



Senate

General Assembly

File No. 352

February Session, 2022

Substitute Senate Bill No. 278

Senate, April 6, 2022

The Committee on Energy and Technology reported through SEN. NEEDLEMAN of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING FEES PAID TO COMPANIES OR ORGANIZATIONS RESPONSIBLE FOR COMMUNITY ACCESS PROGRAMMING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-331a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) As used in this section: [.]

4 (1) ["multichannel video programming distributor"] "Multichannel
5 video programming distributor" means a multichannel video
6 programming distributor, as defined in 47 CFR 76.1300, as from time to
7 time amended, and includes an owner of an open video system, as
8 defined in 47 CFR 76.1500, as from time to time amended; [.]

9 (2) "Subscriber" means any residential or commercial customer who
10 purchases one or more of the following services: (A) Video streaming,
11 (B) Internet access, or (C) cable television; and

12 (3) "Video streaming" means the delivery of video content sent in
13 compressed form over the Internet and displayed by the viewer in real
14 time for a fee on a subscription basis.

15 (b) Each company or organization selected pursuant to subsection (c)
16 of this section, in consultation with the franchise's advisory council,
17 shall provide facilities, equipment, and technical and managerial
18 support to enable the production of meaningful community access
19 programming within its franchise area. Each company shall include all
20 its community access channels in its basic service package. Each
21 company or organization shall annually review its rules, regulations,
22 policies and procedures governing the provision of community access
23 programming. Such review shall include a period for public comment,
24 a public meeting and consultation with the franchise's advisory council.

25 (c) If a community-based nonprofit organization in a franchise area
26 desires to assume responsibility for community access operations, it
27 shall, upon timely petition to the authority, be granted intervenor status
28 in a franchise proceeding held pursuant to this section. The authority
29 shall assign this responsibility to the most qualified community-based
30 nonprofit organization or the company based on the following criteria:
31 (1) The recommendations of the advisory council and of the
32 municipalities in the franchise area; (2) a review of the organization's or
33 the company's performance in providing community access
34 programming; (3) the operating plan submitted by the organization and
35 the company for providing community access programming; (4) the
36 experience in community access programming of the organization; (5)
37 the organization's and the company's proposed budget, including
38 expenses for salaries, consultants, attorneys, and other professionals; (6)
39 the quality and quantity of the programming to be created, promoted or
40 facilitated by the organization or the company; (7) a review of the
41 organization's procedures to ensure compliance with federal and state
42 law, including the regulations of Connecticut state agencies; and (8) any
43 other criteria determined to be relevant by the authority. If the authority
44 selects an organization to provide community access operations, the
45 company shall provide financial and technical support to the

46 organization in an amount to be determined by the authority. On
47 petition of the Office of Consumer Counsel or the franchise's advisory
48 council or on its own motion, the authority shall hold a hearing, with
49 notice, on the ability of the organization to continue its responsibility for
50 community access operations. In its decision following such a hearing,
51 the authority may reassign the responsibility for community access
52 operations to another organization or the company in accordance with
53 the provisions of this subsection.

54 (d) Each company or organization shall conduct outreach programs
55 and promote its community access services. Such outreach and
56 promotion may include, but not be limited to (1) broadcasting cross-
57 channel video announcements, (2) distributing information throughout
58 the franchise area and not solely to its subscribers, (3) including
59 community access information in its regular marketing publications, (4)
60 broadcasting character-generated text messages or video
61 announcements on barker or access channels, (5) making speaking
62 engagements, (6) holding open receptions at its community access
63 facilities, and (7) in multitown franchise areas, encouraging the
64 formation and development of local community access studios operated
65 by volunteers or nonprofit operating groups.

66 (e) Each company or organization shall adopt for its community
67 access programming a scheduling policy which encourages
68 programming diversity. Said scheduling policy shall include (1) limiting
69 a program, except instructional access and governmental access
70 programming, to thirteen weeks in any one time slot when a producer
71 of another program requests the same time slot, (2) procedures for
72 resolving program scheduling conflicts, and (3) other measures which
73 the company or organization deems appropriate. A company or
74 organization may consider the availability of a substantially similar time
75 slot when making community access programming scheduling
76 decisions.

