

**Comments for the
Report to the General Assembly of
The State of Missouri
(A Report on Developments Resulting From the Implementation of the
2007 Video Services Providers Act)**



**Respectfully Submitted
By**



American Community Television

August 17, 2011

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Introduction

The following are comments for the 2011 report on the developments resulting from the implementation of the 2007 Video Services Providers Act by American Community Television.

American Community Television is a national nonprofit organization that is dedicated to the preservation of public, educational and government access television channels through the promotion and advocacy of positive federal legislation. ACT works, through communication with federal officials, for the passage and protection of federal statutes which establish and enhance the ability of local communities to use electronic media for the benefit of their citizens via public, educational and government access (PEG) television channels and to insure the accessibility for all citizens regardless of their socio-economic status.

Since the enactment of the Video Services Providers Act (SB 284) there have been intended and unintended harms to:

- Persons who are blind or visually impaired
- Public, Educational and Government Access Television
- Consumers

Our comment will address each of these areas.

Harms to Persons who are Blind or Visually Impaired

The way AT&T delivers Public, Educational and Government (PEG) access television channels to subscribers over its U-verse network makes them inaccessible to persons who are unable to

view and interact with multiple on-screen menus. As a consequence, blind and visually impaired persons are unfairly denied access to important and unique information provided by PEG channels. It is important to note that commercial channels (*i.e.*, broadcast networks and cable networks) are delivered to subscribers differently, and can be accessed by blind and visually impaired individuals using traditional methods and technologies. It therefore appears that AT&T has made a conscious decision to treat PEG channels in an inferior and discriminatory manner that presents insurmountable and unnecessary barriers to the blind and visually impaired.

By way of background, the AT&T U-verse system places all PEG channels in a particular geographic region on “Channel 99.” These channels can only be accessed by selecting Channel 99, and then interacting with several on-screen menus to choose a specific PEG channel, such as the channel serving a subscriber’s community. This is a deeply flawed technical solution for selecting PEG channels because blind and visually impaired persons cannot view the on-screen menus and buttons and therefore cannot interact with the requisite on-screen menus and make desired choices (*e.g.*, choosing or changing a PEG channel). Moreover, if a subscriber wishes to go to other cable or network channels, he/she must use the on-screen menu again to back out of Channel 99, which is something blind and visually impaired persons cannot do by themselves.

It is therefore evident that the AT&T U-verse platform makes PEG channels inaccessible to those individuals who are blind or visually impaired. No other cable company offers PEG channels in this manner. All other cable companies deliver PEG channels to subscribers the same way they deliver commercial channels, as independent channels that can be accessed by pressing the buttons on a remote control.

We believe that AT&T knew when it developed its U-verse architecture that PEG channels would be inaccessible to persons who are blind or visually impaired. In a recent report titled “Accessibility, Innovation and Sustainability at AT&T,” AT&T asserted that it tests all of its products for accessibility.

Specifically, AT&T stated:

“The Human Factors Group at AT&T conducts customer research, analysis, design and usability testing to help develop products and services that are accessible, useful and usable for customers with and without disabilities. The fundamental goal of the Human Factors Lab is to learn and adjust product design in the lab from inception, rather than after a product or service is deployed to tens of millions of customers.”

This statement strongly suggests that AT&T must have tested the U-verse platform to determine if it was accessible by customers with visual disabilities (a conclusion supported by the *ex parte* filing discussed below). If this is the case, AT&T must have known that PEG channels would be inaccessible to blind and visually impaired consumers using the U-verse platform. If AT&T did not thoroughly test its U-verse product, then its pronouncement is misleading at best.

In addition, an *ex parte* communication to the Federal Communications Commission from a member of the AT&T Advisory Panel on Access & Aging, states that the U-verse system was tested for accessibility.¹ However, the member never represents that that the AT&T Advisory Panel on Access & Aging found PEG channels carried on the U-verse platform to be accessible; rather he talks about wireless and website accessibility. This appears to be a glaring omission

¹ See *ex-parte* from Larry Goldberg, Director, The Carl and Ruth Shapiro Family National Center for Accessible Media at WGBH (NCAM)

and could certainly be viewed as an admission that PEG channels on U-verse systems are not accessible to persons with visual disabilities.

