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Comments on VERMONT TEN YEAR TELECOMMUNICATIONS PLAN DRAFT

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Thank you for the opportunity to comment on [Vermont Telecom Plan Draft](#). As longtime advocates for public, educational and government access to cable television, CCTV offers the following comments and recommendations. CCTV launched the state's first funded PEG access channel in 1984, founded Vermont Access Network in 1985, and currently operates Channel 17/ Town Meeting Television a/k/a Chittenden County's Government Access Channel.

Summary of Testimony

The State of Vermont first established public, educational and government (PEG) access cable channels and funding as a public policy objective in April 1984. The Vermont Public Utility Commission (formerly Public Service Board), as the State's telecommunications regulator, has implemented this public policy by ruling consistently in favor of PEG channels, capacity and funding for Vermont's 25 access management organizations for 35 years.

The result: a thriving local media ecosystem that weaves Vermont's rural and urban communities together with 75 full time channels, and 18,000 hours of live public meetings and events, community-based education, and diverse free speech forums each year. Evidence confirms that Vermont's access management organizations have strong local ties, are recognized by their communities, and considered a valuable local asset that is growing in importance as local media coverage shrinks.

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

- "How do we preserve the state's ability to manage its rights of way?", and

- “How does Vermont continue to support the public policy objectives of PEG access in through administrative, legislative and regulatory authority?”

This testimony lays out these threats, and poses recommendations for Vermont policy makers to consider as part of Vermont’s 10 Year Telecommunications Plan.

1. Foundation of Vermont’s Cable Franchising Authority and Support for Public, Educational, and Government (PEG) Access

The State of Vermont established government support for public, educational and government (PEG) access cable channels and funding in 1984. Over thirty five years and a dozen (or more) Orders, Vermont’s franchising authority, the Public Utility Commission, has repeatedly upheld the public benefit and importance of setting aside cable capacity (PEG channels) and allocating franchise fees to meet community communication needs.

Vermont’s authority to require public 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 that requires 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. ([Read more about this policy history here](#) - from the Prefiled Testimony of Lauren-Glenn Davitian in Docket 8301, pages 9 - 12)

As a result of the State of Vermont’s firm commitment to PEG access, Vermonters benefit from a thriving network of 25 access management organizations that put \$8.7 million of cable subscriber dollars to work, producing more than 18,000 hours of original local programs each year--many of which are government meetings which are streamed live--and employing 78 full time and 101 part time staff. (Source: Vermont Access Network Fact Sheet 2018 - Attached, below)

Vermont’s public, educational and government access channels play a role in the economy and our centers serve vital community functions including: government transparency, preservation of community history, education for all ages, and fearless fighting for free speech. Vermont’s community media centers weave the state together and contribute to the well-being of its people.

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.

2. Threats to Vermont's Cable Franchising Authority and Support for Public, Educational, and Government (PEG) Access

Today, Vermont faces several policy and court actions that threaten its authority to manage its rights of way. Under the Cable Act of 1984, Vermont can require public benefits (example, PEG) in exchange for cable operator use of these rights of way. 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.

The regulatory framework that supports PEG access and these important community benefits is under being challenged on several fronts:

- Cable companies are using the same rights of way (and often the same "cables") to provide internet service to its customers, and to deliver video content via the internet. Because franchising authorities (like the PUC) do not have 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. **The combination of cable "cord cutting" (subscribers canceling their cable subscriptions and taking their video content directly from the internet) and the following FCC and court actions** are slowly reducing funding for community based media that so many Vermont communities depend upon. Cable companies, such as Burlington Telecom, are actively encouraging their subscribers to cut the cord and move their video viewing on-line. (See below, **Appendix 1- Save Money by Cutting Cable - BT Can Show You How!**)
- Most immediately, **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.
- The [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). Given the composition of the FCC, this is likely to move forward and could 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 5% franchise fee negotiated by the AMOs and Comcast.

