Financial Viability of Public, Educational and Government Access Television in Vermont

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The PEG Study

- “PEG” means Public, Educational and Governmental programming.
- Goal of study was s to provide options to “ensure the future financial stability and viability of PEG channels.”
- Report examined:
  - Likely financial future
  - Possible efficiencies and other forms of organization.
  - Possible new financing mechanisms.

Cable History and PEG History

- Cable companies started as “community antenna” services serving small areas. Many merged and were acquired in the 1980s and thereafter.
- PEG began as an FCC initiative on analogy to the “public interest” obligations of commercial television broadcasters.
  - An “AMO” is an “Administrative Management Organization” or an “Access Media Organization.”
- Today Vermont has
  - 11 cable companies. Comcast has the great majority of customers.
  - 25 AMOs – all are nonprofit corporations.
    - Formal geographic coverage area is limited to areas served by cable, but actual service area can be larger, depending on community of interest.

Vermont AMOs

- Multiple roles
  - Recording government activity and events of public interest, like graduations and sports events.
  - Training for video volunteers.
  - Overall, a combination of town hall, local newspaper, town library, public school, and the Speaker’s Corner.
- Funding Sources
  - 92% from cable companies.
  - Remaining 8% comes from fees, memberships, donations, and other sources.
- Expenditures total about $8 million. Size of AMO budgets variable.
  - Highest single AMO budget is about $800 K.
  - Lowest single AMO budget is about $75 K.

Federal Regulation

- Cable Act of 1984, as later amended.
  - Also called Communications Act of 1934, “Title VI.”
  - Allocates responsibility between federal government and “franchising authorities.”
  - State has very limited authority over cable rates.
- Title VI sets limits on “franchise fees” imposed.
  - 5% of cable revenues for operations is the maximum.
    - No added contribution can be required from Internet or telephone service revenues.
    - Vermont assigns 100% of this revenue to AMOs.
  - “Capital” expenses are excluded from the 5% maximum.
    - In some states, an additional 1% contribution for capital is normal.
  - General taxes are not “franchise fees.”

State Regulation

- PUC Rule 8.000 (1991)
  - AMOs are certified by their cable companies, not the state.
  - Cable companies must:
    - Provide channels for AMO programs.
    - Pay for AMO operating expenses
      - Currently a uniform 5% of gross operating cable revenue.
    - Pay “capital expense” payments and enough equipment for AMO to operate.
      - Actual payment rates vary from zero to 1.25%. Modal rate is 0.5% of gross cable revenue. Capital rates are negotiated between each AMO and cable company pair.
  - AMOs file detailed annual reports with information about their finances and operations.

What’s New in Telecom Since 1984?

- Digital media and the Internet
  - Video streaming
    - Fewer cable subscribers.
    - Less PEG revenue.
    - Benefit of PEG programming spreads over wider area.
  - PEG operations are changing to digital technology and Internet streaming.
    - Digital streaming service. Increases customer convenience.
    - Service benefit now extends outside the cable footprint to a larger region.
- Telecommunications Competition
  - Every platform can provide every service.
  - Old “silos” look increasingly dated.
    - E.g. Taxes on single industries.

