sat: 8:30am to 3pm

Tha s omca ic!

comcast

Digital Cable

High-Speed Internet

Digital Voice

HDTV

DVR

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comcast.

CHANNEL LINEUP

BASIC EFFECTIVE 3/31/07

Channel Line-Up Subject to change.

ABC Family	6	***Disney***	***46***
VERSUS	7	***Nickelodeon***	***47***
ESPN 2	8	**TV Land**	**48**
ESPN	9	**TCM**	**49**
Comcast SportsNet	10	**The History Channel**	**50**
Golf Channel	11	**A&E**	**51**
WZDC-64 (Telemundo)	12	**Hallmark**	**52**
City Cable	13	**AMC**	**53**
WFDC-14 (Univision)	14	**Lifetime**	**54**
WMDO-47 (Telefutura)	15	***HBTV***	***55***
City Cable 16	16	***Food Network***	***56***
Discovery Health	17	**Oxygen**	**57**
WGN	18	**style.**	**58**
WDCA-20 (MY)	20	**E! Entertainment Television**	**59**
CN8	21	**Bravo**	**60**
MPT-22 (PBS)	22	**Sci-Fi Channel**	**61**
WDCW-50 (CW)	23	**TNT**	**62**
WRC-4 (NBC)	24	**FX**	**63**
WTTG-5 (FOX)	25	**Court TV**	**64**
WETA-26 (PBS)	26	**USA**	**65**
WJLA-7 (ABC)	27	**TBS**	**66**
News Channel 8	28	**Spike TV**	**67**
WUSA-9 (CBS)	29	**Comedy Central**	**68**
QVC	30	**GSN**	**69**
HSN	31	**G4**	**70**
WHUT-32 (PBS)	32	**CMT**	**71**
WPXW-66 (ION Television)	33	**VH-1**	**72**
Weather Channel	***34***	**MTV**	**73**
Headline News	***35***	**BET**	**74**
CNN	**36**	**TVOne**	**75**
Fox News	**37**	TV Guide	76
MSNBC	**38**	Leased Access	77
CNBC	**39**	CSPAN	78
Travel Channel	**40**	CSPAN 2/MASN 2	79
Discovery Channel	**41**	DCTV (Public Access)	95
MASN	**42**	DCTV2 (Public Access)	96
TLC	**43**	Univ. of the District of Columbia	98
Animal Planet	**44**	DC Public Schools	99
Cartoon Network	**45**		

LEGEND: **Limited Basic** | **Expanded Basic** | Premium Service | Pay-per-View | ***Family Tier***

DIGITAL EFFECTIVE 5/31/07

Channel Line-Up Subject to change.

Weatherscan Local	DC	101
ESPNews	DC	102
C-SPAN 2	B	104
C-SPAN 3	DC	105
Bloomberg	DC	106
Current TV	DC	107
Fox Reality	DC	108
Nat'l Geographic Channel	DC/FT	109
The Science Channel	DC/FT	110
Discovery Times	DP	111
Military Channel	DP	112
Discovery Home	DP	113
BBC America	DP	114
Biography Channel	DP	115
History International	DP	116
WE	DP	117
Lifetime Movie Network	DP	119
SOAPnet	DC	120
DIY	DP/FT	121
Fine Living	DP	122
PBS Kids Sprout	DC/FT	128
Nick Toons	DC	129
Discovery Kids	DC/FT	130
Noggin	DC	131
Nick2	DP	132
Nick Games and Sports	DC/FT	133
Encore WAM!	DP	134
Toon Disney	DC/FT	135
MTV Hits	DP	139
MTV 2	DC	140
MTV Trx	DP	141
MTV Jams	DP	142
VH-1 Classic	DC	143
VH-1 Soul	DC	144
CMT Pure Country	DP	145
CMT	DC	146
GAC	DC	147
MOVIE*plus*	DC	149
Encore	DC	150
Encore (W)	DC	151
Encore Action (E)	DP	152
Encore Action (W)	DP	153
Encore Mysteries (E)	DP	154
Encore Love Stories (E)	DP	156
Encore Love Stories (W)	DP	157
Encore Drama (E)	DP	158
Encore Westerns (E)	DP	160
Encore Westerns (W)	DP	161
LOGO	DP	163
Independent Film Channel	DP	164
Sundance	DP	165
FEARnet	B	166
IndiePlex	DP	167
RetroPlex	DP	168
Flix (E)	DC	170
Flix (W)	DC	171
BET Jazz	DC	174
NFL Network	DP	180
MHz 3 France 24	B	186
GMC	DC	189
AZN TV	DC	161

InDemand Previews	DC	199
Comcast IN Demand	PPV	157
Comcast IN Demand	PPV	158
WETA Create (PBS)	D	200
WETA Family (PBS)	3	201
WETA World (PBS)	4	202
Doug Hill's Weather Now	D	204
MHz Worldview	H	205
WDCW-The Tube	3	207
NBC Weather Plus	D	208
WJLA-HD (ABC)[1]	3	210
WRC-HD (NBC)[1]	4	211
WUSA-HD (CBS)[1]	3	212
WTTG-HD (Fox)[1]	3	213
WDCW-HD (CW)[1]	3	214
WETA-HD (PBS)[1]	3	220
National Geographic HD[1]	DC	224
Discovery HD[1]	DC	225
INHD1[1]	DC	226
HBO HD[1]	P	228
MHD[1]	P	229
Cinemax HD[1]	P	233
Showtime HD[1]	P	238
Starz! HD[1]	P	246
TNT HD[1]	DC	249
Universal HD[1]	DC	250
Comcast SportsNet HD[1]	DP	251
ESPN HD[1]	DC	252
ESPN 2 HD[1]	DC	253
Versus/Golf HD[1]	DC	254
Fox College Sports - Atlantic	SEP	262
Fox College Sports - Central	SEP	263
Fox College Sports - Pacific	SEP	264
ESPN Classic	DP	265
Fox Soccer Channel	SEP	267
Gol TV	SEP	268
Speed Channel	SEP	271
NBA TV	SEP	273
CSTV	SEP	274
NFL Network	SEP	275
Tennis Channel	SEP	277
Home Preview Channel	DC	281
WNVT-DT1(MHz2)	B	283
TBN	DC	290
EWTN	DC	291
The Black Family Channel	DC	293
The Word	DC	294
INSP	DC	295
Bollywood On Demand	SVOD	298
HBO HD[1]	P	300
HBO (E)	P	301
HBO 2 (E)	P	302
HBO Signature (E)	P	303
HBO Family (E)	P	304
HBO Comedy (E)	P	305
HBO (W)	P	309
HBO 2 (W)	P	307
HBO Signature (W)	P	308
HBO Family (W)	P	309
HBO Zone (E)	P	310
HBO Latino (E)	P	311

HBO Latino (W)	P	312
Cinemax HD[1]	P	318
Cinemax (E)	P	320
MoreMax (E)	P	321
Cinemax (W)	P	322
More Max (W)	P	323
ActionMax (E)	P	324
Thriller Max (E)	P	325
Action Max (W)	P	326
WMax (E)	P	327
⊕Max (E)	P	328
5 Star Max (E)	P	329
Outer Max (E)	P	330
Showtime HD[1]	P	339
Showtime (E)	P	340
Showtime Tee (E)	P	341
Showtime Showcase (E)	P	342
Showtime (W)	P	343
Showtime Tee (W)	P	344
Showtime Showcase (W)	P	345
Showtime Beyond (E)	P	346
Showtime Extreme (E)	P	347
Showtime Extreme (W)	P	348
Showtime Beyond (W)	P	349
The Movie Channel (E)	P	350
The Movie Channel (W)	P	351
The Movie Channel Xtra (E)	P	352
The Movie Channel Xtra (W)	P	353
Starz! HD[1]	P	369
Starz! (E)	P	370
Starz!Edge (E)	P	371
Starz! In Black (E)	P	372
Starz! Kids & Family (E)	P	373
Starz! Cinema (E)	P	374
Starz! Comedy (E)	P	375
Starz! (W)	P	376
Starz! Cinema (W)	P	380
Showcase	GMC	401
Today's Country	GMC	402
Classic Country	GMC	403
Bluegrass	GMC	404
R&B and Hip Hop	GMC	405
Classic R&B	GMC	406
Smooth R&B	GMC	407
R&B Hits	GMC	408
Rap	GMC	409
Metal	GMC	410
Rock	GMC	411
Arena Rock	GMC	412
Classic Rock	GMC	413
Alternative	GMC	414
Retro-Active	GMC	415
Electronica	GMC	416
Dance	GMC	417
Adult Alternative	GMC	418
Soft Rock	GMC	419
Hit List	GMC	420
Party Favorites	GMC	421
90's	GMC	422
80's	GMC	423
70's	GMC	424
Solid Gold Oldies	GMC	425

Singers & Standards	GMC	426
Big Band & Swing	GMC	427
Easy Listening	GMC	428
Smooth Jazz	GMC	429
Jazz	GMC	430
Blues	GMC	431
Reggae	GMC	432
Soundscapes	GMC	433
Classical Masterpieces	GMC	434
Opera	GMC	435
Light Classical	GMC	436
Show Tunes	GMC	437
Contemporary Christian	GMC	438
Gospel	GMC	439
Radio Disney	GMC	440
Sounds of the Seasons	GMC	441
Musica Urbana	GMC	442
Salsa Merengue	GMC	443
Rock 'En Español	GMC	444
Pop Latino	GMC	445
Mexicana	GMC	446
Howard Stern On Demand	SVOD	495
WWE ON DEMAND	SVOD	496
InDemand Preview	DC	509
Comcast IN Demand	PPV	501
Comcast IN Demand	PPV	502
Adult On Demand	PPV	549
Playboy	PPV/P	544
Spice XCESS	PPV	547
TEN	PPV	548
Azteca America	CL	600
Discovery Español	CL	601
CNN Español	CL	602
Fox Sports en Español	CL	603
ESPN Deportes	CL	604
MTV Tr3s	CL	605
History Channel Español	CL	606
Toon Disney Español	CL	607
Cine Latino	CL	608
VeneMovies	CL	609
Cine Mexicano	CL	610
Gol TV	CL	622
Canal 52 MX	CL	652
MHz 2 Russian TV	B	657
TV Asia	P	685
Zee TV	P	686
MHz 4 Nigerian TV Authority	B	677
The Africa Channel	DP	678
RAI (Italian Television)	P	679
TV5 (French Television)	P	686
Sports PPV	PPV	701-708
NBA TV	DSP	749
NBA Previews	PPV	750
NBA League Pass	PPV	751-759
NHL	PPV	771-780
Digital Cable And Me	DC	908
ON DEMAND Help	DC	909
Comcast Internet Help	DC	912

[1] Subject to HDTV availability in your area. Tuning to HDTV channels requires a digital converter or digital cable card. Not available in all Comcast areas. A digital converter is required for access on channel 100-999.

LEGEND

B = Basic	D = Digital Plus	F = Family Tier	HD = High Definition TV
D = Digital Classic	DSP = Sports Entertainment Pack	SVOD = Subscription Video On Demand	EO = East Coast Feed
DP = Digital Plus/Classic	P = Premium	PPV = Pay Per View	WO = West Coast Feed

8 CHANNEL LINE-UP

ATTACHMENT 3

Existing Customer? **Register** Already Registered? **Login** Search

DISCOVER THE DIRECTV DI

Order Now
Packages
Receivers
Premium Channels
International Channels
Sports Subscriptions
Pay Per View
DIRECTV Exclusive
Customer Service
My Account

SIX REASONS to switch to DIRECTV today

Brilliant Picture

DIRECTV provides 100% digital quality [illegible] channel, all the time.

2 The Most Sports in HD
3 Exclusive Programming
4 The Best National HD Channels
5 Cutting-Edge Technology
6 Superior Service

MYTHS
cable companies dish out about satellite TV

"The equipment is too expensive."
You get FREE installation of a 4-room DIRECTV system. There's no equipment to buy. (Lease fees apply.)

"It's too difficult to install!"
Our professional installers will take care of everything for you and show you how easy it is to get the most from your DIRECTV service.

"I can't get local channels with satellite."
Nationwide to neighborhood, DIRECTV has your favorite local channels included in every programming package.†

"My signal will go out in bad weather."
DIRECTV delivers a digital signal 99.9% of the time, rain or shine.

DIRECTV HD
DVR Scheduler
Latest News
DIRECTV Rewards
High-Speed Internet
Video Lounge

Sign up For Emails

Hear about new DIRECTV products, exclusive sales & special offers.

Email Address
(Go)

Existing customer? Log in

dish NETWORK

Current Customer log-in

• register now
• forgot your username

UserName: | Password:

Offers | What's on DISH | Our Products | Customer Service

SEARCH

Offers
- Overview
- Best Programming Offer
- $10 for 10 Offer
- Our Best HD Offer Ever
- Ofertas Latinas
- International Offers
- Existing Customer Offers
- Additional Offers
- What's New
- Why DISH?

Save up to
$800
on a Sharp
AQUOS™ HDTV

Learn More

DISH NETWORK IS TOTAL VALUE.

Start saving about $31/month* over digital cable.

Offer ends soon!

- The Lowest All-Digital Price Nationwide Every Day
- The Leader in HD - 3 mo HD FREE for 6 months!
- FREE upgrade to a DVR, or the best HD DVR available today
- Get 3 months FREE of HBO and Cinemax!

Order Now!

Special HD Offer

Get our largest selection of DishHD programming, **FREE for 6 months** with a ***FREE upgrade*** to our top-rated dual-tuner HD DVR!
Learn More

DishBUILDER

We know satellite TV can seem confusing. Our interactive DishBUILDER helps you get EXACTLY what you want at the price you want.
Learn More

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Legal Agreements and Policies | *Do Not Call Policy* | Site Feedback
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Get DISH Network up
enter e-mail addre

Mr. MARKEY. Thank you, Mr. Cohen, very much. Our next witness is Gail Torreano, who is the President of AT&T Michigan. Welcome.

STATEMENT OF GAIL TORREANO, PRESIDENT, AT&T MICHIGAN, DETROIT, MI

Ms. TORREANO. Thank you very much, Mr. Chairman, and the other members of the subcommittee for inviting me here today. AT&T's PEG product is a reflection of our commitment to consumers as well as our communities. AT&T is very proud of its PEG product. It is robust, it is innovative, and it is high quality. AT&T is investing over $5 billion by mid-2008 to upgrade its telecommunications network and bring fiber closer to our customers' homes. Over this advanced network, AT&T is offering a suite of IP-based services, including U-Verse TV. In fact, AT&T created 1,200 new positions in Michigan in 2007, the majority of which are union jobs and are supporting this U-Verse deployment. AT&T's PEG offering, which we rolled out last summer, reflects the innovative nature of U-Verse TV itself.

It is available at no additional cost with any U-Verse TV package, and I brought a demonstration that I would like you to turn to your left so that you can see what it is like.

[Video shown.]

Ms. TORREANO. If I may continue.

Mr. MARKEY. Please.

Ms. TORREANO. I am sorry about the low sound. Hopefully you picked up some of it.

Mr. MARKEY. We apologize to you for the low sound.

Ms. TORREANO. As you can see, the U-Verse PEG product is different from traditional PEG products offered by incumbent cable providers, but these benefits clearly—or these differences clearly benefit our customers in the communities in which we all live. For instance, a Dearborn resident who owns a small business in Southgate, Michigan, will be able to watch a Zoning Commission hearing from his home as he sees what his neighboring community is doing. And the PEG content is available on Channel 99 no matter where you are in the United States watching our product. AT&T has conducted scores of demonstrations and technical discussions about the PEG product with various elected officials and other stakeholders. We have made adjustments to the product in response to the reactions that we have received from local communities, and we will continue those ongoing dialogues as we continue to enhance the product.

For example, AT&T's PEG product will now remember the customer's last programming selection, making it easier for the customer to jump to that favorite PEG channel and see that immediately when they go on the TV. In sum, the very technology that will allow AT&T to alter the competitive landscape for video services will likewise issue a new era of community programming. I appreciate having the opportunity to be here to share a bit about our product and have the opportunity to answer your questions. Thank you.

[The prepared statement of Ms. Torreano follows:]

STATEMENT OF GAIL F. TORREANO

My name is Gail Torreano, President of AT&T Michigan. Among other things, I am responsible for AT&T's community and government affairs in Michigan. In that role, I am familiar with the Public, Educational and Governmental (PEG) programming made available in connection with AT&T's U-verse TV product, as well as our extensive efforts to incorporate feedback from communities into our evolving PEG capabilities.

AT&T's approach to PEG programming is driven by a commitment to carry the programming in any community we serve that seeks carriage; an insistence that our PEG capabilities reflect what our customers have come to expect from our competitors; and a continuing effort to enhance the product as technology and customer demand evolve. With these principles in mind, AT&T is proud of the PEG product that it has deployed; it is robust, distinctive and of high quality.

In this statement, I will outline the basic contours of AT&T's U-verse TV deployment; describe the particular characteristics of the PEG capabilities available with U-verse TV; summarize our beneficial efforts in Michigan and elsewhere to obtain critical feedback from our local communities regarding our PEG product; and, in the process, address some of the concerns that have been raised regarding the unique characteristics of our PEG service.

AT&T'S IP VIDEO DEPLOYMENT

AT&T is investing over $5 billion by mid-2008 to upgrade its telecommunications network and bring fiber closer to AT&T customers' homes. More fiber in the ground, closer to customers, will make it possible for AT&T to provide a groundbreaking suite of Internet Protocol (IP)-based services over its existing network. These services will include broadband Internet access, IP telephony (VoIP), and AT&T's IP-based TV (IPTV) service called AT&T U-verse TV.

AT&T's U-verse effort represents the largest rollout of IPTV technology to date in the world, and the features, functions and competitive impacts of U-verse TV will prove to be equally unprecedented. Using a client-server delivery model, and next-generation compression and modem technology developed specifically for U-verse, AT&T will deliver hundreds of television channels (dozens of them in high definition) to consumers over a largely copper-wire network originally designed to carry traditional telephony service. 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 full potential.

AT&T began its commercial offering of U-verse TV in late 2006. As of the end of 2007, after just one year of service, AT&T already had signed up 231,000 customers - up from 126,000 customers just three months earlier. As of January 24 of this year, AT&T had deployed the U-verse technology to 7.9 million living units. Our target is to be able to make the service available to 30 million living units in our local service territory by the end of 2010. In short, U-verse TV is a competitive game-changer; it brings fresh, innovative IP-based services to consumers thirsty for choice for their video services.

THE U-VERSE PEG EXPERIENCE

AT&T's PEG offering benefits directly from the new communications and broadband technology that enables the U-verse suite of services. It operates as an application that integrates content obtained via a secure IP-based connection, 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). Most importantly, U-verse unifies the full range of PEG programming in a given Designated Market Area (DMA) at a single, easy-to-find location. And, PEG programming is available - at no additional cost - in connection with any U-verse TV package.

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, as it is a prime location. It bridges the local station line up with the national channel line up, which begins at Channel 100. That is, customers find PEG programming before reaching the multitude of national broadcast stations.

At the PEG channel, a customer sees an alphabetical listing of all the cities with PEG programming available in her DMA. Once she selects a city from that menu, she can then choose from a list of programming available for that city. Moreover, while watching, she can choose to display a navigational bar on screen to select different PEG programming made available within that city. This allows a seamless

change from one PEG program to another. Alternatively, she can choose to ″hide″ the navigational bar and watch full-screen PEG programming.

AT&T's method for PEG carriage has several inherent benefits. First, PEG programs are available to much larger audiences because distribution is not limited to town borders. Unlike most typical cable customers, U-verse subscribers will be able to keep track of events in surrounding communities, where they might work or attend school, or where family members and friends live. If, for instance, the City of Livonia has produced premier educational programs, residents in, say, Royal Oak will be able to enjoy them. Or, a Dearborn resident who owns a small business in Southgate will be able to watch a zoning commission hearing in that neighboring community from the comfort of his home. Second, the new service brings programming from multiple municipalities in a DMA together in an easy-to-remember channel location. Among other things, this ensures a consistent, predictable experience across the U-verse platform; all U-verse customers will know exactly where to go for the available PEG programming in their area. Third, 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 more flexibly to access their PEG in a manner that suits their interests and schedules.