What makes this situation different from commercial pay-per-view channels, which are also driven and accessed by an on-screen menu, is that all cable subscribers, including those who are blind or visually impaired, pay for the PEG channels through franchise fees and/or PEG support fees. They have no choice as it is imbedded in their monthly cable bill. Thus, blind and visually impaired persons are effectively paying for a service they cannot receive.

American Community Television believes that AT&T's handling of PEG channels violates the spirit if not the letter of the law in the Americans with Disabilities Act and the more recent 21st Century Communications and Video Accessibility Act. AT&T's actions may also violate state trade practices laws.

We call on the state Legislature of Missouri to amend SB 284 to require AT&T to deliver PEG channels with the same equivalency in quality, accessibility and functionality to the channel capacity used for required carriage of local commercial television stations, as defined in section 614(h)(1) of the Telecommunications Act.

Harms to PEG Access Television Since the Passage of SB 284, the Video Services Providers Act

Since the passage of the statewide franchising law in Missouri, 2007 Video Services Providers Act--SB 284, the treatment of Public, Educational and Government (PEG) access channels by video providers in Missouri has been contrary to the public's interest. Video service providers such as Charter and Mediacom singled out PEG channels for discriminatory treatment, frequently moving PEG channels to the highest ranges of the digital tier; providing inadequate or

non-existent technical support; taking away channels without explanation; forcing customers to rent additional equipment to be able to view the PEG channels; etc.

SB 284 clearly states that all video providers must abide by state and federal laws.² The Telecommunications Act clearly defines PEG channels as being placed in the Basic Tier of service; it states that PEG channels are part of the “minimum contents” of the Basic Tier.³

(A) MINIMUM CONTENTS.--Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

Both Charter and Mediacom have moved PEG channels out of the Basic Tier of service in several municipalities. We received testimony from Springfield, St. Peters and Cape Girardeau as follows:

Springfield (note, Springfield’s PEG channels were not only moved out of the Basic Tier by Mediacom, but moved three times in eighteen months)

In the fall of 2008 Mediacom approached the City about moving our access channel. We met with them, expressed concerns and the outcome was they agreed to at least delay the switch. But they went ahead and moved all other access channels. At the time they said eventually ALL channels would move to the digital tier but they had no timetable for that "migration" (their word)

² Section 67.2679 (7)(1).

³ Section 623 (47 U.S.C. 543)(b)(7)(A).

We asked then for our channel to be moved when the other local stations/affiliates were moved. They had no schedule for that and noted contractual issues etc.

Shortly after the digital migration our school system dropped using their channel. They commented that it was too difficult for people to find them on the new digital channel and they didn't have time to sort it all out. They now use the web only for the District things.

In Spring 2009. Mediacom came back with a planned migration date again. Once again we tried to stall using the facts that we were in the middle of some huge budget and pension issues with lots of public meetings on the channel and to switch in the middle of this would be bad timing. They agreed to postpone briefly once again.

But they wanted to make the switch in June 2009 which just so happened to be in the middle of the whole over-the-air fiasco with the FCC's digital thing so we begged again to NOT switch us in the midst of this. It would only confuse an already confused and frustrated public more.

After some protracted emailing back-and-forth they agreed to delay until mid-July. We did switch at that time and they simulcast us for 30 days on both the new channel and the old one.

But things did not go smoothly. Some subscribers needed or already had set-top boxes. For them the move was OK - except for those who needed to get boxes. Mediacom agreed to provide boxes free for one year BUT people had to pick them up within 30 days. After that, there would be a \$5 per month charge. (NOTE - the rental of a set-top box is now \$10/month.)

For folks with digital TVs - with QMA tuners - the saga went on for a month or so. Mediacom first put our digital channel at 80 for box users and 15.7 or something for digital TV people. But no one could get the channel. Mediacom's answer was always "tell people to auto-program their sets"

When our own technicians could not get the channel, Mediacom relented and moved us again to another "point - something" channel.

