BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 7, 2013

IN RE:

COMPLAINT OF CITY OF KNOXVILLE AGAINST AT&T TENNESSEE	)	**DOCKET NO. 12-00082**

ORDER

This matter came before Vice Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 7, 2013 to consider the Complaint filed by the City of Knoxville on July 24, 2012 and the Complaint filed by Knox County on August 15, 2012 against BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T").

BACKGROUND

The Competitive Cable and Video Services Act ("CCVSA" or the "Act") became effective on July 1, 2008 and was codified in Tenn. Code Ann. § 7-59-301, *et seq.* The Act provides for state-issued video franchise authority as an alternative to franchises issued by local governments. Under the Act, a cable or video company can apply to the TRA for state franchise authority to provide service for certain areas. If the application is deemed complete, the TRA must issue the franchise within certain deadlines. Pursuant to Tenn. Code Ann. § 7-59-312(a), the TRA also has limited jurisdiction to consider a complaint from a municipality or county arising under certain sections of the Act, including § 7-59-309 concerning public, educational and governmental ("PEG") access channels.

On August 5, 2008, the TRA granted a state-issued certificate of franchise authority to AT&T to provide non-exclusive cable or video services in various areas, including the City of Knoxville and Knox County, Tennessee.[1]

On July 24, 2012, the City of Knoxville filed a Complaint with the Authority against AT&T, which provides U-Verse television service within the City of Knoxville and Knox County. Knox County filed an identical Complaint against AT&T in the same docket on August 15, 2012.

Knoxville and Knox County (together, the "Complainants" or "Local Governments") state that Community Television of Knoxville ("CTV"), a non-profit corporation, is the authorized manager of PEG channels for Knoxville and Knox County. Pursuant to Tenn. Code Ann. § 7-59-309(a)(1), CTV activated its PEG channels, which AT&T and other cable providers began transmitting. The signals used by CTV to deliver the PEG channels to AT&T are not compatible with the IP technology AT&T uses to deliver video service, so the signals must be altered through an encoder. AT&T provided the needed encoders to CTV as required by statute when it began service in the Knoxville area in 2009.[2]

However, AT&T U-Verse stopped transmitting the PEG channels, apparently because of the failure of the encoder device provided by AT&T to CTV.[3] The Complainants state that they notified AT&T that AT&T was no longer transmitting the PEG channels as required by law. AT&T refused to replace the encoder device, asserting that it was only required to provide the encoder initially. The Complainants allege that AT&T has a continuing obligation by statute to bear the expense of transmission of the activated PEG channels, and, therefore, the TRA should order AT&T

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[1] *See In re: Application of BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee for a State-Issued Certificate of Franchise Authority*, TRA Docket No. 08-00115, *Certificate of Franchise Authority* (August 5, 2008).
[2] *See AT&T Tennessee Initial Brief on the Merits*, p. 1 (October 30, 2012).
[3] Since the filing of the Complaints, a second encoder provided by AT&T to CTV failed. *See Initial Brief of Complainant City of Knoxville, Tennessee*, p. 4 (October 30, 2012).

to bear current and all future expenses involved in the transmission of PEG channels, including replacement or repair of the encoder devices, under penalty of revocation of its franchise authority

To determine the validity of the Complaints, the Authority must interpret the meaning of Tenn. Code Ann. § 7-59-309(f), which reads as follows:

