

## **8.000 CABLE TELEVISION**

### **8.100 Definitions**

For purposes of this rule, the following definitions apply. For terms not defined here, refer to the federal cable act (Title 47 U.S.C. § 521 et seq.).

- (A) Access channel: a channel made available by an operator that is used to cablecast non-commercial programming created or acquired for public, educational, or governmental purposes pursuant to this Rule. Access channels are sometimes referred to as public, educational, and government channels, or "PEG" channels.
- (B) Access management organization, or AMO: a nonprofit entity apart from the cable television operator designated to receive PEG access support through the cable operator and contracted to manage public, educational, and governmental access channels and facilities for non-commercial purposes.
- (C) Activated channel: a channel engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use.
- (D) Basic cable service: any service tier that includes the retransmission of local television broadcast signals (may also include other signals).
- (E) Commission: the Vermont Public Utility Commission.
- (F) Billing dispute: a disagreement between a subscriber and cable television company concerning:
  - (1) credits for payments made by the subscriber to the cable television company;
  - (2) credit refund for service outage;
  - (3) errors in billing amount; or
  - (4) assessment of non-recurring charges such as disconnection fees, service calls, and late charges.
- (G) Business office: the office of the cable television company where a subscriber or others may make inquiries regarding bills, line extensions, and company rules and regulations; request service; pay bills, either in person or by mail; or bring disputes and complaints.
- (H) Cable company: as defined in 30 V.S.A. § 501, a person, firm, partnership, corporation, association, joint stock association, or company which owns or operates a cable system in this state, except non-profits systems serving fewer than 100 subscribers.
- (I) Cable operator: the operator of a cable system, also referred to as "operator."
- (J) Cable service area, or service area: a geographic area within which a cable system has the right to provide cable service to the public. Such boundaries may include areas into which extension of service is not immediately feasible but may be in the future.

- (K) Cable television system, or cable system: a facility meeting the definition in 30 V.S.A. § 501 or 47U.S.C. § 522 and subject to the regulation of the Commission.
- (L) Capacity: portion of electromagnetic frequency spectrum used for commercial and public purposes.
- (M) Channel or cable channel: a portion of the electromagnetic frequency spectrum that is used in a cable system and which is capable of delivering a television channel as that term is defined by the Federal Communication Commission regulations.
- (N) Collection charge: a fee or charge imposed upon a subscriber by a cable television company for its efforts at collecting or attempting to collect a past due account.
- (O) Department: the Vermont Department of Public Service.
- (P) Educational access channel: an access channel designated for non-commercial educational purposes.
- (Q) Governmental access channel: an access channel designated for non-commercial civic purposes.
- (R) Institutional network or I-Net: a communication network that is constructed or maintained by the cable operator and that is made available to educational or governmental institutions.
- (S) Late charge: a charge that is added to a cable television subscriber's account or bill for non-payment of a previously due account.
- (T) Leased access: use of the Leased Access Channel.
- (U) Leased access channel: a channel, available for a charge, for commercial or non-commercial purposes.
- (V) Live origination program: PEG content cablecast from cable company head end or remote origination site while it is taking place.
- (W) Local origination: the creation of programming cablecast by the cable operator.
- (X) Local presentation: request by an institution or individual living or working within the cable service area to transmit PEG content using cable channels or capacity, whether or not that PEG content was produced using PEG access facilities.
- (Y) Local use: non-commercial use of PEG channels and capacity by residents of the State of Vermont, including schools and not-for-profit educational institutions, and local and state governments or agencies thereof.
- (Z) PEG: Public, educational, governmental.
- (AA) PEG content: any non-commercial voice, video, or information made available by members of the public, educational institutions, local or state government, or an AMO and distributed through PEG channels or cable system capacity set aside for such purposes.

- (BB) PEG facilities: includes equipment and studio space necessary for community members to produce, post-produce and distribute any PEG content from the cable company head end and remote origination sites to the system's cable subscribers.
- (CC) PEG AMO service territory: the area for which the AMO has responsibility, and upon whose gross annual revenues the cable operator bases the calculation of that area's PEG AMO's annual support.
- (DD) Premium channel or service: an optional channel to which a customer may subscribe for an additional monthly charge, e.g., HBO or Showtime.
- (EE) Promotional offerings: special discounted service offerings that are made available or promoted for no more than six months.
- (FF) Public access channel: an access channel designated for non-commercial use by the public on a first come, first served basis.
- (GG) Remote origination site: a source of PEG content that is physically some distance from, but configured to transmit signal to, the cable company headend for distribution over the cable system.
- (HH) Service outage: a loss of video or audio signals on one half or more of the basic channels or on one or more premium channels which is not caused by the subscriber's television receiver or by the subscriber.
- (II) Service tier: a group of channels sold as a package.

## **8.200 Certificates of Public Good**

### **8.210 Petitions (other than for renewal)**

#### **8.211 Form and content**

The petition shall be on a form specified by the Commission (available from the Commission and on the Commission's web site) and shall contain at a minimum the information required by the instructions to the petition form.

#### **8.212 Service of petitions**

When a petition is filed with the Commission and the Department of Public Service for a certificate of public good pursuant to 30 V.S.A. § 503, or to alter, extend, or abandon a cable system service area, a copy of the petition and its supporting documents shall be served upon the clerk of each municipality encompassed in the proposed service area. In addition, a copy of the petition without its supporting documentation shall be served upon:

(A) The superintendent of any school system encompassed in the proposed or affected service area.

(B) The clerk of each municipality adjacent to the proposed or affected service area.

Note that a complete application must be filed both at the Commission and at the Department.

### **8.213 Hearings**

The Commission shall set petitions relating to applications for certificates of public good for hearing (if a hearing is required under 30 V.S.A. § 231) within a reasonable time. If hearings are held, at least one hearing shall be held in the county of the proposed service area to afford opportunity for public comment.

### **8.214 Criteria**

In determining whether to approve or reject a petition requesting a certificate of public good for a cable system service area, the Commission shall consider the following:

- (A) The criteria of 30 V.S.A. Chapter 13.
- (B) The criteria known as the EMCO criteria:
  - (1) financial soundness and stability, both of the applicant generally and the particular proposal;
  - (2) the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access;
  - (3) the commitment to a construction and in-service schedule;
  - (4) the experience and ability of the applicant to run and manage a cable tv system;
  - (5) the rates proposed to be charged to customers;
  - (6) consumer policies, particularly re: complaints and problems;
  - (7) availability of service to maximum number of residences;
  - (8) the quality of the engineering and materials used in the system;
  - (9) logical fit with neighboring systems.

### **8.215 Approval**

If, after hearing (if required) and investigation, the Commission finds pursuant to the above criteria that approval of the applicant's proposal to provide cable service to the proposed area would promote the general good of the state, it shall issue a certificate of public good to such applicant.

### **8.220 Termination**

#### **8.221 Transfer of certificates**

A certificate of public good is not transferable and may not be sold, pledged, mortgaged, or otherwise alienated other than with the approval of the Commission. When permission is given by the Commission for the sale and purchase of assets of a cable company pursuant to 30 V.S.A. §§ 102, 109, 231, or 232, a new certificate shall be issued to the purchaser.

#### **8.222 Revocation or alteration for cause**

- (A) The Commission may, after hearing, cancel, revoke, suspend, or alter any certificate for the following causes:
  - (1) Willful violation of any provision of Chapter 13 of Title 30.
  - (2) Willful failure of the certificate holder to comply with any rule, regulation, or order of the Commission, including the express terms of the certificate of

public good, unless such rule, regulation, or order has been stayed by order of the Commission or by the Supreme Court.

- (3) Failure, without written permission of the Commission, to commence operations according to the construction and commencement of service schedule made a condition of the certificate of public good.
  - (4) After commencing operations, failure (without good cause shown) to render adequate service for a continuous period exceeding thirty days.
- (B) The burden of proof in a revocation hearing is on the party seeking the cancellation, revocation, suspension, or alteration; the standard of proof is the preponderance of the evidence.

### **8.223 Removal of property**

- (A) In the event that a certificate of public good is revoked or cancelled, the holder thereof shall, upon order of the Commission and at its own expense, promptly remove all its property and promptly restore the street or other area from which it is removed to the condition existing before such removal, or to a reasonable condition as may be directed by the municipality or public authority.
- (B) The Commission may, upon written application therefor by the certificate holder, approve the abandonment of any such property in place under such terms and conditions as the Commission may prescribe. The Commission shall not unreasonably refuse permission to so abandon underground plant.
- (C) The provisions of this section shall apply only if ownership of the property is not transferred pursuant to federal law.

### **8.230 Renewal**

When an incumbent cable television operator seeks to renew a certificate of public good, the Commission, pursuant to law, shall ascertain whether:

- (A) The cable operator has substantially complied with the material terms of the existing certificate of public good and with applicable law;
- (B) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, has been reasonable in light of community needs;
- (C) The operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- (D) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

### **8.231 Community Needs Assessment**

In order to ascertain section 8.230(D), the Department shall conduct a community needs assessment within each access service area. Unless the Commission orders otherwise, the assessment process shall include:

- (A) Discussions with representative educational, governmental, and non-profit organizational sectors of the PEG AMO service territory, including any PEG AMO,

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access advisory committee, or other non-profit entity that provides communication services to the general community. These discussions will generally take the form of a series of focus group sessions, sector meetings, and public hearings.

