

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule 8.00 Cable Television

/S Anthony Z. Roisman
(signature)

, on 9/20/2022
(date)

Printed Name and Title:

Anthony Z. Roisman
Chair, Vermont Public Utility Commission

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary



1. TITLE OF RULE FILING:

Rule 8.00 Cable Television

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P005

3. ADOPTING AGENCY:

Vermont Public Utility Commission

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Jake Marren, Esq.

Agency: Vermont Public Utility Commission

Mailing Address: 112 State Street 4th Fl. Montpelier, VT
05602

Telephone: (802) 828-1167 Fax:

E-Mail: jake.marren@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://epuc.vermont.gov/?q=node/64/166982>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Micah Howe

Agency: Vermont Public Utility Commission

Mailing Address: 112 State Street 4th Fl. Montpelier VT
05602

Telephone: (802) 828-2358 Fax:

E-Mail: micah.howe@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:



(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

30 V.S.A. §§ 209(b) and 517

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The Commission has "jurisdiction to hear, determine, render judgment, and make orders and decrees in all matters" related to the provision of utility services in Vermont. 30 V.S.A. § 209(a). The Commission is required to adopt rules that "regulate or prescribe terms and conditions of extension of utility service to customers or applicants for service . . . including the extension of service lines." 30 V.S.A. § 209(b)(1). Section 517(e) of Title 30 states that "the Commission may require the construction of cable television line extensions when a company receives a bona fide request for service from a reasonable number of verified customers or with reasonable contributions in aid of construction from customers."

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The proposed rule will standardize the method of calculating and the format of presenting the construction cost estimates that cable operators provide to customers requesting cable line extensions. The rule also amends the timeframes within which cable operators are required to provide such construction cost estimates.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

When a customer in an unserved area requests cable service, a line extension must be built. State statute requires the Commission to adopt a rule prescribing the terms of line extensions and authorizes the Commission to require cable line extensions where requested by a new customer, subject to a customer's reasonable contribution in aid of construction. Providing reasonable, accurate, and consistent estimates of construction costs will allow potential cable customers to better assess the feasibility of cable line extensions and facilitate the expansion of cable service in Vermont.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

For over twenty years, the Commission has used a formula to allocate line extension construction costs between new subscribers and the cable operator depending on how many new subscribers there are per mile of a line extension. The rule clarifies how two inputs to the formula, the construction costs and the length of a line extension, are derived. First, the rule clarifies that only necessary costs may be included in the estimate of line extension construction costs.

Second, the rule clarifies that only the length of the new line extension, as opposed to parts of the existing cable system, can be used in the formula. These changes are not arbitrary because it would be unreasonable to require new subscribers to pay for the cost of infrastructure that is not necessary to extend service. It would also be unreasonable to use a length that exceeds the length of the new line extension because it would disproportionately shift the cost of the extension onto new subscribers.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

The rule will affect persons in uncabled areas that are interested in receiving cable service, Vermont cable operators, and the Vermont Department of Public Service.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):



The rule will not have a significant economic impact. The stakeholders did not identify any significant economic impacts associated with the rule. To the extent that the rule encourages the expansion of cable service, there may be economic benefits to both the cable operators and to customers receiving cable service.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 5/3/2022

Time: 06:30 PM

Street Address: <https://meet.goto.com/146547341> OR call (866)899-4679 and enter Pin# 146-547-341

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

5/10/2022

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Cable Television



Public Utility Commission
Line Extensions



112 State Street
4th Floor
Montpelier, VT 05620-2701
TEL: 802-828-2358



TTY/TDD (VT: 800-253-0191)
FAX: 802-828-3351
E-mail: puc.clerk@vermont.gov
Internet: <http://puc.vermont.gov>

**State of Vermont
Public Utility Commission**

September 20, 2022

The Hon. Mark A. MacDonald
Legislative Committee on Legislative Rules

Re: Rulemaking 22-P005

Dear Senator MacDonald,

This letter concerns the Vermont Public Utility Commission's proposed changes to Rule 8.000, rulemaking 22-P005. The Commission has made the following changes to its Initial Proposal in response to comments received.

1. The Vermont Department of Public Service and the cable operators requested clarification about whether the length of cable line extensions should be measured from the end of the existing cable plant or from the last serviceable pole. In response, the Commission has amended Section 8.313(B)(1) to reflect that the length of a cable line extension is measured from the end of the existing cable plant. The modifier "standard" was also deleted from the "standard subscriber drops" language that was added in the initial proposed rule to clarify that subscriber drops are not included in the length of the line extension.
2. The Vermont Department of Public Service and the cable operators requested clarification about whether network upgrades may be included in the cost of a cable line extension. In response, the Commission has added Section 8.313(B)(6), which states that network upgrades may be included in the cost of a cable line extension, but only if such upgrades "are necessary and would not be installed but for the line extension."

The Commission provided the Department of Public Service and the cable operators an additional 30 days to comment on these revisions, and both responded that they agree with the revisions described above.

Sincerely,

Anthony Roisman

Anthony Z. Roisman, Chair
Vermont Public Utility Commission



Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Rule 8.00 Cable Television

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

09P-025, Cable Television, effective 2/12/2010





INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: March 14, 2022, virtually via Microsoft Teams

Members Present: Chair Douglas Farnham, Brendan Atwood, Diane Bothfeld, Jennifer Mojo, John Kessler, Diane Sherman and Michael Obuchowski

Members Absent: Jared Adler

Minutes By: Melissa Mazza-Paquette

- 2:01 p.m. meeting called to order, welcome and introductions.
 - Introduction of new ICAR member Jared Adler, Department of Labor
 - Resignation of ICAR member Clare O'Shaughnessy, Agency of Education
- Review and approval of minutes from the January 12, 2022 meeting.
 - Motion made to accept the minutes by John Kessler and seconded by Diane Sherman – all approved.
- Note: An emergency rule titled 'Emergency Administrative Rules for Notaries Public and Remote Notarization' by the Office of the Secretary of State, Office of Professional Regulation was supported by ICAR Chair Farnham on 03/14/22.
- No additions/deletions to agenda. Agenda approved as drafted.
- Public comments:
 - Sylvia Knight/'Earth Community Advocate' spoke and comments were submitted via email and shared with ICAR members.
 - Mike Bald/'Got Weeds?' comments were submitted via email and shared with ICAR members.
- Presentation of Proposed Rules on pages 2-4 to follow.
 1. Vermont Regulations for Control of Pesticides, Agency of Agriculture, Food and Markets, page 2
 2. VOSHA Rule: 29 CRF 1926.1124, 29 CRF 1915.1024; Updates to the Beryllium Standard for the Construction and Shipyard Industry' by the Department of Labor, page 3
 3. Rule 8.00 Cable Television, Vermont Public Utility Commission, page 4
- Next regularly scheduled meeting is Monday, April 11, 2022 at 2:00 p.m.
 - A special meeting will be held late March/early April as needed to review an updated filing of the Vermont Regulations for Control of Pesticides if submitted in a timely manner from the Agency of Agriculture, Food and Markets.
- 4:08 p.m. meeting adjourned.

Proposed Rule: Vermont Regulations for Control of Pesticides, Agency of Agriculture, Food and Markets

Presented By: Dave Huber and Cary Giguere

No motions were made. Presenters Dave Huber and Cary Giguere agreed to resubmit a new proposed rule filing that incorporates the following recommendations prior to a special hearing which will be scheduled for a time that works best for all near the end of March 2021 for ICAR's consideration of the proposed rule.

1. Proposed Filing Coversheet, #7: Include reference to the legal authority/enabling legislation as noted in #6.
2. Proposed Filing Coversheet, #8: Include a general description of what this rule does and doesn't do to begin with and then go into detail as to what this rule amendment does. Be clear, transparent and specific when explaining exactly what is being changed.
3. Proposed Filing Coversheet, #9: Include more detail as to why the rule is being amended.
4. Proposed Filing Coversheet, #10: Include more detail as to how the rule is not arbitrary as defined by 3 V.S.A. §801(b)(13)(A).
5. Proposed Filing Coversheet, #11: Consider housing associations and include the public.
6. Proposed Filing Coversheet, #12: Provide more information pertaining to 'significant' and reflect the work done as defined in the Economic Impact Analysis. Include conforming efforts with the federal laws and regulations and costs incurred. Identify that the Vermont changes won't be in addition to the costs already incurred. Use consistency with the Economic Impact Analysis. Explain costs.
7. Economic Impact Analysis: Review for grammar and spelling.
8. Economic Impact Analysis, #3: Request a new certification category for terrestrial invasive plants versus the broader category of emerging forest pests. In the 'Property Management Companies/Landlords' section – add 'to' between 'ought' and 'be'. In the 'Pest Applicators, Pesticide applicator businesses, and dealers' section, define the 'changed permitting requirements' and 'training materials'. Overall, clarify each section and define the economic impact to each.
9. Economic Impact Analysis, #8: Complete 'Alternative 3'.
10. Economic Impact Analysis, #9: Highlight positive impacts in other areas. Include the public.
11. Environmental Impact Analysis, #3: Include the why and how in the first sentence and more detail if warranted in the second sentence.
12. Environmental Impact Analysis, #9: Expand response to describe how the analysis was conducted, identifying relevant internal and/or external sources of information used.
13. Public Input Maximization Plan: Expand beyond homeowners to include the public as well.
14. Public Input Maximization Plan, #3: Define time frame of outreach. Include steps taken and to be done for public outreach and engagement. Detail public hearing information if known.
15. Incorporation by Reference, #5: Include URL web links and phone number. Note that libraries are a valuable resource for those who need internet access to materials listed.



Proposed Rule: Rule 8.00 Cable Television, Vermont Public Utility Commission
Presented By: Jake Marren

Motion made to accept the rule by John Kessler, seconded by Diane Bothfeld, and passed unanimously with the following recommendations:

1. Proposed Filing – Coversheet: Check for spelling (such as in #9 third line).
2. Proposed Filing – Coversheet, #8: Include ‘to’ between ‘required’ and ‘provide’ in the last sentence.
3. Proposed Filing – Coversheet, #10: Include reasoning.
4. Proposed Filing – Coversheet, #12: Change ‘little or no’ – perhaps to ‘negligible’.
5. Final Proposed Filing – Coversheet: Remove.
6. Adopted Filing – Coversheet: Remove.
7. Economic Impact Analysis, #9: Include reference for ‘any material costs’ to explain why. Include language from the Environmental Impact Analysis, #9.
8. Scientific Information Statement: Remove.
9. Incorporation by Reference: Remove.



Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Rule 8.00 Cable Television

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

This rule will affect cable operators and individuals seeking extensions of cable service to their residences. The rule clarifies the method of calculating the cost of line extension projects and determining a customer's reasonable contribution in aid of construction. The clarifications will ensure that only necessary costs are included in the cost of line



extension projects and will ensure that those costs are apportioned fairly between the cable operator and any new customers. The cable operators have not identified any material costs to providing construction cost estimates using the standards in the proposed rule. The rule will promote consistency in the development of line extension projects and, therefore, will encourage the expansion of cable service to new customers.

4. **IMPACT ON SCHOOLS:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

The rule will not have any effect on public schools unless the school is requesting a cable line extension. In those circumstances, the school will benefit from a more transparent and reliable construction cost estimate.

5. **ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

The rule will impose no additional costs on schools.

6. **IMPACT ON SMALL BUSINESSES:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The rule will have no impact on small businesses unless those businesses are requesting an extension of cable service. The rule will benefit those businesses by ensuring that they receive transparent and reasonable estimates of the cost to extend cable service. The rule will also ensure that small businesses are not required to contribute more than their fair share towards the cost of constructing a line extension. If the small business is a Vermont cable operator, that business will benefit from having more detailed guidance on how to calculate a customer's contribution in aid of construction. The Rule will also benefit small cable operators by providing a standardized Line Extension Form and expanded timeframes to develop construction cost estimates.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

The rule will not result in any cost of compliance for most small businesses. Small cable operators will need to change their estimate procedures to include the standardized Line Extension Form that will be provided by the Commission. No small cable businesses participating in the workshops objected to the proposed rule revisions.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The Commission is required by 30 V.S.A. § 209(b) to have a rule addressing line extensions. Without the rule, small businesses might have less transparency into how the estimated cost of a line extension is derived.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

This rule was developed in consultation with the cable operators, the Department of Public Service, and the public. Participants were provided opportunities to provide feedback on several drafts of the rule, submit legal briefing, and speak directly with Commission staff at a workshop before the initial proposal was filed. The Commission revised its initial proposal in response to stakeholder comments on the initial proposal. Participants were then provided an additional 30 days to comment on these revisions. No participant identified any material economic impact from the rule.



Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Rule 8.00 Cable Television

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
This rule will have no impact on the emission of greenhouse gases.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
This rule will have no impact on water quality or pollution.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
This rule will have no impact on land.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

This rule will have no impact on recreation.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

This rule will have no impact on climate.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

This rule will have no impact on other aspects of Vermont's environment.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The amended rule will only affect the manner in which construction estimates are provided to customers. The amended rule does not affect any of the physical mechanics of cable line extensions and, therefore, will have no effect on Vermont's environment.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Rule 8.00 Cable Television

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The proposed rule is the product of a public proceeding that has occurred over the past two years. The Commission has held two publicly noticed workshops. All documents related to this rulemaking are available online through the Commission's document management system, ePUC.

In addition to the public process that has already occurred, the Commission held a public hearing on the proposed rule so that any additional public input could be considered before a final rule is adopted.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

New England Cable Television Association

Department of Public Service

Champlain Broadband, LLC

Comcast



Public Input

Duncan Cable

Helicon Group L.P. (D/b/a Charter Communications)

Smugglers Notch Cable

Stowe Cable Systems

Southern Vermont Cable Company

Topsham Communications, LLC

Trans Video, Inc.

Valley Net

Waitsfield-Fayston Telephone Company Inc.

Spectrum Northeast

Richard Pecor

Brent Literer

Matthew Ekstrom

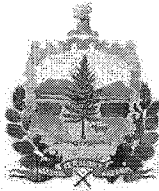
Art Klossner

Curt Taylor

Sarita Austin

Seth Chase

112 State Street
4th Floor
Montpelier, VT 05620-2701
TEL: 802-828-2358



TTY/TDD (VT: 800-253-0191)
FAX: 802-828-3351
E-mail: puc.clerk@vermont.gov
Internet: <http://puc.vermont.gov>

**State of Vermont
Public Utility Commission**

RULE 8.300 CABLE TELEVISION LINE EXTENSION RULEMAKING

Responsiveness Summary

September 8, 2022

I. INTRODUCTION

During the public comment period for PUC Rule 8.300, the Cable Television Rule, the Vermont Public Utility Commission (“Commission” or “PUC”) received written comments, which are included in this rule filing, from: the Vermont Department of Public Service (“Department”); the New England Cable and Telecommunications Association, Inc., on behalf of Vermont cable operators Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, and Spectrum Northeast, LLC (collectively, the “Cable Operators”); and Richard Pecor.

The changes to PUC Rule 8.300 discussed during this rulemaking proceeding (PUC Case No. 22-0752-RULE) and the previous investigation proceeding (PUC Case No. 19-4625-INV) focused primarily on cable line extension policies included in Rule 8.313, including the formula for calculating customer contributions-in-aid-of-construction (“CIAC”) and cost estimates.

Rule 8.313(B)(1) contains a formula for calculating a customer’s CIAC. The formula is as follows:

$$A = (C_T / N) * (1 - (N / (H * L)))$$

Where A is the dollar contribution from each new customer; C_T is the actual cost of the line extension; N is the number of verified subscribers on the extension who will be making the contribution in aid of construction; L is the length of the extension in miles; and H is a number designated by the cable company’s tariff representing the number of verified subscribers per mile, counting all the miles proposed on the extension, above which the company will not require a contribution-in-aid-of-construction.

Rule 8.313 also contains provisions addressing the reallocation or rebate of customer contributions when new customers receive service on a line extension (Rule 8.313(A)) and includes deadlines by which a cable operator must provide preliminary and final estimates of the costs of a requested line extension (Rule 8.313(F)).

A summary of the comments received and the Commission’s responses are provided below. The Commission also responded to comments received in the rulemaking proceeding in an order issued on July 26, 2022.

II. COMMENTS AND RESPONSES

A. Inclusion of Network Upgrades in the Cost of Line-Extension Projects (8.313(B))

Comment:

The Department requested new rule language that would exclude from the cost of a cable line extension any network upgrades in an existing cable area without prior approval of the Commission.¹

Response:

The Commission has not included the Department's proposed language in its final proposed rule. The Commission explained that the proposed language was not warranted because it presumptively excluded costs associated with network upgrades even when the upgrades were a necessary part of the cable line extension project. In response to the Department's comment, the Commission instead added language in Rule 8.313(B)(6) explaining that cable operators may include the cost of network upgrades in the cable line extension cost "if the network upgrades are necessary and would not be installed but for the line extension."²

B. Measuring the Length of the Extension (8.313(B)(1))

Comment:

The Department and Richard Pecor asked the Commission to clarify that the length factor, L, in the cable line extension cost formula includes only new cable system length, measured from the end of any existing cable plant. The Cable Operators initially argued that the L factor should be measured "from the last serviceable pole whereby service can be extended to new customers, excluding standard subscriber drops," but later agreed to limit the L factor to the length of the extension with the Commission's clarification that necessary upgrades may be included in the overall project cost.³

Response:

The Commission has incorporated the Department's proposed clarifying language, which also addresses the concerns raised in Mr. Pecor's comment. The Commission explained that the L factor determines the appropriate allocation of costs to new verified cable subscribers along the extended cable plant. The Cable Operators' initial proposal would include the additional length of upgraded existing cable plant, which would shift the allocation formula and increase contribution requirements for the new verified cable subscribers. The Commission also explained that the costs associated with upgrading the existing cable plant would still be included as part of the total project cost and allocated between the new verified subscribers on the

¹ Case No. 22-0752-RULE, Department 5/10/22 Comments at 2.

² Case No. 22-0752-RULE, Order of 7/26/22 at 2-4.

³ Case No. 22-0752-RULE, Cable Operators 5/10/22 Comments at 3-4; Cable Operators 8/22/22 Reply Comments at 1-3.

extended plant, and that subscriber drops to customers' homes should not be included in the L factor.

C. Preliminary and Final Estimate Deadlines (8.313(F))

Comment:

The Cable Operators ask that the deadlines for providing a final estimate of the cost of a requested cable line extension be extended from 30 to 60 days, rather than from 30 to 45 days as the Commission currently proposes.⁴ Extending the deadline for providing a final estimate from 30 to 45 days was proposed by the Department during the investigation phase of this rulemaking, and the Department still supports extending the period to 45 days.

Response:

We have not adopted the Cable Operators' proposed 60-day period for providing a final estimate and have instead retained the 45-day deadline. While we understand that additional time will always be beneficial to estimate accuracy, we also recognize that potential new customers have an interest in promptly receiving a final estimate once the new customers have approved the cable operator's preliminary estimate. The extension of the deadline from 30 days to 45 days provides a 50 percent increase in the time for providing a final estimate after the preliminary estimate has been approved in writing by all new verified subscribers. This balances the interests of the cable providers and the new subscribers seeking the line extension.

D. Reducing the CIAC Rebate/Reallocation Period (8.313(A))

Comment:

The Cable Operators proposed a reduction of the time period during which the original new verified subscribers would receive a rebate or reallocation of their contribution toward the costs associated with a cable line extension as a result of new subscribers receiving service from the extended line.⁵ The current rule provides a seven-year rebate/reallocation period, which would be reduced to a three-year period under the Cable Operators' proposed change.

The Department opposes the reduction of the rebate/reallocation period. The Department explains that a seven-year period provides a reasonable and fair balance between the interests of the customers who contributed toward the cost of the line extension and the useful life of the line extension.⁶

Response:

We have not implemented the Cable Operators' proposed changes. We agree with the Department that cable line extensions can involve significant investments by the initial verified

⁴ Case No. 22-0752-RULE, Cable Operators 5/10/22 Comments at 6-7; Cable Operators 8/22/22 Reply Comments at 3-4.

⁵ Case No. 22-0752-RULE, Cable Operators 5/10/22 Comments at 7-9.

⁶ Case No. 22-0752-RULE, Department 8/25/22 Comments at 1.

customers that contribute to the cost of the line extension and that a three-year period as proposed by the Cable Operators would not provide sufficient time for those costs to be offset by new customers receiving cable service from the line extension.

E. Eliminating Depreciation and Reallocation Sections (8.313(A)(3), (A)(4))

Comment:

The Cable Operators have proposed to delete sections 8.313(A)(3) and (A)(4).⁷ The two sections specify procedures for depreciating line extensions when reallocating customer contributions and provide an alternative procedure for reducing initial subscriber contributions for a line extension based on the number of non-participating residential and non-residential premises passed by the extended cable line in lieu of issuing rebates. The Cable Operators' primary reason for deleting the alternative reallocation provision is that the provision is complicated and outdated.

The Department opposes the elimination of Section 8.313(A)(3) as proposed by the Cable Operators. The Department views the depreciation of line-extension costs as essential to the calculation of rebates over time and argues that the section should be retained.⁸

Response:

We have not implemented the Cable Operators' proposed elimination of Sections 8.313(A)(3) and (A)(4). We agree with the Department that the cost of a line extension should be depreciated over time and that the depreciated value should be used when calculating rebate amounts due to the initial verified customers that contributed toward the line-extension costs. The seven-year depreciation period pairs with the seven-year reallocation/rebate period in Section 8.313(A)(1) and ensures that contributions from new customers reflect the shorter period during which those new contributing customers benefitted from the line extension.

We have also retained Section 8.313(A)(4). Section 8.313(A)(4) is an alternative to providing rebates if new customer contributions are reduced based on the number of premises passed by the line extension. Apart from the Cable Operators' comments, the participants in this rulemaking and in the preceding investigation and workshops did not discuss how the alternative procedure could be simplified or updated to reflect more modern patterns in the use of seasonal premises. At this time, we are unable to assess the impact of removing the section and have retained the section in its existing form.

⁷ Case No. 22-0752-RULE, Cable Operators 5/10/22 Comments at 9-11.

⁸ Case No. 22-0752-RULE, Department 8/25/22 Comments at 2.

This document has been electronically filed using ePUC

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Proposed revisions to Vermont Public Utility)
Commission Rule 8.313 and the line extension) Case No. 22-0752-RULE
policies and tariffs of cable operators in Vermont)

**COMMENTS OF THE CABLE OPERATORS IN RESPONSE
TO THE VERMONT PUBLIC UTILITY COMMISSION'S JULY 26, 2022 ORDER RE.
FURTHER PROPOSED REVISIONS AND REQUEST FOR COMMENTS**

Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC ("Comcast") and Spectrum Northeast, LLC ("Charter") (collectively, the "Cable Operators") appreciate the opportunity to file written comments with the Vermont Public Utility Commission ("Commission"), pursuant to the Commission's Order and Request for Comments issued on July 26, 2022 ("July 26, 2022 Order") in the above-captioned proceeding.

CABLE OPERATORS' COMMENTS ON COMMISSION'S PROPOSED RULE 8.313

1. Inclusion of "Network Upgrades" in the Cost of Line-Extension Projects

In order to clarify the issue of whether certain "network upgrades" can be included in the actual cost of a line extension (C_T), the Commission has proposed adding the following as Commission Rule 8.313(B)(6):

8.313(B)(6) A cable company may include the cost of network upgrades within an existing cabled area in C_T if the network upgrades are necessary and would not be installed but for the line extension.

The Cable Operators appreciate the clarification provided by the Commission. It should be noted that "network upgrades" are in actuality "additional network architecture" needed to

support the provision of cable television service to the requesting customer(s)¹ and that such “additional network architecture” would not, but for the line extension request, be necessary. With that understanding, the Cable Operators support the addition of Commission Rule 8.313(B)(6), as proposed by the Commission.

2. Measuring the Length of the Extension

With respect to measuring the length of a line extension (“L”), the Commission has proposed to amend Commission Rule 8.313(B)(1) as follows:

where A is the dollar contribution from each new customer; C_T is the actual cost of the line extension; N is the number of verified subscribers on the extension who will be making the contribution-in-aid-of-construction; L is the length of the extension in miles, measured along the pole route from the end of the current plant to the end of the proposed extension, excluding standard subscriber drops; and H is a number designated by the cable company’s tariff representing the number of verified subscribers per mile, counting all the miles proposed on the extension, above which the company will not require a contribution-in-aid-of-construction.

Previously, the Cable Operators agreed to exclude the length of standard subscriber drops when calculating the length of the line extension². The Cable Operators also agreed to provide separate estimates for non-standard drops.³

Although the Commission’s proposed amendment of Commission Rule 8.313(B)(1) excludes both the length of subscriber drops and “network upgrades”⁴ from the value for “L”, the

¹ Case No. 19-4625-INV, Initial Brief of the Cable Operators in Response to the June 22, 2021 Order of the Vermont Utility Commission, pgs. 3-4.

² Case No. 19-4625-INV, Reply Comments of the Cable Operators Regarding the Department of Public Service’s Post-Workshop Comments, pg. 2.

³ *Id.* at pg. 2.

⁴ As previously noted, “network upgrades” are in actuality “additional network architecture”.

Cable Operators believe the July 26, 2022 Order provides sufficient clarity regarding the Commission's intent with respect to its proposed amendment of Commission Rule 8.313(B)(1). Specifically, the Commission states, "To be clear, limiting the L value to the actual length of the extension would not exclude any costs associated with necessary upgrades because those costs are included in the C_T factor's cost of construction." The Commission also notes, "...the cost of subscriber drops is appropriately borne by individual consumers."

Based on the clarification provided by the Commission in the July 26, 2022 Order, the Cable Operators agree with the Commission's proposed revisions to Commission Rule 8.313(B)(1).

3. Preliminary and Final Estimate Deadlines

In Case No. 19-4625-INV, both the Department of Public Service ("Department") and the Cable Operators proposed changes to the deadlines outlined in Commission Rule 8.313(F)⁵. There was only one difference between the two proposals: the amount of time for provision of a final estimate after "receiving written approval of a preliminary estimate by all included subscribers". The Department proposed that a final estimate be provided within forty-five (45) days whereas the Cable Operators proposed that a final estimate be provided within sixty (60) days.

The Cable Operators reaffirm their proposal for providing a final estimate within sixty (60) days. In cases where pole lines are located in easements, underground placement of facilities is required, or extensive make-ready work may be required, the Cable Operators may need to request

⁵ Case No. 19-4625-INV, Department of Public Service Post-Workshop Comments, dated May 3, 2021, and Reply Comments of the Cable Operators Regarding the Department of Public Service's Post-Workshop Comments, dated May 17, 2021.

and obtain pricing information from third parties, such as pole owners or contractors. Increasing the deadline to sixty (60) days should enhance the overall accuracy of the final estimate and is thus in the best interest of customers.

CABLE OPERATORS' PROPOSED CHANGES TO RULE 8.313

In the Cable Operator Comments in Response to the VPUC filed on May 10, 2022, the Cable Operators proposed additional changes to simplify Commission Rule 8.313(A), which pertains to rebating or reallocation of customer contributions, as summarized below.

- i. Commission Rule 8.313(A)(1)
 - Shorten the timeframe for reallocation and rebating of customer contributions from seven (7) years to three (3) years after activation of a customer-financed line extension.
 - Clarify that only customers who are passed by and who connect to the subject line extension are eligible for a rebate.
- ii. Commission Rule 8.313(A)(2)
 - Payment of rebates to original participants who are also the current owners of the buildings or structures served by the line extension when the reallocation and reimbursement occurs.
 - Reallocation and rebating of customer contributions at the end of the three (3) year period.
- iii. Commission Rule 8.313(A)(3)



- Eliminate depreciation of customer-requested line extension when reallocating customer contributions.
- iv. Commission Rule 8.313(A)(4)
- Eliminate alternative process for reducing customer contributions in lieu of rebates.

The Cable Operators reaffirm their positions regarding the above changes as outlined in their comments filed on May 10, 2022 in this proceeding. The Cable Operators believe their proposed changes to Commission Rule 8.313(A) are in the best interest of customers. Furthermore, the Cable Operators believe that revising Commission Rule 8.313(A) as part of this proceeding is in the interest of judicial economy and efficiency.

Included as part of this filing are the Cable Operators' proposed changes, in redline format, to Commission Rule 8.313. Again, the Cable Operators appreciate both the clarification provided by the Commission on various issues and the opportunity to file written comments with the Commission.

Respectfully submitted,

/s/Timothy O. Wilkerson

Timothy O. Wilkerson, President
New England Cable and Telecommunications
Association, Inc.
53 State Street 5th Floor
Boston, MA 02109
(781) 843-3418

This document has been electronically filed using ePUC

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Proposed revisions to Vermont Public Utility)
Commission Rule 8.313 and the line extension) Case No. 22-0752-RULE
policies and tariffs of cable operators in Vermont)

**COMMENTS OF THE CABLE OPERATORS IN RESPONSE
TO THE MARCH 31, 2022 MEMORANDUM
OF THE VERMONT PUBLIC UTILITY COMMISSION**

Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (“Comcast”) and Spectrum Northeast, LLC (“Charter”) (collectively, the “Cable Operators”) appreciate the opportunity to file written comments with the Vermont Public Utility Commission (“Commission”), pursuant to the Commission’s Memorandum entered on March 31, 2022 in the above-captioned proceeding.

CABLE OPERATORS’ BRIEF AND REPLY BRIEF (CASE NO. 19-4625-INV)

Included as part of this filing are the following documents filed by the New England Cable and Telecommunications Association (“NECTA”)¹ on behalf of the Cable Operators in Case No. 19-4625-INV, an “Investigation concerning matters related to Vermont Public Utility Commission Rule 8.313 and the line extension policies and tariffs of cable operators in Vermont”:

1. Reply Comments of the Cable Operators Regarding the Department of Public Service’s Post-Workshop Comments, filed May 18, 2021 (“Reply Comments”);

¹ NECTA is a non-profit corporation and trade association that represents the interests of most community antenna television (“cable”) and broadband internet providers in Vermont, including affiliates of the Cable Operators and their competitive local exchange company affiliates.

2. Initial Brief of the Cable Operators in Response to the June 22, 2021 Order of the Vermont Public Utility Commission, dated August 24, 2021 (“Initial Brief”); and
3. Reply Brief of the Cable Operators in Further Response to the June 22, 2021 Order of the Vermont Public Utility Commission, dated September 14, 2021 (“Reply Brief”).

In the Reply Comments, the Cable Operators responded to recommendations from the Department of Public Service (“Department”) for changes to Commission Rule 8.313. The Cable Operators also offered their own recommendations for changes to Commission Rule 8.313, which will be discussed below in the “Cable Operators’ Comments on Proposed Rule 8.313.”

At the request of the Commission, the Cable Operators briefed the Commission on three issues in their Initial Brief: (1) the scope of the Commission’s authority to determine whether certain “network upgrades” may be included in the calculation of contributions in aid of construction (“CIAC”); (2) line extensions policies used by other franchising authorities and how those authorities treat the issue of network upgrades; and (3) whether the Commission should reevaluate the inputs to the “H” factor calculation used by cable operators when calculating a CIAC. The Department also briefed the Commission on the same issues.

The Cable Operators’ Reply Brief was filed in response to the Department’s brief. In the Reply Brief, the Cable Operators further briefed the Commission on three issues: (1) the Commission’s cable line extension authority; (2) cable franchising authority line extension policies; and (3) alleged “manipulation” of the CIAC formula.

To date, none of the issues briefed by the Cable Operators or the Department have been addressed by the Commission. The Cable Operators believe that, in order for the parties in the

instant proceeding to have productive discussions regarding changes to Commission Rule 8.313, the Commission must first address the issues briefed by the Cable Operators and the Department. The Cable Operators stand by their positions outlined in both their Initial Brief and Reply Brief.

CABLE OPERATORS' COMMENTS ON COMMISSION'S PROPOSED RULE 8.313

1. Subscriber Drops

The Commission has proposed a change to Commission Rule 8.313(B)(1) with respect to standard subscriber drops:

8.313(B)(1) Any line-extension policy that requires contributions-in-aid-of-construction shall not require a contribution in excess of the amount required by the following formula:

$$A = (C_T / N) * (1 - (N / (H * L)))$$

where A is the dollar contribution from each new customer; C_T is the actual cost of the line extension; N is the number of verified subscribers on the extension who will be making the contribution in aid of construction; L is the length of the extension in miles, excluding standard subscriber drops; and H is a number designated by the cable company's tariff representing the number of verified subscribers per mile, counting all the miles proposed on the extension, above which the company will not require a contribution-in-aid-of-construction.

In their Reply Comments, the Cable Operators indicated they could agree to exclude the length of standard subscriber drops when calculating the length of the line extension. However, the Commission's proposal does not address the issue of the starting point for measuring the length of the line extension. Thus, the Cable Operators offer the following proposal, in response:

8.313(B)(1) Any line-extension policy that requires contributions-in-aid-of-construction shall not require a contribution in excess of the amount required by the following formula:

$$A = (C_T / N) * (1 - (N / (H * L)))$$

where A is the dollar contribution from each new customer; C_T is the actual cost of the line extension; N is the number of verified subscribers on the extension who will be making the contribution in aid of construction; L is the length of the

extension in miles, following the pole line from the last serviceable pole whereby existing service can be extended to new customers, excluding standard subscriber drops; and H is a number designated by the cable company's tariff representing the number of verified subscribers per mile, counting all the miles proposed on the extension, above which the company will not require a contribution-in-aid-of-construction.

In cases where a proposed line extension requires additional fiber in order to support the provision of the Cable Operator's services, including cable television service, to new customers, it is the Cable Operators' position that it is appropriate to include the length of the additional fiber when calculating the length of the proposed line extension.

The Commission has proposed changes to Commission Rule 8.313(B)(4) with respect to standard subscriber drops, installation costs, and non-standard subscriber drops:

8.313(B)(4) ~~Unless otherwise requested,~~ Cable companies shall develop cost estimates ~~assuming~~ excluding a standard aerial drop of 300 feet from the pole for each dwelling serving each verified subscriber and any costs for installation of service inside the subscriber's home. Each verified subscriber shall be responsible for its own additional costs for installation of any nonstandard service drop unless participating verified subscribers and the cable company agree to divide the cost of non-standard service drops among the group of verified subscribers requesting service. Individual potential customers requesting service may be provided with a cost addendum outlining additional costs for a subscriber drop that is in excess of 300 aerial feet; and concealed wiring or other custom installation work; and all underground drops.

The Commission's proposed changes are identical to the changes proposed by the Cable Operators in their Reply Comments. Thus, the Cable Operators recommend Commission Rule 8.313(B)(4) be revised as proposed by the Commission.

2. Line Extension Estimates

The Commission has proposed changes to Commission Rule 8.313(B)(3) with respect to preliminary estimates:

8.313(B)(3) Upon request of a person in an unserved area within a cable company's franchise area, the cable company shall provide an estimate of the cost of a line extension. The cable company may satisfy this obligation by providing a preliminary estimate to the requestor. If the requestor is located a significant distance from the last serviceable pole whereby service can be extended to new customers, a representative of the cable company may contact the requestor to inform the requestor of the approximate length and cost of the line extension. In such instances, the cable company will provide a written estimate only if the requestor indicates they still wish to receive a written estimate. ~~The final customer contribution required shall not be more than 10% in excess of the final estimate provided.~~

The Commission's proposed changes are identical to the changes proposed by the Cable Operators in their Reply Comments. Thus, the Cable Operators recommend Commission Rule 8.313(B)(3) be revised as proposed by the Commission.

The Commission has also proposed the addition of a new provision, Commission Rule 8.313(B)(5), regarding written estimates:

8.313(B)(5) All written estimates provided to verified subscribers, whether mailed or sent electronically, must use the Line Extension Form. The cable operator may provide the map required by the Line Extension Form as a separate document. All written estimates are valid for 90 days or a longer period, as specified in the cable company's tariff. The Line Extension Estimate Form must clearly indicate whether the estimate is a preliminary or final estimate and whether the estimate includes actual make-ready costs. For preliminary estimates, the Line Extension Estimate Form must also indicate that the estimate may not reflect actual field conditions and make-ready costs. The final customer contribution required may not be more than 10% in excess of the final estimate provided.

Although there are some slight differences in wording, the Commission's proposed changes are substantively similar to the changes proposed by the Cable Operators in their Reply



Comments. Thus, the Cable Operators recommend Commission Rule 8.313(B)(5) be revised as proposed by the Commission.

3. Preliminary and Final Estimate Deadlines

The Commission has proposed changes to the deadlines outlined in Commission Rule 8.313(F):

8.313(F) Whenever a prospective subscriber or subscribers located in a service expansion area requests ~~a site survey~~ an estimate to determine the cost of bringing cable service, the cable company, at its discretion, may first provide a preliminary estimate to the requestors. For final estimates, the cable company must ~~shall~~ conduct a field survey. ~~and~~ Both preliminary and final estimates must inform each of the prospective subscribers of the contribution-in-aid-of-construction or expansion that may be charged. The cable company shall support the designated community organizer with appropriate information such as an explanation of how the company's line extension policies work, product information, and construction time frames. The cable company shall provide preliminary estimates within ~~45~~ 30 ~~business~~ days of receiving the requests. The cable company shall provide a final estimate within ~~30~~ 45 days of receiving written approval of the preliminary estimates by all included subscribers. Where ~~site surveys~~ a proposed line extension involve a nonconventional extension of more than three ~~(3)~~ ends of line and ~~twenty~~ (20) verified subscribers, the company may have ~~thirty (30)~~ 60 days to provide an initial estimate and ~~sixty (60)~~ 90 days to provide a final estimate.

While the Commission's proposed changes are similar to the changes proposed by the Cable Operators in their Reply Comments, there is one key difference: the length of time between proposed estimates and final estimates. The Commission proposed increasing the amount of time from 30 to 45 days to provide final estimates after receiving written approval of preliminary estimates by all included subscribers. In their Reply Comments, the Cable Operators proposed that final estimates be provided within sixty (60) days:

8.313(F) Whenever a prospective subscriber or subscribers located in a service expansion area requests ~~a site survey~~ an estimate to determine the cost of



bringing cable service, the cable company, at its discretion, may first provide a preliminary estimate to the requestors. For final estimates, the cable company must ~~shall~~ conduct a field survey. ~~and~~ Both preliminary and final estimates must inform each of the prospective subscribers of the contribution-in-aid-of-construction or expansion that may be charged. The cable company shall support the designated community organizer with appropriate information such as an explanation of how the company's line extension policies work, product information, and construction time frames. The cable company shall provide preliminary estimates within ~~15~~ 30 ~~business~~ days of receiving the requests. The cable company shall provide a final estimate within ~~30~~ 60 days of receiving written approval of the preliminary estimates by all included subscribers. Where ~~site surveys~~ a proposed line extension involve a nonconventional extension of more than three ~~(3)~~ ends of line and ~~twenty~~ (20) verified subscribers, the company may have ~~thirty (30)~~ 60 days to provide an initial estimate and ~~sixty (60)~~ 90 days to provide a final estimate.

While 45 days is an improvement to the current 30 days for providing a final estimate, the Cable Operators believe that changing the deadline from thirty (30) days to sixty (60) days will enhance the accuracy of the final estimate, especially in cases where pole lines are located in easements, underground placement of facilities is required, or extensive make-ready work may be required.

4. Proposed Changes to Commission Rules 8.313(A)(2), (G), (I), & (J)

The Commission has proposed non-substantive changes to Commission Rule 8.313(A)(2), 8.313(G), 8.313(I), and 8.313(J). The Cable Operators agree and recommend Commission Rules 8.313(A)(2), (G), (I), and (J) be revised as proposed by the Commission on March 31, 2022.

CABLE OPERATORS' PROPOSED CHANGES TO RULE 8.313

In addition to the Commission's non-substantive change to Commission Rule 8.313(A), the Cable Operators propose additional changes to simplify Commission Rule 8.313(A), which

pertains to rebating or reallocation of customer contributions. Commission Rule 8.313(A) was last amended on February 12, 2010. Since that time, it has been the Cable Operators' experience that the rebating and reallocation provisions of Commission Rule 8.313(A) are not well understood by customers, thus creating confusion. The Cable Operators propose changes to clarify the rebating and reallocation provisions and to shorten the timeframe for reallocation and rebating of customer contributions:

(A) If a policy on expansion into unserved areas requires contributions-in-aid-of construction, then that policy shall also allow for the rebating or reallocation of such contributions among original and new subscribers. Whenever more than one customer is connected to a customer-financed line extension, total contributions-in-aid-of-construction shall be computed to yield to the utility not more than the total cost of extending or expanding service to the new customer(s), less the service drop credit(s). Amounts to be collected from new customer(s) connecting to customer-financed lines shall be computed as follows:

- (1) For a period of ~~threeseven~~ (37) years from the ~~activation~~~~completion~~ of ~~construction~~ of a customer-financed line extension, contributions from new customer(s) who are passed by and who connecting to the subject line extension said lines shall be based upon an equal share~~ing~~ of the full cost of construction of the subject line extension as if the new customers were original participants.
- (2) For a period of ~~Threeseven~~ (37) years after activation of ~~from the completion~~ of ~~construction~~ of a customer-financed line extension, contributions calculated under section 1 above shall be reimbursed to the original participant(s) based upon an equal share~~ing~~ of the full cost of construction of the subject line extension as if the new customer(s) were original participants, except that:
 - (a) All line extension reimbursements shall be paid by cable companies to the original participant(s) who contributed to the line extension and who are also current owners of the dwellings or structures served by line extensions that are subject to reimbursement payments for new connections, and shall be paid as a cash rebate or, if to a current subscriber, cash or a credit, at the subscriber's choice.
 - (b) Reallocation of contributions and Reimbursements will occur ~~may be made at any time, but a final reallocation and reimbursement shall be conducted~~ at the end of the ~~threeseven~~ (37)-year period.
 - (c) No reimbursement shall be required if the computed amount is less than \$100.

