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Hon. Kenneth C. Hill, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Complaint of Community Television of Knoxville*  
Docket No. 12-00082

Dear Chairman Hill:

Enclosed please find AT&T Tennessee's Initial Brief in the above-referenced matter.

As explained in the enclosed Brief:

- This case is about which party is responsible for paying repair costs for certain equipment.
- The case is governed by the terms of Tennessee's Competitive Cable and Video Services Act ("the Act").
- AT&T Tennessee already pays substantial franchise fees to both the City of Knoxville ("the City") and Knox County ("the County") (collectively, the "Local Governments") that, to date have been 22 times the costs to replace the equipment at issue for the City and 36 times cost of replacement for the County.
- Given that the equipment is operated under the exclusive control of the City and County, and that AT&T has already paid the City 22 times and the County 36 times what it will cost them to replace the equipment, it is unreasonable to expect AT&T Tennessee to pay for the equipment yet again.
- Nothing in the Act obligates AT&T Tennessee to pay replacement costs above and beyond what AT&T is already paying in franchise fees, a fact confirmed by the Act's primary legislative sponsors.

Service of this Brief and letter on Knox County and Knox County of Knoxville is confirmed in the attached Certificate of Service.

Very truly yours,

Joelle Phillips

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BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Complaint of Community Television of Knoxville*

Docket No. 12-00082

**AT&T TENNESSEE INITIAL BRIEF ON THE MERITS**

This case is about which party is responsible for paying repair costs for certain equipment. The case is governed by the terms of Tennessee's Competitive Cable and Video Services Act ("the Act"). As discussed below, AT&T Tennessee already pays substantial franchise fees to both the City of Knoxville ("the City") and Knox County ("the County") (collectively, the "Local Governments") that, to date have been 22 times the costs to replace the equipment at issue for the City and 36 times cost of replacement for the County. Given that the equipment is operated under the exclusive control of the City and County, and that AT&T has already paid the City 22 times and the County 36 times what it will cost them to replace the equipment, it is unreasonable to expect AT&T Tennessee to pay for the equipment yet again. Nothing in the Act obligates AT&T Tennessee to pay replacement costs above and beyond what AT&T is already paying in franchise fees, a fact confirmed by the Act's primary legislative sponsors.

**Overview**

The signals used by the Local Governments to deliver their "public, educational, government access channel" ("PEG channel") content to AT&T Tennessee are not compatible with the IP technology AT&T Tennessee uses to deliver video service to its subscribers. Consequently, for AT&T Tennessee's customers to view the Local Governments' PEG channels, the Local Governments' PEG channel signals must be altered before AT&T Tennessee transmits PEG programming to its customers. As required by the Act, when AT&T Tennessee first initiated its video service in the Knoxville area in 2009, it provided both of the Local Governments with a \$10,000 encoder the Local Governments use to make the necessary alterations in the signals they forward to AT&T Tennessee. Thereafter, AT&T Tennessee also

began paying franchise fees to both Local Governments – more than \$225,000 to the City and more than \$364,000 to the County through Second Quarter 2012 – that are intended, in part, to cover future maintenance and replacement costs of the Local Governments’ PEG equipment.

The encoders have apparently stopped working and are out of warranty. The complaints filed by the Local Governments ask Tennessee Regulatory Authority (“TRA” or “Authority”) to ignore the substantial fees AT&T Tennessee is paying to the Local Governments and require AT&T Tennessee to make even more payments to the Local Governments to repair or replace the equipment. As explained below, however, AT&T Tennessee’s sole obligation under the Act (relative to this issue) was to provide the Local Governments with an encoder initially. After that, the respective encoders were under each Local Government’s exclusive control, and the Local Governments had the obligation to maintain (and if necessary replace) it, using revenue streams that were intended (and that have proven to be more than adequate) for that purpose.

There is no merit to either the Local Governments’ complaint. The statutory language requiring AT&T Tennessee to “provide” each Local Government with an encoder does not impose any obligation on AT&T Tennessee to also repair, maintain, or replace the equipment in-perpetuity.<sup>1</sup> That makes perfect sense, given that the Local Governments operate and control the encoders. Each should be responsible for the equipment in its possession. Both the plain language of the governing statute (which does not contain the words repair, maintain, or replace) and the deliberate legislative negotiations regarding the statute support this conclusion.

The letter Senator Bill Ketron and Representative Steve McDaniel filed with the TRA on August 10, 2012 also supports this conclusion. As the prime sponsors of the statute that governs this dispute, these legislators emphasize in their letter their intent that video providers, like AT&T Tennessee, are not required to make additional payments to Local Governments for ongoing repair, maintenance, or

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<sup>1</sup>The Act authorizes the TRA to resolve complaints regarding provision of PEG channels. T.C.A. § 7-59-312.

replacement of the equipment used to alter PEG signals. Instead, the legislators confirm that their intent was for the ongoing stream of franchise fees paid to Local Governments to cover such costs as they arise. AT&T Tennessee agrees with their explanation of the intent of the statute.