> (f) (1) The operation and content of any PEG channel provided pursuant to this section shall be the responsibility of the municipality or the county receiving the benefit of the channel and the cable or video service provider bears only the responsibility for the transmission of the channel. A holder of a state-issued certificate of franchise authority must transmit a PEG channel by one (1) of the following methods:
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> (A) Interconnection, which may be accomplished by direct cable, microwave link, satellite or other method of connection. Upon request, if technically feasible, an incumbent cable service provider must interconnect its network for the provision of PEG programming with a holder of a state-issued certificate of franchise authority. The terms of the interconnection shall be as mutually agreed and shall require the requesting holder to pay the reasonable costs of establishing the interconnection. It is declared to be the legislative intent that an incumbent cable service provider should not incur any additional cost as a result of an interconnection required pursuant to this subdivision (f)(1)(A). In the event a holder of a state-issued certificate of franchise authority and the incumbent cable service provider cannot agree upon the terms under which the interconnection is to be made or the costs of the interconnection, either party may request the department to determine the terms under which the interconnection shall be made and the costs of the interconnection. The determination of the department shall be final. Upon notice to the governing authority of the county or municipality, the time for the holder of a state-issued certificate of franchise authority to begin providing PEG programming as required in this section shall be tolled during the time the department is making its determination; or
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> (B) Transmission of the signal from each PEG channel programmer's local origination point, at the holder's expense, such expense to include any equipment necessary for the holder to transmit the signal from PEG channels activated as of July 1, 2008, if the origination point is in the holder's service area.
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> (2) All PEG channel programming provided to a cable or video service provider for transmission must meet the federal national television system committee standards or the advanced television committee standards. If a PEG channel programmer complies with these standards and the holder does not provide transmission of the programming without altering the transmission signal, then the holder must do one (1) of the following:
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> (A) Alter the transmission signal to make it compatible with the technology or protocol the holder uses to deliver its service; or
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> (B) Provide to the municipality or county, at the holder's expense, in the case of PEG channels activated as of July 1, 2008, the equipment needed to accomplish such alteration.

> (3) If accessibility to PEG programming or a subscriber's ability to utilize PEG programming transmitted by a holder of a state-issued certificate of franchise authority is materially different than that provided by an incumbent cable provider, then the holder shall make available a description of the differences on a publicly accessible web site and within the holder's marketing materials and customer service agreements.

AT&T filed an Answer to Knoxville's Complaint on August 24, 2012, and an Answer to Knox County's Complaint on September 12, 2012. AT&T asserts that its only statutory duty was to provide the PEG encoder equipment at the initiation of its video service, and that any subsequent repairs or replacement costs should be borne by the Complainants and funded out of the franchise and PEG fees that AT&T pays to them.

AT&T filed a letter from Sen. Bill Ketron and Rep. Steve McDaniel, two sponsors of the CCVSA, on August 10, 2012. The letter states that it was the legislators' "intent that providers would be required to supply an encoder, but providers would *not* be required to maintain that equipment."[4] The Complainants filed a Motion to Strike the letter from the record, which the Hearing Officer denied, declining to strictly enforce the Rules of Evidence in an administrative proceeding.[5]

Because there were no material factual disputes and this matter is one of statutory interpretation, initial briefs were submitted by the parties on October 30, 2012, and reply briefs were filed on November 20, 2012.[6] Oral arguments were heard by the panel at the regularly scheduled December 17, 2012 Authority Conference.[7]

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[4] Letter to Chairman Kenneth C. Hill from Sen. Bill Ketron and Rep. Steve McDaniel, p. 1 (August 10, 2012) (*emphasis in original*) ("Ketron/McDaniel letter").

[5] *See Order Denying Request to Strike Legislators' Comments* (November 29, 2012). The panel appointed a Hearing Officer to prepare this matter for hearing at its September 10, 2012 Authority Conference. *See Order Convening a Contested Case and Appointing a Hearing Officer* (September 20, 2012).

[6] Knox County adopted the briefs of the City of Knoxville. *See Knox County's Notice of Adopting the Brief of the City of Knoxville* (October 30, 2012) and *Knox County's Notice of Adopting the Reply Brief of the City of Knoxville* (November 21, 2012).

[7] *See Order Entering Revised Procedural Schedule* (October 1, 2012).

POSITIONS OF THE PARTIES

The parties have set forth their arguments in full in the record of this docket and in the presentation of their positions at oral argument. The following section is intended as a brief summary of the positions of the Complainants and AT&T in this matter.

Position of the Complainants

Knoxville and Knox County present the question to the Authority as a determination of "whether the obligation of a holder of a state-issued certificate of franchise authority such as AT&T to provide, at its expense, any 'equipment' needed to fulfill the holder's ongoing duties to provide transmission and any necessary signal alteration of public, educational and government access ('PEG') signals pursuant to Tenn. Code Ann. § 7-59-(f)(1)(B) & (f)(2)(B), ceases on delivery of such equipment or is ongoing, just like PEG transmission and signal alteration duties that the equipment obligation is meant to serve."[8]

