The Energy And Technology Committee

March 6, 2008

House Bill No. 5814,

AAC COMMUNITY ACCESS TELEVISION

Testimony of

The Office of Consumer Counsel

Mary J. Healey, Consumer Counsel

The Office of Consumer Counsel (OCC) has carefully reviewed and suggests revisions to **House Bill No. 5814, AAC COMMUNITY ACCESS TELEVISION**, captioned "to improve community access television in the state." The OCC has advocated for the last three years for a truly "level playing field" among all video providers in this state, regardless of technology, but H.B. 5814 perpetuates an UN-level playing field in video services across Connecticut, choosing a winner in what should instead be a highly competitive market that reduces prices while improving service quality and inciting technological advances.

Consumers want a video market in which prices are driven down toward cost while enhancing services for all consumers. The market discrimination created in H.B. 5814 will continue to lead to negative effects on the competitors, enhancing the market power of one provider at the expense of all others, and in turn reduce benefits to consumers at a time when telecommunications prices are rising along with those of other utilities. Two attachments detail fair cable legislation in Idaho and the California response to the inadequate formatting for access programs.

For example, H.B. 5814 will form a competitive market similar to two gas stations across an intersection where, if the price of gas is $3.00 a gallon and Telco Gas charges $3.05, it gains a nickel profit. Across the intersection, however, Cable Gas is required by an ordinance to provide full service and wipe the windshield and check the oil, costing another $0.20, yielding a price of $3.25 a gallon with the nickel profit. Top this off with property tax breaks for Telco Gas and this is the ultimate UN-competitive market. We question why is there an ordinance that discriminates against one competitor by imposing public policy costs while excusing the other? There is no valid reason for hobbling the cable operators with obligations not shared by AT&T and increasing costs while reducing services for consumers.

For instance, AT&T is allowed by the legislation to only offer CT-N and the Public, Education, and Government Access Providers a cumbersome and reduced-quality "video on demand" service instead of broadcast quality channels, as presently offered (and required in the future) by the cable companies. By way of further discrimination, AT&T will carry C-SPAN on a broadcast channel, but not CT-N! The cable companies have provided CT-N and PEG providers with full broadcast channels for several years now and assert that they presently have no plans to do otherwise.

If the General Assembly believes that CT-N and PEG providers are well served by the "video on demand" service offered by AT&T, then why isn't that reduced-quality service acceptable for the cable companies? The cable companies have been required by state statutes to deliver high-quality public policy programming for over 30 years, a successful relationship undoubtedly beneficial to all concerned. Why should AT&T be selected by the General Assembly to alone be exempt from such rules and interactions with the communities it serves?

Yet another example is Section 9 of H.B. 5814 which attempts to further discriminate among providers by rolling back the "cable lite" regulation allowed to cable operators in 07-253. The OCC supported that application before the DPUC and applauds the DPUC's positive ruling granting such a certificate to a Connecticut cable operator.

Section 5 similarly discriminates among video providers in this state by requiring a "freeze" on technology and the number of channels operated by the cable companies, while allowing AT&T complete freedom in both these aspects of the video business. H.B. 5814 sentences the cable companies to an indefinite period requiring static provision of linear PEG access channel capacity fixed in time as of 1/1/08, while allowing AT&T to consider the least costly technology for delivery of PEG access which translates into non-linear programming that will be buried in the video-on-demand menus of the U-Verse system.

Conclusion:

The right answer here is to detail the level of regulation the General Assembly believes will properly provide consumers and the market with adequate market pressures, and to impose identical regulations equally on all providers of video services. Other states have adopted reasonable approaches to introducing greater competition to the video services market and before greater damage is done to the Connecticut market, the OCC urges amendment of H.B. 5814 consistent with the OCC's suggestions in this testimony.

G:\SHAREDAT\Legislative\2008\Testimony\OCC Testmy HB 5814 PEG Access 030708.doc

TUESDAY, MARCH 4, 2008 COMMUNICATIONS DAILY—5

Suit Nears over AT&T PEG Channels -- California Official

SAN FRANCISCO -- The issue of whether AT&T's U-verse video service meets California mandates for public, educational and governmental channels, a flashpoint under the new state franchising law, will be decided in court, a senior staffer said Monday at the Public Utilities Commission. San Diego has sent AT&T a demand letter on what it considers legal violations, and "I think we'll see litigation on that in the not-too-distant future," Michael Morris, head of the PUC unit on video franchising and broadband deployment, told a Practising Law Institute seminar on cable law.

U-verse compliance with state law on PEGs also is a hot issue in Illinois and Michigan, said Joseph Van Eaton, a communications attorney for localities. He said comparable questions may apply everywhere U-verse operates. An AT&T lawyer said his company's offering meets its duties.