- (B) Letters of support, statements of need, recordings of public meetings, and other information gathered by the AMO as part of any community needs assessment that it may have independently conducted.
- (C) A non-scientific survey of the educational, governmental, and non-profit organizational sectors in the PEG AMO service territory that measures the organizations' communication needs, and other needs that may have reasonable cable-related communication solutions.
- (D) A statistically valid survey of randomly selected households that measures, with regard to PEG access, attitudes and behaviors such as, but not limited to, subscriber satisfaction, awareness, and use of PEG access. If the survey is conducted for more than one PEG AMO service territory, the methodology shall be such that a minimum of useful data interpretation and analysis may be provided for each such service territory.

### **8.300 Conduct of Business**

### **8.310 Rates and Charges**

### **8.311 General provisions**

- (A) As provided in 30 V.S.A. § 219, all rates and charges by a cable company shall be applied without discrimination between classes of customers.
- (B) Nothing herein shall prohibit the following:
  - (1) the waiving or reduction of rates and charges in conjunction with promotional campaigns for the purpose of attracting subscribers;
  - (2) the provision of installation or monthly service without charge to schools, government or non-profit organizations or agencies, or buildings operated by such entities;
  - (3) the provision of service at no charge to employees and agents of the cable system operator;
  - (4) the provision of service at bulk-discount rates, lower than individual rates, so long as the difference in rates is related and attributable to lower costs of providing such bulk service.

Any of the above discounted rates may be provided, if at all, at the option of the cable system operator.

- (C) Cable companies are relieved from the obligation under 30 V.S.A. §§ 225, 226, and 227(a) to file tariffs setting forth the rates and terms and conditions of service except as specifically required under this Rule or unless the requirements of those sections are reimposed by the Commission after an opportunity for hearing. Upon the effective date of this Rule all tariffs for cable services on file with the Commission are no longer in effect, except for tariffs or tariff sections regarding a company's line extension policy.

### **8.312 Rates, Terms, and Conditions of Service**

- (A) Each company shall maintain a copy of all its current schedules of rates, terms, and conditions of service at its business offices. The information on file at the company shall contain a complete description of the terms and conditions applicable to each level of service or combination of services. The information on file shall include, at a minimum, the information required by the following paragraphs of this section to the extent that the service is offered or the charge is applied by the company.
- (B) Residential subscribers. For each level of service, detail:
- (1) number and listing (description and channel) of programmed channels available and the subscription rates;
  - (2) installation charges for first outlet and each additional outlet (including custom installation work and aerial and underground drops);
  - (3) monthly service charges for first outlet and each additional outlet;
  - (4) charges for disconnection, reconnection, relocation of outlets;
  - (5) charges for FM radio service installation and monthly service;
  - (6) equipment installation, monthly rental, and deposit charges (include purchase or lease prices, if applicable);
  - (7) charges for changes in service;
  - (8) surcharges for the support of Public, Educational, and Governmental (PEG) access; and
  - (9) returned check, collection, and late payment charges.
- (C) Other classes of subscribers. Detail special installation, monthly rental, and deposit charges (include purchase or lease prices, if applicable) for:
- (1) multiple unit dwellings;
  - (2) commercial subscribers;
  - (3) institutional subscribers.
- (D) Ancillary services. Detail installation, monthly service, and other rates and charges for any services offered other than residential subscriber and premium services (including, but not limited to, alarm services, facsimile, and other similar services).
- (E) Leased channels. Detail all charges associated with lease of cable channels, if any are provided.
- (F) Production charges. Charges for use of production equipment, facilities, personnel, and materials by:
- (1) users of PEG access channels;
  - (2) other customers of production services.
- (G) Premium services rates. Detail current rules, regulations, and rate schedules for premium or pay cable television services available, with installation, monthly service, deposits, parental keylock, and other charges specified for each pay service offered.
- (H) Failure of any operator to comply with formal filing procedures with respect to its rules and regulations shall not be the basis for any revocation or denial of recertification.

### **8.313 Policy on Expansion into Unserved Areas**

Each cable company shall file a statement of the company's policy on expansions of service into unserved areas as a tariff for the Commission's approval. Each such policy must at a minimum conform to the provisions of this section.

- (A) If a policy on expansion into unserved areas requires contributions-in-aid-of-construction, then that policy shall also allow for the rebating or reallocation of such contributions among original and new subscribers. Whenever more than one customer is connected to a customer-financed line extension, total contributions-in-aid-of-construction shall be computed to yield to the utility not more than the total cost of extending or expanding service to the new customer(s), less the service drop credit(s). Amounts to be collected from new customers connecting to customer-financed lines shall be computed as follows:
- (1) For a period of seven (7) years from the completion of construction of a line extension, contributions from new customers connecting to said lines shall be based upon an equal sharing of the full cost of construction of the subject line extension as if the new customers were original participants.
  - (2) For a period of seven (7) years from the completion of construction of a line extension, contributions calculated under section 1 above shall be reimbursed to the original participants based on an equal sharing of the full cost of construction of the subject line extension as if the new customers were original participants, except that:
    - (a) All line-extension reimbursements shall be paid by cable companies to the current owners of the dwellings or structures served by line extensions that are subject to reimbursement payments for new connections, and shall be paid as a cash rebate or, if to a current subscriber, cash or a credit, at the subscriber's choice.
    - (b) Reimbursements may be made at any time, but a final reallocation and reimbursement shall be conducted at the end of the seven (7)-year period.
    - (c) No reimbursement shall be required if the computed amount is less than \$100.
  - (3) For purposes of this Rule, when calculating contributions under paragraph 1 or reimbursements under paragraph 2, the original full cost of construction may be depreciated at a straight-line rate of up to 50% at the end of the seven (7)-year period. Depreciation for these purposes, if any, shall be calculated similarly for both contributions and reimbursements and applied as of the date of the connection of new customer(s).
  - (4) As an alternative to issuing rebates under this section, a cable company may reduce the initial subscriber contribution-in-aid-of-construction based on the number of residential and non-residential premises passed within 500 feet of the proposed cable facilities that are not participating. For non-participating premises, each non-seasonal residential premise passed shall be counted as 1/4 of a verified subscriber, each seasonal residential premise passed shall be counted as 1/10 of a verified subscriber, each commercial or institutional lodging (such as a hotel, motel, or nursing home) shall be counted as 3/4 of a verified subscriber, and each non-residential premise passed shall be counted as 1/9 of a verified subscriber. If a cable company chooses to offer this rebate alternative, it shall include such an alternative in its tariff and no rebate shall be

required. If this alternative is to be used, the company estimates under "F" below shall clearly indicate that no rebates will be issued. The following additional conditions apply only to this rebate alternative:

- (a) If a verified subscriber commits to take service from a cable company for an additional commitment period of up to 18 months, then the company shall reduce the verified subscriber's contribution by the value of the additional commitment, exclusive of taxes and fees.
  - (b) If a verified subscriber commits to provide to the cable company, over the term of the two-year commitment period, a minimum annual amount of qualifying revenues up to 150% of the average annual revenue per subscriber, then the cable company shall reduce the verified subscriber's contribution by the incremental revenue above the average annual revenue per subscriber, exclusive of taxes and fees. Qualifying revenues shall include revenues from all services provided to the subscriber over the facilities that provide the cable service, except revenues paid by the subscriber to non-affiliated third parties.
- (B) Any cable company for which the expansion of service into unserved areas requires the extension of lines or cables to the customer location shall provide a line-extension policy compliant with this subsection.
- (1) Any line-extension policy that requires contributions-in-aid-of-construction shall not require a contribution in excess of the amount required by the following formula:

$$A = (C_T / N) * (1 - (N / (H * L)))$$

where A is the dollar contribution from each new customer;  $C_T$  is the actual cost of the line extension; N is the number of verified subscribers on the extension who will be making the contribution-in-aid-of-construction; L is the length of the extension in miles, measured along the pole route from the end of the current plant to the end of the proposed extension, excluding subscriber drops; and H is a number designated by the cable company's tariff representing the number of verified subscribers per mile, counting all the miles proposed on the extension, above which the company will not require a contribution-in-aid-of-construction.

- (2) No line-extension policy filed in accordance with this section shall specify a value for H in excess of a maximum number established by the Commission. The maximum value for H for straightforward, aerial construction shall be 16 for a period of at least three years after the adoption of this rule, and thereafter may be re-set by the Commission after notice and opportunity for comment not more frequently than once every three years.
- (3) Upon request of a person in an unserved area within a cable company's franchise area, the cable company shall provide an estimate of the cost of a line extension. The cable company may satisfy this obligation by providing a preliminary estimate to the requestor. If the requestor is located a significant distance from the last serviceable pole whereby service can be extended to new customers, a representative of the cable company may contact the requestor to inform the requestor of the approximate length and cost of the line extension. In such instances, the cable company will provide a written estimate only if the requestor indicates they still wish to receive a written estimate.