After a couple of tries and some frequency adjustments, people could finally find us at 15.1. So we were on 80 and 15.1. Try explaining that to grandma who just went to Wal Mart to buy her converter box with her coupon for \$40. How come she can't see the City Council meeting anymore?

Jump now to spring 2010. Mediacom again wanted to move us. They wanted to move our 15.1 channel to 80.1 to simplify things. Again we asked them to delay. Spring is a busy programming time for us. They agreed to wait until summer.

Mid-June I contacted Mediacom to confirm our agreed upon date of July 13 and was told they had some technical issues to work out and would not be moving our 15.1 channel after all. I left for vacation shortly after that.

While on vacation and checking my facebook page I noticed an update about "City's channel moving on Mediacom". Upon checking back with my office, Mediacom moved us anyway.

And somehow in that move they changed frequencies once again. We could not watch or receive the channels properly on any of our City Hall TVs.

This time the problem was splitters. Seems the new frequency was too high for some old splitters to pass. So TVs were getting a very weak (or no) signal and couldn't lock on - even those with set-top boxes. Mediacom came to us and swapped out all our old splitters and fixed the problem. When I pointed out to them about fixing everybody else's splitter problem, I got no answer. Which is typical - it often takes them weeks to respond to phone calls or emails. I typically use emails as I have to reach several Mediacom folks in different locations and email makes that easier.

We are still in the current mode of not knowing how many people still can't view our channel because of a "splitter problem." We are getting calls every week from citizens. In one case after I spoke with a gentlemen with a digital TV he informed me Mediacom sent him home with a \$10/month set-top box. Either Mediacom is trying to get every last dollar OR their Customer Service Representatives (CSR's) really don't have a clue.

We finally posted something on our website telling people to call Mediacom. I have no idea how many people just get fed up and say forget about it. We may never know about those people if they don't call us also.

St. Peters (note, Charter not only moved the PEG channels but also took St. Peters' Public access television channel and gave it to the county, without St. Peters' permission)⁴

Under previous franchise agreement, St. Peters had Channel 10 (local government channel), Channel 18 (local public access channel) and Channel 26 (Lindenwood University Higher Education Channel).

November 1, 2007, Charter takes away Channel 18-the City of St. Peters' Public Access Channel and awards Channel 18 to St. Charles County for their government channel. (NOTE: This was the only public access channel in all of St. Charles County—there is currently no public access channel in St. Charles County.)

⁴ See Resolution No. 1446 by the City of St. Peters, passed August 11, 2011, stating that Charter's movement of the PEG channel to 992 is a violation of the Telecommunications Act.

April 2008, Charter moves St. Peters government channel 10 to the new digital tier and Channel 992. Immediately, City of St. Peters receives dozens of calls from residents including many senior citizens and others regarding the issue. Elected officials are also questioned at City meetings and other public or neighborhood meetings about the channel move and the increased cost for people on fixed incomes. At that time, AT&T U-verse had little or no availability in St. Peters so there was no other option. There is still limited AT&T U-verse availability.

St. Peters officials were told by Charter that Charter needed to take Channel 10 because they wanted to add more programming at that level and that they were moving St. Peters' government channel to 992 to a new "government neighborhood" with all other government channels in St. Charles County. We were told to direct any citizen complaints about this issue to Charter Cable, which we did.

Now, more than two years later, the spot for Channel 10 on the Charter line-up remains empty and we still get complaints about why there is no signal on Channel 10. Lindenwood University's old channel is also empty in the Charter line-up; the Lindenwood University channel has also been moved to the 990 "neighborhood" on the Charter digital line-up.

Cape Girardeau (note, Cape Girardeau's access television channel was moved from Channel 5 to 993. Our interview of Cape Girardeau provided us with information regarding the franchise agreement prior to passage of SB 284 and circumstances after the passage of the bill. Most disturbing is the loss of PEG support funds).