AT&T Tennessee, therefore, respectfully requests that the Authority deny all relief requested by the Local Governments in their Complaints and rule that (a) AT&T Tennessee's only obligation was to provide the PEG equipment at the initiation of AT&T Tennessee's video service, and, (b) consistent with the Act, any subsequent repair, maintenance, or replacement costs are to be borne by the Local Governments and funded from the substantial franchise fees the Local Governments have collected and continue to collect.

### Argument

Before 2008, Tennessee's locally-controlled franchising process left most Tennessee communities with only one provider of land-line cable or video service. The General Assembly remedied this situation in 2008, when it passed the Act, opening Tennessee's video market to competition from new providers like AT&T Tennessee. As a result, new providers have made significant investment in the State, and Tennessee consumers now enjoy the benefits of a far more robustly-competitive video market that offers more choices and better prices.

The Act was the subject of vigorous debate over two legislative sessions, and passage was eventually accomplished only after legislators directed opponents and proponents of the Act to spend weeks negotiating under the supervision of legislative sponsors.<sup>2</sup> The result was a carefully-constructed

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<sup>2</sup> News coverage of the legislative battle included this article from February 4, 2008, in Nashville Post, "Naifeh on cable-AT&T battle: 'We will have a bill'," in which then Speaker Jimmy Naifeh described the contentious negotiations over the bill. The Post reported:

"Competition is what can make this particular item work," Naifeh told reporters. He said he doubts that either AT&T or cable companies would like the legislation in the end, which in his view would mean "it's a good bill for Tennesseans." He also said that over the course of the past six weeks, representatives from both sides have been meeting with legislators to come up with a bill that is "good for all Tennesseans."

compromise bill – which balanced the interest of new entrants into the market (like AT&T Tennessee), incumbent providers (like Comcast and Charter), and local governments (like the City and the County).

On many issues, legislators sided with local governments. There were other issues on which legislators decided that the needs of consumers or providers outweighed the preference of local governments. The TRA's role in resolving this dispute is to effectuate the compromise that legislators crafted in the language of the law – not to alter the balance of these decisions now, by imposing a maintenance, repair, or replacement obligation on providers when legislators chose not to do so.

The TRA would commit legal error if, in effect, it re-wrote the law that legislators agreed upon, in order to provide the relief the Local Governments seek. Moreover, the TRA would also be mistaken if it concluded that local governments need protection from a “bad bargain.” In fact, local governments fared well in the negotiations that produced the Act. Some of the highest profile issues involved whether new entrants would be required to “build out” to reach a specified number of potential customers (“build out” was required of new entrants), whether incumbents would be required to fulfill obligations to local governments contained in existing local franchises (Incumbents were required to do so), and whether video providers would pay franchise fees directly to local governments (providers were required to do so and were required to pay up to 5% of specified video revenues in such fees). In each of these areas, the interest of local governments was well-protected.

While legislators were concerned with the interests of local governments, they also decided, on many issues, that local governments' preferences would not be the right path and declined to include local government-supported proposals. In particular, legislators were wary of imposing too many PEG-related requirements, which could have increased subscribers' costs for channels that subscribers did not watch in large numbers. Among the rejected PEG proposals were requirements mandating certain picture quality standards (which would not have been compatible with newer technology platforms) and

requirements that channels be preserved for PEG even if local governments no longer used the channels or stopped producing new PEG programming, leaving the channels idle.

At the end of the legislative process, legislative sponsors balanced the competing interests in the manner they decided best served Tennessee. The Local Governments now ask the TRA to read into the law a provision that does not appear in the language the General Assembly enacted. That would be an error of statutory construction that would disrupt the careful balance of provisions legislators believed was best.

I. **The Act Establishes Clear And Detailed Requirements Regarding the Provision Of PEG Channels.**

Local governments were ably represented in the negotiations that led to the Act, and provision of PEG channels was only one among many issues on which local governments focused. While some of local governments' preferences on PEG channels were rejected by legislators, many of their preferences on PEG channels were adopted. Beyond that, local governments successfully negotiated into the law other provisions of higher priority to them (such as maximizing franchise fees and preserving police powers relating to the deployment of facilities in local rights-of-way). Accordingly, it would be wrong to conclude that local governments like the City or the County did not fare well in the negotiations that led to the Act.

