

sum spent on equipment represents less than 18% of the total expenditures that Cablevision claims are attributable to Area Two Access. Sound View Brief, p. 12.

SPV points out that Cablevision's plans to renovate the community access facility to create two new edit suites and a green room might not take place if Cablevision suffered a loss of subscribership. SPV Brief, p. 16; Tr. 2/6/98, p. 746. However, Cablevision intends to continue to charge to community access portions of its management salaries, in addition to the three technicians, whether or not its subscriber base were to decrease. *Id.*, citing Tr. 2/6/98, p. 895.

The Department believes that Cablevision's community access facility is far from ideal. In terms of size and equipment, the facility meets the minimum requirements, based on regulations adopted many years ago, but is apparently not meeting the expectations of those individuals who have attended training. It is clearly a relatively small community access facility in comparison to the size of the Area Two subscriber base.

It seems that Cablevision is overstating the amount of space devoted to community access purposes. For example, it appears that Cablevision is allocating its entire employee cafeteria, not just a portion of it, to the community access budget. In response to a question as to what proportion of the cafeteria is attributed to community access, one Cablevision witness could not say, while the other pointed out that the entire room was available to community access users, not just a part of it. Tr. 2/25/98, p. 852. Also, some allocation of restroom space to community access would be reasonable, but Cablevision apparently allocates the entire restroom facilities space to community access. *Id.*, p. 850. Full allocation of shared facilities entirely to community access is clearly unreasonable, and leads to an overstatement of the cost of the community access facility space.

The Department discovered that approximately 42% of the community access facility rent cost submitted by Cablevision is attributed to pole rental (i.e., the cost of using space on poles owned by telephone and electric utilities).⁴ Pole rental is a system cost, not a direct cost of providing community access, and it should not be included in any community access budget.

Cablevision claims that its 1998 total cost of rent for the River Street building is approximately \$150,000 greater than in 1996.⁵ By way of explanation, Cablevision stated that a new building lease had recently been signed, but provided no explanation for such a substantial increase. This lack of substantiation raises questions as to the reasonableness of the total rent and, particularly, the appropriateness of the amount allocated to access.

⁴ KPMG Independent Auditors' Report on Financial Statements for Years Ended December 31, 1996 and December 31, 1995. Note 4 Operating Leases explains rent expense as 1996 building expense of \$409,000 and utility pole rental of \$295,000 for a total 1996 rent expense of \$704,000. $\$295,000/704,000 = 42\%$.

⁵ Late Filed Exhibit No. 16.

The Department also questions the propriety of some of Cablevision's planned purchases. For example, the allocation of \$10,000 for green room furniture and cosmetic makeover of a 9 x 12 room appears excessive given the current size and usage of the access facility. Late Filed Exhibit No. 16.

In addition to the River Street studio, Cablevision's Access Plan for Area Two lists a "mobile production vehicle capable of 4-camera production." Access Plan, pp. 31 and 32. According to Cablevision, the van is a "studio on wheels," not just "a truck with equipment," and was built in 1982 at a cost of \$150,000 to be a PEG access facility. Tr. 1/13/98, pp. 256, 298. The van "comes with Cablevision employees," and requires a large crew, optimally 12 people. *Id.*, p. 258. It is used by Cablevision for News 12 and for local origination programming as well as for PEG access. *Id.* During the last year, the van was used four times by Cablevision's News 12 and four times by Area Nine community access users; it was not used at all for Area Two community access and apparently has never been used by Area Two access users. *Id.*, pp. 257, 299.⁶ The Cablevision system has also used the van approximately 36 times a year for local origination programming. Tr. 2/25/98, pp. 812 and 813.

Despite the absence of use in Area Two, Cablevision proposed to allocate one-third of the mobile van operating expense, \$5,400, to Area Two community access in 1998. Late Filed Exhibit No. 16. Cablevision also proposed to allocate \$105,000 in capital costs (mobile van improvements) over three years (1998-2000).⁷ Access Plan, p. 61. Cablevision maintains that the van has been available to Area Two access producers. Tr. 1/13/98, p. 299.

OCC contends that the allocation of one third of the funding spent on the van to the community access budget has resulted in Area Two subscribers paying for services which they have not received and illustrates Cablevision's excessive and irresponsible funding of the van. OCC Brief, p. 13. Sound View states that notwithstanding requirements by the Department that no overtime charges be assessed for weekend studio use and that the access van be made available to Area Two access users, written material Cablevision distributed to community access users "provides for overtime charges, and unavailability of the van." Sound View Brief, pp. 17 and 18, citing Tr. 2/25/98, pp. 929-931. Sound View further states that the information Cablevision submitted to the Department concerning its policies for availability of the van were different from the policies made available to Area Two PEG users. Sound View Brief, p. 23.

The Department finds that the mobile van has provided no benefit to Area Two subscribers, despite the significant amount of PEG access funding allocated to expenditures for the van. Cablevision admits that the van has never been used by subscribers in this franchise. If the van was available for use by Area Two access producers, as Cablevision claims, Cablevision apparently did not make this known to

⁶ PEG access producer Michael Manente testified that community access users have been repeatedly told the van is unavailable for use by them. Tr. 1/12/98, pp. 16 and 17.

⁷ As these capital costs do not appear in certain Late Filed Exhibits that provide details concerning portions of the budgets, Cablevision may have decided not to charge the access budget for the mobile van upgrade, but this is not clear.

potential users. Even if the van's availability were adequately publicized, the Department questions whether a van requiring the producer to assemble a crew of nine to twelve qualified volunteers represents the best use of PEG access funds. There has been no evidence of any demand for its use in Area Two, and no further van-related community access allocations will be allowed.

Compared to other PEG access facilities serving large numbers of subscribers, Cablevision's facility is small and the planned renovation will provide no additional space. Nor could the facility be described as conveniently located, readily identifiable or user-friendly. For the current small number of PEG access users in Area Two, the Cablevision facility is probably adequate in size. Compared to the potential number of users in Area Two, however, it is clearly too small. As discussed above, Cablevision's figures for the size and cost of the PEG access facility and the cost of the associated equipment are unreliable. In general, costs appear to have been significantly overstated.

b. Sound View

Sound View's proposal contained a commitment to establish a primary facility in a location within the franchise that is "welcoming, attractive, functional and user-friendly." Sound View indicated that other criteria include establishing the facility in a location that is safe, handicap accessible and convenient to those reliant on public transportation." Sound View Application, p. 11.

Sound View provided no details regarding proposed locations for its studio. When it was developing its access proposal, Sound View discussed with then-Fairfield First Selectman Paul Audley the possibility of leasing a 15,000 square foot facility in the Town of Fairfield at a cost of one dollar per year. Subsequently, Albert Blank, Executive Assistant to succeeding First Selectman Kenneth Flatto stated in a January 26, 1998 letter to the Department that the property was no longer available for use as a community access facility. Sound View states that in selecting a location for its facility, it is concentrating on the Bridgeport area and that the City of Bridgeport has been very cooperative. Tr. 2/6/98, p. 595. According to Sound View, it is also actively negotiating with a landlord. Id.

Sound View initially proposed a 10,000 square foot facility as its prototype for a state-of-the-art facility to serve the 92,000 cable subscribers in Area Two. Sound View Application. Sound View pointed out that Nutmeg TV, the community access provider serving 72,000 subscribers in the six-town Plainville area, has a 5,500 sq. ft. facility, and Citizens TV, the community access provider serving 73,000 subscribers in the New Haven area, has a facility of approximately 6,000 sq. ft. Subsequently, Sound View scaled back its plan and stated that an 8,500 square foot facility would be its optimum facility size; however, it also included a separate 6,000 square foot model for the Department's consideration. Late Filed Exhibit No. 4. Both proposed facilities would include a 1,200 square foot main studio. As proposed, the larger facility would have four edit suites of 150 square feet each while the smaller one would have only three. The larger facility also allocated space for a second "outreach studio," an equipment repair shop, records retention area, gift shop, producers work area and a resource

library. An "outreach studio" is an automated facility that will allow a single person to produce and technically operate a studio single-handedly. Id.

The cost differential between the two facility options is accounted for primarily by the additional square footage, but also by the costs associated with equipping and maintaining the additional outreach studio. Sound View assumed no additional staff would be required for the larger facility and did not believe the associated operating budget would be greater than the smaller facility. Late Filed Exhibit No. 4, p. 2.

Based on its discussions with Fairfield officials, Sound View's initial budget included a rental cost of zero. Sound View Access Plan, p. 28. After that offer was withdrawn, Sound View stated that it is confident that it can secure rental terms of \$10.00 per square foot or less, although it did not offer any written commitments from prospective landlords. Tr. 2/6/98, pp. 590 and 591. Sound View expects that its eventual landlord would retrofit the site to suit Sound View's needs, recouping those costs through a higher rent, estimated at an additional \$1.50 per sq. ft. Tr. 2/6/98, p. 591. Sound View has allocated \$36,000 over four years to reimburse the leaseholder for the cost of renovating the facility (6,000 sq. ft. x \$1.50 x 4). Id. Other estimated upfront costs for facility design, architect, engineering, and legal include \$12,000 for a design engineer, \$25,000 for an architect, and \$10,000 for legal. Late Filed Exhibit No. 4.

Subsequent to the establishment of the main facility, Sound View would investigate options for the creation of a smaller satellite studio closer to Milford, Orange and Woodbridge residents. The Advisory Council conducted a search for a suitable location and Sound View concurs with the Council that if needed, a satellite studio should be located in the Town of Milford. Sound View also proposes to attempt to locate a satellite facility in a library or other public building and use volunteer and part-time staffing to cut costs. Sound View Access Plan, p. 12.

Sound View's plan for the establishment of its facility includes the transfer of certain equipment from Cablevision and SPV. The estimated value of this equipment is approximately \$150,000. Sound View also plans in its first year to purchase a satellite dish that will provide educational and other programming. Tr. 2/6/98, p. 592. Sound View budgets \$136,000 for the purchase of new equipment, in addition to that transferred from Cablevision and SPV. Late Filed Exhibit No. 4. A multi-camera field production system will also be utilized to allow for two and three camera studio quality productions in the field. Sound View intends to rely on competent resources in PEG access equipment in preparing its equipment package and will purchase equipment that will produce the best quality picture and sound for the best price. Sound View states that its goal is to look for equipment that is sturdy, lightweight, easy to maintain. Sound View plans to have equipment in sufficient quantity to allow simultaneous production by a number of PEG access users. Sound View Access Plan, p. 13.

Cablevision charges that Sound View's budget "substantially understates the costs of implementing its plans," most seriously with regard to the proposed facility. Cablevision Brief, p. 10. Cablevision believes that Sound View's estimated rent of \$10.00 per sq. ft. is unrealistic, pointing to its own \$16.74 per sq. ft. rental costs. Id., pp. 10 and 11. Cablevision also describes Sound View's renovation cost estimates as

unrealistic in comparison to the amounts Cablevision spent to equip and modify its current community access facility. *Id.*, p. 11.

Sound View's smallest proposed facility, at 6,000 sq. ft., would not only be nearly three times as large as Cablevision's facility, but also would offer additional edit suites, a library, and other resources, including the innovative outreach studio. Compared to the Nutmeg and Citizens facilities and the number of subscribers in their respective systems, a 6,000 sq. ft. facility is not unreasonable, at least in the long term. However, the Department finds that the larger facilities proposed by Sound View are overly ambitious given the current number of PEG access users. Even the 6,000 sq. ft. facility would require a rapid and substantial expansion in the number of users to justify its size, not to mention the significant issue of limited funding. In terms of facility location, the criteria that Sound View proposes to use are appropriate, and more sensitive than Cablevision to the need for a facility that will attract access users. In addition, unlike Cablevision, Sound View is willing to consider the need for a satellite facility to better serve potential users in the towns of Fairfield, Milford, Orange and Woodbridge. However, Sound View has offered little evidence as to how a satellite facility might affect the planned size of the primary facility or how the satellite would affect the budget.

Cablevision correctly points out that no landlord has committed to rental costs as low as Sound View anticipates; on the other hand, firm commitments are not likely as long as Sound View remains merely an applicant for the community access manager designation. Moreover, Cablevision's argument regarding the low rental cost proposed by Sound View is mitigated by the fact that its rental costs, exclusive of pole rental, are closer to \$9 than \$17 per square foot.⁸ Also, although the Department does not agree with Cablevision's assertion that Sound View "has not actually looked into the cost of retrofitting an access studio,"⁹ based on the Department's experience in other cases, \$36,000 appears to significantly understate the required costs of renovating office space into a studio. Taking financial considerations into account, the Department believes that Sound View should have used more conservative assumptions for planning purposes, including a facility of perhaps 5,000 sq. ft. and higher renovation costs.