Pre-VSPA, our franchise agreement with our video service provider included:

A survey of cable subscribers every two years (we are unable to afford this process now)

Two PEG channels: a government and education channel (they are now subject to the provider's requirements, but yes they have been lenient)

Production of twice-monthly council meetings (\$24,000/annually)

*Production of school board meetings (price now incurred by school district unknown)
A grant of \$30,000 annually to support public/education/government programming and equipment for both channels (we now must pay for our own)*

Production of "other Council meetings"

The provider gave free cable to +/- 20 offices within the City and schools (many of these are still free)

In summary, it is easy to say that Cape Girardeau lost at least \$55,000 annually.

St. Louis

In addition to this testimony, we have been tracking the situation of “channel slamming” in St. Louis and St. Louis County. Charter slammed the access channels (KDHX, HEC TV, STLTV), from the Basic Tier of service to the 900’s. What is most noteworthy in this move by Charter is that they have not done this in any other state. They attempted to channel slam channels in Wisconsin to the 900’s and when Madison threatened to sue, they continued to provide access channels at their position on the Basic Tier and also provided a channel in the 900’s. We have been told by St. Louis County programmers that one of the consequences of this move is that the public schools can no longer receive the channels and in order to do so will have to spend hundreds of thousands of dollars on cable boxes.

There is no apparent justification or need for the channel slamming engaged in by Charter and Mediacom. The PEG channels are not in the Basic Tier of service required by federal law. And, we believe that when they were moved after SB 284 was enacted, they were not in compliance with Missouri law which did not allow them to be moved until at least 50% of the subscribers were purchasing that tier. On further investigation, it is highly doubtful that 50% of subscribers are now purchasing the tier that Charter has slammed the PEG channels to, namely the highest digital tiers.

We call on the Public Service Commission to investigate these complaints and we call on the Missouri state legislature to amend SB 284 to make the PEG channels whole again through placement on the Basic Tier of service and the reinstatement of PEG access television funding to at least the levels that were provided in local franchises when SB 284 was enacted.

Consumer Complaints

SB 284 removed the ability of the local municipalities to address cable related complaints or assist consumers in resolving issues. The Missouri PSC clearly states that they do not have the jurisdiction to address video service complaints and reports that only 3 complaints were received in the most recent 12 month period. Asking the cable operators to self-report does not help consumers, and it leaves open the possibility that video service providers will not report accurately the number of complaints they receive.

Missouri has approximately 1.5 million cable subscribers. In a recent query of cable administrators that receive and mitigate consumer complaints, we found an average of 1.2 complaints per thousand subscribers per month. If we apply that average to Missouri, statewide, there would be over 1,200 complaints per month.

That the PSC has no authority to address complaints and local governments' only option is to seek nonbinding mediation with the cost being born by both parties. Additionally, local government is expressly prohibited from establishing any kind of consumer standards. If repeated, willful and material violations continue, and a 60 day notice to cure has elapsed, the local government may file a complaint on behalf of the resident with the state's Administrative Hearing Commission for an order to revoke the video service provider's franchise for that political subdivision, however that decision may be appealed in court.

Before SB 284, local government had the authority to resolve complaints, fine video service providers for infractions, and guarantee that a minimum standard of consumer protection would be established. Since SB 284, consumers have been left out in the cold, they have nowhere to

turn, local government is wary of entering into nonbinding mediation since the outcome is unsure and could be expensive. That almost 15,000 Missouri residents would have complaints each year, but have no place to turn, SB 284 is harming Missouri consumers.

That the PSC reports a total of 3 complaints in the most recent twelve months is telling. It's not that consumer complaints have all but disappeared, it is that consumers have no agency they can ask for assistance.

We urge the legislature to amend SB 284 and provide consumers protection in their dealings and transactions with video service providers.

Conclusion

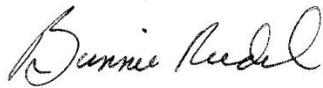
SB 284 has harmed persons who are blind or visually impaired by not requiring AT&T to deliver the PEG channels with the same accessibility, function and equivalency as local commercial channels. Blind or visually impaired persons cannot access the PEG channels on AT&T's U-verse system the way they can access PEG channels on any other cable system.