COORDINATION WITH COMMUNITIES

AT&T launched its first PEG market in July 2007. As of today, we have the product operational in 14 cities with over 40 PEG channels. In doing so, we have remained sensitive to the reactions and observations of our local community partners. Among other things, AT&T established various demonstration locations where cities could experience AT&T's PEG product on the U-verse system and provide their suggestions, reactions and concerns regarding the product.

In Michigan, in particular, AT&T has gone to great lengths to involve local communities in the process of enhancing our PEG capabilities. Our implementation team has conducted technical meetings with 39 of the 45 communities that have made requests for carriage of PEG programming and has conducted similar meetings with numerous other cities that have merely requested information about PEG. In addition, AT&T has conducted scores of demonstrations of U-verse TV and the PEG product with other stakeholders, including legislators, Public Service Commission and Attorney General staff, and representatives from various municipalities.

This concerted effort to involve local government and other officials in the development of our product has born fruit and been translated into actual modifications to the PEG offering. Just by way of example, in response to municipal suggestions, AT&T added a PEG menu tab on the U-verse main menu. In addition to accessing PEG at Channel 99, an end user can access the PEG channel from the main Electronic Program Guide menu screen by selecting ″Local Public Education and Government.″ No other channel on AT&T's system has this capability. Additionally, AT&T's PEG product will now remember the customer's last programming selection, making it even easier for the customer to jump to her favorite PEG content.

DIFFERENT IS BETTER

AT&T acknowledges that not all local communities are comfortable with some of the more original attributes of the U-verse PEG offering. In particular, some communities have voiced concerns about the placement of all PEG programming at a single channel, requiring in some cases an additional step of choosing among a menu of community programming.

This is a difference as compared to more traditional PEG products offered by incumbent cable operators, but it is a difference that clearly benefits our customers and the communities in which they live. With U-verse, the customer can access from a single, easy-to-remember channel (or a dedicated tab on the U-verse main menu) all PEG programming that communities in the relevant DMA have asked to be carried on AT&T's system. This is a significant benefit for customers who live and work in neighboring communities and therefore have an equal interest in government or school activities in multiple locations, who wish to keep track of community events where their family and friends live, or who want simply to monitor happenings in surrounding communities. Thus, AT&T has expanded exponentially the PEG viewing choices of its customers and, in turn, offered local communities and PEG programmers a much larger audience for their broadcasts.

Moreover, by placing PEG content on a common channel across AT&T's network, AT&T can better promote Channel 99 nationally so that customers will know, wherever they live, that they can find important community information on Channel 99. Indeed, AT&T has already assembled a comprehensive promotional campaign to notify AT&T subscribers that PEG content will be found on Channel 99. 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 sum, the very technology that will allow AT&T to alter the competitive landscape for video services in general will likewise usher a new era of community programming.

Mr. MARKEY. Thank you, Ms. Torreano. And our final witness is Annie Folger. She is Executive Director of the Midpeninsula Community Media Center from Palo Alto, California. We welcome you.

STATEMENT OF ANNIE FOLGER, EXECUTIVE DIRECTOR, MIDPENINSULA COMMUNITY MEDIA CENTER, PALO ALTO, CA

Ms. FOLGER. Thank you. Good afternoon. I actually run a nonprofit PEG access organization serving Palo Alto and five surrounding jurisdictions. I represent the Alliance for Community Media and over 3,000 PEG access centers that operate 5,000 local community channels. On behalf of our members, community television producers and viewers, we thank Chairmen Dingell and Markey and the members of this subcommittee for inviting the Alliance to speak with you today. Alliance members are here from California, Illinois, Indiana, Kentucky, Michigan, New York, Ohio, Virginia, and Washington, D.C. PEG access owes its existence to the visionaries in Congress who protected the franchise process to create a platform for local communication. In Palo Alto, for example, we carry Representative Eshoo's town meetings live on our channels, answering the e-mails of constituents who cannot attend.

But in the past 2 years there has been a major push to undermine local cable franchising. The FCC has overruled Congress, assigning itself powers that Congress meant for local communities. Industry-backed legislation in 17 states has further harmed public access. Thirty years of community investment in PEG has been turned on its head. We welcome competition but not at the expense of PEG access obligations. Representative Markey noted the dangers of this de-regulatory fervor in an address a year ago in Memphis, when he said we will not let telecommunications companies or the FCC chill PEG access television. At this point, we would like to start our video showing how long it takes to load a PEG channel on U-Verse at a typical home in Cupertino, California. First, the customer flips through the commercial channels, then he loads a PEG channel.

The challenge for PEG is not digital technology. Many PEG centers have already moved into digital technology for production and transmission. The challenge is preserving PEG signal quality, function, channel placement and funding. Let me give you an example. AT&T's PEG platform consigns PEG channels alone to a format that is inferior to commercial channels in virtually every way that matters to a viewer. For example, AT&T's PEG product cannot closed caption the educational programming that our hearing impaired students rely on. Most DeAnza Community College pro-

gramming is closed captioned, as California law requires. AT&T, however, will not pass through the closed captioning DeAnza provides. This means that our disabled students cannot be served as the law and common decency demand.

But the lack of closed captioning is just one of the several shortcomings of AT&T's PEG product. PEG channels in U-Verse cannot be recorded on DVR, take from 45 to 90 seconds to load, are harder to find, have no second audio program for Spanish language or other translations, and only 25 as much resolution as other channels, have a smaller picture, stutter when used for sports, dance or motion, and have no last channel or favorites capability on the remote. If AT&T's PEG product is so cutting edge, why aren't other basic commercial programmers on AT&T's system seeking the same treatment? Let us look at the broader picture. The threats currently faced by PEG in Palo Alto are being played out across the country, but the problems go far beyond those presented by AT&T's PEG product.

Phone and cable companies may tell you that they are taking care of PEG access, but the reality can fall short of that. PEG funding in Ohio, Missouri, Florida, and Wisconsin will end in less than 5 years. Comcast closed PEG facilities in 9 communities in northern Indiana and 12 in Michigan. Salina, Kansas is losing more than $130,000 this year as a result of operators' interpretation of new state laws. As more of our media is consolidated, outsourced, regionalized, and controlled by people far away from our home towns, the local commitment of our PEG channels becomes all the more important. Whether it is in an urban neighborhood or a small town, we need local media resources like PEG access. To ensure PEG's future, Congress must act to strengthen laws protecting PEG access.

We look to our leaders in Congress to preserve the ability of local communities to express their unique interest, to know their neighbors, to stay informed. Let industry and the FCC know that efforts to imperil PEG will not be tolerated or allowed to stand. We ask you to reinvest in our local communities for which PEG access is the only and last remaining local television by making sure that community programming grows and thrives in the future. Thank you for your time. I look forward to your questions.

[The prepared statement of Ms. Folger follows:]

BEFORE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY COMMERCE, SCIENCE AND TRANSPORTATION

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS SERVICES IN THE DIGITAL AGE

Testimony of

ANNIE FOLGER

Executive Director
MIDPENINSULA COMMUNITY MEDIA CENTER,
PALO ALTO, CALIFORNIA

on behalf of

The Alliance for Community Media

JANUARY 29, 2008

ROOM 2322, RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D.C.

Good afternoon, my name is Annie Folger, Executive Director of the Midpeninsula Community Media Center in Palo Alto, California. We are a non-profit organization responsible for managing the public, educational and government ("PEG") access channels serving the City of Palo Alto and five surrounding jurisdictions. I speak to you on behalf of my community PEG center and the members of the Alliance for Community Media. The Alliance represents over 3,000 PEG access centers across the country. Our thousands of members, millions of community television producers and tens of millions of viewers thank Chairman Dingell and Chairman Markey and the members of this Subcommittee for inviting me to speak with you today on the important topic of the future of PEG access in the digital age.

PEG access owes its existence to the visionaries in Congress who recognized that the franchising process created an unprecedented opportunity for localized and diverse content that responds to the unique needs and interests of each particular community.

Thanks to this vision, community media has grown and thrived since the 1984 Cable Act. Members of Congress have repeatedly affirmed the importance of PEG access to the community.

PEG communities now produce more than one million hours of original programming per year. Tens of thousands of people are first taught by PEG centers to use video equipment and computers for the benefit of their communities. Over the past 35 years, PEG has become an irreplaceable part of community dialogue, participation and local identity. Alliance members in the room today have come from California, Illinois, Indiana, Kentucky, Michigan, New York, Ohio, Virginia and Washington, D.C., representing PEG operations across the nation – all states in which PEG access is threatened in the current, chaotic environment.

The Alliance testified before this Committee nearly two years ago in connection with the then-proposed federal franchising legislation. Since that time, a major push has been underway for control of the cable market. Massive dollars have been spent by telephone and cable companies on ad campaigns and lobbying to influence legislation.

PEG support is eroding on several fronts. Video service providers have attempted to deprive PEG channels of the same viewer accessibility, signal quality, channel functionality and channel positioning that they afford to all other commercial programmers. Since 2005, state cable franchising laws have passed in 17 states, and most are being used to dismantle PEG support and to damage channel quality and accessibility. In just the last year the FCC adopted rules that

assign itself powers that Congress rightly placed in the local community. The FCC rulings are fraught with provisions and conditions that undermine the development and viability of PEG access in the future.

All of this has been done in the name of promoting competition. We welcome competition. But it is not an excuse for shirking or dismantling PEG access obligations that have provided direct service to the local communities for over thirty years. Chairman Markey noted the dangers of this deregulatory fervor in an address a year ago in Memphis, Tennessee, when he said: "We will not let telecommunication companies or the FCC kill PEG access television."

These assaults on PEG have resulted in a chaotic environment for PEG centers, programmers and viewers. And they threaten the ability of PEG to fulfill the vital public interests that it serves – interests that Congress has recognized and fostered repeatedly ever since the Cable Act was first enacted in 1984.

To put this issue in perspective, PEG funding constitutes less than *a quarter of 1%* of cable revenues in this country. And yet over a million hours of local programming result each year. While PEG channels are 100% devoted to the local public, less than one half of 1% of programming on commercial stations today – that's only 17 seconds per hour! – is devoted to local public affairs.

Communities and PEG centers across the nation are experiencing a variety of different kinds of threats to their PEG channels. They include:

- Cable operators relegating PEG channels to the inferior status of a mere Internet application rather than a true video channel.
- Operators moving PEG channels to high digital tier channel numbers that require subscribers to pay for additional equipment to view PEG channels.
- Substantial reductions in PEG monetary support due to operators' unilateral interpretations of new state laws or FCC rules.
- Shutting down of PEG studios by operators.
- Operators forcing PEG centers or local governments to purchase new transmission capacity to be able to send PEG programming from PEG studios or city halls to the operator's headend.
- Freezing the number of PEG access channels that an operator will provide, with no opportunity for growth.

PEG in a Digital Environment.

The primary challenge for PEG access television is *not* digital technology and transmission, but rather how infrastructure-based video providers, whether they are a traditional cable operator or a telephone company, treat PEG in terms of

signal quality and functionality, subscriber access to PEG channels, channel placement and PEG funding resources.

Many PEG centers have already moved into digital technology for production, post-production, and to some extent, signal transmission. PEG centers are fully aware that this migration to an integrated "end-to-end" digital environment will continue, and we are committed to planning for and implementing reasonable, cost-effective solutions.

Contrary to industry claims, the Internet is not a replacement for PEG. Many, if not most, PEG centers already have websites, and many stream video content from their websites. But that is no substitute for reaching the public through dedicated video channels on a cable system. If it were, then over-the-air broadcasters and traditional cable channels like CNN and ESPN would presumably abandon the expense associated with transmitting their video channels and rely exclusively on the Web. But of course, they do not. Rather, they use websites as a complement to, rather than a replacement for, their video channels.

My own community of Palo Alto, California, has already begun to suffer from AT&T's shirking of its PEG obligations in ways that will also affect other communities across the country.

AT&T's "PEG Product" in Palo Alto.

Let me begin with the example with which I am most personally familiar: The problems that the Midpeninsula Media Center has encountered with AT&T's so-called "PEG product" on its U-Verse system that is being marketed in the Palo Alto area. Because AT&T's "PEG product" is the same virtually everywhere, the problems my community has encountered will occur everywhere AT&T extends its U-Verse video offering.

Palo Alto has seven PEG channels that deliver a wide variety of diverse programming of great interest to our residents. Rep. Eshoo's town hall meetings, for instance, are carried live on one of our PEG channels. She reaches constituents who cannot make it to the meeting and answers questions that constituents e-mail to her while they're watching. Similarly, our state senator, Joe Simitian, produces a show called *Capital Focus* that runs on one of our PEG channels. But these are just a few of the many examples of diverse and locally-responsive programming that our residents can watch on our PEG channels and *nowhere else.*

AT&T's planned "PEG product," however, would radically change our PEG channels. It would make our PEG channels substantially inferior to every other popular commercial channel on AT&T's system in virtually every way that would matter to a viewer: in terms of ease and time of retrieval, in terms of signal quality, in terms of channel functionality, and in terms of channel location.

AT&T's method and format for delivering PEG access channels to subscribers is fundamentally inferior to that of Comcast, our incumbent cable operator. Also unlike AT&T, Verizon, the other major telephone company entering the video market, is operating hundreds of cable franchises across the country in a way that permits it to meet the same PEG public interest obligations as incumbent cable operators. Unlike incumbent cable operators and Verizon, PEG channels on AT&T's system are not delivered as television channels at all. Instead, PEG channels – alone among all other video channels on AT&T's lowest priced service tier – are delivered as if part of an Internet-based system separate and unequal as compared to the full-screen format and picture resolution of other channels carried on AT&T's basic cable tier. Commercial programmers get red carpet treatment, while PEG programmers must communicate through a small door in a back alley.

Attached as Exhibit A to my testimony is a letter dated November 29, 2007, to AT&T from the Palo Alto Joint Powers Authority. It describes the shortcomings of AT&T's so-called "PEG product." We do not believe that AT&T's euphemistically named "PEG product" complies with California's new state cable franchising law or with the FCC's closed captioning rules. AT&T disagreed in their response (see Exhibit B). More importantly for our discussion

today, AT&T does *not* dispute the description of the deficiencies built into its "PEG product" set forth in the Joint Powers Authority's November 29 letter.

If a picture is worth a thousand words, then a video is worth considerably more. We have supplied you with CDs of AT&T's so-called "PEG product." Your own eyes will reveal shortcomings that no engineering report can describe or refute as effectively.

Based on correspondence, meetings and demonstrations by AT&T, we noted the following serious deficiencies in AT&T's delivery of PEG – deficiencies that will be present in *every* community in which AT&T's U-Verse system is deployed:

- **Channel Placement**. Our current PEG channels are located on channels 26, 27, 28, 29, 30, 75 and 76. Yet AT&T will move all of our PEG channels to channel 99.
- **Submenus**. Our PEG channels will be retrievable only after the subscriber scrolls through a maze of confusing menus and submenus located at channel 99.
- **Channel Latency**. Merely retrieving a channel can take well over a minute—as compared to less than a second for commercial channels.
- **Degraded Resolution**. AT&T's method of transforming all PEG television channels into Internet video streams means that

the quality of PEG channels is inevitably compromised when 75% of the original picture detail is discarded. (See Exhibit C attached.)

- **Reduced Size**. When originally accessed, PEG channels will be reduced to one-quarter the screen size of all other basic tier channels. The subscriber may enlarge the PEG channel by selecting the zoom option, but that exacerbates the inferior picture resolution of the PEG channel.
- **Reduced Usefulness**. The resulting loss of size and detail in the picture makes it difficult, often impossible, for a student to read written text in a lesson or for a citizen to decipher items on a city council agenda.
- **Degraded Motion**. Programs like high school football and basketball games, involving fast motion and high details, are further compromised by AT&T's Internet streaming techniques. The end result is a viewing experience that has more in common with a YouTube clip than a standard definition TV broadcast.
- **No Closed-Captioning**. The hearing-impaired community may be prevented from accessing programs properly.

Furthermore, AT&T's lack of closed captioning may place PEG programming at risk of violating state or local disability service requirements.

- **No SAP Capability**. All other channels are capable of providing second audio program for second language translation and other innovative uses. This is stripped out of PEG channels in AT&T's U-Verse.
- **No Recording Capability**. Unlike other channels on AT&T's system, PEG channels cannot be scheduled for recording on TIVO or VCR because they are on submenus that cannot be accessed by recorders.
- **No Last Channel/ Favorite Channel Capability**. The remote control cannot be used to return to the PEG channels because they are not actually channels.
- **No Emergency Override**. Under California law, AT&T must comply with the local emergency override requirements of the Comcast franchise until the Comcast franchise would have expired in July 2010. Whether AT&T can comply is unclear. It has recently asked the FCC for a waiver of the FCC's rules concerning the emergency alert system ("EAS") because

> AT&T's U-Verse system is apparently not yet capable of delivering state or local emergency alerts. Unlike Comcast, AT&T is unable to deliver unique programming to a local neighborhood, so would by implication be unable to deliver an emergency alert to an area more localized than the entire Bay Area.

AT&T has argued that these many shortcomings must be tolerated if the competition to cable operators offered by AT&T is to be realized. It touts its failings as benefits. AT&T argues that since its system enables our viewers to retrieve any PEG channel in the entire Bay Area, it offsets the inferior channel quality, functionality and accessibility that our subscribers will suffer in retrieving and viewing their own local PEG channels. We do not share that view. By their nature, PEG channels are local. We doubt our subscribers would prefer to sacrifice the accessibility, quality and functionality of our local PEG access channels in return for being able to access PEG access channels from, for example, Walnut Creek or Oakland.

The real issue is that regional accessibility has nothing to do with the degraded quality they provide us:

- Everyone in the neighboring systems sees CNN and Fox and the other commercial channels - but they are still recordable and navigable. PEG should be, also.
- Like AT&T's system, Verizon's FiOS allows everyone in a metro area to see all PEG channels in the metro area. But unlike AT&T, Verizon's PEG channels are on real channels, not pretend channels. You reach them the same way and they are the same basic quality as other commercial video channels on Verizon's FiOS system.

The bottom line is that AT&T has designed a system that is not in compliance with law or with the intentions of Congress.

Closed Captioning.

I want to add a special word about AT&T's inability to pass through closed-captioning on PEG channels. One of Palo Alto's PEG channels is an educational access channel that is programmed by DeAnza Community College. DeAnza delivers lectures, instruction and other educational material to its students, as well as the public, over its PEG channel. Most of the DeAnza channel's programming is closed captioned, as California law requires it to be.

AT&T, however, will not pass through the closed captioning in DeAnza's programming as it is delivered to AT&T. That, coupled with the reduced picture

size and inability to record DeAnza's programming through DVR capability, would render AT&T's carriage of the DeAnza channel essentially useless to its students. Many of DeAnza's programs include PowerPoint presentations and other instructional tools that will be unreadable and/or obscured by AT&T's reduced picture formatting and open captioning.

The closed captioning issue extends far beyond Palo Alto, however. Many PEG channels are closed captioned elsewhere. Government access channels in Los Angeles, California, Cincinnati, Ohio, and Portland, Oregon, for example, are closed captioned. In Los Angeles, some government access programming is also delivered with SAP capability, enabling viewers to hear the programming in Spanish. As in the case of closed captioning, AT&T's "PEG product" cannot deliver SAP capability on PEG channels.

AT&T's unilateral replacement of closed captioning with always-on open captioning on PEG channels is an inadequate substitute, and blatantly discriminatory to PEG. As anyone who has ever watched captioned programming knows, the captioning obscures a significant part of the screen. For those viewers who do not need or want captioning, their ability to watch the programming is frustrated by open captioning. Moreover, those who need captioning often click the captioning on and off, depending on what is going on in the programming (for example, to see a diagram or a sports replay) – something that closed, but not open,

captioning allows them to do. Finally, AT&T *does* pass through closed captioning on all of the other over-the-air broadcast and commercial programming channels it carries. Only PEG is singled out for open captioning.

The Broader Picture of the Threats Facing PEG.

The threats currently faced by PEG go far beyond those faced by my community in particular, or those presented by AT&T's "PEG product" in general.