To the contrary, on every aspect of the complex Act, legislators considered the arguments of the various parties and sought to strike the right balance. Legislators sought to encourage competition for consumers and to bring investment and new technology for Tennessee's economy on the one hand, while preserving appropriate regulation that treated competitors and local government fairly on the other. Legislators knew that too few obligations on new providers could have a negative impact on local governments, but too many could deprive Tennessee consumers of the benefits of competition by discouraging new entrants from competing successfully.

With respect to PEG channels, that balance resulted in a detailed list of multiple PEG-related requirements for holders of state-issued franchises, including the following:

- **Number of Channels.** Legislators chose to require holders of state-issued franchises to provide the same number of PEG channels already activated by the incumbent provider and to require incumbents to fulfill PEG channel obligations in existing local franchises – even if they opted for a state-issued franchise.<sup>3</sup> On this issue, legislators compromised between the preference of providers (to reduce the number of existing PEG channels, making room to meet consumer demand for more popular channels) and the preference of local governments (to increase the number of PEG channels and keep PEG channels on certain tiers.)
- **Existing PEG Support Fees.** legislators chose to require new providers to pay a PEG support fee that is equivalent to any PEG support fee required of the incumbent under the terms of the incumbent’s local franchise, to require incumbents to continue paying such fees through the expiration date of local franchises (even if they opt for a state-issued franchise), and to preserve such historic PEG support on an ongoing basis.<sup>4</sup> On this issue, legislators compromised between the preference of local governments (who urged that they should be permitted to establish new PEG support payments over and above franchise fee payments), and the position of providers (who argued that franchise fees provided ample resources from which cities could cover all PEG-related costs if they chose to have PEG channels).
- **New PEG-Support Fees.** Legislators chose to allow local government, where no PEG support fee existed under the terms of the incumbent’s franchise, to establish a new PEG support fee of up to 1% of gross revenues, provided that the total PEG support fee combined with the local franchise fee may not exceed 5%.<sup>5</sup> On this point, legislators compromised between ending existing PEG support payments, as providers urged, and allowing any city to establish a new PEG channel and a new PEG support fee as local government urged.
- **Transmission of PEG Signal to Video Consumers.** Legislators chose to require new providers to bear the ongoing cost of transmitting the signals from the Local Government’s respective PEG origination points to their video consumers after any alterations to the signals that are necessary to make them compatible with the new providers’ systems are performed.<sup>6</sup> (In the

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<sup>3</sup> T.C.A. § 7-59-309(d)

<sup>4</sup> T.C.A. § 7-59-309(j)(1).

<sup>5</sup> T.C.A. § -7-59-309(j)(2)

<sup>6</sup> T.C.A. § 7-59-309(f). The Local Governments incorrectly suggest that that the statutory provisions generally addressing signal transmission apply to this case. This case is not about who must transmit the Local Governments’ PEG signals to AT&T Tennessee’s customers – instead, this case is about who, on a going-forward basis, must maintain, repair, or replace the equipment that is necessary to *alter* those signals to make them compatible with AT&T Tennessee’s technology *before* the signals are transmitted to AT&T Tennessee’s customers. It is clear from the structure and language of the statute that these are separate and distinct issues. The statutory provisions generally addressing the transmission of the Local Governments’ signals are set forth in subsection §7-59-309(f)(1), while the provisions specifically addressing any alterations that are necessary to make the Local Governments’ signals compatible with AT&T Tennessee’s technology before the signal is transmitted are set forth separately in subsection 7-59-309(f)(2). And it is the specific provisions of subsection 7-59-309(f)(2), and not the general provisions of subsection 7-59-309(f)(1), that apply to these cases. *Ramsey v. Tenn. Dept of Human Services*, 2011 Tenn. App. LEXIS 6, \*10 (“It is a well-settled principle of statutory construction that [s]pecific

case of AT&T Tennessee's IP-based U-verse TV<sup>®</sup>™ service, this is accomplished by picking up the altered signal from the PEG origination point using a dedicated T-1 transport service, which would ordinarily cost a retail subscriber approximately \$550 per month. Once the altered signal is delivered by that transport service, AT&T Tennessee uses its network to transmit the signal to its video customers.) On this issue, legislators compromised between the preference of providers (who urged that the costs of delivering the PEG signal from the local governments' respective origination points to the provider's network should be borne by local governments) and local governments (who urged that providers should be required to cover all costs of picking up the PEG signals, regardless of the location of local governments' PEG origination points).