The Complainants assert that because AT&T's obligations to provide PEG signal transmission and alteration in (f)(1) and (f)(2) are ongoing, AT&T's obligation to provide encoder equipment *that works* is ongoing as well.[9] Under (f)(1), AT&T bears "the responsibility for the transmission of the [PEG] channel."[10] This responsibility may be fulfilled either by AT&T's interconnection with the incumbent cable operator (under subdivision (f)(1)(A)) or by AT&T transmitting the PEG signal from its origination point to AT&T's system, including AT&T's provision of any "necessary" equipment (under subdivision (f)(1)(B)). AT&T has chosen the latter option under (f)(1)(B).[11]

Further, under § 7-59-309(f)(2), where the PEG programming meets federal national television system committee standards or advanced television committee standards (as the CTV

[8] *Initial Brief of Complainant City of Knoxville, Tennessee.* p. 1 (October 30, 2012).
[9] *Id.* at 14 (*emphasis in original*).
[10] *Id.* at 6.
[11] *Id.*

PEG channels do), and where the franchise holder chooses to alter the PEG programming signal to be compatible with the holder's chosen system technology (as AT&T has chosen to do), AT&T bears the responsibility for altering the PEG signal to be compatible with its system. AT&T may fulfill this obligation either by altering the PEG signal within its network at its own cost under (f)(2)(A), or by providing the Complainants with the "needed" equipment required to alter the PEG signal "at [AT&T's] expense" under (f)(2)(B), which is the option AT&T has chosen.[12] Subdivisions (f)(2)(A) and (B) are alternative technological means that a video service provider like AT&T may choose to satisfy its overarching (f)(2) duty: to provide, at its expense, any PEG signal alteration necessary for a PEG channel to be compatible with its system. What AT&T refers to as "Option A" (subdivision (f)(2)(A)), allows the provider to fulfill the signal alteration obligation "in-network," and "Option B" (subdivision (f)(2)(B)), gives the provider the alternative of fulfilling the same signal alteration obligation by providing "at [its] expense," the "needed" equipment located at the local PEG origination premises.[13] Thus, while (f)(2) gives a video service provider two different technological options to perform signal alteration, the provider's obligation under either option is the same: to provide PEG signal alteration.[14] By contrast, AT&T's construction would mean that (f)(2)(A) and (B) are not really options for achieving the same result, but are two unequal obligations from which the provider gets to choose, with (f)(2)(B) being a greater burden on a local government than (f)(2)(A). According to the Complainants, "any common sense and fair reading of § 7-59-309(f)(2) is that the provider may not, by its choice of transmission protocol, unilaterally shift signal alteration costs to the locality, which has no say over the provider's transmission protocol decision."[15]

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[12] *Id.* at 6-7.
[13] *Id.* at 9.
[14] *Reply Brief of Complainant City of Knoxville, Tennessee*, p. 4 (November 20, 2012).
[15] *Id.* at 5.

The Complainants assert that AT&T's argument that it should not be responsible for the encoder equipment because AT&T lacks control over that equipment is inconsistent with AT&T's argument that the local government should be responsible for the equipment even though the local government lacks control over AT&T's election to choose the (f)(2)(B) equipment option.[16] AT&T can "provide" equipment to customers at their premises while retaining ownership and control of that equipment. Either retaining ownership of the equipment or transferring ownership of the equipment would be consistent with the statute, but AT&T cannot, by unilaterally choosing to pass ownership, reduce or change its ongoing signal alteration obligation.[17]

According to the Complainants, since AT&T has conceded in its Answer that (f)(1)(B)'s PEG transmission "equipment" "at the holder's expense" language includes the obligation to replace, repair or maintain that equipment, (f)(2)(B)'s PEG signal alteration "equipment" "at the holder's expense" language must be construed the same way.[18] The Complainants argue that the plain language of § 7-59-309(f) points to the conclusion that AT&T's subdivision (f)(2)(B) signal alteration equipment obligation is ongoing, because it is an option for fulfilling the ongoing PEG signal alteration of (f)(2), just as the (f)(1)(B) "equipment" provision is an option for fulfilling the ongoing PEG transmission obligation of subdivision (f)(1).[19] Because the plain language controls, there is no reason to consult legislative history. However, the legislative history that exists supports the Complainants, not AT&T.[20]