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- (4) Cable companies shall develop cost estimates excluding a standard aerial drop of 300 feet from the pole for each dwelling serving each verified subscriber and any costs for installation of service inside the subscriber's home. Each verified subscriber shall be responsible for its own additional costs for installation of any nonstandard service drop unless participating verified subscribers and the cable company agree to divide the cost of non-standard service drops among the group of verified subscribers requesting service. Individual potential customers requesting service may be provided with a cost addendum outlining additional costs for a subscriber drop that is in excess of 300 aerial feet; and concealed wiring or other custom installation work; and all underground drops.
  - (5) All written estimates provided to verified subscribers, whether mailed or sent electronically, must use the Line Extension Form. The cable operator may provide the map required by the Line Extension Form as a separate document. All written estimates are valid for 90 days or a longer period, as specified in the cable company's tariff. The Line Extension Estimate Form must clearly indicate whether the estimate is a preliminary or final estimate and whether the estimate includes actual make-ready costs. For preliminary estimates, the Line Extension Estimate Form must also indicate that the estimate may not reflect actual field conditions and make-ready costs. The final customer contribution required may not be more than 10% in excess of the final estimate provided.
  - (6) A cable company may include the cost of network upgrades within an existing cabled area in  $C_T$  if the network upgrades are necessary and would not be installed but for the line extension.
- (C) Any company that provides cable television services over facilities that it uses to provide telecommunications or other non-cable-television services and that does not require the construction of new cables or lines in order to expand service into unserved areas shall provide a policy on expansion of cable service into unserved areas conforming to this subsection.
- (1) Any expansion-of-service policy shall provide for a maximum ratio of verified subscribers to served lines or premises in a project area that defines when the cable company shall provide an expansion of service without requiring customer contribution-in-aid-of-construction. This ratio shall be not more than a default ratio established by the Commission after notice and opportunity for comment, and which, after it is first established, may be re-set by the Commission after notice and opportunity for comment not more frequently than once every three years.
  - (2) A "served line or premise" is a line over which or a premise to which a company already provides any non-cable retail or wholesale service using facilities that can also be used to provide cable services. A company may make calculations under this subsection using either served lines or served premises, but shall use exclusively one or the other. A "project area" is an area that can be upgraded to offer cable services, including investments in facilities in common to the area that would benefit from the upgrade. A project area shall be defined at the request of a customer or in advance by the company by reference to its customary engineering practices.
  - (3) When a verified subscriber or group of verified subscribers requests an expansion of service into a project area, the cable company shall calculate the

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cost of the expansion, and calculate a cost per verified subscriber making the request by dividing the cost of the expansion by the number of verified subscribers participating in the request. When calculating the cost of the expansion, the cable company shall multiply  $C_A$ , the average cost per served line or premise, specified in the company's tariff, by the number of served lines or premises in the project area. However, the company shall reduce the number of served lines or premises by the number of verified subscribers divided by  $H$ , the ratio of verified subscribers to served lines or premises, above which the company does not require a contribution-in-aid-of-expansion, specified in the company's tariff. This calculation can be summarized by the following formula:

$$A = (C_A * (L - (N / H)) / N)$$

where  $A$  is the dollar contribution from each new customer;  $C_A$  is the average cost per served line or premise to expand cable service in a project area, specified in the company's tariff;  $N$  is the number of verified subscribers in the project area who will be making the contribution-in-aid-of-expansion;  $L$  is the total number of lines or customer premises in the project area; and  $H$  is the ratio of verified subscribers per served line or premise, above which the company will not require a contribution-in-aid-of-expansion.

- (D) A cable company may specify more than one value for  $C$  or  $H$  in its tariff, based on the number of miles, lines, or premises in a proposed expansion, if there are significant differences in cost based on size or other relevant cost factors of the proposed expansion, including underground excavation.
- (E) With a cable company's annual report, the company shall submit a report of the number of additional miles and homes served as a result of its service expansion policy.
- (F) Whenever a prospective subscriber or subscribers located in a service expansion area request an estimate to determine the cost of bringing cable service, the cable company, at its discretion, may first provide a preliminary estimate to the requestors. For final estimates, the cable company must conduct a field survey. Both preliminary and final estimates must inform each of the prospective subscribers of the contribution-in-aid-of-construction or expansion that may be charged. The cable company shall support the designated community organizer with appropriate information such as an explanation of how the company's line extension policies work, product information, and construction time frames. The cable company shall provide preliminary estimates within 30 days of receiving the requests. The cable company shall provide a final estimate within 45 days of receiving written approval of the preliminary estimates by all included subscribers. Where a proposed line extension involves a non-conventional extension of more than three ends of line and 20 verified subscribers, the company may have 60 days to provide an initial estimate and 90 days to provide a final estimate.
- (G) The cable company shall apply for any necessary pole-attachment agreements within 30 days of its receipt of the contribution-in-aid-of-construction from all verified subscribers, and shall make available cable service within 90 days from the receipt of the pole-attachment agreements and other necessary permits or easements, subject to weather, Force Majeure, and the performance of make-ready.

- (H) Nothing in this section shall require a cable company to expand service in the absence of a request from one or more verified subscribers. Cable companies shall maintain maps of serviceable areas.
- (I) No cable company shall be required to overbuild another company, or provide cable service to locations where another cable company has already constructed facilities or to which another cable company is required by rule or order of the Commission to construct facilities, or to locations where another cable company has made a binding commitment to construct facilities within the next 18 months.
- (J) Every cable company shall file proposed changes to its line-extension policy with the Commission and the Department of Public Service at least 45 days prior to the effective date of the change, except for changes that only reduce required customer contributions-in-aid-of-construction, which may take effect immediately upon notice to the Commission and the Department.
- (K) For the purposes of this section, a "verified subscriber" is a person whose residence or business is in an unserved area who makes a binding commitment to purchase cable service from a cable company for a minimum period of two years, or a lesser period required by the cable company, or pays an amount equivalent to one year of service in advance.
- (L) The provisions of this section supersede and remove any requirement to perform "house count surveys" contained in any certificate of public good previously issued by the Commission.

**8.314 "Lifeline" service**

No service offering of any company may be referred to, by tariff or by company promotion, as "Lifeline" service.

**8.320 Notice**

**8.321 General Requirement**

Every cable television company shall provide, the following written information on each of the following items at the time of installation of service, at least once annually to all subscribers, and at any time upon request:

- (A) Products and services offered;
- (B) Prices and options for programming services and conditions of subscription to programming and other services;
- (C) Installation and service maintenance policies and charges;
- (D) Information regarding how to obtain instructions on how to use cable service; and
- (E) Channel positions of all programming carried on the system.

**8.322 Timing and Content for Notices of Change**

- (A) Cable Companies shall notify affected customers, the Commission, and the Department of any changes in rates, charges, or programming in writing. Thirty (30) days' advance written notice is required for any change that increases rates or

charges. If advance notice is not required then notice shall be given not later than the first bill following implementation of the change. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notice is not required for a change to which the customer has previously and specifically agreed, including but not limited to those associated with individual customer contracts. Cable operators shall file written notice to the Commission and Department of promotional rates and services, if such promotions are available or promoted to new customers for more than six months. If the cable operator is given insufficient notice by a service provider to give the required notice above, the operator shall give notice as soon as practicable.

- (B) Written notice may be accomplished by letter, bill insert or bill message.
- (C) A customer may terminate service without penalty at anytime within 30 days of the effective date of a change in rates, terms, or conditions when:
  - (1) the change may increase the cost of service to the customer; and
  - (2) the customer has not previously and specifically agreed to that change.
- (D) Cable companies shall retain a record of the terms and conditions of service for promotions and individual customer contracts offered to customers during any point during the preceding twenty-four (24) months and make available a copy upon request.

### **8.330 Telephone Access**

#### **8.331 Hours**

Each company shall maintain telephone lines for the receipt of trouble calls, service complaints, and requests for repairs or adjustment. Unless otherwise ordered by the Commission, the lines shall be staffed by a customer service representative during the company's normal business hours. This staffing provision shall not apply to any system which employs less than four full time employees. At other times an answering service or answering machine must be provided to receive such calls, provided that messages are checked at least every four hours between 7 a.m. and 11 p.m.

#### **8.332 Toll-free**

Customer calls to customer service representatives must be by way of local, toll-free, or other number which causes no more expense to the customer than would a local call. The company shall list such telephone number on all statements sent to customers.

#### **8.333 Response**

Any such call must be connected to a customer service representative within two minutes during normal business hours, except in case of a system emergency.

#### **8.334 Telephone listings**

The telephone number of an operator's business office or offices shall be listed in all official telephone directories of all telephone companies serving the franchised area.

