

VERMONT ACCESS NETWORK

13 August 2019

MEMO TO: Vermont Legislative PEG Study Committee

FROM: Lauren-Glenn Davitian, Vermont Access Network, davitian@cctv.org

RE: Policy Models for Supporting Public Benefit Media

The PEG Study Committee was convened by the Vermont Legislature 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”.

During the past two meetings of the PEG Study Committee, we have looked at the purpose and function of public, educational, and government access (PEG) in Vermont. We’ve identified that the future of PEG is tied with its distribution on both cable and the internet. And we have started an inquiry into the state’s authority to require public benefit in exchange for use of its right of ways.

In this presentation, Vermont Access Network offers a look at the benefits of PEG, its expanding internet audience, recent FCC rulings on state regulatory authority, a range of taxes and fees paid by today’s telecom providers, and national examples to prompt Study Committee discussion.

We offer this overview for consideration during our next meeting, with these recommended Agenda Items:

- PEG Access Data Presentation
- Preview & Discuss National Examples
- Discussion of State Authority/ Pre-Emption

Summary of Key Ideas

1. US communications policy is based on an exchange of public benefit for commercial access to public rights of way.
2. In Vermont, PEG is a local, non-commercial, media resource that helps to inform, educate and weave the community together.
3. PEG capacity and service is funded by cable subscribers (5-6% of their cable bills in Vermont). This public benefit is allowed in Title 6 of the Cable Communications Act, in exchange for commercial use of the public rights of way. Franchise fees and in kind services enable access management organizations to deliver community media services to cable subscribers and the community-at-large.
4. Since the digital transition, Internet users have become an important beneficiary of both PEG programming and services and will continue to expand as broadband grows throughout Vermont.
5. However, the state's authority to require benefits from internet providers is hampered by both Congress (Internet Tax Freedom Act) and the FCC (various orders). The FCC re-classified Internet delivery as a Title 1 service with no public interest requirements. This is consistent with other FCC Orders that aim to "level the playing field", regulate with a "light touch", and curtail local franchising authority over right of way matters.
6. Yet, local authorities retain points of leverage as taxing and regulatory bodies. These may present a way forward as we consider alternative funding streams for PEG access in Vermont.

7. Some Taxes, Fees, Surcharges of Interest to the PEG Study Committee:

- Amusement Tax
- Heritage Tax/Sales Tax
- Telecommunication Tax
- Spectrum Proceeds

8. Emerging Policy Ideas:

- News Desert Legislation
- Community Information Districts
- Community Reinvestment Act as a Mechanism
- New Markets Tax Credit

1. US communications policy is based on an exchange of public benefit for commercial access to public rights of way.

The Communications Act of 1934 was created, in part, to spell out the commercial terms for use of the “public rights of way”, including public interest requirements. On the “common carrier” side (Title 2: wireline and wireless) of the Act, providers (de facto monopolies the time) were required to compensate for use of the rights of way with universal service. More recently, public interest consideration include subsidies to promote broad based urban and rural and low-income access as well as ownership caps.

On the “mass media side” (Title 3: radio, tv, satellite, Title 6: cable) forms of public access have included “equal time” (now overturned), ownership caps (still, [the monopolization of telecommunications abides](#)). For satellite providers, regulated by the FCC, leased access channels are set aside for public use. Typically, used by religious organizations, and activist TV channels such as Free Speech TV.

Cable is regulated as Title 6 of the Cable Act, local franchise authorities can require conditions that fit into the legislative intent, i.e., to be responsive to community needs and interests and assurance that cable systems would provide the widest possible diversity of information sources and services to the public. Why? These support the conditions for democracy to flourish.¹

Local franchising authority to require public goods from carriers is slowly being eroded by recent FCC reinterpretations of the Cable Act. This is discussed in more detail, below.

¹ Among the stated purposes of the Cable Act are the establishment of franchise procedures and standards to encourage the growth and development of cable systems and to assure that *cable systems were responsive to the needs and interests of the local community*, 47U.S.C. sec. 521(2); the establishment of guidelines for the exercise of federal, state, and local authority with respect to the regulation of cable systems, 47 U.S.C. sec. 521(3); and *the assurance that cable systems would provide the widest possible diversity of information sources and services to the public*, 47 U.S.C. sec. 521(4).# (Italics added)

2. In Vermont, PEG is a valued, local, non-commercial, community media resource that helps to inform, educate and weave communities together.²

Public assessments, conducted by Comcast, the Department of Public Service, and third parties, consistently indicate a high level of recognition, respect and important regard of PEG Access by people and organizations in all parts of Vermont. Schools, libraries, municipal governments, nonprofit corporations, churches, clubs, seniors, youth and individuals from all walks of life regard PEG AMOs, where they exist, as anchor institutions that provide government transparency, educational opportunity, and first amendment forum for community presentations and discussion.

