



**The Energy & Technology Committee
February 19, 2015**

**Proposed House Bills 6436, 6437, 6438:
AN ACT CONCERNING COMMUNITY ACCESS TELEVISION**

The New England Cable & Telecommunication Association (NECTA) represents Connecticut's cable companies that compete to provide advanced broadband, voice and video products and services to our state's business and residential consumers. NECTA respectfully submits testimony **in opposition** to the above listed bills.

Proposed House Bills 6436, 6437 and 6438 contain identical language amending subsection (k) of title 16-331a of the General Statutes to allow companies or organizations responsible for community access operations to collect access fees from all subscribers of any services provided by multichannel video programming distributors (MVPD) including Internet, cable television and telephone services. NECTA opposes these bills for multiple reasons.

First, the Public Utility Regulatory Authority (PURA) recently addressed the specific issue in response to an access group's recent request seeking a ruling that PURA clarify and order multichannel video programming distributors (MVPD) – including cable companies – to collect access fees from all subscribers, not just video customers. PURA's December 10, 2014 response declined to expand the assessment to telephone and Internet subscribers, as follows:

“Conn. Gen. Stat. §16-331a(k) is silent as to the service subscribers that are responsible for recovery of the community access programming costs. However, Conn. Gen. Stat. §16-331a(k) does require that community access channels be included in each company's basic service package. Also, in the Authority's Decisions addressing the calculation of community access support, the PURA has required that any MVPD with either a Cable Certificate of Franchise Authority or a Certificate of Video Franchise Authority to provide video service to fund community access.¹ (Emphasis added)

While no specific reference to the services purchased by subscribers is provided for by Conn. Gen. Stat. §16-331a(k), it is the opinion of the Authority that only those subscribers that have the ability to receive the community access programming should be responsible for their costs. Since that programming is provided through the purchase of cable company basic service packages, it is

¹ See, e.g., PURA Decision in Docket No. 14-01-18 The Public Utilities Regulatory Authority Annual Community Access Support Review, pp. 7-9.

logical that only the subscribers to those service packages be assessed the community access programming fee. Recovery of the community access programming costs from those MVPD customers not purchasing the basic cable service package would be inequitable because they do not have access to the programming and do not derive any benefit from its provision. Accordingly, the Authority hereby declines to order MVPD license holders to collect community access fees from all of their subscribers.”

Second, the PURA decision not to extend community access funding obligations accords with fairness. The §16-331a(k) access assessment is on a “per subscriber per year” basis rather than on a per-service basis. Under the PURA decision the subscribers eligible to receive access services remain responsible for the assessment, irrespective of whether or not they receive additional services. Conversely, Internet or voice-only MVPD customers that do not benefit from access are and should continue to be exempt.

Third, the proposed bills conflict with federal limits on the assessment authority of state and local entities in the area of Internet and voice services. Longstanding federal law provides that only revenue derived from cable services can be assessed fees for support of community access, and well-settled law provides that Internet access services and voice services over cable systems are not “cable services.”² Given these limitations, government efforts to collect franchise fees on cable-delivered Internet services are invariably stricken down.³ Additionally, any new Internet assessment would conflict with the policies of the Internet Tax Freedom Act (ITFA).⁴ The ITFA prohibits local governments from burdening broadband service providers with taxes in order to further the national policy of encouraging the growth and availability of broadband Internet services to all Americans. The General Assembly should do likewise and maintain the current limits on community access assessment and not assess additional services.

CONCLUSION

For the reasons set forth above NECTA respectfully opposes passage of the Proposed House bills listed above.

Respectfully Submitted

William D. Durand
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² See, e.g., NCTA v. Brand X Internet Services, Inc., 545 U.S. 967 (2005) (upholding FCC decision on classification of Internet services as non-cable).

³ See, e.g., Comcast Cable of Plano, Inc. v. City of Plano, 315 S.W.3d 673, 679 (Tex. App. 2010).

⁴ The most recent ITFA extensions occurred this fall. See Pub L 113-164, 128 Stat 1867, 1871 (Sept. 19, 2014); Consolidated and Further Continuing Appropriations Act, 2015, HR 83, 113th Cong. (2014) (signed December 16, 2014). Connecticut is grandfathered, but phased out pre-enactment Internet taxes.