Currently, Commission Rule 8.313(A) could require cable operators to reallocate and reimburse customer contributions multiple times for a period of seven (7) years after the line extension is completed. This lengthy time period creates a significant administrative burden and causes confusion for customers. Also, in some instances, customers have mistakenly thought they have to wait seven (7) years before they can request reallocation and reimbursement of customer contributions. The Cable Operators propose to shorten the timeframe from seven (7) years to three (3) years and to reallocate and reimburse customer contributions at the end of the three (3) year period.

Customers who originally contributed to a line extension have tried to claim reimbursement for new customers who are in areas adjacent to, but not passed by, the customer-financed line extension. When Cable Operators calculate the customer contribution-in-aid-of construction, they only count customers who are passed by and, unless otherwise requested, within 300 feet of the route of the proposed line extension. Cable Operators do not count customers who are past either the starting point or the end point of the proposed line extension. Thus, the Cable Operators propose adding language to clarify that in order for reallocation and reimbursement to occur, the new customers must *be passed by and connect* to the customer-financed line extension.

It is the position of the Cable Operators that reimbursement of a customer contribution should be paid to original participants who are also the current owners of the buildings or structures served by the line extension when the reallocation and reimbursement occurs. In its current form, Commission Rule 8.313(A)(2) potentially provides a windfall.

By reducing the timeframe to three (3) years for reallocation and reimbursement of customer contributions, the Cable Operators believe Commission Rule 8.313(A) can be further

simplified by eliminating Commission Rule 8.313(A)(3), which allows cable operators to depreciate the customer-requested line extension when reallocating customer contributions.

- ~~(3) For purposes of this Rule, when calculating contributions under paragraph 1 or reimbursements under paragraph 2, the original full cost of construction may be depreciated at a straight-line rate of up to 50% at the end of the seven (7)-year period. Depreciation for these purposes, if any, shall be calculated similarly for both contributions and reimbursements and applied as of the date of the connection of new customer(s).~~

Finally, the Cable Operators also propose to eliminate Commission Rule 8.313(A)(4):

- ~~(4) As an alternative to issuing rebates under this section, a cable company may reduce the initial subscriber contribution in aid of construction based on the number of residential and non-residential premises passed within 500 feet of the proposed cable facilities that are not participating. For non-participating premises, each non-seasonal residential premise passed shall be counted as 1/4 of a verified subscriber, each seasonal residential premise passed shall be counted as 1/10 of a verified subscriber, each commercial or institutional lodging (such as a hotel, motel, or nursing home) shall be counted as 3/4 of a verified subscriber, and each non-residential premise passed shall be counted as 1/9 of a verified subscriber. If a cable company chooses to offer this rebate alternative, it shall include such an alternative in its tariff and no rebate shall be required. If this alternative is to be used, the company estimates under "F" below shall clearly indicate that no rebates will be issued. The following additional conditions apply only to this rebate alternative:~~

- ~~(a) If a verified subscriber commits to take service from a cable company for an additional commitment period of up to 18 months, then the company shall reduce the verified subscriber's contribution by the value of the additional commitment, exclusive of taxes and fees.~~
- ~~(b) If a verified subscriber commits to provide to the cable company, over the term of the two-year commitment period, a minimum annual amount of qualifying revenues up to 150% of the average annual revenue per subscriber, then the cable company shall reduce the verified subscriber's contribution by the incremental revenue above the average annual revenue per subscriber, exclusive of taxes and fees. Qualifying revenues shall include revenues from all services provided to the subscriber over the facilities that provide the cable service, except revenues paid by the subscriber to non-affiliated third parties.~~

The process outlined in Commission Rule 8.313(A)(4) for reducing customer contributions in lieu of rebates is complicated. The process requires a detailed survey of every structure passed by the proposed route of the line extension in order to determine how a structure should be classified. There is the potential for misclassification of residential premises. In the past, seasonal residential premises were typically owner-occupied for only part of the year. During the portion of the year where the seasonal property was not occupied, the owner would usually suspend cable television service. With the advent of home sharing services, it is possible for “seasonal” residential premises to be occupied throughout the year, and thus there is a year-round need for not only cable television but also other services proved by cable operators. Additionally, during the COVID-19 pandemic, some owners of seasonal residential premises have chosen to occupy their seasonal property for longer periods of time. Given these changes, the provisions of Commission Rule 8.313(A)(4) with respect to residential premises seem outdated.

Included as part of this filing is the Cable Operators’ proposed changes, in redline format, to Commission Rule 8.313. The Cable Operators look forward to discussing revisions to Commission Rule 8.313 with the Commission, the Department, and other parties to this proceeding.

Respectfully submitted,

/s/Timothy O. Wilkerson

Timothy O. Wilkerson, President
New England Cable and Telecommunications
Association, Inc.
53 State Street 5th Floor
Boston, MA 02109
(781) 843-3418



8.000 CABLE TELEVISION

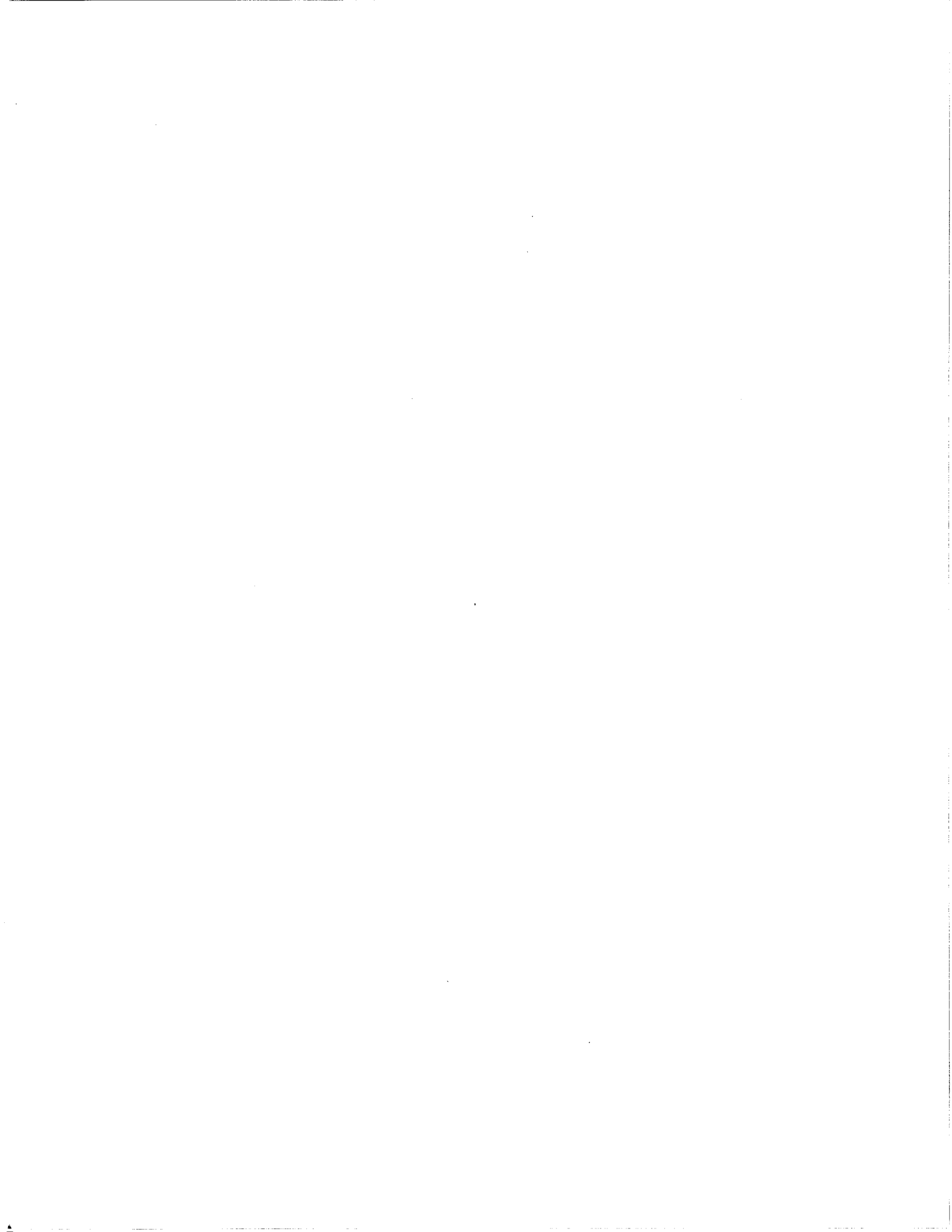
8.100 Definitions

For purposes of this rule, the following definitions apply. For terms not defined here, refer to the federal cable act (Title 47 U.S.C. § 521 et seq.).

- (A) Access channel: a channel made available by an operator that is used to cablecast non-commercial programming created or acquired for public, educational, or governmental purposes pursuant to this Rule. Access channels are sometimes referred to as public, educational, and government channels, or "PEG" channels.
- (B) Access management organization, or AMO: a nonprofit entity apart from the cable television operator designated to receive PEG access support through the cable operator and contracted to manage public, educational, and governmental access channels and facilities for non-commercial purposes.
- (C) Activated channel: a channel engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use.
- (D) Basic cable service: any service tier that includes the retransmission of local television broadcast signals (may also include other signals).
- (E) Commission: the Vermont Public Utility Commission.
- (F) Billing dispute: a disagreement between a subscriber and cable television company concerning:
 - (1) credits for payments made by the subscriber to the cable television company;
 - (2) credit refund for service outage;
 - (3) errors in billing amount; or
 - (4) assessment of non-recurring charges such as disconnection fees, service calls, and late charges.
- (G) Business office: the office of the cable television company where a subscriber or others may make inquiries regarding bills, line extensions, and company rules and regulations; request service; pay bills, either in person or by mail; or bring disputes and complaints.
- (H) Cable company: as defined in 30 V.S.A. § 501, a person, firm, partnership, corporation, association, joint stock association, or company which owns or operates a cable system in this state, except non-profits systems serving fewer than 100 subscribers.
- (I) Cable operator: the operator of a cable system, also referred to as "operator."
- (J) Cable service area, or service area: a geographic area within which a cable system

has the right to provide cable service to the public. Such boundaries may include areas into which extension of service is not immediately feasible but may be in the future.

- (K) Cable television system, or cable system: a facility meeting the definition in 30 V.S.A. § 501 or 47U.S.C. § 522 and subject to the regulation of the Commission.
- (L) Capacity: portion of electromagnetic frequency spectrum used for commercial and public purposes.
- (M) Channel or cable channel: a portion of the electromagnetic frequency spectrum that is used in a cable system and which is capable of delivering a television channel as that term is defined by the Federal Communication Commission regulations.
- (N) Collection charge: a fee or charge imposed upon a subscriber by a cable television company for its efforts at collecting or attempting to collect a past due account.
- (O) Department: the Vermont Department of Public Service.
- (P) Educational access channel: an access channel designated for non-commercial educational purposes.
- (Q) Governmental access channel: an access channel designated for non-commercial civic purposes.
- (R) Institutional network or I-Net: a communication network that is constructed or maintained by the cable operator and that is made available to educational or governmental institutions.
- (S) Late charge: a charge that is added to a cable television subscriber's account or bill for non-payment of a previously due account.
- (T) Leased access: use of the Leased Access Channel.
- (U) Leased access channel: a channel, available for a charge, for commercial or non-commercial purposes.
- (V) Live origination program: PEG content cablecast from cable company head end or remote origination site while it is taking place.
- (W) Local origination: the creation of programming cablecast by the cable operator.
- (X) Local presentation: request by an institution or individual living or working within the cable service area to transmit PEG content using cable channels or capacity, whether or not that PEG content was produced using PEG access facilities.



- (Y) Local use: non-commercial use of PEG channels and capacity by residents of the State of Vermont, including schools and not-for-profit educational institutions, and local and state governments or agencies thereof.
- (Z) PEG: Public, educational, governmental.
- (AA) PEG content: any non-commercial voice, video, or information made available by members of the public, educational institutions, local or state government, or an AMO and distributed through PEG channels or cable system capacity set aside for such purposes.
- (BB) PEG facilities: includes equipment and studio space necessary for community members to produce, post-produce and distribute any PEG content from the cable company head end and remote origination sites to the system's cable subscribers.
- (CC) PEG AMO service territory: the area for which the AMO has responsibility, and upon whose gross annual revenues the cable operator bases the calculation of that area's PEG AMO's annual support.
- (DD) Premium channel or service: an optional channel to which a customer may subscribe for an additional monthly charge, e.g., HBO or Showtime.
- (EE) Promotional offerings: special discounted service offerings that are made available or promoted for no more than six months.
- (FF) Public access channel: an access channel designated for non-commercial use by the public on a first come, first served basis.
- (GG) Remote origination site: a source of PEG content that is physically some distance from, but configured to transmit signal to, the cable company headend for distribution over the cable system.
- (HH) Service outage: a loss of video or audio signals on one half or more of the basic channels or on one or more premium channels which is not caused by the subscriber's television receiver or by the subscriber.
- (II) Service tier: a group of channels sold as a package.

8.200 Certificates of Public Good

8.210 Petitions (other than for renewal)

8.211 Form and content

The petition shall be on a form specified by the Commission (available from the Commission and on the Commission's web site) and shall contain at a minimum the information required by the instructions to the petition form.

8.212 Service of petitions

When a petition is filed with the Commission and the Department of Public Service for a certificate of public good pursuant to 30 V.S.A. § 503, or to alter, extend, or abandon a cable system service area, a copy of the petition and its supporting documents shall be served upon the clerk of each municipality encompassed in the proposed service area. In addition, a copy of the petition without its supporting documentation shall be served upon:

- (A) The superintendent of any school system encompassed in the proposed or affected service area.
- (B) The clerk of each municipality adjacent to the proposed or affected service area. Note that a complete application must be filed both at the Commission and at the Department.

8.213 Hearings

The Commission shall set petitions relating to applications for certificates of public good for hearing (if a hearing is required under 30 V.S.A. § 231) within a reasonable time. If hearings are held, at least one hearing shall be held in the county of the proposed service area to afford opportunity for public comment.

8.214 Criteria

In determining whether to approve or reject a petition requesting a certificate of public good for a cable system service area, the Commission shall consider the following:

- (A) The criteria of 30 V.S.A. Chapter 13.
- (B) The criteria known as the EMCO criteria:
 - (1) financial soundness and stability, both of the applicant generally and the particular proposal;
 - (2) the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access;
 - (3) the commitment to a construction and in-service schedule;
 - (4) the experience and ability of the applicant to run and manage a cable tv system;
 - (5) the rates proposed to be charged to customers;
 - (6) consumer policies, particularly re: complaints and problems;
 - (7) availability of service to maximum number of residences;
 - (8) the quality of the engineering and materials used in the system;
 - (9) logical fit with neighboring systems.

8.215 Approval

If, after hearing (if required) and investigation, the Commission finds pursuant to the above criteria that approval of the applicant's proposal to provide cable service to the proposed area would promote the general good of the state, it shall issue a certificate of public good to such applicant.



8.220 Termination

8.221 Transfer of certificates

A certificate of public good is not transferable and may not be sold, pledged, mortgaged, or otherwise alienated other than with the approval of the Commission. When permission is given by the Commission for the sale and purchase of assets of a cable company pursuant to 30 V.S.A. §§ 102, 109, 231, or 232, a new certificate shall be issued to the purchaser.

8.222 Revocation or alteration for cause

(A) The Commission may, after hearing, cancel, revoke, suspend, or alter any certificate for the following causes:

- (1) Willful violation of any provision of Chapter 13 of Title 30.
- (2) Willful failure of the certificate holder to comply with any rule, regulation, or order of the Commission, including the express terms of the certificate of public good, unless such rule, regulation, or order has been stayed by order of the Commission or by the Supreme Court.
- (3) Failure, without written permission of the Commission, to commence operations according to the construction and commencement of service schedule made a condition of the certificate of public good.
- (4) After commencing operations, failure (without good cause shown) to render adequate service for a continuous period exceeding thirty days.

(B) The burden of proof in a revocation hearing is on the party seeking the cancellation, revocation, suspension, or alteration; the standard of proof is the preponderance of the evidence.

8.223 Removal of property

(A) In the event that a certificate of public good is revoked or cancelled, the holder thereof shall, upon order of the Commission and at its own expense, promptly remove all its property and promptly restore the street or other area from which it is removed to the condition existing before such removal, or to a reasonable condition as may be directed by the municipality or public authority.

(B) The Commission may, upon written application therefor by the certificate holder, approve the abandonment of any such property in place under such terms and conditions as the Commission may prescribe. The Commission shall not unreasonably refuse permission to so abandon underground plant.

(C) The provisions of this section shall apply only if ownership of the property is not transferred pursuant to federal law.

8.230 Renewal

When an incumbent cable television operator seeks to renew a certificate of public good, the Commission, pursuant to law, shall ascertain whether:

- (A) The cable operator has substantially complied with the material terms of the existing certificate of public good and with applicable law;
- (B) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, has been reasonable in light of community needs;
- (C) The operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- (D) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

8.231 Community Needs Assessment

In order to ascertain section 8.230(D), the Department shall conduct a community needs assessment within each access service area. Unless the Commission orders otherwise, the assessment process shall include:

- (A) Discussions with representative educational, governmental and non-profit organizational sectors of the PEG AMO service territory, including any PEG AMO, access advisory committee, or other non-profit entity that provides communication services to the general community. These discussions will generally take the form of a series of focus group sessions, sector meetings, and public hearings.
- (B) Letters of support, statements of need, recordings of public meetings, and other information gathered by the AMO as part of any community needs assessment that it may have independently conducted.
- (C) A non-scientific survey of the educational, governmental, and non-profit organizational sectors in the PEG AMO service territory that measures the organizations' communication needs, and other needs that may have reasonable cable-related communication solutions.
- (D) A statistically valid survey of randomly selected households that measures, with regard to PEG access, attitudes and behaviors such as, but not limited to, subscriber satisfaction, awareness, and use of PEG access. If the survey is conducted for more than one PEG AMO service territory, the methodology shall be such that a minimum of useful data interpretation and analysis may be provided for each such service territory.

8.300 Conduct of Business

8.310 Rates and Charges

8.311 General provisions

- (A) As provided in 30 V.S.A. § 219, all rates and charges by a cable company shall be applied without discrimination between classes of customers.
- (B) Nothing herein shall prohibit the following:



Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 7 of 36

- (1) the waiving or reduction of rates and charges in conjunction with promotional campaigns for the purpose of attracting subscribers;
- (2) the provision of installation or monthly service without charge to schools, government or non-profit organizations or agencies, or buildings operated by such entities;
- (3) the provision of service at no charge to employees and agents of the cable system operator;
- (4) the provision of service at bulk-discount rates, lower than individual rates, so long as the difference in rates is related and attributable to lower costs of providing such bulk service.

Any of the above discounted rates may be provided, if at all, at the option of the cable system operator.

- (C) Cable companies are relieved from the obligation under 30 V.S.A. §§ 225, 226, and 227(a) to file tariffs setting forth the rates and terms and conditions of service except as specifically required under this Rule or unless the requirements of those sections are reimposed by the Commission after an opportunity for hearing. Upon the effective date of this Rule all tariffs for cable services on file with the Commission are no longer in effect, except for tariffs or tariff sections regarding a company's line extension policy.

8.312 Rates, Terms, and Conditions of Service

- (A) Each company shall maintain a copy of all its current schedules of rates, terms, and conditions of service at its business offices. The information on file at the company shall contain a complete description of the terms and conditions applicable to each level of service or combination of services. The information on file shall include, at a minimum, the information required by the following paragraphs of this section to the extent that the service is offered or the charge is applied by the company.

- (B) Residential subscribers. For each level of service, detail:

- (1) number and listing (description and channel) of programmed channels available and the subscription rates;
- (2) installation charges for first outlet and each additional outlet (including custom installation work and aerial and underground drops);
- (3) monthly service charges for first outlet and each additional outlet;
- (4) charges for disconnection, reconnection, relocation of outlets;
- (5) charges for FM radio service installation and monthly service;
- (6) equipment installation, monthly rental, and deposit charges (include purchase or lease prices, if applicable);
- (7) charges for changes in service;
- (8) surcharges for the support of Public, Educational, and Governmental (PEG) access; and
- (9) returned check, collection, and late payment charges.

- (C) Other classes of subscribers. Detail special installation, monthly rental, and deposit charges (include purchase or lease prices, if applicable) for:

Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 8 of 36

- (1) multiple unit dwellings;
 - (2) commercial subscribers;
 - (3) institutional subscribers.
- (D) Ancillary services. Detail installation, monthly service, and other rates and charges for any services offered other than residential subscriber and premium services (including, but not limited to, alarm services, facsimile, and other similar services).
- (E) Leased channels. Detail all charges associated with lease of cable channels, if any are provided.
- (F) Production charges. Charges for use of production equipment, facilities, personnel, and materials by:
- (1) users of PEG access channels;
 - (2) other customers of production services.
- (G) Premium services rates. Detail current rules, regulations, and rate schedules for premium or pay cable television services available, with installation, monthly service, deposits, parental keylock, and other charges specified for each pay service offered.
- (H) Failure of any operator to comply with formal filing procedures with respect to its rules and regulations shall not be the basis for any revocation or denial of recertification.

8.313 Policy on Expansion into Unserved Areas

Each cable company shall file a statement of the company's policy on expansions of service into unserved areas as a tariff for the Commission's approval. Each such policy must at a minimum conform to the provisions of this section.

- (A) If a policy on expansion into unserved areas requires contributions-in-aid-of-construction, then that policy shall also allow for the rebating or reallocation of such contributions among original and new subscribers. Whenever more than one customer is connected to a customer-financed line extension, total contributions-in-aid-of-construction shall be computed to yield to the utility not more than the total cost of extending or expanding service to the new customer(s), less the service drop credit(s). Amounts to be collected from new customers connecting to customer-financed lines shall be computed as follows:
- (1) For a period of ~~threeseven~~ (37) years from the ~~activation~~ completion of construction of a customer-financed line extension, contributions from new customer(s) who are passed by and who connecting to the subject line extension ~~said lines~~ shall be based upon an equal share~~ing~~ of the full cost of construction of the subject line extension as if the new customer(s) were original participants.
 - (2) For a period of ~~Three seven~~ (37) years ~~after activation~~ ~~offrom the completion of construction of a~~ customer-financed line extension, contributions calculated under section 1 above shall be reimbursed to the original participant(s) based upon an equal share~~ing~~ of the full cost of construction of the subject line extension as if the new customer(s) were original participants, except that:

- (a) All line extension reimbursements shall be paid by cable companies to the original participant(s) who contributed to the line extension and who are also current owners of the dwellings or structures served by line extensions that are subject to reimbursement payments for new connections, and shall be paid as a cash rebate or, if to a current subscriber, cash or a credit, at the subscriber's choice.
 - (b) Reallocation of contributions and Reimbursements will occur may be made at any time, but a final reallocation and reimbursement shall be conducted at the end of the threeseven (37)-year period.
 - (c) No reimbursement shall be required if the computed amount is less than \$100.
- ~~(3) For purposes of this Rule, when calculating contributions under paragraph 1 or reimbursements under paragraph 2, the original full cost of construction may be depreciated at a straight line rate of up to 50% at the end of the seven (7) year period. Depreciation for these purposes, if any, shall be calculated similarly for both contributions and reimbursements and applied as of the date of the connection of new customer(s).~~
- ~~(4) As an alternative to issuing rebates under this section, a cable company may reduce the initial subscriber contribution in aid of construction based on the number of residential and non-residential premises passed within 500 feet of the proposed cable facilities that are not participating. For non-participating premises, each non-seasonal residential premise passed shall be counted as 1/4 of a verified subscriber, each seasonal residential premise passed shall be counted as 1/10 of a verified subscriber, each commercial or institutional lodging (such as a hotel, motel, or nursing home) shall be counted as 3/4 of a verified subscriber, and each non-residential premise passed shall be counted as 1/9 of a verified subscriber. If a cable company chooses to offer this rebate alternative, it shall include such an alternative in its tariff and no rebate shall be required. If this alternative is to be used, the company estimates under "F" below shall clearly indicate that no rebates will be issued. The following additional conditions apply only to this rebate alternative:~~
- ~~(a) If a verified subscriber commits to take service from a cable company for an additional commitment period of up to 18 months, then the company shall reduce the verified subscriber's contribution by the value of the additional commitment, exclusive of taxes and fees.~~
 - ~~(b) If a verified subscriber commits to provide to the cable company, over the term of the two-year commitment period, a minimum annual amount of qualifying revenues up to 150% of the average annual revenue per subscriber, then the cable company shall reduce the verified subscriber's contribution by the incremental revenue above the average annual revenue per subscriber, exclusive of taxes and fees. Qualifying revenues shall include revenues from all services provided to the subscriber over the facilities that provide the cable service, except revenues paid by the subscriber to non-affiliated third parties.~~

(B) Any cable company for which the expansion of service into unserved areas requires the extension of lines or cables to the customer location shall provide a line extension policy compliant with this subsection.

- (1) Any line extension policy that requires contributions-in-aid-of-construction shall not require a contribution in excess of the amount required by the following formula:

$$A = (C_T / N) * (1 - (N / (H * L)))$$

where A is the dollar contribution from each new customer; C_T is the actual cost of the line extension; N is the number of verified subscribers on the extension who will be making the contribution in aid of construction; L is the length of the extension in miles, excluding standard subscriber drops; and H is a number designated by the cable company's tariff representing the number of verified subscribers per mile, counting all the miles proposed on the extension, above which the company will not require a contribution-in-aid-of-construction.

- (2) No line extension policy filed in accordance with this section shall specify a value for H in excess of a maximum number established by the Commission. The maximum value for H for straightforward, aerial construction shall be 16 for a period of at least three years after the adoption of this rule, and thereafter may be re-set by the Commission after notice and opportunity for comment not more frequently than once every three years.
- (3) Upon request of a person in an unserved area within a cable company's franchise area, the cable company shall provide an estimate of the cost of a line extension. The cable company may satisfy this obligation by providing a preliminary estimate to the requestor. If the requestor is located a significant distance from the last serviceable pole whereby service can be extended to new customers, a representative of the cable company may contact the requestor to inform the requestor of the approximate length and cost of the line extension. In such instances, the cable company will provide a written estimate only if the requestor indicates they still wish to receive a written estimate. The final customer contribution required shall not be more than 10% in excess of the final estimate provided.
- ~~(4)~~ Unless otherwise requested, cable companies shall develop cost estimates assuming excluding a standard aerial drop of 300 feet from the pole for each dwelling serving each verified subscriber and any costs for installation of service inside the subscriber's home. Each verified subscriber shall be responsible for its own additional costs for installation of any nonstandard service drop unless participating verified subscribers and the cable company agree to divide the cost of non-standard service drops among the group of verified subscribers requesting service. Individual potential customers requesting service may be provided with a cost addendum outlining additional costs for a subscriber drop that is in excess of 300 aerial feet; and concealed wiring or other custom work; and all underground drops.
- ~~(4)~~(5) All written estimates provided to verified subscribers, whether mailed or sent electronically, must use the Line Extension Form. The cable operator may provide the map required by the Line Extension Form as a separate document. All written estimates are valid for 90 days or a longer period, as specified in the cable company's tariff. The Line Extension Estimate Form must clearly indicate whether



Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 11 of 36

the estimate is a preliminary or final estimate and whether the estimate includes actual make-ready costs. For preliminary estimates, the Line Extension Estimate Form must also indicate that the estimate may not reflect actual field conditions and make-ready costs. The final customer contribution required may not be more than 10% in excess of the final estimate provided.

- (C) Any company that provides cable television services over facilities that it uses to provide telecommunications or other non-cable-television services and that does not require the construction of new cables or lines in order to expand service into unserved areas shall provide a policy on expansion of cable service into unserved areas conforming to this subsection.
- (1) Any expansion-of-service policy shall provide for a maximum ratio of verified subscribers to served lines or premises in a project area that defines when the cable company shall provide an expansion of service without requiring customer contribution-in-aid-of-construction. This ratio shall be not more than a default ratio established by the Commission after notice and opportunity for comment, and which, after it is first established, may be re-set by the Commission after notice and opportunity for comment not more frequently than once every three years.
 - (2) A "served line or premise" is a line over which or a premise to which a company already provides any non-cable retail or wholesale service using facilities that can also be used to provide cable services. A company may make calculations under this subsection using either served lines or served premises, but shall use exclusively one or the other. A "project area" is an area that can be upgraded to offer cable services, including investments in facilities in common to the area that would benefit from the upgrade. A project area shall be defined at the request of a customer or in advance by the company by reference to its customary engineering practices.
 - (3) When a verified subscriber or group of verified subscribers requests an expansion of service into a project area, the cable company shall calculate the cost of the expansion, and calculate a cost per verified subscriber making the request by dividing the cost of the expansion by the number of verified subscribers participating in the request. When calculating the cost of the expansion, the cable company shall multiply C_A , the average cost per served line or premise, specified in the company's tariff, by the number of served lines or premises in the project area. However, the company shall reduce the number of served lines or premises by the number of verified subscribers divided by H , the ratio of verified subscribers to served lines or premises, above which the company does not require a contribution-in-aid-of-expansion, specified in the company's tariff. This calculation can be summarized by the following formula:

$$A = (C_A * (L - (N / H)) / N)$$

where A is the dollar contribution from each new customer; C_A is the average cost per served line or premise to expand cable service in a project area, specified in the company's tariff; N is the number of verified subscribers in the project area who will be making the contribution-in-aid-of-expansion; L is the total number of lines or customer premises in the project area; and H is the ratio of verified subscribers per served line or premise, above which the company will not require a contribution-in-aid-of-expansion.

- (D) A cable company may specify more than one value for C or H in its tariff, based on the number of miles, lines, or premises in a proposed expansion, if there are significant differences in cost based on size or other relevant cost factors of the proposed expansion, including underground excavation.
- (E) With a cable company's annual report, the company shall submit a report of the number of additional miles and homes served as a result of its service expansion policy.
- (F) Whenever a prospective subscriber or subscribers located in a service expansion area requests a site survey ~~an estimate~~ to determine the cost of bringing cable service, the cable company, ~~at its discretion, may first provide a preliminary estimate to the requestors. For final estimates, the cable company must~~ shall conduct a field survey, ~~and Both preliminary and final estimates must~~ inform each of the prospective subscribers of the contribution-in-aid-of-construction or expansion that may be charged. The cable company shall support the designated community organizer with appropriate information such as an explanation of how the company's line extension policies work, product information, and construction time frames. The cable company shall provide preliminary estimates within ~~15-30 business~~ days of receiving the requests. The cable company shall provide a final estimate within ~~30-60~~ days of receiving written approval of the preliminary estimates by all included subscribers. Where ~~site surveys a proposed line extension involves~~ a non-conventional extension of more than three ~~(3)~~ ends of line and ~~twenty (20)~~ verified subscribers, the company may have ~~thirty (30)~~ 60 days to provide an initial estimate and ~~sixty (60)~~ 90 days to provide a final estimate.
- (G) The cable company shall apply for any necessary pole attachment agreements within ~~thirty (30)~~ days of its receipt of the contribution-in-aid-of-construction from all verified subscribers, and shall make available cable service within ~~ninety (90)~~ days from the receipt of the pole attachment agreements and other necessary permits or easements, subject to weather, Force Majeure, and the performance of make ready.
- (H) Nothing in this section shall require a cable company to expand service in the absence of a request from one or more verified subscribers. Cable companies shall maintain maps of serviceable areas.
- (I) No cable company shall be required to overbuild another company, or provide cable service to locations where another cable company has already constructed facilities or to which another cable company is required by rule or order of the Commission to construct facilities, or to locations where another cable company has made a binding commitment to construct facilities within the next ~~eighteen (18)~~ months.
- (J) Every cable company shall file proposed changes to its line extension policy with the Commission and the Department of Public Service at least ~~forty-five (45)~~ days prior to the effective date of the change, except for changes that only reduce required customer contributions-in-aid-of-construction, which may take effect immediately upon notice to the Commission and the Department.



(K) For the purposes of this section, a "verified subscriber" is a person whose residence or business is in an unserved area who makes a binding commitment to purchase cable service from a cable company for a minimum period of two years, or a lesser period required by the cable company, or pays an amount equivalent to one year of service in advance.

(L) The provisions of this section supercede and remove any requirement to perform "house count surveys" contained in any certificate of public good previously issued by the Commission.

8.314 "Lifeline" service

No service offering of any company may be referred to, by tariff or by company promotion, as "Lifeline" service.

8.320 Notice

8.321 General Requirement

Every cable television company shall provide, the following written information on each of the following items at the time of installation of service, at least once annually to all subscribers, and at any time upon request:

- (A) Products and services offered;
- (B) Prices and options for programming services and conditions of subscription to programming and other services;
- (C) Installation and service maintenance policies and charges;
- (D) Information regarding how to obtain instructions on how to use cable service; and
- (E) Channel positions of all programming carried on the system.

8.322 Timing and Content for Notices of Change

- (A) Cable Companies shall notify affected customers, the Commission, and the Department of any changes in rates, charges, or programming in writing. Thirty (30) days' advance written notice is required for any change that increases rates or charges. If advance notice is not required then notice shall be given not later than the first bill following implementation of the change. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notice is not required for a change to which the customer has previously and specifically agreed, including but not limited to those associated with individual customer contracts. Cable operators shall file written notice to the Commission and Department of promotional rates and services, if such promotions are available or promoted to new customers for more than six months. If the cable operator is



given insufficient notice by a service provider to give the required notice above, the operator shall give notice as soon as practicable.

- (B) Written notice may be accomplished by letter, bill insert or bill message.
- (C) A customer may terminate service without penalty at any time within 30 days of the effective date of a change in rates, terms, or conditions when:
- (1) the change may increase the cost of service to the customer; and
 - (2) the customer has not previously and specifically agreed to that change.
- (D) Cable companies shall retain a record of the terms and conditions of service for promotions and individual customer contracts offered to customers during any point during the preceding twenty-four (24) months and make available a copy upon request.

8.330 Telephone Access

8.331 Hours

Each company shall maintain telephone lines for the receipt of trouble calls, service complaints, and requests for repairs or adjustment. Unless otherwise ordered by the Commission, the lines shall be staffed by a customer service representative during the company's normal business hours. This staffing provision shall not apply to any system which employs less than four full time employees. At other times an answering service or answering machine must be provided to receive such calls, provided that messages are checked at least every four hours between 7 a.m. and 11 p.m.

8.332 Toll-free

Customer calls to customer service representatives must be by way of local, toll-free, or other number which causes no more expense to the customer than would a local call. The company shall list such telephone number on all statements sent to customers.

8.333 Response

Any such call must be connected to a customer service representative within two minutes during normal business hours, except in case of a system emergency.

8.334 Telephone listings

The telephone number of an operator's business office or offices shall be listed in all official telephone directories of all telephone companies serving the franchised area.

8.340 Billing Practices

8.341 Notification of billing practices

- (A) Every cable television company shall notify each of its subscribers, in writing, of its billing practices and payment requirements. The notice shall describe, at a minimum, billing procedures (including payment requirements to avoid discontinuance of service, e.g., payment due dates), late charges, advance billing options, if any, procedures to be followed in billing disputes, and credit to be given for service outages.

(B) Notice shall be given as follows:

- (1) to new subscribers, at the time of initial installation;
- (2) to all subscribers, whenever there is a change in the company's billing practices or payment requirements; and
- (3) to all subscribers at least annually.

(C) Copies of the company's billing practices and payment requirements shall be filed with the Commission and the Department and in the company's business office and shall be given or sent to a subscriber upon request.

8.342 Bill format

- (A) Twice a year, at six month intervals, each subscriber shall receive a bill or other statement that shall itemize each service or piece of equipment for which the subscriber is charged. If a company bills its subscribers less than twice a year then each bill shall contain such itemization.
- (B) Every bill shall include the telephone number of the company and the toll-free subscriber assistance number of the Department of Public Service. The bill shall include a statement that the company should be called first for problem resolution.
- (C) Any returned check charge imposed by such company shall be reasonably related to the company's actual cost of processing returned checks, including bank charges, if any, but shall not exceed \$25.00, absent prior approval by the Commission.
- (D) The company's billing practices shall conform to the Commission's Rule 3.400, as amended.

8.343 Credit for service outage

- (A) In the event of a subscriber service disruption for more than twenty-four (24) consecutive hours, the cable company shall credit the subscribers affected for the total period of the disruption in an amount proportionate to their regular monthly service charge.
- (B) Each subscriber so affected must notify the cable company of the disruption unless there is a system-wide disruption or that subscriber's disruption is otherwise known or should have been known to the cable company.
- (C) The disruption period shall not begin until the disruption is reported to the cable company, personally, by telephone or in writing, or otherwise is known or should have been known to the cable company. Receipt of such notice by the cable company, which includes notification to an answering service, company employee, etc., shall cause the disruption period to commence.
- (D) Once the disruption period is known by the cable company to exist, for a particular subscriber, the subscriber's credit shall be automatic, and shall require no further request on the part of the affected subscriber.

- (E) Disruptions reported after the fact shall not be eligible for a refund.
- (F) The minimum credit shall be equal to the company's daily billing for the first twenty-four hour period and each whole or portion of a twenty-four hour period during which a service outage continues. The daily billing is the customer's monthly billing for the services affected divided by the number of days in the month which the company uses to compute its bills.
- (G) A cable television company shall conduct routine maintenance of its system at hours during which the least amount of subscriber service interruption shall occur, when practicable. The company shall make a reasonable effort to notify subscribers, in advance, of any scheduled service outages for purposes including, but not limited to, equipment repair or replacement, system upgrade, or rebuild which may interfere with service.

8.344 Subscriber and converter deposits

The provisions of Rule 3.200, as amended, apply to deposits required to be made before service is provided. In addition, if a cable operator supplies a converter or other auxiliary equipment to a subscriber's receiving equipment, it may not require a deposit exceeding the replacement cost, less salvage, of like equipment, to be applied so far as necessary to replacement or repair of the equipment resulting from subscriber abuse. If so applied, the company may require that an additional deposit be paid so as to restore the deposit to its original amount.

8.345 Billing disputes

- (A) Any subscriber shall have 45 days from the payment due date contained in the subscriber's bill in which to register a complaint with a company with respect to any billing error or dispute. A billing complaint may be registered in person at the company's business office, by telephone, or by mail. The company shall promptly investigate the billing complaint, shall provide an initial response to the subscriber not later than three business days after receipt thereof, and shall provide a written proposal for the disposition of the complaint to the subscriber not later than 15 business days following the company's receipt of the complaint.
- (B) The subscriber, after receiving the company's proposed disposition of the complaint, shall have ten days to contest the disposition and may present the company with additional information concerning the complaint. In the event the subscriber contests the proposed disposition, the company shall review any additional information, if provided, and shall notify the subscriber of the company's final disposition within 15 business days of notification of contest by the customer.
- (C) No company may effect termination of service to the subscriber for non-payment of disputed bills during the pendency of any billing complaint, provided the subscriber pays current and undisputed bill amounts during the pendency of the complaint.
- (D) If a subscriber uses this provision of this Rule to avoid paying proper bills by means of repetitive claims of dispute of each new bill, the company may petition the Commission for permission to disconnect such a subscriber.



- (E) The Commission, upon the written request of the subscriber, may review the company's disposition of a billing complaint in accordance with such procedures as the Commission shall prescribe and make such orders as the Commission deems reasonable and necessary to finally resolve the complaint.
- (F) A cable company shall not refuse cable video service to a customer due to a delinquent bill owed by another person unless the customer responsible for the delinquency, resulting from service to that household, resides in the same household.

8.346 Disconnection

- (A) The provisions of Rule 3.400, as amended, shall apply, except as provided below:
- (B) No cable company may disconnect a subscriber's service except for one of the following reasons:
 - (1) at the request of the subscriber;
 - (2) because the subscriber without the company's approval tapped the system to provide cable service or additional service to himself, or service to different or additional equipment or has otherwise tampered with the company's facilities;
 - (3) because the subscriber made fraudulent representations regarding the use of the service within the subscriber's premises;
 - (4) because the subscriber so operates or connects his equipment as to cause disturbing effects on the service of other subscribers or the company's equipment or facilities;
 - (5) to prevent a hazard to persons or property resulting from the condition of the installation or the subscriber's equipment;
 - (6) because the subscriber refuses reasonable access to his premises to company representatives who must have such access to make required inspections or tests or to make adjustments to or service equipment or to legally remove the company's property or to otherwise comply with conditions of the company's rules and regulations;
 - (7) because customer-installed equipment is causing signal leakage in violation of federal or state regulations;
 - (8) for non-payment as otherwise provided in this Rule.
- (C) For reasons 4, 5, and 7, above, the company may disconnect without prior notice to the customer, but must leave written notice at the customer's premises explaining why service was terminated and what must be done to have it restored.
- (D) Notice of service discontinuance shall clearly state the reason and the action on the part of the subscriber necessary to avoid discontinuance.
- (E) No cable television company shall disconnect service for non-payment or as otherwise provided in this rule (except by subscriber request) on a weekend, public holiday, a day when the office of the company is not open for business, or the day before any of the days above.
- (F) When a company representative is at a subscriber's residence or place of business to disconnect service and the subscriber, at that time, pays the amount in arrears in lieu of

disconnection, the company may add a reasonable collection charge to the subscriber's bill, provided all other applicable provisions of this section have been followed.

(G) Receipt of a subsequently dishonored instrument from a subscriber in response to a notice of discontinuance shall not constitute payment, and a cable company need not go through another Rule 3.400 disconnect notice cycle. The cable company may disconnect on a minimum four (4) day notice that the instrument was dishonored.

(H) This section (pertaining to disconnection and notice of disconnection) does not apply to any person who is not an actual subscriber or who has not requested service, in which case no notice of any kind is required.

