

1 Sec. **X**. 32 V.S.A. chapter 247 is added to read:

2 CHAPTER 247. CABLE AND STREAMING ENTERTAINMENT

3 SERVICES ASSESSMENT

4 § 10601. PURPOSE

5 (a) The purpose of this chapter is to establish a comprehensive statewide  
6 policy for compensation for use of infrastructure in public rights-of-way by  
7 cable companies and streaming entertainment operators. It is the intent of the  
8 General Assembly that cable companies and streaming services contribute  
9 equally to the noncommercial content provided by access management  
10 organizations.

11 § 10602. DEFINITIONS

12 As used in this chapter:

13 (1) “Access management organization” or “AMO” means a nonprofit  
14 entity that is not a part of a cable company and that is designated to receive  
15 public, educational, and government (PEG) access support through a cable  
16 company and contracted to manage PEG channels and facilities for  
17 noncommercial purposes, pursuant to Public Utility Commission Rule 8.000.

18 (2) “Cable company” means a company that operates a cable television  
19 system, as defined in 30 V.S.A. chapter 13.

20 (3) “Gross revenues” means all revenue received directly or indirectly  
21 by a streaming entertainment operator arising from, attributable to, or in any

**Commented [KK1]:** S.181 findings and intent could be inserted here.

1 way derived from the sale of streaming entertainment services in the State.  
2 The term “gross revenues” shall not include bad debts, investment income,  
3 refunded deposits, or any taxes on services furnished by streaming  
4 entertainment providers and imposed directly upon any user by the local, state,  
5 federal or other governmental unit.

6 (4) “Streaming entertainment services” means any paid service that  
7 provides audio, video, or computer-generated or computer-augmented  
8 entertainment and delivers such entertainment via digital infrastructure to users  
9 and delivers those services through facilities located at least in part in the  
10 public rights-of-way without regard to delivery technology, including internet  
11 protocol technology or other intelligences. This definition does not include  
12 any cable service defined in 47 U.S.C. § 522(6) or any video programming  
13 provided by a commercial mobile service provider defined in 47 U.S.C §  
14 332(d) or provided solely as part of, and via, a service that enables users to  
15 access content, information, electronic mail, or other services offered over the  
16 public internet.

17 (5) “Streaming entertainment operator” means any company, entity, or  
18 organization that:

19 (A) provides streaming entertainment services and delivers such  
20 entertainment via digital infrastructure provided through facilities located at

1 least in part in the public rights-of-way with regard to delivery technology,  
2 including internet technology or other intelligences; and

3 (B) earns more than \$250,000.00 in gross annual revenues from  
4 providing such services to users in the State.

5 (6) “Video programming” means programming provided by, or  
6 generally considered comparable to programming provided by, a television  
7 broadcast station.

8 § 10603. ASSESSMENT

9 (a) All streaming entertainment operators and cable companies shall pay an  
10 assessment equal to **five percent** of gross annual revenues derived from the sale  
11 or provision of streaming entertainment services and video programming to  
12 individuals and businesses in the State.

**Commented [KK2]:** Rate can be reduced but not increased.

13 (b) The assessment shall be for each year, or part of each year, that a  
14 streaming entertainment operator or cable company is engaged in the sale of  
15 streaming entertainment services or video programming to individuals and  
16 businesses in the State.

17 (c) All streaming entertainment operators and cable companies shall file bi-  
18 annual financial statements reporting the gross revenues derived in the period  
19 from the sale of streaming entertainment services and video programming to  
20 individuals and businesses in the State in the following manner:

1           (1) financial statements shall contain a complete accounting and  
2           itemization of gross revenues derived from, or pertaining to, the sale or  
3           provision of streaming entertainment services and video programming to  
4           individuals and businesses in the State;

5           (2) financial statements shall conform to Generally-Accepted  
6           Accounting Principles (GAAP) and shall be submitted in a form and manner  
7           determined by the Commissioner;