- **Alteration of Signal.** Legislators chose to require new providers that use different or newer technology than the incumbent to participate in the alteration of a local government's PEG signal to make it capable of transmission over newer technology used, including providing the equipment needed to alter the signal.<sup>7</sup> (In the case of AT&T Tennessee's IP-based U-verse TV<sup>®</sup>™ service, this is accomplished by providing each local government with an encoder device and other pieces of equipment, which for the City and the County cost AT&T Tennessee approximately \$34,600 in the aggregate (\$17,300 each) for the encoders at issues in this case.<sup>8</sup> On this issue, legislators compromised between the preference of providers (to require local governments to provide a signal compatible with newer IP technologies and to bear all the costs associated with updating PEG studios to accomplish any alteration required) and the preference of local government (to require providers to bear not only the cost of providing the new equipment needed to upgrade the PEG studio's ability to alter the signal to the newer technology, but also to have an ongoing responsibility to repair, maintain, or replace such equipment if it was damaged once in the control of the local governments.) **This is the very issue raised by the City and the County in their complaints, and they are seeking a different outcome than the compromise position decided by legislators.**
- II. **AT&T Tennessee Complied with the Act by Providing to the City and to the County, at AT&T Tennessee's Expense, Equipment Needed to Alter Their PEG Channel Signals so AT&T Tennessee Could Then Transmit Their PEG Programming to AT&T Tennessee's Customers.**

On May 19, 2010, AT&T Tennessee provided and installed, at no cost to either of the Local Governments, equipment necessary to alter the Local Governments' PEG programming signals to a format that AT&T Tennessee could then transmit to its video service customers. This equipment included an encoder, router, Ethernet switch and connection patch panel with an aggregate value of \$17,300 to each entity (for a combined total of \$34,600 for both the City and the County). The equipment AT&T Tennessee provided was subject to a 90-day warranty. AT&T Tennessee also provided

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provisions relating to a particular subject must govern in respect to that subject, as against general provisions in other parts of the law which otherwise might be broad enough to include it").

<sup>7</sup> T.C.A. § 59-7-309(f)

<sup>8</sup> AT&T Tennessee also provided an additional PEG encoder (also costing \$17,300) to the County to facilitate the use of an additional origination point. That encoder is operating properly.

the City and the County with the information attached as Exhibit A in October 2009 (prior to providing the equipment), and the information stated that AT&T Tennessee would not be responsible for maintenance after the 90-day warranty period.

Specifically, the material provided with the equipment stated:

AT&T will provide and configure the conversion equipment based on AT&T technical specifications. AT&T provides a 90-day warranty on the equipment from installation. After the 90-day period, all conversion equipment provided by AT&T will be fully owned by, and the responsibility of, the City,<sup>9</sup> and AT&T assumes no liability for, and makes no warranties, express or implied, with respect to, the equipment after the 90-day warranty expires. After the 90-day period expires, however, a manufacturer's warranty may be applicable to the equipment. The City may contact the manufacturer directly for more information. Further, the City may contact 3<sup>rd</sup> party vendors for information and a pricing quote on an extended warranty and support.

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The City may report technical issues to AT&T's Emerging U-verse applications. During the first 90 days after installation, AT&T will troubleshoot and resolve issues within the AT&T U-verse network, the PEG transport circuit(s) and the AT&T-provided PEG conversion equipment. After 90 days, AT&T will troubleshoot the AT&T U-verse network up to the building's minimum point of entry (MPOE) or demarcation and clear any issues with AT&T's network. If the problem is identified to be with the City's encoding hardware or software, the City is responsible for troubleshooting and issue resolution and can contact the hardware manufacturer or a 3<sup>rd</sup> party vendor for trouble resolution.

On May 29, 2012, AT&T Tennessee noticed that it was not receiving a PEG signal from the City. After verifying that its T-1 transport service was operating properly, AT&T Tennessee asked the City to check its signal alteration equipment. AT&T Tennessee personnel had several discussions with City personnel to attempt to resolve this issue. It appears that the encoder was not operating.

On August 15, 2012, AT&T Tennessee noticed that it was not receiving a PEG signal from the County. After verifying that its T-1 transport service was operating properly, AT&T Tennessee asked the County to check its signal alteration equipment. AT&T Tennessee personnel had several discussions with County personnel to attempt to resolve this issue. It appears that the encoder was not operating.

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<sup>9</sup> The materials provided to the City and the County are identical.

III. The Plain Language of the Controlling Statute Makes the Local Governments, not AT&T Tennessee, Responsible for the Maintenance, Repair, and Replacement of the Signal Alteration Equipment AT&T Tennessee Provided the Local Governments and that the Local Governments Subsequently Operated and Controlled.

Tennessee courts have explained that in construing a statute under its jurisdiction, the Authority must look first to the language of the statute itself. When that language is plain and unambiguous, as here, the Authority cannot add language that is not in the statute or adopt an interpretation that expands the statute's meaning.<sup>10</sup> It is clear from the plain language of the applicable section<sup>11</sup> of the Act that AT&T Tennessee is not required to maintain, repair, or replace the equipment as the Local Governments mistakenly claim in their Complaints.