Many of the new state franchising laws have no provision for protecting PEG channel capacity allocated in cable franchise agreements or increasing PEG capacity above the number of currently activated channels. Some permit operators to aggregate PEG channels serving multiple communities, thereby eroding the ability to provide truly local community programming.

PEG funding is being eroded by new state franchising laws and the FCC's Video Franchising Orders through reductions in franchise fees, charges to PEG centers for carriage, unreasonable restrictions on what constitutes capital support, and reductions in support from existing cable operators.

In many state video franchising bills, you'll see language that says the companies will make "reasonable, technically feasible efforts" to transmit and interconnect PEG channels. "Reasonable, technically feasible efforts" is lawyer speak. It's an invitation to mischief. What we need are three simple words, "Just Do It."

Recent industry-pushed actions by states, and cable operators' interpretations of them, have posed dire threats to the future of PEG. Just a fraction of the resources that AT&T, Comcast and other companies are putting into ad campaigns and lobbying to influence the outcome of legislative changes would fund PEG access in perpetuity. It's a big stakes game for business. We're here to tell you that, although we lack the public relations and lobbying resources of industry, the stakes are also high for the public as well.

A few examples of the new threats faced by PEG centers in various states follow:

Michigan

Comcast's decision to move all of its Michigan PEG channels up to the channel 900 range is another example of a disturbing pattern of industry steps that seem aimed at destroying the future of PEG. Mayor O'Reilly of Dearborn will discuss that matter in detail. I only add that, if Comcast (which happens to be the incumbent cable operator in my community) were to do the same thing in Palo Alto, it would seriously damage, if not destroy, the ability of our PEG channels to reach many of our residents.

The Michigan Chapter of the Alliance for Community Media found that AT&T's PEG picture quality is substantially reduced in quality as compared to other local programmer signals. Nonetheless, a PEG center is required by

Michigan law to purchase expensive transmission equipment – only to have the final signal degraded by AT&T. There is no excuse for such erosion in quality for PEG access from the quality standards we enjoy on cable systems today.

Elaine McLain of **Clinton Township**, who is a member of the Birmingham [MI] Area Cable Board and Chair of its Cable Action Committee, says she is outraged that AT&T is using a cumbersome menu system and poor picture and audio quality to marginalize the PEG programming on her U-Verse service. We have included a copy of her e-mail to the editor in our packet as Exhibit D.

Following passage of a statewide cable and video franchising law in Michigan, Comcast shut down its PEG facilities in 12 communities.

Ohio

Ohio's state law went into effect in September of 2007, but you can already see the damaging effect on PEG access. In the **City of Wadsworth, Ohio,** Time-Warner has dropped all financial support for PEG to the tune of $138,000 per year. The Miami Valley Communications Council, which represents eight Dayton suburbs in consortium, will be losing its institutional network on April 1st of this year, thereby imposing on its municipal members over $100,000 in new capital costs to replace these services. As a result, public safety plans to connect the security cameras of the local schools to the police department have been

shelved, and the consortium is looking at the loss of more than $114,000 in franchise fees and $50,000 in PEG equipment annually.

In **Mentor, Ohio**, where AT&T has begun service, 40% of the complaints made to the city communications office in the month of January have been about AT&T's failure to provide Mentor's PEG access programming on its system. Dayton Access Television, the public access television provider for Dayton, Ohio, is facing an immediate reduction of $150,000 in its annual PEG support funding, and the city itself will see a drop of approximately 20% in franchise fees.

Many communities throughout Ohio will see even more damaging effects as their franchises expire and the final implementation deadline of the new Ohio law comes to pass, including loss of all PEG funding, reclamation of PEG channels that are used as text-based bulletin boards by video service providers, movement of PEG channels to the digital tier, and barriers to the creation of new PEG channels.

Kansas

After Kansas's state franchising law went into effect, the City of Salinas and other Kansas communities lost hundreds of thousands of dollars in PEG support.

Indiana

One year after Indiana's state franchising law went into effect, Comcast closed its PEG facilities in nine communities in the northern part of the state. PEG Programming ceased in those communities on December 18, 2007. Attempts are

being made to restart these operations, but PEG capital payments have not been made by AT&T, Verizon or Comcast.

Conclusion

Telephone and cable companies may represent to you that they are taking care of PEG access. But the reality doesn't come close to that.

Every day we hear more about the fallout from unilateral decisions made by video service providers about PEG carriage and funding that are made hastily and without full consideration for the implications for the public. The people of this country deserve better.

As more of our media is commercialized, outsourced, regionalized and controlled by people far away from our hometowns, the local commitment of our PEG channels becomes all the more important. Whether it's an urban neighborhood or a small town, we need to have local media resources like PEG access.

Congress can do one of two things: It can leave PEG access twisting in the wind at the mercy of industry's campaign to destroy it. Or Congress can vigorously act to support and strengthen laws protecting PEG access and let industry and the FCC know that current efforts to imperil PEG will not be tolerated or allowed to stand. As you did in 1984, we look to you, our leaders in Congress, to declare your vision in 2008, to preserve the ability of local communities to

engage in local media, to express their unique interests and cultures, to get to know their neighbors' views, and to stay informed on local issues. We encourage you to re-invest in the local community and the many people who rely on PEG access as the only and last local television media by making sure that community programming grows and thrives in the future.

Thank you for your time and attention. I look forward to your questions.

EXHIBIT A

City of Palo Alto
Administrative Services Department

November 29, 2007

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Accounting
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650.323.1741 fax
Purchasing
650.329.2271
650.329.2468 fax
Investments
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Parking Citations
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Area Manager
AT&T External Affairs
Central Coast Region
401 W. Franklin St.
Monterey, CA 93940

Subject: AT&T's Apparent DIVCA Non-Compliance in the Palo Alto JPA Area

Dear Ms. Saxon:

I write on behalf of the City of Palo Alto and the six-member cable television Joint Powers Authority ("JPA") concerning the manner of AT&T's planned delivery of the JPA's public, educational and governmental access ("PEG") programming and franchise emergency override information to subscribers, and the apparent conflicts between that delivery and the requirements of the California Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") and other applicable laws or rules.

As you know, the JPA has previously sent you correspondence on these matters. Specifically, on June 13, I sent you a letter, setting forth the JPA's concerns that AT&T's PEG implementation plan appeared to fail to comply with DIVCA in several respects, including the PEG channel number and replacement requirements of Public Utilities Code Section 5870(b), the PEG signal quality and functionality requirements of Section 5870(g)(3), and the NTSC-capable requirements of Section 5870(b). In the letter, the JPA requested a written explanation from AT&T as to how or why it believed its PEG implementation was consistent with DIVCA. To date, we have yet to receive any such written explanation.

On August 2, I wrote you, again, reiterating the JPA's concerns that AT&T's PEG implementation appeared to be inconsistent with DIVCA. The letter also noted that AT&T's apparent inability to pass through closed-captioning contained in PEG programming delivered to it also raised questions about possible non-compliance with FCC rules governing the closed-captioning obligations of cable operators and other multichannel video programming distributors.

P.O. Box 10250
Palo Alto, CA 94303

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After I sent the August 2 letter, you responded by letter, dated August 13. In addition, on August 23, a conference call between AT&T and JPA representatives was held, and thereafter, on September 6, JPA representatives attended an AT&T PEG demonstration in San Ramon. While we certainly appreciate the time AT&T devoted to the August 23 conference call and the September 6 demonstration, neither resulted in any diminution or alleviation of the JPA's concerns about whether AT&T's PEG plans complied with DIVCA or other applicable law. Moreover, neither occasion resulted in any explanation from AT&T as to how its PEG plan was consistent with those legal requirements.

I wrote a third letter to you on behalf of the JPA on September 12. That letter informed you of our view that the September 6 demonstration did not satisfy the JPA's concerns about whether AT&T's PEG implementation plan satisfied the requirements of DIVCA and other applicable laws and rules. In addition, the letter pointed out that AT&T's PEG system created substantial problems for the JPA's De Anza College educational access channel, because AT&T's system would not pass through the closed-captioning that De Anza by California law is required to include in its programming, and because the reduced format and lack of DVR capability associated with AT&T's PEG plan would render De Anza's programming of little or no use to its student viewers. The September 12 letter, therefore, requested that AT&T continue to work with De Anza College to ensure that De Anza's programming is carried by AT&T and to provide a proposed timetable for resolving De Anza's closed captioning and other concerns. To date, the JPA's requests to AT&T concerning the De Anza channel have gone unanswered.

Although AT&T has not responded, in writing, to my September 12 letter, it did invite JPA representatives to attend a demonstration of AT&T's carriage of the JPA's PEG channels in San Ramon on October 18. I, along with other JPA representatives, attended that demonstration, and we appreciate AT&T's hospitality in holding the demonstration.

The October 18 demonstration did not, however, allay the JPA's concerns that AT&T's PEG implementation may be inconsistent with DIVCA and other applicable rules or laws. To the contrary, it tended to confirm those concerns.

On October 25, I e-mailed Tedi Vriheas of AT&T, setting forth the Emergency Alert System ("EAS") requirements of Palo Alto's recently-adopted DIVCA implementation ordinance, Palo Alto Municipal Code ("P.A.M.C.") § 2.11.110, and requesting confirmation that AT&T's video system will comply with those requirements. To date, I have received no response to my request from AT&T.

Based on AT&T's demonstrations and its lack of response to many of our requests, we can only conclude that AT&T's PEG and franchise emergency override

implementation plans appear to fail to comply with DIVCA in at least the following different and independent ways:

Channel Placement.

Public Utilities Code § 5870(b) provides: "*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 AT&T proposal uses a scheme of locating all PEG channels beneath several menus and submenus on channel 99 using a media browser platform, segregating PEG channels into a content area totally separate from all other commercial video channels. The JPA's PEG channels would not have the same designations as they do on the incumbent cable operator's system (channels 26, 27, 28, 29, 30, 75 and 76). AT&T's current channel 99 PEG channel placement scheme does not appear to be an issue of technical feasibility, but rather it is apparently a business decision. There is no technical reason why PEG channels could not be treated in the same manner as commercial broadcast channels, other than that to do so might leave the current AT&T system design with less bandwidth than AT&T would like to have for non-video purposes. We believe that AT&T's PEG model, which may have been consistent with the law of another state, appears to be out of compliance with the requirements of DIVCA and will require modification in order to be complaint.

Non-NTSC Complaint.

Public Utilities Code § 5870(b) also requires that, when transmitting PEG channels, the holder of a statewide franchise must ensure that: "*Each channel shall be capable of carrying a National Television System Committee (NTSC) television signal.*" Industry best practices and SMPTE define the digital equivalent of an NTSC standard video signal as 648 x 486 (with sync and data lines eliminated). The standard viewable NTSC signal has 314,928 pixels, while AT&T's proposal would only have 76,800 pixels for PEG channels. This means that 75% of the PEG video signal would be discarded by AT&T's transmission scheme. No amount of set-top "up-conversion" can compensate for such a drastic reduction of original information once it has been discarded. Additionally, an NTSC television signal carries both closed-captioning and secondary audio (SAP) content. The AT&T PEG proposal discards this information and has no provision to include it in the PEG channels sent to subscribers.

Signal Quality and Channel Functionality.

Public Utilities Code § 5870(g)(3) requires: "*The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the*

lowest cost tier of service unless the signal is provided to the holder at a lower quality or less functionality." For the reasons stated in the "Non-NTSC Compliant" section above, a 75% reduction in precompression PEG channel video information cannot be considered of "*similar quality.*" On the issue of functionality, local broadcast and other commercial video channels on AT&T's system will enjoy a number of features and functionalities that PEG channels do not:

- PEG channels are neither available in the main program guide nor are they searchable using the DVR interface.
- Individual programs carried on PEG channels are not listed in AT&T's U-Verse system program guide.
- PEG channels cannot be recorded using DVR capability.
- PEG channels cannot be programmed into subscribers' channel "favorites" on their remotes, nor will subscribers be able to return to PEG channels promptly via "last channel" capability on their remotes.
- AT&T will not pass through closed-captioning or SAP embedded into PEG signals.
- Other standard U-Verse features, such as picture-in-picture and page-down functionality, are not supported for PEG channels.
- Unlike the case with local broadcast channels and other commercial video channels on AT&T's system, subscribers cannot enter individual channel numbers in their remotes to access any PEG channel. Instead, they must go to channel 99 and sort through several menus and submenus to find a particular PEG channel. Moreover, the latency involved in loading channel 99 and thereafter retrieving and sorting through the PEG menus and submenus is significant – anywhere from a minimum of over 25 seconds up to well over a minute, depending on how fast AT&T's program is running at the time and/or how adept and tech-savvy the subscriber is. And the subscriber must endure this latency and menu-surfing every time he or she wishes to access a PEG channel. In addition, this already significant latency will only become worse when, as we understand, all of the Bay Area DMA PEG channels are added to the channel 99 menu. Furthermore, once the subscriber finally succeeds in accessing the PEG channel, he or she must take yet another step – selecting the zoom function – to make a PEG channel fill the TV screen as broadcast channels do. (In doing so, the PEG signal quality will suffer for the reasons stated in the "Non-NTSC Compliant" section above.)

In sum, in virtually every way imaginable, from signal quality to functionality to accessibility, subscribers' experience in retrieving and viewing the JPA's PEG channels on AT&T's system will be substantially different from, and far inferior to, their experience in retrieving and viewing local broadcast stations and other commercial video channels on AT&T's system.

DIVCA Emergency Override Obligations.

Public Utilities Code § 5880 provides: "*Any provision in a locally issued franchise authorizing local entities to provide local emergency notifications ... shall apply to all holders of a state-issued franchise in the same local area, for the duration of the locally issued franchise, until the term of the franchise would have expired ..., or until January 1, 2009, whichever is later.*" Comcast's franchise, which is scheduled to expire July 25, 2010, has such an emergency override provision, and thus P.A.M.C. § 2.11.110 incorporates that DIVCA obligation and imposes it on state franchise holders like AT&T until July 25, 2010.

We are aware that AT&T recently filed with the FCC a Petition for Limited Waiver of the FCC's EAS rules with respect to AT&T's U-Verse multichannel video service. That waiver request, however, does not absolve AT&T of its emergency franchise override obligations under Public Utilities Code § 5880 and P.A.M.C. § 2.11.110, for several reasons. First, the FCC has ruled that its EAS rules do not preempt local franchise emergency override requirements.[1] Second, the FCC's EAS rules require cable operators and other wireline video service providers to provide state and local EAS capability, 47 C.F.R. § 11.21, yet at least based on AT&T's Waiver Petition, it is only working to have federal government EAS capability, not state or local EAS capability. Third, at least as described in its Waiver Petition, AT&T's planned EAS capability does not appear to be able to distribute local emergency alerts. And fourth, again, at least as described in its Waiver Petition, AT&T will not even offer override capability on many of the channels on its system, including PEG channels, until some later date.

While the JPA certainly looks forward to the multichannel video competition that AT&T intends to bring to JPA area residents, we cannot accept that AT&T's steerage-class treatment of the JPA's PEG channels, and its apparent failure to provide local EAS capability, are a price that should be paid, or which DIVCA permits to be paid, for that competition. It is our reluctant, but definite and ineluctable, conclusion that AT&T's PEG and EAS implementation do not comply with DIVCA.

---

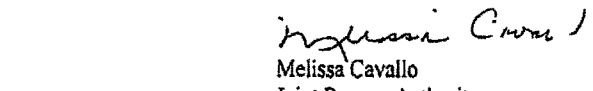
[1] *Emergency Broadcast System*, Second Report and Order, 12 FCC Rcd 15503, 15520 (1997).

I also add that AT&T's inability to pass through closed-captioning in PEG programming delivered to it appears to violate FCC rules, 47 C.F.R. §§ 76.606 & 79.1(c).

The JPA, therefore, requests that AT&T immediately take whatever steps are necessary to make its PEG and EAS delivery in the JPA area come into compliance with DIVCA and other applicable rules and law, and to keep the JPA apprised of AT&T's progress. To the extent that AT&T disagrees with any of our conclusions and believes its PEG or EAS implementation in the JPA area complies with DIVCA and all other applicable rules and law, the JPA requests that AT&T promptly provide the JPA with a detailed written explanation of its position and the factual and legal reasoning behind it. If AT&T fails to do so, the JPA will have no alternative but to consider its legal options to compel AT&T to come into compliance with DIVCA and other applicable laws and rules.

I look forward to your prompt and complete response.

Sincerely,



Melissa Cavallo
Joint Powers Authority
Cable Coordinator

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Director, AT&T – Municipal Affairs
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December 21, 2007

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Dear Ms. Cavallo:

Ms. Bettye J. Saxton forwarded your letter of November 29, 2007. In that letter, you suggest that AT&T California's plan for public education and government ("PEG") carriage does not comply with the requirements of the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") regarding channel placement, NTSC, signal quality and channel functionality. You also suggest that AT&T's franchise emergency override implementation plan fails to comply with DIVCA at the present time. For the reasons set forth herein, AT&T California disagrees with your conclusion that AT&T California's Internet-sourced PEG Product and emergency override implementation plan may violate the law.[1]

DIVCA envisions competitive providers will use a variety of technological choices 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. The Act 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

[1] While AT&T California submits this written response to your letter of November 29, 2007, this is obviously not the first time that AT&T has discussed our PEG Product nor addressed the JPA's concerns. Throughout the implementation process, AT&T hosted several conference calls with JPA representatives. Indeed, AT&T has hosted the JPA at two demonstrations of the PEG product. AT&T California takes exception to the inference in the letter that we have been unresponsive to the JPA's concerns.

PEG Product, a different viewer experience. Primarily, because AT&T's U-verse system does not insert content physically into its network at the local level, as 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 does provide the functionality the law requires while satisfying the public objectives behind PEG programming.

AT&T California recognizes the importance of PEG and welcomes the opportunity to help bring the next generation of community access programming to cities. AT&T California's PEG Product represents a new and innovative way of delivering content that will benefit the communities and our customers. Consumers, for the first time, can access PEG programming from their own city as well as from other California communities. AT&T is providing competitive choice and options to consumers. We are not only investing in our existing infrastructure and in the communities we serve, but also making improvements that offer our customers powerful enhancements to broadband capabilities and a new, competitive video service.

Before addressing your specific concerns, I want to provide you with some important background information regarding AT&T's 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 an application instead of a linear channel.

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 "[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 TV 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 its 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. While 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 things 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 Internet-sourced PEG Product

In order to appropriately respond to the concerns mentioned in your letter, it is first appropriate to more fully describe how AT&T's PEG Product is delivered. You may recall that coincident with the product launch in July of 2007, AT&T established various demonstration locations, including one in San Ramon, where cities could experience AT&T's PEG Product on the U-verse system, even if they are not ready yet to request or implement PEG. I understand that you had the opportunity to attend PEG demonstrations in San Ramon in September and October of this year. Discussions at these demonstrations have enabled AT&T to include city input in the product launch and development. Although AT&T's PEG Product as designed is fully compliant with DIVCA, AT&T has accepted cities' suggestions for reasonable enhancements and improvements. As discussed herein, two improvements already have been developed and others are being actively pursued and investigated.

End User Experience

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 'niche' 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. 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.

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 ("RDP"), an application running on the 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.

Source Content

The source content from a local community is connected to a VC-1 (WM9)[2] 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 24 – City Council").

AT&T's method for PEG carriage differs from legacy cable and 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

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

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 now 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.

AT&T's Response to Your Specific Concerns

1. AT&T's Channel 99 Designation does not violate §5870(b).

Before addressing why AT&T's Channel 99 designation does not violate DIVCA, 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 which presently make it infeasible for AT&T to "mirror" the cable delivery of PEG channeling.

a. <u>Differences in physical network delivery — lack of local insertion capability</u>

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 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.

b. <u>AT&T's Software Solution</u>

AT&T has received suggestions that our PEG Product would be "improved" by making just a particular city's PEG offerings available to AT&T subscribers located only within that city. But limiting viewers' access to PEG by locality would require AT&T to invest enormous resources to increase processing power, only to provide consumers *less* PEG programming than they otherwise will receive on Channel 99. This is the case because each channel provided over AT&T's system is effectively a stream of video "mapped" via software to a channel number that lists that content on the electronic programming guide (EPG). In this context, the channel number is not associated with a frequency or MHz but to a multicast IP address corresponding to a stream of content. Because this mapping occurs back in the network via the network middleware, continuous "balancing" must occur to manage the number of subscribers that are added, the number of content sources that can be mapped to individual channel numbers, and the availability of necessary processing power in AT&T's VHOs in order to deliver service.