3. Personnel

a. Cablevision

Cablevision's budget includes a total of \$220,000 in salaries and benefits for three full-time production technicians and four positions shared with other Cablevision operations: a programming director (1/3), a secretary (1/3), a programming manager (1/2), and a maintenance technician (1/3). \$5,000 is separately budgeted for a Sunday tape operator. Late Filed Exhibit No. 12.

None of Cablevision's Area Two access management staff is located in Bridgeport; rather, they are all located in the Company's Norwalk office. Programming

⁸ See footnote no. 4.

⁹ Cablevision Brief, p. 11, citing Tr. 2/6/98, p. 697.

Director Maryce Cunningham is a member of professional organizations such as the National Academy of Cable Programming and the Cable Television Public Affairs Association, as well as many civic organizations, but does not belong to the Alliance for Community Media. She spends approximately five hours per week at the Bridgeport facility, but is available by phone to address problems at the Bridgeport studio. Tr. 1/13/98, p. 308. One-half of the time of Cablevision's Programming Manager, Nelson Wegler, is allocated to the Area Two access budget. Tr. 1/13/98, p. 457.

Cablevision emphasizes its corporate programming experience and the qualifications of its community access staff. Cablevision has created its own award-winning local programming in Connecticut for more than fifteen years. Cablevision Access Plan, p. 24. In addition, as a multi-system operator Cablevision has substantial experience in the management of community access, currently managing hundreds of PEG access studios in eighteen states. Tr. 1/13/98, p. 253. Ms. Cunningham has a graduate degree in television production and years of experience as a program producer, and has been with Cablevision since 1983. Tr. 1/13/98, p. 229. The Production Technician Senior has a degree in Mass Communications with a concentration in television production and has worked for several years in Cablevision's Master Control Operation. Cablevision Access Plan, pp. 12-14. One production technician has a specialization in audio engineering and the other has a degree in Communications and is an award-winning PEG access producer, journalist and radio talk show producer. Id. Cablevision's Programming Manager has a long and varied career in the production of television programming around the world. Id., p. 16. Additionally, Cablevision has the resources of more than 500 cable professionals on its staff. Id., p. 17.

Sound View states that while Cablevision's community access plan includes reasonable costs for salaries, the fact that the managerial and supervisory personnel will not be dedicated full-time to Area Two access is consistent with Cablevision's past performance, in which the provision of community access has suffered. Sound View Brief, p. 19. For example, despite Cablevision's claim of having available an engineering and purchasing department, the community access facility was without a necessary ladder for an extended period of time because the part-time manager ordered a ladder that was too short. Id., citing Tr. 1/13/98, p. 474. OCC stated that while the Director of Programming has a graduate degree in television production, years of experience as a program producer and has been managing PEG access for over fifteen years, she has not taken responsibility for any of the multitude of problems this PEG access operation has experienced. OCC Reply Brief, p. 5, citing Tr. 1/13/98, p. 229; Tr. 1/13/98, p. 357.

Cablevision's technical staffing plan is appropriate for a franchise of this size. Now that three technicians are working in this system, the technical staffing seems adequate and the salary allocated to these positions is reasonable. However, the allocation of managerial time to this franchise is overstated. Cablevision allocates salary equivalent to approximately 85% of one position to Area Two access management, which is reasonable, but Area Two actually receives far less than that amount of on-site, hands-on managerial time. Although one-third and one-half, respectively, of the salaries of the Director of Programming and the Programming Manager are allocated to the Area Two access budget, these managers are both based

in Norwalk and spend little of their time in the Bridgeport studio. In the franchise renewal proceeding, and again during the hearings in this docket, it became clear that these off-site managers were simply not aware of what is happening in Area Two. In view of the problems plaguing the PEG access operation, which were thoroughly reviewed during the franchise renewal proceeding, Cablevision might reasonably have been expected to appoint a full-time manager to oversee the PEG access operation in Area Two. The presence of a full-time manager would alleviate the need to repeatedly rectify problems that have gone unnoticed and uncorrected by absentee managers for far too long.

b. Sound View

Sound View's budget includes \$251,932 in salaries and benefits in its first full year of operations,¹⁰ compared to the \$220,000 in Cablevision's budget. Sound View proposes five full-time staff positions: a director, a station manager, a program coordinator, a trainer/outreach person, and an administrative assistant. There are also various part-time positions, including evening and weekend technical, security and support staff. Late Filed Exhibit No. 4.

Sound View's primary witness in this proceeding was project manager Thomas Castelot. Mr. Castelot's relevant experience includes more than 21 years of experience in facilities management, human resources training and commercial real estate. He has also been a active member of the Discovery Museum board of trustees for eight years, serving on the building committee, marketing committee and fund raising committee. Mr. Castelot has no television experience. Tr. 1/12/98, pp. 55 and 56.

As the Sound View project manager, Mr. Castelot has spent over a year developing a plan for this franchise. Tr. 1/12/98, pp. 55 and 56. He has met extensively with the directors of Citizens Television and Nutmeg to learn how community access works under the leadership of these two successful non-profit providers. Mr. Castelot also attended the National Conference of the Alliance for Community Media in Milwaukee in 1997 and is a board member of the Connecticut Chapter of this group. Tr. 1/12/98, p. 29.

The Discovery Museum's Board of Directors has committed to lend its experience in governing skills and strategic perspectives to successfully launch Sound View. Tr. 1/12/98, pp. 21 and 22. Further, SPV states that it plans to continue to work closely with Sound View in the provision of community access for Area Two. SPV sees its role as an ongoing resource for Sound View. As part of its overall commitment to community access, SPV plans to continue to provide managerial and technical expertise, and support in the areas of access training and outreach. SPV Brief, p. 8.

Cablevision points out that Sound View, despite spending some \$100,000 to date, has not hired anyone with substantial television or production experience to assist it in formulating its access plan. Cablevision Brief, p. 8, citing Tr. 1/12/98, p. 55. Cablevision is also critical of Sound View's plan to not hire employees or finalize specific position descriptions until the Department has certificated it as a community

¹⁰ Late Filed Exhibit No. 4. Projected budget for 6,000 sq. ft. facility.

access provider. Id., citing Sound View Response to Interrogatory OCC-7. According to Cablevision, Sound View is asking the Department to assume that Sound View will be able to locate, hire and train a team that is capable of meeting the unusual challenges of managing community access. Id., pp. 8 and 9.

The Department acknowledges the time and resources devoted to this project by the Discovery Museum and the research done by Mr. Castelot. The Department believes that if selected as the community access manager for Area Two, Sound View would benefit from the support of the Discovery Museum, whose Board of Directors has committed to lend its experience in governing skills and strategic perspectives to successfully launch Sound View, and also from the extensive technical and managerial resources of SPV, which is willing to provide advice and technical assistance along with access training and outreach support. Tr. 1/12/98, pp. 21 and 22; SPV Brief, p. 8. No other non-profit organization has come before the Department with such support for its application to become a community access manager.

It is obvious that the community access organization for this franchise area must include personnel with knowledge of the technical aspects of video transmission, television production, video equipment requirements and maintenance. The technicians could also share with management the duties of training and outreach. Based on the problems experienced by Cablevision when it was understaffed in this area, the Department believes that Sound View's personnel budget amount is reasonable, but its technical staffing needs may be slightly understated.

4. Training, Outreach and Promotion

a. Cablevision

Cablevision states that the present condition of its training program is good, a far cry from the program that elicited user and Department complaints during the 1996 renewal hearings. Cablevision Reply Brief, p. 5. A new training class is begun every six weeks. There are five sessions, plus a sixth week for make-up or any additional assistance needed by class members. Cablevision states that each session contains a great deal of personal attention and hands-on exercises, and that its staff is always available to give individual attention to potential users who need a more focused presentation. Cablevision states that training was recently made available on Saturdays, and upon request it offers special classes to groups outside of the regular training schedule. Tr. 1/13/98, pp. 247 and 263. Eight classes are scheduled for 1998. Tr. 2/25/98, p. 876.

Cablevision claims that recent comments concerning the training program have been "overwhelmingly positive." Cablevision Reply Brief, p. 4, citing two letters included in Late Filed Exhibit No. 10 and Tr. 2/6/98, p. 570. On the other hand, Advisory Council member Paula Patterson was not satisfied with the training she received in fall 1997. For example, although the class time was listed in the information packet as 6 to 9 p.m., the sessions actually lasted only one hour and 40 minutes and her request for additional practice time was refused. Tr. 1/12/98, pp. 42 and 43. She also stated that the informational handout consisted of six pages copied from the training manual of

Citizens TV and that the "hands-on" training was very limited. Id., pp. 43 and 44. Cablevision has a training evaluation form, but it is not being used, a fact that the Director of Programming learned only during the hearings. Tr. 1/13/98, pp. 378 and 472.

Cablevision claims that its community outreach activities are well-known in the area and stand high on its list of achievements. Cablevision cites its OptimumTV Scholarship Program, encouraging classes to visit its studios, internships and Company representatives' frequent participation in local schools career presentations. Cablevision has begun working with local schools to offer programming on the Educational access channel. Cablevision lists in its monthly program listing guide any PEG access programs that are scheduled prior to the guide's publication deadline. It also lists PEG access programs on the alphanumeric guide channel and on the community access channel itself. Cablevision states that it also donates commercial time to run community public access promotional spots, noting that one such public service announcement was created by an Area Two resident and former advisory council member. A daily message is run on the system Community Bulletin Board inviting viewers to create their own television programs and suggesting that they call Cablevision for information about PEG access and training. Cablevision Access Plan, pp. 28-31.

A program entitled "This is Public Access" was produced in the PEG access studio to promote community access and is hosted by the Access Coordinator, who discusses PEG access and training with the Program Director. A separate segment with three producers gives advice to potential producers on methods of producing programming. Also, a segment of a Cablevision local origination program was devoted to community access. Id.

Cablevision's training, outreach and promotion of community access were harshly criticized in the franchise renewal proceeding. Since then, those programs have improved, although some problems with training may still exist. If the outreach and promotion programs are successful, the result will be increased programming and an increased number of access users.

b. Sound View

Sound View considers community access training to be one of its highest priorities. This organization believes that a primary purpose of PEG access is to train community members, groups, other non-profit organizations, educational institutions and government entities to create programming of interest to the community. Sound View believes that Discovery Museum's expertise in teacher, adult, technical and other training programs will be valuable in designing and implementing its community access training courses. Sound View Access Plan, p. 13.

Enrollment in Sound View's training courses will be on a first-come, first-serve basis. Training will be scheduled frequently and at varying times, including evenings, days and weekends. Id. Participants in each training session will have the opportunity to assist with current productions. After completing the training requirements, certification will be granted which will allow producers to use the center and produce

programs. Sound View Access Plan, pp. 14 and 15. Sound View also will establish a resource library containing technical articles, trade magazines equipment manuals and other resource books available for loan to interested producers. Id.

Sound View also plans to work with educational and governmental institutions to develop programming in these areas. Sound View staff will work with educational and governmental representatives to develop program needs, concepts, scripts and oversight of the final production. Sound View will rely on producers, volunteers, students, and interns to operate cameras and to fill other technical positions for cablecasting of live and taped events. Sound View Access Plan, p.15.

Open forums and seminars will be held in order to stimulate interest in community access. Sound View believes it must create an open and user-friendly PEG access environment and it will collaborate with the Advisory Council and the cable operators to deliver quality access services. Sound View will participate in local, state, and national PEG access alliances such as the Alliance for Community Media. Sound View Access Plan, p. 16.

Outreach plans also include initiatives to encourage producers and recognize their work. A producer database will be maintained to track producer progress, list particular volunteer and producer interests, equipment certifications, program library and availability to work on programs. A Sound View newsletter will be developed to provide notification of advanced workshops, special events, annual meetings volunteer opportunities, special recognition and other pertinent information. Sound View's outreach plans also include forming a producers club that fosters fellowship and is run by its members. Sound View Access Plan, p. 17.

5. Economies of Scale

Cablevision claims that its community access operations benefit from certain economies unavailable to Sound View. For example, Cablevision states that it has the resources of more than 500 cable professionals on its staff. Cablevision Access Plan, p. 17. According to Cablevision, other significant economies available through a company-based PEG access operation include: broader employee benefits package, purchase of equipment at the Company's parent company discounted rate, unallocated services (equipment and facility repair and maintenance, cleaning, security). In addition, Cablevision claims that utilities, insurance, and services are less expensive when purchased in bulk. Furthermore, Cablevision states that its in-house legal fees are not charged to the PEG access budget. Access Plan, pp. 54-58.