The recent Vermonter Poll, conducted in February 2019, reports that 80% of respondents watch public access TV, largely to see public events, meetings and educational programs. Respondents believe that it is important (37%) or very important (41%) for a community to have public access television, and would support funding through a variety of revenue streams including local government budgets (39%), state government (49%), subscriptions (42%), local fundraising efforts (55%).³

² [See VAN Presentation to Study Committee July 19 2019 for discussion of “PEG and Assessments of Community Needs”, p 5.](#)

³ Vermonter Poll 2019, PEG Questions
<https://drive.google.com/file/d/1vJwWBWwWChAQaPRRtgpkjQtTTSYRozRg/view?usp=sharing>

3. PEG capacity and service is funded by cable subscribers (5-6% of their cable bills in Vermont). This public benefit is allowed in Title 6 of the Cable Communications Act, in exchange for commercial use of the public rights of way.

Franchise fees and in kind services enable access management organizations to deliver community media services to cable subscribers and the community-at-large.

Vermont Access Network members (AMOs) now operate 81 commercial free channels (67 in Standard Definition and 14 in High Definition), help to produce 18,000 hours of original local programming annually (49 programs a day), and employ more than 100 full and part time employees, aided by hundreds of volunteers. Twenty-four of the AMOs provide web streaming of their programming, either live or on-demand.⁴

Vermont cable subscribers pay between \$8 million each year to support substantial community coverage, training, and the operation of non-commercial media dedicated to local community development and free speech. VAN calculates that the market rate equivalent of AMO services to be in the neighborhood of \$74 million (a factor of 8.5).

See also:

<https://legislature.vermont.gov/Documents/2020/WorkGroups/PEGAccess/Documents%20and%20Testimony/W~Lauren-Glenn%20Davitian~VAN%20Info%20Sheet~7-19-2019.pdf>

See also: Comcast handout on historic PEG revenue handed out by Dan Glanville on 7/19/19.

⁴ Comcast Vermont Cable Headend of PEG Access Territories by Town
<https://drive.google.com/file/d/11GT7H7d8Ypt2TUDjWKSTftjMRrF-mo9z/view?usp=sharing>

4. Since the digital transition, Internet users have become an important beneficiary of both PEG programming and services and will continue to expand as broadband grows throughout Vermont.

For example, please see [VAN Presentation to PEG Study Committee 7/19/19, PEG Viewing and Internet Statistics \(p. 9\)](#):

Channel 17/ Town Meeting TV internet audiences vary based on community relevance. For example, Town of Essex meeting statistics from 2018 show that the 3/5/18 Essex Selectboard garnered 61 YouTube views, the 5/21/18 Selectboard meeting was watched by 635 people, and the June 4th meeting (on gun control) had an audience of 1,982 viewers.

Computer Ownership and Internet Access Census Stats & VT Stats for % of Houses with No Internet (scroll down)

<https://www.digitalinclusion.org/home-internet-maps/>

Recently passed Vermont Act 79 - An Act Related to Broadband Deployment

<https://legislature.vermont.gov/bill/status/2020/H.513>

5. However, the state’s authority to require benefits from internet providers is hampered by both Congress (Internet Tax Freedom Act) and the FCC.

The FCC re-classified Internet delivery as a Title 1 service with no public interest requirements. This is consistent with other FCC Orders that aim to “level the playing field” , regulate with a “light touch”, and curtail local franchising authority over right of way matters.

Current FCC Cases that Influence Localities Control Over Rights of Way [These are discussed in more detail here.](#)

I. FCC 5G Order

<https://www.govtech.com/dc/Court-Rules-in-Favor-of-FCC-5G-Regulatory-Rollbacks.html>

See Also:

<https://arstechnica.com/tech-policy/2019/07/ajit-pai-has-yet-another-plan-to-stop-local-broadband-regulation/>

II. FCC In-Kind Order

Ajit Pai Answers to Senate Commerce Cmte and Comments on the Outcome of the FCC In-Kind Proceeding

<https://www.benton.org/headlines/chairman-pai-submits-answers-senate-commerce-committee> **(See this link for detail of Pai comments).**

III. FCC and Capping Universal Service Fund Fund

<https://www.benton.org/headlines/fcc-proposes-capping-fund-used-close-digital-divide>

VUSF: Peter Bluhm Written Testimony about Universal Service Funds 2/14/19

<https://legislature.vermont.gov/Documents/2020/WorkGroups/House%20Energy%20and%20Technology/Budget/VUSF/W~Peter%20Bluhm~Written%20Testimony%20about%20Universal%20Service%20Funds~2-14-2019.pdf>

6. Yet, local authorities retain points of leverage as taxing and regulatory bodies. These may present a way forward as we consider alternative funding streams for PEG access in Vermont.