SB 284 has harmed Public, Educational and Government (PEG) access television by eliminating the requirement for video service providers to provide PEG funding and by taking away local control of PEG requirements. This harm is especially evident in Charter and Mediacom systems which have shown a blatant disregard for local community desires and have slammed PEG channels out of the Basic Tier, a violation of federal law.

SB 284 has harmed consumers in Missouri because there is no enforcement mechanism for consumer standards and it harmed local governments' ability to ensure consumer standards and industry accountability.

We urge the state legislature to amend SB 284 to address these areas.

August 17, 2011

A handwritten signature in cursive script that reads "Bonnie Riedel".

Bonnie Riedel
Executive Director
American Community Television
8775 Centre Park Dr. #255
Columbia, MD 21045

Attachment A



May 23, 2011

Via Electronic Submission

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Statement:**
Petitions for Declaratory Ruling Regarding Public, Educational
and Governmental Programming, MB Docket No. 09-13; Annual
Assessment of the Status of Competition in the Market for the
Delivery of Video Programming, MB Docket No. 07-269.

Dear Ms. Dortch:

As a long-standing member of the AT&T Advisory Panel on Access and Aging (“AAPAA”), I read with interest the article in the May 20 edition of Communications Daily about criticism by the PEG community of AT&T's accessibility efforts. The issue of inaccessible user interfaces of TV set-top boxes is one that affects more than just PEG networks – in fact most menus and electronic program guides for cable, satellite and telecom video systems have been recognized as a major barrier to blind and visually impaired consumers. That's why the "21st Century Communications and Video Accessibility Act" (“CVAA”), passed by the last Congress and signed by President Obama last fall, included a strong mandate to make these devices fully accessible. AT&T was one of the first supporters of this ground-breaking legislation and helped usher it through many rounds of negotiations.

To implement the requirements of the bill, the FCC established the Video Programming Accessibility Advisory Committee (“VPAAC”); AT&T is a member of this committee and is dedicating much time and effort to its deliberations which will result in recommendations for implementing the accessible set-top box provisions. Following a schedule set forth in the bill, the FCC will issue rules which will require audible access to all menus.

But even before the CVAA was passed, AT&T contracted outside experts to analyze its U-verse access services and features and put into a development cycle several recommendations to improve the accessibility of its service. (I know because it was my non-profit organization which performed this analysis.) Accessible user interfaces are an issue not only for television services, but for mobile devices and web sites as well. AT&T has made tremendous progress over the past few years in assuring that blind and visually impaired people can readily use its cell phones (as is required by law) and has instituted one of the most significant and effective corporate initiatives to bring its hundreds of

thousands of web sites and pages into conformity with the W3C's Web Content Accessibility Guidelines.

The issues surrounding channel placement for PEG channels on the U-verse service should be argued on their own merits. By raising accessibility arguments, the PEG community is not standing on firm ground: AT&T's commitment to fully inclusive products and services is among the strongest in all of corporate America.

Sincerely,

A handwritten signature in black ink that reads "Larry Goldberg". The signature is written in a cursive, flowing style.

Larry Goldberg, Director
The Carl and Ruth Shapiro Family
National Center for Accessible Media at WGBH (NCAM)

cc: Bill Lake
Michelle Carey
Mary Beth Murphy
Alison Neplokh
John Norton
Holly Sauer

ATTACHMENT B

RESOLUTION NO. 1446

A RESOLUTION BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF ST. PETERS REQUESTING CHARTER COMMUNICATIONS AND OTHER VIDEO SERVICE PROVIDERS IN THE STATE BE REQUIRED TO OFFER MUNICIPAL AND COUNTY GOVERNMENT ACCESS CHANNELS ON THEIR BASIC CABLE CHANNEL TIER AND THAT THE MISSOURI PUBLIC SERVICE COMMISSION INCLUDE THIS RESOLUTION IN THEIR 2011 ANNUAL REPORT TO THE MISSOURI GENERAL ASSEMBLY

WHEREAS, Senate Bill 284, the Video Services Provider Act was passed in 2007.

