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**CGA Energy and Technology Committee
 Public Hearing – February 19, 2015**

SUPPORT FOR

HB 5555 – AAC the Public, Educational and Governmental Programming and Educational Technology Investment Account (PEGPETIA) Grant Program

HB 6436 - AA Stabilizing the Funding for the Connecticut Institution of Community Access Television

HB 6437 - AAC Community Access Television

HB 6438 - AAC Multichannel Video Programming Distributors

Submitted by Pua Ford, Media Issues Specialist

The League of Women Voters of Connecticut appreciates the opportunity today to offer comment on proposed House Bills 5555, 6435, 6437, and 6438.

The League of Women Voters of Connecticut believes that community access television channels must be adequately protected, promoted, and funded, regardless of the provider of TV/video services to Connecticut residents. Government should provide opportunities for citizen participation in decisions regarding community access, or PEG, TV.

Two concepts are presented in this set of bills; both concepts address problems in funding community access television. As expressed in the title of HB 6436, community access television is a valued institution in this state and has enjoyed statutory protection since 1980. But funding for our PEG access stations has always been lean when compared to that in other states where community access flourishes. We need to take measures to make sure the PEG stations can continue to operate.

1. PEGPETIA

The intent of HB 5555 is “to reinstate the PEGPETIA Grant.” Some may believe that this has already been accomplished when the state Bond Commission allocated \$3.5 million in bonds for the Public, Educational and Governmental Programming and Educational Technology Investment Account on January 12, 2015. The Public Utility Regulatory Authority announced on its website that it would begin accepting applications for the grant program again as of February 9. The amount approved by the Bond Commission is the same as that scheduled to be swept from the “separate, nonlapsing” PEGPETIA into the General Fund for this fiscal year. Given the needs for and costs of television equipment and educational technology, it is likely that the money recently restored will run out before too long. Also, the fund may be vulnerable to sweeps again as budget planning for 2016-2018 begins.

The history and importance of PEGPETIA to community access television was explained at length in oral and written testimony before this Committee at the March 4, 2014 hearing (*see page 6 for links to references*). At that time, this Committee proposed a resolution for a Constitutional Amendment to preserve PEGPETIA from sweeps (HJ 18 for 2014). Although that effort failed, we appreciate the thought behind it. We hope that Committee members can find ways to protect the grant program as the next budgets come before the Appropriations Committee. **Please do not let PEGPETIA be swept again.**

2. Cord-Cutting and Per Subscriber Funding

House Bills 6436, 6437, and 6438 have similar language and the same intent: To protect regular, operational funds for community access television. It has been noted many times in the news that consumers are turning away from (or never subscribing to) cable television. Some watch video from satellite television or from some internet service, like Netflix, Hulu or Amazon Prime.

What this means, especially for Community Access Providers (CAPs) in Connecticut, is a loss of operational funds. Each year PURA determines the annual amount each subscriber of certain Multichannel Video Program Distributors (MVPD) pays to support the CAP in their respective areas. The MVPDs in Connecticut are the cable companies and “competitive video” (Internet Protocol Television services like U-Verse and FiOS). Satellite television services do not carry PEG television channels and do not pay the fees.

The per subscriber rate for 2014 ranged from \$5.40 to \$10.57—or 45 to 88 cents per month. Most of the regionally-based CAPs receive several hundred thousand dollars of this money, which may be used for salaries, rent, utilities, insurance and other ongoing expenses. CAPs may collect other money from their communities through DVD sales and fundraising events, but the base of their budgets is most reliably built on the per subscriber fees.

The bottom line is: *Fewer subscribers = less money.*

The portion of the General Statutes that defines the per subscriber fee is Sec. 16-331a, subsection (k). LWVCT understands that the proposed solution in this group of bills is to change wording in that section to include all subscribers to companies with MVPD services—broadband internet as well as video. It is probably true that not all broadband subscribers use their service for video, but it is also true that not all cable subscribers watch their community access channels. An increasing number of community access centers in the nation are using the Internet as an alternate platform for their programming, through on-demand sites like Vimeo and YouTube or through streaming services like Roku. Those sites are available at no additional fee to the viewers. Extending the per subscriber fee to broadband subscribers is as fair as the original collection of fees from television subscribers.

