



14 February 2024

MEMO TO: Rep. Emilie Kornheiser and Members of House Ways + Means Committee

FROM: Lauren-Glenn Davitian, Public Policy Director, CCTV Center for Media + Democracy, davitian@cctv.org

RE: Testimony Regarding H. 657 Telecommunications Tax Modernization - Questions Raised at 2/9/24 Committee Hearing on Community Media Public Benefit Fund

Vermont Access Network (VAN) offers these responses to questions raised by members of the House Ways + Means Committee during discussions of the Community Media Public Benefit Fund, included in H. 657 v.1.2.

1. Clarifying Vermont Access Management Organizations' (AMOs) Current and Projected Revenue Gap Under the Existing Cable Franchise Model

The Community Media Public Benefit Fund mechanism in H.657 is designed to address the collective revenue gap for Vermont's 24 Access Management Organizations. This revenue gap is due to three key factors:

- Steady flattening and decline of Vermont cable revenue;
- Modest but steady annual increases in community media operating costs;
- Costs related to the expansion of PEG services beyond cable service territories.

Taking total statewide cable revenue account between 2019 (\$7.6M) and 2022 (\$8M), some AMOs have been hit harder than others. For example, Mad River TV has seen a 21% drop in cable revenue, Woodstock (-11%), CVTV/ Barre (-2%),

CCTV/ Media Factory (-2%). ORCA/ Montpelier, KATV (St. Johnsbury) cable revenue is flat.

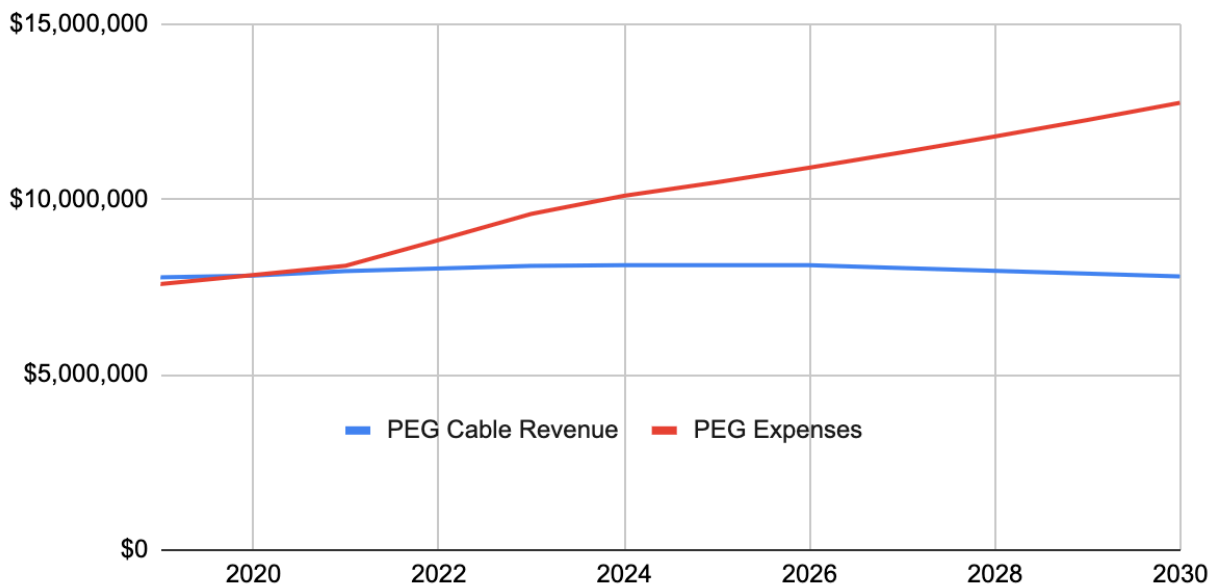
Taking cable revenue and inflation rates (17%) between 2019 and 2022 into account, Vermont AMOs in all corners of the state have been impacted by revenue gaps. This does include 2% for the cost of expanded technical support and services delivered since 2020.

VT Cable Revenue - Expenses + Inflation between 2019 - 2022	%
Vermont AMO	
BCTV - Brattleboro	1%
CATV - White River	-18%
CAT-TV - Bennington	-13%
CH17 - Burlington	-19%
CVTV - Barre	-19%
FACT-TV - Bellows Falls	-13%
GMATV - Hyde Park	-6%
GNAT - Manchester	-10%
HCTV - Hardwick	-7%
KATV - St. Johnsbury	-17%
LCATV - Colchester	-12%
OVTV - Ludlow	-11%
MCTV - Middlebury	-7%
Media Factory - Burlington	-19%
MMCTV - Mt. Mansfield	-12%
MRVTV - Mad River	-39%
NEAT - Bristol	-9%
NEK-TV - Newport	-4%
NWA-TV - St. Albans	-3%
ORCA - Montpelier	-16%
RRCTV - Rutland	-16%
SAPA-TV - Springfield	-15%
WCTV - Woodstock	-28%
WOA8TV - Windsor	-13%
Total Overall Revenue Gap	-14%

With national communications industry trends¹ and past performance of Vermont cable operators in mind, VAN offers a *conservative* estimate of statewide cable revenues remaining flat or declining at 1% per year through 2030. PEG AMO costs, driven largely by labor and including operation costs are forecast to increase at the rate of inflation.² AMOs are working to address the funding gap through revenue diversification and seeking a long term funding source with the support of the Legislature to modernize how PEG funding is collected.