Sound View contended that Cablevision's assessment of the savings available to it for equipment purchases is overestimated. Sound View produced a video magazine to demonstrate that Cablevision's "discounted purchase prices" were higher than typical magazine list prices. Tr. 1/13/98, pp. 437-441. Sound View contends that its relationship with the museum will provide financial economies to its operation. Among the significant economies available to Sound View are public relations support, accounting and financial services, insurance savings and teacher and instructional support. Late Filed Exhibit No. 3. Sound View states that its relationship with the

Discovery Museum and the shared services and economies of scale it would provide have a value of approximately \$27,000. Tr. 2/6/98, p. 584; Late Filed Exhibit No. 3.

The Department acknowledges that a company Cablevision's size could probably avail itself of certain economies of scale not available to a comparably smaller, non-profit, such as Sound View. But the extent of these economies, and the extent to which they are passed on to subscribers or community access operations, has not been clearly demonstrated. For example, while the two applicants budget virtually the same amount for "utilities," Sound View budgets \$4,500 for telecommunications, while Cablevision budgets \$13,822, five percent of its total telecommunications costs. Late Filed Exhibits Nos. 4 and 16; Cablevision Operating Plan, p. 61. Cablevision's total telecommunications costs, for which it claims to enjoy volume discount rates, include those for its dispatch operations and customer service representatives, which makes its 5% allocation unreasonable. Operating Plan, p. 6. Cablevision also claims that its in-house legal fees are not charged directly to the community access budget, but it falls short of claiming that legal fees are not charged to its access budget at all. Operating Plan, p. 57.

6. Start-Up Costs and Transition Period

a. Sound View Proposal

As a new organization, Sound View lacks the facilities and equipment that any established PEG access provider would already possess. In addition, the Discovery Museum has already expended approximately \$100,000 in preliminary costs for which it would like to be reimbursed. Late Filed Exhibit No. 3, p. 3. There was considerable controversy regarding Sound View's proposals to fund its start-up costs.

Initially, Sound View proposed that the Department order Cablevision and SPV to provide a \$500,000 capital grant to cover start-up costs associated with a 10,000 sq. ft. PEG access facility. Sound View Access Plan, p. 18. On January 26, 1998, Sound View filed revised budgets that presented a downsized 8,500 square foot facility as its optimum facility size and a separate 6,000 square foot model. The various schedules in the revised budgets relate to the size of the facility and whether a grant or higher per subscriber fees are used to provide start-up funds. Tr. 2/6/98, p. 579. The grant requested for either facility is \$275,000. Tr. 2/6/98, p. 581; Late Filed Exhibit No. 4, Schedules A-D.

Schedules A (6,000 sq. ft.) and C (8,500 sq. ft.) assume that the Department orders SPV and Cablevision to provide a \$275,000 capital grant. Late Filed Exhibit No. 4, p. 2. In addition, during the first year transition period, Sound View proposed that the \$5.00 per subscriber revenue be divided as follows: Cablevision would continue to manage PEG access for \$2.00 per subscriber and provide the remaining \$3.00 per subscriber per year to Sound View in start-up funds. Similarly, in these scenarios, SPV would provide \$3.00 per subscriber per year to Sound View for start-up funding and \$2.00 to Discovery Museum to extend its Interim Agreement to provide limited PEG access to SPV subscribers. Thus, under these proposals, Sound View would receive approximately \$274,500 in per subscriber revenues for its operating expenses in year

one, in addition to the \$275,000 capital grant. Id., pp. 2 and 3. One month prior to the end of year one, Cablevision would transfer its studio equipment, control room equipment and portable equipment to Sound View. At the same time, SPV would also transfer its equipment from the museum to Sound View's studio. Id.

Commencing with the start of the second year under the capital grant scenarios (when Sound View assumes community access management) and continuing through year three, Sound View proposes that the subscriber fee would be increased to \$5.50 per subscriber for a 6,000 square foot facility while \$5.75 would be necessary for an 8,500 square foot facility. Late Filed Exhibit No. 4, pp. 2 and 3. The higher per subscriber fees would apply to both cable operators. Id.

Sound View also submitted alternative scenarios for 6,000 and 8,500 square foot facilities assuming that no capital grant would be provided. In these scenarios, Sound View assumes that Cablevision and SPV would continue to provide community access through year one while Sound View establishes its facility, but all of the subscriber fee revenue would be diverted to Sound View. Late Filed Exhibit No. 4, pp. 3 and 4, Schedules B & D. Apparently no funds would be available to the actual access providers during the transitional year. Why Sound View believes that cable operators would provide access without compensation is not explained. These scenarios assume funding of \$6.00 per subscriber in the first year and \$5.50 in the second and third years for a 6,000 square foot facility and \$5.75 for the larger facility. As in the capital grant scenarios, one month prior to the close of the year, the cable operators would transfer equipment to Sound View. Id.

In addition to capital grants or higher per subscriber fees, the budgets assume the transfer of equipment estimated by Sound View to have a value of \$150,000.¹¹ The budgets detail the replacement of specific types of equipment to be purchased over the next three years. In evaluating the cost of equipment maintenance and replacement, Sound View used the industry standard of 9% for maintenance cost as equipment ages and 15% for equipment replacement per year. Tr. 2/6/98, pp. 582 and 583. Based upon its review, the Department finds that Sound View may have underestimated the salvage value and useful lives of its equipment.

Sound View's proposal of a twelve month interim period in which Cablevision and SPV (through the Discovery Museum) would continue to provide PEG access while Sound View selects and renovates rental property into a suitable access facility is reasonable. Although it would be advantageous and more economical for Sound View to shorten this period if possible, the Department can envision that the process may take considerable time. Sound View's financial assumptions, however, are not reasonable. In its capital grant scenarios, Sound View assumes that both Cablevision and SPV can operate access on \$2 per subscriber per year. Although Cablevision appears to have overstated its costs, the legitimate costs are most likely greater than \$2 per subscriber per year. The assumption is also dubious for SPV, although its PEG

¹¹ Of the total of \$150,000, approximately \$45,000 worth would be transferred by SPV; the remainder by Cablevision. SPV is willing to transfer the equipment to Sound View. SPV Brief, p. 23.. Cablevision, however, is only willing to sell the equipment to Sound View. Cablevision Brief, p. 13, citing Tr. 1/13/98, pp. 326-327.

access operation is very limited. However, in its fee-only scenarios, Sound View goes much further, inexplicably assuming that both cable operators can and will provide PEG access for free for an entire year, with no reimbursement. The Department considers this assumption unrealistic and unfair.

b. Cablevision Position

Cablevision attacks Sound View's proposals for funding start-up costs as unrealistic. Cablevision Brief, p. 12. Sound View projects pre-opening revenues of at least \$649,000, but, in Cablevision's view, "revenues of this magnitude will not be available to Sound View." First, although Cablevision is willing to sell its PEG access equipment to Sound View for its depreciated value, "the equipment was purchased by Cablevision with shareholder funds and Cablevision cannot be required to contribute it to Sound View." *Id.*, pp. 13 and 14, citing Tr. 1/13/98, pp. 326 and 327. Similarly, Cablevision argues that the Department lacks the legal authority to direct Cablevision to make large cash grants to meet Sound View's pre-opening budget. *Id.*, p. 14.

Cablevision next turns to Sound View's proposal that \$3.00 of the \$5.00 annual per subscriber funding be turned over to it during year one, while Cablevision would retain \$2.00 and continue to manage community access. This amount would be at least \$274,000 with a capital grant and at least \$549,000 without such a grant, but Cablevision argues that "no such money is available from subscribers unless their cable rates are increased." Cablevision Brief, p. 14. In support of this conclusion, Cablevision states that in its most recent filing of Federal Communications Commission Form 1240, it "has not increased its rates to cover its community access expenses." *Id.*, p. 15. More broadly, Cablevision goes on to make the claim that it "has never passed the costs of community access on to its subscribers." *Id.*, p. 23. Finally, Cablevision concludes that because it is not charging its customers for community access, there is no money available to support Sound View if it were the designated community access provider unless rates were increased, a step Cablevision is unwilling to take. *Id.*, p. 15.

Cablevision's claim that it has never passed the costs of community access support on to its subscribers is not correct, as explained by the following brief history of cable rate regulation. Prior to 1984, the Department regulated cable rates using traditional cost of service methodology, and all legitimate costs, including mandated access support costs, were a part of those regulated rates. Cable rates were deregulated between 1984 and 1992,¹² and it is a safe assumption that Cablevision's unregulated monopoly rates more than fully recovered its costs, including PEG access costs, during that period.

In 1992, Congress passed the Cable Television Consumer Protection and Competition Act, which re-regulated cable rates. In 1993, as directed by Congress, the Federal Communications Commission (FCC) implemented its "benchmark" system of rate regulation. Under this regulatory option, a cable operator's rates for regulated services were compared to a benchmark that represented what a competitive cable

¹² There was a 5% cap on annual rate increases for the first two years after 1984; thereafter there were no limits on rate increases until 1992.

system with the same basic characteristics would charge.¹³ If the operator's rates were higher than the competitive benchmark, they had to be reduced, either to the benchmark, or by 10% from the September 1992 level, whichever was the lesser reduction. In its first filing under the benchmark system, Cablevision's rates were found to be higher than the benchmark.¹⁴ The rates were not reduced to the benchmark because that reduction was greater than 10% of the September 1992 rates. By definition, the FCC's benchmark fully compensated cable operators for all costs, including a reasonable profit. Because Cablevision's initial regulated rates exceeded that benchmark, it follows that those rates more than fully covered all of Cablevision's costs during the September 1993-July 1994 period.¹⁵

Pursuant to subsequent rate Decisions, from July 1994 to March 1997, the maximum permitted rate was adjusted and Cablevision charged the maximum permitted basic rate. After March 1997, Cablevision generally did not increase its basic rate to reflect increases in the maximum permitted rate.¹⁶ The most recent rate filings calculated an increase in maximum permitted basic rates due largely to higher community access support costs required by the October 15, 1997 Franchise Agreement. Cablevision could have increased basic rates to the maximum permitted level, but did not do so. However, although it is true that Cablevision is not charging customers as much for basic service as is legally allowed, that is not the same as what Cablevision is claiming, that it is not charging its subscribers for access support. Because the initial regulated rates were, by definition, more than fully compensatory, it is not at all certain that Cablevision's current rates are not covering all its costs.

c. Legal Issues

Cablevision raises several legal arguments supporting its contention that the Department cannot legally order the funding which Sound View seeks. First, as discussed above, Cablevision asserts that it does not charge its customers for community access, and therefore there is no funding to be passed through to a non-profit organization. Brief, p. 15. This argument is creative but baseless. Cablevision is required to provide annual funding of community access programming in the amount of \$5 per subscriber, plus inflation. Whether or not it chooses to pass that cost on to its subscribers is a business decision over which the Department can not exercise jurisdiction. The fact remains, however, that Cablevision is required to provide support for community access programming regardless of the entity managing the programming. If, during a transition to a new access manager, the full amount of

¹³ These characteristics included the number of subscribers, the total number of channels, and the number of satellite-delivered channels. Calculation of the benchmark was not based on any cost or revenue data.

¹⁴ This filing applied to rates effective during the period September 1, 1993 through July 14, 1994. See Docket No. 93-12-02, DPUC Review of Basic Cable Rates and Equipment of Cablevision of Southern Connecticut, Limited Partnership, Decision dated August 17, 1994, p. 11, and Docket 93-12-02, Amended Decision dated May 10, 1995.

¹⁵ During that initial 1993-1994 period, Cablevision charged its customers the maximum permitted rate. In fact, it charged more than the maximum permitted for basic service and installation and equipment service and was required to refund the overcharges.

¹⁶ Cablevision charged different rates in the Fairfield County portion of its franchise area than in the New Haven County portion, and also different rates for upgraded, non-upgraded, and Optimum service.

funding were not needed to maintain PEG access operations, the surplus does not revert to the private accounts of the existing PEG access manager. The obvious use for such surplus funds would be, as Sound View suggests, a portion of the new manager's start-up costs.