It is worth noting that of the 3400 comments submitted to the FCC, 242 Vermonter’s responded to the FCC’s FNPRM at the end of 2018. Vermont’s [comments are compiled here.](#)

- **Comcast’s federal court challenge to the [PUC’s Docket 8301 Decision on the company’s CPG renewal](#),** which includes provisions Comcast itself recommended in 2005 (including public access to the electronic program guide). This case will have the intended effect of expending even more subscriber dollars on legal fees. We anticipate that the Docket and Federal Court case will cost upwards of \$300,000--funds that could be serving subscribers and communities directly. [A summary of the PUC Order is found here.](#)
- **[Supreme Court Docket 17-1702/ Manhattan Neighborhood Network v. Halleck](#)** - which turns on the whether public access centers are “state actors” and has been opened further by the National Cable Television Association which is arguing (in an Amicus Brief) that “Cable Operators Have First Amendment Rights That Are Burdened by the PEG Channel Requirement”. [See the NCTA Amicus Brief here.](#) [A response to this was developed for the Alliance for Community Media is found here.](#)

While the Supreme Court may choose to ignore these arguments (and focus on the “state actor” questions), there is general expectation at the NCTA will continue to bring up the constitutional question until the question reaches the U.S. Supreme Court. [Here is a *Communications Daily* summary of the filings 1/21/19.](#)

3. What the Public Thinks

Local PEG channels are highly regarded within their local communities. 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."

Cable operators do not typically share TV viewer statistics with Vermont AMOs. Most PEG channels now rely on web statistics to gauge community interest in their web based programming. For example, Brattleboro Community TV (BCTV) reports 64,000 unique page views on their web site in 2018. VCAM, serving several Chittenden County communities, hosted 76,000 unique page views in the same year.

Program viewership varies based on the importance of local issues and topics. Many AMOs use YouTube as a delivery platform for live meetings and events. For example, the Essex Selectboard garnered 61 YouTube views for their 3/5/18 meeting, while a 6/4/18 meeting on a local gun ordinance featured an audience of 1,982 viewers.

According to the Vermont Department of Public Service for the [Vermont Ten Year Telecommunications Plan](#):

- About 60% of respondents are aware of the difference between Vermont Public Broadcasting System (PBS) and Public, Educational, and Governmental Access Channels (PEG), and 72% have watched a public access channel. These are consistent with previous studies, dating back 15 years. Nearly half (48%) of respondents have watched more than one hour of public access programming as follows: 1-2 Hours Per Week - 29%; 3-5 Hours Per Week - 10% ; 5-10 Hours Per Week - 8%; More than 10 - 1%.
- Of those who have watched public access channels, 43% say they have watched a town meeting on their public access channel. The number of Vermonters who have watched a town meeting on their public access channel had increased by about 15% since a comparable 2014 survey.

- When asked if Vermonters had ever created content for airing on a public access channel, most respondents (86%) said no they have not. 15% have!
- Regardless of whether they have watched public access channels, a majority of Vermonters (51%) say that it is very important to have public access channels, and 31% say it is moderately important. The overall importance of having public access channels has increase marginally by about 5% since 2014, with more people said that having public access channels are very important.

4. 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.

We recommend the following actions to be included in the 10 Year Plan in order to continue Vermont's 35 year old PEG access policy objectives. These actions are necessary in order to address the state's control of its own rights of way and its abiding public policy commitment to PEG access in an era of eroding regulatory authority. These actions will help us to address these important questions:

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

a. Schedule Future of PEG Workshop at the Vermont Public Utility Commission

to examine these issues with the Vermont Department of Public Service, Access Management Organization and Vermont Cable Operators. (Spring 2019) Topics to discuss (for example) proposal for using PEG funds for Over-the-Top (OTT) content delivery.

b. Build in Formal Checkpoints with Parties during 11 Year Franchise Term

- It is typical for Vermont access management organizations to run into compliance issues with Comcast over the course of the 11 year cable franchise. To offset the

expense of convincing regulators and the cable operator to meet to discuss, it will be important to build in a formal evaluation meeting at one or two times during the course of the franchise.