8.347 Late Payment Charge

A late payment charge may be imposed on unpaid balances no less than 60 days overdue and shall not exceed 1.5% of the delinquent amount not in dispute, absent prior approval by the Commission.

8.350 Service Calls

8.351 Customer interaction

(A) Investigative action shall be initiated on the same day a trouble call is received at the local office, if possible, but in no case later than the following business day, unless requested otherwise by the subscriber.

(B) When at the request of the subscriber a service call to the subscriber's premises is required, the subscriber shall be informed in advance, if possible, as to the day thereof and whether the service call is scheduled during the morning, afternoon, or evening. If for any reason a service technician is unable to make the service call as scheduled, a reasonable attempt shall be made to inform the subscriber.

8.352 Records

(A) A report on each service call in which a cable system fault reported by a single subscriber was identified shall be filed at the local office, and shall include the following data:

- (1) subscriber identification;
- (2) date and approximate time complaint was received;
- (3) date and approximate time of response;
- (4) nature of complaint;
- (5) brief description of the fault;
- (6) signal level measured on each problem channel after corrective action and on other channels, where such measurements are appropriate;
- (7) corrective steps taken (if any required);
- (8) date case is closed; and
- (9) identification of technician or repairman.

(B) A report on each system fault, or on any failure reported by more than one subscriber and affecting an area, shall be filed at the local office and shall include the following data:

- (1) cause of failure and brief description of the component or structures causing the failure sufficient to allow the later determination of the area affected;
 - (2) date and approximate time of failure or report of failure; and
 - (3) date and time service is restored.
- (C) A report for each service call in which no trouble was identified, or in which instruction was given to enable the subscriber properly to adjust the terminal receiving equipment, or in which the fault was in the subscriber's receiving equipment, shall be filed at the local office and shall include:
- (1) subscriber identification;
 - (2) date and time complaint was received;
 - (3) date and time of response;
 - (4) nature of complaint;
 - (5) corrective steps taken (if any required); and
 - (6) identification of technician or repairman.
- (D) Small systems that have only a single technician or an owner-technician may perform the record-keeping required by subsections (A), (B), and (C) by maintaining a log of trouble calls containing the substance of the information called for.
- (E) Any report required to be maintained pursuant to this section shall be kept by the operator for a period of two years from the event to which it relates. It may be maintained in original form, as computer data base, or as data base report, at the election of the operator, so long as the basic information remains available.
- (F) The records required by this section shall upon request be made available to the Commission and the Department of Public Service. However, the operator may obscure, remove, or delete any personally identifiable information contained in the records if in the operator's opinion it must do so in order to comply with Section 631 of the Communications Policy Act of 1984, 47 U.S.C. § 551.

8.360 Construction

8.361 Information filing

After receiving a certificate of public good for a new service territory, the company shall submit the following to the Commission and the Department, as available:

- (A) A map of the service area, showing the planned phases of construction for the entire cable system. Such map and description shall also indicate those parts of the service area that the applicant anticipates would receive service only through application of the proposed line extension policy.
- (B) A statement that the applicant has obtained all licenses and other forms of permission required by state and local government bodies prior to commencement of construction.



- (C) A statement that pole attachment, conduit occupancy, and right-of-way agreements have been consummated.
- (D) Any corrections, updates, or amplifications, to items filed at the time of application for a certificate of public good.

8.362 Compliance with design standards; waivers

- (A) All cable systems constructed and operated within this state shall conform to the minimum design criteria set forth in this rule.
- (B) Waivers of specific provisions of the design criteria may be granted by the Commission only upon a showing that strict compliance would endanger the viability of the system.

8.363 System requirements

- (A) The technical standards contained in Subpart K of Part 76 of the Rules and Regulations of the Federal Communications Commission, as amended, are hereby incorporated into these rules, and made a part of all certificates of public good issued by the Commission for cable systems.
- (B) All systems shall be designed and built so that closed caption data can pass through.
- (C) All systems shall be designed and built so that they may provide the PEG access capabilities required by section 8.410 et seq. of this rule, or so that those capabilities may be later added without major reconstruction of the system.
- (D) Preliminary Performance Tests. Prior to the commencement of service to cable subscribers on any portion of a new cable system or on any substantially reconstructed portion of a cable system, the operator will ensure that the system provides acceptable picture quality by "rough balancing" the active equipment to within plus or minus 5db of equipment specification for peak-to-valley signal performance. These tests may be performed by qualified system personnel or by qualified contractors, and copies of the preliminary test results shall be made available to the Department of Public Service upon request for a period of up to one year after completion of the new or reconstructed cable system.
- (E) Final Performance Tests. Within 120 days of completion of a new cable system or any substantially reconstructed portion of a cable system, the operator shall conduct system proof of performance tests to determine the extent to which the system complies with the standards required in section 8.363(A) of this Rule.
 - (1) All such tests shall be performed by or under the supervision of qualified system personnel or qualified contractors using equipment and procedures necessary to achieve reasonable precision of measurement.
 - (2) In the event that the measured performance at any end of the trunk test point fails to comply with the technical standards required, the operator shall immediately take steps to insure compliance.
 - (3) Copies of the report of the final performance test shall be provided to the



Department of Public Service upon request and shall be kept available for inspection at the operator's office for a period of five (5) years after completion of the test.

8.364 Timetable

- (A) Application for pole attachment license shall be made to the relevant utilities within fifteen (15) days of receipt of a certificate, and application for make-ready work shall be made within 120 days of receipt of the license. Construction of a cable system shall begin within ninety (90) days of completion of make-ready work for the first phase of cable construction, or as soon thereafter as weather permits.
- (B) The operator shall maintain current as-built design maps for its system at its business offices, and shall produce photocopies of such portions of the maps as may be requested by the Department of Public Service.
- (C) The operator's complaint department shall begin operation at the same time as service commences.
- (D) Unless the Commission shall have waived the requirement, within four years from the receipt of the certificate the holder thereof shall have made service available to all potential residential subscribers in those portions of its franchise area meeting the density tests described in its line extension tariff for no-charge construction. In cases where the operator is unable to extend service because of a lack of right of way or other access problem, the operator shall be moving with due diligence to acquire such access to potential subscribers.

8.365 Safety codes and standards

- (A) All construction of cable systems shall be with the use of materials of good and durable quality.
- (B) All work involved in construction, installation, maintenance and repair of cable systems shall be performed in a safe, thorough, and reliable manner, and in compliance with:
 - (1) the "Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines" of the National Bureau of Standards, U.S. Department of Commerce;
 - (2) the latest edition of the National Electric Safety Code, as from time to time amended and revised; and
 - (3) all applicable federal, state, and municipal laws, ordinances, and regulations.

8.366 Placement of cables

- (A) Wherever practical, a holder of a certificate shall install its system using existing poles, conduits, rights-of-way, and other facilities of utility companies.
- (B) If at any time a municipality shall require all utilities to be placed underground, the certificate holder shall, upon reasonable notice by such municipality, conform with such requirement. This provision shall not be taken as determinative of who must bear the costs of placing such plant underground.



8.367 Subscriber drops

(A) Each company provides a standard, fixed-price installation from its distribution cable to the subscriber's premises. Installations up to three hundred (300) feet in length (aerial construction) shall be made without additional charge to the subscriber. Drops in excess of this length, any concealed wiring or other custom installation work, and all underground drops, shall be charged at the rates set forth in the company's rules and regulations, which shall provide for a credit equal to the cost of the standard installation.

(B) In areas where existing utility drop cables are located underground, cable subscriber drop cables shall also be located underground where practical. In other areas, the drop cables shall be aerial unless the subscriber elects to pay the costs of underground installation as set forth in the company's rules and regulations.

8.368 Installation of drops

(A) When a cable operator receives an application for service, and the only outdoor installation work required is to drop a line from the feeder cable to the subscriber's building, it will make the installation promptly and in no event later than ten (10) days following receipt of the application unless good and sufficient reason exists. Good and sufficient reason may include scheduling conflicts, system emergency, severe weather, and lack of access or right of way.

(B) Cable installers shall be trained to connect closed caption decoders to work with the cable connection. The decoder (provided by the subscriber) shall be connected without extra charge to the subscriber.

8.370 Signal Carriage

8.371 Channels required

Each cable system certificated to operate within this state shall be operationally capable of relaying to all subscriber terminals at least the following signals:

(A) All television broadcast signals, if any, required to be carried in that service area pursuant to FCC rules, as amended from time to time.

(B) All specifically designated access channels required to be carried by that system pursuant to section 8.410 of these rules shall be carried in all service tiers defined as basic tiers by this Rule or federal law.

8.380 Annual Report

Within one year of the granting of a certificate of public good and annually thereafter as provided by 30 V.S.A. § 22, every cable operator shall file an Annual Report with the Department and the Commission containing the information required by 30 V.S.A. §§ 22 and 514 and any other information the Department may require. The report shall be made in a form acceptable to the Department.

8.390 Availability of Books and Records

The Commission and the Department shall have the right to inspect the books, records, maps, plans, and other like materials of each cable company applicable to its system or systems in this state, at any time during reasonable business hours. Each cable company shall fully cooperate in making the materials available at reasonable times, provided that where volume and convenience necessitate, the company may request that inspection take place on its own premises. Where information in the materials constitutes trade secrets or other confidential or proprietary information, the company may request that Commission or Department employees given access to that information enter into an agreement to protect such information, in conformance with Commission Rule or Commission practice.

8.400 Purposes, Scope

- (A) Purposes. The purposes of this part (8.400 et seq.) of this rule are: (1) to promote the availability and use of local public, educational, and governmental content in a manner consistent with the development of cable technology and federal law by providing parameters for franchise renewal negotiations, for negotiations between cable operators and existing or proposed Access Management Organizations, and for resolution of disputes by the Commission; and (2) to clarify the obligations of and relationship between cable operators and Access Management Organizations with regard to meeting cable-related community needs, and to establishing and administering PEG channels and facilities.
- (B) Additional Obligations. The Public Utility Commission as the franchising authority for the state of Vermont may impose additional or specific obligations by condition in a new or renewed certificate of public good consistent with these rules. The scope of operator and subscriber support for PEG access should be limited to those applications and designations of capacity that support distribution of public, educational, and governmental access content to cable subscribers over the cable system.
- (C) Scope. This rule applies to cable television companies as defined in 30 V.S.A. § 501(c) to the extent that they offer cable television services as defined by 47 U.S.C. § 522 and to existing or proposed Access Management Organizations (AMOs) that administer the PEG access facilities or channels.
- (D) Digital cablecasting of PEG Channels. One year prior to the Federal Communication Commission deadline for Vermont VHF and UHF broadcasters to relinquish analog bandwidth, the Commission will consider initiating rulemaking to ensure that community needs and PEG access services are being adequately supported in light of evolving technology and consistent with FCC regulations.

8.401 General Obligations of Cable Operators

For purposes of franchise negotiations, a cable operator must demonstrate that its proposal for PEG Access is consistent with these rules and reasonable in light of the cable-related community needs taking into consideration costs on the cable operator and cable subscribers. In order to meet community related cable needs, cable operators shall be prepared to:

- (A) Designate system capacity for the use of PEG channels and applications.



Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 24 of 36

- (B) Consider requests for PEG channels and other applications.
- (C) Designate an Access Management Organization (AMO), when requested.
- (D) Provide PEG facilities.
- (E) Provide PEG funding.
- (F) Notify subscribers, Commission, and Department of (A) through (E).

8.402 Provision of System Capacity for PEG Access

- (A) Absent a waiver by the Commission, a cable operator shall be prepared to designate and activate at least three forward viewable PEG channels.
- (B) In lieu of viewable channels, a cable operator and an Access Management Organization may agree that the cable operator should dedicate system capacity or facilities in a form other than a forward channel to support the distribution of PEG content to cable television subscribers in order to meet its PEG access obligations.

8.403 Activation of First Three PEG Channels

The operator of a cable television system shall designate:

- (A) At least one full-time activated channel for public, educational, and governmental access use.
- (B) At least one additional full-time channel for public, educational or governmental access use, to be activated at such time as is requested by the AMO and after the channel required by paragraph (A) is already in use. The cable operator shall provide the channel within a reasonable period of time following the submission of the request.
- (C) One additional full-time channel for public, educational, or governmental access use, to be activated at such time as is requested by the AMO and after the channel required by paragraph (B) is already in use. The cable operator shall provide the channel within a reasonable period of time following the submission of the request.
- (D) In the event that three channels for public, educational, and governmental use are required to be activated, one channel shall be designated for each type of use; provided, however, that any channel maybe used for any PEG purpose if necessary to satisfy the demand for channel time, and, should more than one AMO exist, as agreed by the AMOs. Pooling of channel time shall be done in conformance with the system's PEG access plan.
- (E) When no other PEG access programming is available for cablecasting, and no PEG access management organization (as described in section 8.420) exists, the operator shall make available programming, at a minimum, in the nature of a character-generated community bulletin board. When submissions are available, the operator shall post content on the PEG access channel community bulletin board that is up-dated at least weekly and contains information relevant to the particular PEG access service area where it is seen.



(F) PEG channels may be activated at a headend or hub site within the service territory.

(G) Requests for activation of PEG channels shall be submitted and reviewed as provided in section 8.405.

8.404 Activation of Additional PEG Channels or Other PEG Applications

(A) Additional PEG access channels. Activation of additional PEG access channels may be requested at such time as the channels required by section 8.403 are in use.

(B) Other PEG Applications. A cable operator may propose, or an Access Management Organization may request, that a cable operator dedicate system capacity or facilities in a form other than a channel to support the distribution of PEG content to cable subscribers.

(C) It is not necessary to utilize the first three PEG channels prior to a request for other PEG applications. This does not preclude an AMO's ability to request and receive three PEG channels pursuant to section 8.403.

(D) Requests for PEG channels and other PEG applications shall be evaluated using the criteria and process provided in section 8.405 and implemented as negotiated between the operator and AMO or AMOs.

8.405 Consideration of Requests for PEG Channels and Other PEG Applications

Requests for the activation of PEG channels or other PEG applications shall be submitted to the operator and reviewed as follows:

(A) The request must describe:

- (1) The use or functionality for which the capacity will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace;
- (2) Examples of its use;
- (3) The community need that the PEG channel or PEG application is intended to address, how such community need has been ascertained, and how that need will be met by the PEG channel or PEG application requested;
- (4) The equipment and facilities, initial and ongoing operating and capital expenditures necessary to implement the request;
- (5) The estimated cost of the functionality to the AMO and the extent to which the cable operator is expected to support the cost;
- (6) How the use or functionality can be sustained, financially and operationally, by the AMO, including commitments made by others to support the request;
- (7) Why the use or functionality requested is consistent with current or planned services to be offered by the existing or proposed AMO;
- (8) Other reasonable materials deemed necessary by the operator to consider such request.

(B) Cable operators shall do the following in reviewing and responding to requests for PEG channels or other PEG applications:

- (1) Provide to the requesting AMO written acknowledgment of receipt of the request and confirmation that the request is complete. If the request is not complete, the cable operator shall so inform the AMO within 45 days, together with an explanation of how the request is incomplete and a description of the information that is needed to complete the request.
- (2) Once a request is complete, review and respond in writing to the AMO's proposal within 60 days of submitting a complete request. If an extension is necessary for adequate review or extenuating circumstances, the cable operator shall inform the AMO in writing and provide a reasonable timeframe for responding to the request.
- (3) Offer the requesting AMO an opportunity, to the extent possible, to discuss the request with regard to the criteria listed in subsection (C) below, and mutually investigate possible alternatives should any aspect of the request be problematic.

(C) The cable operator shall evaluate the AMO request using the following criteria:

- (1) Whether any portion of the request would be in violation of, or would require amendment to, the cable operator's certificate of public good or any existing PEG Access Agreement;
- (2) Whether and how costs that would be incurred by the operator or the AMO would affect the cable operator and cable subscribers;
- (3) Whether the cable operator has the capacity to meet the request, taking into consideration existing and other potential uses;
- (4) Whether the request is consistent with the cable operator's and the AMO's Access Plan;
- (5) Whether alternative more cost-effective methods within the purview of the cable operator are available to meet the need asserted in the request;
- (6) Whether the request responds to community needs;
- (7) Other considerations that it deems relevant.

(D) Cable operators retain discretion to approve, deny, or amend such requests. If a cable operator denies an AMO request, it must provide a written explanation, addressing each of the criteria in subsection (C) and the grounds for denial.

(E) Resolution of disputes arising from requests may be reviewed by the Commission.

8.406 Inclusion in Service Tiers

- (A) The first three PEG access channels shall be available to all cable subscribers. All other PEG access channels shall be available on the basic service tier unless activation of the channel on the basic service tier would require removal of an existing channel from the basic tier. If removal of an existing basic tier channel would be necessary to accommodate an additional PEG access channel, the cable operator shall offer, and the AMO may accept, substitute capacity on the next available analog tier or digital tier as a means of allowing more than three PEG channels to be made available.
- (B) All PEG channels on the basic tier shall be delivered in a standard analog format unless all other channels on the basic tier are delivered in a digital format.

Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 27 of 36

8.407 (reserved)

8.408 Designation of Administrative Management Organizations, Generally

- (A) Unless a cable operator has obtained a waiver pursuant to section 8.410 of this Rule, it shall designate an AMO:
- (1) that demonstrates the capability to meet the obligations of an AMO, as set forth in sections 8.420–8.422 of this Rule; and
 - (2) that demonstrates the capability to meet all other relevant requirements of this Rule; and
 - (3) that is willing to enter an access contract, pursuant to section 8.424, on terms that have been negotiated in good faith.
- (B) The person or organization that seeks designation as an AMO bears the burden of demonstrating that they or it should be designated.
- (C) A cable operator may designate one or more AMOs to provide PEG content within all or a portion of a geographic area where another AMO also provides PEG content.
- (D) AMOs may be designated in the certificate of public good at the time of issuance.
- (E) The designation of an AMO does not require the approval of the Commission.
- (F) AMOs may administer access for more than one cable system or cable channel.
- (G) An AMO may be in whatever form its members select.

8.409 Educational and Governmental

To allow for channels to be activated on a cable television system for educational or governmental use, an educational access channel may be operated and administered by a non-profit organization, committee, or commission representing educational institutions serving the territory served by the cable system. Where more than one cable system is operating in a school system or municipality, cooperation between the AMOs for the respective access channels is encouraged. A governmental access channel may be operated and administered by a non-profit organization, committee, or a commission appointed by local governments, including appropriate representation of local school systems within the service area of the cable television system if it will share the channel with educational use. Absence of an AMO to administer educational or governmental access shall not prevent the cable operator from making available additional channels for educational or governmental access.

8.410 Exception for Small Cable Systems

The operator of a cable television system with annual gross receipts from 'cable services' of two million dollars or less may be excused from the provisions of Rule 8.400 if said company can demonstrate that is meeting the cable related community needs and interests of its service territory. For the purpose of this subsection, 'cable services' has the definition stated in 47 U.S.C. § 522.

8.411 –8.414 (reserved)

8.415 Facilities and Funding Generally

Any cable television certificate of public good may include additional provisions concerning the provision of funding and facilities for PEG access consistent with sections 8.416 and 8.417. Any other provision concerning the facilities and funding for public, educational, and governmental access consistent with federal and state law may be included in a certificate of public good.

8.416 Facilities

- (A) Minimum capabilities. Unless otherwise ordered by the Commission, all operators shall ensure that their systems have available the following minimum PEG capabilities once their systems are in operation. The facilities shall include equipment necessary for community members to produce, post-produce, and distribute PEG content from its studios or community locations to the system's cable subscribers. When an AMO is established, it may negotiate for additional or different facilities to account for community needs and technological changes.
- (B) This rule neither forbids nor requires the sharing of equipment and facilities between neighboring systems or between systems owned by the same company if any established AMO or AMOs approves the plan for sharing and, if the sharing is between systems owned by different operators, if the operators approve the plan for sharing.
- (C) Cable operators shall support reasonable requests by AMOs for remote origination sites. The cable operator's response to such requests shall take into account community needs and the capabilities of the designated AMO and resulting costs.

8.417 Funding

- (A) Basis. PEG access funding shall be calculated based on the cable operator's gross revenues generated by "cable services" as defined by 47 U.S.C. § 522, unless otherwise agreed by a cable company and the AMO to which the funding would be provided. PEG access funding of an AMO shall be calculated based upon the corresponding PEG AMO's service territory.
- (B) Startup capital payment. An AMO may request, and the cable operator shall negotiate concerning the provision of, startup funding. The amount of startup funding, if any, provided to an AMO shall reflect consideration of requests for PEG channels and applications outlined in section 8.405.
- (C) Annual operating. Negotiation between the operator and the AMO or AMOs is the preferred method of setting the annual operating expense funding level provided by the cable operator to one or more AMOs. Funding levels for operating costs shall be based on community needs and are subject to the 5% franchise fee cap provided in 47 U.S.C. § 542(b).
- (D) Annual capital. Negotiation between the operator and the AMO or AMOs is the preferred method of setting the annual capital contribution for PEG access. Capital contributions are not subject to the 5% franchise fee cap but are considered external costs eligible for pass through to subscribers pursuant to 47 U.S.C. § 542(c).

Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 29 of 36

- (E) Other payments. New and existing AMOs, as part of PEG access contract negotiations, may negotiate for in-kind contributions or certain lump sum amounts to be paid by the operator for start-up operating and start-up capital funds, annual capital funds, and other capital improvements under certain conditions or at certain times during the term of the certificate of public good.
- (F) Accounting for PEG funds expended by operator in the absence of an AMO. Funds expended by an operator to meet its PEG access obligations and reported in the operator's Notice of PEG Availability (section 8.418), prior to the establishment of an AMO, may be debited against any funds, reserves, or deferred liabilities that have accrued for PEG access purposes. The documentation of such expenditures, however, must be filed in a timely and clearly itemized manner in the operator's PEG Notification, and value placed on those expenditures by the operator shall have been reasonable, taking into consideration the levels of, and reasons for, expenditures by other PEG access operations.
- (G) Legislative tax. In the event a tax or fee is enacted by the Legislature of the State of Vermont, and if it is determined that the tax or fee and a PEG access funding requirement imposed by the certificate of public good or by a PEG Access contract are both defined as franchise fee payments under the Cable Communications Policy Act of 1984, as amended, the PEG access funding requirement shall be reduced proportionately to the extent the state fee plus the PEG access funding requirement for operating expenses total more than 5% of the operator's gross revenues.

8.418 Notice of PEG Availability

- (A) The cable operator shall notify subscribers, by annual written notice and by character generated or video message on the computer bulletin board (see section 8.403(e)), of the opportunity to create and cablecast PEG content. Notices shall include name, address, and telephone number of the entity or entities to be contacted for use of existing PEG services, and similar contact information for the cable operator staff responsible for negotiating start-up arrangements with persons seeking to create a new AMO.
- (B) If an AMO does not exist in the service territory, the cable operator will also make the following information available: minimum operating rules and procedures for facilitating production of local content and a copy of the PEG Access Report, required by section 8.419, for the most recent year.

8.419 Cable Operator PEG Access Report

Each cable operator shall submit annually, by April 15, to its designated AMOs, the Department, and the Commission, a PEG access report for each cable system. Copies of this report shall be made available to the public upon request in printed or electronic formats. The report shall include the following information.

- (A) Where no AMO is designated, a summary of the prior year's activities, including the scope of programming services available for use by the public in each community served by the operator.

- (B) A statement of the facilities contributed to an AMO or AMOs. The statement should indicate whether ownership of the facilities has been transferred to the AMO or AMOs, or whether the operator has retained ownership and only made the facilities available;
- (C) If the operator has sought advice for the administration of its PEG access operation from an advisory body, a roster naming the advisors and a summary of the advisory body's activities;
- (D) An accounting of any reserves, whether funded or not, that have accrued to date for PEG access use;
- (E) Summary of funding, including a statement that funding is derived from subscriber paid PEG access fees, and other support rendered to each AMO in the prior year;
- (F) Contact information for cable operator and for AMO(s).
- (G) A description of the geographic service territory covered by the report, and an explanation of any changes in the description from the prior year.

8.420 Obligations of an AMO

(A) The responsibilities of each AMO shall include:

- (1) Documentation of and response to community needs;
 - (2) Delivery of outreach for the purpose of informing the public of the opportunity for access to the cable system and availability of programs and services;
 - (3) Delivery of training, programming, and services to meet community needs;
 - (4) Managing facilities and equipment, including maintaining operating rules and procedures, for the purposes of public availability;
 - (5) Negotiation with the cable operator for facilities and funding;
 - (6) Coordination of PEG capacity use and applications with cable operator;
 - (7) Maintenance of rules and procedures for board governance, complaint and dispute resolution, and compliance with relevant laws, including Vermont's Open Meeting law;
 - (8) Receipt and management of all funds in a manner consistent with the public nature of those funds, including the provision of an annual budget for payment of current operating and capital expenses;
 - (9) Preparation of an access plan which is designed to anticipate the future cable-related community needs and demand for PEG services;
 - (10) Completing Annual Report pursuant to section 8.422;
 - (11) Preparation of information required by the cable operator for the submission of the annual PEG access report as required by section 8.419;
 - (12) Maintenance of records and preparation of forms as may be required by the Federal Communications Commission for its oversight of access channel usage. Such information may be delivered to the cable operator or submitted directly to the F.C.C., as is found expedient by the parties.
- (B) The operator may retain any of the responsibilities identified in subsection (A). Any responsibility not explicitly delegated remains the responsibility of the cable operator. The

foregoing notwithstanding, a cable operator having existing contracts with AMOs may rely on those contracts to comply with this section until such time as the contracts are renewed or materially amended.

8.421 Meetings and Reports

All meetings of AMOs shall be open to the public pursuant to Vermont's Open Meeting Law, 1 V.S.A. § 311 et seq., and shall be announced in advance by character-generated announcement on the PEG channel to which it pertains. The access plan, local rules, budget, and annual report of the AMO shall be available to the public at reasonable times and places.

8.422 AMO Annual Access Report.

AMOs shall submit to the cable operator, the Department, and the Commission a PEG access report for each cable system within 120 days of the end of the AMO's fiscal year. Copies of this report shall be made available to the public upon request. The report shall clearly distinguish between expenditures that support production and distribution of PEG content to cable television subscribers, and expenditures for other purposes not related to the production and distribution of PEG content to cable television subscribers, if any. It shall also distinguish between funds provided by the operator as PEG funding and funds obtained from other sources. The report shall also include the following information:

- (A) Changes in service territory;
- (B) Description of current PEG capacity and applications;
- (C) Description of current PEG services, including outreach strategies, training delivery, PEG content production and distribution (for example, hours of original programming, utilization of PEG facilities such as live drops or interconnect);
- (D) Details of complaints and how the AMO responded to them;
- (E) Description of facilities (equipment and location);
- (F) Roster of staff and board;
- (G) Changes in organizational structure;
- (H) A statement of total operating and capital funding received from the operator and whether any funds were carried forward from the prior year;
- (I) Financial reports that include:
 - (1) Income and expense statement and balance sheet for year of annual report,
 - (2) Projected operating and capital budget for current fiscal year;
- (J) Certification that AMO has:
 - (1) Bylaws or other governing documents,

- (2) Rules and operating procedures,
 - (3) Complaint and dispute resolution procedures,
 - (4) Evidence of conducting meetings consistent with Open Meeting law;
- (K) Planning considerations and expectations for how community needs will be identified and met for current and future fiscal years;
- (L) Service quality issues requiring attention;
- (M) Copy of tax returns, financial reviews or, if available, audited financial statements;
- (N) In the event that the operator requires financial information from an AMO for the purpose of auditing the AMO, or for the purpose of a company audit, the AMO shall make the information available, consistent with other provisions of this section. If an audit is required by the operator, the cost of the audit to the AMO will be borne by the operator, unless ordered otherwise by the Commission.

8.423 PEG Access Contracts

- (A) In cable systems without an AMO, cable operators shall have the obligation to negotiate in good faith with AMOs or entities requesting designation as an AMO.
- (B) Entities seeking or having received designation under this Section may request, under section 8.425(a), multi-party negotiations with multiple cable operators with the objective of a single contract.
- (C) Contracts between AMOs and cable operators shall be made for a fixed period of time not to exceed eleven years (and normally not past the time the current certificate is due to expire) and be consistent with Commission Rules and include agreements related to the following subjects:
- (1) Description of PEG capacity and applications;
 - (2) Description of geographic service territory;
 - (3) Term and duration of contract;
 - (4) Amount of start-up, operating, and capital funds and a schedule for payment of such funds;
 - (5) Procedures for addressing service quality issues;
 - (6) Dispute resolution procedures.
- (D) If the cable operator is not satisfied that an entity with which it is negotiating will perform properly as an AMO, or if there is more than one entity volunteering to be the AMO for a single channel, the operator or entities may petition the Commission to hear and resolve the dispute.

8.424 Failure to Perform

- (A) If a cable operator believes that an AMO has failed to perform in any material way under a contract, unless otherwise provided in the contract, the cable operator, after providing the

AMO with reasonable notice of the failure, may petition the Commission to cure such a failure.

- (B) If an AMO believes that a cable operator has failed to perform in any material way under a contract, unless otherwise provided in the contract, the AMO, after providing the cable operator with reasonable notice of the failure, may petition the Commission to cure such a failure.

8.425 Statewide AMO

The Commission may designate an AMO to administer a state-wide PEG access network and to promote the sharing of PEG content among cable systems.

- (A) Petition form and content. An entity seeking designation under this rule as an administrator of the statewide PEG access network shall file a petition with the Public Utility Commission. The petition shall include the following additional information about the petitioner's ability to administer the network and plans for doing so:
- (1) A description of the organizational structure and management of the administrator along with the administrator's articles of association and bylaws;
 - (2) Demonstration of sufficient technical and managerial expertise to administer the service;
 - (3) Description of committed or tentative funding sources for the AMO, or a proposal for providing funding out of the existing PEG access obligations of cable companies;
 - (4) A plan for coordination of services with other AMOs;
 - (5) A proposal for location of the AMO 's office, studios, and equipment, and the extent of the AMO 's operations around Vermont;
 - (6) If the state-wide PEG access network currently has an administrator, an explanation of the reason for changing administrator designation and an administration transition plan.
- (B) Service of petition. The petitioner shall provide a copy of the petition to the Department of Public Service, all cable companies operating in Vermont, and all AMOs. Along with each copy of the petition, the petitioner shall provide a list of the persons served under this paragraph.
- (C) Order. After notice and opportunity for hearing, the Commission shall issue an order accepting, conditionally accepting, or rejecting the petition.
- (D) Provisional designation. The Commission may provisionally designate the petitioner as the statewide AMO, even if the AMO does not yet have a fully-developed capability to administer the statewide access network. This designation may be for a fixed period of time. The Commission may, in its order granting provisional designation, limit the obligations of cable companies to a provisional statewide network AMO.
- (E) Term and revocation of designation.

- (1) The term of a non-provisional administrator designation shall be indefinite unless specifically limited by the Commission. Designation as an administrator may not be transferred to a successor without prior Commission approval.
- (2) Upon its own motion or upon the petition of the Department or an entity or person adversely affected by an administrator's performance, the Commission may after notice and opportunity for hearing revoke or suspend its designation of an administrator, may impose additional conditions on continued designation to assure the statewide AMO adequately administer the statewide access channel, complies with conditions of its designation, or take other such actions that serve the public good of the state.
- (3) The burden of proof in a revocation hearing is on the party seeking the revocation or suspension; the standard of proof is the preponderance of the evidence.

8.426 Request for Statewide PEG Capacity and Applications

(A) Requests for PEG capacity and applications that will serve statewide purposes must be submitted by the statewide AMO to the cable operators and will be considered by the Commission after consultation with all licensed cable operators.

(B) Request for statewide services or applications shall include a description of:

- (1) The community need and how that need is met by the request;
- (2) The use or functionality for which the capacity will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace;
- (3) The equipment and facilities necessary to implement the request;
- (4) The estimated cost of the functionality and whether such costs will be borne by cable operators and cable subscribers;
- (5) The budget and source of funds necessary to sustain the functionality;
- (6) How the use or functionality can be sustained, financially and operationally, by the AMO, including commitments made by others to support the request;
- (7) How this request is consistent with needs of the state, and whether the services would complement or replace the services currently provided by local AMOs;
- (8) The management structure necessary to support the request;
- (9) Evidence of coordination with local AMOs, if necessary;
- (10) Guidelines for management and public use of the capacity and/or application;
- (11) Other reasonable materials deemed necessary by the Commission.

8.427 (reserved)

8.428 Notice

The entity responsible for administering and operating a public, or a public access channel combined with an educational or governmental access channel, shall provide notice to the general public of the opportunity to use such channel on the community bulletin board (subject to section 8.403(e)). Notices shall include the name, address, and telephone number of the entity to be contacted for use of the channel. All access programming shall be identified as such.

8.429 Time

Channel time shall be scheduled on the public access channel by the entity responsible for the management thereof on a non-discriminatory basis; except that the entity may prevent any single user, or type of user on a combined PEG access channel, from monopolizing the programming time available.

8.430 Local Priority

Local presentations or programming produced through local use should be given preferred status on Public, Educational, and Governmental access channels in the event of competing requests for channel time, except for any state-wide PEG access channel.

8.431 Usage Charges

Neither the cable operator nor an AMO may charge any person for channel time for PEG access programming.

8.432 Control of Content

The following guidelines shall apply to editorial control of PEG access content:

- (A) Municipality. A municipality shall not exercise any editorial control over any use by the public of a PEG access channel; but if the municipality appoints a member of an AMO's board, that member may take part in decisions of the AMO. A government AMO may control the content of programming that it produces.
- (B) Public Access Channel. An AMO shall not exercise any editorial control over the use of the public access channel except that it is encouraged to promulgate non-discriminatory rules that establish late-night safe-harbor hours, parental warnings, or other methods that advise viewers with regard to indecent programming or other programming that may be unsuitable for children.
- (C) Educational and Government Access Channels. Access entities that manage an educational or government access channel may promulgate rules for the use of that channel that conform to the policies of the institutions for which it administers and manages the channel. A government/education AMO may set guidelines for PEG content but may not infringe upon the free speech rights of the participating speakers.
- (D) Editorial control by operator. Except to the extent provided by 47 U.S.C. § 531(e) and 47 C.F.R. § 76.702, the cable television operator shall not exercise any editorial control over any public, educational, or governmental use of capacity designated for PEG purposes. PEG content programmed by an AMO is not owned by the cable operator, except in those instances where such content has been copyrighted by the cable operator.

8.433 Use by Operator

- (A) Where no AMO exists, a cable operator shall be permitted to use PEG capacity or applications for the purpose of promoting PEG use or airing PEG content subject to the programming guidelines of the channel.

- (B) Where an AMO has been designated to provide PEG services, a cable operator shall be permitted to use PEG capacity or applications with the permission of the AMO.

8.434 Certificate of Public Good Conditions.

- (A) Interconnection of Cable Systems. The Commission may require that a cable company, as a condition of a certificate of public good, enable interconnection of their systems, directly or indirectly, with cable systems throughout Vermont, to provide transmission of PEG access programming between cable systems in the state regardless of the identity of the cable operator.
- (B) Institutional Networks, Condition of Certificate of Public Good. Subject to federal law, the Commission may require that a cable company, as a condition of a certificate of public good, make available an institutional network linking state or local government buildings, educational institutions, studios of educational or governmental access administrative entities within its franchise area, or interconnection points for institutional networks serving neighboring franchise areas.

8.435 Waivers, Rulings, and Disputes

- (A) Availability of Waivers. A cable television operator, a municipality, or an entity designated to administer a PEG access service may seek a waiver of one or more provisions of this rule by application to the Commission.
- (B) Declaratory Rulings by Commission. Any interested person may seek a ruling from the Commission concerning the applicability or implementation of any provision of this section or any provision of a certificate concerning PEG access.
- (C) Disputes and Remedies. Any dispute related to contracts or requirements outlined in this rule may be heard by the Commission.
- (D) No editorial control. Notwithstanding the above, the Commission shall not grant any waiver or ruling, or enter any order that constitutes the exercise of editorial control over the content of public access programming.

8.500 Regulation of Rates: Procedures to be used in the Investigation or Setting of Rates

8.510 Federal and State Rules

In any proceeding to set or investigate the rates charged by a cable television system, if the Commission has been certified by the Federal Communications Commission to regulate such rates, the Commission will act in a manner consistent with the Rules of the Federal Communications Commission and with Federal law. The Commission will also act in a manner consistent with Vermont law and precedent and with these rules, to the extent they are not preempted or superseded.



STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Investigation concerning matters related to)
Vermont Public Utility Commission Rule)
8.313 and the line extension policies and) Case No. 19-4625-INV
tariffs of cable operators in Vermont)

**INITIAL BRIEF OF THE CABLE OPERATORS IN RESPONSE TO THE
JUNE 22, 2021 ORDER OF THE VERMONT PUBLIC UTILITY COMMISSION**

Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (“Comcast”) and Spectrum Northeast, LLC (“Charter”) (collectively, the “Cable Operators”) appreciate the opportunity to brief the Vermont Public Utility Commission (“Commission”), pursuant to the Commission’s Order entered on June 22, 2021 (“Order”) in the above-captioned proceeding.¹ The Order requests briefing on: (1) the scope of the Commission’s authority to determine whether certain “network upgrades” may be included in the calculation of contributions in aid of construction (“CIAC”);² (2) line extensions policies used by other franchising authorities and how those authorities treat the issue of network upgrades; and (3) whether the Commission should reevaluate the inputs to the “H” factor calculation used by cable operators when calculating a CIAC.³ Each of these issues is addressed below.

¹ The Commission granted a request by the Department of Public Service to extend the filing date for initial briefs to August 24, 2021 and reply briefs to September 14, 2021. *See Procedural Order Re: Briefing Schedule* (July 26, 2021).

² *See* Commission Rule 8.313(B).

³ *See id.*



I. COMPLEX LINE EXTENSIONS

A. Understanding Complex Line Extensions

Modern cable systems typically utilize a hybrid fiber-coaxial network architecture to deliver the advanced digital video services Vermont cable subscribers demand and enjoy, including the two-way and Internet protocol (“IP”) delivery technologies that play an important role in the provision of HD channels, digital video recording (“DVR”) capability, on-demand programming, and other modern cable service features. For Comcast, the use of such advanced technologies is also necessary to support requirements related to public, educational, and governmental channels that Comcast must carry under its Certificate of Public Good.⁴

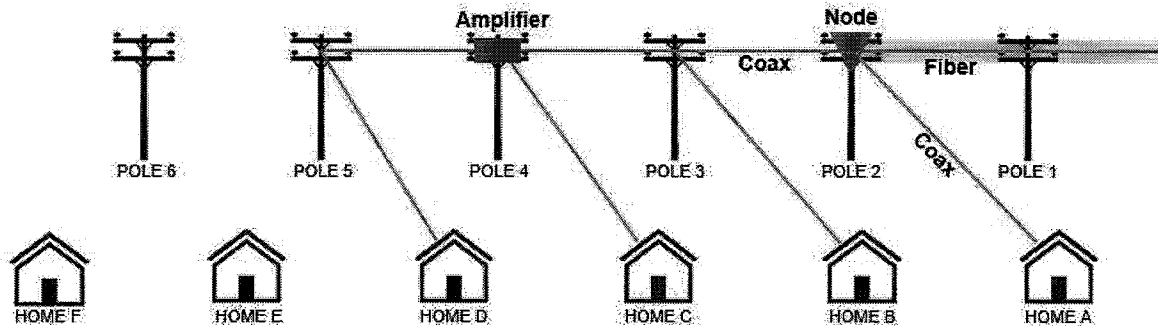
Where the necessary network architecture is in close proximity to unserved homes, extending a cable system to provide these advanced digital cable services to new locations may be possible using a simple coaxial cable line extension. In Vermont, however, cable systems are largely built out in most densely populated locations and additional line extensions commonly involve more remote areas of the state where service addresses are much farther apart. For such locations, more complex line extensions – including additional fiber, amplifiers, power supplies, line extenders, and nodes – are usually necessary to provide adequate service.

Figure 1 below provides a greatly simplified (and not at all to scale) illustration of basic line extension architecture.

⁴ See, e.g., *In Re: Renewal of the Certificate of Public Good of Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, d/b/a Comcast, expiring on December 29, 2016, to provide cable television service*, Order Approving Amended Certificate of Public Good, Docket No. 8301, at 2-3 (Sept. 27, 2019) (“2019 CPG Amendment Order”).



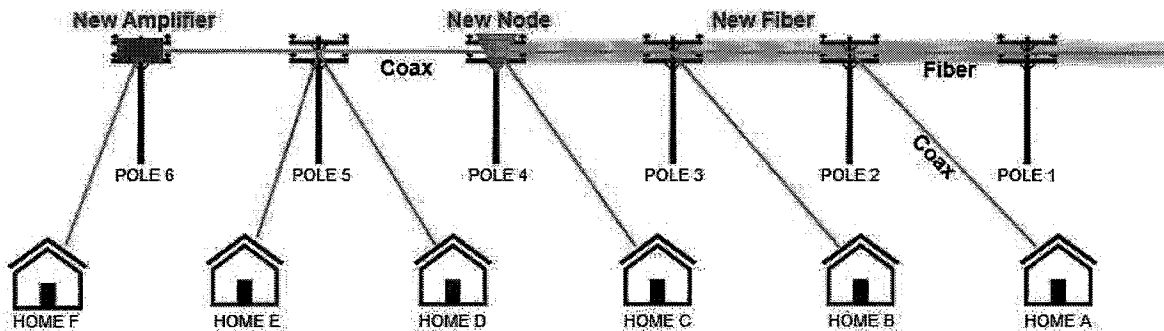
Figure 1



In this depicted situation, depending on the distances involved and myriad other factors the cable operator must evaluate, the existing signal at Pole 5 may be sufficient to allow cable service to be extended to Home E using a simple coaxial line extension from Pole 5. To extend service to Home F, however, additional tasks may be required to provide adequate service, such as extending fiber beyond Pole 2 and adding new nodes, amplifiers, or other equipment or electronics.