The Heartland Institute commissioned the Beacon Hill Institute at Suffolk University (BHI) to conduct a survey of taxes and fees imposed by federal, state, and local governments on cable, wireline, and wireless communication service subscribers for a sample of U.S. cities. (2007)

<http://www.butlersnow.com/wp-content/uploads/2016/11/ComBlog-07MayBHI-HeartlandTelecomTaxes.pdf>

In sum: Communication services today consist of voice, video, and Internet access services delivered over telephone wires, cable TV lines, or wirelessly (via point-to-point signal transmission or satellite). In the past, each service relied on a different technology, allowing it to be purchased, regulated, and taxed separately. Today, all three can be delivered via all three technological platforms and are often offered in packages combining several different services using one or more platforms. Cable television and telephone subscribers pay taxes and fees on these services, while Internet access is largely untaxed.

A sample of the most common types of federal, state, and local taxes, fees, and surcharges that are imposed on telecommunications providers, in this case Mitel, by government agencies and taxing authorities. Providers separately itemize these taxes, surcharges, and fees on customer invoices rather than include these amounts in higher rates for services. Application of these taxes, fees and surcharges are based on the product used by the consumer.

<https://oneview.mitel.com/s/article/Taxes-Fees-and-Surcharges>

7. Some Taxes, Fees, Surcharges of Interest to the PEG Study Committee (noted above):

Communications Tax - This is a tax imposed on telecommunication services in many states, for example, FL and VA, just to name two.

Municipal Franchise Fee - The municipal franchise fee, sometimes called a "Right-of- Way" fee, is a monthly charge imposed by local jurisdictions and paid by the customer to help recover the costs associated with providing telephone service, to include installation of underground conduit, outside telephone wires, and telephone poles. This fee varies by location and is often based upon an agreement between the local jurisdiction and Mitel or upon local or state law.

Service Tax - This is a tax imposed on the privilege of making sales of services.

Sales Taxes and District Tax - These are taxes imposed on the privilege of making sales within a state or a

special district (e.g., a rapid transit authority, school district, development zone, etc.).

State and Local Excise Tax - Excise tax is imposed on payments received for the privilege of sending or receiving telecommunications messages.

Utility Users Tax - This is a tax imposed on the consumer for using a utility (telecommunications) service. The tax is commonly assessed as a percentage of the amount billed to each customer for the service.

In Vermont, there is also an AOT **Right of Way Rent**. Contact: Robert M. White | Right of Way Chief
Acquisition, Property Management,
Utility Relocation and Survey
Vermont Agency of Transportation
802-828-2616,
Rob.White@vermont.gov

Amusement Tax

Chicago Amusement Tax

Updated in 1998 to reflect charges to terrestrial entertainments, e.g. Netflix, gaming platforms.

https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/tax_list/amusement_tax.html

The Amusement Tax has been collected for many years by the City of Chicago. According to [Amusement Tax General Info - Updated for 2018](#), as of 2018, the amusement tax applies to charges paid for the privilege to witness, view or participate in an amusement. This includes not only charges paid for the privilege to witness, view or participate in amusements in person but also charges paid for the privilege to witness, view or participate in amusements that are delivered electronically. Thus: a. charges paid for the privilege of watching electronically delivered television shows, movies or videos are subject to the amusement tax, if the shows, movies or videos are delivered to a patron (i.e., customer) in the City (see paragraph 13 below); b. charges paid for the privilege of listening to electronically delivered music are subject to the amusement tax, if the music is delivered to a customer in the City; and c. charges paid for the privilege of participating in games, on-line or otherwise, are subject to the amusement tax if the games are delivered to a customer in the City.

https://www.chicago.gov/content/dam/city/depts/rev/supp_info/TaxSupportingInformation/AmusementTaxGeneralInfo-UpdatedFor2018.pdf

Criticism of Amusement Tax:

<https://www.atr.org/chicago-s-amusement-tax-no-laughing-matter>

Also to be considered in MA: Mass Access is pushing 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. Recently introduced. <https://malegislature.gov/Bills/191/HD4389>

See also:

<https://commonwealthmagazine.org/media/bill-would-hit-netflix-hulu-with-fees/>

Heritage Tax/ Sales Tax

Minnesota Heritage Tax/ Sales Tax

.5% - To preserve Minnesota heritage Written into the constitution so that it cannot be vetoed or swept into the general fund. Generates \$150 million a year to fund wildlife conservation and preservation of arts and culture. Rural/ urban coalition of outdoor and cultural groups organized for this. Distributed through an intermediary organization, the State Arts Board. Significant impact.