### **8.340 Billing Practices**

#### **8.341 Notification of billing practices**

- (A) Every cable television company shall notify each of its subscribers, in writing, of its

billing practices and payment requirements. The notice shall describe, at a minimum, billing procedures (including payment requirements to avoid discontinuance of service, e.g., payment due dates), late charges, advance billing options, if any, procedures to be followed in billing disputes, and credit to be given for service outages.

(B) Notice shall be given as follows:

- (1) to new subscribers, at the time of initial installation;
- (2) to all subscribers, whenever there is a change in the company's billing practices or payment requirements; and
- (3) to all subscribers at least annually.

(C) Copies of the company's billing practices and payment requirements shall be filed with the Commission and the Department and in the company's business office and shall be given or sent to a subscriber upon request.

**8.342 Bill format**

(A) Twice a year, at six-month intervals, each subscriber shall receive a bill or other statement that shall itemize each service or piece of equipment for which the subscriber is charged. If a company bills its subscribers less than twice a year then each bill shall contain such itemization.

(B) Every bill shall include the telephone number of the company and the toll-free subscriber assistance number of the Department of Public Service. The bill shall include a statement that the company should be called first for problem resolution.

(C) Any returned check charge imposed by such company shall be reasonably related to the company's actual cost of processing returned checks, including bank charges, if any, but shall not exceed \$25.00, absent prior approval by the Commission.

(D) The company's billing practices shall conform to the Commission's Rule 3.400, as amended.

**8.343 Credit for service outage**

(A) In the event of a subscriber service disruption for more than twenty-four (24) consecutive hours, the cable company shall credit the subscribers affected for the total period of the disruption in an amount proportionate to their regular monthly service charge.

(B) Each subscriber so affected must notify the cable company of the disruption unless there is a system-wide disruption or that subscriber's disruption is otherwise known or should have been known to the cable company.

(C) The disruption period shall not begin until the disruption is reported to the cable company, personally, by telephone or in writing, or otherwise is known or should have been known to the cable company. Receipt of such notice by the cable company, which includes notification to an answering service, company employee, etc., shall cause the disruption period to commence.

(D) Once the disruption period is known by the cable company to exist, for a particular subscriber, the subscriber's credit shall be automatic, and shall require no further

request on the part of the affected subscriber.

- (E) Disruptions reported after the fact shall not be eligible for a refund.
- (F) The minimum credit shall be equal to the company's daily billing for the first twenty-four-hour period and each whole or portion of a twenty-four-hour period during which a service outage continues. The daily billing is the customer's monthly billing for the services affected divided by the number of days in the month which the company uses to compute its bills.
- (G) A cable television company shall conduct routine maintenance of its system at hours during which the least amount of subscriber service interruption shall occur, when practicable. The company shall make a reasonable effort to notify subscribers, in advance, of any scheduled service outages for purposes including, but not limited to, equipment repair or replacement, system upgrade, or rebuild which may interfere with service.

#### **8.344 Subscriber and converter deposits**

The provisions of Rule 3.200, as amended, apply to deposits required to be made before service is provided. In addition, if a cable operator supplies a converter or other auxiliary equipment to a subscriber's receiving equipment, it may not require a deposit exceeding the replacement cost, less salvage, of like equipment, to be applied so far as necessary to replacement or repair of the equipment resulting from subscriber abuse. If so applied, the company may require that an additional deposit be paid so as to restore the deposit to its original amount.

#### **8.345 Billing disputes**

- (A) Any subscriber shall have 45 days from the payment due date contained in the subscriber's bill in which to register a complaint with a company with respect to any billing error or dispute. A billing complaint may be registered in person at the company's business office, by telephone, or by mail. The company shall promptly investigate the billing complaint, shall provide an initial response to the subscriber not later than three business days after receipt thereof, and shall provide a written proposal for the disposition of the complaint to the subscriber not later than 15 business days following the company's receipt of the complaint.
- (B) The subscriber, after receiving the company's proposed disposition of the complaint, shall have ten days to contest the disposition and may present the company with additional information concerning the complaint. In the event the subscriber contests the proposed disposition, the company shall review any additional information, if provided, and shall notify the subscriber of the company's final disposition within 15 business days of notification of contest by the customer.
- (C) No company may effect termination of service to the subscriber for non-payment of disputed bills during the pendency of any billing complaint, provided the subscriber pays current and undisputed bill amounts during the pendency of the complaint.
- (D) If a subscriber uses this provision of this Rule to avoid paying proper bills by means of repetitive claims of dispute of each new bill, the company may petition the Commission for permission to disconnect such a subscriber.

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- (E) The Commission, upon the written request of the subscriber, may review the company's disposition of a billing complaint in accordance with such procedures as the Commission shall prescribe and make such orders as the Commission deems reasonable and necessary to finally resolve the complaint.
- (F) A cable company shall not refuse cable video service to a customer due to a delinquent bill owed by another person unless the customer responsible for the delinquency, resulting from service to that household, resides in the same household.

### **8.346 Disconnection**

- (A) The provisions of Rule 3.400, as amended, shall apply, except as provided below:
- (B) No cable company may disconnect a subscriber's service except for one of the following reasons:
  - (1) at the request of the subscriber;
  - (2) because the subscriber without the company's approval tapped the system to provide cable service or additional service to himself, or service to different or additional equipment or has otherwise tampered with the company's facilities;
  - (3) because the subscriber made fraudulent representations regarding the use of the service within the subscriber's premises;
  - (4) because the subscriber so operates or connects his equipment as to cause disturbing effects on the service of other subscribers or the company's equipment or facilities;
  - (5) to prevent a hazard to persons or property resulting from the condition of the installation or the subscriber's equipment;
  - (6) because the subscriber refuses reasonable access to his premises to company representatives who must have such access to make required inspections or tests or to make adjustments to or service equipment or to legally remove the company's property or to otherwise comply with conditions of the company's rules and regulations;
  - (7) because customer-installed equipment is causing signal leakage in violation of federal or state regulations;
  - (8) for non-payment as otherwise provided in this Rule.
- (C) For reasons 4, 5, and 7, above, the company may disconnect without prior notice to the customer, but must leave written notice at the customer's premises explaining why service was terminated and what must be done to have it restored.
- (D) Notice of service discontinuance shall clearly state the reason and the action on the part of the subscriber necessary to avoid discontinuance.
- (E) No cable television company shall disconnect service for non-payment or as otherwise provided in this rule (except by subscriber request) on a weekend, public holiday, a day when the office of the company is not open for business, or the day before any of the days above.
- (F) When a company representative is at a subscriber's residence or place of business to disconnect service and the subscriber, at that time, pays the amount in arrears in lieu of disconnection, the company may add a reasonable collection charge to the subscriber's bill, provided all other applicable provisions of this section have been followed.

- (G) Receipt of a subsequently dishonored instrument from a subscriber in response to a notice of discontinuance shall not constitute payment, and a cable company need not go through another Rule 3.400 disconnect notice cycle. The cable company may disconnect on a minimum four (4) day notice that the instrument was dishonored.
- (H) This section (pertaining to disconnection and notice of disconnection) does not apply to any person who is not an actual subscriber or who has not requested service, in which case no notice of any kind is required.

### **8.347 Late Payment Charge**

A late payment charge may be imposed on unpaid balances no less than 60 days overdue and shall not exceed 1.5% of the delinquent amount not in dispute, absent prior approval by the Commission.

### **8.350 Service Calls**

#### **8.351 Customer interaction**

- (A) Investigative action shall be initiated on the same day a trouble call is received at the local office, if possible, but in no case later than the following business day, unless requested otherwise by the subscriber.
- (B) When at the request of the subscriber a service call to the subscriber's premises is required, the subscriber shall be informed in advance, if possible, as to the day thereof and whether the service call is scheduled during the morning, afternoon, or evening. If for any reason a service technician is unable to make the service call as scheduled, a reasonable attempt shall be made to inform the subscriber.

#### **8.352 Records**

- (A) A report on each service call in which a cable system fault reported by a single subscriber was identified shall be filed at the local office, and shall include the following data:
  - (1) subscriber identification;
  - (2) date and approximate time complaint was received;
  - (3) date and approximate time of response;
  - (4) nature of complaint;
  - (5) brief description of the fault;
  - (6) signal level measured on each problem channel after corrective action and on other channels, where such measurements are appropriate;
  - (7) corrective steps taken (if any required);
  - (8) date case is closed; and
  - (9) identification of technician or repairman.
- (B) A report on each system fault, or on any failure reported by more than one subscriber and affecting an area, shall be filed at the local office and shall include the following data:
  - (1) cause of failure and brief description of the component or structures causing the failure sufficient to allow the later determination of the area affected;
  - (2) date and approximate time of failure or report of failure; and

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- (3) date and time service is restored.
- (C) A report for each service call in which no trouble was identified, or in which instruction was given to enable the subscriber properly to adjust the terminal receiving equipment, or in which the fault was in the subscriber's receiving equipment, shall be filed at the local office and shall include:
  - (1) subscriber identification;
  - (2) date and time complaint was received;
  - (3) date and time of response;
  - (4) nature of complaint;
  - (5) corrective steps taken (if any required); and
  - (6) identification of technician or repairman.
- (D) Small systems that have only a single technician or an owner-technician may perform the record-keeping required by subsections (A), (B), and (C) by maintaining a log of trouble calls containing the substance of the information called for.
- (E) Any report required to be maintained pursuant to this section shall be kept by the operator for a period of two years from the event to which it relates. It may be maintained in original form, as computer data base, or as data base report, at the election of the operator, so long as the basic information remains available.
- (F) The records required by this section shall upon request be made available to the Commission and the Department of Public Service. However, the operator may obscure, remove, or delete any personally identifiable information contained in the records if in the operator's opinion it must do so in order to comply with Section 631 of the Communications Policy Act of 1984, 47 U.S.C. § 551.

