

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the matter of )  
 )  
Petition for a Declaratory Ruling That )  
AT&T's Method of Delivering Public, ) MB Docket No. \_\_\_\_\_  
Educational and Government Access Channels )  
Over Its U-verse System Is Contrary to the )  
Communications Act of 1934, as amended, )  
and Applicable Commission Rules )

**PETITION FOR DECLARATORY  
RULING OF ALLIANCE FOR COMMUNITY MEDIA,  
ALLIANCE FOR COMMUNICATIONS DEMOCRACY,  
SACRAMENTO (CALIFORNIA) METROPOLITAN CABLE TELEVISION  
COMMISSION,  
FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT, CALIFORNIA,  
CHICAGO ACCESS NETWORK TELEVISION,  
ILLINOIS NATOA,  
MANHATTAN (NEW YORK) NEIGHBORHOOD NETWORK,  
BRONXNET (NY), BROOKLYN (NY) COMMUNITY ACCESS TELEVISION,  
CITY OF RALEIGH, NORTH CAROLINA,  
ACM WESTERN REGION,  
ACM CENTRAL STATES REGION,  
ACM MIDWEST REGION,  
ACM NORTHWEST REGION,  
ACM NORTHEAST REGION,  
AND SEATOA**

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## SUMMARY

AT&T's method of delivering PEG channel programming to its U-verse video subscribers, its "PEG product," results in inferior PEG channel accessibility, functionality and signal quality to that afforded all other basic (and virtually all non-basic) video channels on AT&T's U-verse systems. AT&T's U-verse product also does not pass through closed captioning contained in PEG programming.

Petitioners ask the Commission to declare the following with respect to AT&T's method of delivering PEG programming over its U-verse system:

1. AT&T's systematic discrimination against PEG programming in terms of accessibility, functionality, and signal quality violates Sections 611, 623 and 624(e) of the Communications Act and FCC rules and policies by discriminating against PEG channels and by exercising impermissible editorial control over PEG channel capacity.
2. AT&T's "PEG product" fails to provide PEG programmers with "channels" as defined in Section 602(4) of the Cable Act and thus violates Section 611 of the Cable Act by failing to provide "channel capacity" for PEG use.
3. The closed captioning pass-through requirements imposed on cable operators and VPDs by §§ 76.606 and 79.1(c) of the Commission's rules are absolute and are not qualified by Section 79.1(e)(2).

### ***AT&T's "PEG Product"***

What AT&T refers to as its "PEG product" differs fundamentally from other video programming provided on AT&T U-verse's basic video programming tier. When a subscriber to AT&T's U-verse multichannel video service wishes to select a particular broadcast or commercial cable programming channel, the process is virtually indistinguishable from that of a traditional incumbent operator cable system. If, however, an AT&T U-verse subscriber wishes to locate and watch local programming of a PEG channel from the community where he or she lives, the process is much more time-consuming and complicated. The subscriber will find no individual local PEG channels listed on the AT&T channel guide. At most, AT&T's onscreen guide may show a generic listing of "Local Government Education and Public Access" assigned to "Channel 99" of the U-verse lineup.

Channel 99 on AT&T's system is not a video channel at all. Instead, clicking "99" on the remote activates the downloading of an Internet-mediated application that AT&T sometimes refers to as its "PEG product." The subscriber first receives a generic screen entitled "Local Government Education and Public Access." The subscriber must then press "OK," which initiates the loading of AT&T's "PEG product" application. Unlike retrieving any broadcast or commercial cable programming channel, the loading of AT&T's PEG application can take anywhere from 8 seconds to over a minute. Once AT&T's PEG product application is loaded, the subscriber then receives a menu listing

the names of all of the various communities in the DMA where the U-verse system is located. The subscriber must scroll down the list of communities to find his/her selected community and click on it. After yet another delay, the subscriber is then presented with yet another menu of the PEG channels in the selected community. The subscriber must again scroll down and find and select the desired PEG access channel. The subscriber must hit "OK" to enlarge the PEG channel's picture a full screen – the equivalent of zooming to full screen when watching video on a computer. After the subscriber has taken these many steps just to retrieve a particular PEG channel, additional problems occur both in viewing PEG programming once it is finally retrieved and when the subscriber tries to channel surf between PEG and other channels.