The Complainants maintain that the bill that ultimately became the CCVSA, as originally introduced, provided that municipalities, rather than the video service provider, were responsible for altering PEG signals to be compatible with the provider's system. Fourteen states where "AT&T is

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[16] *Id.* at 6.
[17] *Id.* at 4.
[18] *Id.* at 7.
[19] *Initial Brief of Complainant City of Knoxville, Tennessee*, p. 11 (October 30, 2012).
[20] *Id.* at 13.

the primary local telephone company" have enacted new statewide video franchising laws. The new laws in ten of those states mirror the language of the original bill as introduced and put the obligation on the municipality rather than the provider. The other states (California, Illinois, North Carolina and Ohio) did as Tennessee and placed the signal alteration obligation on the provider.[21]

The Complainants assert that the "unverified, long after-the-fact characterizations of what AT&T and two Tennessee legislators believe is the meaning of the CCVSA in general, and of § 7-59-309(f) in particular, are not legislative history at all and are irrelevant to the meaning of the statutory language at hand."[22] Courts have held "letters, testimony or other evidence rendered by a legislator retrospectively is not admissible" regarding legislative history, and because the Ketron/McDaniel letter was written four years after the CCVSA was enacted, it does not qualify as legislative history.[23]

The Complainants argue that "AT&T's ruminations about the CCVSA's general goals and alleged balancing of interests cannot trump the specific language that the Legislature chose in § 7-59-309(f)(1) and (2) to address service providers' PEG signal transmission and signal alteration obligations."[24]

Further, the Complainants dismiss AT&T's assertion that the 5% franchise fee AT&T pays provides the Complainants with more than enough money to pay for replacing or repairing the encoders. The Complainants note that the CCVSA's 5% franchise fee merely parallels what the federal Cable Act has allowed municipalities to impose on cable operators since 1984 and serves as "rent for the exceedingly valuable privilege of using the City's right-of-way to provide cable/video service."[25] In addition, the federal Cable Act "permits localities to require cable operators to pay

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[21] *Id.* at 14-15.
[22] *Id.* at 11.
[23] *Id.* at 12.
[24] *Id.* at 16.
[25] *Id.* at 17, *citing* 47 U.S.C. § 542.

the capital costs of PEG-related equipment and facilities *over and above* the 5% franchise fee."[26] For many smaller communities, the cost of replacing an encoder would far exceed franchise fee revenues. The notion that fulfilling its equipment obligation would impose a financial hardship on AT&T "strains credulity."[27]

Position of AT&T

According to AT&T, Tenn. Code Ann. § 7-59-309(f) sets out the responsibilities of local governments and AT&T with regard to the operation, content, and transmission of PEG channels. Subdivision (f)(1) plainly states that "[t]he operation and content of any PEG channel provided pursuant to this section shall be the responsibility of the [Local Governments] ... and [AT&T Tennessee] bears only the responsibility for the transmission of the channel."[28] Therefore, AT&T is responsible only for the costs of transmitting a usable signal to its customers. Subdivision (f)(2) provides an exception, requiring the franchise holder to assume limited responsibilities beyond transmission where the PEG signal cannot be sent along to customers without alteration.[29] Under these circumstances, AT&T can choose between two statutory options: Under "Option A" (subdivision (f)(2)(A)), AT&T itself can alter the signals to make them compatible with the technology or, alternatively, under "Option B" (subdivision (f)(2)(B), AT&T can "provide" to the Local Governments "the equipment needed to accomplish such alteration."[30] However, the specific language in the statute that addresses signal alteration does not say that AT&T must "repair," "maintain," or "replace" the equipment.[31] Under "Option A" (subdivision (f)(2)(A)), AT&T uses its own network to perform the alteration and must perform repairs, maintenance and/or

[26] *Id.* at 17 (*emphasis in original*), *citing* 47 U.S.C. 542(g)(2)(C).
[27] *Initial Brief of Complainant City of Knoxville, Tennessee*, p. 18 (October 30, 2012).
[28] *AT&T Tennessee Initial Brief on the Merits*, p. 9 (October 30, 2012).
[29] *Id.* at 9-10.
[30] *Id.* at 10.
[31] *Id.*

replacements of its own equipment to keep it operating.[32] Under "Option B" (subdivision (f)(2)(B)), AT&T must provide equipment that is owned and controlled by the Local Governments.[33]