IP technology provides the potential for virtually limitless access capacity and content choice, but there are currently practical limits at the VHO on the quantity of channels and differing channel maps that AT&T can support simultaneously. Committing resources to allocate more separate channels to PEG, where the number of supportable channel maps is finite, would work against AT&T's goal of providing consumers with a competitive and attractive choice for commercial content, and would result in consumers having access to *fewer* sources of PEG content. For these reasons, we believe our approach to PEG is both a sound business decision and one that benefits consumers.

c. <u>The AT&T PEG Experience</u>

AT&T's design and chosen software provides 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. (The JPA, according to your letter, offers seven channels). AT&T, were it to mimic cable in its PEG solution, would be forced to send viewers many more channel numbers on the EPG and a very larger number of these would be consumed by PEG. In larger DMAs, such as 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 the result would impair viewers' experience without making it any easier for them to find or navigate to individual PEG channels.

AT&T seeks to provide a commercially attractive alternative to cable. We provide a mix of high definition and standard definition content along with premium channels. Our most inclusive package today consists of over 400+ channels in order to compete

with satellite and the incumbent cable operators. In those markets with 100 (or more) total PEG channels, our channel guide would be overwhelmed were AT&T required to map all PEG channels to a unique channel number. Since we can map to only a limited number of channel numbers, 20% (or more) of the available channels would be used solely for PEG. (By comparison, cable providers typically allocate just a handful of channels for PEG; these are reused for varying locally inserted content throughout a DMA.) 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.

d. AT&T does not violate § 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, combined with the constraints on AT&T's channel map imposed by its processing power and middleware, make it infeasible for AT&T to provide PEG in the form of linear channels listed individually on its programming guide.

2. AT&T's PEG product complies with the NTSC requirement.

Section 5870(b)'s requirement that each channel be capable of "*carrying* a NTSC television signal" cannot be read to require the video provider to *deliver* programming using a NTSC television signal. NTSC is an analog standard that is not compatible with a digital network, like AT&T's IP-based network. Because the NTSC signal relates solely to analog technology, if this provision is read as you suggest, it would mean that an all-digital provider, such as AT&T, would have to convert to analog simply to carry PEG programming. Not only would that be an unwise business decision, it would run counter to the Legislature's stated goal in DIVCA to "promote widespread access to the *most technologically advanced* cable and video services." *See* §5810(a)(2)(B) (Emphasis added). Instead the proper reading of the statute is that while AT&T must *accept* PEG content provided in NTSC form (if the city does not maintain it in form compatible with our network), it has no duty to *deliver* it to its customers in that form. Section 5870(g)(1) affirmatively gives AT&T the right to change the form of the transmission to make it compatible with its chosen technology. AT&T, consequently, can change the form of the transmission (i.e., NTSC) to make it compatible with its IP network (encode per AT&T's PEG spec sheet). Section 5870(g)(1) does not say that AT&T must accept and deliver content "in the same manner or form that is standard in the industry" as it was submitted

by the local entity to AT&T. To read §5870(b) to require that, as the JPA does, would render §5870(g)(1) meaningless.

3. AT&T's PEG Product provides similar quality and functionality to that offered by commercial channels.

Section 5870(g)(3) states that the "PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the holder at a lower quality or with less functionality." AT&T's PEG Product complies with this requirement.

a. Quality.

In interpreting the word "similar," California courts look to the word's common usage and hold that "'[s]imilar does not mean identical.'" *Russ Building Partnership v. City and County of San Francisco*, 44 Cal.3d 839, 849, 750 P.2d 324, 329 (1988). Applying the common usage meaning of "similar" to §5870(g)(3), the viewing experience for PEG content on Channel 99 is similar, although not necessarily identical, in material respects to commercial content on U-verse.

b. Functionality.

For the reasons stated above concerning AT&T's IP network design, AT&T is providing PEG content via an application on Channel 99. AT&T is providing similar functionality compatible with its technology. For example, although individual PEG channels are not available individually on the top level EPG, channel-specific information will be available to the viewer once he or she selects Channel 99. Moreover, PEG channels, unlike any individual commercial channel or application, are promoted on AT&T's main EPG menu. The menu functionality for PEG is thus similar though not identical.

Any minor effect on the viewer's experience due to having to take a second step to locate PEG programming is off-set by the fact that the viewer has easier access to PEG from the main EPG menu and will be able to access a much greater variety of PEG programming, which is one of the stated purposes of DIVCA. *See* §5810(a)(1)(A).[3]

Additionally, the AT&T U-verse PEG product includes open captioning functionality. With open captioning, the captioned text is embedded within the video stream (i.e. within the video viewport). If the source (city) activates open captioning, it is "on" for all viewers, all the time. The FCC has found that open captioning is an appropriate substitute for closed captioning: its regulations provide that open captioning

[3] Contrary to your assertion, there will not be any adverse effect on the time to launch the application on Channel 99 as additional cities are added to the Channel 99 menu.

may be used "in lieu of closed captioning," 47 C.F.R. §79.1(e)(2), to meet federal requirements.

Currently, there is no pre-scheduled DVR functionality for PEG. This means a customer cannot schedule his or her DVR to record a PEG program on U-verse. That does not create a legal issue, however, because the statutory language ties the test of similar quality and functionality to the quality and functionality of the video service provider's lowest cost tier of service. Although PEG will be provided by AT&T on all tiers of the U-verse service, AT&T does not offer DVR functionality as part of its lowest cost tier of service and, based on information and belief, neither do the incumbent cable operators. In any event, a customer can add his or her own VCR or TiVo-like device and record a PEG program while they are watching it. In addition, AT&T is working on potentially providing an archiving feature. Thus, in the future, it may be feasible to allow cities to maintain a selection of recorded PEG content accessible on demand. This enhancement will provide a DVR-like time-shifting functionality for cities. This functionality is currently under assessment.

In sum, in assessing whether AT&T has met the "similarity" requirement, one should evaluate compliance by looking at the system as a totality. AT&T's PEG Product – viewed as a totality - provides PEG access capacity with similar quality and functionality to commercial channels offered on AT&T's basic tier.

That said, AT&T constantly assesses its products and services for areas where improvements can be made. The technology underlying AT&T's PEG product is new and is improving – more features are on the way. For example, in response to municipal suggestions, AT&T added a PEG Menu Tab on the U-verse menu. In addition to accessing PEG at Channel 99, an end user can access PEG Channel 99 from the main EPG menu screen by selecting the Local Public Education and Government button. No other channel on AT&T's system has this capability. This feature has been certified for use and will begin to be rolled out in December 2007. AT&T also is working on an upgrade that will decrease the time associated with launching the PEG application. Additionally, AT&T is working on installation of a "cookie" that would allow an end user one-click access to their "favorite" city PEG content from the menu of cities providing PEG content within a DMA.

4. AT&T's PEG Product satisfies the emergency override requirements of §5880.[4]

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[4] Section 5880 provides:

> Holders of state franchises shall comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be distributed over the holder's network. Any provision in a locally issued franchise authorizing local entities to provide local emergency notifications shall remain in effect, and shall apply to all holders of a state-issued franchise in the same local area, for the duration of the locally issued franchise, until the term of the franchise would have expired were the franchise not terminated

AT&T recognizes the importance of providing public safety information and will provide EAS alerts on its U-verse system in compliance with applicable FCC rules and regulations and §5880 of DIVCA. AT&T currently provides state and local alerts, e.g., National Weather Service alerts, to its subscribers by retransmitting alerts from local broadcasters. In the Federal Communications Commission's Emergency Alert System (EAS) *Second Report & Order*,[5] the FCC ordered wireline providers such as AT&T to participate in EAS. Among other obligations, participants in EAS must provide Presidential alerts on the channels that they offer to their subscribers.[6] The requirement becomes effective 60 days from the Congress' receipt from the FCC of a report on its EAS modifications pursuant to the Congressional Review Act.[7] The Second Report & Order also requires participants to provide State Governors' alerts within 180 days after the Federal Emergency Management Agency ("FEMA") adopts the protocol.[8] To date FEMA has not acted to adopt the protocol. There is no requirement in the EAS for participants to carry local alerts.

While §5880 obligates AT&T to honor any local override capability contained in an existing incumbent's franchise, AT&T disagrees with your interpretation of the statutory requirement. Many local franchise agreements in California first require the provider to provide an EAS fully compliant with the FCC's EAS requirements and then, after that EAS is functional, allow that EAS to be overridden by the city in the event of a local emergency. This is the case with TCI/Comcast agreement.[9] In this situation the local override capability is a "bolt-on" to the federally mandated EAS. AT&T's obligation to provide the local override would be conditioned on its first implementing the federal EAS.

There are however certain local franchise agreements that require local override capability separate and apart from any federally-mandated EAS. In order to provide the

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pursuant to subdivision (m) of Section 5840, or until January 1, 2009, whichever is later.

[5] *Review of the Emergency Alert System*, Second Report and Order, 22 FCC Rcd 13275 (2007) ("*Second Report & Order*"); *see also Erratum*, 22 FCC Rcd 17023 (2007).

[6] *Id.* at ¶11.

[7] *Id.* at ¶83 (as modified in *Erratum*). On November 14, 2007, AT&T requested, to the extent necessary, a time-limited waiver (until July 31, 2008) of the *Second Report & Order*.

[8] *Id.* at ¶55.

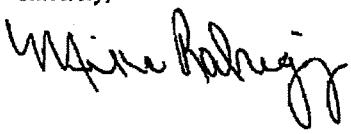
[9] 7.14.1 TCI shall install and maintain an emergency alert system ("EAS") in conformance with FCC regulations. The EAS shall be remotely activated by telephone and shall allow an authorized representative of each of the members of the Joint Powers to override the audio and video on all channels on the Cable System that may be lawfully overridden, without the assistance of TCI, for emergency broadcasts from a location designated by each Joint Powers member in the event of a civil emergency or for reasonable test. Testing of the EAS shall occur at times that will cause minimal Subscriber inconvenience.

local override capability in these jurisdictions, pending full deployment of AT&T's EAS, AT&T has developed a "short term" override capability that will allow AT&T personnel, at the request of a city, to manually enter a multicast message containing a local emergency alert message. The message will appear on all of AT&T's channels, including Channel 99, as a text overlay on the screen and will be distributed to subscribers residing in the impacted county. Long term, as AT&T deploys its EAS, AT&T will move to an automated process to support the local overrides in those cities with the local override requirement.

While the JPA's local franchise does not mandate an EAS capability separate and distinct from the federally mandated EAS, AT&T would be happy to discuss further AT&T's short term local override solution and enabling that solution for the JPA's use pending the roll out of the federal EAS.

AT&T California appreciates the opportunity to address your concerns. AT&T's PEG Product meets the requirements for PEG carriage in DIVCA and will provide our subscribers with more viewing options for PEG content than they have available today.

Sincerely,



cc: Bettye Saxon

EXHIBIT C

AT&T PEG PROPOSAL
CITY OF SAN JOSE CONCERNS

CPUC PRESENTATION 12/12/2007

Ross Braver
408.535.8164
ross.braver@sanjoseca.gov

DIVCA STATES

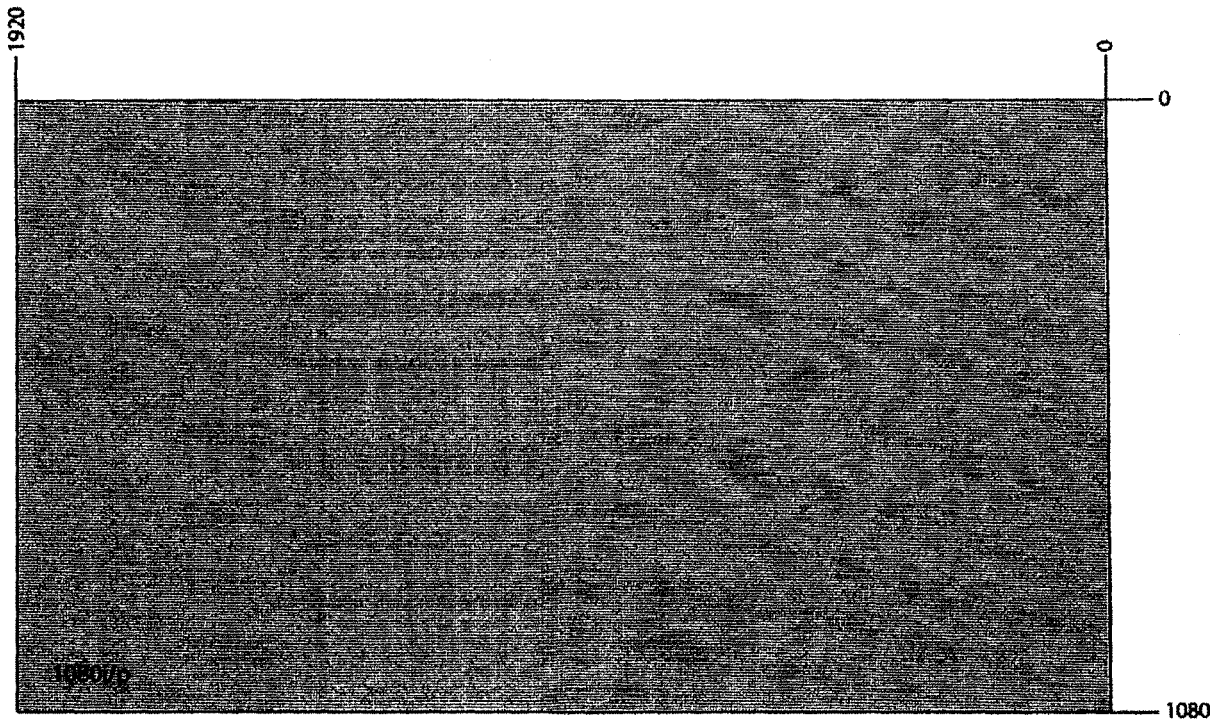
- *"The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service..."*

- *"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..."*

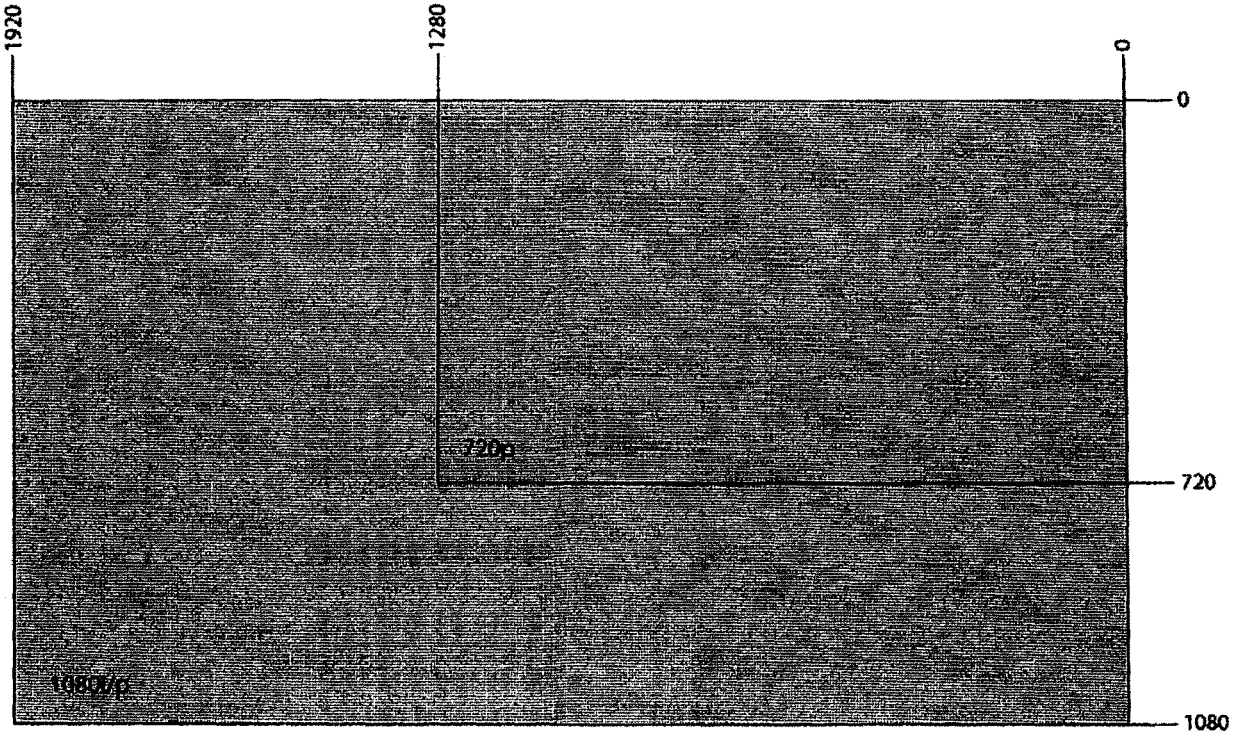
FUNCTIONS COMPARISON

	Commercial Channels	PEG Channels
Record Programs	●	
Search for Programs	●	
Pause Live Programs	●	
Closed Captioning	●	
SAP Audio	●	
Previous Channel "Jump"	●	
Broadcast Quality Video	●	
Broadcast Quality Audio	●	