WHEREAS, Senate Bill 284 clearly states that all video providers must abide by state and federal laws.

WHEREAS, The Telecommunications Act clearly defines PEG channels as being placed in the Basic Tier of service; it states that PEG channels are part of the “minimum contents” of the Basic Tier.

WHEREAS, In May, 2008 Charter Communications moved St. Peters government channel from Channel 10 on the basic cable system to Channel 992 on their digital tier, requiring St. Peters residents to pay an additional \$5.00/ month for a digital cable box. (The channel was available on some late model devices equipped with a QAM tuner.)

WHEREAS, We believe that when Charter Communications moved St. Peters government channel from 10 to 992, after SB 284 was enacted, Charter Communications was not in compliance with Missouri law which did not allow Charter Communications to move our cable channel until at least 50% of the Charter Communications subscribers in St. Peters were purchasing that expanded basic tier.

WHEREAS, Many St. Peters residents are senior citizens who are most interested in viewing the Board of Aldermen meetings, yet are unable to physically attend them, and;

WHEREAS, Being on fixed incomes during these difficult economic times, these senior citizens and other residents would most benefit from Charter Communications resuming to offer the St. Peters Government access channel in the basic tier of service.

WHEREAS, We believe that when Charter Communications moved St. Peters government channel from 10 to 992 it was not in compliance with the federal Telecommunications Act since our PEG channel was no longer part of the “minimum contents” of the Basic Tier.

WHEREAS, During the last three years, the City of St. Peters Citizen Action Center and elected officials received hundreds of phone calls regarding this issue and the residents were referred to contact Charter Communications directly. This topic was also discussed during

several Board of Aldermen meetings by elected officials and many members of the community spoke during public comment periods during Board of Aldermen meetings.

WHEREAS, City of St. Peters officials were told by Charter Communications officials that Charter needed to take Channel 10 because they wanted to add more programming at that level and that they were moving St. Peters' government channel to 992 to a new "government neighborhood" with all other government channels in St. Charles County. Now more than three years later, the spot for Channel 10 on the Charter lineup remains empty and we still get complaints from our residents about why there is no signal on Channel 10 and our channel is on 992.

WHEREAS, In contrast to Charter Communications, Time Warner, the cable operator in Kansas City, Missouri has kept their government access television channel on Channel 2 on their cable system; and AT&T U-Verse provides our government channel on Channel 99 of their basic tier, not requiring our residents to pay extra money to view their government channel.

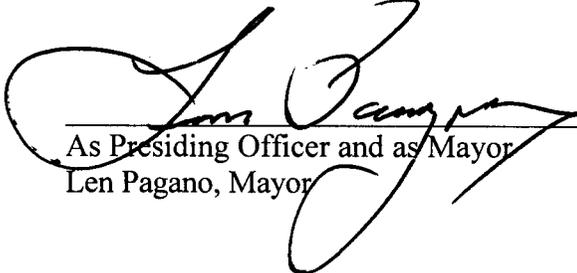
WHEREAS, SB 284 directs the Missouri Public Service Commission in their annual report to the Missouri General Assembly to make recommendations as the Missouri Public Service Commission deems appropriate to benefit consumers.

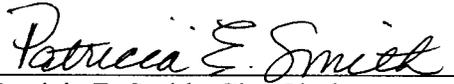
NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF ST. PETERS, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor and Board of Aldermen of the City of St. Peters request the Missouri Public Service Commission include this resolution in their 2011 Annual Report to the Missouri General Assembly.

SECTION 2. The Mayor and Board of Aldermen of the City of St. Peters requests the Missouri Public Service Commission make a recommendation to the Missouri General Assembly in their 2011 Annual Report that Charter Communications and other video service providers in the state be required to offer municipal and county government access channels on their basic cable channel tier.

Read and adopted this 11th day of August, 2011.



As Presiding Officer and as Mayor
Len Pagano, Mayor

Attest: 
Patricia E. Smith, City Clerk