AT&T asserts that the Act was a result of the balancing of competing interests.[34] The Ketron/McDaniel letter supports AT&T's position and interpretation and is a compelling indication of legislative intent.[35] In the final legislative compromise, franchise holders were required to pay to provide the altering equipment and to fund the transmission of PEG signals, including the transport from the PEG origination point to the provider's network. Legislators, however, stopped short of requiring new providers to shoulder the cost of maintenance, repair or replacement of equipment outside of their control and made it clear by not including any reference to maintenance, repair or replacement so that no obligation was included "among the many other PEG-related financial burdens imposed on providers."[36] The Local Governments are in a far better position than AT&T to maintain and repair equipment in their PEG studios under their custody and control.[37] The Act reasonably places repair costs with the party that actually possesses and controls the equipment, giving an appropriate incentive to handle the equipment with due care.[38] The Local Governments house, operate and control the equipment; therefore, it is "beyond reasonable argument" that those entities should be responsible for taking appropriate care of the equipment and replacing it if it fails.[39] The encoders worked when AT&T provided them and if the TRA accepts the

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[32] *Id.* at 11.
[33] *Id.*
[34] *Id.* at 12.
[35] *AT&T Tennessee Reply Brief*, pp. 3-4 (November 20, 2012).
[36] *AT&T Tennessee Initial Brief on the Merits*, p. 13 (October 30, 2012).
[37] *Id.* at 14.
[38] *AT&T Tennessee Reply Brief*, p. 2 (November 20, 2012).
[39] *Id.* at 4.

Complainants' argument, then the Act would give no incentive for the party in the best position to take care of the equipment to do so.[40]

AT&T argues that the Act allows the Local Governments to collect a "hefty" 5% franchise fee and that they are "free to use these fees to maintain, repair, or replace the equipment AT&T Tennessee provided them."[41] In addition, the CCVSA allows the Local Governments to impose "state-authorized PEG access support payments" of up to 1% of video service revenues. The fact that the General Assembly provided revenue for the sole purpose of "PEG access support" refutes the Complainants' argument that they are not responsible for these costs.[42]

AT&T maintains that the legislative decision to require new entrants to the video market to provide equipment, but not repair or maintain it, is logical when read in combination with the Act's franchise fee requirements. When a new provider enters a market, the local government has not yet received franchise fees that it could use to pay for alteration equipment. Therefore, the new provider is required to "front" the costs of the equipment. Later, the new provider would have paid franchise fees which would cover the costs of repairs or maintenance.[43]

According to AT&T, smaller communities do not have PEG channels and have no need for the encoder equipment. Nor will they have the need in the future because § 7-59-309(d) limits the number of PEG channels to the number provided for in any local franchise agreement in effect as of January 1, 2008.[44]

Finally, AT&T argues that, while the Complainants assert that their position is supported by the "plain language" of the Act, the Local Governments dismiss the fact that the terms "maintain" and "repair" do not appear in the statute. If the legislature had wanted to impose "maintenance and

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[40] *Id.* at 5.
[41] *AT&T Tennessee Initial Brief on the Merits*, p. 12 (October 30, 2012).
[42] *Id.* at 12.
[43] *Id.* at 14.
[44] *AT&T Tennessee Reply Brief*, pp. 5-6 (November 20, 2012).

repair" obligations on franchise holders, it could have included those terms in the Act.[45] AT&T states that it has been clear about its understanding of its responsibilities and that the fact that the Local Governments would own and bear responsibility for their equipment was noted in the materials AT&T provided at the time of installation.[46]

FINDINGS AND CONCLUSIONS

The panel deliberated this matter at its Authority Conference on January 7, 2013. The panel first found that the Complaints were properly before the Authority pursuant to Tenn. Code Ann. § 7-59-312(a). The General Assembly has delegated to the TRA the ability to consider complaints regarding PEG channels, and in considering the Complaints, the panel determined the Authority has both the ability and duty to interpret the meaning of the statutes the TRA is called upon to enforce.