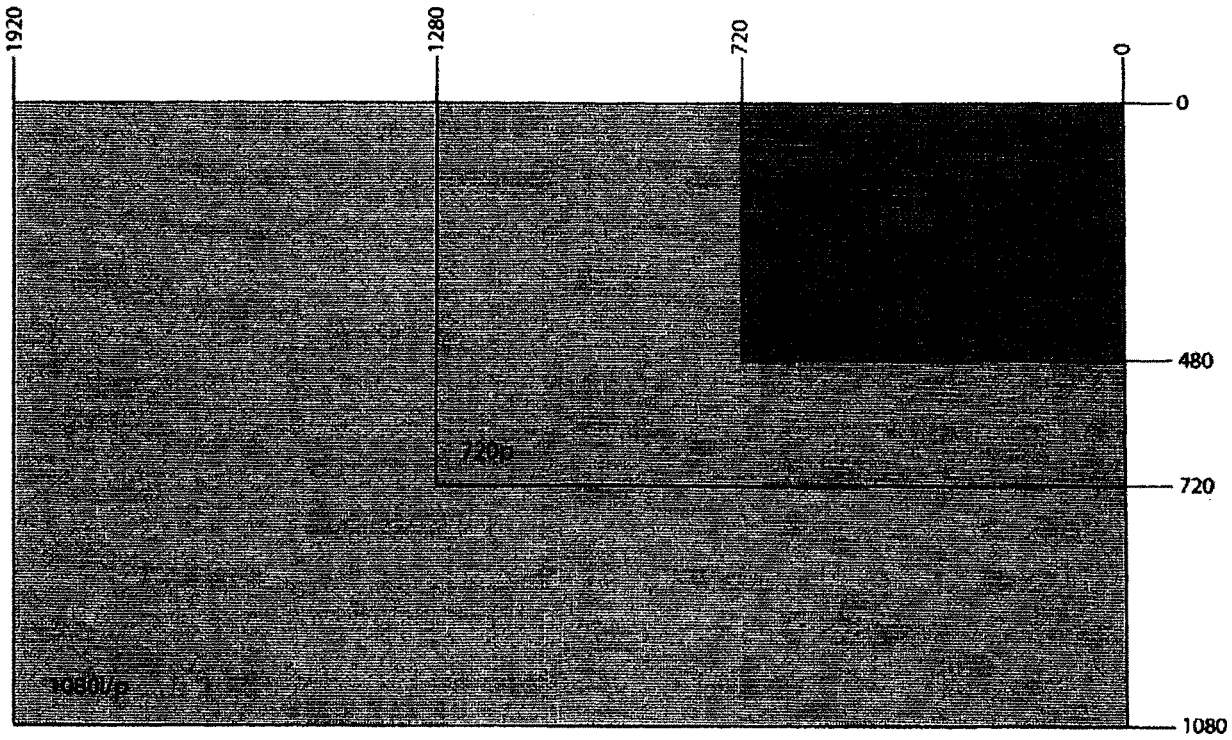
1080i/p



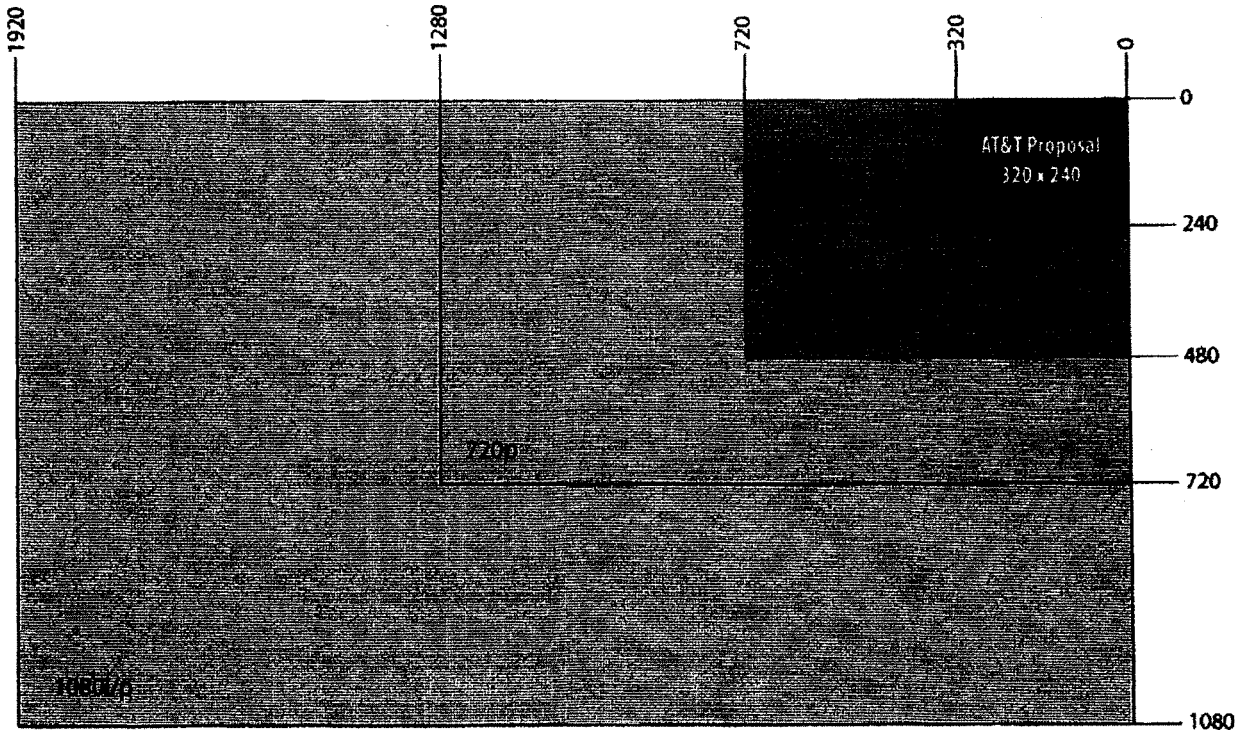
720p



480i/p DV NTSC



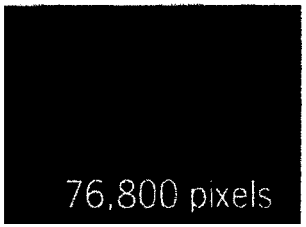
AT&T Proposed Resolution



VIDEO RESOLUTIONS

AT&T Commercial Channels

AT&T PEG



TIME TO NAVIGATE TO CHANNELS
(Including time for user interaction)

Commercial Channels: Under 2 seconds

PEG Channel: 01:27

Ross Braver
408.535.8164
ross.braver@sanjoseca.gov

EXHIBIT D

From: Ekmclain@aol.com
Date: Tue, 8 Jan 2008 19:16:30 EST
Subject: Article Input
To: cttv_michigan@yahoo.com

Linda: You may quote me as one of the first AT&T Uverse subscribers in our neighborhood, Birmingham, MI 48009. Further, please disclose that I am an active member of the Birmingham Area Cable Board (serving: Birmingham, Beverly Hills, Bingham Farms and Franklin for 3 years in March) and Chair of the Cable Action Committee. At the two NATOA conferences I have attended, I have been an outspoken consumer/member with access to the governmental affairs professionals from the public and private sector, including FCC Commissioner Jonathan Adelstein. I am not a telecommunications professional, nor lawyer, nor municipal administrator nor public access producer or technician.
I am a volunteer consumer advocate for fair competition and respect for customer service standards. I began this journey as a regular cable customer who couldn't take it anymore.

1) General impression of the "PEG Solution," i.e. Ch 99 vs rest of the Uverse line up:

GENERAL UVERSE EXPERIENCE:
We have had Uverse IPTV since late July, I believe. While it was initially a rough road with early rollout in our area (some minor installation adjustments, 1 major and 1 minor system wide outage/upgrade, some technical enhancements and a Port 1 VRAD box concern), **when it works---it is spectacular *even without HD flat screen TV's***. The graphics and floating menus, offsite programming and expansive DVR options are impressive even for a nouveau techie like me. We have had immediate access by 1-800-ATT-2020 with few exceptions and been fairly credited when there were failures. We have had informed and professional responses from local technicians and supervisory personnel for trouble shooting and consultation. I have accepted no referral fees and have no financial interest in AT&T products or services. I do not advocate services, but have helped develop a brochure entitled "Choosing A TV Provider" for our four communities.

CH 99 PEG "SOLUTION:" As a citizen of this community who follows local meetings and politics, I cannot give the so called, AT&T "PEG Solution" the same positive review. At best, it should be called the "PEG First Offer to Quiet the Community." Thus far, only Clinton Township is being broadcast and the quality is inconsistent. It is a good start, not a solution. With the advance technology they are applying to expand Uverse and its appeal, AT&T can do a better job with PEG if motivated.

2) Viewer experience watching PEG: Access to CH 99 involves a 10 to 15 second delay with two more instructive screens as everything loads, (as do the CH 92 AT&T Yahoo Games and CH 97 AT&T yellopages.com channels), cannot be saved to favorites or live rewind and cannot be recorded for later broadcast as other Uverse programming. Frankly, the delay is so unlike the instant gratification of the other channel options, who would wait? These new procedures are most confusing for those who seem to want public access most: new digital subscribers, channel surfers and seniors.

OBSERVATIONS AND OPINIONS

Let's be frank. This appears to be a money issue and not a public policy issue. T 1 lines are expensive and budgets are tight in communities all over Michigan. We all saw AT&T's endless bottom line while gaining access to Michigan at the end of 06. I was asked at NATOA, when complaining about these exact cumbersome PEG features, whether anyone "really cares that much about PEG anyway?" I was clear in my response. Local communities, and Michigan as a whole, will NOT go quietly without the support AT&T promised while lobbying in the legislature. Ironically, a review of the **2006 SBC/AT&T Knowledge Ventures ad in the 26th Annual NATOA Conference Program (8/22-25) includes the following:**

"We will provide cities and towns with video franchising fees equivalent to their current agreements."
"We will deliver community programming, disability access and emergency alerts, **and contribute to the funding of community access operations."**

In fairness, AT&T and satellite providers have now begun to provide the very real competition we have craved for so long while suffering Seinfeldian waits for "Cable Guys" who never call, never show or screw up the installation. We don't take it for granted and will hold all to the same high standards of courtesy and professionalism.

If telecoms truly want to invest in the community, quit funding noxious ad campaigns and provide the viewers with seamless access to the public process in this election year when it is more important than ever. And, answer the phone when we call.

Elaine McLain

Mr. MARKEY. Thank you, Ms. Folger, very much. And I ask unanimous consent to enter into the record a letter from the City of Boston on these issues as well. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. MARKEY. The chair will now recognize himself for a round of questions. Mr. Cohen, as the digital TV transition unfolds and cable systems are upgraded to full digital capacity, many channels may be shifted to digital tiers, some before others. Today we are discussing PEG channels. Up in Massachusetts, many consumers are upset that CSPAN 2 is being moved. What is the criteria which Comcast uses to determine which channels to transition and when?

Mr. COHEN. The chairman is correct. And as I noted in my testimony and my oral statement, this is really not just a PEG issue. Part of our digital transition, which I think is different than the broadcast digital transition that Congress has tended to focus on is our long-term program ultimately to transition our plants, and I am talking cable now, to a fully digital platform. There is no science to answer the question that you have raised. It is more a matter of art. As we look at bandwidth and as we look at the packages of channels that we are offering, we try and make judgments and assessments based on overall customer demand, and we are trying to migrate channels that may have lesser customer demand in order to add high definition channels and other services that have greater customer demand.

In CSPAN's case let us remember we have CSPAN, we have CSPAN 2, we have CSPAN 3, which was launched exclusively as a digital channel. So CSPAN, prime CSPAN, we have not migrated to digital anywhere. CSPAN 2 has been one of the several dozen channels, analog channels, that we have begun the process of migrating to digital. When we do that, we try and put in place affordable plans for our customers to gain access to those channels. We added a new digital tier called digital starter or enhanced cable or basic digital in all of our markets as we began this migration so that there would be an affordable digital option for the customers who still wanted to receive access to those channels.

Mr. MARKEY. Can I ask, Mr. Cohen, when CSPAN 2 is being moved, are they being moved and agreeing to it, or are they being moved and being resistant to it?

Mr. COHEN. Well, our affiliation agreement with CSPAN gives us the right to move CSPAN, CSPAN 2, and CSPAN 3 to digital, and it gives us, as I said, CSPAN 3——

Mr. MARKEY. And have they agreed to that? Are they happy with it? In other words, there are a lot of things. You know, you agree that certain things will happen, but then when someone invokes it as a contract and here CSPAN 2 is just being moved from its neighbor, CSPAN 1, and CSPAN 2 tends to cover the Senate more, so I am doing this obviously more dispassionate, but a lot of my constituents seem to enjoy watching the Senate proceedings. And so it seems to me that the cable industry used to tout that CSPAN 2 was going to join CSPAN 1, and now as it is put in a different category. I guess the question is from CSPAN, are they just going agreeably, or are they at least internally questioning the wisdom of the decision?

Mr. COHEN. I think every content provider would like to have their channel carried on a tier of service that had the broadest possible distribution, so if you were to ask CSPAN where would they prefer to have CSPAN 2 carried, they would tell you as an analog channel.

Mr. MARKEY. You are saying that CSPAN agreed to it as part of their carriage agreement with the cable operator?

Mr. COHEN. That is correct.

Mr. MARKEY. That the cable operators could put it wherever they wanted to put it.

Mr. COHEN. That is correct. And let me just say there is always a win here, so when CSPAN launched CSPAN 3, a lot of cable providers, by the way, including Comcast, did not launch it ubiquitously across their digital plant, so as we have been migrating CSPAN 2, we have always simultaneously launched CSPAN 3.

Mr. MARKEY. I have to—only because my time is going to run out and I want to ask Ms. Torreano a quick question because I am concerned about the fact that closed captioning is not easy to selectively turn on and off by consumers. It strikes me that technologists ought to be able to solve this limitation regarding closed captioning. Would you please comment on how closed captioning can be addressed?

Ms. TORREANO. Yes. First of all, if the city or the PEG provider provides us with programming with captioning, we can carry that. At this point in time, we cannot close that. It is open captioning. It is one of the issues that we have talked to communities about. Clearly you have heard it from your constituents. I have talked to numerous cities in Michigan, and I have heard the same thing. What we are in the process of doing is we are having dialogue, and this is one of the issues that we have heard and in fact we think right now we are in the process of taking those issues back. We have taken them back. That is not the only issue that communities have communicated to us, but that is one. And you are right, we can't do it right now.

Mr. MARKEY. Obviously, we are very concerned about that issue in the committee. We are proud of building it into the Americans with Disabilities Act in 1990 out of this committee and part of the 1996 Telecom Act. It is something we are all collectively very proud of. Ms. Folger, quickly, do you have a comment on that issue?

Ms. FOLGER. Closed captioning is very important to our disability community, and we feel that if AT&T can offer it on all their other channels they should be able to offer it on ours as well. We don't want sub-quality standards.

Mr. MARKEY. I thank you. We are mandating that all TV sets be able to carry closed captioning. The television manufacturers are fighting, but we mandated that it happen, and we work with all of the content industries as well, and we kind of created a whole new industry, you know. Guys could be at bars watching the game and trying to meet new people at the same time, and who knew what we were going to be doing with that and immigrants able to kind of turn it on so their children could see what it was in English even as the people are talking. And there are millions of Americans, new Americans, who do that as well. So this is very impor-

tant. Closed captioning can't be left behind. The chair's time has expired. I recognize the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Mr. Chairman, I wonder if I could delay my turn and just ask the opportunity to have my predecessor, Mr. Upton, who has to leave for an important meeting, if he could take his 5 minutes now.

Mr. MARKEY. Without objection.

Mr. UPTON. I thank my friend from Florida for being accommodating. I do have a couple questions. First of all, I want to say based on the testimony that I heard it sounds to me, it sounds like we might be able to see an agreement reached between the parties. And I am very glad to hear that, and I can't resist, though you weren't prepared to talk about the Big Ten Network as it relates to the schools, I hope that it follows that same pattern and that ultimately we will get an agreement on the Big Ten Network. But we will save that for another hour but in knowing that you weren't prepared to talk about that. The question that I do have, though, is primarily to Mr. O'Reilly. Mr. Mayor, welcome before the committee.

I am interested to know exactly what are the franchise fees today that you are receiving from a variety of different providers in Dearborn? What is the franchise fee? Do you know off the top what it would be for—3 percent?

Mr. O'REILLY. It is about 5 percent.

Mr. UPTON. So is it 3 plus 3 for the PEG channels, is that how—it is 5 percent of the channel?

Mr. O'REILLY. It is not separate for PEG channels, but what we had is a bifurcated system when the law was passed. It was grandfathered in at 5 percent franchise fee. And so that generates about $700,000.

Mr. UPTON. And that is from Comcast, is that right?

Mr. O'REILLY. Right.

Mr. UPTON. And is it the same figure for AT&T?

Mr. O'REILLY. We don't have that kind of agreement with AT&T but with WOW we have, okay, and WOW is 5 plus 1.

Mr. UPTON. WOW?

Mr. O'REILLY. Yes, WOW. Another cable provider, Wire to Wire.

Mr. UPTON. That is right. I heard you say that. So are you working with AT&T then to get a franchise?

Mr. O'REILLY. Well, that is an issue because the way that the state law PA-480 was provided there does not appear to be mechanism for that.

Mr. UPTON. As we looked at a national franchise bill in the last Congress, 2006, I believe we had a 6 percent for everyone, is that right, 5 plus 1, so we had 6 percent for everyone. So if that national law was in AT&T, everyone would be at 6 percent. What is the number of customers that you have for Comcast and WOW?

Mr. O'REILLY. About 15,000 for Comcast and 7,500 for WOW right now.

Mr. UPTON. And do you know what the number is for AT&T?

Mr. O'REILLY. I think they are just beginning the service, so I would have to defer to Ms. Torreano, because we don't have that number. We have no way of knowing it right now.

Mr. UPTON. Gail, do you know about what——

Ms. TORREANO. The state law calls for up to 5 and up to 2, 5 for the franchise fee, 2 for the PEG fee. I don't know specifically about Dearborn, but we have applied in Dearborn as well as 106 other communities in southeast Michigan, and we are serving parts of 107. So it would——

Mr. UPTON. Do you have a back of the envelope number?

Ms. TORREANO. More than likely it would be, I would think, 5 and 2 or 5 and 1—5 and 1.

Mr. UPTON. But in terms of the number of customers.

Ms. TORREANO. I don't have a breakdown by city. No, I do not. We have about 230,000 that we are serving nationally at this point in time.

Mr. UPTON. And obviously, Mr. O'Reilly, with satellite you don't get any fee, is that right?

Mr. O'REILLY. Correct. They don't use the public right-of-way.

Mr. UPTON. So the point that I just want to make is that all consumers, and I am no different than anybody else, we want HD content. Once you have HD you don't want to go back to something else. And as you all negotiate with Comcast and others as it relates to the quality of service in Dearborn, what you have to worry about is if for some reason Comcast, you steer people away from Comcast because they don't have that—they don't offer the HD, that consumer is going to pick somebody else. They are going to go to satellite. They are going to go to AT&T where you have no agreement, and so you will then lose all of that money from that consumer every single month.

Mr. O'REILLY. I am a Comcast customer, and I have bundled service, so my modem, my telephone service, and my television service are all bundled with Comcast. You are right. And that is not what we are trying to do. We are trying to maintain the basic tier of service in its integrity. Where they put it, and that is why our contract says negotiated, where they put it is where we want to go because we think it is important to our customers, particularly the customers, the 13.5 percent who are where they need to get a converter in order to access, that group is a heavy user of local cable as we understand it. Again the Nielsen ratings are very difficult. We have talked about that in terms of getting real numbers. But we know that there is a sharp—and we use it as a tool. When our sirens go off, at the same time our sirens go off there is a message that is carried so that people can go and see what is that about, what do I have to do. We do a lot of public safety. In fact, it is so important all of our programming is now put on our web site also, so we are trying to be really current, but we do not want the cable companies to be harmed in any way. We just say that this is one of the last things negotiated in the original contracts that we think is important enough that we need to make sure it is maintained.

Mr. UPTON. Last question, just a yes, no. Gail, do you all offer the Big Ten Network?

Ms. TORREANO. Yes.

Mr. UPTON. Okay. Yield back my time.

Ms. SOLIS [presiding]. Thank you. I would like to recognize the chairman of the Energy and Commerce Committee, the gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Madam Chairman, thank you for your courtesy to me. This question to Mr. O'Reilly and Ms. Folger, do PEG channels and PEG programming provide valuable service to the communities and to the consumers, yes or no?

Ms. FOLGER. Yes.

Mr. DINGELL. Mr. O'Reilly.

Mr. O'REILLY. Yes.

Mr. DINGELL. Are there any other entities in your community outside of PEG programmers that consistently offer this type of community oriented programs that are offered here, yes or no?

Mr. O'REILLY. No, with the exception of local broadcasts.

Mr. DINGELL. Ms. Folger.

Ms. FOLGER. I didn't understand.

Mr. DINGELL. Does anybody else offer the kind of service that you get out of PEG channels?

Ms. FOLGER. No.

Mr. DINGELL. Now, Mr. Cohen, I understand that in the community of Grand Rapids Comcast offers with four channels, that it owns the basic service traditional local broadcast signals and PEG services. These channels are Comcast information, Comcast local, Comcast marketplace, and Comcast review. In the events that led to this hearing, I understand that Comcast chose to cease to provide PEG programming in an add-on format rather than moving your own channels to the digital tier. I am confused. In the latest statutory requirements relative to these matters why did you move PEG channels and not the other channels into the digital tier rather than terminating analog PEG programming?

Mr. COHEN. Mr. Chairman, I am not familiar with the Grand Rapids situation. I will look into it and get back to you. I can tell you that elsewhere, and I am sure, the case in Michigan, that we have migrated or even terminated some of our own local programming, which, by the way, comes with its own controversy, because that local programming is like PEG programming and does provide local content, but the fact that they are our channels does not protect them from digital migration, digitization or even complete closing down, and I will get back to you on the details in Grand Rapids.

Mr. DINGELL. Now, Ms. Torreano, I note that AT&T has filed a request on behalf of U-Verse for a waiver of the FCC's emergency alert system requirements, our national and regional public safety alert system by which consumers are warned of imminent harm. Is that true?

Ms. TORREANO. Yes.

Mr. DINGELL. Now I am curious. Why did AT&T launch a service that did not provide the required alert, and is there a reason for that?

Ms. TORREANO. The alerts are viewed on all of the national programming, and we are in the process—the technical experts are in the process, making it available throughout the entire lineup.

