



20 February 2020

TO: Senator Kitty Toll and Members of the House Appropriations Committee

FROM: Lauren-Glenn Davitian, CCTV Executive Director on Behalf of Vermont Access Network, davitian@cctv.org, 802.862.1645 x12

RE: [H. 744](#) & [S. 318](#) - Public, Educational and Government (PEG) Access Study: An act relating to financing options for public, educational, and government access television

Summary: Lauren-Glenn Davitian's testimony addresses [H. 744](#) & [S. 318](#) and includes a one time request for \$100,000 for a Public, Educational and Government (PEG) Access Financing Study.

These companion bills carry forward the work of the [Vermont PEG Access Study Committee](#), convened by the Legislature in Summer 2019 to explore how the State of Vermont can support Public, Educational, and Government (PEG) Access in light of cable revenue declines.

The result we seek? The Legislature will accrue public benefits for commercial use of its state and local public rights of way. The Legislature will allocate some or all of these resources to Vermont's community media centers which contribute to improved community resiliency and local democracy through transparent government, media education, and open channels for the exchange of news, information, and ideas.

Story Behind the Curve: Public, Educational, and Government (PEG) Access Television provides an essential community service in Vermont. PEG Access Television extends the concept of participatory democracy by providing both a

window to State and local government proceedings and a forum for citizens to voice their viewpoints and opportunities for life-long learning and cultural exchange.

There are 25 PEG Access Management Organizations (AMOs) serving Vermont. Vermont's twenty-five community media centers knit communities together through the delivery of local media services through gavel-to-gavel local meeting coverage, delivery of media education, and free speech support.

Changes in cable revenue now impact revenue and operations of 25 AMOs. Changes in Generally Accepted Accounting Principles have impacted the revenue available to fund PEG Access services in 2018 Vermont by \$500,000.

The General Assembly considers healthy and viable PEG Access services to be in the best interests of Vermont. As a result, the [Vermont PEG Access Study Committee](#) was convened by the Vermont Legislature during their 2019 Session in order to *"consider changes to the State's cable franchising authority and develop for legislative consideration alternative regulatory and funding mechanisms to support public, educational, and government (PEG) access channels and services to communities across Vermont."* ([H. 513 - Broadband Bill - Section 28](#)).

The result of the Study Committee work is [draft legislation](#), which was adapted into two bills. [H. 744](#) introduced by Representative Mike Yantachka (and study committee co-chair), with a dozen co-sponsors. In the Senate Finance Committee, Senator Becca Balint introduced the bill in the Senate Finance Committee as [S. 318](#)

Success Looks Like

- Alternative revenue streams from state and local rights of way which can be used for public benefit, i.e., to replace declining cable revenue.

Next Steps (What it Takes to Work & Measure Success) [H. 744](#) & [S. 318](#)

- Contract with one or more independent consultants to evaluate options for financing PEG operations and services to communities across Vermont.
- Appropriate an amount of \$100,000 from the General Fund in fiscal year 2021 to fund the study or expenses incurred as a result of study.

- Assess uses of the public rights-of-way and make findings and recommendations on whether and to what extent the users may be subject to any fee or right-of-way assessment.
- Recommend alternative models for revenue generation.
- Submit a report on or before January 1, 2021, which may include draft legislation implementing a proposal.
- Evaluate the costs and benefits of a State partnership with PEG Access Centers to coordinate, develop, maintain, and expand the delivery of a statewide videoconferencing services.
- Appropriate an amount of \$500,000 from the General Fund in fiscal year 2021 for support of PEG Access services impacted in 2018 by changes in Generally Accepted Accounting Principles.

Additional Background: The seven member [Vermont PEG Access Study Committee](#) represented legislators, regulators, cable industry operators, PEG, and municipalities. During the PEG Study Committee meetings (six between July and November 2019, plus a public hearing, [which may be viewed here](#)), the Committee reviewed and discussed:

- Current PEG operations, budget trends, and concerns,
- Diversification of PEG funding, state practices (including Department of Taxes, Agency of Transportation, Joint Fiscal Office), and,
- [National funding models](#) (including telecommunications taxes, OTT fees, right of way rents), including new ways of looking at funding (Communications Districts, connection charges).