c. Schedule Summer Study Committee to explore legislative authority, alternative PEG access funding streams, and ways to advance PEG access over the next 10 - 15 years. (Summer 2019)

d. State Support for Vermont Access Network petition in support of **statewide Access Management Organization** - Create additional infrastructure to support statewide action of Vermont's 25 access management organizations, including:

- **Economy of Scale Projects** - Evaluate and develop proposals to reduce AMO costs through collective efforts including shared purchasing, back end services such as bookkeeping, payroll, accounting, IT and technical services and shared capital investments (e.g. archiving, live content delivery).
- **Business Planning Education** - Work with subject matter experts to provide business and development planning training to AMO leadership in order to expand revenue opportunities.

e. Vermont Legislative, Administrative and Regulatory Bodies Monitor actions that impact Vermont state management of rights of way, franchising authority, and PEG access. We strongly recommend that the PUC, DPS, key Legislative Committees and the Attorney General's office actively monitor

- Federal Communications Commission (FCC),
- Congressional Committees, and
- Supreme Court and Federal Courts

in order to prepare timely and robust comments and, policy, regulatory or administrative action as required.

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Appendix 1- Save Money by Cutting Cable - BT Can Show You How!

Save Money by Cutting Cable - BT Can Show You How!

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ANNOUNCEMENT

If you're sick of your cable TV subscription prices going up year after year, please join Burlington Telecom's Cord Cutting expert Sean Kio to learn how you can stream all your favorite content online and cancel your traditional cable package. The realm of streaming video can be overwhelming and confusing for some. We strive to take the guesswork out of cord cutting and help you to transition smoothly (and hopefully save money!)

Thursday, January 17th at 1127 North Avenue (in the Ethan Allen Shopping Plaza) from 12pm-1pm.

TOPIC THIS WEEK: What is Cord Cutting?

Future Clinics:

January 24

January 31

The best place to get started is to visit our Cord Cutting Page on our website. There you will find helpful information, resources, and tools. We also now offer cord cutting webinars on our YouTube page. For more info or to schedule a 1-on-1 cord cutting session. Call 802.540.0007 or email us at cordcutting@burlingtontelecom.com

Appendix 2 - Some Important Vermont PEG Access Statistics: November, 2018

This document was prepared by Greg EplerWood, November 26, 2018.
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- Vermont has **25** independent, non-profit Public, Educational, Government Access Management Organizations (PEG AMOs). Vermont, per-capita, has more of these PEG AMOs, also called *Community Media Access Centers*, than any other state.

- Each Access Center is a welcoming space for talking, meeting, taking classes, borrowing equipment and producing video.
- These 25 Access Centers operate **81** full-time commercial-free channels: **67** in Standard Definition and **14** in High Definition.
- The predominant Cable Operator is **Comcast**, which contracts with 18 of these AMOs. Other Cable Operators are:
 - o **Charter Communications, d/b/a Spectrum** (contracts with 2 AMOs)
 - o **VTel** (contracts with 6 AMOs that also contract with Comcast)
 - o **Burlington Telecom** (contracts with 3 AMOs that also contract with Comcast)
 - o **Southern Vermont Cable** (contracts with 1 AMO that also contracts with Comcast)
 - o **Waitsfield Communications** (contracts with 1 AMO)
- Every year these 25 Community Media Access Centers together produce almost **18,000** local, original programs. These 18,000 hours of *local, original programs* average out statewide to 49 hours per day, every day, 365 days a year!
- 78 full-time and 101 part-time staff these Access Centers, aided by hundreds of community volunteer producers.
- In fiscal year 2017, \$8.1 million in PEG Access Fees were collected by Vermont's cable operators and passed on to the Access Centers. Based on local market conditions, the commercial dollar equivalent of community services our Community Media Access Centers provided that year approximate 8.5 times this amount, or about *\$6.9 Billion*.
- Via websites, 24 AMOs stream their channel programming either Live or On-Demand.