PEG Viewership

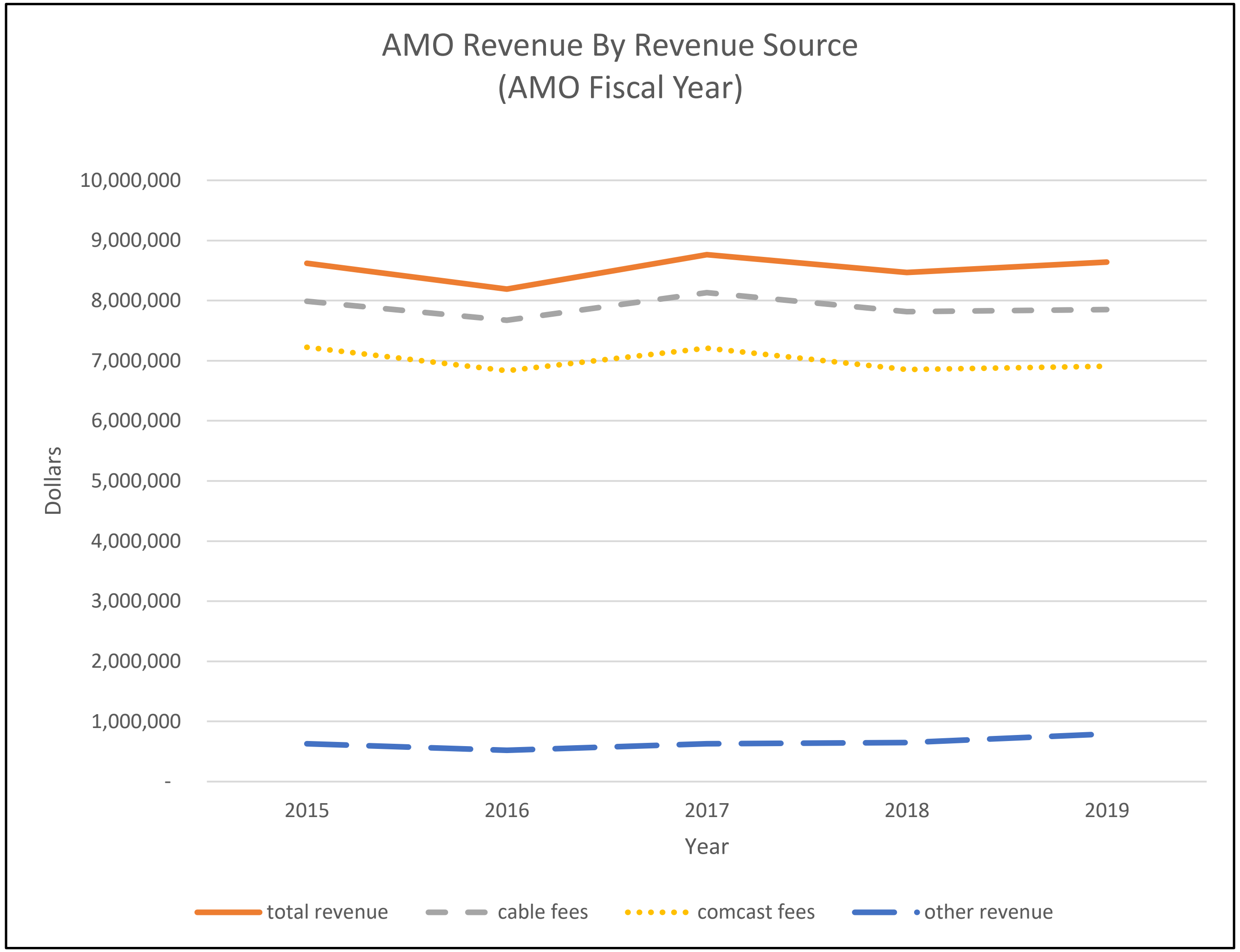
- 2020 COVID Response Plan included results of statewide survey.
  - PEG viewership, overall:

    “has been steady or increasing, and in many cases, the Vermont community’s engagement with PEG resources has increased significantly, with many stations reporting spikes in Facebook views, YouTube views, and Google website traffic during the pandemic months.”
  - Far more respondents said that they had accessed PEG content using their broadband connection than using the local cable channels.
  - AMO role in disseminating information was particularly useful because many municipalities

    “have struggled to engage citizens and elected officials via online tools, and few have made plans for larger engagement challenges like Town Meeting Day.”

PEG Revenue History

- Recent Revenue to AMOs generally stable over the last 5 years.
- One sizeable dip in 2018-19 because of a nationwide accounting change that affected the “cable revenues” of cable companies.



Revenue Forecast

- Our method: future of cable revenue will be affected by number of cable subscribers and cable ARPU (Average Revenue per Unit).

- High-normal estimate for 2026 shows total PEG payments declining from $7.82 MM to $7.46 MM, a loss of about $0.4 MM.
- Low-normal estimate for 2026 shows total PEG payments declining to $7.04 MM, a loss of about $0.8 MM.
- If AMOs also have a 1% inflation in costs, then 2026 deficit could be $1.4 MM, or 17% of current spending level.
- Risks not quantified:
  - Changing FCC rules on “in-kind” cable contributions counting against the 5% cap.
  - Increasing cable company losses of video subscribers.
  - Cable company strategic decisions to shift from cable service to streaming video.

Efficiency Options

- Horizontal Mergers
  - Some are under consideration already.
  - Forced mergers not likely to produce substantial savings unless matched with closing of some PEG centers.
- Sharing Resources
  - Some now underway through VAN. (e.g. VMX, Statewide channel).
  - Other possibilities include insurance, accounting, electronics.
- Interactive Meeting Venues
  - Possible role replacing function of Vermont Interactive Television
- Miscellaneous Revenue – memberships, donations, contracts, underwriting.
  - Now only 8%.

