

**VERMONT ACCESS NETWORK (VAN)
REGIONAL EDUCATIONAL TELEVISION NETWORK (RETN)**

Testimony before the House Education Committee

February 27, 2019

Submitted by Jess Wilson, RETN Executive Director

Good morning. My name is Jess Wilson and I'm the Executive Director of the Regional Educational Television Network (RETN) and today I'm also representing the Vermont Access Network (VAN). RETN is an educational access cable TV channel serving communities in Chittenden and Addison Counties. We are a member of the Vermont Access Network – the trade organization representing Vermont's community media centers.

Thank you for the opportunity to brief you on the multiple threats to Vermont's cable regulatory authority, and public, educational and government access media organizations, and to talk about the value of community media centers - specifically related to educational opportunities for learners in our state.

HISTORY

Vermont's authority to require Public, Educational, and Government (PEG) Access and franchise fees rests upon its ability to manage its public rights of way and is enshrined in the Federal Communications Act of 1934 and the Cable Communications Policy Act of 1984. The Cable Act is the national mandate requiring both regulators and cable operators to encourage the growth of cable systems, respond to community needs and interests, and assure the widest possible diversity of information sources through the regulation of cable television franchises.

The State first established PEG Access cable channels and funding as a public policy objective in April 1984, and the Public Utility Commission provides regulation.

CURRENT CONDITIONS

As a result of the State's firm commitment to PEG Access, Vermonters benefit from a thriving local media ecosystem that connects communities together through:

- 25 Community Media Centers
- over 80 fulltime channels
- 18,000 hours of live public meetings and events, community-based education, and diverse free speech forums each year
- nearly \$74 million worth of equivalent community services in 2017 from only \$8.7 million in cable subscriber funding
- employment of almost 200 people

Support for Learning

Educational access organizations like RETN provide professional video production coverage to local communities for school board meetings, school events, community concerts, and other arts programming - at little or no cost. These programs are carried on cable and online, and provide a lifeline for residents to connect to local news, decision makers and events in their community.

But perhaps of more interest to this committee is the work of educational access organizations to provide learning opportunities for Vermont students and professional development for educators. This work includes hosting video camps, supporting student internships, providing training for teachers to use video in their classroom, free or low cost classes at our centers, support and equipment for video integration into student personal learning plans, media literacy training, and much more.

A great example of this work in action is a 2018 project RETN completed with Charlotte Central School students, NASA and the International Space Station. Students were given a once-in-a-lifetime opportunity to speak directly with astronauts aboard the ISS as part of an interdisciplinary unit on space experiments. School officials reached out to RETN because they did not have the equipment or expertise to support a live uplink. RETN provided all the equipment and production support necessary for the uplink, which was broadcast live on RETN and NASA TV. Additionally, RETN's education and production teams worked directly with students to create short videos about their research and experience talking with the astronauts. Twenty-two student videos and a short documentary were produced and shared with the community. More:

https://www.retn.org/blog/retn_connects_students_ISS

Threats

Right now our ability to continue this work is under several threats (economic, regulatory, and judicial), that will have a direct impact on the Public Utility Commission's future franchising authority and the future of PEG. These threats include:

- **Cable Cord Cutting**
- **Cable Revenue Reclassification:** Comcast has used new GAAP (Generally Accepted Accounting Principles) guidance to reclassify its advanced basic services revenue as of 12/31/17, resulting in a 5% or \$500K loss for 22 PEG centers across Vermont in 2018 and for the years to come. Comcast is the only Vermont cable operator that has chosen to reclassify their revenue in this way.
- **Comcast challenge to Vermont PUC authority:** Comcast did not agree with the terms of its most recent certificate of public good (CPG)

ordered by the Vermont PUC. In 2018, the company took the State of Vermont to federal court to challenge the PUC's Docket 8301 Decision on the company's CPG renewal.

- **FCC Rulemakings:** The FCC is actively working to erode the authority of local cable franchising authorities. [FCC Further Notice of Proposed Rulemaking 05-311](#) seeks to reduce the PEG fees charged to cable subscribers by subtracting all cable public interest requirements from the franchise fees (5% collected in Vermont).