Subsection 7-59-309(f) of the Act sets out the responsibilities of local governments and AT&T Tennessee with regard to the operation, content, and transmission of PEG channels. It begins with subitem (1), which 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."<sup>12</sup> Clearly, the statutory rule is that the Local Governments are responsible for all costs of delivering a useable PEG channel signal to AT&T Tennessee, and AT&T Tennessee is responsible **only** for the costs of transmitting that usable signal to its customers.

Subitem (2) then provides a specific exception to this general rule, requiring a provider like AT&T Tennessee, in certain circumstances, to assume limited responsibilities beyond just transmitting

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<sup>10</sup> The guiding principle of statutory construction is to give effect to legislative intent without unduly restricting or expanding the statute's coverage beyond its intended scope. *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994). Such legislative intent is generally gleaned from the plain language of the statute without any forced or subtle construction that would extend or limit its meaning. *Id.*; *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994).

<sup>11</sup> As noted above, the Local Governments' complaints mistakenly focus on the more general statutory provisions addressing the **transmission** of their signals. This case is governed by the more specific statutory provisions addressing any **alterations** that are necessary to make their PEG signals compatible with AT&T Tennessee's technology before the signals are transmitted.

<sup>12</sup> T.C.A. §7-59-309(f)(emphasis added).

the PEG channel.<sup>13</sup> This exception applies in this case because the Local Governments send AT&T Tennessee PEG signals that cannot be sent along to AT&T Tennessee's customers without alteration.<sup>14</sup> Under these circumstances, AT&T Tennessee can choose between two statutory options. One option is for AT&T Tennessee itself to alter the signals to make them compatible with the technology or protocol AT&T Tennessee uses to deliver its video services.<sup>15</sup> Alternatively, AT&T Tennessee can "provide" the Local Governments "the equipment needed to accomplish such alteration."<sup>16</sup> AT&T Tennessee chose this second option and provided the Local Governments the equipment needed to accomplish such alteration.

The Local Governments argue that the more general provision requiring "transmission" of their PEG signals requires AT&T Tennessee to not only give the Local Governments the signal alteration equipment free of charge (which AT&T Tennessee did), but also to repair, maintain, and/or replace this equipment regardless of when or why it ceases to function. But the specific language in the statute addressing the signal alteration does not say that AT&T Tennessee must "repair," "maintain," or "replace" the signal alteration equipment<sup>17</sup> – it plainly says that AT&T Tennessee is only required to "provide" the equipment. That alone makes clear that the Authority must reject the Local Governments' proposed interpretation of the Act.

In addition to the plain language of the statute, the interplay between §7-59-309(f)(2)(A) and §7-59-309(f)(2)(B) makes clear that the Local Governments' proposed interpretation is wrong. As

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<sup>13</sup> Like all exceptions to general statutory rules, this exception must be construed as narrowly as possible. *Little v. Eastgate of Jackson, LLC*, 2007 Tenn App. LEXIS 242, \*6-7 (noting need to narrowly construe exception to general at-will employment doctrine to avoid exception swallowing rule.); *McGowan v. Miles*, 72 SW 2d 553, 559 (Tenn. 1934)(noting that exception to general rules are to be narrowly construed).

<sup>14</sup> See §7-59-309(f)(2).

<sup>15</sup> See §7-59-309(f)(2)(A).

<sup>16</sup> See §7-59-309(f)(2)(B).

<sup>17</sup> It would have been easy enough for the General Assembly to have included the words "maintain," "repair," or "replace," in the statute, and it is no mistake that they do not appear in the statute. To the contrary, the General Assembly clearly intended that AT&T Tennessee's obligation is merely to "provide" the equipment, and not to maintain, repair, or replace the equipment. See Letter from Senator Bill Ketron and Representative Steve McDaniel, filed in this docket on August 10, 2012.

explained above, under the circumstances of this case, the Act gives AT&T Tennessee the option to either: (A) alter the Local Governments' PEG signals to make them compatible with the technology or protocol AT&T Tennessee uses to transmit its video services; or (B) "provide" the Local Governments "the equipment needed to accomplish such alteration."<sup>18</sup> Option A – altering the Local Governments' PEG signals – would involve AT&T Tennessee using its own network to perform the alteration and therefore would require AT&T Tennessee to perform the same repairs, maintenance, and/or replacements of its own equipment that would ordinarily be required to keep it operating. AT&T Tennessee, however, chose Option B – to "provide" the Local Governments "the equipment needed to accomplish such alteration." Under AT&T Tennessee's correct interpretation of the statute, Option B is substantively different than Option A because Option B does not require AT&T Tennessee to repair, maintain, and/or replace the equipment that accomplishes the alterations. In sharp contrast, under the Local Governments' erroneous interpretation of the statute, Option A and Option B are substantively identical – both would require AT&T Tennessee to repair, maintain, and/or replace the equipment that accomplishes the alterations. But Tennessee law clearly instructs the Authority to choose an interpretation of a statute that renders meaning to each of its provisions (as AT&T Tennessee's interpretation does) over an interpretation that (like the Local Governments') renders some of the statute's provisions meaningless or superfluous.<sup>19</sup>