Business Model Options

- AMOs everywhere seem to be nonprofit organizations, run locally.
- In some states (e.g., MA) the government entity negotiates for PEG payments, but Vermont's existing system seems more efficient. Also, since Vermont franchises at the state level, the analogy fails.
- Joint operations with educational institutions.
  - Most AMOs already have informal relations to local schools, but few or none derive any significant revenue. Schools don't seem interested in joint operations.
  - Vermont colleges might be interested, but probably not in a way that replaces internships with joint programs.
- Impose a more hierarchical structure, like a state agency.
  - Not likely to produce better local service.

New Revenue Options - Goals

- Traditional lists for tax system goals –the Oklahoma version
  - “Reliable, simple, neutral, transparent, fair, and modern.”

- Another goal for telecommunications taxes - competitive neutrality
  - Treating competitors alike.
  - Bias against “silo” taxes on particular industries.

Federal Constraint #1 – Cable Act

- “Franchise fee” limited to 5% of cable revenues.
  - Excludes PEG capital costs.
  - Excludes general taxes, like Sales and Use Tax
- FCC’s “Third Order” expands the class of “in-kind” services the value of which are to be considered “franchise fees” and which can therefore reduce the level of cash payments to AMOs.
  - Mandated cable service and mandated Internet service.
  - Vermont PUC requires both of these from cable companies in franchise documents (CPGs).
  - Third Order still on appeal.

Federal Constraint #2 – Universal Service

- Vermont's USF is funded by surcharge on "intrastate" and "interstate" telephone revenues. This is a somewhat unusual base, but it has been unchallenged now for 26 years.
- Federal Telecommunications Act of 1996 authorized federal and state USF programs, but with many limitations, especially for states.
  - A state rule cannot be *inconsistent* with the Commission's *rules*.
  - Contributions must be "*equitable and nondiscriminator*y."
  - Support mechanisms must be "*specific, predictable, and sufficient*."
  - Mechanisms cannot rely on or "*burden*" federal universal service support mechanisms.
- Post-1996 litigation has not clarified these concepts. There is substantial risk in doing anything innovative in the universal service sphere.
  - The FCC appears strongly opposed to letting states fund universal service by a surcharge on Internet access.

Federal Constraint #3 – Barriers to Entry

- States cannot do anything that prohibits entry into telecommunications markets. 47 U.S.C. § 253.
  - This could potentially include a confiscatory charge or tax.
- "Safe harbor" exemption for management of rights-of-way.
  - Some risk that courts might view a ROW tax as not related to state's cost of maintaining the ROW.
- Case decisions
  - Have invalidated franchising requirements, but generally for provisions that give too much discretion to the franchising agent.
  - One court sustained a city charge of 4% of gross revenues against a telecommunications company seeking to install miles of underground conduit.

Federal Constraint #4 – Internet Tax Freedom Act

- States cannot tax Internet access.
  - Now a permanent provision of federal law.
- Exceptions for:
  - Universal service (but must meet FCC standards)
  - 911 and E-911

Federal Constraint #5 – FCC Broadband Policy

- FCC issued *Restoring Internet Freedom Order* in 2017.
  - Reversed once again FCC's position on whether Internet access is a "telecommunications service." It's not.
  - Order purported to preempt states from regulating Internet access.
    - "Preemptive policy of non-regulation."
  - Order preempted States taxing Internet access for universal service.
- On appeal, the FCC was reversed in part.
  - When the FCC declared Internet access is not a "telecommunications service," it undercut its own authority.
  - FCC authority over the industry and the states is limited.
  - But, FCC's universal service discretion not substantially affected.

Revenue Option #1 –
New 1% Charge on Cable Revenues

- Proceeds would go to the state General Fund, and be appropriated to AMOs.
  - AMOs would have to use the money for capital expenditures.
- Would displace existing cable company payments for capital costs of AMOs.
  - State might have to delay effective dates until existing contracts expire. Net effect an increase in cable company charges of about $0.4 MM.
- Advantages:
  - Similar to charges in some other states.
- Disadvantages:
  - Not competitively neutral – increases burden on cable companies.
  - Involves state treasury in a new kind of transaction with little marginal financial change effected.