PEG Financial Projections 2024-30	2024	2025	2026	2027	2028	2029	2030
PEG Cable Revenue (Millions)	\$8.1	\$8.1	\$8.1	\$8.0	\$7.9	\$7.8	\$7.7
PEG Expenses (Millions)	\$10.0	\$10.4	\$10.8	\$11.3	\$11.7	\$12.2	\$12.7
GAP (between red and blue line, below)	-\$1.9	-\$2.3	-\$2.7	-\$3.2	-\$3.8	-\$4.3	-\$4.9

Vermont PEG Financial Projections FY2019-2030



¹ “With Cord-Cutting, Cable TV Industry Is Facing Financial Challenges”, Brad Adgate, 10 October 2023. <https://www.forbes.com/sites/bradadgate/2023/10/10/with-cord-cutting-cable-tv-industry-is-facing-financial-challenges/?sh=357e2d09756c>

² https://www.usinflationcalculator.com/inflation/current-inflation-rates/#google_vignette

2. What Maine/Other States Are Doing

In 2019, Maine added High Definition and Electronic Program Guide requirements to their state franchising law, which withstood challenges in State and Federal Courts (NCTA v Frey). After cable company refusal to pay for these requirements, advocates promoted LD 1967 “An Act to Support Municipal Franchise Agreements”.

The bill, on the Governor’s desk this week, requires that (a) all video service providers with facilities in the public right-of-way have an agreement with local municipalities; (b) transmission requirements of Maine law be paid for by video service providers; (c) providers carry PEG channels regardless of the cable operator’s technical infrastructure. The bill includes rural buildout provisions for broadband and has won support from the Maine Connectivity Authority and other state associations and agencies.

See: <https://legiscan.com/ME/bill/LD1967/2023>

As noted in VAN’s 2/9/24 testimony, **Massachusetts’** bill is being considered by the Legislature for a second year and is working its way through committee. *H 74/S 34 An Act to modernize funding for community media programming* extends a five percent fee to streaming services with facilities in the Public Right of Way and distributes revenues to the State, Municipalities and Community Media organizations on a 20/40/40 percent split.

See: <https://malegislature.gov/Bills/193/H74/>

New York’s Community Media Reinvestment Act (S.2581/ A.5900) is before Legislative committees this year for the first time. Modeled on the Massachusetts bill, it establishes a video streaming and satellite excise tax equal to a five percent franchise fee and distributes the revenue to a statewide fund to be distributed on a 20/40/40 percent split between the State, Municipalities and Community Media organizations. Cable revenues would be exempt from the tax.

See: <https://www.nysenate.gov/legislation/bills/2023/S2581>

3. Range of PEG Access/ Community Media Service Distribution

Vermont AMOs are part of cable TV “service territories” that include 169 municipalities. Vermont AMOs are designed to meet “community needs and interests”. Many AMOs—particularly in rural areas—are serving communities that are not explicitly part of the cable service territory. Internet based viewing

audiences grow annually.

Training and equipment is available to people who live and work outside of the “cable territory”. Production services and technical support are frequently provided to communities who do not contribute franchise fee revenue that supports AMOs because they are part of a regional community of interest.

In the event that funding becomes available for Vermont municipalities to initiate or improve live meeting coverage with the support of the Vermont Secretary of State, as contemplated in S.55 which is being marked up in the Senate Government Operations Committee this week, Vermont’s AMOs are prepared to provide needed technical assistance. AMOs are also willing to extend their services to outlying communities as they are able to diversify their revenue streams. Legislative support in the form of a dependable and ongoing funding source can help to advance these interests.

TV Coverage: In most cases, Vermont AMOs cover public and community events outside of their “cable service area”, extending to adjacent communities and overlapping districts, especially regional sports, school board meetings, and community events of wide interest. AMOs provide technical support to communities interested in setting up live meeting coverage upon request.

- ***Okemo Valley TV (Windsor County):*** We serve the Town of Reading even though we don't have the PEG designation from Comcast. We actually do a lot of work for that Town, providing AV and tech services for their hybrid meetings for Selectboard and Planning Commission. We also have had some volunteers & producers who live outside of our PEG designated towns. Another example would be regional and statewide organizations or agencies. We support the work of a lot of different orgs. who might be located in an adjacent or nearby town but whose service area includes ours.
- ***LCATV (Chittenden, Franklin, Grand Isle):*** Coverage of the meetings and activities of several supervisory unions (namely Franklin West SU and Grand Isle SU) provide towns both inside and outside of our service with a connection to district and school activities.
- ***At Northwest Access TV (Franklin),*** internet users are some of the most common consumers of our services. This became evident during the high point of the pandemic from 2020-2022 when thousands of community members and families across Vermont relied on our live streaming services to watch local high school sports. Our digital footprint has continued to climb steadily since 2022 not just with

our community in Franklin County but across the entire state. We have seen our viewership increase by 100% from 2021 to 2022 and average 150,000 views per year since. Our service allows families and friends supporting their local teams to watch from afar and not make the two-plus hour trek to St. Albans, Swanton and Highgate. With our no-cost to viewers online streaming service, community members in our coverage area have the ability to watch their loved ones compete at the high school level. Without proper funding, this mechanism would fall on the school districts to support, trickling down to the community as whole.