Moreover, as discussed more fully (in Section III B) below, the Option B requires the provider to provide equipment that will be owned and controlled by the Local Governments. It would be irrational to conclude that the provider, who lacks any control over the care of that equipment, would be responsible for repairs in the absence of explicit language stating that. Instead, the reasonable reading

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<sup>18</sup> See T.C.A. §7-59-309(f)(2).

<sup>19</sup> *State v. Turner*, 913 SW2d 158, 162 (Tenn. 1995)(noting that courts should construe statutes to avoid rendering provisions redundant or meaningless).

of the provision is that the intent was that the party in the position to take care of the equipment would have responsibility for maintaining it. That party is the Local Government.

Finally, and most importantly, the Act allows both the City and the County to collect from AT&T Tennessee a hefty franchise fee of 5% of its video services revenue within their respective boundaries,<sup>20</sup> and the City and County are free to use these fees to maintain, repair, or replace the equipment AT&T Tennessee provided them. The Act also allows the City and the County to impose “state-authorized PEG access support payments” of up to 1% of such revenues, and these PEG access support payments “may not be used for other purposes.”<sup>21</sup> The fact that the General Assembly provided revenue for the local governments to use for the sole purpose of “PEG access support” further refutes the City’s and the County’s argument that they are not responsible for these costs.

**A. The Local Governments’ Interpretation Imposes Unreasonable Burdens on New Entrants into the Video Market at Odds with the Legislature’s Careful Balancing of Interests.**

During negotiation of the Act, legislators considered – and accepted or rejected – numerous proposals. Legislators balanced competing interests, and no stakeholder walked away with everything it wanted. The resulting final legislation, co-sponsored by 62 House members and 7 senators, was a 50-page public chapter addressing every aspect of the complex debate.

On the issue of PEG, legislators could have chosen a much more restrictive approach, eliminating or severely limiting government mandates for providers to fund these channels. New providers argued that the need for government-mandated, yet un-funded, programming was now far less compelling because cities and counties (like Knoxville and Knox County) are now able to provide up-to-the-minute information to the public using internet websites. Similarly, the programming often featured on “community access” channels can also be obtained through YouTube and other internet sites. Given this dramatic shift in circumstances, legislators could have concluded that cable and video

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<sup>20</sup> T.C.A. § 7-59-306.

<sup>21</sup> T.C.A. §7-59-309(J)(1), (4).

subscribers should not be forced to subsidize local programming that could be seen using less expensive web-based platforms.

Those arguments were balanced against arguments from local governments who wanted new competitors' subscribers to view the same PEG programming that landline incumbents were transmitting – even if subscribers did not wish to pay for these channels.

In the final compromise, local governments obtained substantial financial support from new providers. In addition to the requirement to pay to provide the equipment needed to alter PEG signals to newer technological platforms, providers were also required 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 or repair of signal alteration equipment outside their control. By not including any reference to repair, maintenance, or replacement of signal alteration equipment, legislators made clear that no such obligation was included among the many other PEG-related financial burdens imposed on providers.

**B. The Decision to Place Maintenance Responsibilities on Local Governments Was Reasonable, and the Local Governments Should Have Planned for the Potential of Repair Costs.**

Legislators did not leave local governments without resources to repair and maintain this equipment. New providers are required to pay franchise fees to local governments, and local governments are free to invest such fees in PEG studio maintenance.<sup>22</sup>

Tennessee courts routinely stress the importance of interpreting statutes in a manner that does not produce an absurd result.<sup>23</sup> Yet, the Local Governments' urged interpretation would absurdly

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<sup>22</sup> In fact, AT&T Tennessee has paid the County \$364,273.93 and the City \$225,000 in video franchise fees since 4<sup>th</sup> Quarter, 2009. The 5% franchise fee required under the Act is the maximum permitted under Federal Law. 47 USC 542(b).

require a new entrant, who has just provided each of them with a working piece of PEG equipment, to provide another to replace it if the City or County simply tossed the equipment out the window, or otherwise failed to maintain the equipment properly. While there is no indication that either of the Local Governments have damaged this equipment, it is clear that they are in a far better position than AT&T Tennessee to maintain and repair equipment kept in their respective PEG studios under their custody and control. This logic is consistent with the reasonable decision of legislators to require new entrants to provide – but not to repair or maintain – this equipment.