Option #2 – New Streaming Video Charge

- A new charge on streaming video, paid to General Fund and appropriated to AMOs.
  - Sales tax already applies to this service.
  - Charge could also apply to satellite video services.
- Advantages
  - Vermont Sales and Use Tax already covers this. This helps solve many administrative and scope issues.
  - This kind of charge has been upheld at least once against a Commerce Clause challenge. Other states considering enacting such charges.
  - Could improve the alignment between the Vermont residents who benefit from PEG service in the modern age – through Internet streaming – with those who pay for that service.
- Disadvantages
  - Cost of administering a new tax

Option #3 – Raise the VUSF Rate

- VUSF already supports a range of telecommunications services.
  - VUSF is for telephone and broadband.
  - PEG is for video.
- Most of the VUSF funding now goes for E-911, but the VUSF isn't currently raising enough to match E-911 appropriations.
  - VUSF rate may have to increase anyway.
- Disadvantages:
  - VUSF is funded by telephone surcharges. It may not be fair to telephone customers to add this additional burden.
  - Federal limitations on universal service prevents broadening the base of the VUSF to include Internet access payments.

Interlude – Connection Charges

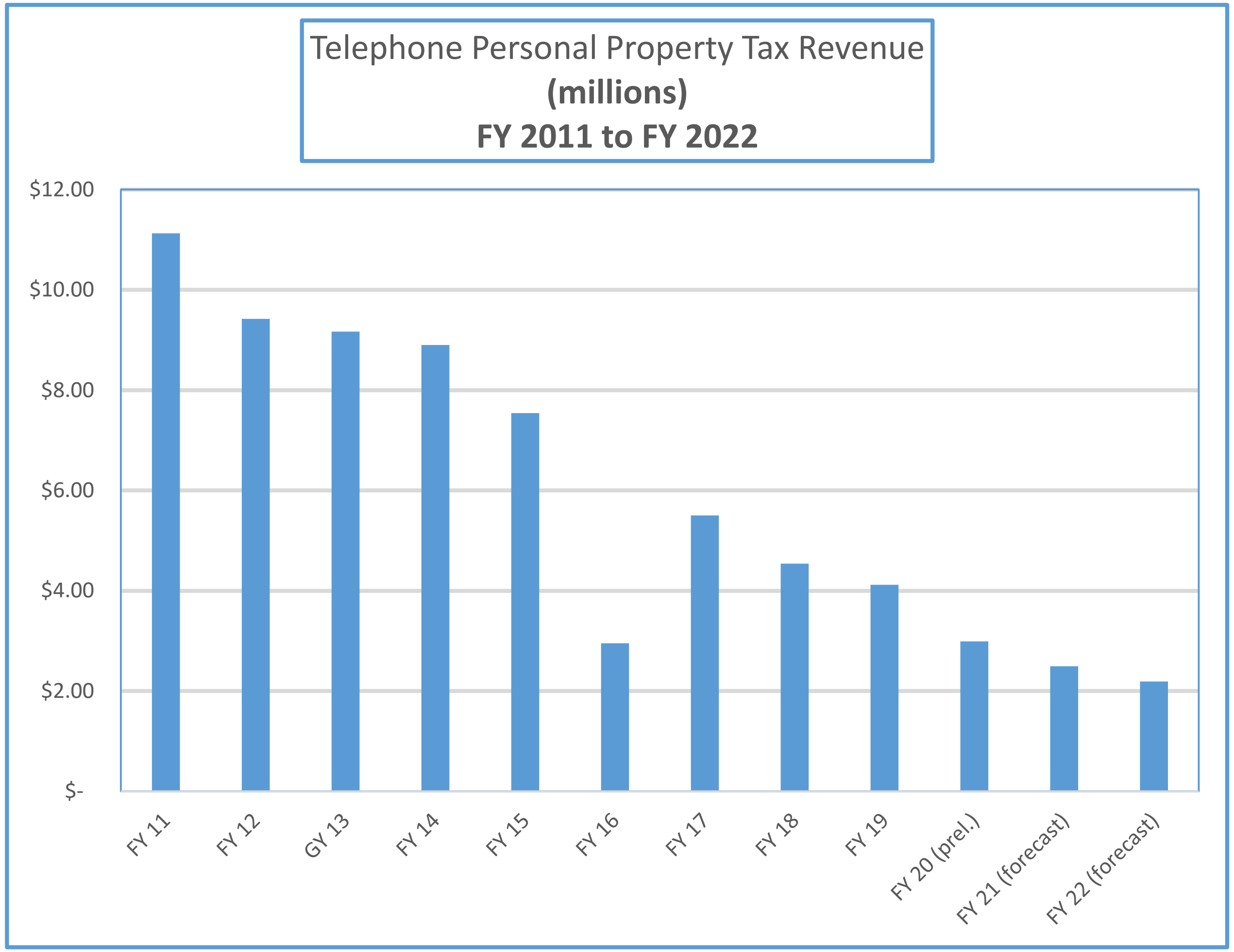
- Replacing gross receipts funding with per-connection funding has been popular in some states.
  - Maine and some other states use a per-line connection charge on telephone numbers to fund its state universal service fund.
- A connection fee on Internet access could distribute the burden of VUSF funding more fairly, but that step is blocked by the FCC.
- A per-connection fee on telephone customers, replacing the VUSF gross revenues fee, could be a slight improvement over the status quo, but is beyond the scope of this PEG study.