Figure 2 illustrates the more complex line extension necessary to serve Home F in this scenario.

Figure 2



As this depiction shows, to ensure an adequate signal at Home F, the cable operator must (1) extend fiber from Pole 2 to Pole 4, (2) install a new node at Pole 4, and (3) install a new amplifier at Pole 6. Such additional network architecture is commonly required in rural and

other low-density areas of Vermont, where homes are generally further apart and distant from any usable pole, to ensure adequate cable service to a new customer's home.⁵

The Order refers to the facilities, equipment, and labor required for these more complex line extensions – i.e., beyond the cost of the simple coaxial line extension itself – as “network upgrades.” But that is a misnomer. *None of these more complex line extensions improves or “upgrades” the cable service delivered to already-served Homes A through D or any other existing on-network locations.* This additional network architecture is required solely to enable *the new location* to receive the same level of service as already-served homes. *But for* the line extension request, the cable operator would not incur these costs. And this additional cable network architecture is fundamentally different from an electric utility adding a substation to serve new homes, which – as described by Commission staff during the May 24, 2021 workshop held in this proceeding – enhances the electric grid for all utility customers.⁶

B. Limits on the Commission's Line Extension Authority

The Commission's authority over cable line extensions derives from 30 V.S.A. § 517(e), which only authorizes line extension requirements to the extent they are reasonable under the circumstances.⁷ In exercising this authority, the Commission must consider, among other things,

⁵ To reiterate, these examples are greatly simplified and for illustrative purposes only. In Vermont, several miles of new fiber is often needed to support a line extension; and, as noted above, many complex line extensions involve more network architecture than just new fiber, a new node, and a new amplifier.

⁶ See Transcript of Workshop Held Via GoToMeeting Video Conference, *Investigation concerning matters related to Vermont Public Utility Commission Rule 8.313 and the line extension policies and tariffs of cable operators in Vermont*, Case No. 19-4625-INV, at 16 (May 24, 2021, 1:00 PM) (“May Workshop Transcript”) (remarks of Staff Attorney Jake Marren) (explaining that “the building [of] the substation did overall have benefits to [Vermont Electric Cooperative (“VEC”)] systems and provide a sort of ancillary benefits to all VEC customers . . .”). For many regulated electric utilities, the costs of new substations are included in the rate setting process and collected from all customers.

⁷ 30 V.S.A. § 517(e) (“Notwithstanding any other provision of this section, the Commission may require the construction of cable television line extensions when a company receives a bona fide request for service from a *reasonable number* of verified customers or with *reasonable contributions in aid of construction* from customers.”) (emphasis added).

“the convergence of technologies and the availability of different modes of delivery for video programming and broadband services,” “fair treatment for competing providers of services,” and “the public interest in making a broad range of cable television services available to customers.”⁸

These constraints on the Commission’s line extension authority align with those imposed by the federal Cable Act. As the Federal Communications Commission (“FCC”) has ruled, under section 621(a)(4)(A) of the Cable Act, franchising authorities may only require line extensions “[i]n circumstances when it is reasonable for [local franchising authorities (‘LFAs’)] to require cable operators to build out their networks in accordance with a specific plan,” and “LFAs must give franchisees a reasonable period of time to comply with those requirements.”⁹ Section 621(a)(4)(A) does not permit universal service-type requirements and instead “is a limit on franchising authorities that seek to impose such obligations.”¹⁰ To ensure compliance with these federal mandates, section 636(c) of the Cable Act expressly preempts any State or local law or regulation (or any provision of any franchise) that is inconsistent with any provision of the Communications Act, including the Cable Act.¹¹

The Commission’s line extension authority is also limited to *cable television service*. It does not extend to other services, such as broadband Internet access. Under Vermont law, the

⁸ Act No. 79, An Act Relating to Establishing the Vermont Telecommunications Authority to Advance Broadband and Wireless Communications Infrastructure Throughout the State, § 5(b) (eff. June 9, 2007), <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/DOCS/2008/ACTS/ACT079.HTM>.

⁹ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 5101 ¶ 84 (2007) (citing 47 U.S.C. § 541(a)(4)(A)); *see also id.* ¶ 85 (explaining that this interpretation “is consistent with relevant jurisprudence and the legislative history”) (citing *Americable Int’l, Inc. v. Dep’t of Navy*, 129 F.3d 1271, 1274-75 (D.C. Cir. 1997), *as amended* (Jan. 30, 1998)).

¹⁰ *Id.* ¶ 85 (noting that Congress “explicitly rejected” a universal service build-out requirement in enacting the Cable Act).

¹¹ 47 U.S.C. § 556(c). The U.S. District Court for the District of Vermont has confirmed that the intent of Vermont law is “to implement the state’s authority to regulate cable television systems to the full extent allowed under federal law.” *Comcast of Conn./Ga./Mass./N.H./N.Y./N.C./Va./Vt., LLC v. Vt. Pub. Util. Comm’n*, No. 5:17-cv-161, slip op. at 21-22 n.14 (D. Vt. Sept. 20, 2018) (internal quotation marks and citation omitted).



Commission can only require reasonable “cable television line extensions” to meet bona fide requests for cable television service.¹² And federal law expressly prohibits state and local franchising authorities from regulating broadband and other non-cable services cable operators may provide using their cable systems.¹³ Accordingly, and as Vermont’s Attorney General has acknowledged,¹⁴ the VPUC has no authority to order line extensions where the purpose is to expand broadband access, rather than access to cable service.¹⁵ Although the cable operators share the Commission’s interest in extending broadband services to more Vermont families, the Commission has no authority to order cable television line extensions for this purpose.

Finally, federal law limits the Commission’s exercise of its cable television line extension authority in two additional ways that are relevant here. First, the Cable Act prohibits the Commission from regulating cable service rates now that the FCC has determined that cable

¹² 30 V.S.A. § 517(e).

¹³ 47 U.S.C. §§ 544(b)(1) (prohibiting franchising authorities from regulating information services), 556(c); *City of Eugene v. FCC*, 998 F.3d 701, 715-16 (6th Cir. 2021); *see also* 47 U.S.C. § 541(b)(3)(B) (prohibiting franchising authorities from regulating any “telecommunications service” provided by franchised cable operators).

¹⁴ *See Comcast of Conn./Ga./Mass./N.H./N.Y./N.C./Va./Vt., LLC v. Vt. Pub. Util. Comm’n*, Case No. 5:17-cv-161, Transcript of Motion Hearing, at 9 (Apr. 16, 2018) (acknowledging that that it would “conflict with the Cable Act itself” for the VPUC to “impose[] [a] line extension requirement to in some way maximize the provision of broadband internet access service”).

¹⁵ *Compare* Vt. Dep’t of Pub. Serv. Response to Commission Information Request, *Investigation concerning matters related to Vermont Public Utility Commission Rule 8.313 and the line extension policies and tariffs of cable operators in Vermont*, Case No. 19-4625-INV, at 2 (Jan. 22, 2021) (“DPS January 2021 Comments”) (discussing, in the context of possible changes to the *cable* line extension rules, “the COVID-19 pandemic that has further underscored the need for universal *broadband* in the state,” and noting that “the Department’s role in the line extension process has greatly increased” due to this need) (emphasis added), *with* Transcript of Workshop Held Via GoToMeeting Video Conference, *Investigation concerning matters related to Vermont Public Utility Commission Rule 8.313 and the line extension policies and tariffs of cable operators in Vermont*, Case No. 19-4625-INV, at 43 (Mar. 16, 2021, 9:30 AM) (remarks of Richard Pecor) (stressing that “access to the internet” is “a vital concern,” but acknowledging that broadband is “not regulated by the State”).



operators in Vermont (and nationwide) are presumptively subject to “effective competition.”¹⁶

And second, the Commission may not regulate cable operators as utilities or common carriers.¹⁷

C. The Commission Lacks Authority to Prohibit Including Complex Line Extension Costs in a CIAC.

The Commission would exceed its authority if it were to attempt to prohibit cable operators from including their but-for line extension costs in the CIAC, including the cost of any so-called “network upgrades” necessary to provide adequate cable service over extended lines. As explained above, the additional network architecture *necessary* to provide adequate cable service to a new customer does not improve the cable service for, or confer any other benefits on, existing cable customers. *But for* the line-extension request to serve the new customer, the cable operator would not incur such costs. Therefore, it would not be “reasonable” under 30 V.S.A. § 517(e) or the Cable Act to prohibit a cable operator from including the cost of this necessary equipment and labor in the CIAC.

The Department of Public Service (“DPS”) has asserted (without support or further explanation) that so-called network upgrades “fall outside the scope of the[] line extension request.”¹⁸ But that is plainly incorrect. As shown above, the additional network architecture at issue does not upgrade or improve the cable network for existing customers. It is *only* necessary to accomplish the cable television line extension itself. Without this additional architecture, the

¹⁶ 47 U.S.C. § 543(a)(2); *Amendment to the Commission’s Rules Concerning Effective Competition*, Report and Order, 30 FCC Rcd. 6574 ¶ 1 (2015).

¹⁷ 47 U.S.C. § 541(c) (“Any cable system *shall not be subject to regulation as a common carrier or utility* by reason of providing any cable service.”) (emphasis added).

¹⁸ Vt. Dep’t of Pub. Serv. Post-Workshop Comments, *Investigation concerning matters related to Vermont Public Utility Commission Rule 8.313 and the line extension policies and tariffs of cable operators in Vermont*, Case No. 19-4625-INV, at 4 (May 3, 2021).



mere extension of coaxial cable to the new customer's premises would serve no purpose because the customer would not be able to receive adequate cable service.

Similarly, at the recent workshop, a Commission Staff Attorney suggested that the Commission might require a cable operator to "socialize[]" the costs of so-called network upgrades among its entire subscriber base, rather than allocating those costs on a but-for basis to the new customers who would actually benefit from the line extension.¹⁹ The Staff Attorney likened this regulatory approach to the way the Commission has imposed price controls on certain electric utilities. Unlike electric utilities, however, the Commission lacks authority to impose such a requirement on cable operators. Cable operators are not utilities and are not regulated as such under Vermont law. In any event, as noted above, federal law expressly prohibits such regulation of cable operators.²⁰

The effect of such a price control requirement would also constitute unlawful cable rate regulation. It would directly interfere with a cable operator's charges to both new and existing customers for cable service. This proposed regulatory approach would therefore violate the Cable Act, which expressly preempts rate regulation of Vermont cable systems.²¹ To be sure, the effect of such price controls on cable customer rates would be in near constant flux depending on the number and types of cable television line extensions requests and related requirements imposed on the cable operator at a particular time.

¹⁹ May Workshop Transcript at 16-17.

²⁰ 47 U.S.C. § 541(c); *see, e.g., MediaOne Grp., Inc. v. Cnty. of Henrico*, 97 F. Supp. 2d 712, 715-16 (E.D. Va. 2000) (holding that an ordinance imposing utility obligations on a cable operator was preempted by 47 U.S.C. § 541(c)); *Westmarc Commc'ns, Inc. v. Conn. Dep't of Pub. Util. Control*, 807 F. Supp. 876, 884-85 (D. Conn. 1990) (same).

²¹ 47 U.S.C. § 543(a)(2).

It is well established that any state or local rule that has the practical effect of dictating what rates cable operators may or may not charge constitutes rate regulation that is impermissible in areas subject to effective competition, such as Vermont. For example, in *City of Burlington v. Mountain Cable Co.*, the Supreme Court of Vermont held that a contract between a cable operator and a city that limited the cable operator's discretion to set its own rates constituted rate regulation and was therefore preempted, as it "would offend one of the essential purposes of the Cable Act" – namely, prohibiting the regulation of cable rates.²² Similarly, in *Westmarc Communications, Inc. v. Connecticut Department of Public Utility Control*, the federal court held that an order prohibiting the cable operator from adjusting its rates for cable service to offset a fine imposed by a state public utility commission constituted preempted rate regulation, because the prohibition directly affected the monthly rates the cable operator could charge to customers.²³ Under these principles, which courts have repeatedly followed,²⁴ the Commission lacks authority to require that all existing customers share in the cost of a cable television line extension, regardless of the network architecture that may be needed to enable adequate cable service to a new customer.

²² 559 A.2d 153, 155 (Vt. 1988)

²³ 807 F. Supp. at 886.

²⁴ See, e.g., *Town of Norwood v. Adams-Russell Co.*, 549 N.E.2d 1115, 1119 (Mass. 1990) (holding that a contract prohibiting a cable operator from raising its rates constituted preempted rate regulation, because to hold otherwise would "permit the circumvention of the Cable Act"); *Storer Cable Commc'ns v. City of Montgomery*, 806 F. Supp. 1518, 1544 (M.D. Ala. 1992) (preempting as impermissible rate regulation a law that forbade cable operators from setting rates that are deemed so low as to diminish competition, such that the cable operator was unable "to lower its rates in one part of the city"); *Spectrum Ne. LLC v. Frey*, 496 F. Supp. 3d 507, 513 (D. Me. 2020) (holding that a law requiring prorated cable bills constitutes preempted rate regulation, because it "alters the rates that [the cable operator] charges, at least for [a] subset of subscribers," and "forces [the cable operator] to depart from its usual monthly rate"); *Altice USA, Inc. v. Fiordaliso*, No. 319CV21371BRMZNQ, 2021 WL 1138152, at *4–5 (D.N.J. Mar. 23, 2021) (holding that a requirement to prorate cable bills was preempted, because "any . . . statute that regulates the rates for the provision of . . . cable service is expressly preempted").



Besides violating the Cable Act, this form of rate regulation would also be bad public policy. It would unfairly require existing cable customers to pay more for the exact same service they receive today, distorting the competitive landscape and likely causing the loss of cable customers to the rapidly growing number of competing video service providers in Vermont. It could also increase complaints and call center traffic due to customer confusion about the cause of such cable rate increases.

For these reasons, the Commission lacks authority to prohibit cable operators from including the costs of necessary network architecture (i.e., so-called network upgrades) from the CIAC. The Commission should therefore reject such regulatory proposals in this proceeding.

D. Line Extension Policies Used by Other Franchising Authorities

For background, line extension requirements are generally negotiated between the cable operator and the LFA during the grant or renewal of a cable franchise. The cable operator and the LFA may discuss unserved areas where there is bona fide demand for cable television service. The cable operator can then evaluate whether it is both reasonable and feasible to extend service and, if so, submit a proposal for doing so. Both the cable operator and the LFA may need to make compromises in order to reach agreement. The final franchise agreement thus typically contains mutually agreed upon provisions that consider future cable-related needs and interests, taking into account the cost of meeting such needs and interests.²⁵

Because franchise agreements themselves do not provide insight into the LFA's ascertainment process or the compromises that led to the final agreement, they must be considered in light of those limitations. Nonetheless, compared to cost sharing formulas in other jurisdictions, the CIAC formula in the current Commission cable television line extension rule

²⁵ See 47 U.S.C. § 546.

unquestionably apportions a higher percentage of the construction costs to cable operators. Other jurisdictions frequently adopt no density requirement or a requirement of 35 homes per mile. By contrast, Vermont has adopted a density requirement of 16 verified subscribers (as opposed to homes) per mile. Comcast's renewal CPG also requires Comcast to build 350 miles of line extensions in uncabled areas during the franchise term,²⁶ irrespective of density considerations. This blanket requirement is likewise highly atypical compared to cable franchises issued in other jurisdictions.

For additional network architecture necessary to serve a new customer (so-called network upgrades) in particular, cable franchises generally define "construction costs" to include the cost of all "materials, labor and easements" required, and the franchises also include in the CIAC all "construction *and other* costs" the cable operator must incur.²⁷ This language is commonly – and correctly – construed to cover all but-for costs for a cable television line extension, including any additional network architecture necessary to provide adequate cable service to a residence over the extended line.

Some recent franchise agreements more explicitly include the costs of such additional network architecture in the CIAC. For example, franchise agreements that Comcast negotiated

²⁶ 2019 CPG Amendment Order at 2.

²⁷ E.g., Bellevue, Washington Resolution No. 7040, § 13.1(B), <https://mrsc.org/getmedia/3A8E0E67-A01C-452C-A52B-3CF24AB616A0/B44r7040.aspx> (emphasis added); *see also* Longmont, Colorado Municipal Code § 6.26.1100, https://library.municode.com/co/longmont/codes/code_of_ordinances?nodeId=PTIICOOR_TIT6BUTALIRE_CH6_26CATEFR_IICATEFRAG_12SEAVINSESCPUBU_6.26.1100SEAV (same); Rifle, Colorado Municipal Code § 5-1-545, https://library.municode.com/co/rifle/codes/charter_and_municipal_code?nodeId=CH5FRCOSY_ARTICATESYFR (same); Burlington, Iowa, Municipal Code § 114.16, https://library.municode.com/ia/burlington/codes/code_of_ordinances?nodeId=FRANCHISES_OTHER_SERVICE_S_CH114CAFRAG_114.05FRFE (same).

with nine municipalities in Minnesota earlier this year all define the “Total Construction Costs” that may be included in the CIAC as follows:

“Total Construction Costs” (“TCC”) is defined as the actual turnkey cost to construct the entire extension from the existing trunk and distribution system that is required to serve the Person(s) requesting Cable Service *including electronics, pole make-ready charges, labor and reasonable associated overhead, but not the cost of the Drop. TCC shall include existing plant modifications needed to support the extension (such as node splits and fiber extensions).*²⁸

A separate provision in the same franchises further specifies that the cable operator “is not required to build out to any home . . . unless, for that home, there is a secure commitment to fund *all construction costs (including the node splits and fiber extensions)* in excess of” a fixed amount per home that is denominated the cable operator’s share of the build.²⁹ These more recent franchise provisions codify the general expectation and practice that the but-for costs of such additional network architecture are properly included in the CIAC where necessary for the line extension to deliver adequate cable service to newly served homes.

II. CHANGES TO “H” FACTOR INPUTS

The “H” factor is part of a build-out formula that has little, if any, continuing relevance in Vermont. As noted above, the current maximum value of 16 for H is already much lower than the applicable density thresholds in most other jurisdictions. The Commission also requires Comcast to perform its own annual calculations for H. Those calculations (which contain potentially confidential information and have thus been filed under seal) yield values for H that are *significantly higher* than 16 and much more consistent with the density thresholds applied in other jurisdictions. There is thus little point to re-evaluating this factor in the current proceeding.

²⁸ E.g., City of Birchwood Village, Minnesota, Ordinance Granting a Cable Television Franchise to Comcast of Minnesota, Inc., at 18 (Apr. 1, 2021), https://drive.google.com/drive/folders/13VXIENejd_YTd5ujM0JOYxXLDheJsEDv?usp=sharing (emphasis added).

²⁹ *Id.* at A-3.

Tinkering with inputs to the H factor or other aspects of the formula would not make new cable system buildouts economical, even if those changes yielded a substantially (and artificially) *lower* value for H.

Instead, the Commission should focus on other proven ways to extend cable television plant to unserved areas. DPS-administered programs like the Line Extension Customer Assistance Program (“LECAP”)³⁰ are a far more effective approach for making it economically feasible to connect unserved homes in Vermont. As DPS has noted in this proceeding, in 2020, LECAP provided grants for over 200 locations, and construction on those projects was already 90% complete as of January 2021.³¹ DPS is currently accepting applications for LECAP reimbursement for 2021.³² Similarly, in 2015, DPS assumed the functions of the Vermont Telecommunications Authority in promoting the expansion of telecommunications and broadband infrastructure in the State. DPS created a Connectivity Initiative program that has provided grants to connect areas of Vermont that lack access to broadband Internet (currently defined by the FCC as 25/3 Mbps).³³ For example, Comcast received program funding that resulted in the expansion of its cable system network to 114 homes and businesses in Cavendish. These kind of programs address head-on the realities of the high cost of line extensions for many remaining areas of Vermont by helping to supply the funding needed to make those buildouts happen.

³⁰ See Vt. Dep’t of Pub. Serv., *Vermont COVID-19 Internet Line Extension Customer Assistance Program 2021*, <https://publicservice.vermont.gov/content/vermont-covid-19-line-extension-customer-assistance-program-2021> (updated July 23, 2021) (“LECAP Guidance”).

³¹ DPS January 2021 Comments at 3 & n.2.

³² LECAP Guidance.

³³ Vt. Dep’t of Pub. Serv., *Connectivity Initiative*, <https://publicservice.vermont.gov/content/connectivity-initiative-0> (last visited Aug. 23, 2021).

As the Commission is no doubt aware, new funding is already becoming available for LECAP and similar projects in Vermont. State and local governments are set to receive funding under the Coronavirus State and Local Fiscal Recovery Funds authorized by the American Rescue Plan Act, which allocates \$220 billion to states and \$130 billion to localities, including for broadband infrastructure projects.³⁴ The same legislation also authorized an additional \$10 billion for state governments under the Coronavirus Capital Projects Fund.³⁵ Additional federal funding may also become available in connection with federal infrastructure legislation that has been passed by the Senate and is expected to become law later this year.³⁶

To connect previously unserved homes, therefore, the Commission should focus its efforts on these important programs in cooperation with the Cable Operators. This cooperative approach is already proven to make a meaningful difference in narrowing the digital divide. Spending Commission and cable operator time and resources on adjustments to the increasingly anachronistic H factor formula will not.

CONCLUSION

For the foregoing reasons, the Cable Operators urge the Commission to: (1) act within the scope of its lawful authority by recognizing that cable operators appropriately include the but-for costs of additional architecture (so-called network upgrades) in a CIAC where necessary for the provision of adequate cable service to newly served homes; (2) refrain from making

³⁴ See *Coronavirus State and Local Fiscal Recovery Funds*, U.S. Dep't of the Treasury, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds> (last visited Aug. 23, 2021).

³⁵ See *Coronavirus Capital Projects Fund*, U.S. Dep't of the Treasury, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund> (last visited Aug. 23, 2021).

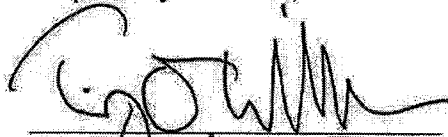
³⁶ See Emily Cochrane, *Senate Passes \$1 Trillion Infrastructure Bill, Handing Biden a Bipartisan Win*, N.Y. Times (Aug. 11, 2021), <https://www.nytimes.com/2021/08/10/us/politics/infrastructure-bill-passes.html>.

changes to the H factor calculation; and (3) focus its cable television line extension efforts on LECAP and similar programs in cooperation with the Cable Operators.



**PRIVILEGED & CONFIDENTIAL
ATTORNEY WORK PRODUCT**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Wilkerson", written over a horizontal line.

Timothy O. Wilkerson, President
New England Cable and Telecommunications
Association, Inc.
101 Federal Street, Suite 1900
Boston, MA 02110
(781) 843-3418

August 24, 2021

PCL6 ERROR - Insufficient Memory

POSITION : 0x5678fb (5667067)

SYSTEM : eHeapBand

LINE : 5952

VERSION : PCL6 5.98 09-23-2009



Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Utility Commission

Rule 8.000
Page 1 of 33

8.000 CABLE TELEVISION

8.100 Definitions

For purposes of this rule, the following definitions apply. For terms not defined here, refer to the federal cable act (Title 47 U.S.C. § 521 et seq.).

- (A) Access channel: a channel made available by an operator that is used to cablecast non-commercial programming created or acquired for public, educational, or governmental purposes pursuant to this Rule. Access channels are sometimes referred to as public, educational, and government channels, or "PEG" channels.
- (B) Access management organization, or AMO: a nonprofit entity apart from the cable television operator designated to receive PEG access support through the cable operator and contracted to manage public, educational, and governmental access channels and facilities for non-commercial purposes.
- (C) Activated channel: a channel engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use.
- (D) Basic cable service: any service tier that includes the retransmission of local television broadcast signals (may also include other signals).
- (E) Commission: the Vermont Public Utility Commission.
- (F) Billing dispute: a disagreement between a subscriber and cable television company concerning:
 - (1) credits for payments made by the subscriber to the cable television company;
 - (2) credit refund for service outage;
 - (3) errors in billing amount; or
 - (4) assessment of non-recurring charges such as disconnection fees, service calls, and late charges.
- (G) Business office: the office of the cable television company where a subscriber or others may make inquiries regarding bills, line extensions, and company rules and regulations; request service; pay bills, either in person or by mail; or bring disputes and complaints.
- (H) Cable company: as defined in 30 V.S.A. § 501, a person, firm, partnership, corporation, association, joint stock association, or company which owns or operates a cable system in this state, except non-profits systems serving fewer than 100 subscribers.
- (I) Cable operator: the operator of a cable system, also referred to as "operator."
- (J) Cable service area, or service area: a geographic area within which a cable system has the right to provide cable service to the public. Such boundaries may include areas into which extension of service is not immediately feasible but may be in the future.

- (K) Cable television system, or cable system: a facility meeting the definition in 30 V.S.A. § 501 or 47U.S.C. § 522 and subject to the regulation of the Commission.
- (L) Capacity: portion of electromagnetic frequency spectrum used for commercial and public purposes.
- (M) Channel or cable channel: a portion of the electromagnetic frequency spectrum that is used in a cable system and which is capable of delivering a television channel as that term is defined by the Federal Communication Commission regulations.
- (N) Collection charge: a fee or charge imposed upon a subscriber by a cable television company for its efforts at collecting or attempting to collect a past due account.
- (O) Department: the Vermont Department of Public Service.
- (P) Educational access channel: an access channel designated for non-commercial educational purposes.
- (Q) Governmental access channel: an access channel designated for non-commercial civic purposes.
- (R) Institutional network or I-Net: a communication network that is constructed or maintained by the cable operator and that is made available to educational or governmental institutions.
- (S) Late charge: a charge that is added to a cable television subscriber's account or bill for non-payment of a previously due account.
- (T) Leased access: use of the Leased Access Channel.
- (U) Leased access channel: a channel, available for a charge, for commercial or non-commercial purposes.
- (V) Live origination program: PEG content cablecast from cable company head end or remote origination site while it is taking place.
- (W) Local origination: the creation of programming cablecast by the cable operator.
- (X) Local presentation: request by an institution or individual living or working within the cable service area to transmit PEG content using cable channels or capacity, whether or not that PEG content was produced using PEG access facilities.
- (Y) Local use: non-commercial use of PEG channels and capacity by residents of the State of Vermont, including schools and not-for-profit educational institutions, and local and state governments or agencies thereof.
- (Z) PEG: Public, educational, governmental.
- (AA) PEG content: any non-commercial voice, video, or information made available by members of the public, educational institutions, local or state government, or an AMO and distributed through PEG channels or cable system capacity set aside for such purposes.

- (BB) PEG facilities: includes equipment and studio space necessary for community members to produce, post-produce and distribute any PEG content from the cable company head end and remote origination sites to the system's cable subscribers.
- (CC) PEG AMO service territory: the area for which the AMO has responsibility, and upon whose gross annual revenues the cable operator bases the calculation of that area's PEG AMO's annual support.
- (DD) Premium channel or service: an optional channel to which a customer may subscribe for an additional monthly charge, e.g., HBO or Showtime.
- (EE) Promotional offerings: special discounted service offerings that are made available or promoted for no more than six months.
- (FF) Public access channel: an access channel designated for non-commercial use by the public on a first come, first served basis.
- (GG) Remote origination site: a source of PEG content that is physically some distance from, but configured to transmit signal to, the cable company headend for distribution over the cable system.
- (HH) Service outage: a loss of video or audio signals on one half or more of the basic channels or on one or more premium channels which is not caused by the subscriber's television receiver or by the subscriber.
- (II) Service tier: a group of channels sold as a package.

8.200 Certificates of Public Good

8.210 Petitions (other than for renewal)

8.211 Form and content

The petition shall be on a form specified by the Commission (available from the Commission and on the Commission's web site) and shall contain at a minimum the information required by the instructions to the petition form.

8.212 Service of petitions

When a petition is filed with the Commission and the Department of Public Service for a certificate of public good pursuant to 30 V.S.A. § 503, or to alter, extend, or abandon a cable system service area, a copy of the petition and its supporting documents shall be served upon the clerk of each municipality encompassed in the proposed service area. In addition, a copy of the petition without its supporting documentation shall be served upon:

- (A) The superintendent of any school system encompassed in the proposed or affected service area.
- (B) The clerk of each municipality adjacent to the proposed or affected service area.

Note that a complete application must be filed both at the Commission and at the Department.

8.213 Hearings

The Commission shall set petitions relating to applications for certificates of public good for



hearing (if a hearing is required under 30 V.S.A. § 231) within a reasonable time. If hearings are held, at least one hearing shall be held in the county of the proposed service area to afford opportunity for public comment.

8.214 Criteria

In determining whether to approve or reject a petition requesting a certificate of public good for a cable system service area, the Commission shall consider the following:

- (A) The criteria of 30 V.S.A. Chapter 13.
- (B) The criteria known as the EMCO criteria:
 - (1) financial soundness and stability, both of the applicant generally and the particular proposal;
 - (2) the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access;
 - (3) the commitment to a construction and in-service schedule;
 - (4) the experience and ability of the applicant to run and manage a cable tv system;
 - (5) the rates proposed to be charged to customers;
 - (6) consumer policies, particularly re: complaints and problems;
 - (7) availability of service to maximum number of residences;
 - (8) the quality of the engineering and materials used in the system;
 - (9) logical fit with neighboring systems.

8.215 Approval

If, after hearing (if required) and investigation, the Commission finds pursuant to the above criteria that approval of the applicant's proposal to provide cable service to the proposed area would promote the general good of the state, it shall issue a certificate of public good to such applicant.

8.220 Termination

8.221 Transfer of certificates

A certificate of public good is not transferable and may not be sold, pledged, mortgaged, or otherwise alienated other than with the approval of the Commission. When permission is given by the Commission for the sale and purchase of assets of a cable company pursuant to 30 V.S.A. §§ 102, 109, 231, or 232, a new certificate shall be issued to the purchaser.

8.222 Revocation or alteration for cause

- (A) The Commission may, after hearing, cancel, revoke, suspend, or alter any certificate for the following causes:
 - (1) Willful violation of any provision of Chapter 13 of Title 30.
 - (2) Willful failure of the certificate holder to comply with any rule, regulation, or order of the Commission, including the express terms of the certificate of public good, unless such rule, regulation, or order has been stayed by order of the Commission or by the Supreme Court.
 - (3) Failure, without written permission of the Commission, to commence operations according to the construction and commencement of service schedule made a condition of the certificate of public good.

- (4) After commencing operations, failure (without good cause shown) to render adequate service for a continuous period exceeding thirty days.
- (B) The burden of proof in a revocation hearing is on the party seeking the cancellation, revocation, suspension, or alteration; the standard of proof is the preponderance of the evidence.

8.223 Removal of property

- (A) In the event that a certificate of public good is revoked or cancelled, the holder thereof shall, upon order of the Commission and at its own expense, promptly remove all its property and promptly restore the street or other area from which it is removed to the condition existing before such removal, or to a reasonable condition as may be directed by the municipality or public authority.
- (B) The Commission may, upon written application therefor by the certificate holder, approve the abandonment of any such property in place under such terms and conditions as the Commission may prescribe. The Commission shall not unreasonably refuse permission to so abandon underground plant.
- (C) The provisions of this section shall apply only if ownership of the property is not transferred pursuant to federal law.

8.230 Renewal

When an incumbent cable television operator seeks to renew a certificate of public good, the Commission, pursuant to law, shall ascertain whether:

- (A) The cable operator has substantially complied with the material terms of the existing certificate of public good and with applicable law;
- (B) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, has been reasonable in light of community needs;
- (C) The operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- (D) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

8.231 Community Needs Assessment

In order to ascertain section 8.230(D), the Department shall conduct a community needs assessment within each access service area. Unless the Commission orders otherwise, the assessment process shall include:

- (A) Discussions with representative educational, governmental, and non-profit organizational sectors of the PEG AMO service territory, including any PEG AMO, access advisory committee, or other non-profit entity that provides communication services to the general community. These discussions will generally take the form of a series of focus group sessions, sector meetings, and public hearings.
- (B) Letters of support, statements of need, recordings of public meetings, and other information gathered by the AMO as part of any community needs assessment that it may have independently conducted.

- (C) A non-scientific survey of the educational, governmental, and non-profit organizational sectors in the PEG AMO service territory that measures the organizations' communication needs, and other needs that may have reasonable cable-related communication solutions.
- (D) A statistically valid survey of randomly selected households that measures, with regard to PEG access, attitudes and behaviors such as, but not limited to, subscriber satisfaction, awareness, and use of PEG access. If the survey is conducted for more than one PEG AMO service territory, the methodology shall be such that a minimum of useful data interpretation and analysis may be provided for each such service territory.

8.300 Conduct of Business

8.310 Rates and Charges

8.311 General provisions

(A) As provided in 30 V.S.A. § 219, all rates and charges by a cable company shall be applied without discrimination between classes of customers.

(B) Nothing herein shall prohibit the following:

- (1) the waiving or reduction of rates and charges in conjunction with promotional campaigns for the purpose of attracting subscribers;
- (2) the provision of installation or monthly service without charge to schools, government or non-profit organizations or agencies, or buildings operated by such entities;
- (3) the provision of service at no charge to employees and agents of the cable system operator;
- (4) the provision of service at bulk-discount rates, lower than individual rates, so long as the difference in rates is related and attributable to lower costs of providing such bulk service.

Any of the above discounted rates may be provided, if at all, at the option of the cable system operator.

(C) Cable companies are relieved from the obligation under 30 V.S.A. §§ 225, 226, and 227(a) to file tariffs setting forth the rates and terms and conditions of service except as specifically required under this Rule or unless the requirements of those sections are reimposed by the Commission after an opportunity for hearing. Upon the effective date of this Rule all tariffs for cable services on file with the Commission are no longer in effect, except for tariffs or tariff sections regarding a company's line extension policy.

8.312 Rates, Terms, and Conditions of Service

(A) Each company shall maintain a copy of all its current schedules of rates, terms, and conditions of service at its business offices. The information on file at the company shall contain a complete description of the terms and conditions applicable to each level of service or combination of services. The information on file shall include, at a minimum, the information required by the following paragraphs of this section to the extent that the service is offered or the charge is applied by the company.



(B) Residential subscribers. For each level of service, detail:

- (1) number and listing (description and channel) of programmed channels available and the subscription rates;
- (2) installation charges for first outlet and each additional outlet (including custom installation work and aerial and underground drops);
- (3) monthly service charges for first outlet and each additional outlet;
- (4) charges for disconnection, reconnection, relocation of outlets;
- (5) charges for FM radio service installation and monthly service;
- (6) equipment installation, monthly rental, and deposit charges (include purchase or lease prices, if applicable);
- (7) charges for changes in service;
- (8) surcharges for the support of Public, Educational, and Governmental (PEG) access; and
- (9) returned check, collection, and late payment charges.

(C) Other classes of subscribers. Detail special installation, monthly rental, and deposit charges (include purchase or lease prices, if applicable) for:

- (1) multiple unit dwellings;
- (2) commercial subscribers;
- (3) institutional subscribers.

(D) Ancillary services. Detail installation, monthly service, and other rates and charges for any services offered other than residential subscriber and premium services (including, but not limited to, alarm services, facsimile, and other similar services).

(E) Leased channels. Detail all charges associated with lease of cable channels, if any are provided.

(F) Production charges. Charges for use of production equipment, facilities, personnel, and materials by:

- (1) users of PEG access channels;
- (2) other customers of production services.

(G) Premium services rates. Detail current rules, regulations, and rate schedules for premium or pay cable television services available, with installation, monthly service, deposits, parental keylock, and other charges specified for each pay service offered.

(H) Failure of any operator to comply with formal filing procedures with respect to its rules and regulations shall not be the basis for any revocation or denial of recertification.

8.313 Policy on Expansion into Unserved Areas

Each cable company shall file a statement of the company's policy on expansions of service into unserved areas as a tariff for the Commission's approval. Each such policy must at a minimum conform to the provisions of this section.

(A) If a policy on expansion into unserved areas requires contributions-in-aid-of-construction, then that policy shall also allow for the rebating or reallocation of such

contributions among original and new subscribers. Whenever more than one customer is connected to a customer-financed line extension, total contributions-in-aid-of-construction shall be computed to yield to the utility not more than the total cost of extending or expanding service to the new customer(s), less the service drop credit(s). Amounts to be collected from new customers connecting to customer-financed lines shall be computed as follows:

- (1) For a period of seven (7) years from the completion of construction of a line extension, contributions from new customers connecting to said lines shall be based upon an equal sharing of the full cost of construction of the subject line extension as if the new customers were original participants.
- (2) For a period of seven (7) years from the completion of construction of a line extension, contributions calculated under section 1 above shall be reimbursed to the original participants based on an equal sharing of the full cost of construction of the subject line extension as if the new customers were original participants, except that:
 - (a) All line-extension reimbursements shall be paid by cable companies to the current owners of the dwellings or structures served by line extensions that are subject to reimbursement payments for new connections, and shall be paid as a cash rebate or, if to a current subscriber, cash or a credit, at the subscriber's choice.
 - (b) Reimbursements may be made at any time, but a final reallocation and reimbursement shall be conducted at the end of the seven (7)-year period.
 - (c) No reimbursement shall be required if the computed amount is less than \$100.
- (3) For purposes of this Rule, when calculating contributions under paragraph 1 or reimbursements under paragraph 2, the original full cost of construction may be depreciated at a straight-line rate of up to 50% at the end of the seven (7)-year period. Depreciation for these purposes, if any, shall be calculated similarly for both contributions and reimbursements and applied as of the date of the connection of new customer(s).
- (4) As an alternative to issuing rebates under this section, a cable company may reduce the initial subscriber contribution-in-aid-of-construction based on the number of residential and non-residential premises passed within 500 feet of the proposed cable facilities that are not participating. For non-participating premises, each non-seasonal residential premise passed shall be counted as 1/4 of a verified subscriber, each seasonal residential premise passed shall be counted as 1/10 of a verified subscriber, each commercial or institutional lodging (such as a hotel, motel, or nursing home) shall be counted as 3/4 of a verified subscriber, and each non-residential premise passed shall be counted as 1/9 of a verified subscriber. If a cable company chooses to offer this rebate alternative, it shall include such an alternative in its tariff and no rebate shall be required. If this alternative is to be used, the company estimates under "F" below shall clearly indicate that no rebates will be issued. The following additional conditions apply only to this rebate alternative:
 - (a) If a verified subscriber commits to take service from a cable company for an additional commitment period of up to 18 months, then the company shall reduce the verified subscriber's contribution by the value of the additional commitment, exclusive of taxes and fees.
 - (b) If a verified subscriber commits to provide to the cable company, over the term of the two-year commitment period, a minimum annual amount of qualifying revenues up to 150% of the average annual revenue per



subscriber, then the cable company shall reduce the verified subscriber's contribution by the incremental revenue above the average annual revenue per subscriber, exclusive of taxes and fees. Qualifying revenues shall include revenues from all services provided to the subscriber over the facilities that provide the cable service, except revenues paid by the subscriber to non-affiliated third parties.

- (B) Any cable company for which the expansion of service into unserved areas requires the extension of lines or cables to the customer location shall provide a line-extension policy compliant with this subsection.
- (1) Any line-extension policy that requires contributions-in-aid-of-construction shall not require a contribution in excess of the amount required by the following formula:

$$A = (C_T / N) * (1 - (N / (H * L)))$$

where A is the dollar contribution from each new customer; C_T is the actual cost of the line extension; N is the number of verified subscribers on the extension who will be making the contribution-in-aid-of-construction; L is the length of the extension in miles, measured along the pole route from the end of the current plant to the end of the proposed extension, excluding standard subscriber drops; and H is a number designated by the cable company's tariff representing the number of verified subscribers per mile, counting all the miles proposed on the extension, above which the company will not require a contribution-in-aid-of-construction.

- (2) No line-extension policy filed in accordance with this section shall specify a value for H in excess of a maximum number established by the Commission. The maximum value for H for straightforward, aerial construction shall be 16 for a period of at least three years after the adoption of this rule, and thereafter may be re-set by the Commission after notice and opportunity for comment not more frequently than once every three years.
- (3) Upon request of a person in an unserved area within a cable company's franchise area, the cable company shall provide an estimate of the cost of a line extension. The cable company may satisfy this obligation by providing a preliminary estimate to the requestor. If the requestor is located a significant distance from the last serviceable pole whereby service can be extended to new customers, a representative of the cable company may contact the requestor to inform the requestor of the approximate length and cost of the line extension. In such instances, the cable company will provide a written estimate only if the requestor indicates they still wish to receive a written estimate.
- (4) Cable companies shall develop cost estimates excluding a standard aerial drop of 300 feet from the pole for each dwelling serving each verified subscriber and any costs for installation of service inside the subscriber's home. Each verified subscriber shall be responsible for its own additional costs for installation of any nonstandard service drop unless participating verified subscribers and the cable company agree to divide the cost of non-standard service drops among the group of verified subscribers requesting service. Individual potential customers requesting service may be provided with a cost addendum outlining additional costs for a subscriber drop that is in excess of 300 aerial feet; and concealed wiring or other custom installation work; and all underground drops.
- (5) All written estimates provided to verified subscribers, whether mailed or sent electronically, must use the Line Extension Form. The cable operator may provide the map required by the Line Extension Form as a separate document. All written estimates are valid for 90 days or a longer period, as specified in the

cable company's tariff. The Line Extension Estimate Form must clearly indicate whether the estimate is a preliminary or final estimate and whether the estimate includes actual make-ready costs. For preliminary estimates, the Line Extension Estimate Form must also indicate that the estimate may not reflect actual field conditions and make-ready costs. The final customer contribution required may not be more than 10% in excess of the final estimate provided.