The legislative decision to require new entrants to provide – but not to repair or maintain – PEG equipment is especially logical when read in combination with the Act’s franchise fee requirements. Legislators understood that, when a new provider first enters a city or county, neither the city nor the county has yet received any franchise fees, which the city or county could use to pay for equipment needed to alter the PEG signal. Legislators therefore saw value in requiring the new provider to “front” the costs of that equipment. Legislators also understood, however, that later – if the equipment needed repairs – the situation would be different. By that time, the new provider would have paid (and would continue to pay) the local government a steady stream of franchise fees. Legislators decided that, at that point, the cost of repairs or maintenance of PEG equipment owned and controlled by the local government could be easily covered using that stream of franchise fees. As noted above, in this case, by the time this repair was needed, AT&T Tennessee had already paid franchise fees to the City of more than twenty-two times, and to the County of more than thirty-six times, the cost of replacing the broken PEG equipment.

Finally, the Local Governments were well aware of the potential that they would incur costs in maintaining their PEG station and equipment, including equipment used to alter their signal for new

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<sup>23</sup> See, for example, *Wachovia Bank v. Johnson*, 26 S.W.3d 621, 627 (Tenn. App. 2000) (“Courts must presume that the legislature did not intend an absurdity and adopt, if possible, a reasonable construction which provides for a harmonious operation of the law.”)

providers. AT&T Tennessee has been clear about its understanding of the responsibilities relating to this equipment. As noted above, the fact that the Local Governments would own and bear responsibility for their respective equipment was noted in the materials (attached as Exhibit A), which AT&T Tennessee provided to the both the City and the County at the time of installation.

### Conclusion

The applicable language of the statute addressing signal alteration equipment is clear, and it logically places the repair and maintenance responsibilities with the entity that controls, owns and posses the equipment. Legislators placed the majority of PEG-related responsibilities on providers by using clear and detailed statutory language. If the intent had been to add a repair and maintenance obligation to the long list of PEG-related obligations, then the language of the statute would say so. As the letter from the prime sponsors of the governing statute reiterates, the intent was for carriers to make the initial investment in equipment to alter the signal, but the ongoing costs to maintain, repair, and replace that equipment was intended to be covered by the franchise fees paid to local governments.

Legislators were not insensitive to the financial needs of local governments, including the potential costs associated with maintenance and repair of new PEG equipment. In fact, the franchise fees paid to local governments provide ample resources for that maintenance and repair.

Looking to general statutory language on transmission to impose maintenance and repair costs for signal alteration equipment would be inconsistent with the General Assembly's intent and the language used in the statute to address signal alteration specifically. For all the reasons set forth above and expressed in the letter from Senator Ketron and Representative McDaniel, AT&T Tennessee respectfully urges the TRA to reject the Local Governments' interpretation of the Act and enter an order finding that AT&T Tennessee is not responsible for the cost of maintenance and repair of the PEG equipment that it provided to the Local Governments.

Respectfully submitted,

AT&T TENNESSEE

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## **Important information Regarding AT&T's PEG Solution**

*Thank you for your interest in AT&T U-verse TV and public, educational and government programming, or "PEG." This sheet contains some important information about AT&T's PEG solution and describes the actions that must be undertaken by AT&T and the City before PEG programming can be carried over AT&T's U-verse TV service.*

### **AT&T's PEG solution**

AT&T uses Internet Protocol (IP) technology to stream a city's PEG channels through the AT&T U-verse TV service to U-verse TV subscribers in the designated market area (DMA).

### **Conversion of PEG Programming Signal to IP Format**

In order to provide PEG programming in the appropriate format for distribution to AT&T U-verse TV subscribers, the PEG programming signal must be converted to a digitally encoded video stream(s) using Windows Media 9, encoded at a rate of 1.25 Mbps per stream. AT&T shall, at its own expense, provide, configure, and install the necessary equipment required to convert the City's PEG programming signal to the required format. AT&T will provide and configure the conversion equipment based on AT&T technical specifications. AT&T provides a 90-day warranty on the equipment from installation. After the 90-day period, all conversion equipment provided by AT&T will be fully owned by, and the responsibility of, the City, and AT&T assumes no liability for, and makes no warranties, express or implied, with respect to, the equipment after the 90-day warranty expires. After the 90-day period expires, however, a manufacturer's warranty may be applicable to equipment. The City may contact the manufacturer directly for more information. Further, the City may contact 3<sup>rd</sup> party vendors for information and a pricing quote on an extended warranty and support.

### **Transmission of PEG Programming Signal to AT&T's network**

AT&T will provide, at its own expense, the required transmission capacity to transport the PEG streams from the building's minimum point of entry (MPOE) or demarcation to AT&T's network. The City is solely responsible for all inside wiring, intra network cable (INC), conduits, or cable raceways as such may be required to connect or provide connectivity from the MPOE to the PEG conversion equipment.

