

TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER DEPARTMENT: ADMINISTRATIVE SERVICES

DATE: FEBRUARY 11, 2008 CMR: 136:08

SUBJECT: STATUS OF AT&T'S CARRIAGE OF PUBLIC, EDUCATION AND GOVERNMENT ACCESS CHANNELS

This is an informational report and no Council action is required.

BACKGROUND

In 1983, the cities of Palo Alto, Menlo Park, East Palo Alto, the Town of Atherton and portions of San Mateo and Santa Clara counties entered into a Joint Powers Agreement (JPA) for the purpose of obtaining cable television service within these jurisdictions. The JPA gives Palo Alto the sole authority to administer the cable franchise process on behalf of its members.

On September 29, 2006, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) was signed into law. The purpose of DIVCA is to create a streamlined process for granting cable or video service franchises to promote broadband deployment, increased competition and expanded customer choice. Under DIVCA, franchises are granted by the California Public Utilities Commission (Commission) rather than by local franchising entities. AT&T obtained a state video franchise from the Commission in March 2007 and has begun to offer service in East Palo Alto. AT&T expects to begin providing service in Palo Alto in mid-2008.

Although promoting competition and broadband deployment are among DIVCA's primary objectives, DIVCA also contains several provisions specifically designed to preserve and protect the continued provision, quality, functionality and accessibility of local Public, Education and Government (PEG) access channels, such as those provided to JPA residents.

On July 30, 2007, staff provided Council with an informational report on the status of AT&T's deployment in Palo Alto (CMR:324:07). In that report, staff detailed its concerns regarding AT&T's plans for carriage of the JPA's PEG access channels. The purpose of this report is to provide the Council with an update on the issues that have arisen regarding AT&T's approach to carriage of the PEG channels.

DISCUSSION

AT&T's method and format for delivering PEG access channels to subscribers is quite different from that of Comcast (the JPA's incumbent cable operator) and from the PEG delivery methods of traditional cable operators. The PEG channels on AT&T's system will be delivered as an Internet-based video stream, instead of as a dedicated video channel like its other basic service tier channels. This different treatment of PEG channels led to some concern by staff as to whether AT&T's PEG solution was consistent with the PEG provisions of DIVCA. Staff feared that AT&T's approach to PEG channel carriage would render the JPA's PEG channels inferior (and not otherwise equivalent) to other video channels on AT&T's system in terms of signal quality, functionality and accessibility to JPA residents.

In mid-2007, staff and JPA representatives began a series of meetings and correspondence with AT&T on this subject. Subsequently, staff and JPA representatives attended demonstrations by AT&T of its PEG product at AT&T's offices in San Ramon. These efforts failed to dispel staff's concerns about the adequacy of AT&T's planned method of delivering PEG channels. On November 29, 2007, the JPA sent a letter to AT&T (Attachment A) summarizing its concerns, as follows:

- The JPA's current PEG channels are located on channels 26, 27, 28, 29, 30, 75 and 76. DIVCA requires that, to the extent feasible, AT&T must not separate PEG channels from other basic service tier channels and must keep them on the same channel numbers as Comcast. Yet AT&T plans to move all of the JPA's PEG channels (along with all other Bay Area PEG channels) to channel 99. Moreover, the JPA's PEG channels will be retrievable only after the subscriber goes through several menus and submenus after reaching channel 99.
- DIVCA requires that each PEG channel be capable of carrying a standard television signal. AT&T's method of transforming all PEG channels into Internet video streaming, however, means that PEG channels will have 75 percent less data, and thus picture and resolution, than all other basic service tier channels provided by AT&T (or Comcast). Moreover, when originally accessed, PEG channels will be reduced to one-quarter of the screen size of all other basic tier channels. (The subscriber may enlarge the PEG channel by selecting the zoom option, but that would exacerbate the inferior picture resolution of the PEG channel.)
- DIVCA requires that PEG capacity must be of "similar quality and functionality to that offered" by commercial channels on the basic tier. On AT&T's system, PEG channels will be quite dissimilar from, and inferior to, all other basic channels provided by AT&T (or Comcast) in both quality and functionality. Among the deficiencies are inferior picture quality, latency of as much as a minute or more in retrieving a PEG channel through the channel 99 menus and submenus and the lack of

many functions that are available on other channels provided by AT&T (or Comcast) and that subscribers have come to expect, including closed captioning, DVR capability, “last channel” capability, “favorite” channel capability and picture-in-picture capability.

- DIVCA requires that AT&T must comply with the local emergency alert requirements of the Comcast franchise until the Comcast franchise would have expired (July 2010). Whether AT&T can comply is unclear, as it has recently asked the FCC for waiver of the FCC’s rules concerning the emergency alert system (“EAS”), because AT&T’s U-Verse system is not yet capable of delivering state or local emergency alerts.

On December 21, 2007, AT&T responded to the November 29 letter (Attachment B). AT&T takes the position that it is fully compliant with DIVCA. For the most part, AT&T does not dispute the differences and shortcomings of its carriage of PEG channels identified in the JPA’s November 29 letter. Instead, AT&T argues that these shortcomings do not mean that its PEG offering is not “similar” to its commercial channel offerings. AT&T also states that DIVCA requires compliance only to the extent feasible. AT&T asserts that it would be infeasible to replicate the cable PEG experience without significantly reengineering its network. To reengineer its network for PEG would be very expensive and would delay its ability to offer competitive video services.

A key premise of AT&T’s response is that it believes the fact that its system enables JPA subscribers to retrieve any PEG channel in the entire Bay Area offsets the perceived inferior channel quality, functionality and accessibility that JPA subscribers will suffer in retrieving and viewing their own local JPA PEG channels. Staff does not share that view. By their nature, PEG channels are local. Staff does not believe a JPA subscriber would prefer to sacrifice accessibility, quality and functionality in return for being able to access PEG access channels from, for example, San Jose or Oakland.

AT&T’s December 21st response does not alleviate staff’s concerns about the many serious shortcomings of AT&T’s proposed carriage of the JPA’s PEG channels. Staff will evaluate the City’s options in response to AT&T’s PEG plan and report to Council on any developments.

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ATTACHMENTS:

Attachment A: November 29, 2007 Letter to AT&T
Attachment B: December 21, 2007 AT&T Response