Moreover, Cablevision's Franchise Agreement does allow for a change in the \$5.00 per subscriber per year funding level within a range of \$2 to \$7 for good cause shown.¹⁷ Franchise Agreement Section 7.2. Thus if additional funding is required to establish Sound View's studio or fund other PEG access related expenses, the Department may adjust the current funding level.

Despite the explicit provision in its Franchise Agreement allowing adjustment of the access support amount, Cablevision contends that the Department is bound by its Decision in Docket No. 94-03-05 in which it set the per subscriber per year amount necessary to cover PEG access. Brief, p. 19. Cablevision claims that "it would be unfair and unlawful for the Department to now modify that finding or the funding level simply to facilitate the budget offered by Sound View." *Id.*, p. 20. The Department draws Cablevision's attention to Conn. Gen. Stat. § 16-331a(c) which states: "If the department selects an organization to provide community access operation, the company shall provide financial and technical support to the organization in an amount to be determined by the department."

Cablevision also claims that "it would be both unfair and unlawful for the Department to mandate that Cablevision fund Sound View at a level in excess of \$5.00 per subscriber per year unless SPV is ordered to contribute an equivalent per-subscriber per-year amount." Brief, p. 23. As there has been no suggestion that if the Department found that a higher level of funding were required, that it would apply only to Cablevision, not SPV, this argument is premature.

Finally, Cablevision raises a concern regarding the Gross Receipts Tax. As the Department stated in the Decision dated April 1, 1998, in Docket No. 95-04-26, Application of TCI Cablevision of Central Connecticut/Vernon for Franchise Renewal: "There has been no definitive determination by either the FCC or the judicial system supporting . . . the claim that the Connecticut gross earnings tax is a franchise fee under federal law. Accordingly, the Department will leave this determination to a court of competent jurisdiction." Decision, p. 14.

After arguing that annual PEG access funding cannot serve as a source of Sound View's start-up costs, Cablevision next argues that the Department may not order the alternative proposed by Sound View, a capital grant, under state or federal law.¹⁸ Cablevision Brief, pp. 21-23. Both OCC and Sound View contend the Department has the authority to order a capital grant to fund Sound View's start-up

¹⁷ Although the Franchise Agreement specifies the low end of the range as \$2, it should be \$3, pursuant to Conn. Gen. Stat. § 16-331a(k).

¹⁸ Much of Cablevision's argument against capital funding rests on its interpretation of Conn. Gen. Stat. § 16-331a(k) which codified Public Act 95-150. However, Cablevision fails to note that it is not bound by the terms of Public Act 95-150. Any argument it advances regarding the authority of the Department to order capital grants based on the provision of the statute is inapposite to this case.

costs, citing the Department's April 1, 1998 Decision in Docket No. 95-04-26. OCC Brief, p. 18; Sound View Brief, pp. 8 and 9. The Department notes that its determination of the need for a capital grant was made in the TCI Vernon case during a franchise renewal proceeding and that funding requirement was incorporated in TCI's Franchise Agreement. Cablevision has recently completed a franchise renewal proceeding which resulted in a Franchise Agreement that does not include the possibility of a capital grant. Accordingly, the Department will not require a capital grant in this case if additional funding is found to be necessary.

Although Cablevision considers the transfer of PEG access equipment proposed by Sound View to be a capital grant, the Department believes it to be a separate issue. Cablevision states that the Department is prohibited from ordering an equipment transfer because "any such order would constitute an unconstitutional taking of Cablevision's property without just compensation." Cablevision Brief, p. 23. Because "Cablevision has never passed the costs of community access on to its subscribers," the equipment was purchased with shareholder funds and "therefore, Cablevision has retained ownership of all of the community access equipment currently being used by its subscribers in Area Two." *Id.*, pp. 13 and 23. Cablevision is only willing to sell the equipment to Sound View at its depreciated value. *Id.*, p. 13.

Although, as discussed above, it is not correct that Cablevision has never passed the costs of community access on to its subscribers, the Department believes that the issue with regard to the equipment is not its ownership, but rather its purpose. Consistent with state law and Cablevision's franchise obligations, the equipment was purchased and intended to be used only for community access purposes.¹⁹ If the Department were to transfer community access management responsibilities to another provider, Cablevision would be able, if it chose, to retain ownership of the equipment and accrue whatever tax deductions or other benefits of legal title may exist, but the equipment should continue to function as before: serving the community access needs of the franchise area. If community access management were to be transferred from a non-profit organization back to the cable operator, the equipment likewise would be transferred.²⁰ It would be unfair if different rules applied to cable operators. The Department also notes that in the several prior instances of transfers of PEG access responsibility to a non-profit organization, no other cable operator has balked at transferring the equipment at no charge.

7. Comparison of Operating Plans

For purposes of preparing budgets and operating plans, both Sound View and Cablevision initially assume subscriber fee revenue of \$5.00 per subscriber per year, the amount of support required by the Department of both franchise holders in Area Two. However, Cablevision's Franchise Agreement provides that "for the first two years

¹⁹ To the extent that any access equipment was also used for other purposes, such as the mobile van, it is the Department's understanding that Sound View has not proposed that it be transferred and therefore it is not an issue here.

²⁰ Such a transfer has in fact happened. In that instance, ownership of the equipment was transferred to the Advisory Council, but the equipment itself was used by the new access manager, the cable operator. Docket No. 88-07-26, Sammons Communications of Connecticut, Inc. Franchise Renewal - Reopening, Decision dated June 30, 1995.

of the franchise term, up to 20% of Franchisee's community access funds may be spent on educational access, governmental access, and the I-Net expenses collectively." Cablevision Franchise Agreement, Section 7.2. Because of this provision, Cablevision based its budgets on annual revenue of \$4.00 per subscriber, or \$360,000 in the first year. Sound View made no such deduction, and its initial budget was based on the full \$5.00 per subscriber.

Sound View proposes a community access facility that is almost three times the size of Cablevision's with far greater room for production, editing and training. Sound View estimates the annual rental costs for the larger facility to be only about one-third greater than those of Cablevision: \$42,000 compared to \$60,000. The personnel costs of the two applicants are similar--\$252,000 for Sound View; \$220,000 for Cablevision--although the proposed positions are different.

Sound View's budget for its first year of operations shows operating costs of \$414,987, while Cablevision budgets operating costs for the same period at \$294,923. The difference is \$120,064, of this total, \$80,000 can be attributed to expenses not shown in Cablevision's budget, such as insurance, accounting and legal services, maintenance, engineering, and technical supplies. Sound View's budget includes capital costs of \$261,000, while Cablevision shows capital costs of \$67,900. At least in part, this disparity reflects the fact that an existing community access provider has no start-up costs and only limited capital needs. Late Filed Exhibit No. 4; Cablevision Operating Plan, pp. 54-61.

Cablevision apparently believes the PEG access budget should cover a portion of its expenses for line maintenance, signal transmission, interconnection and head end equipment. It provided the following detailed list of items it believes would be appropriately attributable to PEG access if a non-profit organization is designated the access provider:

- A capital cost of \$180,000 to interconnect the new facility to Cablevision's headend;
- One-third of the salary stated as \$29,000, of the Programming Director to act as liaison with the non-profit;
- An annual salary of \$46,000 for a Line Technician to maintain fiber lines and,
- A \$32,000 annual salary for a Master Control/Headend Technician to maintain the switching and routing of equipment in the master control and headend.

The total of these charges to the PEG access budget is \$287,000. Late Filed Exhibit No. 17. In the opinion of the Department, these expenses are not appropriately attributed to Cablevision's community access budget when the non-profit organization is actively managing PEG access, although the services of the programming director could be valuable in facilitating the transition to the new PEG access manager.

Sound View criticized Cablevision's operating plan for failing to commit to a larger access facility, and for conditioning certain commitments upon the results of

further investigation and uncertain funding. Sound View Brief, pp. 17 and 18. Cablevision counters that Sound View's operating plan lacks the specificity required to determine its management ability. Cablevision Brief, pp. 36 and 37. OCC states that Sound View has thoroughly researched budget items and reasonably depicted all pertinent aspects for two flexible model facility sizes, based upon the application of the best attributes of model operations. OCC Brief, p. 12, citing Tr. 1/12/98, pp. 14 and 209; 2/6/98, pp. 594 and 595. OCC cites Cablevision's "excessive and irresponsible funding of the mobile van" as a key illustration of the ineffectiveness and inefficiency of its PEG access operating plan. Id., p. 13.

Comparison of Sound View's community access operating plan with that of Cablevision is complicated by the fact that Sound View is a small, non-profit start-up while Cablevision has had years of experience managing community access and modifying its operating plans. It appears to the Department that Sound View has included an appropriate amount of flexibility in its operating plan to allow it to adapt to changes while it eagerly moves toward full operation. Cablevision, despite its years of experience, continues to operate community access in a somewhat begrudging manner, and to allocate costs and pass on charges that do not belong in a community access budget

F. PROGRAMMING QUALITY AND QUANTITY

It is difficult for a community access provider to ensure the quality of PEG access programming since it is unable to exert editorial control over the programming submitted for broadcast. However, a PEG access provider can encourage the steady production of programming most likely to be considered worthwhile to the community by being creative in the promotion of its facility and the many diverse types of programming that may be produced. Sound View's affiliation with the Discovery Museum would allow it to encourage educational and cultural programming.

The quantity of programming actually produced at Cablevision's Bridgeport studio is less than would be expected in a franchise of this size but is not surprising given the lack of promotion and lack of accessibility of its studios. Much of the programming shown in this franchise is actually produced in Area Nine and is sponsored for broadcast in this franchise by Area Two residents.

Prior to its system upgrade, Cablevision regularly cablecast BET on its community access channel in the late night hours. Because the late night hours were reserved for BET, Cablevision scheduled certain adult programming during prime viewing hours, causing many complaints from members of the community.

G. COMPLIANCE WITH FEDERAL AND STATE LAW

The operating plans of Sound View and Cablevision contain appropriate procedures to ensure compliance with applicable law.

H. INTERCONNECTION

The term interconnection refers to the ability of the community access provider to cablecast its programming simultaneously to subscribers of all cable operators through physical interconnection of the cable networks and the community access facility. The alternative to interconnection is for a separate community access facility to serve each cable operator. The Department believes that interconnection represents the best use of subscriber funds for PEG access support as it avoids the wasteful duplication of PEG access facilities and the diseconomies of scale involved in support of two facilities in one PEG access programming area. In terms of the number of dollars potentially involved, interconnection is extremely significant.

In its Decision dated September 26, 1996 in Docket No. 96-01-24, Application of SNET Personal Vision, Inc. for a Certificate of Public Convenience and Necessity, the Department concluded that although interconnection was in the public interest, it had no legal authority to order cable operators to interconnect with one another. During the proceeding in Docket No. 96-01-24, several cable operators, including Cablevision, made clear their firm opposition to interconnection with access facilities. None except SPV expressed support of interconnection, although a number were willing to consider it. In contrast, the non-profit access providers participating in that proceeding expressed support for interconnection. SPV has subsequently entered into interconnection agreements with all the non-profit community access providers in the towns in which it is currently providing service.

Despite Cablevision's previously expressed opposition to interconnection, at the February 6, 1998 hearing in this proceeding, Cablevision informed the Department that it was now open to discussing interconnection with SPV in both Area Two and Area Nine. Tr. 2/6/98, pp. 717 and 718. Cablevision pledged to negotiate in good faith with SPV in an effort to reach an interconnection agreement. Tr. 2/6/98, p. 718; Cablevision Brief, p. 37.

As of the close of the record in this docket, however, no interconnection agreement between Cablevision and SPV has been reached or even discussed. Both parties reported that their first meeting held on March 20, 1998, failed to produce an agreement. SPV was willing to discuss interconnection for Area Nine but was unwilling to discuss an agreement in Area Two during the pendency of this proceeding. Cablevision declined to discuss interconnection for Area Nine and the meeting concluded without any future date set to continue discussions. Cablevision expressed surprised at SPV's refusal to discuss interconnection during the pendency of this proceeding. SPV Reply Brief, p. 12; Cablevision Reply Brief, p. 14.

Based on the evidence in the record of this proceeding, the Department concludes that interconnection between the competing cable operators is a possibility if Cablevision retains responsibility for community access management. If Sound View is the designated community access provider, the Department expects that it will be able to reach an interconnection agreement with SPV as have other non-profit community access providers in other franchise areas.

I. SELECTION OF A COMMUNITY ACCESS PROVIDER

The Department has evaluated the evidence on the record of this proceeding in light of the statutory criteria and finds that although both Cablevision and Sound View are qualified to serve as the community access provider, Sound View is the better qualified of the two applicants to provide and promote community access in this franchise area.