<https://www.legacy.mn.gov/arts-cultural-heritage-fund>

- **Cultural Purposes of the Heritage Fund:** The creation, performance and exhibition of artistic works; The preservation and presentation of Minnesota's history and cultural heritage from its earliest peoples to present day; The dissemination of programming and information about Minnesota's arts, history and cultural heritage through technology and media; The public interpretation of our history and cultural heritage: Arts, history and cultural heritage learning opportunities for all ages; and Collaborations among arts, history and cultural heritage organizations.
- **From the 25 Year Vision of the Heritage Fund:**
https://www.legacy.mn.gov/sites/default/files/resources/ACHFFinal_0.pdf

Telecommunication Tax

Massachusetts Sales Tax on Telecommunications - Telecommunications purchases in Massachusetts are charged a 6.25% sales tax. Learn about the various kinds of telecommunications services and how to register to remit sales tax with MassTaxConnect.

<https://www.mass.gov/service-details/sales-tax-on-telecommunications>

Eugene Oregon Telecom Tax - The City of Eugene sued to collect from Comcast of Oregon II, Inc. (Comcast) a license fee that the city, acting under a municipal ordinance, imposes on companies providing “telecommunications services” over the city’s rights of way. Comcast did not dispute that it used the city’s rights of way to operate a cable system. However it objected to the city’s collection effort and argued that the license fee was either a tax barred by the Internet Tax Freedom Act (ITFA), or a franchise fee barred by the Cable Communications and Policy Act of 1984 (Cable Act). The city read those federal laws more narrowly and disputed Comcast’s interpretation. The trial court rejected Comcast’s arguments and granted summary judgment in favor of the city. The Court of Appeals affirmed. Finding no reversible error, the Supreme Court affirmed.

<https://law.justia.com/cases/oregon/supreme-court/2016/s062816.html>

Oregon Court Decision - The trial court agreed with the city and held that the license fee was not a tax on Internet access barred by ITFA: “Comcast is paying the license fee for the privilege of using the City’s right-of-way. Thus the license fee is a fee imposed for a specific privilege, service, or benefit conferred and not a tax under ITFA.” The trial court did not address Comcast’s argument that it had a preexisting right to use the city’s rights of way to provide cable modem services.

<https://caselaw.findlaw.com/or-supreme-court/1736594.html>

FCC’s Recent Order aimed at this Court Decision -

<https://arstechnica.com/tech-policy/2019/08/pais-fcc-orders-cities-and-towns-to-stop-regulating-cable-broadband/>

“ These efforts appear to have followed the decision by the Supreme Court of Oregon in *City of Eugene v. Comcast*, which upheld a local franchising authority’s imposition of an additional 7% “telecommunications” license fee on the provision of broadband services over a franchised cable system with mixed-use facilities. To address this problem, we now expressly preempt any state or local requirement, whether or not imposed by a franchising authority, that would impose obligations on franchised cable operators beyond what Title VI allows.”

Spectrum Proceeds

IndependenceMedia.Org - Molly Aguilar, New Foundation in Philadelphia from \$135 million spectrum proceeds after WYBE sold its channels. de Aguilar will lead the Independence Public Media Foundation (IPMF), which will fund and support media and media-makers to strengthen and connect diverse voices and foster greater understanding across communities in the Greater Philadelphia region. The foundation has expanded and enhanced its continuing educational and charitable mission since Independence Public Media relinquished its broadcast license in 2017 and received a one-time payment of \$131.5 million through the FCC Broadcast Incentive Auction. Independence Public Media of Philadelphia Inc. was founded in 1981.

Follow Up: Holly Groschner, Vermont Public Television, President and CEO, hgroschner@vermontpbs.org, 802.655.5274

8. Emerging Policy Ideas

News Desert Legislation

Massachusetts' legislature now has a bill under consideration to organize a 17-member commission to study the state's news deserts. According to Columbia Journalism Review, the group would meet five times a year to "sift through data and 'existing literature' about journalism in Massachusetts" and present a summary of their findings and policy recommendations to the state at the end of one year.