Mr. DINGELL. It is my understanding that when an event like Katrina or 9/11 comes along, this kind of national alert or local alert is extremely important. Now national alerts are important, but if it is going to happen in your backyard and it is not big enough to attract the attention of national networks, it could be

that a fellow's got a problem. There might be an airplane dropping in his backyard causing no small unhappiness, or it might be that there is a small tornado headed towards him, and he isn't going to get the family to the basement in time.

Ms. TORREANO. And I would agree with you, and we would agree with you that our communities are important, and that is why our technical experts are working on it to resolve this just as quickly as we can.

Mr. DINGELL. You are working on it?

Ms. TORREANO. Yes.

Mr. DINGELL. Thank you. Now, Ms. Torreano, again we have heard from many who are concerned about the manner in which AT&T provides PEG programming. I believe that there will be in the course of this hearing some comment on that. In my district, each broadcast station has its own channel, while the PEG channels for the entire state of Michigan are grouped together on channel 99. I understand that if one of my constituents is looking for a PEG program she must then use a drop-down menu to find her community, and after finding her community the consumer must use another drop-down menu to find the particular PEG channel she was looking for. I understand that my constituents cannot set a DVR or TIVO to record the PEG programming on AT&T's U-Verse service, but they can record broadcast channels using a DVR or a TIVO. Is that true?

Ms. TORREANO. To your last question, you cannot—our DVR will not record the pay channel programming. You can use a TIVO or a DVR of your own to record it. Again that is one of the issues that communities have communicated to us, and we—our communities are partners. They are our customers. You have on one hand the mass customer, and we have had an extremely good response from our customers. They are satisfied with the PEG product. We don't have any complaints. On the other hand, our communities are important to us. We live in our communities. We work in our communities. And we understand. I am a parent. I understand the importance of PEG. I used to every morning when there was snow on the ground turn on my TV to determine if my kids had school.

I have to tell you that I never knew where the PEG channel was. I knew it was under 30, but I never knew which one. We believe that by offering it on the channel 99, we believe that is something that people remember, and we have had good feedback. As the DVR function, we have taken that back. There are a number of issues, as I talked about before, the EAS, that we have taken back and that we are looking at. Our communities are important to us. I am working with them all the time. We don't want them dissatisfied. We do understand the importance of PEG. We want them to be satisfied as well.

Mr. DINGELL. Well, I am over my time, but I would simply make this observation. First of all, I know you and respect you. You are a very, very valuable citizen and community leader back home and have great affection on my part. I am very concerned about PEG because in this changeover that is occurring we are going to have a lot of problems in seeing to it that the community service that we need for our people continues. And I am very much concerned about the situation also with regard to Comcast, and I want to

thank Mr. Cohen for his cooperation in working towards bringing these situations to a conclusion. But when PEG was first instituted, it was put in place by the communities with the agencies that they were licensing, and the idea was that that would be a community service which would make it desirable to have that particular entity provide that particular service to the community, and that was one of the licensing considerations that went into the licensing of the original cable people who got into these communities.

I hate to see it be dissipated because things were happening which were going to remove it. I also have a strong concern about the difficulty that we could confront if all of a sudden we were to find that the emergency notices, which are so important to our people in the event of major difficulty, all of a sudden vanished from the airwaves and all of a sudden somebody flies away like Dorothy in her house into the land of Oz. I don't think anybody would particularly like that because we had a tornado that was not mentioned on the national news service. So I hope that we will be able to continue working with you and with Comcast and with others, and we can establish in the mind of all that PEG is very important, emergency services is very important, and that we will have the cooperation of all concerned. Thank you for your presence today.

Ms. SOLIS. The next member on our committee that will be recognized, the former chair of our committee, now in the minority, Mr. Barton from Texas, 5 minutes.

Mr. BARTON. Thank you for reminding me that I am now in the minority.

Ms. SOLIS. I thought I was being polite.

Mr. BARTON. Well, no, you were. Mr. Dingell and I are playing hopscotch as we go before the three subcommittees today that are in operation. So I got to refocus from the FDA and SCHIP to PEG. Let me start with you, Mr. Cohen. Next year in March of 2009, the whole country is going to go digital in terms of television broadcast, isn't that correct?

Mr. COHEN. Actually I think it is February but close enough. Close enough for government work, as they say.

Mr. BARTON. Mr. Dingell and I are the two people that came up with the date.

Mr. COHEN. That is right.

Mr. BARTON. You would think I would remember the date. I know it is after the Super Bowl.

Mr. COHEN. That is right. That is right. I remember those discussions.

Mr. BARTON. So in advance of that my understanding is in Michigan, I don't know if it was the entire state or just the City of Dearborn that Mr. O'Reilly is the mayor of, Comcast decided to take its public, education, and governmental channels, or its PEG channels, off of analog and put them into the digital format. Is that correct?

Mr. COHEN. Let us say the answer is yes, but I want to just make a real fine point here, which is there are two different ways you can deliver a channel in digital format. One is to migrate it to a digital tier, which means that you would charge a customer more money to get that service level. The second is you can simply digitize the channel but leave it as part of the basic tier, and it is

the second option that we unveiled in Michigan. That is we did not move it to a different tier of service. We proposed the change. We proposed in maybe a more ham-handed way than we would like to change the method of delivery while leaving it as a part of the same tier.

Mr. BARTON. Okay. Now when you did that how many customers would be affected by that proposed change?

Mr. COHEN. That is a very good question. We have about 1.3 million customers in the State of Michigan. Let us say all but about 60 percent of them are already digital customers so they would have zero impact from this. About 450 customers—400,000 to 450,000 customers—are not currently digital customers. That is the group of customers that would have been affected by this change. Those customers fall into two groups. One is our really limited basic customers that lowest tiers spending $10 to $15 a month for basic broadcast channels, PEG, et cetera, and for that group of people the best option probably would have been the option that we made available, which is that we would provide them with a free set top box. They could continue paying $12 to $15 a month. We would give them a free set top box for a year, and after that we would have charged them something up to $4.20 a month. No decision was made as to whether that is the amount we would have charged.

Mr. BARTON. When you announced this proposed change to the customer base, not the governmental base, which is important, I understand, but at the pure retail customer level, how many complaints did you get about this proposed change?

Mr. COHEN. Relatively—I mean we certainly heard some pushback, relatively little consternation from the pure customer base.

Mr. BARTON. So, Mayor, is it your city that filed the lawsuit?

Mr. O'REILLY. Yes, it is.

Mr. BARTON. Now I would assume that you are in addition to being the Mayor you are also a customer.

Mr. O'REILLY. Yes, I am.

Mr. BARTON. You could be if you wanted to be. It may be a satellite.

Mr. O'REILLY. I have lots of choices, but I have chosen Comcast up to this point.

Mr. BARTON. All right. So did the City of Dearborn decide to go to court based on voter complaints to you and the other council men and women or just based on your personal—

Mr. O'REILLY. Based on complaints that arose from the community in several different sectors. We have very robust local programming. As the entities themselves became aware, they and their followers, you know, supporters, contacted us about it.

Mr. BARTON. What was their principal beef to—

Mr. O'REILLY. It was the idea that they had to get a converter box to get it when many of them were basic here, and as Mr. Cohen just pointed out, and I want to make this clear, the two major tiers that were impacted are those who were getting just must carry, some ESPN, I think. So it was very basic. It was $12 a month for that tier. The next tier that was really impacted that he mentioned was the tier that was channels 1 through 99 in our system, which

meant it covered a lot of product but it was non-digital. It was analog, but it was the most programming you get on analog.

Mr. BARTON. But the big complaint is that while they got one set top box free they didn't get three set top boxes.

Mr. O'REILLY. It is not really—well, no, it is also not for free. January 15 was a trigger date for them to switch it to digital, and the notice came out in January that in February the price of those two tiers went up by about $3 per, which basically covered the cost of the box. So you can call it a free box, but you can also say most of those customers saw an increase of $3. A customer tier in between those two saw one penny. It went from $31.49 to $31.50.

Mr. BARTON. So they are complaining that they are getting rope-a-doped.

Mr. O'REILLY. Right. Exactly. They are saying we are being told we are getting a free box but our costs are going up $3, and it is happening coincidental with the change.

Mr. BARTON. If we could get this problem worked out this year it would go away next year, wouldn't it?

Mr. O'REILLY. Next year they would have to pay for the box, for all the boxes.

Mr. BARTON. Next year the whole country goes digital.

Mr. O'REILLY. Well, they could get a box through the coupon program where they would have to get a box through here, but if they got the box through here it would be $4.20 a box, so they would have that incurred cost for the same product they had been getting now. Our thing is we have a contract. Our contract is enforceable. It requires mutual agreement on this, so that is our position.

Mr. BARTON. Well, this is fascinating.

Ms. SOLIS. You are a little over.

Mr. BARTON. I haven't even got started yet, but my time is expired. Madam Chairwoman, let me ask, is this a solvable problem at the local level, or does it take the full weight and power of the Congress to fix this problem?

Mr. COHEN. I think the answer is this is a solvable problem at the local level. Mr. Chairman, you were not here for my testimony, but as you know this isn't the way we like to do business, and I said we tried. We weren't quite a total bull in the china shop here. We tried. In retrospect we are not happy with our performance. I apologized in my testimony, and we are in friendly negotiations now with the cities in Michigan, including Mayor O'Reilly, and I am highly confident that there will be an agreement.

Ms. SOLIS. All will soon be forgiven.

Mr. BARTON. Does it happen to be that Dearborn is represented by John Dingell?

Mr. O'REILLY. It helps.

Mr. BARTON. It does help.

Mr. O'REILLY. Let me say, Congressman, on your answer the fact is that without regard to Comcast, I think that this committee needs to look at what the states are doing. Michigan recently passed PA-480. The district court of the Eastern District did a great job of analyzing this, and they believed that portions of that are pre-empted federally by the Cable Act. I think that warrants examination on its own.

Mr. BARTON. Well, anything Chairman Dingell wants to look at warrants examination. Just like when I was chairman anything I wanted to look at. I understand the chair——

Ms. SOLIS. That is correct, but now the chair will move on to our next member of Congress, Mr. Gonzalez from Texas, for 5 minutes.

Mr. GONZALEZ. Thank you very much.

Ms. SOLIS. I am sorry, 8 minutes.

Mr. GONZALEZ. Even better. I am sure we say we are not going to use it, then we go 12 minutes, but anyway. But I think the former chairman of the full committee brings a good point. Is this really solvable at a certain level? Is it going to be federal, state or local? But the real question comes down to is this a technological challenge, or is it really a business decision, and that is what we really need to get a handle on. I don't want to confuse the DTV conversion. That really does not have a whole lot to do with this, maybe from a business aspect, but technologically it doesn't. What we are talking about here in essence is having that cable wire going straight to your television like my television that may not be the latest, whatever, being able to go to and paying the minimum amount to my cable company and that PEG is going to be part of it.

And I think, Mr. O'Reilly, that you probably have the basic answer, and that simply would be to bundle PEG with must carry, because most people would venture to guess that anyone who is obligated under must carry is probably not going to move one of those must carry channels anywhere else where it would result in what Mr. Dingell pointed out in regards to PEG. Don't do anything to make it more expensive or add cost or difficulty in locating. That is what we are trying to do here, and my fear is that we get really more complicated than necessary. So the question comes down to is it a technological problem or one that is more a business decision? And I will start with Mr. O'Reilly.

Mr. O'REILLY. Very good. Thank you, Congressman. I think it is really just a business decision that that can be negotiated and be worked out. Again, that is going to depend on the willingness. And the matter of the analog versus digital, I don't understand that. That is the business decision part, but it is certainly doable, and there is no question it can be done.

Mr. GONZALEZ. Mr. Cohen.

Mr. COHEN. I have already said that I think that private party negotiations are the best way to resolve this issue. I won't take a lot of your time in doing this. I would really caution the committee into imposing additional carriage mandates on cable operators as a part of this digital transition. If anything, I think Congress should be looking at reducing carriage mandates, not increasing them, and if you want to focus on consumer-related issues, we are not new players to this table. There are many members of this committee, some of them sitting in this room today, who weighed in on this issue when it was before the FCC, but the number one cost driver in our digital transition is the FCC's decision taking away our right to deploy low cost, low end set top boxes. By denying that waiver, the FCC imposed about a billion dollar tax on the American consumer as a result of this digital transition.

If there is anything from a public policy perspective that warrants congressional attention, it would be ensuring that we can deliver digital equipment to customers' home at the lowest possible cost.

Mr. GONZALEZ. And I couldn't agree with you more, and I don't want to get dragged into that particular aspect of this debate, because I don't think it is necessary to address the issue at hand. And I want to stay focused, because obviously, and this is a lesson to everyone, and that is probably don't roll out anything new in a member's district who happens to be so senior in Congress and happens to be the chair of Energy and Commerce, but other than that we will move on. Ms. Torreano, is it a technological challenge that can be solved or is it really just more of a—for you it may be technology.

Ms. TORREANO. We have technology challenges. It is a different technology that we are using. We are providing IPTV, TV over the Internet. We are a new entrant. We are providing choice to customers. We think that is a good thing. It is a process, it is evolving. And in our situation, sir, I would compare us and take us back a bit to the wireless industry, and the wireless industry came out with a new technology. Obviously over the years it has improved. I think things are moving much quicker in today's world than they were back then, and things are going to evolve quicker, but it is technology. But on the other hand we are listening. We care about our communities. We care about our customers. And we are going to continue to listen and work with them to see what we can do to get over these technological hurdles.

Mr. GONZALEZ. You have to believe in the basic principle because this committee believes in it, and I think Congress does as far as the importance of PEG, and again no additional cost, no greater difficulty in locating, and then the last I neglected to point out was an inferior product, which I think Ms. Folger had pointed out. And I think you really need to keep track of that. Now the other thing is from a technological point of view can you do it, and I think we are willing to listen to reason, but at some point though is there some advantage that is given to you because of the technological restrictions or inabilities that places you at an advantage to someone else like cable?

I think Mr. Cohen was pointing out that that could be something that we face, and we have to be very, very cognizant of that possibility. Ms. Folger, in your opinion, is this a technological challenge or is it something that is just really a business decision that can be worked out?

Ms. FOLGER. I definitely think AT&T has made a business decision. They decided not to build a fatter pipe to the home. The last mile is copper wire. Somebody said it is like sipping an ocean through a straw. They substitute software to squeeze PEG through as a video stream. Now Verizon on the other hand made the business decision to build fiber straight to the home. They don't have that problem. There is a company in Sacramento called Sure West. They, like AT&T, use the IPTV technology, but unlike AT&T, PEG channels keep their same original numbers, channel numbers, and they are delivered as full video channels.

Mr. GONZALEZ. And I think it is important to try to understand that technology, because I surely don't, the Verizon approach to it and the buildout of the fiber optic as opposed to what maybe AT&T is doing, and that bears some closer scrutiny. I am just saying at this point in time, I think it is really a business decision that can be worked out and such. And I guess the last observation is something that we were touching on is we think in terms of going federal and franchising, in Texas we have a Texas franchising law, and I am not sure how that impacts the obligations or abilities of AT&T when they are not dealing directly with the municipality. Believe me, we have already had that bloody fight, but I am still a supporter for the federal franchise regime, and I hope that we are able to do it next go round. At this point, I have 47 seconds, and I will yield back the balance of my time. Thank you.

Ms. SOLIS. Thank you. The ranking member, Mr. Stearns from Florida, is recognized for 5 minutes.

Mr. STEARNS. Thank you, Madam. Mr. Cohen, in your opinion, forgetting the lawsuit from the Mayor here, does the federal and state law allow you to do this? I understand that they allow—well, in your opinion does the federal and state law allow you to make these decisions you made?

Mr. COHEN. I will answer your questions, but I just want to confirm again that we are not relying on our legal rights in our negotiations with the municipalities. The answer is obviously we do believe that both the federal and the state law allowed us to take the actions that we took.

Mr. STEARNS. And is it true that within the public access laws that you can calibrate your decisions so that they are cost effective?

Mr. COHEN. I am not sure I understand that question. I think the answer is yes.

Mr. STEARNS. Yes, following the argument that both the federal and state laws allow you to do this, it also allows you to get recompensated for your decision to innovate?

Mr. COHEN. That is correct.

Mr. STEARNS. So is there any other state where Comcast is operating that you intend to do the same thing?

Mr. COHEN. As I said in my testimony, our typical practice is to negotiate this out with the affected LFAs, and we have done that successfully in a number of places. I will give just one example, which is my hometown of Philadelphia. We negotiated with Philadelphia and were able to—there were four analog PEG channels in Philadelphia, and we were able to negotiate a return of three of those analog PEG channels. They kept one, and we gave them four digital PEG channels, so they went up one PEG channel, but four were digital, one was analog.

Mr. STEARNS. So you are saying in Philadelphia you are actually able to accomplish what you have not accomplished in Dearborn through negotiations?

Mr. COHEN. But in fairness to Dearborn, that is not their fault.

Mr. STEARNS. No, I understand. I understand.

Mr. COHEN. I am going to say that and—

Mr. STEARNS. You are telling me what is controversial here you have already worked out in Philadelphia.

Mr. COHEN. And we have worked it out in Philadelphia and in other jurisdictions, and I am confident given the good faith that exists between Comcast and our local partners in Michigan, including Dearborn, that we will be able to work something out that is a win for our customers——

Mr. STEARNS. No, I understand. You don't have to give me the—I understand what you are saying. Let us just talk about what you are going to do once you do this. I mean when you talk to Dearborn or Philadelphia, the capacity that you are going to recover by carrying the PEG channel exclusively in digital format, why don't you just outline all the advantages for the consumer, because I think if the consumer had to decide notwithstanding that Ms. Folger and others have said the quality of the PEG channel on the analog is weak, I assume that the PEG channel would be better, and there would probably be more enhancement for the digitized PEG channel once the transition occurs, so that in the end the quality of the resolution would be better, closed captioned.

Mr. COHEN. We believe that ultimately the win here is a pro-consumer win, because we think the PEG channels would be a higher quality viewing experience, and more importantly, we will be able to add other services that are extremely popular with consumers really as referenced in your opening statement. More high definition television, more video on demand, more high definition video on demand, faster speeds for our high speed data, and additional services for our Comcast digital voice product, all of which require additional bandwidth.

Mr. STEARNS. As I said in my statement, if you did away with 1 PEG channel, you will get replaced with 3 high definition channels, 10 video on demand channels, 15 standard definition channels, 42 megabits per second of broadband service. Incredible. So maybe the argument has to be also from the standpoint that, sure, it is a little inconvenient. You may have to pay four more dollars or free for a while, but you are going to get so much more. Ms. Folger, wouldn't you be happier with a PEG channel that is high resolution, has closed caption, and at the same time you get for the same price perhaps three high definition additional channels?

Ms. FOLGER. Exactly. We are asking for comparable quality.

Mr. STEARNS. Yeah. So I think your argument would come down to why should the consumer have to pay more money.

Ms. FOLGER. Right.

Mr. STEARNS. And actually probably, Mr. Cohen, when you make this transition, you might do what AT&T did is assign 1 channel for the PEG so that me and others don't have to scroll through the whole bloody 99 channels to find it.

Mr. COHEN. We probably won't go to that particular choice in communities where we have multiple PEG channels but what we will do is we will group the PEG channels, together so that they will be easier for people to find and to be able to gain access to them.

Mr. STEARNS. Thank you, Madam Chair.

Ms. SOLIS. Yes. We will recognize now Mr. Rush from Illinois for 5 minutes.

Mr. RUSH. Thank you, Madam Chairperson. Let me just ask both Ms. Torreano and Mr. Cohen, PEG is sometimes portrayed as a

burdensome requirement. Does PEG offer advantages to both of your companies, and what are those advantages, and what are some of the disadvantages? In other words, is there a profit advantage or advantage that would be defined monetarily for the offering of these PEG channels to your companies? Ms. Torreano, why don't you start.

Ms. TORREANO. I think that the consumer, our customer, your constituents, want PEG channels. I mentioned before that I as a mom, I watch PEG channels, so, yes, I think that there is a business reason to provide it. They are part of our communities. It is information that our customers want, and it is something that I think they have become used to for different reasons, and different people have different reasons. So, yes, I think it is an important part, and we in our offering, U-Verse offering, we think it is important. In fact, our PEG offering is a little bit different than the traditional cable PEG TV, because what you get is if you live in the southeast Michigan area near Detroit, we are serving approximately 107 communities or parts of 107 communities, and what you will be able to do is you will be able to see PEG programs from every one of those communities. I think that is an advantage to a customer, because no longer are our worlds confined to one city. It is much bigger than that. As a Detroit resident, you may have a child who goes to school in Dearborn, so you get a broader perspective.