77 (f) In the case of any initial, transfer or renewal franchise proceeding
78 held on or after October 1, 1990, the authority may, on its own initiative,

79 in the first six months of the second, fifth, eighth and eleventh years of
80 the franchise term, review and evaluate the company's or the
81 organization's provision of community access programming. The
82 authority shall conduct such review or evaluation in any such
83 proceeding held on or after October 1, 1990, if the Consumer Counsel or
84 any interested party petitions the authority for such a review during the
85 first six months of the review year. During any such review year, if an
86 organization desires to provide community access operations it shall
87 petition the authority and the authority shall follow the procedures and
88 standards described in subsection (c) of this section in determining
89 whether to assign to the organization the responsibility to provide such
90 operations. No community access programming produced using the
91 facilities or staff of an organization or company providing community
92 access operations shall be utilized for commercial purposes without
93 express prior written agreement between the producer of such
94 programming and the organization or company providing community
95 access operations the facilities or staff of which were used in the
96 production of the programming. Such an agreement may include,
97 without limitation, a provision regarding the producer and the
98 company or organization sharing any profit realized from such
99 programming so utilized. An organization providing community access
100 operations shall consult with the company in the franchise area prior to
101 making such an agreement.

102 (g) No organization or company providing community access
103 operations shall exercise editorial control over such programming,
104 except as to programming that is obscene and except as otherwise
105 allowed by applicable state and federal law. This subsection shall not be
106 construed to prohibit such organization or company from limiting the
107 hours during which adult programs may be aired. Such organization or
108 company may consult with the advisory council in determining what
109 constitutes an adult program for purposes of this subsection.

110 (h) Upon the request of the Office of Consumer Counsel or the
111 franchise's advisory council, and for good cause shown the authority
112 shall require an organization responsible for community access

113 operations to have an independent audit conducted at the expense of
114 the organization. For purposes of this subsection, "good cause" may
115 include, but not be limited to, the failure or refusal of such organization
116 (1) to account for and reimburse the community access programming
117 budget for its commercial use of community access programming
118 facilities, equipment or staff, or for the allocation of such facilities,
119 equipment or staff to functions not directly related to the community
120 access operations of the franchise, (2) to carry over unexpended
121 community access programming budget accounts at the end of each
122 fiscal year, (3) to properly maintain community access programming
123 facilities or equipment in good repair, or (4) to plan for the replacement
124 of community access programming equipment made obsolete by
125 technological advances. In response to any such request, the authority
126 shall state, in writing, the reasons for its determination.

127 (i) Each company and nonprofit organization providing community
128 access operations shall report annually to the authority on or before
129 February fifteenth. The authority shall adopt regulations, in accordance
130 with the provisions of chapter 54, to specify the information which shall
131 be required in such report. Such information shall be necessary for the
132 authority to carry out the provisions of this section.

133 (j) The advisory council shall review all community access
134 programming of a company or organization within the franchise area
135 which programming has been the subject of a complaint.

136 (k) The authority shall establish the amount that the company or
137 organization responsible for community access operations shall receive
138 for such operations from subscribers and from multichannel video
139 programming distributors. The amount shall be five dollars per
140 subscriber per year, adjusted annually by a percentage reflecting the
141 increase or decrease of the consumer price index for the preceding
142 calendar year, provided the authority may increase or decrease the
143 amount by not more than forty per cent of said amount for the
144 subscribers and all multichannel video programming distributors
145 within a franchise area after considering (1) the criteria set forth in

146 subsection (c) of this section, (2) the level of public interest in community
147 access operations in the franchise area, (3) the level of community need
148 for educational access programming, (4) the level and breadth of
149 participation in community access operations, (5) the adequacy of
150 existing facilities, equipment and training programs to meet the current
151 and future needs of the franchise area, and (6) any other factors
152 determined to be relevant by the authority. Prior to increasing or
153 decreasing said amount, the authority shall give notice and opportunity
154 for a hearing to the company or multichannel video programming
155 distributor and, where applicable, the organization responsible for
156 community access programming. The amount shall be assessed once
157 each year for each end user premises connected to an open video
158 system, irrespective of the number of multichannel video programming
159 distributors providing programming over the open video system. When
160 the authority issues, transfers or renews a certificate of public
161 convenience and necessity to operate a community antenna television
162 system, the authority shall include in the franchise agreement the
163 amount that the company or organization responsible for community
164 access operations shall receive for such operations from subscribers. The
165 authority shall conduct a proceeding to establish the amount that the
166 company or organization responsible for community access operations
167 shall receive for such operations from multichannel video programming
168 distributors and the method of payment of said amount. The authority
169 shall adopt regulations in accordance with chapter 54 to implement the
170 provisions of this subsection. For any subscriber of multiple services, as
171 described in subdivision (2) of subsection (a) of this section, the
172 company or organization responsible for community access operations
173 shall receive only one payment from the subscriber pursuant to this
174 subsection.