8           (3) for the period inclusive of January 1 through June 30, a streaming  
9           entertainment operator or cable company shall submit a financial statement on  
10          or before August 15. For the period inclusive of July 1 through December 31, a  
11          streaming entertainment operator or cable company shall submit a financial  
12          statement on or before February 15 of the following year;

13          (4) streaming entertainment operators and cable companies that fail to  
14          submit financial statements within 30 days of the due dates established in  
15          subdivision (3) of this subsection shall be assessed a penalty equal to one  
16          percent of the gross revenues derived from, or pertaining to, the sale or  
17          provision of streaming entertainment services to individuals and businesses  
18          residing in the State during the applicable time period;

19          (5) streaming entertainment operators and cable companies that fail to  
20          submit financial statements within 60 days of the due dates established in  
21          subdivision (3) of this subsection shall be assessed a penalty equal to two

1 percent of the gross revenues derived from, or pertaining to, the sale or  
2 provision of streaming entertainment services to individuals and businesses  
3 residing in the State during the applicable time period; and

4 (6) any penalty assessed upon a streaming entertainment operator or  
5 cable company for failure to submit financial statements on time shall be  
6 cumulative to the assessment of five percent of gross revenues under  
7 subsection (a) of this section.

8 (d)(1) The Commissioner shall use the financial statement of a streaming  
9 entertainment operator or cable company to assess an amount equal to five  
10 percent of the streaming entertainment operator's or cable company's gross  
11 revenues derived in the period from the sale or provision of streaming  
12 entertainment service to individuals and businesses in the State.

13 (2) Upon assessment by written notice of the Commissioner, a streaming  
14 entertainment operator must submit payment to the Department of Taxes  
15 within 30 days of the notice. Streaming entertainment operators and cable  
16 companies that fail to submit payment within 30 days of the due date shall be  
17 assessed a penalty equal to two percent of the gross revenues derived from, or  
18 pertaining to, the sale or provision of streaming entertainment services and  
19 video programming to individuals and businesses in the State during the  
20 applicable time period.

1           (3) Streaming entertainment operators and cable companies that fail to  
2           submit remuneration of the assessment within sixty days of the due date shall  
3           be assessed a penalty equal to three percent of the gross revenues derived from,  
4           or pertaining to, the sale or provision of streaming entertainment service or  
5           video programming to individuals and businesses in the State during the  
6           applicable time period.

7           (4) Any penalty assessed upon a streaming entertainment operator or  
8           cable company for failure to submit payment before the due date shall be in  
9           addition to the assessment of five percent of gross revenues.

10           § 10604. DEFICIENCIES, AUDITS, REFUNDS, AND APPEALS

11           (a) The Commissioner shall have a right to audit or review the records  
12           reasonably related to the sources, amounts, and computation of assessable  
13           gross revenues derived from, or pertaining to, the sale or provision of  
14           streaming entertainment service or video programming to individuals and  
15           businesses residing in the State within the previous three years. Within 30  
16           days of a written request, a streaming entertainment operator or cable company  
17           shall provide the Commissioner with copies of financial records related to the  
18           review or audit of assessable gross revenues derived from, or pertaining to, the  
19           sale or provision of streaming entertainment services or video programming to  
20           individuals and businesses residing in the State.

1        (b) A streaming entertainment operator or cable company may request a  
2        refund within three years after the date an assessment is required to be paid.

3        (c) Upon receipt of a notice of deficiency, of denial, or reduction of a  
4        refund claim, or of assessment of penalty or interest under section 3203 of this  
5        title, the taxpayer may, within 60 days after the date of mailing of the notice or  
6        assessment, petition the Commissioner in writing for a determination of that  
7        deficiency, refund, or assessment. The Commissioner shall thereafter grant a  
8        hearing upon the matter and notify the taxpayer in writing of his or her  
9        determination concerning the deficiency, refund, or assessment. Any hearing  
10       granted by the Commissioner under this section shall be subject to and  
11       governed by 3 V.S.A. chapter 25. Any aggrieved taxpayer may, within 30  
12       days after a determination by the Commissioner, appeal that determination to  
13       the Washington Superior Court.

14  
15       [Add sections relating to allocation of revenue]