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## MEMORANDUM

FROM: John W. Pestle, Timothy J. Lundgren

RE: Comments in FCC Case to Preserve Public, Education and Government Channels

DATE: February, 2009

**Summary:** Municipalities need to file comments in a Federal Communications Commission ("FCC") case on preserving public, education and government ("PEG") channels as they have always been provided. Otherwise cable/AT&T will claim the lack of comments shows that PEG channels aren't important, and will continue current actions that make them hard to find (not on regular channel numbers), hard to view (poor quality) and hard on the wallet (some people will have to pay to get PEG channels).

The purpose of this memo is to ask you to help preserve your PEG channels as they have always been provided by participating in comments we will file with the FCC. The cost is \$300 per municipality. If you value your local government, school, college or public channels, you should file comments in this case.

**FCC Proceeding:** The FCC proceeding consolidates three cases it has recently received, all of which relate to preserving PEG channels in the fashion they have always been provided:

1. Two cases challenge AT&T's method of providing PEG channels. If AT&T is providing cable service in your community, or might in the future, this case will directly impact you.
  - a. The first case, a petition we filed on behalf of the City of Lansing, Michigan, challenges AT&T's attempt to provide PEG channels only in an inferior, unfriendly

and complicated format reached only through a series of drop-down Internet menus. Unlike regular channels, each PEG channel does not have its own channel number (hundreds of PEG channels are provided on "Channel 99"), PEG programming is provided in a You Tube type format, is accessed via a series of web page menus, is of poor quality and lacks many of the features (such as closed captioning) of regular channels. The City asks that all PEG channels be provided in the same manner, accessibility, functionality and picture quality as other cable channels.

- b. The second case is a petition filed by the Alliance for Community Media (trade group for public access programmers) and municipal and PEG interests nationwide. Although it differs in its technical details from the Lansing case, it similarly challenges AT&T's method of providing PEG channels nationally.
2. The third case is a petition by the City of Dearborn, Michigan and other communities challenging Comcast cable's attempts to provide all PEG channels in digital format, require customers with older TV's to pay for a box so that they can view such channels (such as the PEG channel with their city council meeting), and move PEG channels from low channel numbers (channel 10 or 20) to channels in the 900 range.

The FCC has set March 9 as the date for all interested parties to file comments in this consolidated case. The three petitions are at <http://www.varnumlaw.com/serviceGroups/cableTV/cableFranchising/> as is the FCC Public Notice setting the date for comments and telling how to file them.

Analysis: Local PEG channels have had problems for some time due to decreasing support from (and occasional active opposition by) cable companies, as the companies cut back on funding and support for existing channels and oppose new ones. Basically, as PEG channels go away cable companies then have more room for other channels, many of which will pay the cable company to have their programs carried (more shopping channels, anyone?).

AT&T has taken this to a new level, by providing PEG channels not as conventional channels, where each channel has its own number, but as You Tube type videos. With AT&T all PEG channels are on "Channel 99", are found only through a series of drop down web page menus, take roughly 60 seconds to appear, are in poor quality, can't be easily "surfed", are hard for the hearing or visually impaired to use, and lack the features (closed captioning, local emergency alerts, etc.) of regular channels.

This FCC proceeding provides an opportunity stop this erosion of PEG channels. If successful, residents should be able to continue to see city council meetings, school board meetings, and other local programming as they always have - - ensuring that PEG channels are provided in the same fashion, quality, features and accessibility as other cable channels. The government, school or public channel you save may be your own!

Join Comments: We plan to file comments at the FCC for municipalities supporting the several petitioners and the preservation of PEG channels as they have always been provided. The comments will stress the importance of PEG channels, Congressional support for them, and some of the legal reasons the FCC should rule in favor of the three petitions and support PEG channels continuing to be treated the same as other channels.

We ask for your municipality's participation in and a \$300 contribution towards these comments. Your municipality would be named in the filing (unless you request otherwise), which will be on behalf of

many municipalities as well as participating municipal organizations. The substance of the filing will be determined by us. They obviously will not be contrary to the interests of the City of Lansing, whom we represent as one of the petitioners in the FCC case. The extent and nature of the filing in part will depend on the number of municipalities and organizations participating.

Timing/How to Respond: Timing is very short: Comments are due March 9. Please respond promptly by Wednesday, March 4, if you can and by Friday, March 6 at the outside. Respond by returning the form on the next page.

The Firm: Varnum, Riddering, Schmidt & Howlett LLP has approximately 150 attorneys, is one of Michigan's largest law firms and is more than 100 years old. It has a substantial municipal practice and is municipal attorney for several municipalities. It also represents many municipalities as special cable and telecommunications counsel, labor counsel, bond counsel, environmental counsel and the like.

Cable, Cellular, Wi-Fi, Telecommunications Practice: The firm has a national practice representing municipalities on cable, cellular, Wi-Fi and telecommunications related matters, from small municipalities to large cities such as Fort Worth, Chicago and Detroit. It has represented entities such as the National League of Cities, National Association of Telecommunications Officers and Advisors, U.S. Conference of Mayors, National Association of Counties, Michigan Municipal League and Ohio Municipal League. You may wish to check the firm's web page at [www.varnumlaw.com/cable](http://www.varnumlaw.com/cable).

John Pestle is Co-Chairman of the firm's Cable/Telecommunications Group and is a past chair of both the Municipal Lawyers Section of the State Bar of Michigan and the Legal Section of the American Public Power Association. He works almost exclusively on cellular, cable and telecommunications matters. He received the "Member of the Year" award from the National Association of Telecommunications Officers and Advisors in 1996 for his work assisting municipalities on the Federal Telecommunications Act of 1996 and received a special award of merit from the Michigan Municipal League in 2006 for his years of work representing municipalities in that state and nationally on cable and telecommunications matters. He is a graduate of Harvard College, Yale Graduate School, and the University of Michigan Law School.

Timothy J. Lundgren is a partner with the firm who works extensively on cable and telecommunications matters. He has a B.A. from Hope College, an M.A. from the University of Colorado, a Ph.D. from Ohio State University, and received his J.D. from the University of Michigan.

Questions/Further Information: For questions on substantive matters contact John Pestle or Tim Lundgren at 616-336-6000. Administrative questions can be addressed to Barbara Allen at 616-336-6743.



**FCC Case to  
Preserve Public, Education And Government Channels**

- Yes, we wish to contribute to comments to the FCC. Please bill us \$300 upon the filing being made.
- Please add me to your mailing list to receive information on further developments on this and other telecommunications matters.

Municipality/Firm: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
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Please mail, fax or e-mail this information to the attention of:

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