<https://www.niemanlab.org/2019/07/more-bills-for-government-funding-of-local-news-or-at-least-its-exploration-inch-forward/?relatedstory>

See Also: Discussion of loss of local news and the risks. Every Vermont county has at least one and mostly at least two local newspapers. As financial stress on these news outlets persists, there is concern about news "desertification" in Vermont. PEG Access helps to contribute to media diversity in our communities.

<https://www.usnewsdeserts.com/reports/expanding-news-desert/>
<https://www.usnewsdeserts.com/states/vermont/>

Community Information Districts

Community Information Districts: Simon Gelprin has studied and proposed a tax district (e.g. TIFF) created through referendum. Authorizes the provision of “information goods” to support entities of communication.

<https://www.niemanlab.org/2018/03/could-local-news-driven-by-residents-who-pay-fees-in-a-special-service-district-work/>

Contact: Simon Galperin, simon@groundsource.co, 201-913-5283

- **Info districts are special districts** that fund participatory media and civic communications projects to meet local news and information needs. Modeled after other kinds of special districts – like business improvement or library districts – info districts are established democratically, funded by a local tax, and accountable to the community they serve through a public board.
- The info district framework was incubated at the Craig Newmark Graduate School of Journalism in 2016 with support from the Center for Cooperative Media at Montclair State University. In 2018, the Reynolds Journalism Institute awarded a fellowship to the Community Info Coop to research and produce a guide to launching an info district.
<https://www.infodistricts.org/>

Community Reinvestment Act

The Federal Reserve Bank of Dallas put this study together about the poverty and digital empowerment and the role of banks (and others) in addressing the digital divide and community information needs. They see the CRA as a mechanism to promote digital inclusion through literacy, storytelling and empowerment.

<https://www.dallasfed.org/~media/documents/cd/pubs/digitaldivide.pdf>

Contact: Jordan Barton, Federal Reserve Bank of Dallas,
Jordana.barton@dal.frb.org 210-978-1480

The CRA provides a significant opportunity to help close the digital divide across communities while simultaneously benefiting financial institutions and improving economic stability. The CRA is a law that encourages banks to make loans and investments and provide services to LMI communities. The law was passed in 1977 to address redlining—the denial of credit to individuals based on where they live. Every year, the CRA helps bring more than \$100 billion in capital to LMI communities across the country. The law is intended to be broad, flexible and responsive to changes within communities.

In July 2016, the Federal Reserve, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp. published an updated CRA guidance—the 2016 Interagency Questions and Answers. In the new Q&A, broadband is included as a form of infrastructure investment, and the agencies identify communications infrastructure as an essential community service and describe how investing in new or rehabilitated communications infrastructure is consistent with the CRA regulatory definition of community development.

"This publication provides a toolkit for bankers seeking to bring digital opportunity to underserved, rural and tribal communities through access to high-speed broadband. Bank investments as well as partnerships with local governments, nonprofits and educational groups can help ensure equitable access to the growing digital economy."

For example: Training programs for youth and adults should cover the subject of internet safety and security. A useful resource is the nonprofit Common Sense Media's K-12 digital citizenship curriculum. For this and related resources for educators, parents and youth, visit www.common sense media.org

New Markets Tax Credit

[New Markets Tax Credit](#) eligible investments are examples of qualified investments under the CRA. The U.S. Department of the Treasury, Community Development Financial Institution Fund's 2015 Application FAQs include broadband as an eligible New Markets Tax Credit (NMTC) Program investment. Question 41: "Can NMTCs be used to finance broadband infrastructure or related activities? Broadband infrastructure and related activities are eligible for NMTC investments provided that these activities meet the IRC regulations related to a business qualifying under the NMTC program. For additional details, please see IRC 45D and related IRS guidance.

- **See especially page 17-22 - Includes possible funding ideas:** "We conducted research on our assessment area by meeting with community leaders and local nonprofits and used the tools laid out in Gig.U's, The Next Generation Network Connectivity Handbook: A Guide for Community Leaders Seeking Affordable, Abundant Bandwidth, to understand the opportunities for broadband investment in LMI communities. The following is an overview of the broadband gaps we identified, the actions we took and partnerships we formed to close those gaps."
<https://www.dallasfed.org/~media/documents/cd/pubs/digitaldivide.pdf>