



To: Energy & Technology Committee Members

From: Jennifer Evans, West Hartford Community Television, Executive Director

Written Testimony Supporting with REVISIONS

Raised S.B. Bill No. 286

AN ACT CONCERNING THE PUBLIC, EDUCATION AND GOVERNMENTAL PROGRAMMING AND EDUCATIONAL TECHNOLOGY INVESTMENT ACCOUNT (PEGPETIA) GRANT PROGRAM AND MUNICIPALLY OPERATED EDUCATION AND GOVERNMENT ACCESS CHANNELS.

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 voices and programming is taken seriously. Toward that end, we fully support sections 1 and 3 of this bill.

As of March 9, 2015, the Public Utilities Regulatory Authority no longer is accepting applications for Public, Educational and Governmental Programming and Education Technology Investment Account. (PEGPETIA) The fund is intended to promote and improve public, educational and governmental access programming in Connecticut and to be made available to boards of education and other educational entities for educational technology initiatives.

Section 1 restores the funds currently diverted for fiscal year 2017 and section 3 repeals the re-allocation of funds. We came out last year to protect and defend this fund only to find these sections were added during the emergency special session held in June. I thank you for listening to me once again as I review how critical PEGPETIA is to community television.

PEGEPTIA – The 2007 DEAL

It is important to understand that PEGPETIA was created as a mechanism for capital funding of community television in Connecticut as part of a deal in which the access community was not present at the table. The 2007 law both re-envisioned community television and deregulated cable by eliminating franchises which had been in place in the state since 1967. In fact, all of the stations in the Hartford franchise would have begun re-negotiating their ten year franchises in the following year through a docketed process with then Department of Public Utility Control, now known as the Public Utility Regulatory Authority.

How we got here...

SNET/AT&T Connecticut entered the market with its U-verse IPTV delivery by claiming it was not a cable service and not subject to franchise regulation. A legal challenge was launched with the assistance Attorney General Blumenthal and cable industry challenge in federal court asserting that the u-Verse video product legally would be considered a cable service and, accordingly, could not be offered without first obtaining a franchise (referred to under Connecticut law as a “certificate of public convenience and necessity”), which would subject its video operations to the same rules that cable operators had been meeting for decades. They would have to seek a franchise agreement.

Rather than submit to the law, SNET/AT&T lobbied to change the law...

Instead, they lobbied to change the law and joined forces with the cable industry to support a legislative deal that would allow all video providers to transition into a deregulatory scheme that granted cable franchises in perpetuity, eliminating the need for franchise renewal proceedings. SNET/AT&T was able to obtain legislative support for 07-253, thereby creating new certified competitive video provider categories, with the rights granted to SNET/AT&T and cable providers to offer video service in Connecticut under far less than traditional cable regulation.

What cable providers got...

In short, all certified wireline video providers in Connecticut were freed from many public interest requirements that part of the terms of the old franchise agreements such as providing a senior citizen discount, maintaining return lines and providing modulators and technical support for interconnection. Franchise renewals were no longer.

What PEG lost...

We learned that we would not be delivered as a channel but through a web application with a cumbersome menu. We learned that traditional installation and maintenance responsibilities would no longer be supported. Many stations were using equipment over ten years old and planning for the capital needs as part of franchise negotiations. We lost the ability to require critical infrastructure needs that other communities across the country have written into their

franchise agreements. For example, providing broadband I-nets to move video, inclusion on the electronic program guide and pathways to HD delivery.

The immediate bigger question became how would community access television survive in a world with no franchises? PEGPETIA was born to protect PEG.

PEGPETIA was set up as a tax of one-half of one percent increase of the gross earnings from cable service primarily to benefit public access interests. After two years, the rate would be lowered to one-quarter of one percent. The public, educational and governmental programming and education technology investment account was created and administered by the Department of Public Utility Control (DPUC), now known as the Public Utilities Regulatory Authority. (PURA)

Some initial challenges to the fund included setting up a docket process, the amount of the time it took to apply and receive a grant and the amount of funds collected were not public knowledge and repeated diversions of funding for budget mitigation as the fund was immediately targeted. The fund been routinely swept over the years. Two million dollars was transferred from the PEGPETIA funds for fiscal years ending June 30, 2010 and June 30, 2011.

In 2012, PURA Chairman House, pledged to efficiently administer the fund and the system finally was working as legislatively intended. Just as the program started to work, funds were swept so completely in 2013 that all granting ceased again.