- (6) A cable company may include the cost of network upgrades within an existing cabled area in C_T if the network upgrades are necessary and would not be installed but for the line extension.
- (C) Any company that provides cable television services over facilities that it uses to provide telecommunications or other non-cable-television services and that does not require the construction of new cables or lines in order to expand service into unserved areas shall provide a policy on expansion of cable service into unserved areas conforming to this subsection.
- (1) Any expansion-of-service policy shall provide for a maximum ratio of verified subscribers to served lines or premises in a project area that defines when the cable company shall provide an expansion of service without requiring customer contribution-in-aid-of-construction. This ratio shall be not more than a default ratio established by the Commission after notice and opportunity for comment, and which, after it is first established, may be re-set by the Commission after notice and opportunity for comment not more frequently than once every three years.
 - (2) A "served line or premise" is a line over which or a premise to which a company already provides any non-cable retail or wholesale service using facilities that can also be used to provide cable services. A company may make calculations under this subsection using either served lines or served premises, but shall use exclusively one or the other. A "project area" is an area that can be upgraded to offer cable services, including investments in facilities in common to the area that would benefit from the upgrade. A project area shall be defined at the request of a customer or in advance by the company by reference to its customary engineering practices.
 - (3) When a verified subscriber or group of verified subscribers requests an expansion of service into a project area, the cable company shall calculate the cost of the expansion, and calculate a cost per verified subscriber making the request by dividing the cost of the expansion by the number of verified subscribers participating in the request. When calculating the cost of the expansion, the cable company shall multiply C_A , the average cost per served line or premise, specified in the company's tariff, by the number of served lines or premises in the project area. However, the company shall reduce the number of served lines or premises by the number of verified subscribers divided by H , the ratio of verified subscribers to served lines or premises, above which the company does not require a contribution-in-aid-of-expansion, specified in the company's tariff. This calculation can be summarized by the following formula:

$$A = (C_A * (L - (N / H))) / N$$

where A is the dollar contribution from each new customer; C_A is the average cost per served line or premise to expand cable service in a project area, specified in the company's tariff; N is the number of verified subscribers in the project area who will be making the contribution-in-aid-of-expansion; L is the total number of lines or customer premises in the project area; and H is the ratio of verified subscribers per served line or premise, above which the company will not require a contribution-in-aid-of-expansion.

- (D) A cable company may specify more than one value for C or H in its tariff, based on the number of miles, lines, or premises in a proposed expansion, if there are significant differences in cost based on size or other relevant cost factors of the proposed expansion, including underground excavation.
- (E) With a cable company's annual report, the company shall submit a report of the number of additional miles and homes served as a result of its service expansion policy.
- (F) Whenever a prospective subscriber or subscribers located in a service expansion area request an estimate to determine the cost of bringing cable service, the cable company, at its discretion, may first provide a preliminary estimate to the requestors. For final estimates, the cable company must conduct a field survey. Both preliminary and final estimates must inform each of the prospective subscribers of the contribution-in-aid-of-construction or expansion that may be charged. The cable company shall support the designated community organizer with appropriate information such as an explanation of how the company's line extension policies work, product information, and construction time frames. The cable company shall provide preliminary estimates within 30 days of receiving the requests. The cable company shall provide a final estimate within 45 days of receiving written approval of the preliminary estimates by all included subscribers. Where a proposed line extension involves a non-conventional extension of more than three ends of line and 20 verified subscribers, the company may have 60 days to provide an initial estimate and 90 days to provide a final estimate.
- (G) The cable company shall apply for any necessary pole-attachment agreements within 30 days of its receipt of the contribution-in-aid-of-construction from all verified subscribers, and shall make available cable service within 90 days from the receipt of the pole-attachment agreements and other necessary permits or easements, subject to weather, Force Majeure, and the performance of make ready.
- (H) Nothing in this section shall require a cable company to expand service in the absence of a request from one or more verified subscribers. Cable companies shall maintain maps of serviceable areas.
- (I) No cable company shall be required to overbuild another company, or provide cable service to locations where another cable company has already constructed facilities or to which another cable company is required by rule or order of the Commission to construct facilities, or to locations where another cable company has made a binding commitment to construct facilities within the next 18 months.
- (J) Every cable company shall file proposed changes to its line-extension policy with the Commission and the Department of Public Service at least 45 days prior to the effective date of the change, except for changes that only reduce required customer contributions-in-aid-of-construction, which may take effect immediately upon notice to the Commission and the Department.
- (K) For the purposes of this section, a "verified subscriber" is a person whose residence or business is in an unserved area who makes a binding commitment to purchase cable service from a cable company for a minimum period of two years, or a lesser period required by the cable company, or pays an amount equivalent to one year of service in advance.
- (L) The provisions of this section supersede and remove any requirement to perform "house count surveys" contained in any certificate of public good previously issued

Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 12 of 33

by the Commission.

8.314 "Lifeline" service

No service offering of any company may be referred to, by tariff or by company promotion, as "Lifeline" service.

8.320 Notice

8.321 General Requirement

Every cable television company shall provide, the following written information on each of the following items at the time of installation of service, at least once annually to all subscribers, and at any time upon request:

- (A) Products and services offered;
- (B) Prices and options for programming services and conditions of subscription to programming and other services;
- (C) Installation and service maintenance policies and charges;
- (D) Information regarding how to obtain instructions on how to use cable service; and
- (E) Channel positions of all programming carried on the system.

8.322 Timing and Content for Notices of Change

- (A) Cable Companies shall notify affected customers, the Commission, and the Department of any changes in rates, charges, or programming in writing. Thirty (30) days' advance written notice is required for any change that increases rates or charges. If advance notice is not required then notice shall be given not later than the first bill following implementation of the change. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notice is not required for a change to which the customer has previously and specifically agreed, including but not limited to those associated with individual customer contracts. Cable operators shall file written notice to the Commission and Department of promotional rates and services, if such promotions are available or promoted to new customers for more than six months. If the cable operator is given insufficient notice by a service provider to give the required notice above, the operator shall give notice as soon as practicable.
- (B) Written notice may be accomplished by letter, bill insert or bill message.
- (C) A customer may terminate service without penalty at anytime within 30 days of the effective date of a change in rates, terms, or conditions when:
 - (1) the change may increase the cost of service to the customer; and
 - (2) the customer has not previously and specifically agreed to that change.
- (D) Cable companies shall retain a record of the terms and conditions of service for promotions and individual customer contracts offered to customers during any point during the preceding twenty-four (24) months and make available a copy upon request.

8.330 Telephone Access

8.331 Hours

Each company shall maintain telephone lines for the receipt of trouble calls, service

Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 13 of 33

complaints, and requests for repairs or adjustment. Unless otherwise ordered by the Commission, the lines shall be staffed by a customer service representative during the company's normal business hours. This staffing provision shall not apply to any system which employs less than four full time employees. At other times an answering service or answering machine must be provided to receive such calls, provided that messages are checked at least every four hours between 7 a.m. and 11 p.m.

8.332 Toll-free

Customer calls to customer service representatives must be by way of local, toll-free, or other number which causes no more expense to the customer than would a local call. The company shall list such telephone number on all statements sent to customers.

8.333 Response

Any such call must be connected to a customer service representative within two minutes during normal business hours, except in case of a system emergency.

8.334 Telephone listings

The telephone number of an operator's business office or offices shall be listed in all official telephone directories of all telephone companies serving the franchised area.

8.340 Billing Practices

8.341 Notification of billing practices

(A) Every cable television company shall notify each of its subscribers, in writing, of its billing practices and payment requirements. The notice shall describe, at a minimum, billing procedures (including payment requirements to avoid discontinuance of service, e.g., payment due dates), late charges, advance billing options, if any, procedures to be followed in billing disputes, and credit to be given for service outages.

(B) Notice shall be given as follows:

- (1) to new subscribers, at the time of initial installation;
- (2) to all subscribers, whenever there is a change in the company's billing practices or payment requirements; and
- (3) to all subscribers at least annually.

(C) Copies of the company's billing practices and payment requirements shall be filed with the Commission and the Department and in the company's business office and shall be given or sent to a subscriber upon request.

8.342 Bill format

(A) Twice a year, at six-month intervals, each subscriber shall receive a bill or other statement that shall itemize each service or piece of equipment for which the subscriber is charged. If a company bills its subscribers less than twice a year then each bill shall contain such itemization.

(B) Every bill shall include the telephone number of the company and the toll-free subscriber assistance number of the Department of Public Service. The bill shall include a statement that the company should be called first for problem resolution.

(C) Any returned check charge imposed by such company shall be reasonably related to the company's actual cost of processing returned checks, including bank charges, if any, but shall not exceed \$25.00, absent prior approval by the Commission.

(D) The company's billing practices shall conform to the Commission's Rule

3.400, as amended.

8.343 Credit for service outage

- (A) In the event of a subscriber service disruption for more than twenty-four (24) consecutive hours, the cable company shall credit the subscribers affected for the total period of the disruption in an amount proportionate to their regular monthly service charge.
- (B) Each subscriber so affected must notify the cable company of the disruption unless there is a system-wide disruption or that subscriber's disruption is otherwise known or should have been known to the cable company.
- (C) The disruption period shall not begin until the disruption is reported to the cable company, personally, by telephone or in writing, or otherwise is known or should have been known to the cable company. Receipt of such notice by the cable company, which includes notification to an answering service, company employee, etc., shall cause the disruption period to commence.
- (D) Once the disruption period is known by the cable company to exist, for a particular subscriber, the subscriber's credit shall be automatic, and shall require no further request on the part of the affected subscriber.
- (E) Disruptions reported after the fact shall not be eligible for a refund.
- (F) The minimum credit shall be equal to the company's daily billing for the first twenty-four-hour period and each whole or portion of a twenty-four-hour period during which a service outage continues. The daily billing is the customer's monthly billing for the services affected divided by the number of days in the month which the company uses to compute its bills.
- (G) A cable television company shall conduct routine maintenance of its system at hours during which the least amount of subscriber service interruption shall occur, when practicable. The company shall make a reasonable effort to notify subscribers, in advance, of any scheduled service outages for purposes including, but not limited to, equipment repair or replacement, system upgrade, or rebuild which may interfere with service.

8.344 Subscriber and converter deposits

The provisions of Rule 3.200, as amended, apply to deposits required to be made before service is provided. In addition, if a cable operator supplies a converter or other auxiliary equipment to a subscriber's receiving equipment, it may not require a deposit exceeding the replacement cost, less salvage, of like equipment, to be applied so far as necessary to replacement or repair of the equipment resulting from subscriber abuse. If so applied, the company may require that an additional deposit be paid so as to restore the deposit to its original amount.

8.345 Billing disputes

- (A) Any subscriber shall have 45 days from the payment due date contained in the subscriber's bill in which to register a complaint with a company with respect to any billing error or dispute. A billing complaint may be registered in person at the company's business office, by telephone, or by mail. The company shall promptly investigate the billing complaint, shall provide an initial response to the subscriber not later than three business days after receipt thereof, and shall provide a written proposal for the disposition of the complaint to the subscriber not later than 15 business days following the company's receipt of the complaint.

Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 15 of 33

(B) The subscriber, after receiving the company's proposed disposition of the complaint,

shall have ten days to contest the disposition and may present the company with additional information concerning the complaint. In the event the subscriber contests the proposed disposition, the company shall review any additional information, if provided, and shall notify the subscriber of the company's final disposition within 15 business days of notification of contest by the customer.

- (C) No company may effect termination of service to the subscriber for non-payment of disputed bills during the pendency of any billing complaint, provided the subscriber pays current and undisputed bill amounts during the pendency of the complaint.
- (D) If a subscriber uses this provision of this Rule to avoid paying proper bills by means of repetitive claims of dispute of each new bill, the company may petition the Commission for permission to disconnect such a subscriber.
- (E) The Commission, upon the written request of the subscriber, may review the company's disposition of a billing complaint in accordance with such procedures as the Commission shall prescribe and make such orders as the Commission deems reasonable and necessary to finally resolve the complaint.
- (F) A cable company shall not refuse cable video service to a customer due to a delinquent bill owed by another person unless the customer responsible for the delinquency, resulting from service to that household, resides in the same household.

8.346 Disconnection

- (A) The provisions of Rule 3.400, as amended, shall apply, except as provided below:
- (B) No cable company may disconnect a subscriber's service except for one of the following reasons:
 - (1) at the request of the subscriber;
 - (2) because the subscriber without the company's approval tapped the system to provide cable service or additional service to himself, or service to different or additional equipment or has otherwise tampered with the company's facilities;
 - (3) because the subscriber made fraudulent representations regarding the use of the service within the subscriber's premises;
 - (4) because the subscriber so operates or connects his equipment as to cause disturbing effects on the service of other subscribers or the company's equipment or facilities;
 - (5) to prevent a hazard to persons or property resulting from the condition of the installation or the subscriber's equipment;
 - (6) because the subscriber refuses reasonable access to his premises to company representatives who must have such access to make required inspections or tests or to make adjustments to or service equipment or to legally remove the company's property or to otherwise comply with conditions of the company's rules and regulations;
 - (7) because customer-installed equipment is causing signal leakage in violation of federal or state regulations;
 - (8) for non-payment as otherwise provided in this Rule.
- (C) For reasons 4, 5, and 7, above, the company may disconnect without prior notice to the customer, but must leave written notice at the customer's premises explaining why service was terminated and what must be done to have it restored.

- (D) Notice of service discontinuance shall clearly state the reason and the action on the part of the subscriber necessary to avoid discontinuance.
- (E) No cable television company shall disconnect service for non-payment or as otherwise provided in this rule (except by subscriber request) on a weekend, public holiday, a day when the office of the company is not open for business, or the day before any of the days above.
- (F) When a company representative is at a subscriber's residence or place of business to disconnect service and the subscriber, at that time, pays the amount in arrears in lieu of disconnection, the company may add a reasonable collection charge to the subscriber's bill, provided all other applicable provisions of this section have been followed.
- (G) Receipt of a subsequently dishonored instrument from a subscriber in response to a notice of discontinuance shall not constitute payment, and a cable company need not go through another Rule 3.400 disconnect notice cycle. The cable company may disconnect on a minimum four (4) day notice that the instrument was dishonored.
- (H) This section (pertaining to disconnection and notice of disconnection) does not apply to any person who is not an actual subscriber or who has not requested service, in which case no notice of any kind is required.

8.347 Late Payment Charge

A late payment charge may be imposed on unpaid balances no less than 60 days overdue and shall not exceed 1.5% of the delinquent amount not in dispute, absent prior approval by the Commission.

8.350 Service Calls

8.351 Customer interaction

- (A) Investigative action shall be initiated on the same day a trouble call is received at the local office, if possible, but in no case later than the following business day, unless requested otherwise by the subscriber.
- (B) When at the request of the subscriber a service call to the subscriber's premises is required, the subscriber shall be informed in advance, if possible, as to the day thereof and whether the service call is scheduled during the morning, afternoon, or evening. If for any reason a service technician is unable to make the service call as scheduled, a reasonable attempt shall be made to inform the subscriber.

8.352 Records

- (A) A report on each service call in which a cable system fault reported by a single subscriber was identified shall be filed at the local office, and shall include the following data:
 - (1) subscriber identification;
 - (2) date and approximate time complaint was received;
 - (3) date and approximate time of response;
 - (4) nature of complaint;
 - (5) brief description of the fault;

- (6) signal level measured on each problem channel after corrective action and on other channels, where such measurements are appropriate;
 - (7) corrective steps taken (if any required);
 - (8) date case is closed; and
 - (9) identification of technician or repairman.
- (B) A report on each system fault, or on any failure reported by more than one subscriber and affecting an area, shall be filed at the local office and shall include the following data:
- (1) cause of failure and brief description of the component or structures causing the failure sufficient to allow the later determination of the area affected;
 - (2) date and approximate time of failure or report of failure; and
 - (3) date and time service is restored.
- (C) A report for each service call in which no trouble was identified, or in which instruction was given to enable the subscriber properly to adjust the terminal receiving equipment, or in which the fault was in the subscriber's receiving equipment, shall be filed at the local office and shall include:
- (1) subscriber identification;
 - (2) date and time complaint was received;
 - (3) date and time of response;
 - (4) nature of complaint;
 - (5) corrective steps taken (if any required); and
 - (6) identification of technician or repairman.
- (D) Small systems that have only a single technician or an owner-technician may perform the record-keeping required by subsections (A), (B), and (C) by maintaining a log of trouble calls containing the substance of the information called for.
- (E) Any report required to be maintained pursuant to this section shall be kept by the operator for a period of two years from the event to which it relates. It may be maintained in original form, as computer data base, or as data base report, at the election of the operator, so long as the basic information remains available.
- (F) The records required by this section shall upon request be made available to the Commission and the Department of Public Service. However, the operator may obscure, remove, or delete any personally identifiable information contained in the records if in the operator's opinion it must do so in order to comply with Section 631 of the Communications Policy Act of 1984, 47 U.S.C. § 551.

8.360 Construction

8.361 Information filing

After receiving a certificate of public good for a new service territory, the company shall submit the following to the Commission and the Department, as available:

- (A) A map of the service area, showing the planned phases of construction for the entire cable system. Such map and description shall also indicate those parts of the service area that the applicant anticipates would receive service only through application of the proposed line extension policy.

- (B) A statement that the applicant has obtained all licenses and other forms of permission required by state and local government bodies prior to commencement of construction.
- (C) A statement that pole attachment, conduit occupancy, and right-of-way agreements have been consummated.
- (D) Any corrections, updates, or amplifications, to items filed at the time of application for a certificate of public good.

8.362 Compliance with design standards; waivers

- (A) All cable systems constructed and operated within this state shall conform to the minimum design criteria set forth in this rule.
- (B) Waivers of specific provisions of the design criteria may be granted by the Commission only upon a showing that strict compliance would endanger the viability of the system.

8.363 System requirements

- (A) The technical standards contained in Subpart K of Part 76 of the Rules and Regulations of the Federal Communications Commission, as amended, are hereby incorporated into these rules, and made a part of all certificates of public good issued by the Commission for cable systems.
- (B) All systems shall be designed and built so that closed caption data can pass through.
- (C) All systems shall be designed and built so that they may provide the PEG access capabilities required by section 8.410 et seq. of this rule, or so that those capabilities may be later added without major reconstruction of the system.
- (D) Preliminary Performance Tests. Prior to the commencement of service to cable subscribers on any portion of a new cable system or on any substantially reconstructed portion of a cable system, the operator will ensure that the system provides acceptable picture quality by "rough balancing" the active equipment to within plus or minus 5db of equipment specification for peak-to-valley signal performance. These tests may be performed by qualified system personnel or by qualified contractors, and copies of the preliminary test results shall be made available to the Department of Public Service upon request for a period of up to one year after completion of the new or reconstructed cable system.
- (E) Final Performance Tests. Within 120 days of completion of a new cable system or any substantially reconstructed portion of a cable system, the operator shall conduct system proof of performance tests to determine the extent to which the system complies with the standards required in section 8.363(A) of this Rule.
 - (1) All such tests shall be performed by or under the supervision of qualified system personnel or qualified contractors using equipment and procedures necessary to achieve reasonable precision of measurement.
 - (2) In the event that the measured performance at any end of the trunk test point fails to comply with the technical standards required, the operator shall immediately take steps to insure compliance.
 - (3) Copies of the report of the final performance test shall be provided to the

Department of Public Service upon request and shall be kept available for inspection at the operator's office for a period of five (5) years after completion of the test.

8.364 Timetable

- (A) Application for pole attachment license shall be made to the relevant utilities within fifteen (15) days of receipt of a certificate, and application for make-ready work shall be made within 120 days of receipt of the license. Construction of a cable system shall begin within ninety (90) days of completion of make-ready work for the first phase of cable construction, or as soon thereafter as weather permits.
- (B) The operator shall maintain current as-built design maps for its system at its business offices, and shall produce photocopies of such portions of the maps as may be requested by the Department of Public Service.
- (C) The operator's complaint department shall begin operation at the same time as service commences.
- (D) Unless the Commission shall have waived the requirement, within four years from the receipt of the certificate the holder thereof shall have made service available to all potential residential subscribers in those portions of its franchise area meeting the density tests described in its line extension tariff for no-charge construction. In cases where the operator is unable to extend service because of a lack of right of way or other access problem, the operator shall be moving with due diligence to acquire such access to potential subscribers.

8.365 Safety codes and standards

- (A) All construction of cable systems shall be with the use of materials of good and durable quality.
- (B) All work involved in construction, installation, maintenance and repair of cable systems shall be performed in a safe, thorough, and reliable manner, and in compliance with:
 - (1) the "Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines" of the National Bureau of Standards, U.S. Department of Commerce;
 - (2) the latest edition of the National Electric Safety Code, as from time to time amended and revised; and
 - (3) all applicable federal, state, and municipal laws, ordinances, and regulations.

8.366 Placement of cables

- (A) Wherever practical, a holder of a certificate shall install its system using existing poles, conduits, rights-of-way, and other facilities of utility companies.
- (B) If at any time a municipality shall require all utilities to be placed underground, the certificate holder shall, upon reasonable notice by such municipality, conform with such requirement. This provision shall not be taken as determinative of who must bear the costs of placing such plant underground.

8.367 Subscriber drops

- (A) Each company provides a standard, fixed-price installation from its distribution



cable to the subscriber's premises. Installations up to three hundred (300) feet in length (aerial construction) shall be made without additional charge to the subscriber. Drops in excess of this length, any concealed wiring or other custom installation work, and all underground drops, shall be charged at the rates set forth in the company's rules and regulations, which shall provide for a credit equal to the cost of the standard installation.

- (B) In areas where existing utility drop cables are located underground, cable subscriber drop cables shall also be located underground where practical. In other areas, the drop cables shall be aerial unless the subscriber elects to pay the costs of underground installation as set forth in the company's rules and regulations.

8.368 Installation of drops

- (A) When a cable operator receives an application for service, and the only outdoor installation work required is to drop a line from the feeder cable to the subscriber's building, it will make the installation promptly and in no event later than ten (10) days following receipt of the application unless good and sufficient reason exists. Good and sufficient reason may include scheduling conflicts, system emergency, severe weather, and lack of access or right of way.

- (B) Cable installers shall be trained to connect closed caption decoders to work with the cable connection. The decoder (provided by the subscriber) shall be connected without extra charge to the subscriber.

8.370 Signal Carriage

8.371 Channels required

Each cable system certificated to operate within this state shall be operationally capable of relaying to all subscriber terminals at least the following signals:

- (A) All television broadcast signals, if any, required to be carried in that service area pursuant to FCC rules, as amended from time to time.
- (B) All specifically designated access channels required to be carried by that system pursuant to section 8.410 of these rules shall be carried in all service tiers defined as basic tiers by this Rule or federal law.

8.380 Annual Report

Within one year of the granting of a certificate of public good and annually thereafter as provided by 30 V.S.A. § 22, every cable operator shall file an Annual Report with the Department and the Commission containing the information required by 30 V.S.A. §§ 22 and 514 and any other information the Department may require. The report shall be made in a form acceptable to the Department.

8.390 Availability of Books and Records

The Commission and the Department shall have the right to inspect the books, records, maps, plans, and other like materials of each cable company applicable to its system or systems in this state, at any time during reasonable business hours. Each cable company shall fully cooperate in making the materials available at reasonable times, provided that where volume and convenience necessitate, the company may request that inspection take place on its own premises. Where information in the materials constitutes trade secrets or other confidential or proprietary information, the company may request that Commission or Department employees given access to that

information enter into an agreement to protect such information, in conformance with Commission Rule or Commission practice.

8.400 Purposes, Scope

- (A) **Purposes.** The purposes of this part (8.400 et seq.) of this rule are: (1) to promote the availability and use of local public, educational, and governmental content in a manner consistent with the development of cable technology and federal law by providing parameters for franchise renewal negotiations, for negotiations between cable operators and existing or proposed Access Management Organizations, and for resolution of disputes by the Commission; and (2) to clarify the obligations of and relationship between cable operators and Access Management Organizations with regard to meeting cable-related community needs, and to establishing and administering PEG channels and facilities.
- (B) **Additional Obligations.** The Public Utility Commission as the franchising authority for the state of Vermont may impose additional or specific obligations by condition in a new or renewed certificate of public good consistent with these rules. The scope of operator and subscriber support for PEG access should be limited to those applications and designations of capacity that support distribution of public, educational, and governmental access content to cable subscribers over the cable system.
- (C) **Scope.** This rule applies to cable television companies as defined in 30 V.S.A. § 501(c) to the extent that they offer cable television services as defined by 47 U.S.C. § 522 and to existing or proposed Access Management Organizations (AMOs) that administer the PEG access facilities or channels.
- (D) **Digital cablecasting of PEG Channels.** One year prior to the Federal Communication Commission deadline for Vermont VHF and UHF broadcasters to relinquish analog bandwidth, the Commission will consider initiating rulemaking to ensure that community needs and PEG access services are being adequately supported in light of evolving technology and consistent with FCC regulations.

8.401 General Obligations of Cable Operators

For purposes of franchise negotiations, a cable operator must demonstrate that its proposal for PEG Access is consistent with these rules and reasonable in light of the cable-related community needs taking into consideration costs on the cable operator and cable subscribers. In order to meet community related cable needs, cable operators shall be prepared to:

- (A) Designate system capacity for the use of PEG channels and applications.
- (B) Consider requests for PEG channels and other applications.
- (C) Designate an Access Management Organization (AMO), when requested.
- (D) Provide PEG facilities.
- (E) Provide PEG funding.
- (F) Notify subscribers, Commission, and Department of (A) through (E).

8.402 Provision of System Capacity for PEG Access

- (A) Absent a waiver by the Commission, a cable operator shall be prepared to designate and activate at least three forward viewable PEG channels.
- (B) In lieu of viewable channels, a cable operator and an Access Management Organization may agree that the cable operator should dedicate system capacity or facilities in a form other than a forward channel to support the distribution of PEG content to cable television subscribers in order to meet its PEG access obligations.

8.403 Activation of First Three PEG Channels

The operator of a cable television system shall designate:

- (A) At least one full-time activated channel for public, educational, and governmental access use.
- (B) At least one additional full-time channel for public, educational or governmental access use, to be activated at such time as is requested by the AMO and after the channel required by paragraph (A) is already in use. The cable operator shall provide the channel within a reasonable period of time following the submission of the request.
- (C) One additional full-time channel for public, educational, or governmental access use, to be activated at such time as is requested by the AMO and after the channel required by paragraph (B) is already in use. The cable operator shall provide the channel within a reasonable period of time following the submission of the request.
- (D) In the event that three channels for public, educational, and governmental use are required to be activated, one channel shall be designated for each type of use; provided, however, that any channel may be used for any PEG purpose if necessary to satisfy the demand for channel time, and, should more than one AMO exist, as agreed by the AMOs. Pooling of channel time shall be done in conformance with the system's PEG access plan.
- (E) When no other PEG access programming is available for cablecasting, and no PEG access management organization (as described in section 8.420) exists, the operator shall make available programming, at a minimum, in the nature of a character-generated community bulletin board. When submissions are available, the operator shall post content on the PEG access channel community bulletin board that is up-dated at least weekly and contains information relevant to the particular PEG access service area where it is seen.
- (F) PEG channels may be activated at a headend or hub site within the service territory.
- (G) Requests for activation of PEG channels shall be submitted and reviewed as provided in section 8.405.

8.404 Activation of Additional PEG Channels or Other PEG Applications

- (A) Additional PEG access channels. Activation of additional PEG access channels may be requested at such time as the channels required by section 8.403 are in use.
- (B) Other PEG Applications. A cable operator may propose, or an Access Management Organization may request, that a cable operator dedicate system capacity or facilities

in a form other than a channel to support the distribution of PEG content to cable subscribers.

- (C) It is not necessary to utilize the first three PEG channels prior to a request for other PEG applications. This does not preclude an AMO's ability to request and receive three PEG channels pursuant to section 8.403.
- (D) Requests for PEG channels and other PEG applications shall be evaluated using the criteria and process provided in section 8.405 and implemented as negotiated between the operator and AMO or AMOs.

8.405 Consideration of Requests for PEG Channels and Other PEG Applications

Requests for the activation of PEG channels or other PEG applications shall be submitted to the operator and reviewed as follows:

- (A) The request must describe:
 - (1) The use or functionality for which the capacity will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace;
 - (2) Examples of its use;
 - (3) The community need that the PEG channel or PEG application is intended to address, how such community need has been ascertained, and how that need will be met by the PEG channel or PEG application requested;
 - (4) The equipment and facilities, initial and ongoing operating and capital expenditures necessary to implement the request;
 - (5) The estimated cost of the functionality to the AMO and the extent to which the cable operator is expected to support the cost;
 - (6) How the use or functionality can be sustained, financially and operationally, by the AMO, including commitments made by others to support the request;
 - (7) Why the use or functionality requested is consistent with current or planned services to be offered by the existing or proposed AMO;
 - (8) Other reasonable materials deemed necessary by the operator to consider such request.
- (B) Cable operators shall do the following in reviewing and responding to requests for PEG channels or other PEG applications:
 - (1) Provide to the requesting AMO written acknowledgment of receipt of the request and confirmation that the request is complete. If the request is not complete, the cable operator shall so inform the AMO within 45 days, together with an explanation of how the request is incomplete and a description of the information that is needed to complete the request.
 - (2) Once a request is complete, review and respond in writing to the AMO's proposal within 60 days of submitting a complete request. If an extension is necessary for adequate review or extenuating circumstances, the cable operator shall inform the AMO in writing and provide a reasonable timeframe for responding to the request.
 - (3) Offer the requesting AMO an opportunity, to the extent possible, to discuss the request with regard to the criteria listed in subsection (C) below, and mutually investigate possible alternatives should any aspect of the request be problematic.

- (C) The cable operator shall evaluate the AMO request using the following criteria:
- (1) Whether any portion of the request would be in violation of, or would require amendment to, the cable operator's certificate of public good or any existing PEG Access Agreement;
 - (2) Whether and how costs that would be incurred by the operator or the AMO would affect the cable operator and cable subscribers;
 - (3) Whether the cable operator has the capacity to meet the request, taking into consideration existing and other potential uses;
 - (4) Whether the request is consistent with the cable operator's and the AMO's Access Plan;
 - (5) Whether alternative more cost-effective methods within the purview of the cable operator are available to meet the need asserted in the request;
 - (6) Whether the request responds to community needs;
 - (7) Other considerations that it deems relevant.
- (D) Cable operators retain discretion to approve, deny, or amend such requests. If a cable operator denies an AMO request, it must provide a written explanation, addressing each of the criteria in subsection (C) and the grounds for denial.
- (E) Resolution of disputes arising from requests may be reviewed by the Commission.

8.406 Inclusion in Service Tiers

- (A) The first three PEG access channels shall be available to all cable subscribers. All other PEG access channels shall be available on the basic service tier unless activation of the channel on the basic service tier would require removal of an existing channel from the basic tier. If removal of an existing basic tier channel would be necessary to accommodate an additional PEG access channel, the cable operator shall offer, and the AMO may accept, substitute capacity on the next available analog tier or digital tier as a means of allowing more than three PEG channels to be made available.
- (B) All PEG channels on the basic tier shall be delivered in a standard analog format unless all other channels on the basic tier are delivered in a digital format.

8.407 (reserved)

8.408 Designation of Administrative Management Organizations, Generally

- (A) Unless a cable operator has obtained a waiver pursuant to section 8.410 of this Rule, it shall designate an AMO:
- (1) that demonstrates the capability to meet the obligations of an AMO, as set forth in sections 8.420–8.422 of this Rule; and
 - (2) that demonstrates the capability to meet all other relevant requirements of this Rule; and
 - (3) that is willing to enter an access contract, pursuant to section 8.424, on terms that have been negotiated in good faith.
- (B) The person or organization that seeks designation as an AMO bears the burden of demonstrating that they or it should be designated.
- (C) A cable operator may designate one or more AMOs to provide PEG content within

all or a portion of a geographic area where another AMO also provides PEG content.

- (D) AMOs may be designated in the certificate of public good at the time of issuance.
- (E) The designation of an AMO does not require the approval of the Commission.
- (F) AMOs may administer access for more than one cable system or cable channel.
- (G) An AMO may be in whatever form its members select.

8.409 Educational and Governmental

To allow for channels to be activated on a cable television system for educational or governmental use, an educational access channel may be operated and administered by a non-profit organization, committee, or commission representing educational institutions serving the territory served by the cable system. Where more than one cable system is operating in a school system or municipality, cooperation between the AMOs for the respective access channels is encouraged. A governmental access channel may be operated and administered by a non-profit organization, committee, or a commission appointed by local governments, including appropriate representation of local school systems within the service area of the cable television system if it will share the channel with educational use. Absence of an AMO to administer educational or governmental access shall not prevent the cable operator from making available additional channels for educational or governmental access.

8.410 Exception for Small Cable Systems

The operator of a cable television system with annual gross receipts from 'cable services' of two million dollars or less may be excused from the provisions of Rule 8.400 if said company can demonstrate that is meeting the cable related community needs and interests of its service territory. For the purpose of this subsection, 'cable services' has the definition stated in 47 U.S.C. § 522.

8.411–8.414 (reserved)

8.415 Facilities and Funding Generally

Any cable television certificate of public good may include additional provisions concerning the provision of funding and facilities for PEG access consistent with sections 8.416 and 8.417. Any other provision concerning the facilities and funding for public, educational, and governmental access consistent with federal and state law may be included in a certificate of public good.

8.416 Facilities

- (A) Minimum capabilities. Unless otherwise ordered by the Commission, all operators shall ensure that their systems have available the following minimum PEG capabilities once their systems are in operation. The facilities shall include equipment necessary for community members to produce, post-produce, and distribute PEG content from its studios or community locations to the system's cable subscribers. When an AMO is established, it may negotiate for additional or different facilities to account for community needs and technological changes.
- (B) This rule neither forbids nor requires the sharing of equipment and facilities between neighboring systems or between systems owned by the same company if any established AMO or AMOs approves the plan for sharing and, if the sharing is between systems owned by different operators, if the operators approve the plan for



sharing.

- (C) Cable operators shall support reasonable requests by AMOs for remote origination sites. The cable operator's response to such requests shall take into account community needs and the capabilities of the designated AMO and resulting costs.

8.417 Funding

- (A) Basis. PEG access funding shall be calculated based on the cable operator's gross revenues generated by "cable services" as defined by 47 U.S.C. § 522, unless otherwise agreed by a cable company and the AMO to which the funding would be provided. PEG access funding of an AMO shall be calculated based upon the corresponding PEG AMO's service territory.
- (B) Startup capital payment. An AMO may request, and the cable operator shall negotiate concerning the provision of, startup funding. The amount of startup funding, if any, provided to an AMO shall reflect consideration of requests for PEG channels and applications outlined in section 8.405.
- (C) Annual operating. Negotiation between the operator and the AMO or AMOs is the preferred method of setting the annual operating expense funding level provided by the cable operator to one or more AMOs. Funding levels for operating costs shall be based on community needs and are subject to the 5% franchise fee cap provided in 47 U.S.C. § 542(b).
- (D) Annual capital. Negotiation between the operator and the AMO or AMOs is the preferred method of setting the annual capital contribution for PEG access. Capital contributions are not subject to the 5% franchise fee cap but are considered external costs eligible for pass through to subscribers pursuant to 47 U.S.C. § 542(c).
- (E) Other payments. New and existing AMOs, as part of PEG access contract negotiations, may negotiate for in-kind contributions or certain lump sum amounts to be paid by the operator for start-up operating and start-up capital funds, annual capital funds, and other capital improvements under certain conditions or at certain times during the term of the certificate of public good.
- (F) Accounting for PEG funds expended by operator in the absence of an AMO. Funds expended by an operator to meet its PEG access obligations and reported in the operator's Notice of PEG Availability (section 8.418), prior to the establishment of an AMO, may be debited against any funds, reserves, or deferred liabilities that have accrued for PEG access purposes. The documentation of such expenditures, however, must be filed in a timely and clearly itemized manner in the operator's PEG Notification, and value placed on those expenditures by the operator shall have been reasonable, taking into consideration the levels of, and reasons for, expenditures by other PEG access operations.
- (G) Legislative tax. In the event a tax or fee is enacted by the Legislature of the State of Vermont, and if it is determined that the tax or fee and a PEG access funding requirement imposed by the certificate of public good or by a PEG Access contract are both defined as franchise fee payments under the Cable Communications Policy Act of 1984, as amended, the PEG access funding requirement shall be reduced proportionately to the extent the state fee plus the PEG access funding requirement for operating expenses total more than 5% of the operator's gross revenues.



8.418 Notice of PEG Availability

- (A) The cable operator shall notify subscribers, by annual written notice and by character generated or video message on the computer bulletin board (see section 8.403(e)), of the opportunity to create and cablecast PEG content. Notices shall include name, address, and telephone number of the entity or entities to be contacted for use of existing PEG services, and similar contact information for the cable operator staff responsible for negotiating start-up arrangements with persons seeking to create a new AMO.
- (B) If an AMO does not exist in the service territory, the cable operator will also make the following information available: minimum operating rules and procedures for facilitating production of local content and a copy of the PEG Access Report, required by section 8.419, for the most recent year.

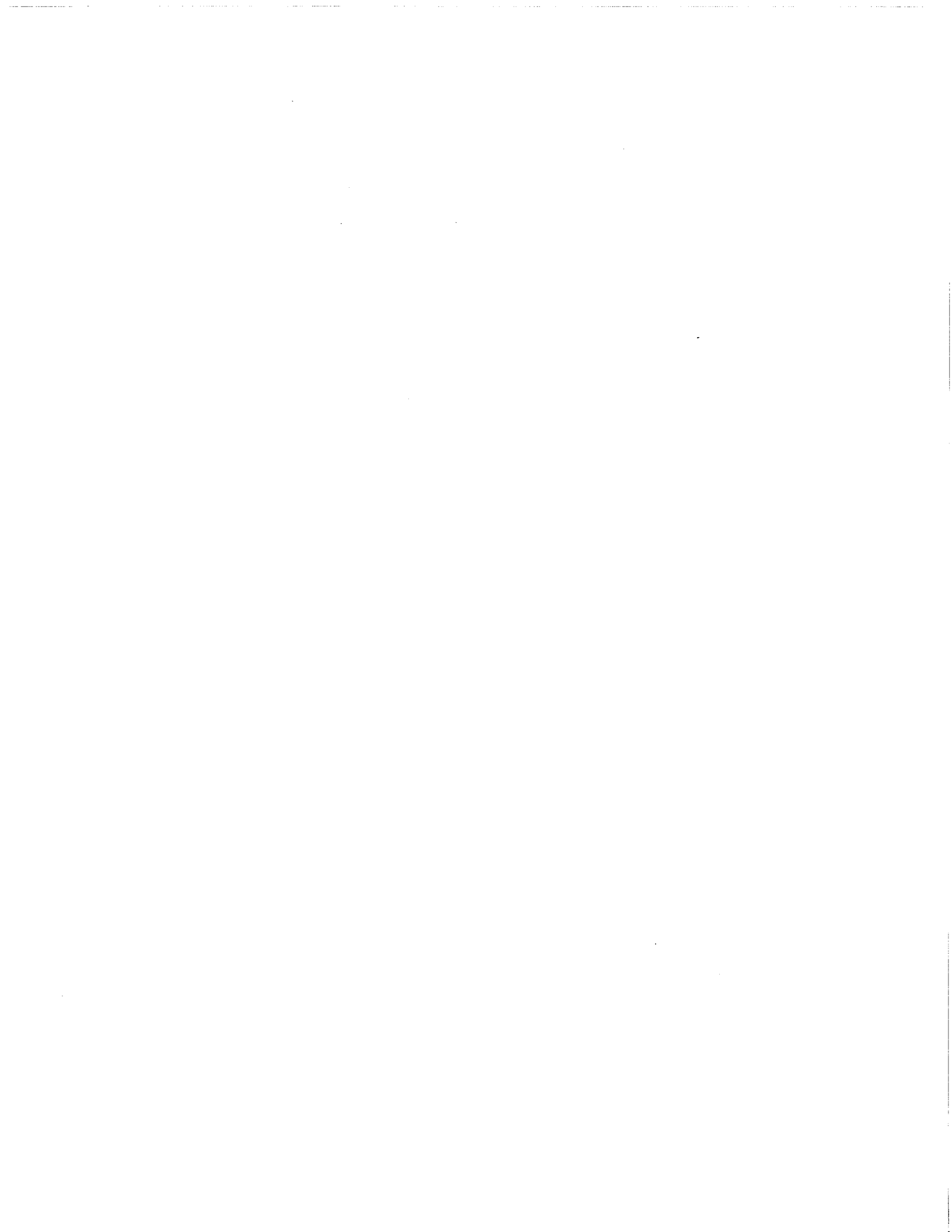
8.419 Cable Operator PEG Access Report

Each cable operator shall submit annually, by April 15, to its designated AMOs, the Department, and the Commission, a PEG access report for each cable system. Copies of this report shall be made available to the public upon request in printed or electronic formats. The report shall include the following information.

- (A) Where no AMO is designated, a summary of the prior year's activities, including the scope of programming services available for use by the public in each community served by the operator.
- (B) A statement of the facilities contributed to an AMO or AMOs. The statement should indicate whether ownership of the facilities has been transferred to the AMO or AMOs, or whether the operator has retained ownership and only made the facilities available;
- (C) If the operator has sought advice for the administration of its PEG access operation from an advisory body, a roster naming the advisors and a summary of the advisory body's activities;
- (D) An accounting of any reserves, whether funded or not, that have accrued to date for PEG access use;
- (E) Summary of funding, including a statement that funding is derived from subscriber paid PEG access fees, and other support rendered to each AMO in the prior year;
- (F) Contact information for cable operator and for AMO(s).
- (G) A description of the geographic service territory covered by the report, and an explanation of any changes in the description from the prior year.