We are aware of the FCC’s recent Notice of Proposed Rulemaking 14-210 to widen the definition of Multichannel Video Programming Distributor, which begins

In this Notice of Proposed Rulemaking (“NPRM”), we propose to update our rules to better reflect the fact that video services are being provided increasingly over the Internet.

The NPRM suggests that MVPD should include businesses that provide video over the Internet, but does not mention including the Internet Service Providers. Community/PEG access channels are mentioned as one of the obligations of some currently-defined MVPDs, to be considered for others. The initial comment period just concluded on 2/17/15, and the NPRM conclusion probably will not be known for many months. But the CAPs in Connecticut need help sooner.

Increasing the subscriber base will not make the CAPs wealthy, nor will it remove the need for PEGPETIA to cover capital expenses. The per subscriber rates in Connecticut are so low, it would not noticeably increase expenses to those watching TV on the Internet. As technology increases the ways people watch video programming, this simple solution should help maintain our community access programming. It continues Connecticut’s standard of protection for community access programming.

Thank you again for today’s public hearing. The League of Women Voters of Connecticut appreciates the Committee’s listening to our testimony.

ADDENDUM

How many Community Access Providers are there?

The most recent list on the PURA website (dated 6/9/2011) lists 34 organizations are officially designated CAPs, operating 35 studios. Of these, we know that 14 are owned by cable companies and 20 are now run by independent nonprofit organizations. In addition, there are 80 town-specific governmental and educational access channels provided by the cable companies; most of these operate without financial support from their CAP.

How do we know that community access is valued in Connecticut?

Early in the history of cable television, Connecticut chose to mandate in our General Statutes the existence of PEG access operations. In other states, community officials chose to skip this as part of their return for cable companies' use of their Public Rights of Way, and their residents who desire the availability of local community television are struggling to put it in place.

When PA 07-253 wove Internet Protocol Television (U-Verse or FiOS) into the statutes as “certified competitive video providers,” new entrants to this market were required to carry the community access channels and pay the per subscriber, PEG support fee. Because franchise renewal was no longer available for CAPs to request capital improvements, PA 07-253 established the PEGPETIA fund. Many CAPs could not replace analog equipment with digital without the fund.

In other states (California and Ohio, among others), the legislative introduction of IPTV replaced local franchising with state authority, eliminated reliable funding for the PEG stations or restricted it to capital expenses only. PEG in the land of steady habits owes something to CGA for keeping the situation mostly stable so far.

What about other states?

In other places, PEG operational funds come from the franchise fee (5% of video provider's gross revenue), sometimes a portion, sometimes the entire 5%. In CT, the entire franchise fee goes to the General Fund (*CGS Sec. 12-258, Sec. 12-268a*).

In VT, PEGs receive \$3.00 per subscriber per month. (*Seven Days article*) “While broadband subscription rates have increased, Vermont cable companies have experienced a corresponding decline in cable subscriptions.... Declining subscriptions have resulted in lower funding amounts for public access stations.” (*2014 Vermont Telecommunications Plan*)

In other states, the local franchising authority is the municipality. In each borough of New York City, the LFA is the nonprofit community media center, with annual budgets over \$1 million. There and in Massachusetts, a portion or all of the franchise fee goes to the community access center.

Alternative solutions to expanding range of MVPD subscribers

If the Committee decides against the simple suggestion to include MVPD subscribers of internet service for CAP support, another possible amendment to CGS Sec. 16-331a(k) might help. Currently it appears that PURA adjusts rates for community access support only according to the consumer price index, without consideration of any particular CAP's basic operational needs—some rent the space for their offices and studios, others are provided space by their municipality. A slow inflation rate does not lead to a slow rise in electric bills. The CAPs that recently transitioned from Comcast ownership to nonprofit independence have new operating expenses and may need more support than when they were part of the company's operations.

Legislature could add to the list of six considerations that PURA uses when calculating community support, explicitly stating other increases in a CAP's budget that are beyond the organization's control—insurance, electricity and other utility rates—should be considered. We suggest two versions of substitute language for this section on the following pages.

AMENDMENT VERSION 1**Sec. 16-331a. Community access programming and operations.**

...