Mr. RUSH. Does the average PEG viewer, do they transition into becoming more loyal to your—and purchase other products from your company, is that what you are saying?

Ms. TORREANO. What I am saying is that it is a different product. I don't know that—it is too early to tell. We are in our infancy. We are just beginning this product, but I think that our customers will find that it is a robust product, it is an innovative product, and it is a game changer. And the PEG product is different. It is really greater in that you get to get information and watch programming from other communities other than just the one that you live in.

Mr. RUSH. Mr. Cohen, would you answer the question? You have a little bit more experience in this area.

Mr. COHEN. As I have said before today, cable in general and Comcast in particular believes in PEG programming. We believe in the value that PEG programming brings to the community. There have been a couple of questions asked about the local nature of programming that appears in PEG channels, and its unique or almost unique status, not necessarily vis-a-vis AT&T or Verizon but against our satellite competitors. That local content is a competitive differentiator for us, and we think it is a valuable competitive asset.

Mr. RUSH. Ms. Torreano, in Chicago we have the Chicago Access Network television, or CAN TV, and there are a lot of elderly and other religious people who are in my district, church going people who like to watch church services on television and other programs similar to those on the cable stations. Would they have as easy access to CAN TV under the U-Verse, or would it be more difficult?

Ms. TORREANO. I believe it is easier. Everything you go to channel 99 and channel 99 then when you press okay it takes you to another menu in which you can watch any of the PEG program-

ming in the Chicago area. And if, in fact, CAN is the program that you watched previously, when you turn it back on, we now have the ability for the program, the CAN programming will come right up, so that it will be right there for you.

Mr. RUSH. What is the quality of the video for the CAN TV and PEG programming, has the quality of the video been compromised on U-Verse, or does it remain as it presently exists under the current system? I understand that there are some problems in terms of the quality of the video, that the quality is less vibrant, and that the quality has been compromised tremendously. Is that true?

Ms. TORREANO. I don't believe so. We have had others have said that it is, but I think our PEG programming, the quality of it is comparable to PEG programming that you see on the cable network, but that is an issue, again that our communities have expressed to us. Me in particular, I am talking to our communities on a weekly basis, and so, yes, I have heard that.

Mr. RUSH. Ms. Folger, I only have a few—thank you, Mr. Chairman. I yield back the balance of my time.

Mr. MARKEY. I apologize to the gentleman, but you are 6 minutes right now, and I think the roll call is going to be going up pretty quickly, but if we want we can come back and have a lightning round of 2 minutes if you would like. The chair recognizes the gentlelady from California, Ms. Solis.

Ms. SOLIS. Thank you, Mr. Chairman. My question is directed to Ms. Folger. I wanted to get to some comments that you made regarding PEG channels and some of the, I guess, challenges that you see that viewers are facing. You mentioned Spanish language access and closed captioning services. Can you elaborate a little bit more for me on that?

Ms. FOLGER. I can. AT&T offers to put open caption on the picture all the time. It will not pass through the closed captioning capability, so what this is going to mean for someone who is not needing the closed captioning feature, part of the picture is going to be obscured throughout the entire program. I don't know if you have ever seen closed captioning but there is a banner that goes across the screen, so for someone who wants to watch it without the banner there is no getting rid of the banner. On the other hand, the hearing impaired people who need to be able to read that also do not have the ability to flip that on and off as they normally do when they are taking a course, for example, on our community college channel. And so what they have to do is sacrifice, to be able to read the material. In addition to that, because of the vastly reduced resolution of the picture by 75 percent, a lot of teachers use Power Point presentations as their lectures and when you reduce the quality that much and you try to read the print on a Power Point presentation on a small TV screen, it is nearly impossible to read, so it has a number of problems that will be to the detriment of our community.

Ms. SOLIS. You mentioned Spanish language as well.

Ms. FOLGER. The second SAP, second channel feature is not activated at all with channel 99, so, for example, in Los Angeles. where they offer Spanish translation for the city council meetings that would not be available on any of the council meetings and there are

many people in this country who rely on that translation for their information about local government.

Ms. SOLIS. And then my next question would be to Ms. Torreano from AT&T. Why can't AT&T provide second language or closed captioning?

Ms. TORREANO. We can provide second language channels if in fact the community provides that to us.

Ms. SOLIS. How do you know if they want them or not, what kind of effort is made to know that there is an interest?

Ms. TORREANO. Well, actually I can't speak specifically for California, but in Michigan we are meeting with each and every one of our communities. That is part of the process that we have. When they are interested in providing PEG programming, we sit down and discuss all the technical aspects that are required of providing us the programming, so we spend considerable time with every single community to make sure that they in fact understand the needs.

Ms. SOLIS. But why would AT&T make such a decision for Los Angeles? That is just incredible to me where 40 and 50 percent of the population speaks other than English, and the primary dominant language is Spanish, so what are you basing that information on, and who is making that decision?

Ms. TORREANO. If I understand your question correctly, if Los Angeles provides us with a program in any language other than English, we will carry that.

Ms. SOLIS. So the city then has to provide that support?

Ms. TORREANO. Whatever the city will provide us, we will carry.

Ms. SOLIS. Okay. I will end my questioning there, and I know we will come back for another round.

Mr. MARKEY. Well, you have a minute left to go if you have any other questions.

Ms. SOLIS. Mr. Cohen, yes, I also want to thank the Mayor for coming. It sounds like you all can work things out at least in this situation. I have some reservations about how that is going to work out given what I have heard from my colleagues and the impact of federal legislation that currently provides this committee with that jurisdiction to oversee that things are being handled correctly or at least fairly. Not correctly, fairly. So I would just like to hear your comments. I know, Mr. Cohen, you said that you don't think it is wise for us to get involved. Maybe you could just elaborate a little bit on that.

Mr. COHEN. Well, I had mentioned previously, I think the current legislative and regulatory structure creates an appropriate balance that enables cable providers to negotiate PEG programming and commitments with their LFAs, and I think the balance, it has been explored in this hearing very well, on the one hand we may need more bandwidth and our local—first of all, as I said, this is a transitional issue. In a few years, this is going to become irrelevant because everyone is going to have digital equipment. I think the local governments understand that chasing customers away from cable, which is the primary deliverer of PEG programming, is not in anyone's interest. And we have numerous occasions where we have been able to work out these agreements with local governments where we have needed to do so. As I said several times, I

am highly confident that the negotiations we are having now will be productive in the State of Michigan.

Mr. MARKEY. The gentlelady's time has expired. There are two roll calls on the House floor. We have approximately 10 minutes left to go to make the roll call, so the way I usually end these hearing is I ask each one of the witnesses to give us the 1 minute that they want us to remember. I apologize to the members because the roll call has gone off. Give us the 1 minute you want us to remember about this issue which clearly deals with the digital transition, and we move forward not losing what we have always had back in the home communities. So we will begin with you, Ms. Folger. One minute.

Ms. FOLGER. Thank you. There are several things I would like to say to this commission—committee, I am sorry. First of all, we are asking that no harm be done to PEG access. We know that you understand the value of what we have to offer. The biggest challenges to use because we are the only outlet for local communities, schools, churches, non-profits, local governments, and ordinary people, ordinary people need to be able to find us, to see us, and to use us. If we are buried on channel 99 and it takes a minute and a half to find us, nobody is going to be flipping around and finding us. That is harm. If this happens, we are sunk. And what do we want to make this right? We feel that these problems are a result of bad law. The way to correct it is good law. Close some of these loopholes that are allowing these things to happen. I believe that PEG channels are the poster children of localism, so fix the problems, please.

Mr. MARKEY. We agree with you, too, and I think every guy who is here and every woman who sees a guy with a clicker in his hand knows that that guy can watch the news, a sporting event, and a movie simultaneously clicking back and forth, and no guy is waiting a minute and 30 seconds for any station to come on. So that has to get fixed. Ms. Torreano.

Ms. TORREANO. Thank you very much. I would just say, first of all, again thank you for inviting me here. We are a new entrant. We are giving your constituents a choice, and when there is choice that is always a good thing, because that means that the consumer, your constituents, are really in the driver's seat. This is evolving. It is a process. It is not an event, and we expect the process to continue and to continue to improve. It is a robust product. It is an innovative product. It differentiates us, and we do believe and act on it. Our communities are important. That is where we live, too, and that is where our customers are. And we are going to continue the dialogue and continue to evolve our product, and thank you again.

Mr. MARKEY. Thank you, Ms. Torreano. Mr. Cohen.

Mr. COHEN. Beyond custom that will turn time back to the chair, three statements. One, PEG programming is valuable and important. Two, the digital transition is complicated and may require change, but in the end it will be very good for consumers. And, number 3, Comcast and the cable industry pledge to this committee to commit to work with our LFAs to protect the essence of PEG through the digital transition.

Mr. MARKEY. Thank you, Mr. Cohen. Mr. O'Reilly.

Mr. O'REILLY. Thank you, Mr. Chairman. The existence of basic service tier is not limited to rate regulated communities but is an obligation of every video provider utilizing public property for the delivery of its services. The PEG channels must appear on the basic service tier or the same level of service as that of commercial broadcast carriers or channels. PEG programming must be delivered with the same visual and audio quality and technical functionality, including closed captioning provided for commercial broadcast channels, and that a single tier of service may not be technically divided such that the subscriber must employ additional equipment to view all the programming on that tier. In addition, I am sorry that Congressman Upton didn't go, because if he moved to Dearborn he would have a choice for a Big Ten channel because with competition, while Comcast in our community doesn't carry the Big Ten channel, WOW does, so that is why we are for competition in market.

Mr. MARKEY. Thank you, Mr. O'Reilly. So I think anyone who heard this hearing knows that there is widespread support for PEG channels on the Telecommunications Subcommittee. We want the consumer to be king. We understand that there is a digital transition that is going on in industry, but we want to ensure that as flexible as you have to be in doing that that ultimately the PEG experience that consumers are used to not only continues to exist but is expanded and improved upon. We want more channels. We want better programming. We want broader band. We want more local access, more diversity. That is what the consumer expects as part of this revolution. We are going to work with the industry and with the local communities in order to ensure that that is the result of this incredible revolution.

We thank all of you for participating. This hearing is adjourned.

[Whereupon, at 2:58 p.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Chairman John Dingell
House Committee on Energy and Commerce
316 Ford House Office Building
Washington, DC 20515

Chairman Dingell,

Thank you for the opportunity to discuss the use of PEG channels. Municipalities and schools across the country rely on their PEG channels to keep the community up to date on what is happening in their area. At times these channels will play original content, but much of the day it is a repeating PowerPoint type presentation. Community members can tune in daily, watch the slide show and then change the channel. There is no need to keep viewing the channel all day. PEG channels provide a key news source for community members on a daily basis. This news source becomes a lifeline in a local emergency.

On January 8th, 2008, the school districts of Wyandotte, Southgate and Grosse Ile, Michigan took part in a mock disaster drill that took place in Grosse Ile. This was a full scale training with police, fire, schools and the entire city's incident command team taking part. The scenario was that a tanker train car was leaking a dangerous gas cloud and that cloud was heading towards the island of Grosse Ile. The drill was very successful and many lessons were learned.

The one thing about this mock disaster that is important to point out is both the city government of Grosse Ile and the school district of Grosse Ile used their PEG channels as a primary communication source. Information was updated on the government and school channels to let the community and parents know what was happening. The PEG channels during this exercise played a primary role in public safety.

In an emergency situation our PEG channels become one of the main sources for government and school information. Removing the channels from the analog tier would greatly reduce the number of televisions and viewers our message would reach. How many state, county and local emergency plans depend on viewers being able to see the PEG channels?

Jeff Trudell
Director of Technology
Wyandotte Public Schools
540 Eureka
Wyandotte, MI 48192

Director of the Special Interest Group for Technology Coordinators
Michigan Association of Computer Users in Learning

Chairman of Michigan School Business Officials Technology Committee

January 28, 2008

Honorable John D. Dingell
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Honorable Edward J. Markey
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Gentlemen:
I have been asked to share my personal experiences and opinions about the AT&T Uverse and PEG Solution in my hometown of Birmingham, Michigan. You may quote me as one of the first Uverse subscribers in the Quarton Lake neighborhood with an installation date of June 22, 2007. I am still a subscriber and coincidentally upgraded my services earlier today to the new 10 Mbps MAX internet and HD TV.

I must disclose that I am a volunteer member of the Birmingham Area Cable Board (citizens' body through an inter-local agreement serving Birmingham and the Villages of Beverly Hills, Bingham Farms and Franklin) and Chair of the Cable Action Committee (directives from BACB meetings and public information). At the NATOA conferences I have attended, I have been the lone outspoken consumer with unprecedented access to governmental affairs professionals and even FCC Commissioner Jonathan Adelstein on two occasions.

I am not a telecommunications professional, nor lawyer, nor municipal administrator, nor public access producer or technician. I am a constituent who advocates fair competition in telecommunications and respect for customer service standards. I was another exhausted "incumbent" cable customer who just couldn't take it anymore. I won't wrestle another insane prompt system on hold for 32 minutes and be summarily disconnected.

While the initial AT&T Uverse rollout was rough in my area (imposing and aesthetically offensive metal VRAD boxes, construction in rights of way with few remedies, numerous installation adjustments, 1 major and 1 minor outage/upgrade, technical enhancements and a Port 1 issue), when it works—it is spectacular—even without HD TV's. The transition was only made tolerable by the responsiveness and professionalism of committed on site technicians and supervisors like Chris Holloway of Royal Oak, Michigan. The graphics and floating menus, offsite programming and expansive DVR options are impressive even to a nouveau techie like me. We have had immediate connection by 1-800-ATT-2020 with few exceptions and been very fairly compensated

when there were failures. Credits to my account have been given for service interruptions and customer loyalty throughout this extended trial period. At no time have I accepted referral fees. A dream come true: a world where cable company contact could be so pleasant.

So, what is my problem? As one of many citizens of this community who follow local meetings and productions, I cannot give the PEG "Solution" the same positive review in its current format. At best, it should be called the "PEG: First Offer to Quiet the Community." Here, only Clinton Township is broadcasting with inconsistent quality and grainy resolution even on a high quality plasma TV. It would be considered substandard on any other channel. In fact, they'd never bother to market it any other way. The consumer outcry would be deafening.

PEG is relegated to Ch 99 (near the newly released Ch 92 AT&T Yahoo! Games and CH 97 yellowpages.com, which are equally frustrating with loading delays). The 20 to 30 second countdown for PEG video and sound are an annoyance. The channel cannot be saved to favorites or live rewind and cannot be recorded for later rebroadcast as other Uverse programming. Frankly, the delay is so unlike the instant gratification of other Uverse channel options, who would wait? These procedures are most confusing to those who value public access most: new subscribers, channel surfers and seniors. AT&T is duly aware.

Let's be direct. This appears to be a money issue and not a public policy issue. T 1 lines are expensive and budgets are tight in all communities—especially in Michigan. We all saw AT&T throw money at the problem in Lansing while gaining access to Michigan at the end of 2006. A review of the 2006 SBC/AT&T Knowledge Ventures advertisement in the 26th Annual NATOA Conference Program included the following:

"We will provide cities and towns with video franchising fees equivalent to their current agreements."
"We will deliver community programming, disability access and emergency alerts, and contribute to the funding of community access operations."

Calling it "PEG 1.0" is a transparent excuse. Uverse has been spreading with precious few PEG stations "partnering" for broadcasting even today. With the advanced technology they are applying to expanding the Uverse platform and its marketing appeal, they can do a better job with PEG if motivated. They don't truly believe that communities will care despite any glitzy productions you may see presented today. If PEG support got one third the technical attention of Whole Home DVR or expanding the bandwidth to allow 2 HD and 2 ED streams per home, we'd be delighted. Let's see which enhancements actually roll out in this first quarter. I am guessing it will be the ones that keep subscribers with high end packages, not basic cable with PEG.

In fairness, AT&T and satellite providers are finally providing the very real competition we craved while suffering Seinfeldian waits for cable guys who never call, never show or screw up the installation.

If telecoms truly want to invest in the community, prove it. Show us the money. Meet the communities half way. Quit funding expensive ubiquitous ad campaigns. Provide viewers with seamless access to the public process in this election year when it is more important than ever. And, please continue to answer the phone when we call.

Thank you for your attention to this matter. I plan to stay involved and informed. These are complex technical issues for a psychiatric nurse, but business is business.

Sincerely,

Elaine McLain
528 Pilgrim
Birmingham, MI 48009

Charter Township of Clinton

OFFICERS:
Robert J. Cannon
Supervisor
Dennis C. Tomlinson
Clerk
William J. Sowerby
Treasurer

TRUSTEES:
George Fitzgerald
Ernest O. Hornung
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January 28, 2008

Mrs. Gail Torreano, President
AT&T Michigan
Suite 1700
444 Michigan Avenue
Detroit, MI 48226

Dear Mrs. Torreano:

I am writing to update you on Clinton Township's observations and requests regarding Clinton Township Television (CTTV) on AT&T's U-verse.

I and Clinton Township Supervisor Robert Cannon have just completed a meeting this afternoon with Greg Clark and Jon Peterson. These gentlemen have been excellent liaisons. They and Gavin Goetz have all been representatives for AT&T that the corporation should be very proud of. Their enthusiasm for the product, along with their concern about addressing our concerns, have been evident in all of our meetings. We look forward to a positive business relationship.

Now, for the disparities between local access channels and mainstream television channels on U-verse that must be rectified in order to have a satisfactory representation of public, educational and governmental (PEG) access channels on U-verse. We expect the viewer to have a realistic television viewing experience while watching PEG, just as they would have locating and watching any other channel on the U-verse lineup.

You will recall that on May 21, 2007, you sent a letter to many Michigan communities who were anticipating the announcement of the roll-out of the U-verse video product. Clinton Township became the first community in the Midwestern United States to transmit programming on U-verse, according to Mr. Goetz. Clinton Township's involvement to-date has been in a test phase of what AT&T calls the PEG Solution, where "PEG becomes a URL", as AT&T officials explained to me in a conference call from Texas.

The test began when Clinton Township sent you a letter on August 21, 2007, requesting that Clinton Township Television (CTTV) and the school districts' channels be included on the line-up. The letter included a long list of concerns with the PEG Solution, the AT&T method of handling PEG access channels as an application on U-verse. At that point, the PEG Solution had been described to communities, but it had not been demonstrated.

AT&T's response was an invitation to Clinton Township to send its content to Channel 99 during a test period, enabling AT&T technicians in this area to experience the handling of a television station's audio and video over a T1 line, and to break the ice[illegible] product that would be entering subscribers' homes. Clinton Township's participation would also allow the real-world demonstration of PEG on U-verse, which had been requested by numerous communities.

The following month, Foster City, California, became the first community in the U.S. to have its government access channel telecast on U-verse Channel 99. Foster City Administrative Services Director Steve Toler explained that in California, not only were communities afforded a 1- to-3% PEG fee on top of a 5% franchise fee by the state-wide video franchising act, but lawmakers included certainties in the legislation that cable and video providers would continue to transport the signal for telecast without charge to the municipalities, schools districts and access centers. Michigan's Public Act 480 of 2006, the Uniform Video Services Franchising Act, allows a 5% franchise fee, but it does not have a guaranteed PEG fee for all communities, nor does it assure that providers cannot charge PEG stations for transporting their signals.

Some of the concerns that Michigan NATOA had first outlined in a letter to you that were reiterated in Clinton Township's letter were:

1) Rather than finding programming when a viewer clicks Channel 99 on the remote, the viewer is faced with several menu screens. Each PEG Channel on U-verse is not a single, exclusive, linear channel like all other U-verse channels, and as PEG channels have been handled on legacy cable systems since the inception of PEG. "We are requesting the same linear channel line-up terms that broadcast channels and other programmers have," the letter stated.
2) PEG on U-verse is not transmitted with the same broadcast standard that other channels enjoy. As a result, the viewer receives a lower-quality picture and oftentimes audio not synchronized with the video. "Our viewers are not expecting to see a product that looks a lot like YouTube on their family television sets," Clinton Township wrote.
3) A combination of inaccessibility and quality problems will mean a reduction in public safety. "The difficulty in locating (a community's) PEG channels in the manner that the company describes is that this vital link to the public may not be received on a timely basis." In addition, Emergency Alert System (EAS) messages cannot currently be viewed on U-verse's PEG channel.