8.420 Obligations of an AMO

- (A) The responsibilities of each AMO shall include:
- (1) Documentation of and response to community needs;
 - (2) Delivery of outreach for the purpose of informing the public of the opportunity for access to the cable system and availability of programs and services;
 - (3) Delivery of training, programming, and services to meet community needs;
 - (4) Managing facilities and equipment, including maintaining operating rules and



- procedures, for the purposes of public availability;
- (5) Negotiation with the cable operator for facilities and funding;
 - (6) Coordination of PEG capacity use and applications with cable operator;
 - (7) Maintenance of rules and procedures for board governance, complaint and dispute resolution, and compliance with relevant laws, including Vermont's Open Meeting law;
 - (8) Receipt and management of all funds in a manner consistent with the public nature of those funds, including the provision of an annual budget for payment of current operating and capital expenses;
 - (9) Preparation of an access plan which is designed to anticipate the future cable-related community needs and demand for PEG services;
 - (10) Completing Annual Report pursuant to section 8.422;
 - (11) Preparation of information required by the cable operator for the submission of the annual PEG access report as required by section 8.419;
 - (12) Maintenance of records and preparation of forms as may be required by the Federal Communications Commission for its oversight of access channel usage. Such information may be delivered to the cable operator or submitted directly to the F.C.C., as is found expedient by the parties.

- (B) The operator may retain any of the responsibilities identified in subsection (A). Any responsibility not explicitly delegated remains the responsibility of the cable operator. The foregoing notwithstanding, a cable operator having existing contracts with AMOs may rely on those contracts to comply with this section until such time as the contracts are renewed or materially amended.

8.421 Meetings and Reports

All meetings of AMOs shall be open to the public pursuant to Vermont's Open Meeting Law, 1 V.S.A. § 311 et seq., and shall be announced in advance by character-generated announcement on the PEG channel to which it pertains. The access plan, local rules, budget, and annual report of the AMO shall be available to the public at reasonable times and places.

8.422 AMO Annual Access Report.

AMOs shall submit to the cable operator, the Department, and the Commission a PEG access report for each cable system within 120 days of the end of the AMO's fiscal year. Copies of this report shall be made available to the public upon request. The report shall clearly distinguish between expenditures that support production and distribution of PEG content to cable television subscribers, and expenditures for other purposes not related to the production and distribution of PEG content to cable television subscribers, if any. It shall also distinguish between funds provided by the operator as PEG funding and funds obtained from other sources. The report shall also include the following information:

- (A) Changes in service territory;
- (B) Description of current PEG capacity and applications;
- (C) Description of current PEG services, including outreach strategies, training delivery, PEG content production and distribution (for example, hours of original programming, utilization of PEG facilities such as live drops or interconnect);
- (D) Details of complaints and how the AMO responded to them;
- (E) Description of facilities (equipment and location);

- (F) Roster of staff and board;
- (G) Changes in organizational structure;
- (H) A statement of total operating and capital funding received from the operator and whether any funds were carried forward from the prior year;
- (I) Financial reports that include:
 - (1) Income and expense statement and balance sheet for year of annual report,
 - (2) Projected operating and capital budget for current fiscal year;
- (J) Certification that AMO has:
 - (1) Bylaws or other governing documents,
 - (2) Rules and operating procedures,
 - (3) Complaint and dispute resolution procedures,
 - (4) Evidence of conducting meetings consistent with Open Meeting law;
- (K) Planning considerations and expectations for how community needs will be identified and met for current and future fiscal years;
- (L) Service quality issues requiring attention;
- (M) Copy of tax returns, financial reviews or, if available, audited financial statements;
- (N) In the event that the operator requires financial information from an AMO for the purpose of auditing the AMO, or for the purpose of a company audit, the AMO shall make the information available, consistent with other provisions of this section. If an audit is required by the operator, the cost of the audit to the AMO will be borne by the operator, unless ordered otherwise by the Commission.

8.423 PEG Access Contracts

- (A) In cable systems without an AMO, cable operators shall have the obligation to negotiate in good faith with AMOs or entities requesting designation as an AMO.
- (B) Entities seeking or having received designation under this Section may request, under section 8.425(a), multi-party negotiations with multiple cable operators with the objective of a single contract.
- (C) Contracts between AMOs and cable operators shall be made for a fixed period of time not to exceed eleven years (and normally not past the time the current certificate is due to expire) and be consistent with Commission Rules and include agreements related to the following subjects:
 - (1) Description of PEG capacity and applications;
 - (2) Description of geographic service territory;
 - (3) Term and duration of contract;
 - (4) Amount of start-up, operating, and capital funds and a schedule for payment of such funds;
 - (5) Procedures for addressing service quality issues;
 - (6) Dispute resolution procedures.



- (D) If the cable operator is not satisfied that an entity with which it is negotiating will perform properly as an AMO, or if there is more than one entity volunteering to be the AMO for a single channel, the operator or entities may petition the Commission to hear and resolve the dispute.

8.424 Failure to Perform

- (A) If a cable operator believes that an AMO has failed to perform in any material way under a contract, unless otherwise provided in the contract, the cable operator, after providing the AMO with reasonable notice of the failure, may petition the Commission to cure such a failure.
- (B) If an AMO believes that a cable operator has failed to perform in any material way under a contract, unless otherwise provided in the contract, the AMO, after providing the cable operator with reasonable notice of the failure, may petition the Commission to cure such a failure.

8.425 Statewide AMO

The Commission may designate an AMO to administer a state-wide PEG access network and to promote the sharing of PEG content among cable systems.

- (A) Petition form and content. An entity seeking designation under this rule as an administrator of the statewide PEG access network shall file a petition with the Public Utility Commission. The petition shall include the following additional information about the petitioner's ability to administer the network and plans for doing so:
- (1) A description of the organizational structure and management of the administrator along with the administrator's articles of association and bylaws;
 - (2) Demonstration of sufficient technical and managerial expertise to administer the service;
 - (3) Description of committed or tentative funding sources for the AMO, or a proposal for providing funding out of the existing PEG access obligations of cable companies;
 - (4) A plan for coordination of services with other AMOs;
 - (5) A proposal for location of the AMO 's office, studios, and equipment, and the extent of the AMO 's operations around Vermont;
 - (6) If the state-wide PEG access network currently has an administrator, an explanation of the reason for changing administrator designation and an administration transition plan.
- (B) Service of petition. The petitioner shall provide a copy of the petition to the Department of Public Service, all cable companies operating in Vermont, and all AMOs. Along with each copy of the petition, the petitioner shall provide a list of the persons served under this paragraph.
- (C) Order. After notice and opportunity for hearing, the Commission shall issue an order accepting, conditionally accepting, or rejecting the petition.
- (D) Provisional designation. The Commission may provisionally designate the petitioner as the statewide AMO, even if the AMO does not yet have a fully-developed capability to administer the statewide access network. This designation may be for a fixed period



of time. The Commission may, in its order granting provisional designation, limit the obligations of cable companies to a provisional statewide network AMO.

(E) Term and revocation of designation.

- (1) The term of a non-provisional administrator designation shall be indefinite unless specifically limited by the Commission. Designation as an administrator may not be transferred to a successor without prior Commission approval.
- (2) Upon its own motion or upon the petition of the Department or an entity or person adversely affected by an administrator's performance, the Commission may after notice and opportunity for hearing revoke or suspend its designation of an administrator, may impose additional conditions on continued designation to assure the statewide AMO adequately administer the statewide access channel, complies with conditions of its designation, or take other such actions that serve the public good of the state.
- (3) The burden of proof in a revocation hearing is on the party seeking the revocation or suspension; the standard of proof is the preponderance of the evidence.

8.426 Request for Statewide PEG Capacity and Applications

(A) Requests for PEG capacity and applications that will serve statewide purposes must be submitted by the statewide AMO to the cable operators and will be considered by the Commission after consultation with all licensed cable operators.

(B) Request for statewide services or applications shall include a description of:

- (1) The community need and how that need is met by the request;
- (2) The use or functionality for which the capacity will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace;
- (3) The equipment and facilities necessary to implement the request;
- (4) The estimated cost of the functionality and whether such costs will be borne by cable operators and cable subscribers;
- (5) The budget and source of funds necessary to sustain the functionality;
- (6) How the use or functionality can be sustained, financially and operationally, by the AMO, including commitments made by others to support the request;
- (7) How this request is consistent with needs of the state, and whether the services would complement or replace the services currently provided by local AMOs;
- (8) The management structure necessary to support the request;
- (9) Evidence of coordination with local AMOs, if necessary;
- (10) Guidelines for management and public use of the capacity and/or application;
- (11) Other reasonable materials deemed necessary by the Commission.

8.427 (reserved)

8.428 Notice

The entity responsible for administering and operating a public, or a public access channel combined with an educational or governmental access channel, shall provide notice to the general public of the opportunity to use such channel on the community bulletin board (subject to section 8.403(e)). Notices shall include the name, address, and telephone number of the entity to be contacted for use of the channel. All access programming shall be identified as such.



8.429 Time

Channel time shall be scheduled on the public access channel by the entity responsible for the management thereof on a non-discriminatory basis; except that the entity may prevent any single user, or type of user on a combined PEG access channel, from monopolizing the programming time available.

8.430 Local Priority

Local presentations or programming produced through local use should be given preferred status on Public, Educational, and Governmental access channels in the event of competing requests for channel time, except for any state-wide PEG access channel.

8.431 Usage Charges

Neither the cable operator nor an AMO may charge any person for channel time for PEG access programming.

8.432 Control of Content

The following guidelines shall apply to editorial control of PEG access content:

- (A) Municipality. A municipality shall not exercise any editorial control over any use by the public of a PEG access channel; but if the municipality appoints a member of an AMO's board, that member may take part in decisions of the AMO. A government AMO may control the content of programming that it produces.
- (B) Public Access Channel. An AMO shall not exercise any editorial control over the use of the public access channel except that it is encouraged to promulgate non-discriminatory rules that establish late-night safe-harbor hours, parental warnings, or other methods that advise viewers with regard to indecent programming or other programming that may be unsuitable for children.
- (C) Educational and Government Access Channels. Access entities that manage an educational or government access channel may promulgate rules for the use of that channel that conform to the policies of the institutions for which it administers and manages the channel. A government/education AMO may set guidelines for PEG content but may not infringe upon the free speech rights of the participating speakers.
- (D) Editorial control by operator. Except to the extent provided by 47 U.S.C. § 531(e) and 47 C.F.R. § 76.702, the cable television operator shall not exercise any editorial control over any public, educational, or governmental use of capacity designated for PEG purposes. PEG content programmed by an AMO is not owned by the cable operator, except in those instances where such content has been copyrighted by the cable operator.

8.433 Use by Operator

- (A) Where no AMO exists, a cable operator shall be permitted to use PEG capacity or applications for the purpose of promoting PEG use or airing PEG content subject to the programming guidelines of the channel.
- (B) Where an AMO has been designated to provide PEG services, a cable operator shall be permitted to use PEG capacity or applications with the permission of the AMO.

8.434 Certificate of Public Good Conditions.

- (A) **Interconnection of Cable Systems.** The Commission may require that a cable company, as a condition of a certificate of public good, enable interconnection of their systems, directly or indirectly, with cable systems throughout Vermont, to provide transmission of PEG access programming between cable systems in the state regardless of the identity of the cable operator.
- (B) **Institutional Networks, Condition of Certificate of Public Good.** Subject to federal law, the Commission may require that a cable company, as a condition of a certificate of public good, make available an institutional network linking state or local government buildings, educational institutions, studios of educational or governmental access administrative entities within its franchise area, or interconnection points for institutional networks serving neighboring franchise areas.

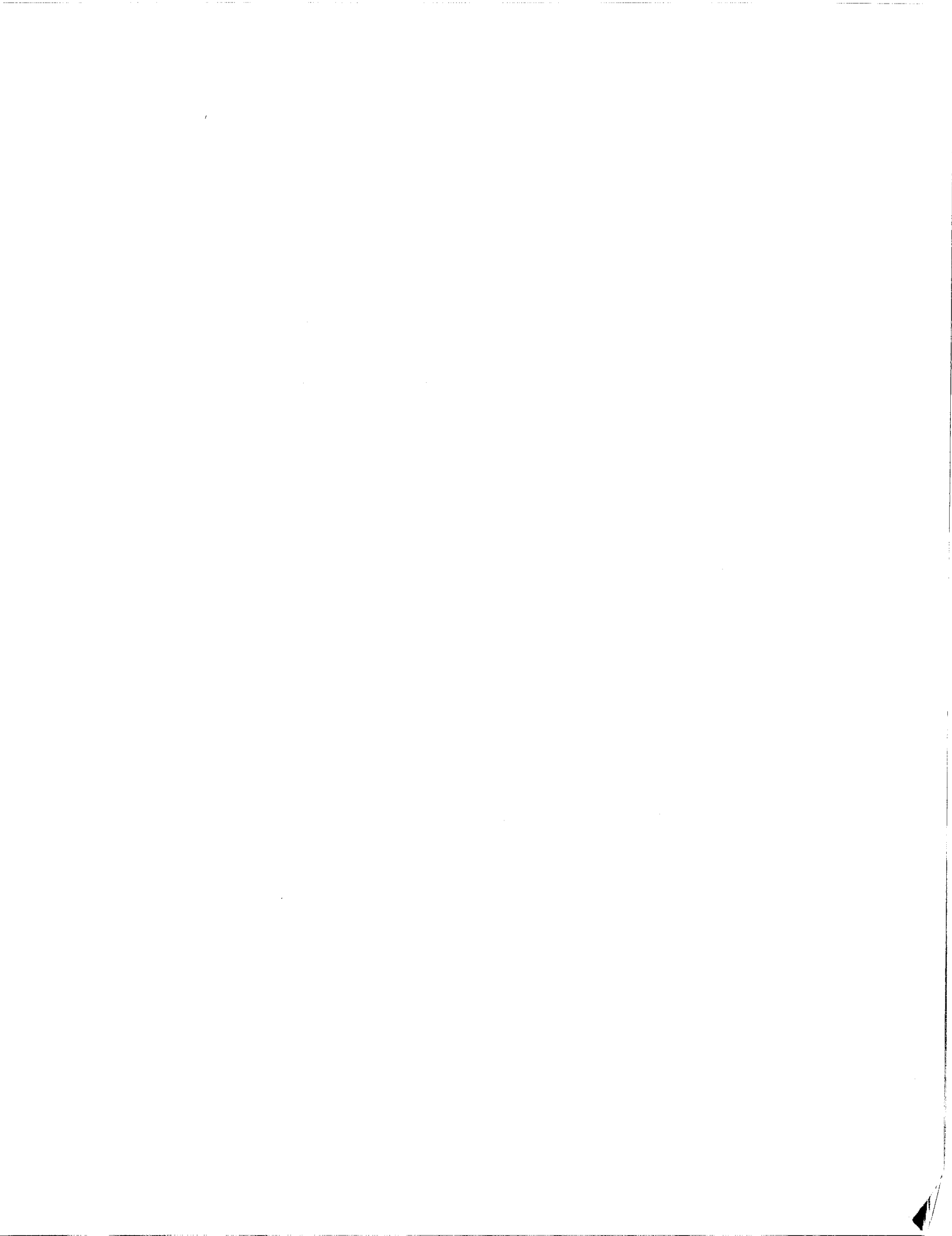
8.435 Waivers, Rulings, and Disputes

- (A) **Availability of Waivers.** A cable television operator, a municipality, or an entity designated to administer a PEG access service may seek a waiver of one or more provisions of this rule by application to the Commission.
- (B) **Declaratory Rulings by Commission.** Any interested person may seek a ruling from the Commission concerning the applicability or implementation of any provision of this section or any provision of a certificate concerning PEG access.
- (C) **Disputes and Remedies.** Any dispute related to contracts or requirements outlined in this rule may be heard by the Commission.
- (D) **No editorial control.** Notwithstanding the above, the Commission shall not grant any waiver or ruling, or enter any order that constitutes the exercise of editorial control over the content of public access programming.

8.500 Regulation of Rates: Procedures to be used in the Investigation or Setting of Rates

8.510 Federal and State Rules

In any proceeding to set or investigate the rates charged by a cable television system, if the Commission has been certified by the Federal Communications Commission to regulate such rates, the Commission will act in a manner consistent with the Rules of the Federal Communications Commission and with Federal law. The Commission will also act in a manner consistent with Vermont law and precedent and with these rules, to the extent they are not preempted or superseded.



Clean
Copy

Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Utility Commission

Rule 8.000
Page 1 of 33

8.000 CABLE TELEVISION

8.100 Definitions

For purposes of this rule, the following definitions apply. For terms not defined here, refer to the federal cable act (Title 47 U.S.C. § 521 et seq.).

- (A) Access channel: a channel made available by an operator that is used to cablecast non-commercial programming created or acquired for public, educational, or governmental purposes pursuant to this Rule. Access channels are sometimes referred to as public, educational, and government channels, or "PEG" channels.
- (B) Access management organization, or AMO: a nonprofit entity apart from the cable television operator designated to receive PEG access support through the cable operator and contracted to manage public, educational, and governmental access channels and facilities for non-commercial purposes.
- (C) Activated channel: a channel engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use.
- (D) Basic cable service: any service tier that includes the retransmission of local television broadcast signals (may also include other signals).
- (E) Commission: the Vermont Public Utility Commission.
- (F) Billing dispute: a disagreement between a subscriber and cable television company concerning:
 - (1) credits for payments made by the subscriber to the cable television company;
 - (2) credit refund for service outage;
 - (3) errors in billing amount; or
 - (4) assessment of non-recurring charges such as disconnection fees, service calls, and late charges.
- (G) Business office: the office of the cable television company where a subscriber or others may make inquiries regarding bills, line extensions, and company rules and regulations; request service; pay bills, either in person or by mail; or bring disputes and complaints.
- (H) Cable company: as defined in 30 V.S.A. § 501, a person, firm, partnership, corporation, association, joint stock association, or company which owns or operates a cable system in this state, except non-profits systems serving fewer than 100 subscribers.
- (I) Cable operator: the operator of a cable system, also referred to as "operator."
- (J) Cable service area, or service area: a geographic area within which a cable system has the right to provide cable service to the public. Such boundaries may include areas into which extension of service is not immediately feasible but may be in the future.



- (K) Cable television system, or cable system: a facility meeting the definition in 30 V.S.A. § 501 or 47U.S.C. § 522 and subject to the regulation of the Commission.
- (L) Capacity: portion of electromagnetic frequency spectrum used for commercial and public purposes.
- (M) Channel or cable channel: a portion of the electromagnetic frequency spectrum that is used in a cable system and which is capable of delivering a television channel as that term is defined by the Federal Communication Commission regulations.
- (N) Collection charge: a fee or charge imposed upon a subscriber by a cable television company for its efforts at collecting or attempting to collect a past due account.
- (O) Department: the Vermont Department of Public Service.
- (P) Educational access channel: an access channel designated for non-commercial educational purposes.
- (Q) Governmental access channel: an access channel designated for non-commercial civic purposes.
- (R) Institutional network or I-Net: a communication network that is constructed or maintained by the cable operator and that is made available to educational or governmental institutions.
- (S) Late charge: a charge that is added to a cable television subscriber's account or bill for non-payment of a previously due account.
- (T) Leased access: use of the Leased Access Channel.
- (U) Leased access channel: a channel, available for a charge, for commercial or non-commercial purposes.
- (V) Live origination program: PEG content cablecast from cable company head end or remote origination site while it is taking place.
- (W) Local origination: the creation of programming cablecast by the cable operator.
- (X) Local presentation: request by an institution or individual living or working within the cable service area to transmit PEG content using cable channels or capacity, whether or not that PEG content was produced using PEG access facilities.
- (Y) Local use: non-commercial use of PEG channels and capacity by residents of the State of Vermont, including schools and not-for-profit educational institutions, and local and state governments or agencies thereof.
- (Z) PEG: Public, educational, governmental.
- (AA) PEG content: any non-commercial voice, video, or information made available by members of the public, educational institutions, local or state government, or an AMO and distributed through PEG channels or cable system capacity set aside for such purposes.

- (BB) PEG facilities: includes equipment and studio space necessary for community members to produce, post-produce and distribute any PEG content from the cable company head end and remote origination sites to the system's cable subscribers.
- (CC) PEG AMO service territory: the area for which the AMO has responsibility, and upon whose gross annual revenues the cable operator bases the calculation of that area's PEG AMO's annual support.
- (DD) Premium channel or service: an optional channel to which a customer may subscribe for an additional monthly charge, e.g., HBO or Showtime.
- (EE) Promotional offerings: special discounted service offerings that are made available or promoted for no more than six months.
- (FF) Public access channel: an access channel designated for non-commercial use by the public on a first come, first served basis.
- (GG) Remote origination site: a source of PEG content that is physically some distance from, but configured to transmit signal to, the cable company headend for distribution over the cable system.
- (HH) Service outage: a loss of video or audio signals on one half or more of the basic channels or on one or more premium channels which is not caused by the subscriber's television receiver or by the subscriber.
- (II) Service tier: a group of channels sold as a package.

8.200 Certificates of Public Good

8.210 Petitions (other than for renewal)

8.211 Form and content

The petition shall be on a form specified by the Commission (available from the Commission and on the Commission's web site) and shall contain at a minimum the information required by the instructions to the petition form.

8.212 Service of petitions

When a petition is filed with the Commission and the Department of Public Service for a certificate of public good pursuant to 30 V.S.A. § 503, or to alter, extend, or abandon a cable system service area, a copy of the petition and its supporting documents shall be served upon the clerk of each municipality encompassed in the proposed service area. In addition, a copy of the petition without its supporting documentation shall be served upon:

- (A) The superintendent of any school system encompassed in the proposed or affected service area.
- (B) The clerk of each municipality adjacent to the proposed or affected service area.

Note that a complete application must be filed both at the Commission and at the Department.

8.213 Hearings

The Commission shall set petitions relating to applications for certificates of public good for

hearing (if a hearing is required under 30 V.S.A. § 231) within a reasonable time. If hearings are held, at least one hearing shall be held in the county of the proposed service area to afford opportunity for public comment.

8.214 Criteria

In determining whether to approve or reject a petition requesting a certificate of public good for a cable system service area, the Commission shall consider the following:

- (A) The criteria of 30 V.S.A. Chapter 13.
- (B) The criteria known as the EMCO criteria:
 - (1) financial soundness and stability, both of the applicant generally and the particular proposal;
 - (2) the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access;
 - (3) the commitment to a construction and in-service schedule;
 - (4) the experience and ability of the applicant to run and manage a cable tv system;
 - (5) the rates proposed to be charged to customers;
 - (6) consumer policies, particularly re: complaints and problems;
 - (7) availability of service to maximum number of residences;
 - (8) the quality of the engineering and materials used in the system;
 - (9) logical fit with neighboring systems.

8.215 Approval

If, after hearing (if required) and investigation, the Commission finds pursuant to the above criteria that approval of the applicant's proposal to provide cable service to the proposed area would promote the general good of the state, it shall issue a certificate of public good to such applicant.

8.220 Termination

8.221 Transfer of certificates

A certificate of public good is not transferable and may not be sold, pledged, mortgaged, or otherwise alienated other than with the approval of the Commission. When permission is given by the Commission for the sale and purchase of assets of a cable company pursuant to 30 V.S.A. §§ 102, 109, 231, or 232, a new certificate shall be issued to the purchaser.

8.222 Revocation or alteration for cause

- (A) The Commission may, after hearing, cancel, revoke, suspend, or alter any certificate for the following causes:
 - (1) Willful violation of any provision of Chapter 13 of Title 30.
 - (2) Willful failure of the certificate holder to comply with any rule, regulation, or order of the Commission, including the express terms of the certificate of public good, unless such rule, regulation, or order has been stayed by order of the Commission or by the Supreme Court.
 - (3) Failure, without written permission of the Commission, to commence operations according to the construction and commencement of service schedule made a condition of the certificate of public good.

- (4) After commencing operations, failure (without good cause shown) to render adequate service for a continuous period exceeding thirty days.
- (B) The burden of proof in a revocation hearing is on the party seeking the cancellation, revocation, suspension, or alteration; the standard of proof is the preponderance of the evidence.

8.223 Removal of property

- (A) In the event that a certificate of public good is revoked or cancelled, the holder thereof shall, upon order of the Commission and at its own expense, promptly remove all its property and promptly restore the street or other area from which it is removed to the condition existing before such removal, or to a reasonable condition as may be directed by the municipality or public authority.
- (B) The Commission may, upon written application therefor by the certificate holder, approve the abandonment of any such property in place under such terms and conditions as the Commission may prescribe. The Commission shall not unreasonably refuse permission to so abandon underground plant.
- (C) The provisions of this section shall apply only if ownership of the property is not transferred pursuant to federal law.

8.230 Renewal

When an incumbent cable television operator seeks to renew a certificate of public good, the Commission, pursuant to law, shall ascertain whether:

- (A) The cable operator has substantially complied with the material terms of the existing certificate of public good and with applicable law;
- (B) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, has been reasonable in light of community needs;
- (C) The operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- (D) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

8.231 Community Needs Assessment

In order to ascertain section 8.230(D), the Department shall conduct a community needs assessment within each access service area. Unless the Commission orders otherwise, the assessment process shall include:

- (A) Discussions with representative educational, governmental and non-profit organizational sectors of the PEG AMO service territory, including any PEG AMO, access advisory committee, or other non-profit entity that provides communication services to the general community. These discussions will generally take the form of a series of focus group sessions, sector meetings, and public hearings.
- (B) Letters of support, statements of need, recordings of public meetings, and other information gathered by the AMO as part of any community needs assessment that it may have independently conducted.



- (C) A non-scientific survey of the educational, governmental, and non-profit organizational sectors in the PEG AMO service territory that measures the organizations' communication needs, and other needs that may have reasonable cable-related communication solutions.
- (D) A statistically valid survey of randomly selected households that measures, with regard to PEG access, attitudes and behaviors such as, but not limited to, subscriber satisfaction, awareness, and use of PEG access. If the survey is conducted for more than one PEG AMO service territory, the methodology shall be such that a minimum of useful data interpretation and analysis may be provided for each such service territory.

8.300 Conduct of Business

8.310 Rates and Charges

8.311 General provisions

(A) As provided in 30 V.S.A. § 219, all rates and charges by a cable company shall be applied without discrimination between classes of customers.

(B) Nothing herein shall prohibit the following:

- (1) the waiving or reduction of rates and charges in conjunction with promotional campaigns for the purpose of attracting subscribers;
- (2) the provision of installation or monthly service without charge to schools, government or non-profit organizations or agencies, or buildings operated by such entities;
- (3) the provision of service at no charge to employees and agents of the cable system operator;
- (4) the provision of service at bulk-discount rates, lower than individual rates, so long as the difference in rates is related and attributable to lower costs of providing such bulk service.

Any of the above discounted rates may be provided, if at all, at the option of the cable system operator.

(C) Cable companies are relieved from the obligation under 30 V.S.A. §§ 225, 226, and 227(a) to file tariffs setting forth the rates and terms and conditions of service except as specifically required under this Rule or unless the requirements of those sections are reimposed by the Commission after an opportunity for hearing. Upon the effective date of this Rule all tariffs for cable services on file with the Commission are no longer in effect, except for tariffs or tariff sections regarding a company's line extension policy.

8.312 Rates, Terms, and Conditions of Service

(A) Each company shall maintain a copy of all its current schedules of rates, terms, and conditions of service at its business offices. The information on file at the company shall contain a complete description of the terms and conditions applicable to each level of service or combination of services. The information on file shall include, at a minimum, the information required by the following paragraphs of this section to the extent that the service is offered or the charge is applied by the company.



(B) Residential subscribers. For each level of service, detail:

- (1) number and listing (description and channel) of programmed channels available and the subscription rates;
- (2) installation charges for first outlet and each additional outlet (including custom installation work and aerial and underground drops);
- (3) monthly service charges for first outlet and each additional outlet;
- (4) charges for disconnection, reconnection, relocation of outlets;
- (5) charges for FM radio service installation and monthly service;
- (6) equipment installation, monthly rental, and deposit charges (include purchase or lease prices, if applicable);
- (7) charges for changes in service;
- (8) surcharges for the support of Public, Educational, and Governmental (PEG) access; and
- (9) returned check, collection, and late payment charges.

(C) Other classes of subscribers. Detail special installation, monthly rental, and deposit charges (include purchase or lease prices, if applicable) for:

- (1) multiple unit dwellings;
- (2) commercial subscribers;
- (3) institutional subscribers.

(D) Ancillary services. Detail installation, monthly service, and other rates and charges for any services offered other than residential subscriber and premium services (including, but not limited to, alarm services, facsimile, and other similar services).

(E) Leased channels. Detail all charges associated with lease of cable channels, if any are provided.

(F) Production charges. Charges for use of production equipment, facilities, personnel, and materials by:

- (1) users of PEG access channels;
- (2) other customers of production services.

(G) Premium services rates. Detail current rules, regulations, and rate schedules for premium or pay cable television services available, with installation, monthly service, deposits, parental keylock, and other charges specified for each pay service offered.

(H) Failure of any operator to comply with formal filing procedures with respect to its rules and regulations shall not be the basis for any revocation or denial of recertification.

8.313 Policy on Expansion into Unserved Areas

Each cable company shall file a statement of the company's policy on expansions of service into unserved areas as a tariff for the Commission's approval. Each such policy must at a minimum conform to the provisions of this section.

(A) If a policy on expansion into unserved areas requires contributions-in-aid-of-construction, then that policy shall also allow for the rebating or reallocation of such

contributions among original and new subscribers. Whenever more than one customer is connected to a customer-financed line extension, total contributions-in-aid-of-construction shall be computed to yield to the utility not more than the total cost of extending or expanding service to the new customer(s), less the service drop credit(s). Amounts to be collected from new customers connecting to customer-financed lines shall be computed as follows:

- (1) For a period of seven (7) years from the completion of construction of a line extension, contributions from new customers connecting to said lines shall be based upon an equal sharing of the full cost of construction of the subject line extension as if the new customers were original participants.
- (2) For a period of seven (7) years from the completion of construction of a line extension, contributions calculated under section 1 above shall be reimbursed to the original participants based on an equal sharing of the full cost of construction of the subject line extension as if the new customers were original participants, except that:
 - (a) All line-extension reimbursements shall be paid by cable companies to the current owners of the dwellings or structures served by line extensions that are subject to reimbursement payments for new connections, and shall be paid as a cash rebate or, if to a current subscriber, cash or a credit, at the subscriber's choice.
 - (b) Reimbursements may be made at any time, but a final reallocation and reimbursement shall be conducted at the end of the seven (7)-year period.
 - (c) No reimbursement shall be required if the computed amount is less than \$100.
- (3) For purposes of this Rule, when calculating contributions under paragraph 1 or reimbursements under paragraph 2, the original full cost of construction may be depreciated at a straight-line rate of up to 50% at the end of the seven (7)-year period. Depreciation for these purposes, if any, shall be calculated similarly for both contributions and reimbursements and applied as of the date of the connection of new customer(s).
- (4) As an alternative to issuing rebates under this section, a cable company may reduce the initial subscriber contribution-in-aid-of-construction based on the number of residential and non-residential premises passed within 500 feet of the proposed cable facilities that are not participating. For non-participating premises, each non-seasonal residential premise passed shall be counted as 1/4 of a verified subscriber, each seasonal residential premise passed shall be counted as 1/10 of a verified subscriber, each commercial or institutional lodging (such as a hotel, motel, or nursing home) shall be counted as 3/4 of a verified subscriber, and each non-residential premise passed shall be counted as 1/9 of a verified subscriber. If a cable company chooses to offer this rebate alternative, it shall include such an alternative in its tariff and no rebate shall be required. If this alternative is to be used, the company estimates under "F" below shall clearly indicate that no rebates will be issued. The following additional conditions apply only to this rebate alternative:
 - (a) If a verified subscriber commits to take service from a cable company for an additional commitment period of up to 18 months, then the company shall reduce the verified subscriber's contribution by the value of the additional commitment, exclusive of taxes and fees.
 - (b) If a verified subscriber commits to provide to the cable company, over the term of the two-year commitment period, a minimum annual amount of qualifying revenues up to 150% of the average annual revenue per

subscriber, then the cable company shall reduce the verified subscriber's contribution by the incremental revenue above the average annual revenue per subscriber, exclusive of taxes and fees. Qualifying revenues shall include revenues from all services provided to the subscriber over the facilities that provide the cable service, except revenues paid by the subscriber to non-affiliated third parties.

(B) Any cable company for which the expansion of service into unserved areas requires the extension of lines or cables to the customer location shall provide a line-extension policy compliant with this subsection.

(1) Any line-extension policy that requires contributions-in-aid-of-construction shall not require a contribution in excess of the amount required by the following formula:

$$A = (C_T / N) * (1 - (N / (H * L)))$$

where A is the dollar contribution from each new customer; C_T is the actual cost of the line extension; N is the number of verified subscribers on the extension who will be making the contribution-in-aid-of-construction; L is the length of the extension in miles, measured along the pole route from the end of the current plant to the end of the proposed extension, excluding standard subscriber drops; and H is a number designated by the cable company's tariff representing the number of verified subscribers per mile, counting all the miles proposed on the extension, above which the company will not require a contribution-in-aid-of-construction.

- (2) No line-extension policy filed in accordance with this section shall specify a value for H in excess of a maximum number established by the Commission. The maximum value for H for straightforward, aerial construction shall be 16 for a period of at least three years after the adoption of this rule, and thereafter may be re-set by the Commission after notice and opportunity for comment not more frequently than once every three years.
- (3) Upon request of a person in an unserved area within a cable company's franchise area, the cable company shall provide an estimate of the cost of a line extension. The cable company may satisfy this obligation by providing a preliminary estimate to the requestor. If the requestor is located a significant distance from the last serviceable pole whereby service can be extended to new customers, a representative of the cable company may contact the requestor to inform the requestor of the approximate length and cost of the line extension. In such instances, the cable company will provide a written estimate only if the requestor indicates they still wish to receive a written estimate.
- (4) Cable companies shall develop cost estimates excluding a standard aerial drop of 300 feet from the pole for each dwelling serving each verified subscriber and any costs for installation of service inside the subscriber's home. Each verified subscriber shall be responsible for its own additional costs for installation of any nonstandard service drop unless participating verified subscribers and the cable company agree to divide the cost of non-standard service drops among the group of verified subscribers requesting service. Individual potential customers requesting service may be provided with a cost addendum outlining additional costs for a subscriber drop that is in excess of 300 aerial feet; and concealed wiring or other custom installation work; and all underground drops.
- (5) All written estimates provided to verified subscribers, whether mailed or sent electronically, must use the Line Extension Form. The cable operator may provide the map required by the Line Extension Form as a separate document. All written estimates are valid for 90 days or a longer period, as specified in the

Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 10 of 33

cable company's tariff. The Line Extension Estimate Form must clearly indicate whether the estimate is a preliminary or final estimate and whether the estimate includes actual make-ready costs. For preliminary estimates, the Line Extension Estimate Form must also indicate that the estimate may not reflect actual field conditions and make-ready costs. The final customer contribution required may not be more than 10% in excess of the final estimate provided.

- (6) A cable company may include the cost of network upgrades within an existing cabled area in C_T if the network upgrades are necessary and would not be installed but for the line extension.
- (C) Any company that provides cable television services over facilities that it uses to provide telecommunications or other non-cable-television services and that does not require the construction of new cables or lines in order to expand service into unserved areas shall provide a policy on expansion of cable service into unserved areas conforming to this subsection.
- (1) Any expansion-of-service policy shall provide for a maximum ratio of verified subscribers to served lines or premises in a project area that defines when the cable company shall provide an expansion of service without requiring customer contribution-in-aid-of-construction. This ratio shall be not more than a default ratio established by the Commission after notice and opportunity for comment, and which, after it is first established, may be re-set by the Commission after notice and opportunity for comment not more frequently than once every three years.
 - (2) A "served line or premise" is a line over which or a premise to which a company already provides any non-cable retail or wholesale service using facilities that can also be used to provide cable services. A company may make calculations under this subsection using either served lines or served premises, but shall use exclusively one or the other. A "project area" is an area that can be upgraded to offer cable services, including investments in facilities in common to the area that would benefit from the upgrade. A project area shall be defined at the request of a customer or in advance by the company by reference to its customary engineering practices.
 - (3) When a verified subscriber or group of verified subscribers requests an expansion of service into a project area, the cable company shall calculate the cost of the expansion, and calculate a cost per verified subscriber making the request by dividing the cost of the expansion by the number of verified subscribers participating in the request. When calculating the cost of the expansion, the cable company shall multiply C_A , the average cost per served line or premise, specified in the company's tariff, by the number of served lines or premises in the project area. However, the company shall reduce the number of served lines or premises by the number of verified subscribers divided by H , the ratio of verified subscribers to served lines or premises, above which the company does not require a contribution-in-aid-of-expansion, specified in the company's tariff. This calculation can be summarized by the following formula:

$$A = (C_A * (L - (N / H)) / N)$$

where A is the dollar contribution from each new customer; C_A is the average cost per served line or premise to expand cable service in a project area, specified in the company's tariff; N is the number of verified subscribers in the project area who will be making the contribution-in-aid-of-expansion; L is the total number of lines or customer premises in the project area; and H is the ratio of verified subscribers per served line or premise, above which the company will not require a contribution-in-aid-of-expansion.

- (D) A cable company may specify more than one value for C or H in its tariff, based on the number of miles, lines, or premises in a proposed expansion, if there are significant differences in cost based on size or other relevant cost factors of the proposed expansion, including underground excavation.
- (E) With a cable company's annual report, the company shall submit a report of the number of additional miles and homes served as a result of its service expansion policy.
- (F) Whenever a prospective subscriber or subscribers located in a service expansion area request an estimate to determine the cost of bringing cable service, the cable company, at its discretion, may first provide a preliminary estimate to the requestors. For final estimates, the cable company must conduct a field survey. Both preliminary and final estimates must inform each of the prospective subscribers of the contribution-in-aid-of-construction or expansion that may be charged. The cable company shall support the designated community organizer with appropriate information such as an explanation of how the company's line extension policies work, product information, and construction time frames. The cable company shall provide preliminary estimates within 30 days of receiving the requests. The cable company shall provide a final estimate within 45 days of receiving written approval of the preliminary estimates by all included subscribers. Where a proposed line extension involves a non-conventional extension of more than three ends of line and 20 verified subscribers, the company may have 60 days to provide an initial estimate and 90 days to provide a final estimate.
- (G) The cable company shall apply for any necessary pole attachment agreements within 30 days of its receipt of the contribution-in-aid-of-construction from all verified subscribers, and shall make available cable service within 90 days from the receipt of the pole-attachment agreements and other necessary permits or easements, subject to weather, Force Majeure, and the performance of makeready.
- (H) Nothing in this section shall require a cable company to expand service in the absence of a request from one or more verified subscribers. Cable companies shall maintain maps of serviceable areas.
- (I) No cable company shall be required to overbuild another company, or provide cable service to locations where another cable company has already constructed facilities or to which another cable company is required by rule or order of the Commission to construct facilities, or to locations where another cable company has made a binding commitment to construct facilities within the next 18 months.
- (J) Every cable company shall file proposed changes to its line-extension policy with the Commission and the Department of Public Service at least 45 days prior to the effective date of the change, except for changes that only reduce required customer contributions-in-aid-of-construction, which may take effect immediately upon notice to the Commission and the Department.
- (K) For the purposes of this section, a "verified subscriber" is a person whose residence or business is in an unserved area who makes a binding commitment to purchase cable service from a cable company for a minimum period of two years, or a lesser period required by the cable company, or pays an amount equivalent to one year of service in advance.
- (L) The provisions of this section supersede and remove any requirement to perform "house count surveys" contained in any certificate of public good previously issued



Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 12 of 33

by the Commission.

8.314 "Lifeline" service

No service offering of any company may be referred to, by tariff or by company promotion, as "Lifeline" service.

8.320 Notice

8.321 General Requirement

Every cable television company shall provide, the following written information on each of the following items at the time of installation of service, at least once annually to all subscribers, and at any time upon request:

- (A) Products and services offered;
- (B) Prices and options for programming services and conditions of subscription to programming and other services;
- (C) Installation and service maintenance policies and charges;
- (D) Information regarding how to obtain instructions on how to use cable service; and
- (E) Channel positions of all programming carried on the system.

8.322 Timing and Content for Notices of Change

- (A) Cable Companies shall notify affected customers, the Commission, and the Department of any changes in rates, charges, or programming in writing. Thirty (30) days' advance written notice is required for any change that increases rates or charges. If advance notice is not required then notice shall be given not later than the first bill following implementation of the change. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notice is not required for a change to which the customer has previously and specifically agreed, including but not limited to those associated with individual customer contracts. Cable operators shall file written notice to the Commission and Department of promotional rates and services, if such promotions are available or promoted to new customers for more than six months. If the cable operator is given insufficient notice by a service provider to give the required notice above, the operator shall give notice as soon as practicable.
- (B) Written notice may be accomplished by letter, bill insert or bill message.
- (C) A customer may terminate service without penalty at anytime within 30 days of the effective date of a change in rates, terms, or conditions when:
 - (1) the change may increase the cost of service to the customer; and
 - (2) the customer has not previously and specifically agreed to that change.
- (D) Cable companies shall retain a record of the terms and conditions of service for promotions and individual customer contracts offered to customers during any point during the preceding twenty-four (24) months and make available a copy upon request.

8.330 Telephone Access

8.331 Hours

Each company shall maintain telephone lines for the receipt of trouble calls, service



Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 13 of 33

complaints, and requests for repairs or adjustment. Unless otherwise ordered by the Commission, the lines shall be staffed by a customer service representative during the company's normal business hours. This staffing provision shall not apply to any system which employs less than four full time employees. At other times an answering service or answering machine must be provided to receive such calls, provided that messages are checked at least every four hours between 7 a.m. and 11 p.m.