Interlude – Telephone Personal Property Tax

- TPPT provides no revenue to PEG programs.
- Current rate is 2.37 % of the “net book value” of a telephone company.
- “Net book value” is a regulatory concept, designed to allow a rate regulated company to make a fair recovery on its initial investment.
  - It was clearly defined and easy to administer in the 1960s.
- Net book has complex features:
  - Exclusion of a large amount of “non-regulated” property used for Internet service, any video services.
  - Accumulated depreciation greatly reduces book value on an older network.

Telephone Personal Property Tax

- Disadvantages as a PEG resource.
  - Not competitively neutral. Many competitors do not pay.
  - Revenue declining.



Option #4 – Pole Attachment Charge

- Vermont telecommunications providers use mainly utility poles.
  - Rocky soil, lots of ledge. Buried cable is expensive in Vermont.
  - Includes cell companies that use cables to reach their antennas.
- Revenue estimate: $4.4 MM/yr. (= $10/att./year x 440 K att.)
- Advantages:
  - More competitively neutral than charges on cable companies or on telephone companies.
- Disadvantages:
  - A new tax.
    - Attachers already pay pole attachment fees, about $15/yr/att.
  - Should probably give credit against PEG payments to comply with 5% limit.
  - Possible “federal-aid” highway restrictions.

Option #5 – Multipart Option

1. Create Vermont Telecommunications Public Benefit Fund (TPBF).
   - Funded by a pole attachment charge. Estimated rate is $10 per year per attachment.
     - Must allow cable companies to reduce current AMO payments dollar for dollar.
   - Legislature appropriate TPBF to AMOs to replace lost cable operating revenues.
2. Retitle and repurpose the VUSF as an E-911 fund.
   - Add Internet access revenue to the base.
   - Transfer other, non-E-911, VUSF program costs from the TPBF.
3. Enact a new PEG capital fee of 1% on cable company gross revenue from cable revenue of cable companies.
   - Legislature appropriate TPBF to AMOs to replace lost cable capital payments.
4. Repeal the Telephone Personal Property Tax.
   - Hold the General Fund harmless by a transfer from the TPBF.

Financial Effects – Example @ $10/yr/att.

Program Element	Policy Change	TPBF (millions)	AMO Revenues (millions)	General Fund (millions)
1	New Pole Attachment Charge	$ 4.41		
	Offsetting Reduction in Cable Company Operating Payments to AMOs		$ (1.32)	
	Appropriation to AMOs	$ (1.32)	$ 1.32	
2	Miscellaneous Programs (Lifeline, TRS) Shifted to TPBF	$ (0.57)		
3	New PEG Capital Fee	$ 1.20		
	Eliminate PEG Capital Payments		$ (0.86)	
	Appropriation to AMOs	$ (1.20)	$ 1.20	
4	Repeal Telephone Personal Property Tax			$ (2.40)
	Fund Transfer from TPBF to Gen.Fund	$ (2.40)		$ 2.40
Total		$ 0.12	$ 0.34	$ -

Recommendations

- Encourage AMO’s to continue their efforts to improve cost efficiencies and seek additional sources of funds.
- Option (#5) deserves serious consideration.
  - Modernizes the state’s telecommunications tax structure.
  - Broadens the base of AMO payments in a way that reflects the increasing use of the Internet as a medium for video programming, including PEG video.
  - Encourages AMOs to expand their program benefits into surrounding towns that have broadband but lack cable television service.

Questions?