California's Digital Infrastructure and Video Competition Act seems to require telcos to make PEG channels available to viewers on the same channel numbers as the cable companies they compete against and with a quality and functionality similar to those of commercial channels the telcos provide, said Morris. But U-verse provides PEG channels in a way similar to video streaming, requiring a viewer go through channel 99 and a number of menu tiers to access channels shown smaller than full-screen and with fewer pixels than others, Morris said. Reaching each tier can take 45 seconds, he said. PEG channels on U-verse can't carry closed captions, a point especially important to some cities and service providers, and don't carry the second audio program, Morris said.

AT&T does provide "open captioning" that takes up much of the screen, Van Eaton said. Channels can't be reached from the program guide or be used in the same manner as commercial channels with the PVR, and the picture "quality is one-quarter that of the standard NTSC channel," he said. If AT&T's practice stands, "PEG channels could go into a downward spiral," with cable companies seeking to be relieved of duties to offer them with better pictures and easier access at the cost of valuable system capacity, Van Eaton said. Spanish speakers and people with disabilities could lose their ability to watch the channels, he said.

"I could see that happening," Morris said of the "downward spiral" prediction. If AT&T found itself losing in court, it could go to the legislature to seek a law change legalizing its PEG practices, he said. Cable could chime in, seeking to have its duties reduced, Morris said.

An AT&T lawyer said his company obeys PEG rules. The law requires only similar treatment of public interest and commercial channels, which U-verse provides, said Joseph Trocca, an AT&T legislative affairs attorney in Sacramento. "It's a wonderful technology," Van Eaton said AT&T's IPTV handling of PEG channels. "It's just not a substitute. It's a supplement." But Morris said YouTube's wide acceptance may show "there are more modern ways to transmit PEG programming" than the way cable

does.

"We know we don't have jurisdiction" at the PUC to revoke a state video license for PEG violations without a judge's ruling, Morris said in response to a question: "I think you have to go to court first."

TR's State NewsWire . . . with TRINSIGHT(R) - 3/6/08

Level playing field featured in this legislation in Idaho.

IDAHO -- Video franchise bill introduced in Senate

Legislation that would establish a streamlined statewide process to enable new providers of video service to receive a certificate of franchise authority from the Secretary of State to provide services was introduced this week in the Senate.

The bill, however, would require a new video service provider to first obtain local authorization for the use of the public rights-of-way in individual cities and unincorporated areas of the counties, and to comply fully with local requirements and oversight.

SB 1461, sponsored by the Senate State Affairs Committee, further provides for equal treatment of incumbent cable service providers and new video service providers, as well as the continuation of the right of local governments to receive revenue from incumbent cable providers and new video service providers on an equal basis.

The "Use of Public Right-of-Way to Provide Video Service Act" specifies that after Jan. 1, 2009, no entity would be allowed to provide video service unless it is a cable service provider currently providing cable service pursuant to an existing franchise agreement or has been granted a certificate of authority by the Secretary of State, and has additionally secured an authorization from the locality in which video service would be delivered.

Once the video or cable provider has received a certificate of franchise authority and has received authorization from a locality, it would have access to the public rights-of-way. The bill specifies that the municipality in which video service is being offered would maintain authority over the public ROW. Among other things, a franchise holder would be required to provide "competently engineered plans" regarding its planned construction activities to a local municipality prior to initiating service.

The proposed bill further outlines the percentage of gross revenue that would be paid to municipalities in the form of a franchise fee. The municipality would set the percentage annually in an amount equal to the percentage paid by an incumbent cable service provider or 5%, whichever is less. If there is no incumbent cable provider, the fee would be 5% of gross revenue, or less.

In addition, the bill provides that any video service provider must designate a sufficient amount of capacity or one or more channels to allow the provision of public, educational and governmental (PEG) programming, or an amount equal to what is provided by the incumbent cable provider. The measure also states that a video service provider "may not deny access to video service to any group of potential residential subscribers because of the income of the residents in the local area in which such group

resides."

The legislature last year considered a measure supported by Qwest Corp. that sought to shift the authority to issue cable and vide franchises to a state agency from local municipalities, but the proposal was eventually withdrawn. A second bill that sought to standardize the process by which video franchises were issued was held by a committee during the last legislative session, as well.

The measure (HB 192) supported by Qwest last year sought to authorize the Secretary of State as the sole issuer of the video and cable service franchises, while HB 195, which was sponsored by the cable industry, proposed to have the Public Utilities Commission establish a standardized process for the issuance of franchises.

Both bills were considered by the House State Affairs Committee, which ultimately determined after holding several hearings that there were too many issues to be worked out regarding the issue of video franchising. The committed concluded that the topic needed to be considered in the interim before the next legislative session began. (03/07/07)

Qwest spokesman Bob Gravely said that although the newly introduced bill is not sponsored by Qwest, the telecom carrier supports its provisions and currently has no plans to introduce an alternate measure.

"Although this is not the same bill we were pushing last year, we are still supportive of the idea of video franchise reform and are supportive of this measure," he said yesterday.

Mr. Gravely added that although this measure seeks to give the cities additional control over public rights-of-way, it still does not include any build-out provisions.