Never before has the Department undertaken such an intensive and detailed review of an application for designation as the community access manager as occurred in this proceeding. Similarly, in no previous case did the cable operator seek to retain community access management after having agreed to consider a non-profit provider. The selection of the community access manager in this franchise area was difficult because although both applicants have important strengths, the proceedings also brought to light the weaknesses of both.

Sound View has strong support from the Advisory Council, area elected officials, and the OCC, and its association with the Discovery Museum provides an excellent opportunity for the production of quality educational programming. Sound View's operating plan has impressive goals, including a facility significantly larger than the current one and proposed to be sited in a more attractive location than the current PEG access facility. Sound View also proposes to provide enhanced community outreach and training programs. Moreover, as a non-profit community-based organization, Sound View's commitment to community access is not a side line, but its entire reason for being, an advantage that the Department believes will enable it to recruit many new PEG access users and increase the quality and quantity of access programming.

At the same time, Sound View's goals are overly ambitious in view of the available resources and current needs. The Department appreciates that state statutes concerning community access support are subject to varying interpretations, but cannot agree with Sound View that federal law would permit the Department to order community access support in excess of that required by existing franchise agreements without the franchise holder's consent. Even if it were legally permissible, the Department is not willing to impose unnecessary burdens on subscribers, the ultimate source of community access support.

Cablevision's strengths include the technical and professional competence of its parent corporation as well as the franchise holder and its direct experience in PEG access management. As one of the nation's largest entertainment companies, the parent corporation has demonstrated success not only in cable television but also in related areas such as programming. As a cable television operator, it has achieved recognition for excellent local programming such as its News 12 operation and certainly has the resources to attract highly qualified staff. Despite these corporate advantages, until very recently Cablevision's performance in community access management has been lackluster at best. From at least 1984 until 1995, in fact, without Department approval, Cablevision sub-contracted PEG access management in this franchise area first to one university and then another, an arrangement that had numerous problems. It is only since 1997, under the intensive scrutiny of the franchise renewal proceeding and this docket, that Cablevision has demonstrated some improvement, and the means

to manage a community access operation in a manner that is at least minimally adequate. Judging Cablevision's PEG access management experience not just during the last two years but throughout its tenure in this franchise area, the Department finds it to be fair to poor, providing little assurance that the current level of performance would not deteriorate when the spotlight of public hearings is gone.

With regard to Cablevision's operating plan and budget, the Department questions the value that subscribers would receive for the community access support they provide. While Sound View's proposed budget would have cost subscribers more than Cablevision's and more than necessary, Cablevision's budget would improperly allocate general corporate expenses—the employee cafeteria and restroom space, pole rental costs, and the mobile van, for example—to the PEG access budget. In terms of what Cablevision's proposed budget would provide, the PEG access facility is small relative to the number of subscribers in the franchise area and would be inadequate if better community outreach increased the number of users substantially. In the past, managers located in Norwalk have been unable to identify or rectify problems in Bridgeport in a timely manner, leading the Department to question the continued lack of on-site management of the Bridgeport access facility in Cablevision's operating plan. Operating Plan, p. 59; Tr. 1/13/98, pp. 456-459.

In addition to evaluating the strengths and weaknesses of the applicants, the Department considered how community access can best serve the community in a competitive environment. In the Decision awarding a cable franchise to SPV, the Department concluded that:

interconnection is the best method of providing community access in a competitive environment because it enhances the sense of community, rather than facilitating its division, and because it makes the best use of available resources, avoiding wasteful duplication of facilities. The Department also notes that it furthers the articulated goal of the state in telecommunications to "encourage shared use of existing facilities and cooperative development of new facilities where legally possible, and technically and economically feasible." Conn. Gen. Stat. § 16-247a (a) (5).

Docket No. 96-01-24, Decision dated September 25, 1996, p. 108.

Although interconnection is possible if a cable operator were the designated PEG access manager, and Cablevision has now expressed a willingness to discuss it, in the Department's experience and judgment, interconnection is all but assured if a non-profit organization is the PEG access manager.

The Department has reviewed both plans and the statutory criteria and finds that while both plans have flaws, subscribers in this franchise area would be better served by Sound View. Sound View's commitment to serve the communities of this franchise, the ability to precisely track its expenses, its affiliation with a non-profit entity that has demonstrated the excellence of its staff and its value to the community and its willingness to work with both SPV and Cablevision make Sound View the better choice to manage PEG access. The Department's authorization of Sound View to assume the

management of community access in this franchise is conditioned upon Sound View's modification of its operating plan and budget and compliance with the reporting requirements detailed below. In addition, the Department will conduct a performance review at the conclusion of the first full year of Sound View's operations.

IV. TRANSITION ISSUES

A. FUNDING

Cablevision's Franchise Agreement allows the Department to adjust the level of access support within a range of \$2.00 to \$7.00 per subscriber per year, as provided by Conn. Gen. Stat. § 16-331a(k).²¹ However, the Department believes that the current level of community access support, \$5.00 per subscriber per year, adjusted for inflation, is adequate, given the large number of cable subscribers in Area Two and the small number of access users. Nevertheless, there is a need to make certain other modifications in the area of community access funding to accommodate the selection of a new organization to provide PEG access management.

Cablevision's Franchise Agreement currently provides for support for community access on a steady annual basis. This is suitable for an established community access operation; it will not, however, meet the first year needs of a start-up access organization such as Sound View. Before it can actually assume responsibility for access operations, Sound View will need time and funds to identify a suitable location for a community access facility, oversee renovations, arrange for equipment purchases and transfers, hire staff, make the necessary adjustments to its budget and operating plan, and otherwise prepare to take over day-to-day operations. Although it will have relatively low operating expenses during the transition period, Sound View will need to make substantial capital investment, primarily in equipment and space renovation, to develop a new facility. The Department estimates that Sound View can accomplish the necessary tasks with approximately \$350,000 in funding during the transition period. The Department believes these funds are most appropriately provided by shifting some of the community access support payments from the future to the present, in other words, a loan from future support obligations to meet the needs of the present. As a loan, these funds will not increase the community access support obligation as a whole during the franchise term.

Accordingly, the Department will direct the cable operators in this franchise area to lend \$350,000 to Sound View, \$50,000 of which will be loaned by SPV and the remaining \$300,000 will be loaned by Cablevision. Once Sound View assumes responsibility for community access operations, it will begin repaying the franchise holders according to a schedule proposed by Sound View and approved by the Department, but in any event not to exceed the length of Cablevision's franchise term. The Department originally contemplated repayment of the loan with interest at the rate used by the Internal Revenue Service. During Oral Argument, it was posited that the additional interest expense might cause a hardship upon Sound View and accordingly, upon subscribers. The Department has determined that a lower and more appropriate

²¹ Although the Franchise Agreement specifies the low end of the range as \$2, it should be \$3, pursuant to Conn. Gen. Stat. § 16-331a(k).

rate for these circumstances is the rate that utility companies must pay on security deposits in accordance with Conn. Gen. Stat. § 16-262j(d), currently 2.6%. This rate, which is determined annually, is equal to the average rate paid on savings deposits by insured commercial banks as published in the Federal Reserve Board Bulletin in November of the prior year. Moreover, this lower interest rate, which may be waived by both cable operators,²² would reduce Sound View's expenses over the life of the loan as well as the need for Sound View to seek an increase in the per subscriber funding amount set by the Department.

B. COMMUNITY ACCESS OPERATIONS

Cablevision and SPV will continue to have responsibility for daily access operations during the transition period of up to one year, until Sound View is ready to take over. During the transition, the Department expects that Cablevision will be as prudent as possible in its expenditures and will carefully scrutinize all budget items as to their appropriateness or usefulness, particularly with respect to Sound View's future operations. Any access support required of Cablevision as of October 15, 1997, by its Franchise Agreement, but not expended shall be made available to Sound View by Cablevision. As described above, the Department has questioned the propriety of certain allocated costs related to the mobile van, pole rental and access facility rental. Cablevision claims that it would be unjust for the Department to penalize the Company for allocating what it considers appropriate community access costs without the Department having issued specific access allocation guidelines equally applicable to all access providers. Cablevision Exceptions, p. 5. The allocations questioned by the Department in this proceeding as inappropriate would be similarly criticized if proposed to be included by any other access provider.

Accordingly, Cablevision should immediately, to the extent required, purge from its community access allocations all costs related to the mobile van and any pole rental costs. Cablevision should also review these costs and all other PEG access allocations, including facility rental and square footage calculations as discussed in this Decision and allocation of telephone charges to ensure that these allocations are reasonable and supportable. The Department may audit these allocations from the date of the renewed term. Any Cablevision allocations considered inappropriate by the Department will be paid over to Sound View, without reimbursement, but Sound View should not rely upon any such "charge-backs" for budget planning purposes. Similarly, PEG access support required of SPV by its Franchise Agreement but not expended, will be made available to Sound View without provision for future reimbursement as well as any allocations not considered by the Department to be appropriately charged to access.

As discussed above, the Discovery Museum advanced approximately \$100,000 to Sound View to cover its initial expenses. Once Sound View begins operations, it shall reimburse the Discovery Museum an amount not to exceed \$100,000 on the same schedule as the franchise holders for all reasonable expenses incurred in connection with Sound View's application, and other expenses the Department determines to be

²² SPV agreed to waive interest payments at Oral Argument; Cablevision did not have representatives present who could speak to the issue. Tr. 11/4/98, p. 989.

appropriate for access purposes. As with the access expenses of the franchise holders, these expenses are subject to Department review and approval. The Discovery Museum's advance to Sound View was made without interest or repayment terms and the Department will not by this Decision impose interest requirements where none previously existed. Thus, the Museum advance will not be eligible for interest. Tr. 11/4/98, pp. 947, 1032 and 1033.

C. TRANSFER OF EQUIPMENT

Sound View's budget assumes the transfer of community access equipment worth a total of approximately \$150,000 from the two franchise holders. As discussed above, the Department agrees that equipment purchased for community access use should continue to be used for that purpose, regardless of any change in community access management. The franchise holders may, if they choose, retain ownership of the equipment, with all the tax or other advantages attendant thereto, but the equipment itself must be transferred to Sound View at the end of the transition period. The Department expects that Sound View and the franchise holders will be able to plan for this transfer in such a way as to minimize disruption to PEG access users and avoid interruption of PEG access programming.

SPV is willing to transfer approximately \$45,000 worth of equipment to Sound View. SPV Brief, p. 23. Unlike SPV, Cablevision stated that it is not agreeable to the transfer of its equipment to Sound View but if required to do so, it would retain title. Tr. 1/13/98, pp. 326 and 327; Tr. 11/4/98, pp. 960 and 961. If Cablevision chooses to retain title to the equipment and the tax benefits that may flow from it, then the Company must retain responsibility for related maintenance and repair.

The Department believes that it would be a small concession for the Company to transfer title of the access equipment to Sound View because of the relatively rapid depreciation of the equipment, and because the useful life of the equipment coincides with the duration of Cablevision's franchise term. If title is transferred, Sound View will be responsible for the maintenance and repair of the equipment .

The Department will require both Cablevision and SPV to submit a complete list of all equipment transferred to Sound View. If Cablevision retains possession of any of the equipment now in the present studio it must explain the reason such equipment has not been transferred.

D. INSTITUTIONAL NETWORK FUNDING FROM ACCESS BUDGET

Section 7.2 of the Cablevision Franchise Agreement provides that "for the first two years of the franchise term, up to 20% of Franchisee's community access funds may be spent on educational access, governmental access, and the I-Net expenses collectively."²³ Pursuant to the Franchise Agreement, after the first two years of the

²³ I-Net refers to the institutional network constructed by Cablevision to connect schools and government buildings in Area Two. The 20% of access funds referred to in the Franchise Agreement is to enable schools and governments to purchase equipment necessary to utilize the I-Net, not to defray

franchise term expire on October 15, 1999, the Department will re-evaluate whether it is appropriate to expend any portion of the access budget on equipment necessary to utilize Cablevision's institutional network or whether the Universal Service Fund is a more appropriate source of support for that purpose.

