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December 11, 2007

BY ELECTRONIC FILING AND FIRST CLASS MAIL

Ms. Louise E. Rickard  
Acting Executive Secretary  
Department of Public Utility Control  
10 Franklin Square  
New Britain, CT 06051

Re: Docket No. 07-05-23 – DPUC Review of AT&T Connecticut’s Community  
Access Funding Obligations

Dear Ms. Rickard:

The New England Cable & Telecommunications Association, Inc. (“NECTA”) hereby submits this letter in lieu of exceptions to the Draft Decision of the Department of Public Utility Control (“Department”) in the captioned Docket.<sup>1</sup>

While many issues and questions may still remain concerning the actual provision of public, educational and governmental access (“PEG access”)<sup>2</sup> by AT&T Connecticut, NECTA’s comment focuses on the issue of interconnection between AT&T Connecticut and existing PEG access facilities. Although not directly pertinent to the determination of the Department in this Docket, the Draft - in response to concerns expressed by “third party community access providers” – evaluates in detail the obligations of AT&T Connecticut under Public Act 07-253, *An Act Concerning Certified Competitive Video Service*.<sup>3</sup> The Draft then claims that Public Act

<sup>1</sup> NECTA represents the interests of substantially all cable operators in Connecticut, as well as other New England states, and has participated before the Department in most all of the dockets involving the provision of video programming by the Southern New England Telephone Company, now d/b/a AT&T Connecticut, in this State.

<sup>2</sup> In Title 16 of the General Statutes and in Public Act No. 07-253, PEG access is referred to as “community access,” a term that the Department has historically recognized as synonymous with “PEG access.”

<sup>3</sup> Draft Decision at 7-8.

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07-253 “. . . makes clear that interconnection of facilities with incumbent CATV operators is not a goal, but a requirement consistent with extant law.”<sup>4</sup> Respectfully, there is no provision in “extant law” that mandates, requires or obligates interconnection between AT&T Connecticut and any existing community access facility – whether operated by a NECTA member cable company or by an independent third party manager. In fact, the authority referenced in the Draft, General Statutes § 16-331a(n), has never been construed by the Department, to impose a mandate that PEG access facilities be interconnected with Connecticut’s incumbent local exchange carrier’s cable services operations.<sup>5</sup>

Public Act 07-253 imposes on AT&T Connecticut, as part of its certificate of video service authority, only the statutory obligation “. . . to engage in good faith negotiation regarding the interconnection of community access obligations where such interconnection is technically feasible or necessary. . . .”<sup>6</sup> Therefore, under law, three criteria must occur before there is interconnection between AT&T Connecticut and a PEG access facility:

1. The interconnection must be technically feasible;
2. The interconnection must be “necessary”; and
3. The parties must agree to the terms of interconnection.

Neither federal nor Connecticut law establish any entitlement to or requirement concerning interconnection of PEG access facilities by or between competing cable companies.<sup>7</sup>

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<sup>4</sup> Id. at 8 (emphasis supplied).

<sup>5</sup> This provision was enacted during operation of the previous state-wide franchise held by SNET’s affiliate known as SNET Personal Vision.

<sup>6</sup> P.A. 07-253, § 5(b). Significantly, this provision is expressly incorporated into the certificate of video franchise authority acquired by AT&T Connecticut under Section 2 of PA 07-253. It is not expressly incorporated into any certificate of cable franchise authority acquired by a cable company pursuant to Section 13.

<sup>7</sup> By contrast, the federal Communications Act, as amended, imposes a general duty to interconnect directly or indirectly with other carriers. 47 U.S.C. § 251(a)(1). In addition, an incumbent local exchange carrier has the statutory duty to negotiate in good faith under federal law. 47 U.S.C. § 251(c)(1). Significantly, Title VI of the federal Communications Act, which sets forth controlling federal law for the regulation of cable systems, has no corresponding obligation concerning the interconnection of PEG access facilities. Therefore, a significant legal question exists as to whether any state could

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Respectfully, a final decision in this Docket must eliminate any conclusion or statement that interconnection is "a requirement" as is presently reflected on p. 8 of the Draft.

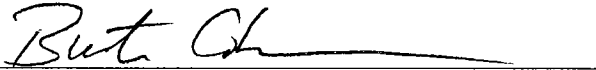
NECTA appreciates very much the Department's efforts to bring this Docket to conclusion as quickly as possible, given the underlying history. NECTA does not request oral argument but respectfully reserves the right to present oral argument should it be scheduled in this proceeding.<sup>8</sup>

The undersigned hereby certifies that a copy hereof has been furnished on this date by electronic mail or first class mail to all participants of record as shown on the Department's service list as of this date. A copy also has been filed with the Department as an electronic web filing and is complete.

Please feel free to contact the undersigned if you have any questions regarding this submission. Thank you for your consideration.

Respectfully submitted,

NEW ENGLAND CABLE &  
TELECOMMUNICATIONS ASSOCIATION,  
INC.

By:   
Burton B. Cohen  
Its Attorney

cc: William D. Durand, Esq., NECTA Ex. Vice President and Chief Legal Counsel

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mandate PEG access interconnection between competing cable companies, consistent with federal law.

<sup>8</sup> While the Department's Notice of Written Exceptions dated November 27, 2007 provides for written exceptions from admitted parties and intervenors in this Docket, it is respectfully suggested that, because the Department sought comments from "incumbent CATV operators" to a series of 10 questions in the Department's Notice of Written Comments and Reply Comments, dated July 17, 2007, the Department allow NECTA's limited participation in this proceeding.