### **Preparation of PEG Programming by City**

The City shall deliver its PEG programming signal (audio and video) to the PEG conversion equipment in a standard format, using standard connectors, to be specified by AT&T. Depending on how the city's PEG system is configured, the city may need to perform work or install equipment that permits AT&T suitable access to the signal and the ability to install the equipment. The type of work cities must perform may include house cabling, premises wiring and demarcation or MPOE extensions, video and audio splitters and amplifiers to deliver the signal at the proper levels; equipment/rack space; conduit; AC/DC power; modifications to HVAC systems or other building-related requirements that may be required to install the conversion equipment. AT&T will work with the city to recommend equipment placement locations and cabling requirements. More information is available on Page 3.

### **Delivery of PEG Programming to U-verse TV Subscribers**

AT&T will deliver the PEG programming to all U-verse TV subscribers within the same designated marketing area (DMA). U-verse subscribers shall locate such programming at Channel 99 using the U-verse PEG menu screens

### **Internet addresses for PEG programming ("URLs/IP Addresses")**

Each PEG channel transmitted by the city to AT&T must have a unique and dedicated Internet URL/IP address. The city will need to work with AT&T to identify and finalize the dedicated URL/IP address for each of its PEG channels. AT&T will provide the city an electronic capability and format ("Muni Administrative Software Tool") to communicate the dedicated URL/IP address information to AT&T.



**Timely Completion of PEG Installation**

AT&T will meet with the city to review PEG requirements and will provide a list of any required items for the site-specific installation. AT&T and the city will work cooperatively and on a timely basis to ensure that work is completed to enable the placement of PEG equipment within specified timelines.

**Maintenance and Support**

The City may report technical issues to AT&T's Emerging U-verse Applications (EUA). During the first 90 days after installation, AT&T will troubleshoot and resolve issues within the AT&T U-verse network, the PEG transport circuit(s) and the AT&T-provided PEG conversion equipment. After 90 days, AT&T will troubleshoot the AT&T U-verse network up to the building's minimum point of entry (MPOE) or demarcation and clear any issues within AT&T's network. If the problem is identified to be with the City's encoding hardware or software, the City is responsible for troubleshooting and issue resolution and can contact the hardware manufacturer or a 3rd party vendor for trouble resolution.

**PEG Programming Content**

AT&T shall not exert direct or indirect programming control or assert ownership over the city's PEG programming. All PEG content provided to AT&T by the city shall remain the responsibility of the city. The city shall ensure that it has the appropriate rights to allow transmission of all content by AT&T to subscribers in the DMA. AT&T shall have no editorial control over the city's PEG programming.

## PEG Equipment Requirements

The following are general requirements for the PEG conversion and associated equipment. Actual requirements will be finalized through discussion following the site visits.

1. The equipment may be placed in existing relay racks if such space is available in a secure location (e.g., locked room or similar environment.) Otherwise, a small amount of floor space may be required in order to install the equipment in a locked cabinet.
2. Typically, the electrical power requirement is a 15 amp dedicated 120VAC circuit and standard grounded outlet (within 6 (six) feet of the equipment).
3. For each channel of programming, the equipment requires one video and one audio hand off (isolated) using one of the options described below. The hand offs must be isolated (e.g., via a distribution amplifier.)
  - o Video Connection options:
    - National Television Standard Committee (NTSC):
      - SDI (BNC-Male connector on hand off cable from source) – SMPTE 259M or
      - Composite (via 1 locking BNC-Male connector on hand off cable from source) or
      - Component (via 3 locking BNC-Male connector on hand off cable from source) or
      - S-video (via 2 locking BNC-Male connector on hand off cable from source)
  - o Audio connection options:
    - Embedded audio over SDI (via 1 locking BNC-Male connector on hand off cable from source) or
    - 2 independent balanced Audio feeds (via 2 locking XLR connectors–Male connector on hand off cable from source)

*Typically, 4 feet of slack cabling is required for both audio and video connections*

**Note:** *Depending on the distance from the City A/V source to the location of the conversion equipment.*

4. At the equipment site, a cable path is needed (e.g., to run CAT 5 wiring) from the equipment to the telco-facility MPOE (minimum point of entry) where the AT&T transmission facilities will be terminated.
5. Depending on the actual site location, other miscellaneous requirements may need to be discussed. For example, reinforcement for mounting of equipment services, mounting of relay racks or cabinets based upon building code to support all Local, State, and Federal building standards, as applicable.

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2012, a copy of the foregoing document was served on the following, via the method indicated:

- Hand
- Mail
- Facsimile
- Overnight
- Electronic

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