(k) The department shall establish the amount that the company or organization responsible for community access operations shall receive for such operations from **all** subscribers and from multichannel video programming distributors. The amount shall be five dollars per subscriber per year, adjusted annually by a percentage reflecting the increase or decrease of the consumer price index for the preceding calendar year, provided the department may increase or decrease the amount by not more than forty per cent of said amount for **[the] all** subscribers and all multichannel video programming distributors within a franchise area after considering (1) the criteria set forth in subsection (c) of this section, (2) the level of public interest in community access operations in the franchise area, (3) the level of community need for educational access programming, (4) the level and breadth of participation in community access operations, (5) the adequacy of existing facilities, equipment and training programs to meet the current and future needs of the franchise area, and (6) any other factors determined to be relevant by the department. Prior to increasing or decreasing said amount, the department shall give notice and opportunity for a hearing to the company or multichannel video programming distributor and, where applicable, the organization responsible for community access programming. The amount shall be assessed once each year for each end user premises connected to an open video system, irrespective of the number of multichannel video programming distributors providing programming over the open video system **or broadband internet connection**. When the department issues, transfers or renews a certificate of public convenience and necessity, **certificate of video franchise authority, or certificate of cable franchise authority** to operate a community antenna television system, the department shall include in the franchise agreement the amount that the company or organization responsible for community access operations shall receive for such operations from **all** subscribers. The department shall conduct a proceeding to establish the amount that the company or organization responsible for community access operations shall receive for such operations from multichannel video programming distributors and the method of payment of said amount. The department shall adopt regulations in accordance with chapter 54 to implement the provisions of this subsection.

AMENDMENT VERSION 2**Sec. 16-331a. Community access programming and operations.**

...

(k) The department shall establish the amount that the company or organization responsible for community access operations shall receive for such operations from subscribers and from multichannel video programming distributors. The amount shall be five dollars per subscriber per year, adjusted annually by a percentage reflecting the increase or decrease of the consumer price index for the preceding calendar year, provided the department may increase or decrease the amount by not more than forty per cent of said amount for the subscribers and all multichannel video programming distributors within a franchise area after considering (1) the criteria set forth in subsection (c) of this section, (2) the level of public interest in community access operations in the franchise area, (3) the level of community need for educational access programming, (4) the level and breadth of participation in community access operations, (5) the adequacy of existing facilities, equipment and training programs to meet the current and future needs of the franchise area, **[and]** (6) **changes in operating expenses that are beyond the community access provider's control, and** (7) any other factors determined to be relevant by the department. Prior to increasing or decreasing said amount, the department shall give notice and opportunity for a hearing to the company or multichannel video programming distributor and, where applicable, the organization responsible for community access programming. The amount shall be assessed once each year for each end user premises connected to an open video system, irrespective of the number of multichannel video programming distributors providing programming over the open video system. When the department issues, transfers or renews a certificate of public convenience and necessity, **certificate of video franchise authority, or certificate of cable franchise authority** to operate a community antenna television system, the department shall include in the franchise agreement the amount that the company or organization responsible for community access operations shall receive for such operations from subscribers. The department shall conduct a proceeding to establish the amount that the company or organization responsible for community access operations shall receive for such operations from multichannel video programming distributors and the method of payment of said amount. The department shall adopt regulations in accordance with chapter 54 to implement the provisions of this subsection.

References

Importance of PEG in CT

Office of Legislative Research report on the History of Cable TV Regulation

<http://www.cga.ct.gov/2009/rpt/2009-R-0417.htm>

Testimony for SB 135 in 2014:

http://www.cga.ct.gov/asp/menu/CommDocTmyBillAllComm.asp?bill=SB-00135&doc_year=2014

Testimony for HB 5172 in 2014:

http://www.cga.ct.gov/asp/menu/CommDocTmyBillAllComm.asp?bill=HB-05172&doc_year=2014

How cord-cutting threatens community access

Article in *Seven Days*, a Burlington, VT newspaper

<http://www.sevendaysvt.com/vermont/vermonts-public-access-television-faces-an-uncertain-future/Content?oid=2242697>

Vermont's recently updated Telecommunications Plan (*see esp. p. 8*)

http://publicservice.vermont.gov/sites/psd/files/Pubs_Plans_Reports/State_Plans/Telecom_Plan/VT%20Telecom%20Plan%202014.pdf

FCC document: NPRM 14-210

<http://www.fcc.gov/document/commission-adopts-mvpd-definition-nprm>

On page 8, the FCC notes that “an entity that uses IP to deliver cable service does not alter the classification of its facility as a cable system....” On page 34, “public, educational, or governmental channels (‘PEG’)” are listed among cable-specific requirements that might be extended to other MVPDs.