E. REVISED OPERATING PLAN AND BUDGET

While the Department will not micromanage community access in this franchise or any other, Sound View must revise its operating plan and budget to be consistent with this Decision and with currently available financial resources. This is likely to mean a smaller community access facility than proposed, less equipment and lower expenditures in most other budget categories. The revised plan should provide for the accomplishment of the necessary tasks during the transition period, and include milestones and the submission of regular progress reports to the Department. The Department has asked Cablevision and SPV to provide support to allow Sound View to fund its start up. For its part, Sound View must be more realistic in its initial plan for a community access facility, and may have to delay some of its plans until its initial loan is repaid. The Department realizes that there will be budgetary constraints initially, but on an ongoing basis, the large subscriber base of this franchise results in a substantial community access budget that will adequately fund realistic community access needs. In addition to scaling back its initial plans Sound View must also make appropriate budget cuts to remain solvent through Cablevision's franchise term. The Department believes that any cuts required will be modest and manageable. The budget should cover at least as many years as proposed to repay the franchise holders and the Discovery Museum, which shall not exceed the remaining length of the current franchise term.

Cablevision has requested that Sound View indemnify and defend the Company against all claims or damages related to or arising out of Sound View's actions in managing access, including producing and cablecasting programming over its system. Written Exceptions, p. 3. It is reasonable that Sound View should indemnify or hold Cablevision harmless for programming Sound View itself produces. In addition, Sound View should consult other non-profit providers regarding the cost of obtaining an insurance policy that would indemnify Sound View against claims or damages from producers or other groups or individuals. Sound View is advised to consult other non-profit access providers regarding inclusion of an indemnification clause in its standard producer's agreement and assistance with the appropriate terms and conditions of such a contract. The operating plan should provide for selection of the facility location within six months of the date of this Decision. The site should be chosen in consultation with the franchise holders and the Advisory Council and shall be located within the City of Bridgeport unless there is a more conveniently located and economical choice elsewhere. Both franchise holders have indicated that costs of interconnection depend on the location and network infrastructure, among other items. SPV October 28, 1998 Request for Clarification, p. 2; Late Filed Exhibit No. 17; Tr. 2/25/98, pp. 910 and 911. Sound View should consult with Cablevision and SPV regarding proposed locations in an effort to minimize such interconnection costs.

Cablevision's costs. Unlike access channels, the institutional network cannot be viewed by all subscribers.

In view of the lack of television experience of both the Discovery Museum and Mr. Castelot, the Department strongly recommends that the Sound View Board of Directors include at least one voting member with technical experience in broadcast or cable television or similar video production experience. Both Cablevision and SPV have been offered ex officio positions on Sound View's Board of Directors. Tr. 11/4/98, p. 1026. The Department believes that such a role by both companies would greatly assist Sound View in its mission, given both companies' experience and desire that subscribers derive the greatest benefit from community access.

F TRANSITION PLANS AND AGREEMENTS

The Department encourages Sound View, Cablevision, SPV, and the Advisory Council to work together in the best interests of the community to ensure that the transition is as short and smooth as possible. With Sound View providing PEG access for Cablevision and SPV, both franchise holders will be required to provide support in a manner that is fair and consistent with the spirit of the level playing field statute. Details of the arrangements between Sound View and Cablevision and Sound View and SPV, respectively, will have to be negotiated. In the case of SPV, the negotiations will produce an interconnection agreement. As the Department has designated Sound View the community access provider in place of Cablevision, an interconnection agreement is technically not necessary, but the Department believes it is essential that the rights and responsibilities of both the community access provider and the franchise holder be clearly delineated in a written agreement to avoid misunderstandings and to assure that community access programming and operations bring credit to both. The Department will require that both the interconnection agreement and the community access provider agreement with Cablevision be submitted for its review and approval.

V. FINDINGS OF FACT

1. Based on the final positions expressed, Sound View has the support of three of the six towns in the franchise area, while three are neutral. None of the municipalities recommended Cablevision.
2. Of the area legislators who took a position, seven supported Sound View and two recommended Cablevision.
3. The Area Two Cable Advisory Council formally supported Sound View to become the third-party non-profit community access provider in this franchise.
4. Three members of the Advisory Council supported Cablevision.
5. Cablevision submitted numerous letters of support from PEG access users, including form letters and letters from residents of Area Nine.
6. Although Cablevision has held the Area Two franchise since 1983, it has only begun actively managing PEG access since 1995, having previously relegated this responsibility to one university and then another, without Department approval.

7. In its November 8, 1995 Phase I Decision in Docket No. 94-03-05, the Department found that Cablevision had not done a satisfactory job of providing and promoting community access, and had a poor attitude regarding public access.
8. Cablevision's performance as community access provider prior to 1997 was deficient.
9. Cablevision acknowledged that its "performance has not always been up to par in the past, especially during the pre-1997 years"
10. Cablevision's community access management performance has improved considerably since 1997.
11. Cablevision has considerable experience in managing community access, and it has a number of individuals on its staff with access experience.
12. Cablevision has had community access responsibility for 15 years, and its current programming director and other staff have been involved with community access for all or most of this period.
13. Cablevision's local origination programming is outstanding and its Cable News 12 is valued by its subscribership, however, community access has not significantly benefited from this expertise.
14. Sound View is an affiliate of the Discovery Museum, a premium interactive arts and science museum center which is located in Bridgeport.
15. Sound View's experience in the provision of community access is very limited, however, the Museum's experience and its record of outstanding community service reflect positively on Sound View's ability to achieve its goals and its commitment to cable subscribers and its opportunity to greatly to enhance educational access.
16. Sound View has gained valuable experience through the Discovery Museum's interim provision of community access for SPV via state-of-the-art equipment.
17. Cablevision's operating plan calls for the community access facility to remain at its present location in Bridgeport at 122 River Street, which is also the Company's business office and dispatch location.
18. Cablevision's access facility is located in a non-residential area primarily used for warehouse purposes.
19. Cablevision's present studio location was opposed by the Advisory Council.
20. Safety concerns have been raised about the location of Cablevision's facility.
21. In response to security concerns arising from the location of the studio,

Cablevision added 24-hour security guards and cameras to its facilities, increased the outdoor lighting and began walking access users to their cars.

22. Cablevision's community access facility consists of a studio, three edit suites, three portable cameras, an office, tape playback area and a prop storage room.
23. According to Cablevision, the community access facility occupies 2500 sq. ft. of space, of which approximately 1000 sq. ft. is space shared with other Cablevision uses (restrooms, hallway and cafeteria).
24. Cablevision's community access plan does not include expansion, but does include a \$20,000 renovation to split one room into two edit suites and to convert other space into a green room.
25. 42 % of Cablevision's cost for community access facility rental may have included pole rental costs.
26. Cablevision's building rental costs allocated to community access increased significantly in recent years
27. Cablevision allocated one-third of the mobile van operating expense, \$5,400, to Area Two community access, although the van was never used for that purpose.
28. Cablevision's three-year budget allocates \$105,000 in capital costs to the mobile van.
29. Sound View initially proposed a 10,000 sq. ft. facility as its prototype for a state-of-the-art facility but subsequently submitted plans for facilities of 8,500 sq. ft. and 6,000 sq. ft.
30. Sound View's smallest proposed access facility, at 6,000 sq. ft., would not only be nearly three times as large as Cablevision's facility, but also would offer additional edit suites, a library, and other resources, including an innovative outreach studio.
31. Nutmeg TV, the community access provider serving 72,000 subscribers in the six-town Plainville area, has a 5,500 sq. ft. facility, and Citizens TV, the community access provider serving 73,000 subscribers in the New Haven area, has a facility of approximately 6,000 sq. ft.
32. Sound View's plan includes the transfer from Cablevision and SPV of certain equipment with an estimated value of approximately \$150,000, the purchase of a satellite dish and additional equipment.
33. Cablevision's budget includes a total of \$220,000 in salaries and benefits for three full-time production technicians and four positions shared with other Cablevision operations: a programming director (1/3), a secretary (1/3), a program manager (1/2), and a maintenance technician (1/3).
34. The members of Cablevision's community access staff are well qualified, with both

formal training in various aspects of television production and many years of experience in the field.

35. None of Cablevision's Area Two community access management staff is located in Bridgeport; rather, they are all located in the Company's Norwalk office.
36. Sound View's budget includes \$251,932 in salaries and benefits for five full-time staff positions (a director, a station manager, a program coordinator, a trainer/outreach person, and an administrative assistant) and several part-time positions.
37. Mr. Thomas Castelot, the project manager retained by the Discovery Museum to develop its Sound View Access Plan, has no television experience, but has been an active member of the Discovery Museum board of trustees for eight years and has more than 21 years of experience in facilities management, human resources training and commercial real estate.
38. The Discovery Museum's Board of Directors has committed to lend its experience in governing skills and strategic perspectives to successfully launch Sound View.
39. SPV plans to continue to work closely with Sound View in the provision of community access for Area Two, providing managerial and technical expertise, and support in the areas of access training and outreach.
40. Cablevision's training course has been criticized by an Advisory Council member as not including enough hands-on training and not being held at the publicized time.
41. Cablevision currently has 107 active community access users.
42. Twenty-two weekly programs are produced with Cablevision's PEG access equipment.
43. As a new organization, Sound View lacks the facilities and equipment that any established access provider would already possess.
44. The Discovery Museum has authorized up to \$100,000 in preliminary costs for which it would like to be reimbursed.
45. Sound View submitted various budget scenarios that included either a capital grant of \$275,000 to fund its start-up costs or increased subscriber funding of \$5.75 or \$6.00 per subscriber per year.
46. Sound View proposed a twelve month interim period during which Cablevision and SPV (through the Discovery Museum) would continue to provide PEG access while Sound View selects and renovates rental property into a suitable facility.
47. Cablevision's claim that it has never passed the costs of community access support on to its subscribers is not correct.

48. Cablevision is currently charging less than the maximum permitted rate for basic service.
49. Consistent with state law and franchise obligations, Cablevision's PEG access equipment was purchased and used only for community access purposes.
50. The Department in Docket 94-03-05 established Cablevision's community access funding requirement at \$5.00 per subscriber per year subject to annual inflation adjustments, and other adjustments for good cause.
51. Cablevision offered during the February 6, 1998 hearing in this proceeding, to negotiate in good faith with SPV in an effort to reach an interconnection agreement.
52. As of the close of the record in this proceeding, no interconnection agreement between Cablevision and SPV has been reached or even discussed.

VI. CONCLUSION AND ORDERS

A. CONCLUSION

The Department concludes that Sound View is the better qualified organization to manage and promote community access in Area Two. Sound View is hereby designated the community access provider for Area Two, subject to the Orders below. Sound View will assume responsibility for community access operations following a transition period of up to one year commencing the date of this Decision. During the transition period, the franchise holders will be responsible for their respective PEG access operations, and from the date of this Decision will provide such other funding, equipment and services consistent with this Decision.

B. ORDERS

For the following Orders, please submit an original and 15 copies of the requested materials, identified by Docket Number, Title and Order Number to the Executive Secretary.

1. No later than December 9, 1998, Cablevision and SPV shall inform the Department of the repayment schedule for the loans, including whether and to what extent interest payments have been waived.
2. No later than December 18, 1998, Sound View shall submit a revised budget and operating plan to the Department reflecting the terms specified in this Decision.
3. No later than January 29, 1999, and quarterly thereafter, Cablevision and SPV shall submit evidence that each has advanced Sound View the first of four equal quarterly installments of the loans aggregating \$350,000, or such other schedule mutually agreed upon by the parties and filed with the Department.

4. No later than January 29, 1999, Sound View shall submit a detailed accounting of its expenditures prior to January 1, 1999, separately showing revenues and expenditures from funds advanced by the Discovery Museum, those provided by the franchise holders, and any other sources of funds.
5. No later than January 29, 1999, Sound View shall submit confirmation of its status as a non-profit 501(c)(3) corporation. Sound View shall also submit copies of its bylaws and articles of incorporation.
6. No later than January 29, 1999, Sound View shall report the names and qualifications of the members of its Board of Directors.
7. No later than January 29, 1999, Sound View shall submit a report following consultation with the franchise holders and the Advisory Council regarding suitable sites for the establishment of a new studio for Area Two.
8. No later than January 29, 1999, Sound View shall provide copies of proposed interconnection agreements with both Cablevision and SPV.
9. No later than January 29, 1999, and quarterly thereafter, Cablevision and SPV shall each file a report with the Department, subject to audit, detailing the PEG access expenditures or allocated costs each has incurred for PEG access operations. Cablevision and SPV must also submit itemized lists of all equipment transferred to Soundview. Cablevision must provide a detailed explanation regarding any PEG access equipment not transferred and must compensate Soundview for any equipment not transferred.
10. No later than April 30, 1999, and quarterly thereafter through the first year of operations following the transition period, Sound View shall submit a progress report, including a detailed statement of its revenues and expenditures, covering the calendar quarter ending one month prior to the report date.
11. No later than 90 days prior to Sound View's assumption of Area Two PEG access management, Cablevision and Sound View shall jointly submit for the Department's review and approval a community access provider agreement regarding each party's Area Two PEG access duties and responsibilities. Upon approval by the Department, the memorandum of understanding shall be incorporated as an addendum to Cablevision's October 24, 1997 Franchise Agreement with the Department.