### **8.360 Construction**

#### **8.361 Information filing**

After receiving a certificate of public good for a new service territory, the company shall submit the following to the Commission and the Department, as available:

- (A) A map of the service area, showing the planned phases of construction for the entire cable system. Such map and description shall also indicate those parts of the service area that the applicant anticipates would receive service only through application of the proposed line extension policy.
- (B) A statement that the applicant has obtained all licenses and other forms of permission required by state and local government bodies prior to commencement of construction.
- (C) A statement that pole attachment, conduit occupancy, and right-of-way agreements have been consummated.
- (D) Any corrections, updates, or amplifications, to items filed at the time of application for a certificate of public good.

#### **8.362 Compliance with design standards; waivers**

- (A) All cable systems constructed and operated within this state shall conform to the

minimum design criteria set forth in this rule.

- (B) Waivers of specific provisions of the design criteria may be granted by the Commission only upon a showing that strict compliance would endanger the viability of the system.

### **8.363 System requirements**

- (A) The technical standards contained in Subpart K of Part 76 of the Rules and Regulations of the Federal Communications Commission, as amended, are hereby incorporated into these rules, and made a part of all certificates of public good issued by the Commission for cable systems.
- (B) All systems shall be designed and built so that closed caption data can pass through.
- (C) All systems shall be designed and built so that they may provide the PEG access capabilities required by section 8.410 et seq. of this rule, or so that those capabilities may be later added without major reconstruction of the system.
- (D) Preliminary Performance Tests. Prior to the commencement of service to cable subscribers on any portion of a new cable system or on any substantially reconstructed portion of a cable system, the operator will ensure that the system provides acceptable picture quality by "rough balancing" the active equipment to within plus or minus 5db of equipment specification for peak-to-valley signal performance. These tests may be performed by qualified system personnel or by qualified contractors, and copies of the preliminary test results shall be made available to the Department of Public Service upon request for a period of up to one year after completion of the new or reconstructed cable system.
- (E) Final Performance Tests. Within 120 days of completion of a new cable system or any substantially reconstructed portion of a cable system, the operator shall conduct system proof of performance tests to determine the extent to which the system complies with the standards required in section 8.363(A) of this Rule.
  - (1) All such tests shall be performed by or under the supervision of qualified system personnel or qualified contractors using equipment and procedures necessary to achieve reasonable precision of measurement.
  - (2) In the event that the measured performance at any end of the trunk test point fails to comply with the technical standards required, the operator shall immediately take steps to insure compliance.
  - (3) Copies of the report of the final performance test shall be provided to the  
  
Department of Public Service upon request and shall be kept available for inspection at the operator's office for a period of five (5) years after completion of the test.

### **8.364 Timetable**

- (A) Application for pole attachment license shall be made to the relevant utilities within fifteen (15) days of receipt of a certificate, and application for make-ready work shall be made within 120 days of receipt of the license. Construction of a cable system shall begin within ninety (90) days of completion of make-ready work for the first phase of cable construction, or as soon thereafter as weather permits.

- (B) The operator shall maintain current as-built design maps for its system at its business offices, and shall produce photocopies of such portions of the maps as may be requested by the Department of Public Service.
- (C) The operator's complaint department shall begin operation at the same time as service commences.
- (D) Unless the Commission shall have waived the requirement, within four years from the receipt of the certificate the holder thereof shall have made service available to all potential residential subscribers in those portions of its franchise area meeting the density tests described in its line extension tariff for no-charge construction. In cases where the operator is unable to extend service because of a lack of right of way or other access problem, the operator shall be moving with due diligence to acquire such access to potential subscribers.

### **8.365 Safety codes and standards**

- (A) All construction of cable systems shall be with the use of materials of good and durable quality.
- (B) All work involved in construction, installation, maintenance and repair of cable systems shall be performed in a safe, thorough, and reliable manner, and in compliance with:
  - (1) the "Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines" of the National Bureau of Standards, U.S. Department of Commerce;
  - (2) the latest edition of the National Electric Safety Code, as from time to time amended and revised; and
  - (3) all applicable federal, state, and municipal laws, ordinances, and regulations.

### **8.366 Placement of cables**

- (A) Wherever practical, a holder of a certificate shall install its system using existing poles, conduits, rights-of-way, and other facilities of utility companies.
- (B) If at any time a municipality shall require all utilities to be placed underground, the certificate holder shall, upon reasonable notice by such municipality, conform with such requirement. This provision shall not be taken as determinative of who must bear the costs of placing such plant underground.

### **8.367 Subscriber drops**

- (A) Each company provides a standard, fixed-price installation from its distribution cable to the subscriber's premises. Installations up to three hundred (300) feet in length (aerial construction) shall be made without additional charge to the subscriber. Drops in excess of this length, any concealed wiring or other custom installation work, and all underground drops, shall be charged at the rates set forth in the company's rules and regulations, which shall provide for a credit equal to the cost of the standard installation.
- (B) In areas where existing utility drop cables are located underground, cable subscriber drop cables shall also be located underground where practical. In other areas, the drop cables shall be aerial unless the subscriber elects to pay the costs of

underground installation as set forth in the company's rules and regulations.

### **8.368 Installation of drops**

- (A) When a cable operator receives an application for service, and the only outdoor installation work required is to drop a line from the feeder cable to the subscriber's building, it will make the installation promptly and in no event later than ten (10) days following receipt of the application unless good and sufficient reason exists. Good and sufficient reason may include scheduling conflicts, system emergency, severe weather, and lack of access or right of way.
- (B) Cable installers shall be trained to connect closed caption decoders to work with the cable connection. The decoder (provided by the subscriber) shall be connected without extra charge to the subscriber.

### **8.370 Signal Carriage**

#### **8.371 Channels required**

Each cable system certificated to operate within this state shall be operationally capable of relaying to all subscriber terminals at least the following signals:

- (A) All television broadcast signals, if any, required to be carried in that service area pursuant to FCC rules, as amended from time to time.
- (B) All specifically designated access channels required to be carried by that system pursuant to section 8.410 of these rules shall be carried in all service tiers defined as basic tiers by this Rule or federal law.

#### **8.380 Annual Report**

Within one year of the granting of a certificate of public good and annually thereafter as provided by 30 V.S.A. § 22, every cable operator shall file an Annual Report with the Department and the Commission containing the information required by 30 V.S.A. §§ 22 and 514 and any other information the Department may require. The report shall be made in a form acceptable to the Department.

#### **8.390 Availability of Books and Records**

The Commission and the Department shall have the right to inspect the books, records, maps, plans, and other like materials of each cable company applicable to its system or systems in this state, at any time during reasonable business hours. Each cable company shall fully cooperate in making the materials available at reasonable times, provided that where volume and convenience necessitate, the company may request that inspection take place on its own premises. Where information in the materials constitutes trade secrets or other confidential or proprietary information, the company may request that Commission or Department employees given access to that information enter into an agreement to protect such information, in conformance with Commission Rule or Commission practice.

#### **8.400 Purposes, Scope**

- (A) Purposes. The purposes of this part (8.400 et seq.) of this rule are: (1) to promote the availability and use of local public, educational, and governmental content in a manner consistent with the development of cable technology and federal law by providing parameters for franchise renewal negotiations, for negotiations between cable operators and existing or proposed Access Management Organizations, and for resolution of disputes by the Commission; and (2) to clarify the obligations of and

relationship between cable operators and Access Management Organizations with regard to meeting cable-related community needs, and to establishing and administering PEG channels and facilities.

- (B) **Additional Obligations.** The Public Utility Commission as the franchising authority for the state of Vermont may impose additional or specific obligations by condition in a new or renewed certificate of public good consistent with these rules. The scope of operator and subscriber support for PEG access should be limited to those applications and designations of capacity that support distribution of public, educational, and governmental access content to cable subscribers over the cable system.
- (C) **Scope.** This rule applies to cable television companies as defined in 30 V.S.A. § 501(c) to the extent that they offer cable television services as defined by 47 U.S.C. § 522 and to existing or proposed Access Management Organizations (AMOs) that administer the PEG access facilities or channels.
- (D) **Digital cablecasting of PEG Channels.** One year prior to the Federal Communication Commission deadline for Vermont VHF and UHF broadcasters to relinquish analog bandwidth, the Commission will consider initiating rulemaking to ensure that community needs and PEG access services are being adequately supported in light of evolving technology and consistent with FCC regulations.