The program was put on hold again in the middle of 2014 as the PEGPETIA funds were diverted to off-set estimated budget shortfalls. With the transfers in fiscal year 2014 of \$3.4 million and fiscal year 2015 of \$3.5 million, a total of \$10.9 million dollars in PEGPETIA funds were allocated to general revenue purposes.

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Currently, the grant process has stopped again and the planned re-allocation of funds will mean that the fund cannot replenish and work as legislatively-intended.

The next page outlines the re-allocations that we have been able to track so far.

Date	Funds	Purpose
2008	2.3 Million Diverted	Budget Mitigation - Some funding left for granting. First Granting Window Opened in August 2008
2009	\$150,000	Transferred to interconnect CT-N to AT&T U-verse, then the remaining balance was swept. We are not sure how much because there was no balance in the account so they let it gather up \$150k and then took it.
Fiscal Year 2010	2 Million Diverted	
Fiscal Year 2011	2 Million Diverted	
June 30, 2012	Swept Completely	
June 30, 2013	3.4 Million – Completely Swept	Budget Mitigation -Program Suspended
June 30, 2014	3.5 Million – Completely Swept	
Spring – Fall 2014	2.5 Million Restored due to State Budget Surplus	Funds Released by Bonding Commission
February 2015	Granting Opened for 4 weeks	Granting Closed
July 1, 2015	3 Million Swept	Enacted in the Emergency Budget – Special Session
July 1, 2016	4.3 Million Scheduled to be Swept	Enacted in the Emergency Budget – Special Session

This is not state money.

We understand that these are difficult times. However, this fund was created for a specific purpose. It is derived from a tax. This non-lapsing fund set up to protect community television seems to be continually viewed as a source of collecting funds to offset the state’s budget challenges and has been allowed to lapse frequently so that access providers cannot depend on the fund to be there when they need it.

It's illegal.

The legality of these transfers or re-appropriation of funds is questionable because it places the state above the 5% franchise fee cap set up by the state. In fact, it places the entire fund at risk.

47 U.S.C. § 542(b) provides, in pertinent part, that “[f]or any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator’s gross revenues derived in such period from the operation of the cable system to provide cable services.

Franchise fees are currently collected by the state and go directly to the general fund. In other states, the regulatory model provides that local towns serve as the franchising authority. Currently in Massachusetts, each local town negotiates the franchise fee and that money is used to support public access. Connecticut community television stations do not receive any funding from franchise fees.

The funds derived from this tax must be used as legislatively intended or the entire design envisioned in 2007 doesn't work. The fund has to remain non-lapsing so that centers can access the funds when they need them. Cable companies pass this fee to their customers. Customers believe their money is going to PEGPETIA but really it's just becoming a vehicle to create an illegal funding stream for use by the state.

What's next?

Due to the regularity of these sweeps, we fear for the future of community television. We find ourselves in a forced into box not of our own making. West Hartford is fortunate because our town values dialogue and its residents support our station and our non-profit above and beyond. This is a period of rapid technological change which requires infrastructure and investment. Operational funding is declining due to reductions in gas prices affecting the cost of living adjustments and the dwindling number of cable subscribers. We are non-commercial and have limited options to fund ourselves.

Thank you...

PEGPETIA works when the funds are there. We are grateful for the funds we have received and implore you, as members of Energy and Technology, to do whatever you can to help us educate your fellow legislators to help us protect this fund. It's amazing what we've been able to do with the grants we have received. We know the budget process is complicated.

We thank you for your previous advocacy and for summoning the will to fight for the return of funds yet again because in the end, public, educational and governmental stations are the beating heart of local democracy. We provide the public space where citizens can discuss, interpret and understand issues that bear upon the common life in a local community. All access does to encourage volunteers to access and use technology happens because of federal and state legislative mandates. It is true that all media is required to serve the public interest in one way or another. For video providers, the mandate that is channel space and support to be used to build local communities, promote dialogue, encourage solutions and enrich the lives of people who live there.

Thank you for your support and I am happy to answer any questions.

Kindest Regards,

Jennifer Evans.

Executive Director, West Hartford Community Television

Section 2.

As an additional note regarding Section 2, West Hartford Community Television holds that there is already a process in place in which a town may request transfer of a channel. It is currently a docketed process through the Public Utility Regulatory Authority in which all parties may participate. We encourage Community Access Providers to develop collaborative relationships with towns to ensure that needs are being met. We believe issues like this can be resolved without legislation but rather through mediation. We recommend repeal of Section 2 so that critical funding may be restored. Due to the lack of consensus among community access providers, we believe further discussion regarding the ramifications of these provisions is warranted.