The Committee also began to examine the extent and limits of state authority to recover fees from providers of communications (Communications Act Title VI)/ telecommunications (Title II) /broadband (Title I) services.

During the required public hearing ([held on 10/21/19](#)), the Committee heard from the wider community about the importance of PEG, decline in PEG revenue, and need to find new funding sources to promote this vital community resource and support free speech, open government, local information, and community based education

During the Committee's "study", several important points came to light that have bearing on future Vermont legislative policy decisions:

- **The Cable Act of 1984 allows franchising authorities (the Vermont Public Utility Commission (PUC)) to require public benefits in exchange for commercial use of the rights of way.** Cable operators pass these franchise fees to their subscribers, and then pay them to Vermont's 25 PEG access management organizations. These funds amounted to \$7-8 million in 2017.
- PEG Funding has Steadily Grown and appears to have peaked - According to the cable industry rep on the study Committee (Comcast VP Dan Glanville), **PEG funding for 22 access management organizations (AMOs)** in Comcast's Vermont service territories was \$3.5 million in 2006. This funding, used to fund PEG operations and capital, reached a high of \$7.2 million in 2017, and is projected to \$500K less in 2019 (due to GAAP reclassification of Comcast bundled package revenue).
- **This cable industry (Communications Act/ Title IV) revenue trend is evidence of changing media consumption habits.** As Vermont (and national) cable consumers drop cable subscriptions in favor of internet delivered information/ entertainment, cable revenue and franchise fees are declining and threaten the future of PEG services in Vermont.
- **A comparable revenue decline in public benefits is also taking place in the telecommunications (Title II) industry,** as landline phone service is being moved to the Internet and cellular networks, there is a concurrent decline in Universal Service Funding which affects the people who need subsidies the most.
- Cable and telecommunications revenue losses raise the larger question of how to subsidize these public benefits in the future. **Vermont's options are limited due to recent decisions by Congress and the FCC.** Vermont's ability to require public benefits from broadband providers are limited by Congress's Internet Tax Freedom Act and recent [FCC decisions](#).

However, there are a variety of state and local level policy examples that can be instructive as Vermont looks to new policy solutions and ways to recover a

percentage of broadband use for public purposes like PEG and Universal Service.

National models point to ways that Vermont can use its authority to assess public benefits from the use of the public rights of way through sales tax, excise tax, telecommunications fees and, possibly, connectivity charges. Examples of these include:

- **Sales Tax** - Examples include the heritage tax in Minnesota (<https://www.legacy.mn.gov/arts-cultural-heritage-fund>) and the expanded entertainment tax in [Chicago](#) that includes OTT providers like Netflix and gaming applications. Notably, Mass Access is advancing a bill to implement a sales tax on online entertainment which would give 20 % to the state, 40% to local govt and 40% to PEG. See: <https://malegislature.gov/Bills/191/HD4389>
- **Excise Tax** - In 2019, the General Assembly added “video streaming services” to the definition of “multichannel video programming service” subject to the existing telecom excise tax. See: <https://www.lexology.com/library/detail.aspx?g=adc83957-af44-457f-95af-35a0b80314d3>
- **Telecommunications license fee** - The City of Eugene now collects a license fee that the city, acting under a municipal ordinance, imposes on companies providing “telecommunications services” over the city’s rights of way. This was upheld by the Oregon Supreme court. The fee is now being challenged by the FCC’s recent 621 “in kind” decision. See: <https://caselaw.findlaw.com/or-supreme-court/1736594.html>)
- **Connection charges**, used to address declines in Universal Service revenue from telecom providers (e.g. Maine, Nebraska, New Mexico, and Utah have used their state funds to experiment with new contribution method).

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