In addition to these items, Clinton Township's board meetings are televised with closed captioning, and closed captioning does not come through AT&T's PEG Solution.

Clinton Township requests that all of these issues be resolved with PEG on U-verse.

After accepting AT&T's invitation to embark on the PEG test, Clinton Township worked with AT&T in an intense month-long set-up that first involved coming to an agreement on a free T1 line for the duration of the test and signing a PEG Test Memorandum. Normally the charge for a T1 line is approximately $550 per month. In addition, an encoder was needed and the township spent $5,800 on this item. This encoder is also used to stream programming to the Internet. Clinton Township's cable channel was also assigned an address on the World Wide Web and properly secured through the managed router AT&T provided with the T1 line. The agreement included a drop to a residence as part of the test for the purpose of monitoring the channel. AT&T refused to provide a free U-verse drop to the municipal offices, citing fear of setting precedent for communities and school districts; furthermore, we were told that a U-verse service box was greater than 2,300 feet from the building (a distance that was too far to service the cable department control rooms).

Clinton Township once again requests the provision of a free U-verse basic service drop to our control room for the purpose of monitoring the channel on the actual U-verse product. A webcast of the channel would not suffice.

Clinton Township also requests that AT&T consider providing a satisfactory transportation method of the audio and video that is sent out from our control room to AT&T and that AT&T pick up the cost of doing so, as it is doing in other states.

One subscriber to U-verse, who enjoys the overall video product, but has much to criticize regarding the PEG Solution, is a member of the Birmingham Area Cable Board. Elaine McLain reported that following a long installation process in

months ago, she has found U-verse to be of good quality and user-friendly. But when I asked her about the PEG Solution, she had much to criticize.

Ms. McLain sits on the cable board representing Birmingham, Beverly Hills, Bingham Farms and Franklin, several communities in Oakland County. She decided to get involved in cable issues because she was a dissatisfied cable customer and there was no real competition in our area, she explained. Since then she has had many opportunities to talk with executives at Comcast and at AT&T. Most recently, she told an AT&T executive face-to-face that PEG is of utmost importance to Michigan residents. She has repeated her belief that "public information is more important than ever at this time in our history and people want to access it."

Clinton Township remains the only community in the state on AT&T's U-verse system. While I was speaking with Ms. McLain as one of our viewers, she decided to see how long it would take for CTTV to load on Channel 99. She told me that it usually takes an average of 20-30 seconds until she actually sees programming. The channel can take much longer to load and sometimes it doesn't load at all. She says she tries to give it time out of fairness to the product. Sometimes she does give up when the small arrow going in a circle does not stop within the constraints of her time or patience.

We talk about ways in which Channel 99 is different than the rest of the U-verse line-up and, according to Ms. McLain: "You cannot press 'last' to immediately go to the last channel you were watching. You can't record it on the DVR. You can't go up or down the channels to exit; you have to press Exit TV to get out of Channel 99. It's just not user friendly."

The quality? Once in program viewing mode, the PEG Solution suffers from grainy digital noise, artifacts caused by compression (also described as "bug swarms" and "mosquito noise"), especially around object edges, and choppy movement, graphics and transitions. Often, audio and video do not match up. Sometimes audio, video or both freeze up. All of these problems were also reported by various municipal access producers who have seen firsthand demonstrations at various sites.

Menus as barriers to accessing the channel, coupled with having to learn how to handle the remote control differently, continue to be cumbersome despite a quick training session that AT&T says is part of every installation. Both I an Ms. McLain fear that the PEG channel will not only be difficult for viewers to access, but could likely become a channel to avoid.

On a related note, communities and schools districts are reluctant to send their program streams to AT&T because the lease of the T-1 line, one for each channel transmitted, is costly and the end product is unsatisfactory.

When I have discussed these problems with AT&T representatives, they promise that these issues will be addressed. "This is PEG version 1.0," they have said many times. They point out how this method allows system-wide viewing of all participating channels. They promise improvements and urge dialogue to continue to improve the PEG Solution. They, and apparently others at AT&T, are failing to see that planning this solution is inherently the problem for PEG programmers and viewers alike, with the extreme cost of the delivery method, menu screens, long waits for loading, and audio and video quality problems.

Michigan PEG stations have attempted to find recourse by pursuing enforcement of the anti-discrimination clause in 2006 P.A. 480. An effort to this end was made in August 2007 by the Michigan Chapter of the Alliance for Community Media (ACM). When I spoke with Mark Monk, Michigan Chapter chair for ACM and operations manager of Community Access Center in Kalamazoo, who, as you know, worked closely in bringing a complaint to the Michigan Public Service Commission in regards to AT&T's planned PEG Solution, he said, "The PEG Solution has fundamental flaws that harm the public." The Alliance for Community Media has been a champion of free speech and access through the medium of cable TV, along with many other avenues of electronic expression. In regards to the PEG Solution potentially creating a barrier to access, I agree with Mark's statement.

Those in PEG access positions nationwide have been active in pointing out the deficiencies of PEG being delivered via this apparently still-experimental method.

The protection of PEG must continue to be a proactive endeavor. The public deserves a delivery method for local access channels that is at par with the way all other channels arrive on their home television sets: click and find, with television benchmarks met. Anything less is unacceptable.

Clinton Township intends to continue to work with AT&T and organizations like Michigan NATOA, which has been at the forefront of several actions, including letters and meetings, to address the problems of the PEG Solution.

I look forward to a detailed response to the issues outlined in this letter. Thank you.

Sincerely,

Linda A. Badzinski
Director of Cable TV and Communications
Clinton Township, Michigan
Michigan NATOA Secretary

cc: By way of email:
The Hon. Congressman John D. Dingell
The Hon. Congressman Edward J. Markey
Governor Jennifer Granholm
State Representatives
State Senators
Federal Communications Commission
AT&T External Affairs Directors
Michigan Public Service Commission
Mrs. Caren Collins-Filer, Michigan NATOA president
Michigan NATOA ListServe
Mr. Hap Hasick, Central States ACM president
Alliance for Community Media
Ms. Angie Folger, Community Media Center
Clinton Township Supervisor Robert Cannon
Clinton Township Board
Mr. John Dolan, counsel
Mr. Neil Lehto, counsel
Mr. Jon Kretscher, counsel

Thomas M. Menino, Mayor
Mike Lynch, Director

Mayor's Office of Cable Communications
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January 28, 2008

The Honorable Edward J. Markey
United States Representative and Chairman
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
United States Congress
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Markey:

The City of Boston applauds your decision as chairman of the Congressional Subcommittee on Telecommunications and the Internet to schedule a hearing on Public, Educational, and Governmental (PEG) Services in the Digital TV Age.

As you know, Mayor Thomas M. Menino is a big fan of access television, appearing regularly as a guest on the daily Boston access news show, Neighborhood Network News. He recognizes the value of access television and supports its mission of delivering news and information to city residents about our local issues. Mayor Menino even set up a partnership with our local PBS affiliate, WGBH-Boston, to provide quality children's and ESOL programming through our government access channel.

In Boston, we have watched closely the developments in Michigan as they relate to cable operator Comcast moving public, educational and government (PEG) channels to the digital tier. Such a move will ultimately and inevitably require cable subscribers who can least afford it to pay additional rental for cable converter boxes.

We fear that any attempt to reassign access to a digital tier line-up is an attempt to marginalize and undermine local programming. We have experienced a series of channel re-alignments in the past few years by Comcast in Boston which point toward such a trend.

Congress has historically been a strong advocate for access television, so we are grateful for this opportunity to share our experience with your Committee members.

Since assuming control of the Boston cable system in 2002, Comcast changed cable signal delivery in a way that negatively impacts 30,000 Boston Basic Tier households. By scrambling all channels above the Basic Tier, Comcast denied Basic, Metro and Family customers the extra TV channels they'd received free of charge for 16 years, a practice that ended March 2, 2004. Despite the years of past practice, Comcast took the position that it was within its rights to make these changes.

The scrambling of programming channels has been a multi-stage process. Like the removal of a la carte programming, viewers were progressively cut off from channels over time. The cumulative result is that Basic subscribers cannot even view public affairs programming like C-Span, so I guess the viewers most impacted won't be able to see your proceedings.

What is more egregious to us is that this practice is directed towards urban cable system subscribers and not suburban system subs, where different controls or traps are used to manage cable systems. Reports from Boston suburbs indicate that they are enjoying more programming at the Basic level than Boston, Brookline and Somerville subscribers. As such, it appears that city residents pay the added penalty of acquiring converter boxes that otherwise would not be necessary.

For cities and towns, cable provides an array of revenue and benefits including: franchise fees, wiring of schools, libraries and municipal buildings, support for (PEG) Access, local programming on local issues, maintaining local customer service centers, hiring local residents, adhering to customer service standards, and, conforming to local construction and public right-of-way (PROW) standards.

I run through this litany of resources and revenue not because we like the cable company, but because we recognize what they give back to their community – it's a local service operating under local rules. These benefits are provided in exchange for the opportunity to run cable over and under our 900 miles of streets and these benefits are defined under federal and state law, as well as local contracts.

Similarly, access television is provided to our citizens because Congress recognized that the right of entry into our homes should be accompanied by a free platform for local concerns. In the 1984 Cable Franchise Policy and Communications Act, Congress recognized that the local character of cable television – as opposed to broadcast TV – provided an unprecedented opportunity for the community of a franchise area to share information. As a result, it included in the Act specific provisions allowing franchise issuing authorities to require "public, educational or government" (PEG) access channels in a cable franchise and to prevent cable operators from controlling the content of programs carried on PEG channels.

Meanwhile, the cable companies and now the phone companies entering the market are trying to dodge these local benefits, and that shouldn't be the allowed. The House Report associated with the Cable Franchise Policy and Communications Act emphasized Congress' intent to provide, through PEG Access, "the video equivalent of the speaker's soapbox or the electronic parallel to the printed leaflet."

In Boston, Comcast has recently raised their rates, moved their customer call center out of the City and opposed the elimination of our telecommunications tax loophole bill. Comcast is also proposing to cut back on access support, cut back on access channels and reduce local programming. It's unclear if it is the fear of competition or the lack of it that drives these decisions.

In our city, the phone company offers nothing in terms of broadband competition. Despite four years of asking, the phone company refuses to engage in cable franchising in Boston, contending that state and federal laws governing cable are too burdensome.

Meanwhile, the pricing of the unregulated services of both cable and telephony's broadband services are cost prohibitive to many of our residents. For that reason, our Mayor is working to create an affordable wireless solution for our residents through the Boston Wi-Fi initiative.

As a City that supports access, we fear that both the cable companies -- and the phone companies getting into the cable business -- are continually undermining the Basic cable tier and access television services that are the staple of lifeline cable service.

We have worked hard in Boston to keep down the cost of Basic cable service, particularly for our senior citizens. So I thank you, Mr. Chairman, and the members of the Subcommittee on Telecommunications and the Internet for your advocacy on behalf of PEG access services and Basic cable subscribers. Like you, we welcome the opportunities that will come to us through the new era of digital television. And we want to make sure that these opportunities do not come at the expense of those least able to afford it.

Respectfully submitted,
City of Boston, Massachusetts

By: Mike Lynch, Mayor's Cable Office
on behalf of the Issuing Authority,

Thomas M. Menino
Mayor of Boston
1 City Hall Square
Boston, Massachusetts

cc: The Honorable Thomas M. Menino, Mayor of Boston
William G. Oates, Chief Information Officer
William F. Sinnott, Corporation Counsel
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February 15, 2008

The Honorable Edward Markey
Chairman
Subcommittee on Telecommunications
& the Internet
United States House of Representatives
Washington, DC 20515

The Honorable Cliff Stearns
Ranking Member
Subcommittee on Telecommunications
& the Internet
United States House of Representatives
Washington, DC 20515

Dear Chairman Markey and Ranking Member Stearns:

In testimony before your Subcommittee on Wednesday, FCC Chairman Martin sought to justify his repeated and controversial efforts to impose numerous burdensome regulations on the cable industry by claiming cable prices have risen by nearly 100 percent over the last ten years. By omitting important information, his continued use of this data paints a picture that is both deceptive and false. Your Subcommittee deserves, and should expect, the leader of any expert agency to provide you with accurate and complete information.

First, one would expect that a credible pricing analysis would include, at a minimum, pricing histories of competing providers. It is a matter of public record that satellite and phone companies (which together account for more than one in three multichannel video subscribers in the U.S.) offer comparably-priced video packages; in fact phone company competitors are raising prices on their video services at a higher rate than are cable companies. Indeed, Verizon recently raised rates 11.6% on the video programming component alone, which followed a 7.6% increase in November 2006. <u>But Chairman Martin never refers to these price increases by our competitors, and certainly doesn't suggest that they are in any way unreasonable. This seems puzzling to say the very least.</u>

Second, any analysis that fails to account for the qualitatively different nature of the video package in 2005, as compared to that in 1995, is crudely incomplete. Indeed, it would be an understatement to say that the 1995-2005 comparison is a classic "apples to oranges" comparison. For example, in 1995, <u>all</u> cable subscribers were analog subscribers and received an average of 45 channels. Now, the majority of our subscribers are digital. These customers receive hundreds of channels, including an array of high-definition channels that typically include most of the broadcast networks and many cable networks. Digital subscribers also receive video-on-demand services, with hundreds if not thousands of shows, movies and interactive services not even contemplated in 1995. In addition, even cable's analog

subscribers now receive an average of 75 channels. These are not small changes; they represent a sea-change in the video offerings available to cable customers and a fundamentally different value proposition for most consumers. Chairman Martin's public comments on this subject utterly ignore these basic realities.

Third, as other FCC Commissioners have pointed out, the FCC's old methodology for collecting pricing data (on which Chairman Martin is relying) is itself widely recognized as flawed. Cable operators had been required to supply data based on "rate cards," which, in most instances, do not reflect discounts or bundling. Initially, cable companies were required to supply pricing data on analog packages only; today most of our customers are digital subscribers. Previous FCC surveys ignored the obvious consumer benefits of discounted phone, high speed Internet, and video services in bundled offerings.

And, for an agency that should be at the cutting edge of data collection and analysis relating to voice, video, and Internet services, the FCC still has not updated its basic data-gathering efforts to measure the consumer value of wildly popular new services such as high-definition, video-on-demand, digital video recorders, or sophisticated program guides. It is disappointing that local television advertisements of cable operators and our competitors provide more up-to-date information than data collected by the FCC. Chairman Martin has not only failed to modernize the basic data-gathering efforts at the FCC in this respect, but has failed to publicly acknowledge that he is relying on outdated and discredited data.

Fourth, Chairman Martin has used flawed data in ways that depart from ordinary FCC practice in order to support pre-determined conclusions. For example, the FCC historically (and Chairman Martin currently) presents data on the wireless industry's pricing in terms of the "price-per-minute-of-use." And, until recently, the FCC typically collected and reported similar measures for cable video services – "price-per-channel" data – a metric widely acknowledged as a more precise index of consumer value. However, after it became clear that this measurement showed a decline in the real "price-per-channel," Chairman Martin ordered the Media Bureau to suppress this information from the public and Congress.

If the FCC were to be consistent across industries, as it should be, it would measure consumer value with a price-per-viewing-hour metric. Price-per-viewing-hour is more accurate as it incorporates changes in quality and quantity in evaluating the service – much like price-per-minute calculations do for voice services. For example, while a customer's wireless bill has undoubtedly increased in recent years, a typical customer's usage has also increased, as has the value of that service to most consumers. Similarly, consumers are watching far more cable programming and using many more services than in previous years, as tens of billions of dollars of investment have yielded better and more popular programming. The result? As Bernstein Research concluded recently, "On an inflation-and-services-adjusted basis, *the cost per hour viewed has fallen 7% annually over the last 13 years*. Despite the nominal price increases, on a total viewing basis, consumers are getting a vastly better deal from their cable

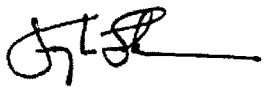
(or satellite) bill . . . ."[1] The important issue is the overall value proposition for consumers. The reduction in price-per-viewing-hour disproves Chairman Martin's shopworn assertion that consumers are being forced to pay more for programming they don't watch.

It is true that nominal prices of video services have increased over the last ten years, though more slowly for cable in recent years. But I believe the evidence strongly suggests that the value to consumers of all cable's offerings has risen even more. For example, one clear success in recent years is that the cable industry is providing the first meaningful voice competition to the phone companies, with savings to the consumer measured in tens of billions of dollars each year.

One can debate the many perspectives when measuring value to the consumer, but it neither serves the public nor the important work of your Committee to pretend that this is either a simple discussion or one aided by incomplete and outdated charts, data and analyses that totally ignore the real-world consumer experience.

Thank you for the opportunity to clarify the record.

Sincerely,



Kyle E. McSlarrow

cc: The Honorable John Dingell
The Honorable Joe Barton
Members, Subcommittee on Telecommunications & the Internet

[1] Craig Moffett, Bernstein Research, "Weekend Media Blast: Death, Taxes ... and Cable Rate Increases. A Look Behind the Headlines," Dec. 7, 2007 (emphasis added).

David L. Cohen
Executive Vice President

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February 13, 2008

The Honorable John D. Dingell
United States House of Representatives
Washington, D.C. 20515-6115

Re: Public, Educational, and Governmental Channels in Grand Rapids, MI

Dear Chairman Dingell:

It was an honor to participate in the recent hearing on "Public, Educational, and Governmental Services in the Digital TV Age" before the House Energy and Commerce Committee's Subcommittee on Telecommunications and the Internet. As the Members recognized, and we agreed, the transition from analog to digital television poses significant challenges to the telecommunications industry and consumers. As I stated in my testimony, PEG digitization is just one part of this national transition.

At the hearing, you specifically asked me about the channel changes previously announced for Grand Rapids. I have now had the opportunity to investigate that situation. There are five PEG channels in Grand Rapids: two educational, two public, and one governmental. Our plan had been to transition all five of these channels to digital-only delivery on January 15, 2008, as part of a larger statewide initiative. The Grand Rapids PEG channels would have remained part of the basic service tier, as would have PEG channels throughout the state, and a free digital converter box was available to affected customers for the next year. These plans are now on hold given our commitment to work with our local partners.

The planned digitization of channels in Grand Rapids, however, was not limited to PEG. Our system in Grand Rapids also offers several Comcast-affiliated channels. Two Comcast local origination ("LO") channels were set to be a part of the January 15 changes – we planned to convert Ch. 20 to a digital format and to eliminate Ch. 23 entirely. As with the digitization of PEG channels throughout Michigan, these changes have been deferred. Comcast offers two other affiliated channels in Grand Rapids on the basic service tier in analog, Real Estate Preview (Ch. 22) and Comcast MartketPlace (Ch. 12). Although no format changes have been announced for these channels, they too may be transitioned to digital delivery, like other programming, in the future as we look for ways to optimize our network.

As I stated in my testimony, we understand the value of PEG programming and are doing our best to help consumers, communities, and PEG providers adjust to this transition easily and affordably. Thank you again for the opportunity to testify and please let me know if we can be of any assistance in the future.

Sincerely,

David L. Cohen
Executive Vice President

DLC:jlp

01/29/2008 TUE 11:09 FAX 586 286 9390 Clinton Township 2 010/010

commitment

Here's where we stand on providing a new choice in video providers.

We will deliver competition.

We will not block lawful web content or intentionally degrade the quality of Internet service.

We will quickly improve our network to deliver a choice of television providers to families in our broadband footprint.

We will provide cities and towns with video franchising fees equivalent to their current agreements.

We will deliver community programming, disability access and emergency alerts, and contribute to the funding of community access operations.

We will respect traditional rights-of-way oversight and enforcement.

We will continue our more than 125-year history of providing quality customer service.