8.332 Toll-free

Customer calls to customer service representatives must be by way of local, toll-free, or other number which causes no more expense to the customer than would a local call. The company shall list such telephone number on all statements sent to customers.

8.333 Response

Any such call must be connected to a customer service representative within two minutes during normal business hours, except in case of a system emergency.

8.334 Telephone listings

The telephone number of an operator's business office or offices shall be listed in all official telephone directories of all telephone companies serving the franchised area.

8.340 Billing Practices

8.341 Notification of billing practices

(A) Every cable television company shall notify each of its subscribers, in writing, of its billing practices and payment requirements. The notice shall describe, at a minimum, billing procedures (including payment requirements to avoid discontinuance of service, e.g., payment due dates), late charges, advance billing options, if any, procedures to be followed in billing disputes, and credit to be given for service outages.

(B) Notice shall be given as follows:

- (1) to new subscribers, at the time of initial installation;
- (2) to all subscribers, whenever there is a change in the company's billing practices or payment requirements; and
- (3) to all subscribers at least annually.

(C) Copies of the company's billing practices and payment requirements shall be filed with the Commission and the Department and in the company's business office and shall be given or sent to a subscriber upon request.

8.342 Bill format

(A) Twice a year, at six month intervals, each subscriber shall receive a bill or other statement that shall itemize each service or piece of equipment for which the subscriber is charged. If a company bills its subscribers less than twice a year then each bill shall contain such itemization.

(B) Every bill shall include the telephone number of the company and the toll-free subscriber assistance number of the Department of Public Service. The bill shall include a statement that the company should be called first for problem resolution.

(C) Any returned check charge imposed by such company shall be reasonably related to the company's actual cost of processing returned checks, including bank charges, if any, but shall not exceed \$25.00, absent prior approval by the Commission.

(D) The company's billing practices shall conform to the Commission's Rule



3.400, as amended.

8.343 Credit for service outage

- (A) In the event of a subscriber service disruption for more than twenty-four (24) consecutive hours, the cable company shall credit the subscribers affected for the total period of the disruption in an amount proportionate to their regular monthly service charge.
- (B) Each subscriber so affected must notify the cable company of the disruption unless there is a system-wide disruption or that subscriber's disruption is otherwise known or should have been known to the cable company.
- (C) The disruption period shall not begin until the disruption is reported to the cable company, personally, by telephone or in writing, or otherwise is known or should have been known to the cable company. Receipt of such notice by the cable company, which includes notification to an answering service, company employee, etc., shall cause the disruption period to commence.
- (D) Once the disruption period is known by the cable company to exist, for a particular subscriber, the subscriber's credit shall be automatic, and shall require no further request on the part of the affected subscriber.
- (E) Disruptions reported after the fact shall not be eligible for a refund.
- (F) The minimum credit shall be equal to the company's daily billing for the first twenty-four hour period and each whole or portion of a twenty-four hour period during which a service outage continues. The daily billing is the customer's monthly billing for the services affected divided by the number of days in the month which the company uses to compute its bills.
- (G) A cable television company shall conduct routine maintenance of its system at hours during which the least amount of subscriber service interruption shall occur, when practicable. The company shall make a reasonable effort to notify subscribers, in advance, of any scheduled service outages for purposes including, but not limited to, equipment repair or replacement, system upgrade, or rebuild which may interfere with service.

8.344 Subscriber and converter deposits

The provisions of Rule 3.200, as amended, apply to deposits required to be made before service is provided. In addition, if a cable operator supplies a converter or other auxiliary equipment to a subscriber's receiving equipment, it may not require a deposit exceeding the replacement cost, less salvage, of like equipment, to be applied so far as necessary to replacement or repair of the equipment resulting from subscriber abuse. If so applied, the company may require that an additional deposit be paid so as to restore the deposit to its original amount.

8.345 Billing disputes

- (A) Any subscriber shall have 45 days from the payment due date contained in the subscriber's bill in which to register a complaint with a company with respect to any billing error or dispute. A billing complaint may be registered in person at the company's business office, by telephone, or by mail. The company shall promptly investigate the billing complaint, shall provide an initial response to the subscriber not later than three business days after receipt thereof, and shall provide a written proposal for the disposition of the complaint to the subscriber not later than 15 business days following the company's receipt of the complaint.

Effective: 7/1/91
Amended effective: 4/18/94
Amended effective: 3/1/05
Amended effective: 8/23/07
Amended effective: 2/12/10

Vermont
Public Service Board

Rule 8.000
Page 15 of 33

(B) The subscriber, after receiving the company's proposed disposition of the complaint,

shall have ten days to contest the disposition and may present the company with additional information concerning the complaint. In the event the subscriber contests the proposed disposition, the company shall review any additional information, if provided, and shall notify the subscriber of the company's final disposition within 15 business days of notification of contest by the customer.

- (C) No company may effect termination of service to the subscriber for non-payment of disputed bills during the pendency of any billing complaint, provided the subscriber pays current and undisputed bill amounts during the pendency of the complaint.
- (D) If a subscriber uses this provision of this Rule to avoid paying proper bills by means of repetitive claims of dispute of each new bill, the company may petition the Commission for permission to disconnect such a subscriber.
- (E) The Commission, upon the written request of the subscriber, may review the company's disposition of a billing complaint in accordance with such procedures as the Commission shall prescribe and make such orders as the Commission deems reasonable and necessary to finally resolve the complaint.
- (F) A cable company shall not refuse cable video service to a customer due to a delinquent bill owed by another person unless the customer responsible for the delinquency, resulting from service to that household, resides in the same household.

8.346 Disconnection

- (A) The provisions of Rule 3.400, as amended, shall apply, except as provided below:
- (B) No cable company may disconnect a subscriber's service except for one of the following reasons:
 - (1) at the request of the subscriber;
 - (2) because the subscriber without the company's approval tapped the system to provide cable service or additional service to himself, or service to different or additional equipment or has otherwise tampered with the company's facilities;
 - (3) because the subscriber made fraudulent representations regarding the use of the service within the subscriber's premises;
 - (4) because the subscriber so operates or connects his equipment as to cause disturbing effects on the service of other subscribers or the company's equipment or facilities;
 - (5) to prevent a hazard to persons or property resulting from the condition of the installation or the subscriber's equipment;
 - (6) because the subscriber refuses reasonable access to his premises to company representatives who must have such access to make required inspections or tests or to make adjustments to or service equipment or to legally remove the company's property or to otherwise comply with conditions of the company's rules and regulations;
 - (7) because customer-installed equipment is causing signal leakage in violation of federal or state regulations;
 - (8) for non-payment as otherwise provided in this Rule.
- (C) For reasons 4, 5, and 7, above, the company may disconnect without prior notice to the customer, but must leave written notice at the customer's premises explaining why service was terminated and what must be done to have it restored.

- (D) Notice of service discontinuance shall clearly state the reason and the action on the part of the subscriber necessary to avoid discontinuance.
- (E) No cable television company shall disconnect service for non-payment or as otherwise provided in this rule (except by subscriber request) on a weekend, public holiday, a day when the office of the company is not open for business, or the day before any of the days above.
- (F) When a company representative is at a subscriber's residence or place of business to disconnect service and the subscriber, at that time, pays the amount in arrears in lieu of disconnection, the company may add a reasonable collection charge to the subscriber's bill, provided all other applicable provisions of this section have been followed.
- (G) Receipt of a subsequently dishonored instrument from a subscriber in response to a notice of discontinuance shall not constitute payment, and a cable company need not go through another Rule 3.400 disconnect notice cycle. The cable company may disconnect on a minimum four (4) day notice that the instrument was dishonored.
- (H) This section (pertaining to disconnection and notice of disconnection) does not apply to any person who is not an actual subscriber or who has not requested service, in which case no notice of any kind is required.

8.347 Late Payment Charge

A late payment charge may be imposed on unpaid balances no less than 60 days overdue and shall not exceed 1.5% of the delinquent amount not in dispute, absent prior approval by the Commission.

8.350 Service Calls

8.351 Customer interaction

- (A) Investigative action shall be initiated on the same day a trouble call is received at the local office, if possible, but in no case later than the following business day, unless requested otherwise by the subscriber.
- (B) When at the request of the subscriber a service call to the subscriber's premises is required, the subscriber shall be informed in advance, if possible, as to the day thereof and whether the service call is scheduled during the morning, afternoon, or evening. If for any reason a service technician is unable to make the service call as scheduled, a reasonable attempt shall be made to inform the subscriber.

8.352 Records

- (A) A report on each service call in which a cable system fault reported by a single subscriber was identified shall be filed at the local office, and shall include the following data:
 - (1) subscriber identification;
 - (2) date and approximate time complaint was received;
 - (3) date and approximate time of response;
 - (4) nature of complaint;
 - (5) brief description of the fault;

- (6) signal level measured on each problem channel after corrective action and on other channels, where such measurements are appropriate;
 - (7) corrective steps taken (if any required);
 - (8) date case is closed; and
 - (9) identification of technician or repairman.
- (B) A report on each system fault, or on any failure reported by more than one subscriber and affecting an area, shall be filed at the local office and shall include the following data:
- (1) cause of failure and brief description of the component or structures causing the failure sufficient to allow the later determination of the area affected;
 - (2) date and approximate time of failure or report of failure; and
 - (3) date and time service is restored.
- (C) A report for each service call in which no trouble was identified, or in which instruction was given to enable the subscriber properly to adjust the terminal receiving equipment, or in which the fault was in the subscriber's receiving equipment, shall be filed at the local office and shall include:
- (1) subscriber identification;
 - (2) date and time complaint was received;
 - (3) date and time of response;
 - (4) nature of complaint;
 - (5) corrective steps taken (if any required); and
 - (6) identification of technician or repairman.
- (D) Small systems that have only a single technician or an owner-technician may perform the record-keeping required by subsections (A), (B), and (C) by maintaining a log of trouble calls containing the substance of the information called for.
- (E) Any report required to be maintained pursuant to this section shall be kept by the operator for a period of two years from the event to which it relates. It may be maintained in original form, as computer data base, or as data base report, at the election of the operator, so long as the basic information remains available.
- (F) The records required by this section shall upon request be made available to the Commission and the Department of Public Service. However, the operator may obscure, remove, or delete any personally identifiable information contained in the records if in the operator's opinion it must do so in order to comply with Section 631 of the Communications Policy Act of 1984, 47 U.S.C. § 551.

8.360 Construction

8.361 Information filing

After receiving a certificate of public good for a new service territory, the company shall submit the following to the Commission and the Department, as available:

- (A) A map of the service area, showing the planned phases of construction for the entire cable system. Such map and description shall also indicate those parts of the service area that the applicant anticipates would receive service only through application of the proposed line extension policy.

- (B) A statement that the applicant has obtained all licenses and other forms of permission required by state and local government bodies prior to commencement of construction.
- (C) A statement that pole attachment, conduit occupancy, and right-of-way agreements have been consummated.
- (D) Any corrections, updates, or amplifications, to items filed at the time of application for a certificate of public good.

8.362 Compliance with design standards; waivers

- (A) All cable systems constructed and operated within this state shall conform to the minimum design criteria set forth in this rule.
- (B) Waivers of specific provisions of the design criteria may be granted by the Commission only upon a showing that strict compliance would endanger the viability of the system.

8.363 System requirements

- (A) The technical standards contained in Subpart K of Part 76 of the Rules and Regulations of the Federal Communications Commission, as amended, are hereby incorporated into these rules, and made a part of all certificates of public good issued by the Commission for cable systems.
- (B) All systems shall be designed and built so that closed caption data can pass through.
- (C) All systems shall be designed and built so that they may provide the PEG access capabilities required by section 8.410 et seq. of this rule, or so that those capabilities may be later added without major reconstruction of the system.
- (D) Preliminary Performance Tests. Prior to the commencement of service to cable subscribers on any portion of a new cable system or on any substantially reconstructed portion of a cable system, the operator will ensure that the system provides acceptable picture quality by "rough balancing" the active equipment to within plus or minus 5db of equipment specification for peak-to-valley signal performance. These tests may be performed by qualified system personnel or by qualified contractors, and copies of the preliminary test results shall be made available to the Department of Public Service upon request for a period of up to one year after completion of the new or reconstructed cable system.
- (E) Final Performance Tests. Within 120 days of completion of a new cable system or any substantially reconstructed portion of a cable system, the operator shall conduct system proof of performance tests to determine the extent to which the system complies with the standards required in section 8.363(A) of this Rule.
 - (1) All such tests shall be performed by or under the supervision of qualified system personnel or qualified contractors using equipment and procedures necessary to achieve reasonable precision of measurement.
 - (2) In the event that the measured performance at any end of the trunk test point fails to comply with the technical standards required, the operator shall immediately take steps to insure compliance.
 - (3) Copies of the report of the final performance test shall be provided to the

Department of Public Service upon request and shall be kept available for inspection at the operator's office for a period of five (5) years after completion of the test.

8.364 Timetable

- (A) Application for pole attachment license shall be made to the relevant utilities within fifteen (15) days of receipt of a certificate, and application for make-ready work shall be made within 120 days of receipt of the license. Construction of a cable system shall begin within ninety (90) days of completion of make-ready work for the first phase of cable construction, or as soon thereafter as weather permits.
- (B) The operator shall maintain current as-built design maps for its system at its business offices, and shall produce photocopies of such portions of the maps as may be requested by the Department of Public Service.
- (C) The operator's complaint department shall begin operation at the same time as service commences.
- (D) Unless the Commission shall have waived the requirement, within four years from the receipt of the certificate the holder thereof shall have made service available to all potential residential subscribers in those portions of its franchise area meeting the density tests described in its line extension tariff for no-charge construction. In cases where the operator is unable to extend service because of a lack of right of way or other access problem, the operator shall be moving with due diligence to acquire such access to potential subscribers.

8.365 Safety codes and standards

- (A) All construction of cable systems shall be with the use of materials of good and durable quality.
- (B) All work involved in construction, installation, maintenance and repair of cable systems shall be performed in a safe, thorough, and reliable manner, and in compliance with:
 - (1) the "Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines" of the National Bureau of Standards, U.S. Department of Commerce;
 - (2) the latest edition of the National Electric Safety Code, as from time to time amended and revised; and
 - (3) all applicable federal, state, and municipal laws, ordinances, and regulations.

8.366 Placement of cables

- (A) Wherever practical, a holder of a certificate shall install its system using existing poles, conduits, rights-of-way, and other facilities of utility companies.
- (B) If at any time a municipality shall require all utilities to be placed underground, the certificate holder shall, upon reasonable notice by such municipality, conform with such requirement. This provision shall not be taken as determinative of who must bear the costs of placing such plant underground.

8.367 Subscriber drops

- (A) Each company provides a standard, fixed-price installation from its distribution



cable to the subscriber's premises. Installations up to three hundred (300) feet in length (aerial construction) shall be made without additional charge to the subscriber. Drops in excess of this length, any concealed wiring or other custom installation work, and all underground drops, shall be charged at the rates set forth in the company's rules and regulations, which shall provide for a credit equal to the cost of the standard installation.

- (B) In areas where existing utility drop cables are located underground, cable subscriber drop cables shall also be located underground where practical. In other areas, the drop cables shall be aerial unless the subscriber elects to pay the costs of underground installation as set forth in the company's rules and regulations.

8.368 Installation of drops

- (A) When a cable operator receives an application for service, and the only outdoor installation work required is to drop a line from the feeder cable to the subscriber's building, it will make the installation promptly and in no event later than ten (10) days following receipt of the application unless good and sufficient reason exists. Good and sufficient reason may include scheduling conflicts, system emergency, severe weather, and lack of access or right of way.

- (B) Cable installers shall be trained to connect closed caption decoders to work with the cable connection. The decoder (provided by the subscriber) shall be connected without extra charge to the subscriber.

8.370 Signal Carriage

8.371 Channels required

Each cable system certificated to operate within this state shall be operationally capable of relaying to all subscriber terminals at least the following signals:

- (A) All television broadcast signals, if any, required to be carried in that service area pursuant to FCC rules, as amended from time to time.
- (B) All specifically designated access channels required to be carried by that system pursuant to section 8.410 of these rules shall be carried in all service tiers defined as basic tiers by this Rule or federal law.

8.380 Annual Report

Within one year of the granting of a certificate of public good and annually thereafter as provided by 30 V.S.A. § 22, every cable operator shall file an Annual Report with the Department and the Commission containing the information required by 30 V.S.A. §§ 22 and 514 and any other information the Department may require. The report shall be made in a form acceptable to the Department.

8.390 Availability of Books and Records

The Commission and the Department shall have the right to inspect the books, records, maps, plans, and other like materials of each cable company applicable to its system or systems in this state, at any time during reasonable business hours. Each cable company shall fully cooperate in making the materials available at reasonable times, provided that where volume and convenience necessitate, the company may request that inspection take place on its own premises. Where information in the materials constitutes trade secrets or other confidential or proprietary information, the company may request that Commission or Department employees given access to that



information enter into an agreement to protect such information, in conformance with Commission Rule or Commission practice.

8.400 Purposes, Scope

- (A) **Purposes.** The purposes of this part (8.400 et seq.) of this rule are: (1) to promote the availability and use of local public, educational, and governmental content in a manner consistent with the development of cable technology and federal law by providing parameters for franchise renewal negotiations, for negotiations between cable operators and existing or proposed Access Management Organizations, and for resolution of disputes by the Commission; and (2) to clarify the obligations of and relationship between cable operators and Access Management Organizations with regard to meeting cable-related community needs, and to establishing and administering PEG channels and facilities.
- (B) **Additional Obligations.** The Public Utility Commission as the franchising authority for the state of Vermont may impose additional or specific obligations by condition in a new or renewed certificate of public good consistent with these rules. The scope of operator and subscriber support for PEG access should be limited to those applications and designations of capacity that support distribution of public, educational, and governmental access content to cable subscribers over the cable system.
- (C) **Scope.** This rule applies to cable television companies as defined in 30 V.S.A. § 501(c) to the extent that they offer cable television services as defined by 47 U.S.C. § 522 and to existing or proposed Access Management Organizations (AMOs) that administer the PEG access facilities or channels.
- (D) **Digital cablecasting of PEG Channels.** One year prior to the Federal Communication Commission deadline for Vermont VHF and UHF broadcasters to relinquish analog bandwidth, the Commission will consider initiating rulemaking to ensure that community needs and PEG access services are being adequately supported in light of evolving technology and consistent with FCC regulations.

8.401 General Obligations of Cable Operators

For purposes of franchise negotiations, a cable operator must demonstrate that its proposal for PEG Access is consistent with these rules and reasonable in light of the cable-related community needs taking into consideration costs on the cable operator and cable subscribers. In order to meet community related cable needs, cable operators shall be prepared to:

- (A) Designate system capacity for the use of PEG channels and applications.
- (B) Consider requests for PEG channels and other applications.
- (C) Designate an Access Management Organization (AMO), when requested.
- (D) Provide PEG facilities.
- (E) Provide PEG funding.
- (F) Notify subscribers, Commission, and Department of (A) through (E).

8.402 Provision of System Capacity for PEG Access

- (A) Absent a waiver by the Commission, a cable operator shall be prepared to designate and activate at least three forward viewable PEG channels.
- (B) In lieu of viewable channels, a cable operator and an Access Management Organization may agree that the cable operator should dedicate system capacity or facilities in a form other than a forward channel to support the distribution of PEG content to cable television subscribers in order to meet its PEG access obligations.

8.403 Activation of First Three PEG Channels

The operator of a cable television system shall designate:

- (A) At least one full-time activated channel for public, educational, and governmental access use.
- (B) At least one additional full-time channel for public, educational or governmental access use, to be activated at such time as is requested by the AMO and after the channel required by paragraph (A) is already in use. The cable operator shall provide the channel within a reasonable period of time following the submission of the request.
- (C) One additional full-time channel for public, educational, or governmental access use, to be activated at such time as is requested by the AMO and after the channel required by paragraph (B) is already in use. The cable operator shall provide the channel within a reasonable period of time following the submission of the request.
- (D) In the event that three channels for public, educational, and governmental use are required to be activated, one channel shall be designated for each type of use; provided, however, that any channel may be used for any PEG purpose if necessary to satisfy the demand for channel time, and, should more than one AMO exist, as agreed by the AMOs. Pooling of channel time shall be done in conformance with the system's PEG access plan.
- (E) When no other PEG access programming is available for cablecasting, and no PEG access management organization (as described in section 8.420) exists, the operator shall make available programming, at a minimum, in the nature of a character-generated community bulletin board. When submissions are available, the operator shall post content on the PEG access channel community bulletin board that is up-dated at least weekly and contains information relevant to the particular PEG access service area where it is seen.
- (F) PEG channels may be activated at a headend or hub site within the service territory.
- (G) Requests for activation of PEG channels shall be submitted and reviewed as provided in section 8.405.

8.404 Activation of Additional PEG Channels or Other PEG Applications

- (A) Additional PEG access channels. Activation of additional PEG access channels may be requested at such time as the channels required by section 8.403 are in use.
- (B) Other PEG Applications. A cable operator may propose, or an Access Management Organization may request, that a cable operator dedicate system capacity or facilities

in a form other than a channel to support the distribution of PEG content to cable subscribers.

- (C) It is not necessary to utilize the first three PEG channels prior to a request for other PEG applications. This does not preclude an AMO's ability to request and receive three PEG channels pursuant to section 8.403.
- (D) Requests for PEG channels and other PEG applications shall be evaluated using the criteria and process provided in section 8.405 and implemented as negotiated between the operator and AMO or AMOs.

8.405 Consideration of Requests for PEG Channels and Other PEG Applications

Requests for the activation of PEG channels or other PEG applications shall be submitted to the operator and reviewed as follows:

- (A) The request must describe:
 - (1) The use or functionality for which the capacity will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace;
 - (2) Examples of its use;
 - (3) The community need that the PEG channel or PEG application is intended to address, how such community need has been ascertained, and how that need will be met by the PEG channel or PEG application requested;
 - (4) The equipment and facilities, initial and ongoing operating and capital expenditures necessary to implement the request;
 - (5) The estimated cost of the functionality to the AMO and the extent to which the cable operator is expected to support the cost;
 - (6) How the use or functionality can be sustained, financially and operationally, by the AMO, including commitments made by others to support the request;
 - (7) Why the use or functionality requested is consistent with current or planned services to be offered by the existing or proposed AMO;
 - (8) Other reasonable materials deemed necessary by the operator to consider such request.
- (B) Cable operators shall do the following in reviewing and responding to requests for PEG channels or other PEG applications:
 - (1) Provide to the requesting AMO written acknowledgment of receipt of the request and confirmation that the request is complete. If the request is not complete, the cable operator shall so inform the AMO within 45 days, together with an explanation of how the request is incomplete and a description of the information that is needed to complete the request.
 - (2) Once a request is complete, review and respond in writing to the AMO's proposal within 60 days of submitting a complete request. If an extension is necessary for adequate review or extenuating circumstances, the cable operator shall inform the AMO in writing and provide a reasonable timeframe for responding to the request.
 - (3) Offer the requesting AMO an opportunity, to the extent possible, to discuss the request with regard to the criteria listed in subsection (C) below, and mutually investigate possible alternatives should any aspect of the request be problematic.

- (C) The cable operator shall evaluate the AMO request using the following criteria:
- (1) Whether any portion of the request would be in violation of, or would require amendment to, the cable operator's certificate of public good or any existing PEG Access Agreement;
 - (2) Whether and how costs that would be incurred by the operator or the AMO would affect the cable operator and cable subscribers;
 - (3) Whether the cable operator has the capacity to meet the request, taking into consideration existing and other potential uses;
 - (4) Whether the request is consistent with the cable operator's and the AMO's Access Plan;
 - (5) Whether alternative more cost-effective methods within the purview of the cable operator are available to meet the need asserted in the request;
 - (6) Whether the request responds to community needs;
 - (7) Other considerations that it deems relevant.
- (D) Cable operators retain discretion to approve, deny, or amend such requests. If a cable operator denies an AMO request, it must provide a written explanation, addressing each of the criteria in subsection (C) and the grounds for denial.
- (E) Resolution of disputes arising from requests may be reviewed by the Commission.

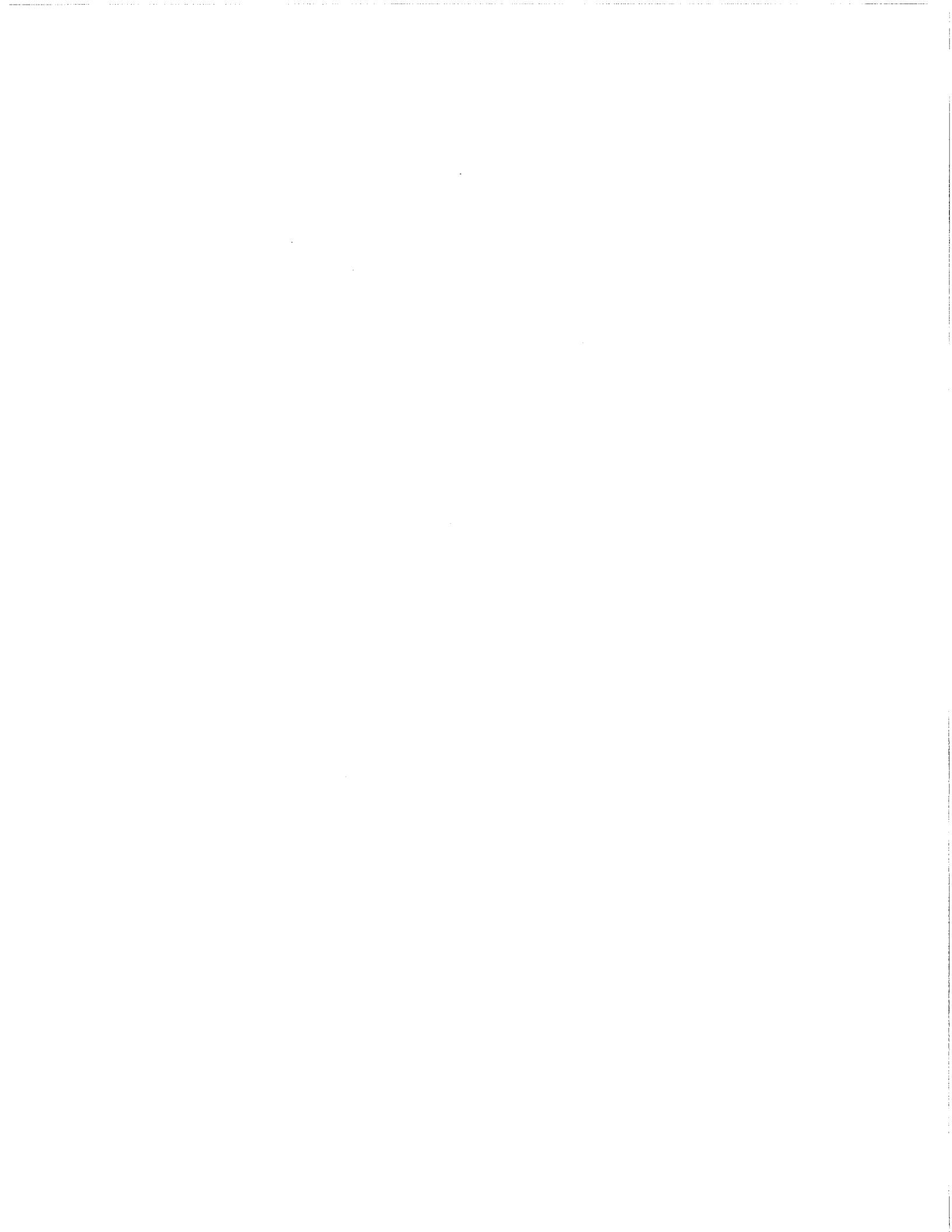
8.406 Inclusion in Service Tiers

- (A) The first three PEG access channels shall be available to all cable subscribers. All other PEG access channels shall be available on the basic service tier unless activation of the channel on the basic service tier would require removal of an existing channel from the basic tier. If removal of an existing basic tier channel would be necessary to accommodate an additional PEG access channel, the cable operator shall offer, and the AMO may accept, substitute capacity on the next available analog tier or digital tier as a means of allowing more than three PEG channels to be made available.
- (B) All PEG channels on the basic tier shall be delivered in a standard analog format unless all other channels on the basic tier are delivered in a digital format.

8.407 (reserved)

8.408 Designation of Administrative Management Organizations, Generally

- (A) Unless a cable operator has obtained a waiver pursuant to section 8.410 of this Rule, it shall designate an AMO:
- (1) that demonstrates the capability to meet the obligations of an AMO, as set forth in sections 8.420–8.422 of this Rule; and
 - (2) that demonstrates the capability to meet all other relevant requirements of this Rule; and
 - (3) that is willing to enter an access contract, pursuant to section 8.424, on terms that have been negotiated in good faith.
- (B) The person or organization that seeks designation as an AMO bears the burden of demonstrating that they or it should be designated.
- (C) A cable operator may designate one or more AMOs to provide PEG content within



all or a portion of a geographic area where another AMO also provides PEG content.

- (D) AMOs may be designated in the certificate of public good at the time of issuance.
- (E) The designation of an AMO does not require the approval of the Commission.
- (F) AMOs may administer access for more than one cable system or cable channel.
- (G) An AMO may be in whatever form its members select.

8.409 Educational and Governmental

To allow for channels to be activated on a cable television system for educational or governmental use, an educational access channel may be operated and administered by a non-profit organization, committee, or commission representing educational institutions serving the territory served by the cable system. Where more than one cable system is operating in a school system or municipality, cooperation between the AMOs for the respective access channels is encouraged. A governmental access channel may be operated and administered by a non-profit organization, committee, or a commission appointed by local governments, including appropriate representation of local school systems within the service area of the cable television system if it will share the channel with educational use. Absence of an AMO to administer educational or governmental access shall not prevent the cable operator from making available additional channels for educational or governmental access.

8.410 Exception for Small Cable Systems

The operator of a cable television system with annual gross receipts from 'cable services' of two million dollars or less may be excused from the provisions of Rule 8.400 if said company can demonstrate that is meeting the cable related community needs and interests of its service territory. For the purpose of this subsection, 'cable services' has the definition stated in 47 U.S.C. § 522.

8.411–8.414 (reserved)

8.415 Facilities and Funding Generally

Any cable television certificate of public good may include additional provisions concerning the provision of funding and facilities for PEG access consistent with sections 8.416 and 8.417. Any other provision concerning the facilities and funding for public, educational, and governmental access consistent with federal and state law may be included in a certificate of public good.

8.416 Facilities

- (A) Minimum capabilities. Unless otherwise ordered by the Commission, all operators shall ensure that their systems have available the following minimum PEG capabilities once their systems are in operation. The facilities shall include equipment necessary for community members to produce, post-produce, and distribute PEG content from its studios or community locations to the system's cable subscribers. When an AMO is established, it may negotiate for additional or different facilities to account for community needs and technological changes.
- (B) This rule neither forbids nor requires the sharing of equipment and facilities between neighboring systems or between systems owned by the same company if any established AMO or AMOs approves the plan for sharing and, if the sharing is between systems owned by different operators, if the operators approve the plan for



sharing.

- (C) Cable operators shall support reasonable requests by AMOs for remote origination sites. The cable operator's response to such requests shall take into account community needs and the capabilities of the designated AMO and resulting costs.

8.417 Funding

- (A) Basis. PEG access funding shall be calculated based on the cable operator's gross revenues generated by "cable services" as defined by 47 U.S.C. § 522, unless otherwise agreed by a cable company and the AMO to which the funding would be provided. PEG access funding of an AMO shall be calculated based upon the corresponding PEG AMO's service territory.
- (B) Startup capital payment. An AMO may request, and the cable operator shall negotiate concerning the provision of, startup funding. The amount of startup funding, if any, provided to an AMO shall reflect consideration of requests for PEG channels and applications outlined in section 8.405.
- (C) Annual operating. Negotiation between the operator and the AMO or AMOs is the preferred method of setting the annual operating expense funding level provided by the cable operator to one or more AMOs. Funding levels for operating costs shall be based on community needs and are subject to the 5% franchise fee cap provided in 47 U.S.C. § 542(b).
- (D) Annual capital. Negotiation between the operator and the AMO or AMOs is the preferred method of setting the annual capital contribution for PEG access. Capital contributions are not subject to the 5% franchise fee cap but are considered external costs eligible for pass through to subscribers pursuant to 47 U.S.C. § 542(c).
- (E) Other payments. New and existing AMOs, as part of PEG access contract negotiations, may negotiate for in-kind contributions or certain lump sum amounts to be paid by the operator for start-up operating and start-up capital funds, annual capital funds, and other capital improvements under certain conditions or at certain times during the term of the certificate of public good.
- (F) Accounting for PEG funds expended by operator in the absence of an AMO. Funds expended by an operator to meet its PEG access obligations and reported in the operator's Notice of PEG Availability (section 8.418), prior to the establishment of an AMO, may be debited against any funds, reserves, or deferred liabilities that have accrued for PEG access purposes. The documentation of such expenditures, however, must be filed in a timely and clearly itemized manner in the operator's PEG Notification, and value placed on those expenditures by the operator shall have been reasonable, taking into consideration the levels of, and reasons for, expenditures by other PEG access operations.
- (G) Legislative tax. In the event a tax or fee is enacted by the Legislature of the State of Vermont, and if it is determined that the tax or fee and a PEG access funding requirement imposed by the certificate of public good or by a PEG Access contract are both defined as franchise fee payments under the Cable Communications Policy Act of 1984, as amended, the PEG access funding requirement shall be reduced proportionately to the extent the state fee plus the PEG access funding requirement for operating expenses total more than 5% of the operator's gross revenues.

8.418 Notice of PEG Availability

- (A) The cable operator shall notify subscribers, by annual written notice and by character generated or video message on the computer bulletin board (see section 8.403(e)), of the opportunity to create and cablecast PEG content. Notices shall include name, address, and telephone number of the entity or entities to be contacted for use of existing PEG services, and similar contact information for the cable operator staff responsible for negotiating start-up arrangements with persons seeking to create a new AMO.
- (B) If an AMO does not exist in the service territory, the cable operator will also make the following information available: minimum operating rules and procedures for facilitating production of local content and a copy of the PEG Access Report, required by section 8.419, for the most recent year.

8.419 Cable Operator PEG Access Report

Each cable operator shall submit annually, by April 15, to its designated AMOs, the Department, and the Commission, a PEG access report for each cable system. Copies of this report shall be made available to the public upon request in printed or electronic formats. The report shall include the following information.

- (A) Where no AMO is designated, a summary of the prior year's activities, including the scope of programming services available for use by the public in each community served by the operator.
- (B) A statement of the facilities contributed to an AMO or AMOs. The statement should indicate whether ownership of the facilities has been transferred to the AMO or AMOs, or whether the operator has retained ownership and only made the facilities available;
- (C) If the operator has sought advice for the administration of its PEG access operation from an advisory body, a roster naming the advisors and a summary of the advisory body's activities;
- (D) An accounting of any reserves, whether funded or not, that have accrued to date for PEG access use;
- (E) Summary of funding, including a statement that funding is derived from subscriber paid PEG access fees, and other support rendered to each AMO in the prior year;
- (F) Contact information for cable operator and for AMO(s).
- (G) A description of the geographic service territory covered by the report, and an explanation of any changes in the description from the prior year.

8.420 Obligations of an AMO

- (A) The responsibilities of each AMO shall include:
 - (1) Documentation of and response to community needs;
 - (2) Delivery of outreach for the purpose of informing the public of the opportunity for access to the cable system and availability of programs and services;
 - (3) Delivery of training, programming, and services to meet community needs;
 - (4) Managing facilities and equipment, including maintaining operating rules and

- procedures, for the purposes of public availability;
- (5) Negotiation with the cable operator for facilities and funding;
 - (6) Coordination of PEG capacity use and applications with cable operator;
 - (7) Maintenance of rules and procedures for board governance, complaint and dispute resolution, and compliance with relevant laws, including Vermont's Open Meeting law;
 - (8) Receipt and management of all funds in a manner consistent with the public nature of those funds, including the provision of an annual budget for payment of current operating and capital expenses;
 - (9) Preparation of an access plan which is designed to anticipate the future cable-related community needs and demand for PEG services;
 - (10) Completing Annual Report pursuant to section 8.422;
 - (11) Preparation of information required by the cable operator for the submission of the annual PEG access report as required by section 8.419;
 - (12) Maintenance of records and preparation of forms as may be required by the Federal Communications Commission for its oversight of access channel usage. Such information may be delivered to the cable operator or submitted directly to the F.C.C., as is found expedient by the parties.

- (B) The operator may retain any of the responsibilities identified in subsection (A). Any responsibility not explicitly delegated remains the responsibility of the cable operator. The foregoing notwithstanding, a cable operator having existing contracts with AMOs may rely on those contracts to comply with this section until such time as the contracts are renewed or materially amended.

8.421 Meetings and Reports

All meetings of AMOs shall be open to the public pursuant to Vermont's Open Meeting Law, 1 V.S.A. § 311 et seq., and shall be announced in advance by character-generated announcement on the PEG channel to which it pertains. The access plan, local rules, budget, and annual report of the AMO shall be available to the public at reasonable times and places.

8.422 AMO Annual Access Report.

AMOs shall submit to the cable operator, the Department, and the Commission a PEG access report for each cable system within 120 days of the end of the AMO's fiscal year. Copies of this report shall be made available to the public upon request. The report shall clearly distinguish between expenditures that support production and distribution of PEG content to cable television subscribers, and expenditures for other purposes not related to the production and distribution of PEG content to cable television subscribers, if any. It shall also distinguish between funds provided by the operator as PEG funding and funds obtained from other sources. The report shall also include the following information:

- (A) Changes in service territory;
- (B) Description of current PEG capacity and applications;
- (C) Description of current PEG services, including outreach strategies, training delivery, PEG content production and distribution (for example, hours of original programming, utilization of PEG facilities such as live drops or interconnect);
- (D) Details of complaints and how the AMO responded to them;
- (E) Description of facilities (equipment and location);

- (F) Roster of staff and board;
- (G) Changes in organizational structure;
- (H) A statement of total operating and capital funding received from the operator and whether any funds were carried forward from the prior year;
- (I) Financial reports that include:
 - (1) Income and expense statement and balance sheet for year of annual report,
 - (2) Projected operating and capital budget for current fiscal year;
- (J) Certification that AMO has:
 - (1) Bylaws or other governing documents,
 - (2) Rules and operating procedures,
 - (3) Complaint and dispute resolution procedures,
 - (4) Evidence of conducting meetings consistent with Open Meeting law;
- (K) Planning considerations and expectations for how community needs will be identified and met for current and future fiscal years;
- (L) Service quality issues requiring attention;
- (M) Copy of tax returns, financial reviews or, if available, audited financial statements;
- (N) In the event that the operator requires financial information from an AMO for the purpose of auditing the AMO, or for the purpose of a company audit, the AMO shall make the information available, consistent with other provisions of this section. If an audit is required by the operator, the cost of the audit to the AMO will be borne by the operator, unless ordered otherwise by the Commission.

8.423 PEG Access Contracts

- (A) In cable systems without an AMO, cable operators shall have the obligation to negotiate in good faith with AMOs or entities requesting designation as an AMO.
- (B) Entities seeking or having received designation under this Section may request, under section 8.425(a), multi-party negotiations with multiple cable operators with the objective of a single contract.
- (C) Contracts between AMOs and cable operators shall be made for a fixed period of time not to exceed eleven years (and normally not past the time the current certificate is due to expire) and be consistent with Commission Rules and include agreements related to the following subjects:
 - (1) Description of PEG capacity and applications;
 - (2) Description of geographic service territory;
 - (3) Term and duration of contract;
 - (4) Amount of start-up, operating, and capital funds and a schedule for payment of such funds;
 - (5) Procedures for addressing service quality issues;
 - (6) Dispute resolution procedures.

- (D) If the cable operator is not satisfied that an entity with which it is negotiating will perform properly as an AMO, or if there is more than one entity volunteering to be the AMO for a single channel, the operator or entities may petition the Commission to hear and resolve the dispute.

8.424 Failure to Perform

- (A) If a cable operator believes that an AMO has failed to perform in any material way under a contract, unless otherwise provided in the contract, the cable operator, after providing the AMO with reasonable notice of the failure, may petition the Commission to cure such a failure.
- (B) If an AMO believes that a cable operator has failed to perform in any material way under a contract, unless otherwise provided in the contract, the AMO, after providing the cable operator with reasonable notice of the failure, may petition the Commission to cure such a failure.

8.425 Statewide AMO

The Commission may designate an AMO to administer a state-wide PEG access network and to promote the sharing of PEG content among cable systems.

- (A) Petition form and content. An entity seeking designation under this rule as an administrator of the statewide PEG access network shall file a petition with the Public Utility Commission. The petition shall include the following additional information about the petitioner's ability to administer the network and plans for doing so:
- (1) A description of the organizational structure and management of the administrator along with the administrator's articles of association and bylaws;
 - (2) Demonstration of sufficient technical and managerial expertise to administer the service;
 - (3) Description of committed or tentative funding sources for the AMO, or a proposal for providing funding out of the existing PEG access obligations of cable companies;
 - (4) A plan for coordination of services with other AMOs;
 - (5) A proposal for location of the AMO 's office, studios, and equipment, and the extent of the AMO 's operations around Vermont;
 - (6) If the state-wide PEG access network currently has an administrator, an explanation of the reason for changing administrator designation and an administration transition plan.
- (B) Service of petition. The petitioner shall provide a copy of the petition to the Department of Public Service, all cable companies operating in Vermont, and all AMOs. Along with each copy of the petition, the petitioner shall provide a list of the persons served under this paragraph.
- (C) Order. After notice and opportunity for hearing, the Commission shall issue an order accepting, conditionally accepting, or rejecting the petition.
- (D) Provisional designation. The Commission may provisionally designate the petitioner as the statewide AMO, even if the AMO does not yet have a fully-developed capability to administer the statewide access network. This designation may be for a fixed period



of time. The Commission may, in its order granting provisional designation, limit the obligations of cable companies to a provisional statewide network AMO.