DOCKET NO. 97-09-09 APPLICATION OF SOUND VIEW COMMUNITY MEDIA
FOR DESIGNATION AS AREA TWO COMMUNITY
ACCESS PROVIDER

This Decision is adopted by the following Commissioners:

Linda Kelly Arnold

John W. Betkoski, III

Donald W. Downes

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control

Date

EXHIBIT 5

DPUC Decision in Docket No. 05-04-09 Application of Cablevision of Southern Connecticut LP for Franchise Renewal, Decision Dated 11/22/2006



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 05-04-09 APPLICATION OF CABLEVISION OF SOUTHERN
CONNECTICUT, L.P. FOR FRANCHISE RENEWAL

November 22, 2006

By the following Commissioners:

Anthony J. Palermino
Anne C. George
Jack R. Goldberg

DECISION

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DECISION

I. INTRODUCTION

A. SUMMARY

In this Decision, the Department of Public Utility Control renews the franchise of Cablevision of Southern Connecticut, L.P. for an 11-year term, if Cablevision revises its Proposal for Renewal as indicated herein.

B. BACKGROUND OF THE PROCEEDING

By letter filed April 25, 2005, pursuant to 47 U.S.C. § 546 and § 16-331(d)(1) of the General Statutes of Connecticut (Conn. Gen. Stat.), Cablevision of Southern Connecticut, L.P. (Cablevision or Company) requested approval from the Department of Public Utility Control (Department) to renew its franchise. The Company's current franchise expires on October 31, 2007. The final report of the consultant, Moss & Barnett (M&B or Needs Assessor), hired to conduct the needs assessment required pursuant to Conn. Gen. Stat. § 16-331(f), was provided to the Department, parties and intervenors on April 19, 2006. On June 5, 2006, Cablevision filed a Proposal for Renewal (PFR), requesting that its franchise be renewed for a term of 15 years.

Cablevision provides community antenna television (CATV or cable) service in the Cities of Bridgeport, Fairfield, Milford and Stratford and the Towns of Orange and Woodbridge. The franchise has approximately 1,310 miles of outside plant, approximately 98,000 subscribers and has reached a penetration rate of 74%. Cablevision of Southern Connecticut July 2006 CATV Statistics.

C. CONDUCT OF THE PROCEEDING

Pursuant to a Notice of Hearing dated May 1, 2006, the Department held an evening hearing at the Milford City Hall Auditorium on June 7, 2006, for public comment only. The hearing was continued at the Department's New Britain offices on June 19, June 21, June 22, and August 14, 2006. By Notice of Close of Hearing dated August 30, 2006, the hearing was closed. Parties and intervenors were given the opportunity to provide written exceptions and to present oral arguments on a draft Decision that was issued on October 20, 2006.

D. PARTIES AND INTERVENORS

Cablevision of Southern Connecticut, L.P., 28 Cross Street, Norwalk, Connecticut 06851 and the Office of Consumer Counsel (OCC), Ten Franklin Square, New Britain, Connecticut 06051 were designated parties to the proceeding. The Towns of Orange and Woodbridge and the City of Milford requested and were granted intervenor status. The Office of the Attorney General (AG) requested and was granted intervenor status. Sound View Community Media, Inc., (Sound View) the non-profit organization that manages community access in the franchise was designated an intervenor. Pursuant to Conn. Gen. Stat. § 16-331(c)(2), the Cablevision of Southern

Connecticut Advisory Council, a/k/a the Area 2 Advisory Council (Advisory Council) was also designated an intervenor.

E. PUBLIC COMMENT

Approximately 75 persons attended the evening public comment hearing held June 7, 2006, at the Milford City Hall, and 37 of those attendees offered testimony on Cablevision's request for franchise renewal. State Senator Gayle S. Slossberg (14th) commented on the issue of town specific community access programming.¹ According to the Senator, it is absurd that the local residents in the franchise area have to battle with Sound View for the right to have town-specific programming. Tr. 6/7/06, p. 46. Senator Slossberg also expressed concern regarding Sound View's ability to ensure that local municipalities receive town-specific programming. *Id.*, pp. 47-50. Also commenting on the Company's request for renewal was State Representative Paul Davis (117th). Representative Davis stated that while he was extremely satisfied with the quality of service, programming and price provided by Cablevision, he had two significant concerns: the requested 15-year renewal term and Sound View as the third-party provider of access programming. Representative Davis believed that a franchise term of ten years would be fair to both Cablevision and the public it serves. Tr. 6/7/06, pp. 34 and 35. Representative Davis also stated that he believed Sound View would continue its region-wide approach to access programming as opposed to a more beneficial town-specific approach. Due to this, Representative Davis believed that the Department should reject Sound View as a third-party provider if it insisted on blocking town-specific government access programming. *Id.*, pp. 35-38.

Milford Mayor James Richetelli also provided comment on Cablevision's renewal request. Mayor Richetelli was primarily concerned with the provision of town-specific access programming. According to Mayor Richetelli, Milford is the only municipality in the franchise area that has been deprived of town-specific programming. Mayor Richetelli believes that Sound View should be immediately required to cease obstruction of town-specific programming to Milford residents. Tr. 6/7/06, pp. 11-15. Other local elected officials from the communities of Amity, Milford, Orange and Woodbridge provided testimony. These comments reinforced other comments regarding the value of town-specific programming and concerns regarding Sound View's region-wide approach to access programming. Considerable praise was given for the access programming and efforts provided by Orange Governmental Access Television (OGAT), including nearly 1,200 letters of support signed by local residents.

A number of local residents and customers of Cablevision were also present to provide comment on the Company's request for franchise renewal. These speakers were generally not in favor of Cablevision's request for a 15-year franchise renewal term. In addition, some customers expressed concern regarding Cablevision's price for service and disappointment regarding the programming offered by the Company.

¹ As used in this Decision, the term "community access" includes three types of access programming: public access programming, educational access programming and governmental access programming.

The Department received 86 other letters regarding the Company's request for franchise renewal, including a letter from Speaker of the House James A. Amann (118th). Representative Amann was concerned that Milford customers were not getting town-specific access programming and suggested that Sound View be ordered to cease any activities that would obstruct such programming. State Senator Bill Finch (22nd) commended Cablevision's efforts in support of local community access programming, including its education component and donation of thousands of dollars worth of free public service announcements. The Department received many letters reinforcing the comments from the June 7, 2006 public comment hearing supporting town-specific access programming. The letters addressed Sound View's continued suitability as a third-party community access manager and expressed support for implementation of town-specific access programming in each franchise area town.

Customers also wrote expressing concerns including the price of service and programming options. Most believed that the price for service has been excessive, especially with recent rate increases. Regarding programming, customers were looking for more options such as more specific sports or religious programming.

Letters in support of Cablevision were focused primarily on the Company's support of community access programming. Several writers commented that the Company provides a wonderful service and commended Cablevision for its support of community access and for its dedication as a corporate citizen.

II. DEPARTMENT ANALYSIS

A. LEGAL REQUIREMENTS

Franchise renewal proceedings are governed by state and federal law, and by state regulations that mirror 47 U.S.C. 546(a), the franchise renewal provisions included in the 1984 Cable Act. The requirements governing informal renewals, which are conducted in a one-phase process, are specified in 47 U.S.C. 546(h) and the Regulations of Connecticut State Agencies (Conn. Agencies Regs.) § 16-333-38. The same provisions allow a cable operator to file for renewal at any time. Conn. Agencies Regs. § 16-333-38 allows for a streamlined renewal process, while affording the franchisee, its subscribers and other constituencies full and fair opportunity to participate in the renewal process.

Conn. Gen. Stat. § 16-331(f) requires that a community needs assessment be conducted by an independent consultant selected by the Department to analyze and report upon the community's past performance as defined in Conn. Gen. Stat. § 16-331(d). Subsequent to the completion of the needs assessment, the Company's filing of a PFR and responses to interrogatories, public hearings are held to review the operator's past performance and to determine if the PFR addresses the future cable-related needs and interests of the franchise area. The Department renders a final decision based upon the record evidence.

B. CABLE PLANT CONDITION AND TECHNICAL PERFORMANCE

1. Present System Configuration

The Company's hub is located in Bridgeport and is supported by the Norwalk headend and by sites in New York. The system has a bandwidth of 750 MHz and is capable of video, digital voice and data services. Analog and digital signals are received, combined and modulated at the Norwalk headend. Response to Interrogatory CATV-64. The system is comprised of approximately 1,310 miles of outside plant, with approximately 90% of the outside plant being overhead. Needs Assessment, p. 42. Customers of Cablevision of Connecticut's neighboring franchise are served by a cable network separate from customers of the instant franchise. Tr. 6/19/06, p. 256. The Company testified that there are only three or four Cablevision systems nationwide whose bandwidth exceeds 750 MHz. Id., p. 259. The system is 100% built. June 5, 2006 PFR.

There are approximately 110 miles of fiber optic cable in the system, deployed since 1996. The longest cascade in the franchise is two amplifiers. The system is supported by uninterruptible power supplies and generators. Responses to Interrogatories CATV-65, CATV-66 and CATV-67. In compliance with its current Franchise Agreement (FA), the system was upgraded from 350 MHz to 750 MHz between 1995 and September of 1998. Response to Interrogatory CATV-1. Eighty-four six-MHz channels are used for analog programming and 26 six-MHz channels are used for digital programming, which was introduced in 2003. Responses to Interrogatories CATV-2 and CATV-3. Since completing the upgrade, premium channels were moved from analog to digital. Response to Interrogatory CATV-5.

Cablevision believes that the system is state-of-the-art and provides all services that subscribers expect from a modern cable system. Tr. 6/19/06, pp. 233 and 259. The Needs Assessor testified that, while the Company's 750 MHz system is not state-of-the-art, its plan to continue to operate the system at that bandwidth is consistent with other CATV operator proposals offered elsewhere. Tr. 6/19/06, p. 163. M&B indicated that cable systems today rely less on bandwidth and more on the deployment of Internet Protocol (IP) transmission techniques. Late Filed Exhibit No. 5. M&B stated that Cablevision's network is capable of delivering new, advanced digital services. Needs Assessment, p. 50. Finally, the Needs Assessor testified that the headend, central office and network operations center were in excellent physical condition and meet or exceed National Electric Code (NEC) requirements. Id.

2. Plant Inspection Results

M&B drove approximately 150 road miles of Cablevision's system, or approximately 11.5% of the total mileage in the franchise. Needs Assessment, p. 42. As a result of its inspection, M&B concluded that, overall, the fiber-overlay plant construction appeared to be in good condition. However, M&B also testified that it had some construction and maintenance concerns that are divided into two categories: (1) plant concerns and (2) subscriber drop-related concerns. Id., p. 43.

The plant concerns expressed by the Needs Assessor were related to the maintenance of cables and supporting structures on telephone poles or in underground conduit systems. In particular, M&B found instances of incomplete pole transfers, lack of down-guy and pole line loading, abandoned power supplies, improper or lack of power supply grounding and improper mid-span clearances. The subscriber drop-related concerns include legacy drops that were not grounded to applicable code, wiring and general workmanship concerns and deficiencies regarding cable drop clearances from telephone and power lines. Needs Assessment, pp. 43 and 44; Tr. 6/19/06, pp. 159 and 160. The major issue regarding the plant concerns, according to M&B, revolves around the ongoing construction and reconstruction of the pole system that supports Cablevision's system. Tr. 6/19/06, p. 161.

Based on its inspection, the Needs Assessor concluded that Cablevision fails to comply with National Electric Safety Code (NESC) requirements and that the number of code violations in the system may exceed 5,000. In addition, M&B testified that the system marginally complies with NEC requirements. Needs Assessment, p. 44. Notwithstanding his conclusions regarding alleged safety violations, the Needs Assessor testified that the number of code violations is fewer than what he would have expected to have found given the size of the system. Tr. 6/19/06, p. 162.

The only other infraction noted by M&B during its system inspection was that there were missing covers on power modules. The Needs Assessor stated that replacement of the panels would restore proper safety. Needs Assessment, p. 50.

