



# Miami Valley Communications Council

Technology for local governments

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April 24, 2009

Ms. Kimberly A. Zurs, Director  
Department of Commerce  
77 South High Street, 24<sup>th</sup> Floor  
Columbus, Ohio 43215-6123

Dear Director Zurs:

The Ohio Chapter of the National Association of Telecommunications Officers and Advisors (Ohio NATOA) and the Miami Valley Communications Council (MVCC)(Collectively, the Ohio PEG Coalition) request an investigation into AT&T Ohio's PEG channel access offering to Ohio communities to determine whether the level of access provided by AT&T Ohio comports with Ohio law.

### **The Ohio PEG Coalition**

The MVCC is a municipal communications and technology organization representing eight member cities, Centerville, Germantown, Kettering, Miamisburg, Moraine, Oakwood, Springboro and West Carrollton, along with 14 other affiliate member communities. Organized as an Ohio council of governments, the MVCC manages the operation and programming of the Council's four cable public access television channels, advises member communities on standards for use of public rights-of-way and develops intergovernmental projects designed to strengthen cooperative services and programs between the member cities.

Ohio NATOA members are comprised of local government representatives, public access centers and professional consultants from throughout the State of Ohio, including the communities of Akron, Brunswick, Cincinnati, Dayton, Dublin, Forest Park, Medina, Mentor, Shaker Heights, Toledo, Union Township and West Chester. Members are involved in the operation of cable, wireless and other communication services as well as the use of public rights-of-way in the provision of those services within their communities.

### **The Issue**

The Ohio PEG Coalition members currently receive access to the incumbent cable systems operating within their communities over distinct channels with no material difference in functionality from the channels that carry commercial programming. This is to say, that if a community receives access to three channels on the system, it is assigned a channel on the basic tier of service (2, 9, 80, etc.) over which it transmits its content. The functionality and bandwidth provided by these channels is substantially similar to every other channel provided on that network.

AT&T Ohio has recently begun providing a competitive video service known as U-verse in the territories of communities represented by the Ohio PEG Coalition. With AT&T Ohio's U-verse service offering, PEG channels will be made available only on Channel 99, requiring the viewer to navigate through a lengthy menu-driven process through which a specific community's programming is selected and streamed to viewers. In other words, multiple PEG "channels," from multiple communities, will be consolidated onto a single "channel." This form of access is fundamentally different than the access provided to all other programming provided on AT&T Ohio's commercial channels. The channel 99 access is not of similar quality or speed to that of the commercial channels. It is slow and cumbersome, of inferior picture quality, and provides limited functionality. The attached letter from Representatives Regula, Serrano and Obey to Federal Communications Chairman Martin, dated September 30, 2008, illustrates the concern.

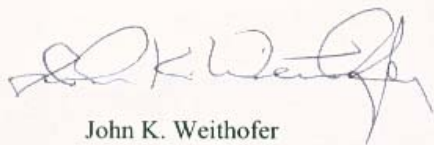
A petition for a declaratory ruling was filed with the FCC by a national coalition of PEG programming providers on January 30, 2009, asking the FCC to rule that AT&T's PEG product violates various provisions of the Cable Communications Policy Act of 1984, and related rules. This petition explains the infirmities of AT&T's U-verse PEG channel access in great detail. Additional petitions were filed by the cities of Lansing and Dearborn, Michigan. These petitions were consolidated for consideration by the FCC under MB Docket 09-13. To date, voluminous comments have been submitted to the FCC regarding those petitions.

Pursuant to Ohio Revised Code Section 1332.30, video service providers have an obligation to provide a certain number of PEG channels, pursuant to the terms of that section. New entrant video service providers such as AT&T Ohio are required to provide "the same number of PEG channels" as is required of the incumbent service provider. Federal law requires that the channels be placed on the basic tier, available to all subscribers of the cable system. There is little question that the level of AT&T's PEG channel access is inferior in fundamental respects to that offered by the incumbent providers.

**Request for Investigation**

The Ohio PEG Coalition respectfully requests that the Director, pursuant to the authority conferred by R.C. 1332.24(B)(1), conduct an investigation into AT&T Ohio's discriminatory and disparate treatment of the Ohio PEG Coalition members caused by AT&T Ohio's U-verse channel 99 PEG Product.

Respectfully Submitted,



John K. Weithofer  
Executive Director  
Miami Valley Communications Council



Kathie Pohl  
President  
Ohio NATOA