In interpreting the provisions of Tenn. Code Ann. § 7-59-309(f), the TRA follows the accepted rules of statutory construction and, thus, must ascertain and give effect to the intent and purpose of the legislature. The Authority must look to the natural and ordinary meaning of the language of the statute and examine its provisions within the context of the entire statute and in light of its overarching purpose and the goals it serves.[47]

The language of Tenn. Code Ann. § 7-59-309(f)(2)(B) is clear when viewed in the context of the statute as a whole. While it is true that the words "repair" and "maintain" are not used, the other provisions of the statute, taken as a whole, lead to the logical conclusion that the General Assembly meant for the state franchise holder to bear those costs with respect to the encoder equipment.

Under the provisions of Tenn. Code Ann. § 7-59-309(f)(1), it is clear that the General Assembly has delineated the responsibility for PEG channels such that the local governments are

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[45] *Id.* at 6.

[46] *AT&T Tennessee Initial Brief on the Merits*, pp. 14 -15 (October 30, 2012). This information sheet is included as Exhibit A to AT&T's Initial Brief.

[47] *See, e.g. Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2011).

responsible for the operation and content of the PEG channel and *the franchise holder is responsible for transmission* of the channel. Transmission is accomplished either through interconnection or through *transmission of the signal at the franchise holder's expense.* AT&T has conceded in its Answer that (f)(1)(B)'s PEG transmission "equipment" "at the holder's expense" language includes the obligation to replace, repair or maintain that equipment.

Similar to the requirement for transmission equipment, if alteration of the signal is needed for transmission, then under the provisions of (f)(2), the holder either alters the signal itself or *provides the "needed" encoder equipment to the local government at the holder's expense.* While (f)(2) gives the franchise holder two different technological options to perform signal alteration, the holder's obligation under either option is the same: to provide PEG signal alteration. The franchise holder is given the choice of which method to use. The panel agrees with the Complainants that AT&T's reading of the statute would create two unequal obligations from which the holder gets to choose, with (f)(2)(B) being a greater burden on a local government than (f)(2)(A). As the Complainants state, "any common sense and fair reading of § 7-59-309(f)(2) is that the provider may not, by its choice of transmission protocol, unilaterally shift signal alteration costs to the locality, which has no say over the provider's transmission protocol decision."[48]

Transmission and alteration of signals is not a one-time occurrence, but an ongoing process, and the General Assembly clearly has placed that responsibility for transmission and alteration on the franchise holder pursuant to both (f)(1) and (f)(2). AT&T's interpretation of the statute that this continuing responsibility can be fulfilled by providing the PEG encoder equipment *only* at the *initiation* of video service strains logic. In addition, the statute clearly provides for the holder to provide, at its expense, the "equipment needed to accomplish such alteration." This "need" for equipment is not a one-time occurrence, but rather is ongoing.

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[48] *Reply Brief of Complainant City of Knoxville, Tennessee,* p. 5 (November 20, 2012).

Therefore, the panel concluded that the plain language of the statute that states that the franchise holder must provide the alteration equipment "at the holder's expense" sets forth a continuing responsibility for the state franchise holder to provide working alteration equipment to the local government at its own expense. As a result, in this instance, the panel found that AT&T is under a continuing duty to provide working alteration equipment to the Complainants. AT&T has not done so and, therefore, the panel found that a violation of the PEG requirements has occurred. Pursuant to Tenn. Code Ann. § 7-59-312(d)(1), however, AT&T must be given a "reasonable period of time" to come into compliance. Therefore, the panel directed AT&T to repair or replace the defective encoder equipment no later than 30 days from January 7, 2013 and to file proof of its compliance in the docket file.[49] If AT&T does not comply, then the panel will reconvene to consider an appropriate civil penalty of not more than $1,000 per day of non-compliance, up to a total of $10,000, as provided in Tenn. Code Ann. § 7-59-312(d)(1).

IT IS THEREFORE ORDERED THAT:

1. AT&T must repair or replace the defective encoder equipment no later than 30 days from January 7, 2013 and file proof of its compliance in this docket file.

2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

3. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

[49] AT&T filed a letter in this docket on January 29, 2013, stating that it has replaced the PEG encoders at issue.

Vice Chairman Herbert H. Hilliard and Director Kenneth C. Hill concur. Director Sara Kyle voted with the majority, but resigned her position prior to the issuance of this order.

ATTEST:

Earl R. Taylor, Executive Director