- **PEG-TV (Rutland):** *We are not the designated AMO for 5 towns in our service area (Mount Tabor, Tinmouth, Middletown Springs, Wells & Shrewsbury), but they are part of the Mill River Union School District, which is a meeting we cover regularly. We have also covered some events in those towns.*
- **NEK TV (Orleans)** *services include filming town meetings or candidate forums, select board meetings, musical events, etc. We also provide the use of our equipment to community producers in those areas should they wish to film/produce their own programs for cablecast/online distribution. Towns like Morgan, Barton, Orleans, etc. only have limited cable availability on main roads so much of those communities are without cable service. We offer the same services to them as well.*
- **GNAT-TV (Bennington)** *serves Landgrove, Danby, Pawlet, Wells and Bennington, which are communities of interest to our region. Our regional services include: online distribution of local, county wide and regional news. <https://gnat-tv.org/news/> Online distribution of a comprehensive regional community calendar. <https://gnat-tv.org/events/> School Coverage and content to Danby and Pawlet. These towns are in our school district, but are not in our AMO cable territory.*
- **Town Meeting TV (Chittenden):** *Our municipal coverage and services are available to the entire community and are paid for by cable subscribers. It's not an evenly distributed tax. And yes, for internships, equipment usage, etc our policies don't require you to be a cable subscriber to use the service.*

Other Services: Vermont AMOs deliver media access and education in the form of equipment availability, media production training for all ages, including summer camps. There are no residency requirements for these services and AMOs frequently serve community members who live and work outside of the cable service territory.

VAN also operates a statewide PEG channel, Vermont Community Television, which is streamed live with programs of statewide interest at <https://www.vtcommunity.tv/>

- *LCATV: We serve three of the five towns of Grand Isle County. However, any youth camps/classes offered in collaboration with community partners in the Islands are open to participants from all five towns. Beginning in 2004, LCATV started working with an organization called Music-COMP (né the Vermont MIDI Project). They pair student composers (K-12) with professional composer mentors to guide the students through the creation of original musical work. A few years in, they started taking some of these events on the road and we've collaborated with several AMOs on co-productions or, when they're in an unserved area, traveled there to produce coverage. We provide coverage where no other coverage is available and also help to make the documents of these events accessible to participating students who do not live in areas with cable services.*

Program Distribution: Vermont's AMOs have been distributing content via the internet since the mid 2000's. Program content that is of interest to regional or statewide audiences may be found through the online channels of every Vermont AMO. This includes websites, YouTube. The number of AMOs using internet apps such as Roku, FireTV and AppleTV are steadily increasing as online distribution outlets.

4. Rural Equity and Costs to Rural Telcos

A few points to consider:

- CUDs are exempt from the excise tax proposed by the Community Media Benefit Fund, and because CUDs largely serve rural areas, this should help ensure rural areas are not bearing more of the costs of the tax.
- The excise tax is proposed for pole attachers, not customers. For private providers that are not exempt, the tax will impact customers only if these providers can and do pass the tax on to customers. If so, we would assume they would do so by taking the total cost of the tax state-wide and allocating it evenly to all customers in the state, which would mean that rural customers would pay the same amount in a pass-through of the tax as non-rural customers.

5. Wireless Industry Arguments

a. Re: the argument that **PEG TV is a kind of streaming program service that should not be funded through the taxing of infrastructure**: The suggestion that streaming services are the issue is incorrect. As discussed above, AMOs provide services to residents throughout the State, regardless of whether they subscribe to cable services, streaming services or no video services. To provide a stable source of funding for AMOs, it is more equitable for the State to look to all communications companies to support AMOs rather than focusing on a subset of services that does not reflect the broad scope of beneficiaries of AMO services.

b. CTIA is incorrect in stating that the FCC found that the tax **savings clause in Section 601 of the Telecommunications Act of 1996** does not apply here and the proposed tax would be preempted. The FCC did not address state excise taxes in the order CTIA referenced. The FCC's order found only that "ROW access fees, and fees for the use of government property in the ROW" are "fees" not "taxes" and thus the tax savings clause does not apply. (*Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088, 9012 (2018) at par. 50 and note 130.) The pole attachment charge is an excise tax that applies to poles in and outside of the rights-of-way. It is not a fee for access to State rights-of-way or State-owned property in the rights-of-way. The Ninth Circuit decision did not address Section 601 nor did it address taxes (as opposed to fees). The proposed pole attachment charge is an excise tax that is not preempted by the Telecommunications Act and is expressly preserved by the Act's tax savings clause.

Thank you for your consideration.