(E) Term and revocation of designation.

- (1) The term of a non-provisional administrator designation shall be indefinite unless specifically limited by the Commission. Designation as an administrator may not be transferred to a successor without prior Commission approval.
- (2) Upon its own motion or upon the petition of the Department or an entity or person adversely affected by an administrator's performance, the Commission may after notice and opportunity for hearing revoke or suspend its designation of an administrator, may impose additional conditions on continued designation to assure the statewide AMO adequately administer the statewide access channel, complies with conditions of its designation, or take other such actions that serve the public good of the state.
- (3) The burden of proof in a revocation hearing is on the party seeking the revocation or suspension; the standard of proof is the preponderance of the evidence.

8.426 Request for Statewide PEG Capacity and Applications

(A) Requests for PEG capacity and applications that will serve statewide purposes must be submitted by the statewide AMO to the cable operators and will be considered by the Commission after consultation with all licensed cable operators.

(B) Request for statewide services or applications shall include a description of:

- (1) The community need and how that need is met by the request;
- (2) The use or functionality for which the capacity will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace;
- (3) The equipment and facilities necessary to implement the request;
- (4) The estimated cost of the functionality and whether such costs will be borne by cable operators and cable subscribers;
- (5) The budget and source of funds necessary to sustain the functionality;
- (6) How the use or functionality can be sustained, financially and operationally, by the AMO, including commitments made by others to support the request;
- (7) How this request is consistent with needs of the state, and whether the services would complement or replace the services currently provided by local AMOs;
- (8) The management structure necessary to support the request;
- (9) Evidence of coordination with local AMOs, if necessary;
- (10) Guidelines for management and public use of the capacity and/or application;
- (11) Other reasonable materials deemed necessary by the Commission.

8.427 (reserved)

8.428 Notice

The entity responsible for administering and operating a public, or a public access channel combined with an educational or governmental access channel, shall provide notice to the general public of the opportunity to use such channel on the community bulletin board (subject to section 8.403(e)). Notices shall include the name, address, and telephone number of the entity to be contacted for use of the channel. All access programming shall be identified as such.

8.429 Time

Channel time shall be scheduled on the public access channel by the entity responsible for the management thereof on a non-discriminatory basis; except that the entity may prevent any single user, or type of user on a combined PEG access channel, from monopolizing the programming time available.

8.430 Local Priority

Local presentations or programming produced through local use should be given preferred status on Public, Educational, and Governmental access channels in the event of competing requests for channel time, except for any state-wide PEG access channel.

8.431 Usage Charges

Neither the cable operator nor an AMO may charge any person for channel time for PEG access programming.

8.432 Control of Content

The following guidelines shall apply to editorial control of PEG access content:

- (A) Municipality. A municipality shall not exercise any editorial control over any use by the public of a PEG access channel; but if the municipality appoints a member of an AMO's board, that member may take part in decisions of the AMO. A government AMO may control the content of programming that it produces.
- (B) Public Access Channel. An AMO shall not exercise any editorial control over the use of the public access channel except that it is encouraged to promulgate non-discriminatory rules that establish late-night safe-harbor hours, parental warnings, or other methods that advise viewers with regard to indecent programming or other programming that may be unsuitable for children.
- (C) Educational and Government Access Channels. Access entities that manage an educational or government access channel may promulgate rules for the use of that channel that conform to the policies of the institutions for which it administers and manages the channel. A government/education AMO may set guidelines for PEG content but may not infringe upon the free speech rights of the participating speakers.
- (D) Editorial control by operator. Except to the extent provided by 47 U.S.C. § 531(e) and 47 C.F.R. § 76.702, the cable television operator shall not exercise any editorial control over any public, educational, or governmental use of capacity designated for PEG purposes. PEG content programmed by an AMO is not owned by the cable operator, except in those instances where such content has been copyrighted by the cable operator.

8.433 Use by Operator

- (A) Where no AMO exists, a cable operator shall be permitted to use PEG capacity or applications for the purpose of promoting PEG use or airing PEG content subject to the programming guidelines of the channel.
- (B) Where an AMO has been designated to provide PEG services, a cable operator shall be permitted to use PEG capacity or applications with the permission of the AMO.

8.434 Certificate of Public Good Conditions.

- (A) **Interconnection of Cable Systems.** The Commission may require that a cable company, as a condition of a certificate of public good, enable interconnection of their systems, directly or indirectly, with cable systems throughout Vermont, to provide transmission of PEG access programming between cable systems in the state regardless of the identity of the cable operator.

- (B) **Institutional Networks, Condition of Certificate of Public Good.** Subject to federal law, the Commission may require that a cable company, as a condition of a certificate of public good, make available an institutional network linking state or local government buildings, educational institutions, studios of educational or governmental access administrative entities within its franchise area, or interconnection points for institutional networks serving neighboring franchise areas.

8.435 Waivers, Rulings, and Disputes

- (A) **Availability of Waivers.** A cable television operator, a municipality, or an entity designated to administer a PEG access service may seek a waiver of one or more provisions of this rule by application to the Commission.

- (B) **Declaratory Rulings by Commission.** Any interested person may seek a ruling from the Commission concerning the applicability or implementation of any provision of this section or any provision of a certificate concerning PEG access.

- (C) **Disputes and Remedies.** Any dispute related to contracts or requirements outlined in this rule may be heard by the Commission.

- (D) **No editorial control.** Notwithstanding the above, the Commission shall not grant any waiver or ruling, or enter any order that constitutes the exercise of editorial control over the content of public access programming.

8.500 Regulation of Rates: Procedures to be used in the Investigation or Setting of Rates

8.510 Federal and State Rules

In any proceeding to set or investigate the rates charged by a cable television system, if the Commission has been certified by the Federal Communications Commission to regulate such rates, the Commission will act in a manner consistent with the Rules of the Federal Communications Commission and with Federal law. The Commission will also act in a manner consistent with Vermont law and precedent and with these rules, to the extent they are not preempted or superseded.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 30 : Public Service

Chapter 005 : State Policy; Plans; Jurisdiction And Regulatory Authority Of Commission And Department

Subchapter 001 : General Powers

(Cite as: 30 V.S.A. § 209)

§ 209. Jurisdiction; general scope

(a) General jurisdiction. On due notice, the Commission shall have jurisdiction to hear, determine, render judgment, and make orders and decrees in all matters provided for in the charter or articles of any corporation owning or operating any plant, line, or property subject to supervision under this chapter, and shall have like jurisdiction in all matters respecting:

(1) the purity, quantity, or quality of any product furnished or sold by any company subject to supervision under this chapter, and may prescribe the equipment for and standard of measurement, pressure, or initial voltage of such product;

(2) the providing for each kind of business subject to supervision under this chapter, suitable and convenient standard commercial units of product or service, which standards shall be lawful for the purposes of this chapter;

(3) the manner of operating and conducting any business subject to supervision under this chapter, so as to be reasonable and expedient, and to promote the safety, convenience, and accommodation of the public;

(4) the price, toll, rate, or rental charged by any company subject to supervision under this chapter, when unreasonable or in violation of law;

(5) the sufficiency and maintenance of proper systems, plants, conduits, appliances, wires, and exchanges, and when the public safety and welfare require the location of such wires or any portion thereof underground;

(6) to restrain any company subject to supervision under this chapter from violations of law, unjust discriminations, usurpation, or extortion;

(7) the issue of stock, mortgages, bonds, or other securities as provided in section 108 of this title;

(8) the sale to electric companies of electricity generated by facilities:

(A) that produce electric energy solely by the use of biomass, waste, renewable resources, cogeneration, or any combination thereof; and

(B) that are owned by a person not primarily engaged in the generation or sale of electric power, excluding power derived from facilities described in subdivision (A) of this subdivision (8); and

(C) that have a power production capacity that, together with any other facilities located at the same site, is not greater than 80 megawatts; and

(9) the issuance of qualified cost mitigation charge orders pertaining to facilities described in subdivision (8) of this subsection, subject to the terms and conditions of section 209a of this title.

(b) Required rules. The provisions of section 218 of this title notwithstanding, the Public Utility Commission shall, under 3 V.S.A. §§ 803-804, adopt rules applicable to companies subject to this chapter that:

(1) regulate or prescribe terms and conditions of extension of utility service to customers or applicants for service including:

(A) the conditions under which a deposit may be required, if any;

(B) the extension of service lines;

(C) the terms of payment of any required deposit; and

(D) the return of any deposit;

(2) regulate or prescribe the grounds upon which the companies may disconnect or refuse to reconnect service to customers; and

(3) regulate and prescribe reasonable procedures used by companies in disconnecting or reconnecting services and billing customers in regard thereto.

(c) Uninterrupted service; reasonable terms. Rules adopted under subsection (b) of this section shall be aimed at protection of the health and safety of utility customers so that uninterrupted utility service may be continued on reasonable terms for the utility and its customers. Such rules shall also ensure that a reasonable rate of interest, adjusted for variations in market interest rates, be set on security deposits held by utility companies.

(d) Energy efficiency.

(1) Programs and measures. The Department of Public Service, any entity appointed by the Commission under subdivision (2) of this subsection, all gas and electric utility companies, and the Commission upon its own motion are encouraged to propose, develop, solicit, and monitor energy efficiency and conservation programs and measures, including appropriate combined heat and power systems that result in the conservation and efficient use of energy and meet the applicable air quality standards of the Agency of Natural Resources. Such programs and measures, and their implementation, may be approved by the Commission if it determines they will be beneficial to the ratepayers of the companies after such notice and hearings as the

Commission may require by order or by rule. The Department of Public Service shall investigate the feasibility of enhancing and expanding the efficiency programs of gas utilities and shall make any appropriate proposals to the Commission.

(2) Appointment of independent efficiency entities.

(A) Electricity and natural gas. In place of utility-specific programs developed pursuant to this section and section 218c of this title, the Commission shall, after notice and opportunity for hearing, provide for the development, implementation, and monitoring of gas and electric energy efficiency and conservation programs and measures, including programs and measures delivered in multiple service territories, by one or more entities appointed by the Commission for these purposes. The Commission may include appropriate combined heat and power systems that result in the conservation and efficient use of energy and meet the applicable air quality standards of the Agency of Natural Resources. Except with regard to a transmission company, the Commission may specify that the appointment of an energy efficiency utility to deliver services within an electric utility's service territory satisfies that electric utility's corresponding obligations, in whole or in part, under section 218c of this title and under any prior orders of the Commission.

(B) Thermal energy and process-fuel customers. The Commission shall provide for the coordinated development, implementation, and monitoring of cost-effective efficiency and conservation programs to thermal energy and process-fuel customers on a whole buildings basis by one or more entities appointed by the Commission for this purpose.

(i) In this section, "thermal energy" means the use of fuels to control the temperature of space within buildings and to heat water.

(ii) Periodically on a schedule directed by the Commission, the appointed entity or entities shall propose to the Commission a plan to implement this subdivision (d)(2)(B). The proposed plan shall comply with subsections (e)-(g) of this section and shall be subject to the Commission's approval. The Commission shall not conduct the review of the proposed plan as a contested case under 3 V.S.A. chapter 25 but shall provide notice and an opportunity for written and oral comments to the public and affected parties and State agencies.

(3) Energy efficiency charge; regulated fuels. In addition to its existing authority, the Commission may establish by order or rule a volumetric charge to customers for the support of energy efficiency programs that meet the requirements of section 218c of this title, with due consideration to the State's energy policy under section 202a of this title and to its energy and economic policy interests under section 218e of this title to maintain and enhance the State's economic vitality. The charge shall be known as the energy efficiency charge, shall be shown separately on each customer's bill, and shall be paid to a fund administrator appointed by the Commission and deposited into the

Electric Efficiency Fund. When such a charge is shown, notice as to how to obtain information about energy efficiency programs approved under this section shall be provided in a manner directed by the Commission. This notice shall include, at a minimum, a toll-free telephone number, and to the extent feasible shall be on the customer's bill and near the energy efficiency charge.

(A) Balances in the Electric Efficiency Fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the Fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the State. Interest earned shall remain in the Fund. The Commission will annually provide the General Assembly with a report detailing the revenues collected and the expenditures made for energy efficiency programs under this section. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection (d).

(B) The charge established by the Commission pursuant to this subdivision (3) shall be in an amount determined by the Commission by rule or order that is consistent with the principles of least-cost integrated planning as defined in section 218c of this title. As circumstances and programs evolve, the amount of the charge shall be reviewed for unrealized energy efficiency potential and shall be adjusted as necessary in order to realize all reasonably available, cost-effective energy efficiency savings. In setting the amount of the charge and its allocation, the Commission shall determine an appropriate balance among the following objectives; provided, however, that particular emphasis shall be accorded to the first four of these objectives: reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the State's transmission and distribution infrastructure; minimizing the costs of electricity; reducing Vermont's total energy demand, consumption, and expenditures; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and targeting efficiency and conservation efforts to locations, markets, or customers where they may provide the greatest value. The Commission, by rule or order, shall establish a process by which a customer who pays an average annual energy efficiency charge under this subdivision (3) of at least \$5,000.00 may apply to the Commission to self-administer energy efficiency through the use of an energy savings account which shall contain a percentage of the customer's energy efficiency charge payments as determined by the Commission. The remaining portion of the charge shall be used for systemwide energy benefits. The Commission in its rules or order shall establish criteria for approval of these applications.

(C) The Commission may authorize the use of funds raised through an energy efficiency charge on electric ratepayers to reduce the use of fossil fuels for space heating by supporting electric technologies that may increase electric consumption, such as air source or geothermal heat pumps if, after investigation, it finds that

deployment of the technology:

(i) will be beneficial to electric ratepayers as a whole;

(ii) will result in cost-effective energy savings to the end-user and to the State as a whole;

(iii) will result in a net reduction in State energy consumption and greenhouse gas emissions on a life-cycle basis and will not have a detrimental impact on the environment through other means such as release of refrigerants or disposal. In making a finding under this subdivision, the Commission shall consider the use of the technology at all times of year and any likely new electricity demand created by such use;

(iv) will be part of a comprehensive energy efficiency and conservation program that meets the requirements of subsections (d)-(g) of this section and that makes support for the technology contingent on the energy performance of the building in which the technology is to be installed. The building's energy performance shall achieve or shall be improved to achieve an energy performance level that is approved by the Commission and that is consistent with meeting or exceeding the goals of 10 V.S.A. § 581 (building efficiency);

(v) among the product models of the technology that are suitable for use in Vermont, will employ the product models that are the most efficient available;

(vi) will be promoted in conjunction with demand management strategies offered by the customer's distribution utility to address any increase in peak electric consumption that may be caused by the deployment;

(vii) will be coordinated between the energy efficiency and distribution utilities, consistent with subdivision (f)(5) of this section; and

(viii) will be supported by an appropriate allocation of funds among the funding sources described in this subsection (d) and subsection (e) of this section. In the case of measures used to increase the energy performance of a building in which the technology is to be installed, the Commission shall assume installation of the technology in the building and then determine the allocation according to the proportion of the benefits provided to the regulated fuel and unregulated fuel sectors. In this subdivision (viii), "regulated fuel" and "unregulated fuel" shall have the same meaning as under subsection (e) of this section.

(4) Contract or order of appointment. Appointment of an entity under subdivision (2) of this subsection may be by contract or by an order of appointment. An appointment, whether by order of appointment or by contract, may only be issued after notice and opportunity for hearing. An order of appointment shall be for a limited duration not to exceed 12 years, although an entity may be reappointed by order or contract. An order of appointment may include any conditions and requirements that the Commission deems appropriate to promote the public good. For good cause, after notice and

opportunity for hearing, the Commission may amend or revoke an order of appointment.

(5) Appointed entity; supervision. Any entity appointed by order of appointment under subdivisions (2) and (4) of this subsection that is not an electric or gas utility already regulated under this title shall not be considered to be a company as defined under section 201 of this title, but shall be subject to the provisions of sections 18-21, 30-32, 205-208, subsection 209(a), sections 219, 221, and subsection 231(b) of this title, to the same extent as a company as defined under section 201 of this title. The Commission and the Department of Public Service shall have jurisdiction under those sections over the entity, its directors, receivers, trustees, lessees, or other persons or companies owning or operating the entity and of all plants, equipment, and property of that entity used in or about the business carried on by it in this State as covered and included in this section. This jurisdiction shall be exercised by the Commission and the Department so far as may be necessary to enable them to perform the duties and exercise the powers conferred upon them by law. The Commission and the Department each may, when they deem the public good requires, examine the plants, equipment, and property of any entity appointed by order of appointment under subdivisions (2) and (4) of this subsection.

(e) Thermal energy and process fuel efficiency funding.

(1) Each of the following shall be used to deliver thermal energy and process fuel energy efficiency services in accordance with this section for unregulated fuels to Vermont consumers of such fuels. In addition, the Commission may authorize an entity appointed to deliver such services under subdivision (d)(2)(B) of this section to use monies subject to this subsection for the engineering, design, and construction of facilities for the conversion of thermal energy customers using fossil fuels to district heat if the majority of the district's energy is from biomass sources, the district's distribution system is highly energy efficient, and such conversion is cost effective.

(A) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2)(A) of this subsection (e) that are not transferred to the State PACE Reserve Fund under 24 V.S.A. § 3270(c). These revenues shall be deposited into the Electric Efficiency Fund established by this section. In delivering services with respect to heating systems using the revenues subject to this subdivision (A), the entity shall give priority to incentives for the installation of high efficiency biomass heating systems and shall have a goal of offering an incentive that is equal to 25 percent of the installed cost of such a system. Provision of an incentive under this subdivision (A) for a biomass heating system shall not be contingent on the making of other energy efficiency improvements at the property on which the system will be installed.

(B) Net revenues above costs from the sale of carbon credits under the cap and



trade program established under section 255 of this title, which shall be deposited into the Electric Efficiency Fund established by this section.

(C) Any other monies that are appropriated to or deposited in the Electric Efficiency Fund for the delivery of thermal energy and process fuel energy efficiency services.

(2) If a program combines regulated fuel efficiency services with unregulated fuel efficiency services supported by funds under this section, the Commission shall allocate the costs of the program among the funding sources for the regulated and unregulated fuel sectors in proportion to the benefits provided to each sector.

(3) In this subsection:

(A) "Biomass" means organic nonfossil material constituting a source of renewable energy within the meaning of section 8002 of this title.

(B) "District heat" means a system through which steam or hot water from a central plant is piped into buildings to be used as a source of thermal energy.

(C) "Efficiency services" includes the establishment of a statewide information clearinghouse under subsection (g) of this section.

(D) "Fossil fuel" means an energy source formed in the earth's crust from decayed organic material. The common fossil fuels are petroleum, coal, and natural gas. A fossil fuel may be a regulated or unregulated fuel.

(E) "Regulated fuels" means electricity and natural gas delivered by a regulated utility.

(F) "Unregulated fuels" means fuels used by thermal energy and process fuel customers other than electricity and natural gas delivered by a regulated utility.

(f) Goals and criteria; all energy efficiency programs. With respect to all energy efficiency programs approved under this section, the Commission shall:

(1) Ensure that all retail consumers, regardless of retail electricity, gas, or heating or process fuel provider, will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation.

(2) Require that continued or improved efficiencies be made in the production, delivery, and use of energy efficiency services, including the use of compensation mechanisms for any energy efficiency entity appointed under subdivision (d)(2) of this section that are based upon verified savings in energy usage and demand, and other performance targets specified by the Commission. The linkage between compensation and verified savings in energy usage and demand (and other performance targets) shall be reviewed and adjusted not less than triennially by the Commission.

(3) Build on the energy efficiency expertise and capabilities that have developed or may develop in the State.

(4) Promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation, including those who do not own their place of residence.

(5) Promote and ensure coordinated program delivery, including coordination with low-income weatherization programs, entities that fund and support affordable housing, regional and local efficiency entities within the State, other efficiency programs, and utility programs.

(6) Consider innovative approaches to delivering energy efficiency, including strategies to encourage third party financing and customer contributions to the cost of efficiency measures.

(7) Provide a reasonably stable multiyear budget and planning cycle in order to promote program improvement, program stability, enhanced access to capital and personnel, improved integration of program designs with the budgets of regulated companies providing energy services, and maturation of programs and delivery resources.

(8) Approve programs, measures, and delivery mechanisms that reasonably reflect current and projected market conditions, technological options, and environmental benefits.

(9) Provide for delivery of these programs as rapidly as possible, taking into consideration the need for these services, and cost-effective delivery mechanisms.

(10) Provide for the independent evaluation of programs delivered under subsection (d) of this section.

(11) Require that any entity appointed by the Commission under subsection (d) of this section deliver Commission-approved programs in an effective, efficient, timely, and competent manner and meet standards that are consistent with those in section 218c of this title, the Board's orders in Public Service Board docket 5270, and any relevant Board orders in subsequent energy efficiency proceedings.

(12) Require verification, on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the Commission to deliver energy efficiency programs under subdivision (d)(2) of this section.

(13) Ensure that any energy efficiency program approved by the Commission shall be reasonable and cost-effective.

(14) Consider the impact on retail electric rates and bills of programs delivered under subsection (d) of this section and the impact on fuel prices and bills.

(15) Ensure that the energy efficiency programs implemented under this section are designed to make continuous and proportional progress toward attaining the overall State building efficiency goals established by 10 V.S.A. § 581, by promoting all forms of energy end-use efficiency and comprehensive sustainable building design.

(g) Thermal energy and process fuel efficiency programs; additional criteria. With respect to energy efficiency programs delivered under this section to thermal energy and process fuel customers, the Commission shall:

(1) Ensure that programs are delivered on a whole-buildings basis to help meet the State's building efficiency goals established by 10 V.S.A. § 581 and to reduce greenhouse gas emissions from thermal energy and process fuel use in Vermont.

(2) Require the establishment of a statewide information clearinghouse to enable effective access for customers to and effective coordination across programs. The clearinghouse shall serve as a portal for customers to access thermal energy and process fuel efficiency services and for coordination among State, regional, and local entities involved in the planning or delivery of such services, making referrals as appropriate to service providers and to entities having information on associated environmental issues such as the presence of asbestos in existing insulation.

(3) In consultation with the Agency of Natural Resources, establish annual interim goals starting in 2014 to meet the 2017 and 2020 goals for improving the energy fitness of housing stock stated in 10 V.S.A. § 581(1).

(4) Ensure the monitoring of the State's progress in meeting the goals of 10 V.S.A. § 581(1). This monitoring shall be performed according to a standard methodology and on a periodic basis that is not less than annual.

(h) Electricity labeling. The Public Utility Commission may prescribe, by rule or order, standards for the labeling of electricity delivered or intended for delivery to ultimate consumers as to price, terms, sources, and objective environmental impacts, along with such procedures as it deems necessary for verification of information contained in such labels. The Public Utility Commission may prescribe, by rule or by order, standards and criteria for the substantiation of such labeling or of any claims regarding the price, terms, sources, and environmental impacts of electricity delivered or intended for delivery to ultimate consumers in Vermont, along with enforcement procedures and penalties. When establishing standards for the labeling of electricity, the Commission shall weigh the cost, as well as the benefits, of compliance with such standards. With respect to companies distributing electricity to ultimate consumers, the Commission may order disclosure and publication, not to occur more than once each year, of any labeling required pursuant to the standards established by this subsection. Standards established under this subsection may include provisions for:

(1) the form of labels;

(2) information on retail and wholesale price;

(3) terms and conditions of service;

(4) types of generation resources in a seller's mix and percentage of power produced from each source;

(5) disclosure of the environmental effects of each energy source; and

(6) a description of other services, including energy services or energy efficiency opportunities.

(i)(1) Pole attachments; broadband. For the purposes of Commission rules on attachments to poles owned by companies subject to regulation under this title, broadband service providers shall be considered "attaching entities" with equivalent rights to attach facilities as those provided to "attaching entities" in the rules, regardless of whether such broadband providers offer a service subject to the jurisdiction of the Commission. The Commission shall adopt rules in accordance with 3 V.S.A. chapter 25 to further implement this section. The rules shall be aimed at furthering the State's interest in ubiquitous deployment of mobile telecommunications and broadband services within the State.

(2) The rules adopted pursuant to this subsection shall specify that:

(A) The applicable make-ready completion period shall not be extended solely because a utility pole is jointly owned.

(B) At the time of an initial pole make-ready survey application, when a pole is jointly owned, the joint owners shall inform the applicant which owner is responsible for all subsequent stages and timely completion of the make-ready process.

(C) If the make-ready work is not completed within the applicable make-ready completion period, the pole owner, within 30 days of the expiration of the make-ready completion period, shall refund the portion of the payment received for make-ready work that is not yet completed, and the attaching entity may hire a qualified contractor to complete the make-ready work. All pole owners and attaching entities shall submit to the Commission a list of contractors whom they allow to perform make-ready surveys, make-ready installation or maintenance, or other specified tasks upon their equipment. The Commission shall provide the appropriate list to an attaching entity, upon request.

(j) Self-managed energy efficiency programs.

(1) There shall be a class of self-managed energy efficiency programs for transmission and industrial electric ratepayers only.

(2) The Commission, by order, shall enact this class of programs.

(3) Entities approved to participate in the self-managed energy efficiency program class shall be exempt from all statewide charges under subdivision (d)(3) of this section



that support energy efficiency programs performed by or on behalf of Vermont electric utilities. If an electric ratepayer approved to participate in this program class also is a customer of a natural gas utility, the ratepayer shall be exempt from all charges under subdivision (d)(3) of this section or contained within the rates charged by the natural gas utility to the ratepayer that support energy efficiency programs performed by or on behalf of that utility, provided that the ratepayer complies with this subsection.

(4) All of the following shall apply to a class of programs under this subsection:

(A) A member of the transmission or industrial electric rate class shall be eligible to apply to participate in the self-managed energy efficiency program class if the charges to the applicant, or to its predecessor in interest at the served property, under subdivision (d)(3) of this section were a minimum of:

- (i) \$1.5 million during calendar year 2008; or
- (ii) \$1.5 million during calendar year 2017.

(B) A cost-based fee to be determined by the Commission shall be charged to the applicant to cover the administrative costs, including savings verification, incurred by the Commission and Department. The Commission shall determine procedures for savings verification. Such procedures shall be consistent with savings verification procedures established for entities appointed under subdivision (d)(2) of this section and, when determined to be cost-effective under subdivision (L) of this subdivision (4), with the requirements of ISO-New England for the forward capacity market (FCM) program.

(C) An applicant shall demonstrate to the Commission that it has a comprehensive energy management program with annual objectives. Achievement of certification of ISO standard 14001 shall be eligible to satisfy the requirements of having a comprehensive program.

(D) An applicant eligible pursuant to subdivision (A)(i) of this subdivision (j)(4) shall commit to an annual average investment in energy efficiency and energy productivity programs and measures during each three-year period that the applicant participates in the program of not less than \$1 million. An applicant eligible pursuant to subdivision (A)(ii) of this subdivision (j)(4) shall commit to an annual average investment in energy efficiency and energy productivity programs and measures during each three-year period that the applicant participates in the program of not less than \$500,000.00. To achieve the exemption from energy efficiency charges related to natural gas under subdivision (3) of this subsection (j), an applicant shall make an additional annual energy efficiency investment in an amount not less than \$55,000.00. As used in this subsection (j), "energy productivity programs and measures" means investments that reduce the amount of energy required to produce a unit of product below baseline energy use. Baseline energy use shall be calculated as the average amount of energy required to make one unit of the same product in the two years preceding implementation of the program or measure.

(E) Participation in the self-managed program includes efficiency and productivity programs and measures applicable to electric and other forms of energy. A participant may balance investments in such programs and measures across all types of energy or fuels without limitations.

(F) A participant shall provide to the Commission and Department annually an accounting of investments in energy efficiency and energy productivity programs and measures and the resultant energy savings in the form prescribed by the Commission, which may conduct reasonable audits to ensure the accuracy of the data provided.

(G) The Commission shall report to the General Assembly annually on or before April 30 concerning the prior calendar year's class of self-managed energy efficiency programs. The report shall include identification of participants, their annual investments and resulting savings, and any actions taken to exclude entities from the program.

(H) Upon approval of an application by the Commission, the applicant shall be able to participate in the class of self-managed energy efficiency programs.

(I) On a determination that, for a given three-year period, a participant in the self-managed efficiency program class did not meet or has not met the commitment required by subdivision (D) of this subdivision (j)(4), the Commission shall terminate the participant's eligibility for the self-managed program class.

(i) On such termination, the former participant will be subject fully to the then existing charges applicable to its rate class without exemption under subdivision (3) of this subsection (j), and within 90 days after such termination shall pay:

(I) the difference between the investment it made pursuant to the self-managed energy efficiency program during the three-year period of noncompliance and the full amount of the charges and rates related to energy efficiency it would have incurred during that period absent exemption under subdivision (3) of this subsection (j); and

(II) the difference between the investment it made pursuant to the program within the current three-year period, if different from the period of noncompliance, and the full amount of the charges and rates related to energy efficiency it would have incurred during the current period absent exemption under subdivision (3) of this subsection (j).

(ii) Payments under subdivision (i) of this subdivision (4)(I) shall be made to the entities to which the full amount of charges and rates would have been paid absent exemption under subdivision (3) of this subsection (j).

(iii) A former participant may not reapply for membership in the self-managed program after termination under this subdivision (4)(I).

(J) A participant in the self-managed program class may request confidentiality

of data it reports to the Commission if the data would qualify for exemption from disclosure under 1 V.S.A. § 317. If such confidentiality is requested, the Commission shall disclose the data only in accordance with a protective agreement approved by the Commission and signed by the recipient of the data, unless a court orders otherwise.

(K) Any data not subject to a confidentiality request under subdivision (J) of this subdivision (4) will be a public record.

(L) A participant in the self-managed program class shall work with the Department of Public Service to determine whether it is cost-effective to submit projects to ISO-New England for payments under the FCM program.

(i) As used in this subdivision (L), "cost-effective" requires that the estimated payments from the FCM program exceed the incremental cost of savings verification necessary for submission to that program.

(ii) If the Department determines the submission to be cost-effective, then an entity appointed to deliver electric energy efficiency services under subdivision (d)(2) of this section shall submit the project to the FCM program for payment and any resulting payments shall be remitted to the Electric Efficiency Fund for use in accordance with subdivision (e)(1)(A) of this section.

(M) A participant in the self-managed program class may receive funding from an energy program administered by a government or other entity that is not the participant and may count such funds received as part of the annual commitment to its self-managed energy efficiency program.

(N) If, at the end of every third year after an applicant's approval to participate in the self-managed efficiency program (the three-year period), the applicant has not met the commitment required by subdivision (4)(D) of this subsection, the applicant shall pay the difference between the investment the applicant made while in the self-managed energy efficiency program and the full amount of charges and rates that the applicant would have incurred absent the exemption under subdivision (3) of this subsection. This payment shall be made no later than 90 days after the end of the three-year period to the entities to which the full amount of those charges and rates would have been paid absent the exemption.

(5) This subdivision applies to a transferee of all or substantially all of the assets at the served property of an entity approved to participate in the self-managed energy efficiency program. The Commission shall allow the transferee to continue as a participant in the self-managed energy efficiency program class in the same manner and under the same terms and conditions that the transferor participant was authorized to participate, provided:

(A) the transferor participant met the requirements of subdivision (4)(A) of this subsection (j) and the transferee otherwise meets the requirements of this subsection;

and

(B) the transferee assumes the obligation to fulfill any outstanding commitment of the transferor participant under subdivision (4)(D) of this subsection.

(k) Energy storage facilities. Except when owned by a retail distribution utility, an energy efficiency utility, or the Vermont Electric Power Company, Inc., competitive suppliers of energy storage services that do not serve retail customers shall be exempt from sections 107, 108, and 109 of this title. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 183, § 5; 1975, No. 56, § 1; 1979, No. 147 (Adj. Sess.), § 2; 1981, No. 245 (Adj. Sess.), § 2; 1989, No. 112, § 6, eff. June 22, 1989; 1995, No. 182 (Adj. Sess.), § 27a, eff. May 22, 1996; 1999, No. 60, § 1, eff. June 1, 1999; 1999, No. 143 (Adj. Sess.), § 28; 2001, No. 145 (Adj. Sess.), §§ 1, 2; 2005, No. 61, § 6; 2005, No. 208 (Adj. Sess.), § 10; 2007, No. 79, § 6, eff. June 9, 2007; 2007, No. 92 (Adj. Sess.), § 12; 2007, No. 190 (Adj. Sess.), §§ 52, 53, eff. June 6, 2008; 2009, No. 45, §§ 14, 14a, eff. May 27, 2009; 2009, No. 54, § 104, eff. June 1, 2009; 2009, No. 1 (Sp. Sess.), § E.235.1, eff. June 2, 2009; 2011, No. 47, §§ 3, 20b, eff. May 25, 2011; 2011, No. 170 (Adj. Sess.), § 16; 2013, No. 89, §§ 2, 3; 2013, No. 142 (Adj. Sess.), § 49; 2013, No. 184 (Adj. Sess.), § 1; 2015, No. 56, §§ 15, 15a; 2017, No. 77, § 6; 2017, No. 102 (Adj. Sess.), § 1; 2017, No. 150 (Adj. Sess.), § 1; 2019, No. 31, § 14; 2019, No. 79, § 20, eff. June 20, 2019; 2021, No. 54, § 7.)



VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 30 : Public Service

Chapter 013 : Cable Television Systems

(Cite as: 30 V.S.A. § 517)

§ 517. Line extensions

(a) A company may enter into agreements under this section with government, nonprofit, or private entities, including projects authorized or affiliated with the Vermont Telecommunications Authority, a municipality or fire district pursuant to 20 V.S.A. § 2601, or a regional aggregation and deployment project, to satisfy cable television line extension requirements.

(b) Upon petition of a company, the Commission shall modify the line extensions that a company would otherwise be required to construct if the company agrees to undertake alternative actions, including the extension of facilities that support alternative technologies for delivering broadband to users. Copies of the petition shall be filed with the Department and the Vermont Telecommunications Authority. The Commission shall approve such alternative methods of satisfying line extension requirements after notice and opportunity for hearing if it finds the petition promotes the general good of the State. In reaching its determination, the Commission shall consider whether the company's proposal:

(1) is consistent with the activities and initiatives of the Vermont Telecommunications Authority;

(2) is likely to provide broadband access to a greater number of unserved consumers than would the foregone cable television line extension requirements;

(3) supports the expansion of broadband services at prices and service levels comparable to those commonly available throughout the State, but not less than the minimum technical service characteristics required by section 8077 of this title;

(4) provides a fair balancing of the benefits to the public compared to benefits realized by the company; and

(5) the modified line-extension obligations will not unreasonably affect the time at which customers to whom a company would otherwise be obligated to extend cable services will have access to broadband services.

(c) This section shall not apply to line extensions previously identified and planned for construction as of June 9, 2007.

(d) The Commission shall not require a company to overbuild another company, or provide cable television service to locations served by another company or to which another company is required to extend cable television service.

(e) Notwithstanding any other provision of this section, the Commission may require the construction of cable television line extensions when a company receives a bona fide request for service from a reasonable number of verified customers or with reasonable contributions in aid of construction from customers.

(f) Notwithstanding any other provision of this section, the line extension construction obligation for additional miles identified in Paragraph 41 of Comcast Communication's certificate of public good, granted by the Public Utility Commission, of September 27, 2006, may be modified only with the approval of the Commission. (Added 2007, No. 79, § 5a, eff. June 9, 2007.)



Proposed Rules Postings

A Service of the Office of the Secretary of State

- [Vermont.gov](#)
- [Feedback](#)
- [SOS Website](#)
- [APA Site](#)
- [Code of Vermont Rules](#)
- [Recent](#)
- [Search Rules](#)
- [Calendar](#)
- [Subscribe](#)
- [APA Contact Info](#)

Search Rules

Deadline For Public Comment

Deadline: May 10, 2022

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	22P005
Title:	Rule 8.00 Cable Television.
Type:	Standard
Status:	Proposed
Agency:	Vermont Public Utility Commission
Legal Authority:	30 V.S.A. §§ 209(b) and 517
Summary:	The proposed rule will standardize the format of the construction cost estimates that cable operators provide to customers for cable line extensions. The rule also amends the timeframes within which cable operators are required to provide such construction cost estimates.



Persons Affected:	Customers interested in receiving cable service, Vermont cable operators, the Vermont Department of Public Service.
Economic Impact:	The rule will have a negligible impact. The cable operators did not identify any material costs associated with using a standardized form for reporting construction cost estimates. To the extent that the rule encourages the expansion of cable service, there may be economic benefits to both the cable operators and to customers receiving cable service.
Posting date:	Mar 30,2022

Hearing Information

Information for Hearing # 1

Hearing date:	05-03-2022 6:30 PM ADD TO YOUR CALENDAR
Location:	Virtual Hearing via Internet
Address:	https://meet.goto.com/146547341
City:	Call (866)899-4679 Pin# 145-547-341.
State:	VT
Zip:	n/a
Hearing Notes:	Virtual Hearing: May 3, 2022 6:30 PM https://meet.goto.com/146547341 OR call (866)899-4679 and enter Pin# 146-547-341.

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

Level:	Primary
Name:	Jake Marren, Esq.
Agency:	Vermont Public Utility Commission
Address:	112 State Street, 4th Floor
City:	Montpelier
State:	VT
Zip:	05620
Telephone:	802-828-1167
Fax:	



Email: jake.marren@vermont.gov

[SEND A COMMENT](#)

Website Address: <https://epuc.vermont.gov/?qnode/64/166982>

[VIEW WEBSITE](#)

Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.

Level: Secondary
Name: Micah Howe
Agency: Vermont Public Utility Commission
Address: 112 State Street
City: Montpelier
State: VT
Zip: 05620-2701
Telephone: 802-828-2358
Fax:
Email: micah.howe@vermont.gov

[SEND A COMMENT](#)

Keyword Information

Keywords:

Cable Television
Public Utility Commission
Line Extensions

[Back](#)

[Accessibility Policy](#) | [Privacy Policy](#)

A Vermont Government Website Copyright 2022 State of Vermont





OFFICE OF THE SECRETARY OF STATE
VERMONT STATE ARCHIVES & RECORDS ADMINISTRATION (VSARA)
(802) 828-2863

TO:	Burlington Free Press Legals (publicnotices@localiq.com) Linda Kennedy (lkenned@gannett.com)	Tel: 863-3441 FAX: 863-4702 Attn: Legal Notices
	The Caledonian Record Julie Poutré (adv@caledonian-record.com)	Tel: 748-8121 FAX: 748-1613
	Times Argus / Rutland Herald Melody Hudson (classified.ads@rutlandherald.com) Elizabeth Marrier (elizabeth.marrier@rutlandherald.com)	Tel: 802-747-6121 ext 2238 FAX: 802-776-5600
	The Valley News (advertising@vnews.com)	Tel: 603-298-8711 FAX: 603-298-0212
	The Addison Independent (legals@addisonindependent.com)	Tel: 388-4944 FAX: 388-3100 Attn: Display Advertising
	The Bennington Banner / Brattleboro Reformer Lylah Wright (lwright@reformer.com)	Tel: 254-2311 ext. 132 FAX: 447-2028 Attn: Lylah Wright
	The Chronicle (ads@bartonchronicle.com)	Tel: 525-3531 FAX: 525-3200
	Herald of Randolph (ads@ourherald.com)	Tel: 728-3232 FAX: 728-9275 Attn: Brandi Comette
	Newport Daily Express (jlafoe@newportvermontdailyexpress.com)	Tel: 334-6568 FAX: 334-6891 Attn: Jon Lafoe
	News & Citizen (mike@stowereporter.com) Irene Nuzzo (irene@newsandcitizen.com and ads@stowereporter.com removed from distribution list per Lisa Stearns.	Tel: 888-2212 FAX: 888-2173 Attn: Bryan
	St. Albans Messenger Ben Letourneau (ben.letourneau@samessenger.com)	Tel: 524-9771 ext. 117 FAX: 527-1948 Attn: Ben Letourneau
	The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: APA Coordinator, VSARA

Date of Fax: March 28, 2022

RE: The "Proposed State Rules " ad copy to run on

April 7, 2022

PAGES INCLUDING THIS COVER MEMO:

2

NOTE 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/> . The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Rule 8.00 Cable Television.

Vermont Proposed Rule: 22P005

AGENCY: Public Utility Commission

CONCISE SUMMARY: The proposed rule will standardize the format of the construction cost estimates that cable operators provide to customers for cable line extensions. The rule also amends the timeframes within which cable operators are required to provide such construction cost estimates.

FOR FURTHER INFORMATION, CONTACT: Jake Marren, Esq. Vermont Public Utility Commission 112 State Street, 4th Floor, Montpelier, VT 05620 Tel: 802-828-1167 Email: jake.marren@vermont.gov URL: (<https://epuc.vermont.gov/?q=node/64/166982>)

FOR COPIES: Micah Howe, Vermont Public Utility Commission 112 State Street, 4th Floor, Montpelier, VT 05620 Tel: 802-828-2358 Email: micah.howe@vermont.gov.

By: [Faint text]

Date: [Faint text]

Title: [Faint text]

Signature: [Faint text]

Name: [Faint text]

Address: [Faint text]

City: [Faint text]

State: [Faint text]

Zip: [Faint text]

Administrative
Committee
on
Cable
Television

Public Utility
Commission

Montpelier, VT
05602

Administrative
Committee
on
Cable
Television

Public Utility
Commission

Montpelier, VT
05602