AT&T's PEG product is incapable of passing through closed captioning in PEG programming. Instead, AT&T forces PEG programmers to have their programming partially obscured by "always on" open captioning, if they wish to deliver captioned programming at all. Also unlike broadcast and commercial cable channels on AT&T's U-verse system, AT&T's PEG product removes or disables secondary audio program ("SAP") capability so SAP in PEG programming is not passed through. AT&T's subscribers cannot record PEG programming using AT&T's own DVR capability or TiVo, as they can with broadcast and commercial cable channels. At most, U-verse subscribers may only record PEG programming manually with their own equipment while their TV set is tuned to the desired PEG programming at the correct time; they *cannot* program their recorder to record PEG programming they are not watching for later viewing. Thus, AT&T's PEG product denies PEG viewers the basic time-shifting DVR capability that they enjoy with broadcast or commercial cable channels. Moreover, channel surfing between PEG and other channels on AT&T's U-verse system is time-consuming and cumbersome – the very antithesis of what viewers expect and demand when channel surfing.

AT&T describes its PEG product as "an application that integrates content via a secure Internet-based link" for "streaming video," an application that AT&T "hope[s]" to use in the future for unspecified "new" or "specialized commercial video content sources." But this "application," which AT&T's own description characterizes as currently unique to PEG, is apparently *not* believed by AT&T, or by broadcast or commercial cable channel programmers, to be adequate for those video programmers. The reason is obvious: AT&T does not use this "application" to deliver these other programmers' programming.

If the FCC were to allow a large provider like AT&T to implement a design that systematically discriminates against PEG and thus fails to comply with legal requirements, that would simply encourage all other providers to follow suit and discriminate against PEG as well.

### ***AT&T's PEG Product Unlawfully Discriminates Against, and Exercises Editorial Control Over, PEG Programming***

AT&T's PEG product violates longstanding Commission principles: It singles out PEG programming for discriminatory and uniquely inferior treatment, in terms of

accessibility, functionality and signal quality vis-à-vis other programming on the AT&T U-verse system's basic, and most non-basic, tiers. The Commission should therefore rule in no uncertain terms that AT&T's PEG product improperly discriminates against PEG programming in violation of the Act and Commission rules and policies.

AT&T's outright discrimination against PEG programming and PEG channels is directly contrary to Congress' expressed intent in the 1984 and 1992 Cable Acts, as well as longstanding Commission policy concerning PEG signal quality requirements. The principle that PEG is not to be discriminated against vis-à-vis commercial channels was reaffirmed by Congress when it enacted the 1992 Cable Act, where Congress explicitly stated its intent that cable operators may *not* discriminate against PEG channels and that "*these channels are available to all community members on a nondiscriminatory basis.*"

The roots of this non-discrimination principle with respect to PEG extend beyond the language and legislative history of the 1984 and 1992 Cable Acts to the longstanding decisions and policies of the Commission itself. For over twenty years, the Commission has made clear its view that cable operators may *not* discriminate against PEG (or for the matter, between any classes of downstream video programming) in terms of signal quality. The Media Bureau has recently reaffirmed that cable operators may not discriminate against PEG vis-à-vis other basic tier channels in terms of accessibility. Yet that is precisely what AT&T's PEG product does.

AT&T's PEG product also violates Section 611(e)'s prohibition against a cable operator's "exercise [of] any editorial control over any [PEG] use of channel capacity." By removing or disabling closed captioning, SAP and other content-related information in PEG programming, AT&T is impermissibly exercising editorial control over PEG channel capacity by "editing out" part of the content of PEG programming.

#### ***AT&T's PEG Product Fails to Provide PEG Channel Capacity as Required by the Act***

AT&T's PEG product fails to provide PEG "channel capacity" within the meaning of Section 611, because AT&T's PEG product does not provide PEG users with "channels" within the meaning of Section 602(4) of the Act. To provide the PEG "channel capacity" required by Section 611, AT&T's PEG product must provide for each PEG channel it is required to carry the IPTV equivalent of a "channel" – in other words, what AT&T provides to local broadcast stations and commercial cable programming channels on its U-verse system. AT&T's PEG product does not do that.

#### ***FCC Rules Require Cable Operators and VPDs to Pass Through Closed Captioning in PEG Programming Intact to Viewers***

Although AT&T's U-verse system passes through closed captioning in television broadcast and commercial cable programming delivered to it, it is not able to pass through to viewers closed captioning in any PEG programming delivered to AT&T with closed captioning. AT&T instead can only open caption PEG programming. "Open captioning" is "always-on" captioning that constantly blocks a portion of the picture despite the viewers' needs or desires with respect to captioning.