These threats raise two fundamental questions:

- *How do we preserve the state's ability to manage its rights-of-way and contracts with cable and telecommunications providers?*
- *How does Vermont continue to support the public policy objectives of PEG access through administrative, legislative and regulatory authority?*

Proposed Ways Forward

In its draft Ten Year Telecommunications Plan, the Vermont Department of Public Service recommends that: *"10. The State should explore new methods of supporting community media centers, as cable subscription revenues decrease. There should be a nexus between the revenue source and the services provided by community media centers, with consideration for the inability of the state to tax internet access subscriptions"* VAN recommends the following:

- A workshop with the Public Utility Commission to examine these issues with the Department, cable operators and PEG access management organizations. This workshop has been scheduled for late March.
- Legislative Summer Study Committee to explore what the state of Vermont should do in light of changes to cable franchising authority and generating alternative regulatory funding recommendations to support PEG access in Vermont.

VAN is working with members of the House Energy and Technology Committee to determine if this committee can be included in legislation. My hope if this legislation moves forward, you will consider supporting a Study Committee.

Thank you for your time and consideration.



TALKING POINTS

Threats to the State of Vermont Rights-of-Way Management & Public, Educational, Government Access Media.

Today, there are multiple threats to Vermont's regulatory authority, raising two important questions:

1. *How do we preserve the state's ability to manage its rights of way?*
2. *How does Vermont continue to support the public policy objectives of PEG Access through administrative, legislative, and regulatory authority?*

HISTORY

Vermont's authority to require Public, Educational, and Government (PEG) Access and franchise fees rests upon its ability to manage its public rights of way and is enshrined in the Federal Communications Act of 1934 and the Cable Communications Policy Act of 1984. The Cable Act is the national mandate requiring both regulators and cable operators to encourage the growth of cable systems, respond to community needs and interests, and assure the widest possible diversity of information sources through the regulation of cable television franchises.

The State first established PEG Access cable channels and funding as a public policy objective in April, 1984. For 35 years, the Public Utility Commission (formerly Public Service Board), as the State's telecommunications regulator, has consistently ruled in favor of PEG channels, capacity, and funding for Vermont's Access Management Organizations (AMOs) to meet community communication needs.

In 1984 there were 50 cable companies serving Vermont's rural and urban communities. Today there are six, which reported \$260 million in gross receipts in 2016. Comcast is the dominant provider, serving up to 90% of the state's cable subscribers.

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Vermont's AMOs have strong local ties and are recognized and valued by their communities, increasingly so as other local media diminishes. PEG Access in the State serves vital functions, including government transparency, preservation of community history, education for all ages, and fearless fighting for free speech.

According to the Vermont Department of Public Service (DPS) [Ten-Year Telecommunications Plan](#), in 2018:

- Of those who have watched PEG Access channels, 43% say they have watched a town meeting on their public access channel, increasing by about 15% since a comparable 2014 survey.
- Regardless of whether they have watched PEG Access, a majority of Vermonters (51%) say that it is very important to have PEG channels, and 31% say it is moderately important, an increase of about 5% since 2014 and with more people considering PEG Access *very* important.
- At a 2016 public hearing on Comcast's contract renewal in Rutland, Senator Kevin Mullin summed up the unique importance of PEG access in his community: *"We have a problem in the state of Vermont in protecting our local democracy and that is we don't have the local news programs we used to have...We had local radio stations and local press that were covering every single local meeting. So really the only good hard factual news that we are getting is from the local public access television programs....[The staff] do an outstanding job of making sure that the local school board meetings, selectboard meetings and local sporting events for children are covered on those channels. I can tell you that people watch these shows because I talk to people on the streets all the time. It's just amazing to me how many people will watch the local access channels."*

THREATS & CHALLENGES

Challenges on multiple fronts (economic, regulatory, and judicial) will have a direct impact on the PUC's future franchising authority and the future of PEG Access:

Cable Cord Cutting: Under the Cable Act of 1984, Vermont can require public benefits like PEG Access in exchange for cable operator use of public these rights-of-way. These same rights-of-way (and, frequently, same cables) are also used by cable operators to provide Internet service to customers and to deliver video content via the Internet. Cable customers are finding it cheaper (and easier to pick what they want to pay for) to switch from cable TV to Internet-only service for video information and entertainment. Cable companies such as Burlington Telecom are actively encouraging subscribers to “cut the cord” and move to on-line viewing. Because franchising authorities like the VT PUC are federally prohibited from exercising jurisdiction over Internet delivery and services, there are limited options for the establishment of public interest requirements that would preserve funding for community-based PEG channels and content, resulting in a slow but inexorable decline in PEG cable revenue.

Cable Revenue Reclassification: Comcast has used new Generally Accepted Accounting Principles (GAAP) guidance to reclassify its advanced basic services revenue as of 12/31/17, resulting in a 5% or \$500K loss for 22 Vermont PEG Centers in 2018 and for the years to come. Comcast is the only Vermont cable operator that has chosen to reclassify their revenue in this way.

Comcast Challenges to VT PUC Authority: Comcast did not agree with the terms of its most recent [11-year Certificate of Public Good \(CPG\)](#) ordered by the Vermont PUC in early 2017. In 2018, Comcast took the State to federal court challenge this order, which includes provisions Comcast itself recommended in 2005 (including the addition of PEG Access to the Electronic Program Guide). This case, and the CPG Docket before it, will have the intended effect of expending an anticipated \$300,000 in subscriber dollars on legal fees – funds that should be serving subscribers and communities directly. [A summary of the PUC Order is found here.](#)

FCC Rulemakings: The FCC is actively working to erode the authority of local cable franchising authorities. [FCC Further Notice of Proposed Rulemaking 05-311](#) seeks to reduce PEG fees charged to cable TV subscribers by subtracting all cable operator public interest requirements from the franchise fees (typically 5% collected in Vermont). Given the composition of the FCC, this is likely to move forward and will have a serious impact on PEG funding if costs for “channels” and other franchise requirements (e.g. fees paid to the City of Burlington) can be subtracted from the franchise fees negotiated by AMOs and cable operators. It is worth noting that of the 3,400 comments submitted to the FCC, 242 Vermonters responded in opposition to the FCC's FNPRM by the end of 2018, including Senator Leahy, Senator Sanders, and Representative Welch. Vermont's comments are compiled [here](#).

Supreme Court Docket 17-1702: The National Cable Television Association is using [Manhattan Community Access Corp. v. Halleck](#) to argue that “Cable Operators Have First Amendment Rights That Are Burdened by the PEG Channel Requirement.” While the Supreme Court may choose to ignore these arguments (and focus on the “state actor” questions of the case), there is general expectation that the NCTA will again bring up the constitutional question this year or next, elevating it for US Supreme Court action. This could permanently remove federal protection of PEG access and limit state franchising authority. Relevant documents and information:

[Communications Daily summary of the case filings.](#)

[NCTA’s Amicus Brief.](#)

[Response from the Alliance for Community Media.](#)

POSSIBLE WAYS FORWARD

In its draft Ten Year Telecommunications Plan, the VT DPS recommends that: *“The State should explore new methods of supporting community media centers, as cable subscription revenues decrease. There should be a nexus between the revenue source and the services provided by community media centers, with consideration for the inability of the state to tax internet access subscriptions”*. VAN recommends the following:

- a. **Schedule a “Future of PEG Access” Workshop at the Vermont Public Utility Commission** to examine these issues with the DPS, AMOs, and Vermont Cable Operators, possibly in spring of 2019). Topics to discuss could include a proposal for using PEG funds for Over-the-Top (OTT) content delivery. The DPS has submitted a formal request to the PUC for such a workshop.
- b. **Schedule Legislative Summer Study Committee** to explore legislative authority, alternative PEG Access funding streams, ways to advance the state’s jurisdiction over its rights-of-way, and public policy goals of PEG access over the next 10 - 15 years. Solutions might include a “right of way” fee to support community uses of the state’s telecommunications infrastructure. (Summer 2019)