#### **8.401 General Obligations of Cable Operators**

For purposes of franchise negotiations, a cable operator must demonstrate that its proposal for PEG Access is consistent with these rules and reasonable in light of the cable-related community needs taking into consideration costs on the cable operator and cable subscribers. In order to meet community related cable needs, cable operators shall be prepared to:

- (A) Designate system capacity for the use of PEG channels and applications.
- (B) Consider requests for PEG channels and other applications.
- (C) Designate an Access Management Organization (AMO), when requested.
- (D) Provide PEG facilities.
- (E) Provide PEG funding.
- (F) Notify subscribers, Commission, and Department of (A) through (E).

#### **8.402 Provision of System Capacity for PEG Access**

- (A) Absent a waiver by the Commission, a cable operator shall be prepared to designate and activate at least three forward viewable PEG channels.
- (B) In lieu of viewable channels, a cable operator and an Access Management Organization may agree that the cable operator should dedicate system capacity or facilities in a form other than a forward channel to support the distribution of PEG content to cable television subscribers in order to meet its PEG access obligations.

**8.403 Activation of First Three PEG Channels**

The operator of a cable television system shall designate:

- (A) At least one full-time activated channel for public, educational, and governmental access use.
- (B) At least one additional full-time channel for public, educational or governmental access use, to be activated at such time as is requested by the AMO and after the channel required by paragraph (A) is already in use. The cable operator shall provide the channel within a reasonable period of time following the submission of the request.
- (C) One additional full-time channel for public, educational, or governmental access use, to be activated at such time as is requested by the AMO and after the channel required by paragraph (B) is already in use. The cable operator shall provide the channel within a reasonable period of time following the submission of the request.
- (D) In the event that three channels for public, educational, and governmental use are required to be activated, one channel shall be designated for each type of use; provided, however, that any channel maybe used for any PEG purpose if necessary to satisfy the demand for channel time, and, should more than one AMO exist, as agreed by the AMOs. Pooling of channel time shall be done in conformance with the system's PEG access plan.
- (E) When no other PEG access programming is available for cablecasting, and no PEG access management organization (as described in section 8.420) exists, the operator shall make available programming, at a minimum, in the nature of a character-generated community bulletin board. When submissions are available, the operator shall post content on the PEG access channel community bulletin board that is up-dated at least weekly and contains information relevant to the particular PEG access service area where it is seen.
- (F) PEG channels may be activated at a headend or hub site within the service territory.
- (G) Requests for activation of PEG channels shall be submitted and reviewed as provided in section 8.405.

**8.404 Activation of Additional PEG Channels or Other PEG Applications**

- (A) Additional PEG access channels. Activation of additional PEG access channels may be requested at such time as the channels required by section 8.403 are in use.
- (B) Other PEG Applications. A cable operator may propose, or an Access Management Organization may request, that a cable operator dedicate system capacity or facilities in a form other than a channel to support the distribution of PEG content to cable subscribers.
- (C) It is not necessary to utilize the first three PEG channels prior to a request for other PEG applications. This does not preclude an AMO's ability to request and receive three PEG channels pursuant to section 8.403.
- (D) Requests for PEG channels and other PEG applications shall be evaluated using the criteria and process provided in section 8.405 and implemented as negotiated

between the operator and AMO or AMOs.

**8.405 Consideration of Requests for PEG Channels and Other PEG Applications**

Requests for the activation of PEG channels or other PEG applications shall be submitted to the operator and reviewed as follows:

- (A) The request must describe:
  - (1) The use or functionality for which the capacity will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace;
  - (2) Examples of its use;
  - (3) The community need that the PEG channel or PEG application is intended to address, how such community need has been ascertained, and how that need will be met by the PEG channel or PEG application requested;
  - (4) The equipment and facilities, initial and ongoing operating and capital expenditures necessary to implement the request;
  - (5) The estimated cost of the functionality to the AMO and the extent to which the cable operator is expected to support the cost;
  - (6) How the use or functionality can be sustained, financially and operationally, by the AMO, including commitments made by others to support the request;
  - (7) Why the use or functionality requested is consistent with current or planned services to be offered by the existing or proposed AMO;
  - (8) Other reasonable materials deemed necessary by the operator to consider such request.
  
- (B) Cable operators shall do the following in reviewing and responding to requests for PEG channels or other PEG applications:
  - (1) Provide to the requesting AMO written acknowledgment of receipt of the request and confirmation that the request is complete. If the request is not complete, the cable operator shall so inform the AMO within 45 days, together with an explanation of how the request is incomplete and a description of the information that is needed to complete the request.
  - (2) Once a request is complete, review and respond in writing to the AMO's proposal within 60 days of submitting a complete request. If an extension is necessary for adequate review or extenuating circumstances, the cable operator shall inform the AMO in writing and provide a reasonable timeframe for responding to the request.
  - (3) Offer the requesting AMO an opportunity, to the extent possible, to discuss the request with regard to the criteria listed in subsection (C) below, and mutually investigate possible alternatives should any aspect of the request be problematic.
  
- (C) The cable operator shall evaluate the AMO request using the following criteria:
  - (1) Whether any portion of the request would be in violation of, or would require amendment to, the cable operator's certificate of public good or any existing PEG Access Agreement;
  - (2) Whether and how costs that would be incurred by the operator or the AMO would affect the cable operator and cable subscribers;
  - (3) Whether the cable operator has the capacity to meet the request, taking into

- consideration existing and other potential uses;
- (4) Whether the request is consistent with the cable operator's and the AMO's Access Plan;
  - (5) Whether alternative more cost-effective methods within the purview of the cable operator are available to meet the need asserted in the request;
  - (6) Whether the request responds to community needs;
  - (7) Other considerations that it deems relevant.
- (D) Cable operators retain discretion to approve, deny, or amend such requests. If a cable operator denies an AMO request, it must provide a written explanation, addressing each of the criteria in subsection (C) and the grounds for denial.
- (E) Resolution of disputes arising from requests may be reviewed by the Commission.

#### **8.406 Inclusion in Service Tiers**

- (A) The first three PEG access channels shall be available to all cable subscribers. All other PEG access channels shall be available on the basic service tier unless activation of the channel on the basic service tier would require removal of an existing channel from the basic tier. If removal of an existing basic tier channel would be necessary to accommodate an additional PEG access channel, the cable operator shall offer, and the AMO may accept, substitute capacity on the next available analog tier or digital tier as a means of allowing more than three PEG channels to be made available.
- (B) All PEG channels on the basic tier shall be delivered in a standard analog format unless all other channels on the basic tier are delivered in a digital format.

#### **8.407 (reserved)**

#### **8.408 Designation of Administrative Management Organizations, Generally**

- (A) Unless a cable operator has obtained a waiver pursuant to section 8.410 of this Rule, it shall designate an AMO:
- (1) that demonstrates the capability to meet the obligations of an AMO, as set forth in sections 8.420–8.422 of this Rule; and
  - (2) that demonstrates the capability to meet all other relevant requirements of this Rule; and
  - (3) that is willing to enter an access contract, pursuant to section 8.424, on terms that have been negotiated in good faith.
- (B) The person or organization that seeks designation as an AMO bears the burden of demonstrating that they or it should be designated.
- (C) A cable operator may designate one or more AMOs to provide PEG content within all or a portion of a geographic area where another AMO also provides PEG content.
- (D) AMOs may be designated in the certificate of public good at the time of issuance.
- (E) The designation of an AMO does not require the approval of the Commission.
- (F) AMOs may administer access for more than one cable system or cable channel.

(G) An AMO may be in whatever form its members select.

#### **8.409 Educational and Governmental**

To allow for channels to be activated on a cable television system for educational or governmental use, an educational access channel may be operated and administered by a non-profit organization, committee, or commission representing educational institutions serving the territory served by the cable system. Where more than one cable system is operating in a school system or municipality, cooperation between the AMOs for the respective access channels is encouraged. A governmental access channel may be operated and administered by a non-profit organization, committee, or a commission appointed by local governments, including appropriate representation of local school systems within the service area of the cable television system if it will share the channel with educational use. Absence of an AMO to administer educational or governmental access shall not prevent the cable operator from making available additional channels for educational or governmental access.

#### **8.410 Exception for Small Cable Systems**

The operator of a cable television system with annual gross receipts from 'cable services' of two million dollars or less may be excused from the provisions of Rule 8.400 if said company can demonstrate that is meeting the cable related community needs and interests of its service territory. For the purpose of this subsection, 'cable services' has the definition stated in 47 U.S.C. § 522.

**8.411–8.414 (reserved)**

#### **8.415 Facilities and Funding Generally**

Any cable television certificate of public good may include additional provisions concerning the provision of funding and facilities for PEG access consistent with sections 8.416 and 8.417. Any other provision concerning the facilities and funding for public, educational, and governmental access consistent with federal and state law may be included in a certificate of public good.