175 (l) An organization assigned responsibility for community access
176 operations which organization ceases to provide such operations shall
177 transfer its assets to the successor organization assigned such
178 responsibility or, if no successor organization is assigned such
179 responsibility, to another nonprofit organization within the franchise
180 area selected by the authority.

181 (m) On petition or its own motion, the authority shall determine
182 whether a franchise area is subject to effective competition, as defined
183 in 47 USC 543, as from time to time amended. Upon a determination
184 that a franchise area is subject to effective competition, the provisions of
185 this section shall apply to multichannel video programming distributors
186 operating in the franchise area, provided (1) where multichannel video
187 programming distributors provide programming over a single open
188 video system, the provisions of this section shall apply jointly and not
189 separately to all such distributors providing programming on the same
190 open video system, and (2) the provisions of subsection (k) of this
191 section shall apply to multichannel video programming distributors
192 whether or not such distributors operate in a franchise area subject to
193 such effective competition.

194 (n) No community antenna television company or nonprofit
195 organization providing community access operations shall refuse to
196 engage in good faith negotiation regarding interconnection of such
197 operations with other community antenna television companies serving
198 the same area. No school or facility owned or leased by a municipal
199 government that possesses community access operations equipment
200 shall unreasonably deny interconnection with or the use of such
201 equipment to any such company or nonprofit organization. At the
202 request of such a company or nonprofit organization providing
203 community access operations, the authority may facilitate the
204 negotiation between such company or organization and any other
205 community antenna television company regarding interconnection of
206 community access operations.

207 (o) Each company or organization shall consult with its advisory
208 council in the formation of a community access programming policy,
209 the adoption of the community access programming budget and the
210 allocation of capital equipment and community access programming
211 resources.

This act shall take effect as follows and shall amend the following sections:

Section	<i>from passage</i>	16-331a
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Statement of Legislative Commissioners:

The bill became a substitute due to a title change.

ET *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill expands the types of subscribers who must pay the community access TV operations fee to include Internet access and video streaming service subscribers. Currently, the fee is \$5 per subscriber.

This is not anticipated to have a fiscal impact on the state or municipalities as it is expected to impact private third-party, non-profit community access providers.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 278*****AN ACT CONCERNING FEES PAID TO COMPANIES OR ORGANIZATIONS RESPONSIBLE FOR COMMUNITY ACCESS PROGRAMMING.*****SUMMARY**

This bill expands the types of subscribers who must pay the fee that helps support community access TV operations to include those who subscribe to internet access and video streaming services from multichannel video programming distributors (MVPDs) (i.e., cable TV providers). Under the bill, “video streaming” is the delivery of video content sent in compressed form over the internet and displayed by the viewer in real time for a fee on a subscription basis.

Existing law, unchanged by the bill, sets the fee at \$5 per subscriber (adjusted annually for inflation since 1995) and allows the Public Utilities Regulatory Authority to adjust it based on factors such as the level of community interest in public access and the adequacy of public access facilities, equipment, and training programs.

EFFECTIVE DATE: Upon passage

COVERED SUBSCRIBERS

Current law requires MVPD subscribers to pay an annual community access fee to help support community access TV operations; however, it does not define these subscribers or the services to which they subscribe. In practice, the fee is charged to cable TV subscribers.

The bill defines a subscriber as any residential or commercial customer who purchases video streaming services, internet access services, or cable TV services. In doing so, it requires those who subscribe to an MVPD for video streaming or internet access services to

also pay the community access fee. However, the bill also specifies that for anyone who subscribes to more than one of the three services, the community access operator that receives the fees must only receive one payment from the subscriber (e.g., someone who receives cable TV and internet service from an MVPD cannot be charged the fee twice).

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable

Yea 24 Nay 2 (03/22/2022)