

March 5, 2009

Senator John Fonfara
Representative Vickie Nardello
Co-Chairs, Energy and Technology Committee
Room 3900, Legislative Office Building
Hartford, CT 06106

Re: H.B. 6604 (Raised), LCO No. 4139, An Act Concerning Public Access Television Channels

Dear Committee Members,

On behalf of West Hartford Community Television, I thank you for the opportunity to participate in this legislative proceeding. We are encouraged by the committee's willingness to tackle some of the issues facing community television and its continued commitment to ensure that the people of Connecticut have meaningful access to the electronic media and that the responsibility to encourage local programming is taken seriously. Toward that end, there are several aspects of HB 6004 which we think must be amended.

SECURING PEG CHANNELS

Section 7 (c) tightens the language set in PA-07-253 and secures capacity for the same number of town specific channels that existed as of January 1, 2008. Without this language, companies that hold a certificate of franchise authority are only obligated to carry three channels per franchise area. As a town specific provider in a town with an estimated population of 60,000 people, we believe we contribute to the social cohesion of our town by providing uniquely local programs produced by the people of our town and for our community. This language is vital to preserving our channels.

ENSURING QUALITY, FUNCTIONALITY AND ACCESSIBILITY OF CHANNELS

In 2008, West Hartford Community Television asked the committee to prevent a race to the bottom by requiring all providers to deliver our channels the same as the other channels on their system and that all costs related to delivery of the channel be borne by the provider. There are several sections in this bill that take the first step toward ensuring these protections. We request the committee clarify the language in the bill to make their intentions clearer in the following ways:

1. Lines 125 & 126: The phrase “on the basis of the commercial or non-commercial status of a channel” should be changed to “between local PEG programming and basic tier commercial channels” or stated more clearly using the model that exists in Illinois law that requires all companies to provide public, education and government channel capacity with the same visual and audio quality, same functionality to that of commercial channels carried on the holder’s basic cable or video service offerings or tier without the need for any equipment other than the equipment necessary to receive the basic cable or video service offerings. The problem with the language used is that a company might take the position that the reason for the discrimination is not “on the basis” of commercial or non-commercial status but “on the basis” of the local nature of the programming, which would defeat the entire intent of the section.
2. Lines 137 & 139: The phrase “same or better” raises several questions. First “functionality, should be added to mirror the requirements above. Second, who is the regulating authority that will decide if the access is “same or better” and what criteria will be used? AT&T may perceive their delivery is better because they use a different technology and provide coverage for multiple municipalities, even though it takes over 30 seconds to get to any station’s program; we think most, if not all, viewers of PEG programming would disagree.

3. Lines 159 – 162: At the end of this sentence, we recommend the period be changed to a comma and the following added: “provided, however, that a competitive video service provider shall not discriminate in the signal quality, functionality or accessibility between local access programming and basic tier commercial channels. The language makes it clear that the video service provider is subject to the same requirements as the incumbent cable provider. Another potential concern is that the “most economical” way may violate sensible, local requirements for safety or other important concerns. It should be made clear that all providers must comply with such local requirements, even if it means it’s not the most economical way because of the location of a building. The most economical way is only significant to us if it is used to create an argument for less quality, functionality or accessibility. If, for some reason, the other protections were removed from this bill, allowing a provider to deliver us in the most economical way would be very dangerous.

In order to create a level playing field, the sections with regard to quality, functionality and accessibility should be applied in a parallel fashion. Therefore, either section 7 should be amended to apply to the competitive video service provider or section 8 should be amended to apply all of the protections discussed.

4. Section 11 requires the DPUC to set up a contested case but says that the focus of the case is only “to define a channel,” which we think may be viewed as too limited. In 2008, HB 5814 offered a more detailed provision for a contested case which permitted broader inquiry into video and signal quality, and the length of time necessary to access and view community television. AT&T’s PEG delivery still requires too many steps, cumbersome navigation and too much time to even get to your program, and when you finally get to the program, you receive a product that is clearly inferior than the other channels on their system. The contested case process should explicitly include these issues or at least be drafted broadly enough to clearly include them. Finally, unlike last year, when this issue was raised for the first time, there appears to be no reason to delay the required initiation of the contested hearing until April of 2010; it should be changed to October 1, 2009.

Finally, we submit that a technology neutral standard should be created so that all future providers will understand that in Connecticut, the PEG channels, the public voice, has an equal place on their system and they need to take that into consideration when they develop their architecture so they can provide the channels in the manner the public deserves. If a CVSP or a CVFA uses the public right of way to make a profit, they give these channels back for the public, education and governments to use in lieu of payment.

REQUIRING PROVIDERS TO PAY THE COSTS OF CARRIAGE

Since the inception of public access, providers have always borne the costs of carriage. We applaud section 12 that makes a company responsible for repair and maintenance. However, we ask that the language be expanded beyond mere transmission of the signal. With new technology, there is often equipment necessary for transcoding signals that might not be technically considered "transmission." We suggest that this section be broadened to include:

All costs associated with installing, connecting and maintaining the interconnectivity between a PEG facility and the provider head end or distribution hub, including but not limited to transmission equipment.

SECURING PEGPETIA GRANT FOR CAPITAL IMPROVEMENTS

Despite the recent dilution of the PEGPETIA account as part of the Governor's mitigation plan, the PEGPETIA remains an important component to the success of PEG. The account was designed to subsidize capital and equipment costs relating to improving the quality and quantity of local productions. Community television providers are uniquely positioned to assess the needs and to encourage hyper local content. Section 6 addresses the purpose of the account and clarifies the original intent of the account as a means for PEG providers to receive some basic funding for capital costs in a world with no franchise renewals or community needs assessments. With the speed at which technology is changing, without the opportunity to apply for PEGPETIA grants, stations like ours would be left behind as our technology became obsolete.

PRESERVING LOCAL NON PROFIT CONTROL

Proposed section 9(a) seems to apply to access centers currently operated by incumbent providers, it could potentially open up established PEG stations and the DPUC to multiple proceeding which are frivolous, in part because various community organizations with specific viewpoints may attempt to gain control of the an access center to promote their own agendas. Public access has always been about encouraging community dialogue and open access to the media. We believe it is potentially disruptive and counterproductive to require the DPUC to open a contested case proceeding without some preliminary determination of cause, at least where there is an incumbent community-based access station. We recommend adding on line 185, between the words "department" and "shall" the following: "shall determine if there is probable cause to believe that the existing local access programmer, if any, has given cause to be replaced and upon such determination, if applicable."

REVIEWING PERFORMANCE OF PROVIDERS

West Hartford Community Television endorses the performance review of video service providers as proposed in Section 10. Subscribers will benefit from ongoing evaluation by the DPUC, with full participation by the Office of Consumer Counsel, Attorney General and local advisory council

ADVISORY COUNCILS

Section one establishes the CATV advisory council as the arbiter of complaints lodged against a member PEG station. To avoid unnecessary burden on both advisory councils and PEG stations, as well as consistent with sound administrative practice, we think that a person seeking such mediation should first be required to present that issue to the board of directors or similar body of the PEG station which would have a defined period of time to resolve the issue.

We submit that community television employees would provide a helpful perspective and expertise to the advisory councils with the understanding that we would recuse ourselves if there was a conflict of interest. (Section 2c)

Submitted Respectfully By,

Jennifer Evans

Executive Director

West Hartford Community Television