#### **8.416 Facilities**

- (A) Minimum capabilities. Unless otherwise ordered by the Commission, all operators shall ensure that their systems have available the following minimum PEG capabilities once their systems are in operation. The facilities shall include equipment necessary for community members to produce, post-produce, and distribute PEG content from its studios or community locations to the system's cable subscribers. When an AMO is established, it may negotiate for additional or different facilities to account for community needs and technological changes.
- (B) This rule neither forbids nor requires the sharing of equipment and facilities between neighboring systems or between systems owned by the same company if any established AMO or AMOs approves the plan for sharing and, if the sharing is between systems owned by different operators, if the operators approve the plan for sharing.
- (C) Cable operators shall support reasonable requests by AMOs for remote origination sites. The cable operator's response to such requests shall take into account community needs and the capabilities of the designated AMO and resulting costs.

#### **8.417 Funding**

- (A) Basis. PEG access funding shall be calculated based on the cable operator's gross revenues generated by "cable services" as defined by 47 U.S.C. § 522, unless otherwise agreed by a cable company and the AMO to which the funding would be provided. PEG access funding of an AMO shall be calculated based upon the corresponding PEG AMO's service territory.
- (B) Startup capital payment. An AMO may request, and the cable operator shall negotiate concerning the provision of, startup funding. The amount of startup funding, if any, provided to an AMO shall reflect consideration of requests for PEG channels and applications outlined in section 8.405.
- (C) Annual operating. Negotiation between the operator and the AMO or AMOs is the preferred method of setting the annual operating expense funding level provided by the cable operator to one or more AMOs. Funding levels for operating costs shall be based on community needs and are subject to the 5% franchise fee cap provided in 47 U.S.C. § 542(b).
- (D) Annual capital. Negotiation between the operator and the AMO or AMOs is the preferred method of setting the annual capital contribution for PEG access. Capital contributions are not subject to the 5% franchise fee cap but are considered external costs eligible for pass through to subscribers pursuant to 47 U.S.C. § 542(c).
- (E) Other payments. New and existing AMOs, as part of PEG access contract negotiations, may negotiate for in-kind contributions or certain lump sum amounts to be paid by the operator for start-up operating and start-up capital funds, annual capital funds, and other capital improvements under certain conditions or at certain times during the term of the certificate of public good.
- (F) Accounting for PEG funds expended by operator in the absence of an AMO. Funds expended by an operator to meet its PEG access obligations and reported in the operator's Notice of PEG Availability (section 8.418), prior to the establishment of an AMO, may be debited against any funds, reserves, or deferred liabilities that have accrued for PEG access purposes. The documentation of such expenditures, however, must be filed in a timely and clearly itemized manner in the operator's PEG Notification, and value placed on those expenditures by the operator shall have been reasonable, taking into consideration the levels of, and reasons for, expenditures by other PEG access operations.
- (G) Legislative tax. In the event a tax or fee is enacted by the Legislature of the State of Vermont, and if it is determined that the tax or fee and a PEG access funding requirement imposed by the certificate of public good or by a PEG Access contract are both defined as franchise fee payments under the Cable Communications Policy Act of 1984, as amended, the PEG access funding requirement shall be reduced proportionately to the extent the state fee plus the PEG access funding requirement for operating expenses total more than 5% of the operator's gross revenues.

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#### **8.418 Notice of PEG Availability**

- (A) The cable operator shall notify subscribers, by annual written notice and by character generated or video message on the computer bulletin board (see section 8.403(e)), of the opportunity to create and cablecast PEG content. Notices shall include name, address, and telephone number of the entity or entities to be contacted for use of existing PEG services, and similar contact information for the cable operator staff responsible for negotiating start-up arrangements with persons seeking to create a new AMO.
- (B) If an AMO does not exist in the service territory, the cable operator will also make the following information available: minimum operating rules and procedures for facilitating production of local content and a copy of the PEG Access Report, required by section 8.419, for the most recent year.

#### **8.419 Cable Operator PEG Access Report**

Each cable operator shall submit annually, by April 15, to its designated AMOs, the Department, and the Commission, a PEG access report for each cable system. Copies of this report shall be made available to the public upon request in printed or electronic formats. The report shall include the following information.

- (A) Where no AMO is designated, a summary of the prior year's activities, including the scope of programming services available for use by the public in each community served by the operator.
- (B) A statement of the facilities contributed to an AMO or AMOs. The statement should indicate whether ownership of the facilities has been transferred to the AMO or AMOs, or whether the operator has retained ownership and only made the facilities available;
- (C) If the operator has sought advice for the administration of its PEG access operation from an advisory body, a roster naming the advisors and a summary of the advisory body's activities;
- (D) An accounting of any reserves, whether funded or not, that have accrued to date for PEG access use;
- (E) Summary of funding, including a statement that funding is derived from subscriber paid PEG access fees, and other support rendered to each AMO in the prior year;
- (F) Contact information for cable operator and for AMO(s).
- (G) A description of the geographic service territory covered by the report, and an explanation of any changes in the description from the prior year.

#### **8.420 Obligations of an AMO**

- (A) The responsibilities of each AMO shall include:
  - (1) Documentation of and response to community needs;
  - (2) Delivery of outreach for the purpose of informing the public of the opportunity for access to the cable system and availability of programs and services;
  - (3) Delivery of training, programming, and services to meet community needs;
  - (4) Managing facilities and equipment, including maintaining operating rules and

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procedures, for the purposes of public availability;

- (5) Negotiation with the cable operator for facilities and funding;
- (6) Coordination of PEG capacity use and applications with cable operator;
- (7) Maintenance of rules and procedures for board governance, complaint and dispute resolution, and compliance with relevant laws, including Vermont's Open Meeting law;
- (8) Receipt and management of all funds in a manner consistent with the public nature of those funds, including the provision of an annual budget for payment of current operating and capital expenses;
- (9) Preparation of an access plan which is designed to anticipate the future cable-related community needs and demand for PEG services;
- (10) Completing Annual Report pursuant to section 8.422;
- (11) Preparation of information required by the cable operator for the submission of the annual PEG access report as required by section 8.419;
- (12) Maintenance of records and preparation of forms as may be required by the Federal Communications Commission for its oversight of access channel usage. Such information may be delivered to the cable operator or submitted directly to the F.C.C., as is found expedient by the parties.

- (B) The operator may retain any of the responsibilities identified in subsection (A). Any responsibility not explicitly delegated remains the responsibility of the cable operator. The foregoing notwithstanding, a cable operator having existing contracts with AMOs may rely on those contracts to comply with this section until such time as the contracts are renewed or materially amended.

#### **8.421 Meetings and Reports**

All meetings of AMOs shall be open to the public pursuant to Vermont's Open Meeting Law, 1 V.S.A. § 311 et seq., and shall be announced in advance by character-generated announcement on the PEG channel to which it pertains. The access plan, local rules, budget, and annual report of the AMO shall be available to the public at reasonable times and places.

#### **8.422 AMO Annual Access Report.**

AMOs shall submit to the cable operator, the Department, and the Commission a PEG access report for each cable system within 120 days of the end of the AMO's fiscal year. Copies of this report shall be made available to the public upon request. The report shall clearly distinguish between expenditures that support production and distribution of PEG content to cable television subscribers, and expenditures for other purposes not related to the production and distribution of PEG content to cable television subscribers, if any. It shall also distinguish between funds provided by the operator as PEG funding and funds obtained from other sources. The report shall also include the following information:

- (A) Changes in service territory;
- (B) Description of current PEG capacity and applications;
- (C) Description of current PEG services, including outreach strategies, training delivery, PEG content production and distribution (for example, hours of original programming, utilization of PEG facilities such as live drops or interconnect);
- (D) Details of complaints and how the AMO responded to them;
- (E) Description of facilities (equipment and location);

- (F) Roster of staff and board;
- (G) Changes in organizational structure;
- (H) A statement of total operating and capital funding received from the operator and whether any funds were carried forward from the prior year;
- (I) Financial reports that include:
  - (1) Income and expense statement and balance sheet for year of annual report,
  - (2) Projected operating and capital budget for current fiscal year;
- (J) Certification that AMO has:
  - (1) Bylaws or other governing documents,
  - (2) Rules and operating procedures,
  - (3) Complaint and dispute resolution procedures,
  - (4) Evidence of conducting meetings consistent with Open Meeting law;
- (K) Planning considerations and expectations for how community needs will be identified and met for current and future fiscal years;
- (L) Service quality issues requiring attention;
- (M) Copy of tax returns, financial reviews or, if available, audited financial statements;
- (N) In the event that the operator requires financial information from an AMO for the purpose of auditing the AMO, or for the purpose of a company audit, the AMO shall make the information available, consistent with other provisions of this section. If an audit is required by the operator, the cost of the audit to the AMO will be borne by the operator, unless ordered otherwise by the Commission.