The Commission should declare that the Act and Commission rules require cable operators and VPDs to deliver intact to viewers all closed captioning in PEG programs that such operators and VPDs receive in closed captioning from PEG programmers. Cable operators are required to pass through intact to viewers the closed captioning of any programming, including PEG programming, received with closed captioning. The same is true of non-cable operator VPDs subject solely to Part 79. The § 79.1(e)(2) “open captioning” exception allows a programmer to “use” open captioning rather than closed captioning in its programming, and it also allows a VPD to pass through in open captioning programming *that it receives* in open captioning. It does *not*, however, absolve a VPD from its § 79.1(c) obligation to pass through closed captioning in programming that *it receives in closed captioning*.

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**PETITION FOR DECLARATORY RULING**

Pursuant to Sections 1.2 and 76.7 of the Commission's rules and 5 U.S.C. § 554(e), petitioners, the Alliance for Community Media ("ACM"), the Alliance for Communications Democracy ("ACD"), the Sacramento (California) Metropolitan Cable Television Commission ("SMCTC"), the Foothill-De Anza Community College District, California ("De Anza"), Chicago Access Network Television ("CAN TV"), the Illinois Chapter of the National Association of Telecommunications Officers and Advisors ("Illinois NATOA"), the Manhattan (New York) Neighborhood Network ("MNN"), BronxNet (New York), Brooklyn (New York) Community Access Television ("BCAT"), the City of Raleigh, North Carolina ("Raleigh"), the ACM Western Region, the ACM Central States Region, the ACM Midwest Region, the ACM Northwest Region, the ACM Northeast Region, and the SouthEast Association of Telecommunications Officers and Advisors ("SEATOA") (collectively, "PEG Petitioners"), request that the Commission issue a Declaratory Ruling that AT&T's current method of carrying

and distributing public, educational and governmental (“PEG”) access channels over its U-verse systems violates the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. §§ 521 *et seq.* (“1984 Cable Act” or “Cable Act”) and Commission rules, and that the closed captioning pass-through obligations of 47 C.F.R. §§ 76.606 and 79.1(c) are absolute.

Specifically, PEG Petitioners ask that the Commission rule that (1) AT&T’s method of delivering PEG channels over its U-verse systems unlawfully exercises editorial control over, and singles out and discriminates against, PEG channels, in terms of viewer accessibility, signal quality, and functionality, vis-à-vis commercial video channels carried on AT&T’s basic tier, contrary to 47 U.S.C. §§ 531, 543 & 544(e) and Commission rules and decisions concerning PEG channels; (2) AT&T’s method of delivering PEG channels impermissibly fails to furnish PEG access programmers “channel” capacity within the meaning of 47 U.S.C. §§ 522(4), 531 & 541(a)(4)(B), and applicable FCC rules and decisions; and (3) the obligation of a cable operator under 47 C.F.R. § 76.606, and of a video programmer distributor (“VPD”) under 47 C.F.R. § 79.1(c), to pass through intact to viewers closed captioning in programming that it receives in closed captioning is absolute and is not subject to the open captioning provision of 47 C.F.R. § 79.1(e)(2).

### **PETITIONERS’ INTERESTS**

Petitioner ACM is a national non-profit member organization representing over 3,000 PEG access organizations and community media centers, and PEG programmers and viewers throughout the nation. Those PEG organizations and centers include more than 1.2 million volunteers and 250,000 community groups that provide PEG access television programming in local communities across the United States.

Petitioner ACD is a national membership organization of non-profit PEG access corporations that supports efforts to protect the rights of the public to speak via cable television, and promotes the availability of the widest possible diversity of information sources and services to the public. The organizations represented by ACM and ACD have helped thousands of members of the public, educational institutions, and local governments make use of PEG channels that have been established in their communities pursuant to franchise agreements and federal law, 47 U.S.C. § 531. A number of PEG access organizations and community media centers adversely affected by AT&T's U-verse treatment of PEG channels are ACM and ACD members.

Petitioner SMCTC is a joint powers agency whose member agencies are seven local governments in the Sacramento, California, area. There are seven PEG channels in the Sacramento area. SMCTC is responsible for administering cable franchises in Sacramento County. SMCTC also operates the local government access channel, Metro Cable. In addition, SMCTC administers other PEG channel capacity and provides funding support for the Sacramento area's public and educational access channels: Access Sacramento, the Sacramento Educational Consortium ("SECC"), KVIE Cable 7, and Religious Community Television. AT&T has obtained a video franchise from the California Public Utilities Commission for SMCTC's area and has begun offering its U-verse multichannel video service in the area. California law requires AT&T to carry the SMCTC PEG access channels on its U-verse system. Cal. Util. Code §§ 5870(a) & (b). Several of the SMCTC PEG channels deliver closed captioned programming: All government meetings cablecast on Metro Cable, the government access channel operated by SMCTC, are closed captioned. Moreover, about 60% of the programming of SECC, which operates two educational access channels and also furnishes educational