**8.423 PEG Access Contracts**

- (A) In cable systems without an AMO, cable operators shall have the obligation to negotiate in good faith with AMOs or entities requesting designation as an AMO.
- (B) Entities seeking or having received designation under this Section may request, under section 8.425(a), multi-party negotiations with multiple cable operators with the objective of a single contract.
- (C) Contracts between AMOs and cable operators shall be made for a fixed period of time not to exceed eleven years (and normally not past the time the current certificate is due to expire) and be consistent with Commission Rules and include agreements related to the following subjects:
  - (1) Description of PEG capacity and applications;
  - (2) Description of geographic service territory;
  - (3) Term and duration of contract;
  - (4) Amount of start-up, operating, and capital funds and a schedule for payment of such funds;
  - (5) Procedures for addressing service quality issues;
  - (6) Dispute resolution procedures.

- (D) If the cable operator is not satisfied that an entity with which it is negotiating will perform properly as an AMO, or if there is more than one entity volunteering to be the AMO for a single channel, the operator or entities may petition the Commission to hear and resolve the dispute.

#### **8.424 Failure to Perform**

- (A) If a cable operator believes that an AMO has failed to perform in any material way under a contract, unless otherwise provided in the contract, the cable operator, after providing the AMO with reasonable notice of the failure, may petition the Commission to cure such a failure.
- (B) If an AMO believes that a cable operator has failed to perform in any material way under a contract, unless otherwise provided in the contract, the AMO, after providing the cable operator with reasonable notice of the failure, may petition the Commission to cure such a failure.

#### **8.425 Statewide AMO**

The Commission may designate an AMO to administer a state-wide PEG access network and to promote the sharing of PEG content among cable systems.

- (A) Petition form and content. An entity seeking designation under this rule as an administrator of the statewide PEG access network shall file a petition with the Public Utility Commission. The petition shall include the following additional information about the petitioner's ability to administer the network and plans for doing so:
- (1) A description of the organizational structure and management of the administrator along with the administrator's articles of association and bylaws;
  - (2) Demonstration of sufficient technical and managerial expertise to administer the service;
  - (3) Description of committed or tentative funding sources for the AMO, or a proposal for providing funding out of the existing PEG access obligations of cable companies;
  - (4) A plan for coordination of services with other AMOs;
  - (5) A proposal for location of the AMO's office, studios, and equipment, and the extent of the AMO's operations around Vermont;
  - (6) If the state-wide PEG access network currently has an administrator, an explanation of the reason for changing administrator designation and an administration transition plan.
- (B) Service of petition. The petitioner shall provide a copy of the petition to the Department of Public Service, all cable companies operating in Vermont, and all AMOs. Along with each copy of the petition, the petitioner shall provide a list of the persons served under this paragraph.
- (C) Order. After notice and opportunity for hearing, the Commission shall issue an order accepting, conditionally accepting, or rejecting the petition.
- (D) Provisional designation. The Commission may provisionally designate the petitioner as the statewide AMO, even if the AMO does not yet have a fully-developed capability to administer the statewide access network. This designation may be for a fixed period

of time. The Commission may, in its order granting provisional designation, limit the obligations of cable companies to a provisional statewide network AMO.

(E) Term and revocation of designation.

- (1) The term of a non-provisional administrator designation shall be indefinite unless specifically limited by the Commission. Designation as an administrator may not be transferred to a successor without prior Commission approval.
- (2) Upon its own motion or upon the petition of the Department or an entity or person adversely affected by an administrator's performance, the Commission may after notice and opportunity for hearing revoke or suspend its designation of an administrator, may impose additional conditions on continued designation to assure the statewide AMO adequately administer the statewide access channel, complies with conditions of its designation, or take other such actions that serve the public good of the state.
- (3) The burden of proof in a revocation hearing is on the party seeking the revocation or suspension; the standard of proof is the preponderance of the evidence.

**8.426 Request for Statewide PEG Capacity and Applications**

(A) Requests for PEG capacity and applications that will serve statewide purposes must be submitted by the statewide AMO to the cable operators and will be considered by the Commission after consultation with all licensed cable operators.

(B) Request for statewide services or applications shall include a description of:

- (1) The community need and how that need is met by the request;
- (2) The use or functionality for which the capacity will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace;
- (3) The equipment and facilities necessary to implement the request;
- (4) The estimated cost of the functionality and whether such costs will be borne by cable operators and cable subscribers;
- (5) The budget and source of funds necessary to sustain the functionality;
- (6) How the use or functionality can be sustained, financially and operationally, by the AMO, including commitments made by others to support the request;
- (7) How this request is consistent with needs of the state, and whether the services would complement or replace the services currently provided by local AMOs;
- (8) The management structure necessary to support the request;
- (9) Evidence of coordination with local AMOs, if necessary;
- (10) Guidelines for management and public use of the capacity and/or application;
- (11) Other reasonable materials deemed necessary by the Commission.

**8.427 (reserved)**

**8.428 Notice**

The entity responsible for administering and operating a public, or a public access channel combined with an educational or governmental access channel, shall provide notice to the general public of the opportunity to use such channel on the community bulletin board (subject to section 8.403(e)). Notices shall include the name, address, and telephone number of the entity to be contacted for use of the channel. All access programming shall be identified as such.

#### **8.429 Time**

Channel time shall be scheduled on the public access channel by the entity responsible for the management thereof on a non-discriminatory basis; except that the entity may prevent any single user, or type of user on a combined PEG access channel, from monopolizing the programming time available.

#### **8.430 Local Priority**

Local presentations or programming produced through local use should be given preferred status on Public, Educational, and Governmental access channels in the event of competing requests for channel time, except for any state-wide PEG access channel.

#### **8.431 Usage Charges**

Neither the cable operator nor an AMO may charge any person for channel time for PEG access programming.

#### **8.432 Control of Content**

The following guidelines shall apply to editorial control of PEG access content:

- (A) Municipality. A municipality shall not exercise any editorial control over any use by the public of a PEG access channel; but if the municipality appoints a member of an AMO's board, that member may take part in decisions of the AMO. A government AMO may control the content of programming that it produces.
- (B) Public Access Channel. An AMO shall not exercise any editorial control over the use of the public access channel except that it is encouraged to promulgate non-discriminatory rules that establish late-night safe-harbor hours, parental warnings, or other methods that advise viewers with regard to indecent programming or other programming that may be unsuitable for children.
- (C) Educational and Government Access Channels. Access entities that manage an educational or government access channel may promulgate rules for the use of that channel that conform to the policies of the institutions for which it administers and manages the channel. A government/education AMO may set guidelines for PEG content but may not infringe upon the free speech rights of the participating speakers.
- (D) Editorial control by operator. Except to the extent provided by 47 U.S.C. § 531(e) and 47 C.F.R. § 76.702, the cable television operator shall not exercise any editorial control over any public, educational, or governmental use of capacity designated for PEG purposes. PEG content programmed by an AMO is not owned by the cable operator, except in those instances where such content has been copyrighted by the cable operator.

#### **8.433 Use by Operator**

- (A) Where no AMO exists, a cable operator shall be permitted to use PEG capacity or applications for the purpose of promoting PEG use or airing PEG content subject to the programming guidelines of the channel.
- (B) Where an AMO has been designated to provide PEG services, a cable operator shall be permitted to use PEG capacity or applications with the permission of the AMO.

#### **8.434 Certificate of Public Good Conditions.**

- (A) Interconnection of Cable Systems. The Commission may require that a cable company, as a condition of a certificate of public good, enable interconnection of their systems, directly or indirectly, with cable systems throughout Vermont, to provide transmission of PEG access programming between cable systems in the state regardless of the identity of the cable operator.
- (B) Institutional Networks, Condition of Certificate of Public Good. Subject to federal law, the Commission may require that a cable company, as a condition of a certificate of public good, make available an institutional network linking state or local government buildings, educational institutions, studios of educational or governmental access administrative entities within its franchise area, or interconnection points for institutional networks serving neighboring franchise areas.

#### **8.435 Waivers, Rulings, and Disputes**

- (A) Availability of Waivers. A cable television operator, a municipality, or an entity designated to administer a PEG access service may seek a waiver of one or more provisions of this rule by application to the Commission.
- (B) Declaratory Rulings by Commission. Any interested person may seek a ruling from the Commission concerning the applicability or implementation of any provision of this section or any provision of a certificate concerning PEG access.
- (C) Disputes and Remedies. Any dispute related to contracts or requirements outlined in this rule may be heard by the Commission.
- (D) No editorial control. Notwithstanding the above, the Commission shall not grant any waiver or ruling, or enter any order that constitutes the exercise of editorial control over the content of public access programming.

#### **8.500 Regulation of Rates: Procedures to be used in the Investigation or Setting of Rates**

##### **8.510 Federal and State Rules**

In any proceeding to set or investigate the rates charged by a cable television system, if the Commission has been certified by the Federal Communications Commission to regulate such rates, the Commission will act in a manner consistent with the Rules of the Federal Communications Commission and with Federal law. The Commission will also act in a manner consistent with Vermont law and precedent and with these rules, to the extent they are not preempted or superseded.