M&B recommends that the Department direct the Company to make its entire outside cable plant compliant with all applicable safety codes, including the NESC and NEC, and that Cablevision be required to prepare a plan of action to address the infractions detected. Finally, the Needs Assessor testified that the Department should require Cablevision to provide written documentation of its progress in correcting the safety problems noted in the Needs Assessment. Needs Assessment, pp. 44 and 45.

Cablevision stated that it has an aggressive preventive maintenance program for addressing issues related to plant, including circumstances outside its control. The Company disputes many of the findings and recommendations of the Needs Assessor, as detailed below. Cablevision Pre-Filed Testimony, pp. 12 and 13.

Cablevision testified that there are only 15 pole transfers pending, not numerous pending transfers as M&B suggested. Regarding M&B's concerns about lack of down-guys and pole line loading, Cablevision stated that guying and anchoring are the responsibility of the pole owner and that it owns no poles in the franchise, but is the lessee of pole space. Cablevision Pre-Filed Testimony, p. 14; Tr. 6/19/06, p. 239. Cablevision claimed that in most cases, clearance issues are created by work completed by other pole licensees after its construction was completed, claiming that other license holders have added multiple attachments moving into Cablevision's pole space. Cablevision Pre-Filed Testimony, p. 14.

The Company stated that, although the abandoned power supplies do not represent a safety hazard, it would schedule their removal, as M&B recommended. *Id.*; Tr. 6/19/06, p. 242. Cablevision strongly disagreed with the Needs Assessor's finding

that proper subscriber drop grounding techniques are not being used in the franchise, noting that its service technicians are required to check the grounding on existing and legacy installations. In addition, new installations and service calls are checked via quality control inspections. Subscriber drops are also checked whenever a service technician is dispatched to a subscriber's residence. Tr. 6/19/06, p. 238. Nonetheless, Cablevision stated that it would review the Needs Assessment's findings and take appropriate action as necessary. Cablevision Pre-Filed Testimony, p. 15.

Cablevision testified that it follows Society of Cable Telecommunications Engineers guidelines for construction, in addition to NEC and NESC codes and claims that in many instances, the examples of improper clearances cited in the Needs Assessment are the result of pole installation activity that occurred after its plant had been constructed. Id.

Finally, Cablevision believes that an audit of the entire system is unnecessary, is unlikely to resolve problems that are not within Cablevision's control and is not reasonable in light of what the costs of an inspection of the entire system would be. Id.

The AG believes that the Department should require that the Company comply with all relevant safety codes, that Cablevision's work be examined by a third-party expert, and that Cablevision file a plan regarding how it intends to correct any outstanding violations. In addition, the AG believes that the Department should impose fines on Cablevision for failure to resolve any code violations, refunding any amounts fined to subscribers. AG Brief, pp. 7 and 8.

The OCC recommends that an independent and comprehensive evaluation of the entire Cablevision system be conducted to be made a part of the record in the instant proceeding or in another docket. A plan should then be filed by the Company regarding its plans to make all cable plant safe and compliant with applicable codes. OCC Brief, p. 7. The OCC also believes that regularly scheduled interim inspections should be conducted. The OCC recommends that the Department order a training program for all Cablevision field employees. Id., pp. 8 and 9.

In response to the Company's claim that an audit of the system is not necessary, M&B stated that system auditing and recordkeeping is already required of the Company by the NESC. In particular, the Needs Assessor cites Sections 214 and 313 of the NESC code regarding inspection and testing of lines and equipment. Late Filed Exhibit No. 5. M&B also note that the NESC code is not based on who caused the violation and that, at a minimum, Cablevision should bring any plant-related matter to the attention of the Department if it is unable to secure code compliance from the party it believes is responsible. Id.

3. FCC Technical Performance

As part of the Needs Assessment, M&B evaluated signal quality requirements pursuant to 47 C.F.R. 76 Subpart K. Picture quality was evaluated at 24 test points throughout the system that were not identified to Cablevision in advance of the testing. At each test point, picture quality was evaluated on each activated analog channel. Needs Assessment, p. 45. A summary of the Needs Assessor's findings follows.

M&B measured carrier-to-noise ratio. A television picture that suffers from poor carrier-to-noise results in "snow" in the picture background and is a byproduct of signal amplification. Cablevision's system demonstrated 100% compliance and is indicative of a system that rarely exhibits visible snow. Needs Assessment, p. 47.

Hum or low frequency distortion is usually the result of improper power supply operation or other equipment failure related to cable system powering. M&B found that Cablevision demonstrated compliance with the FCC's rules that limit low frequency distortion. Id., p. 48.

High frequency distortions are usually seen in television pictures as wavy or diagonal lines as the byproduct of defective or misadjusted amplifiers. M&B's inspection at Cablevision's headend and test points indicated that Cablevision is in full compliance with these FCC requirements. Id. p. 49.

The FCC has established visual carrier signal level standards that cable operators must meet. If the signal levels are too low, pictures may be snowy. If the signals are too high, the visual distortion may be seen as a fine herringbone pattern in the picture background. The Needs Assessor saw no evidence of excessive high or low signal levels in the pictures viewed. Additionally, at all test points, Cablevision demonstrated compliance with the requirement that it maintain all channel video carrier levels within a preset decibel range of any other channel on the system. Id., pp. 48 and 49.

FCC rules also address the relationship between the level of video and audio carrier levels on a channel. The rule is to minimize interference between the carriers. If interference is present, wavy lines appear in portions of the upper adjacent channel. The Needs Assessor concluded that Cablevision was in compliance with the requirement at all test locations and on all channels. Id., p. 49.

M&B observed picture quality on basic, satellite and premium channels at each test point, as displayed via a test converter connected to a television set. Picture quality was observed at the headend to determine if there are picture problems that cannot be attributed to the system operation. All analog pictures were evaluated and the Needs Assessor found no noticeable impairments on any channel. M&B characterized this finding as exceptional. In addition, M&B found that picture quality at sites throughout the system was also excellent, without noticeable degradation. Id., pp. 49 and 50.

The survey conducted by M&B found that 95% of respondents said that they were "very satisfied" or "somewhat satisfied" with both picture quality and sound quality. Needs Assessment, p. 26.

4. Department Analysis of Plant and Technical Performance

The Department has reviewed the record regarding plant and technical performance, including the results of the Needs Assessment. The record clearly indicates that the technical performance of the Cablevision's system is excellent. The system meets or exceeds FCC technical standards and picture quality, by all objective

measures, is first-rate. The Needs Assessor indicated that the absence of any notable degradation of off-air or satellite channels is indicative of the quality of engineering, design and construction of the system. Needs Assessment, p. 50.

The Department is concerned regarding the finding that the number of safety code violations in the system may exceed 5,000, even though the Needs Assessor testified that he would have expected to find more violations, given the size of the system. To address this concern, the Department finds that it is appropriate for Cablevision to file a report with the Department, the OCC, the Advisory Council and the AG no later than six months from the effective date of a renewed term. As indicated by the Needs Assessor, NESC rules require cable operators to routinely inspect their systems and to keep records of those portions of the plant not in compliance with applicable code. Late Filed Exhibit No. 5. The report to be filed by the Company shall include the data and information required of cable operators pursuant to Sections 214 and 313 of the NESC. Id. The report shall also include the time period over which the inspections took place, the total number of lines and equipment inspected, the number and nature of the defects detected and what percentage of the defects have been corrected. In those instances where Cablevision believes that another party, such as the owner of the pole or another lessee, is responsible for a defect, the report shall indicate the number and nature of such defects, when the Company notified the alleged offending party of the existence of said defect and, if known, when the defect was corrected. Because of Cablevision's ongoing obligation to routinely inspect its cable plant and to keep accurate records regarding the results of the inspections, requiring the filing of such a report should not be unduly burdensome. The Department will determine if Cablevision will be required to continue to regularly provide the report on safety violations or if additional corrective action is needed after reviewing the first report.

C. SYSTEM CHARACTERISTICS

1. Company Proposal

In a renewed term Cablevision commits to continue to operate its present 750 MHz system, including substantial use of two-way and fiberoptic technology. The Company plans to introduce new technology and new services as they become technologically, commercially and economically available and for which there is customer demand. Cablevision states that the system will meet applicable standards contained in the FCC's rules and that construction specifications not detailed elsewhere will be governed by the NESC and NEC. June 5, 2006 PFR.

2. Department Analysis of Company Proposal

The Department finds that Cablevision's plan to continue to operate the system as a 750 MHz system, introducing new technology and new services, taking into account technological capability, cost and customer demand is satisfactory. The Department finds that the system, if operated and maintained in compliance with applicable federal and state standards as Cablevision commits in its PFR, should adequately serve subscribers in a new term. Accordingly, the proposals regarding the technical operation of the cable system are acceptable.

D. PROGRAMMING

Cablevision testified that it makes decisions regarding programming and programming packages based on customer interest and business decisions, in addition to regulatory and legal requirements. Response to Interrogatory CATV-69. The Company's digital service offers over 200 channels in various tiers and packages, in addition to offering over 20 channels of high definition television, movies and shows on demand, commercial-free digital music, on demand video services and a variety of sports packages. Cablevision Pre-Filed Testimony, p. 8. Prior to the rebuild of the system, only 47 channels were offered. Id., p. 5. Since completing the upgrade to 750 MHz in 1998, Cablevision has made numerous channel additions and changes. Response to Interrogatory CATV-48.

Cablevision offers two different channel line-ups in the franchise which reflect historical, system-related and legal differences among towns in the franchise. Towns in the Cablevision of Southern Connecticut franchise lie in two Designated Market Areas (DMA) resulting in different must-carry requirements for the two DMAs. Nonetheless, the Company intends to standardize the channel line-up throughout the franchise as much as possible. Response to Interrogatory CATV-68; Tr. 6/19/06, p. 392.

Cablevision currently offers three African-American channels and four Hispanic channels. Response to Interrogatory CATV-70. The African-American and Hispanic programming was added from before 1996 through the present. Late Filed Exhibit No. 21. The Company also offers the Connecticut Television Network. Cablevision Pre-Filed Testimony, p. 8; Response to Interrogatory CATV-21. Cablevision also offers News 12 Connecticut, a separately funded news operation available to all subscribers. Response to Interrogatory CATV-108.

The survey conducted by the Needs Assessor indicated that 72% of respondents were either "very satisfied" or "somewhat satisfied" with the variety of cable packages offered by the Company. In addition, 81% of respondents were either "very satisfied" or "somewhat satisfied" with the diversity of cable channels offered by Cablevision. At the same time, 15% of respondents stated that there were additional types of programming they would like to see added to the channel line-up, including sports and movies. Needs Assessment, pp. 26 and 32.

The Department finds that Cablevision's programming performance has been very good. It is clear that the number of programming choices have increased significantly, particularly since the completion of the system rebuild from 350 MHz to 750 MHz in 1998, and the introduction of digital programming. A clear majority of subscribers are satisfied with the programming offered by Cablevision, according to the Needs Assessment.

The Company commits to offer a diversity of programming choices to its customers, taking into account customer preferences and cost. June 5, 2006 PFR, Section 6.1. The Department finds that this commitment is acceptable.

E. CUSTOMER SERVICE

Cablevision maintains a full service, handicapped accessible business office at 3710 Main Street in Bridgeport. The hours of operation are 8:30 a.m. to 6 p.m. weekdays and 8 a.m. to 5 p.m. Saturdays. Response to Interrogatory CATV-72. Additionally, customers have 11 other locations to make bill payments, each of which is within ten miles of the Bridgeport office. Response to Interrogatory CATV-73. Customers are apprised of the other payment locations on the back of Cablevision's monthly bills. Tr. 6/19/06, p. 260. The Needs Assessment review of Cablevision's Bridgeport office stated that the Company maintained adequate staffing levels to handle the volume of walk-in traffic. Needs Assessment, p. 13. In its PFR, Cablevision commits to maintain a business office in the franchise area to be open and adequately staffed during normal business hours in compliance with Conn. Gen. Stat. § 16-333k(1). June 5, 2006 PFR, Section 5.1.

Telephone calls from Cablevision's franchise area customers are handled by a number of call centers located in the tri-State area as the Company utilizes a "virtual" call center format in place of geographically based call centers. For example, the Company's Stratford, Connecticut call center and its New Jersey call center mainly handle billing questions while the New York City and Long Island call centers mainly handle service and repair issues. Tr. 6/19/06, pp. 269 and 270. According to the Company, the call centers are mutually supporting. A customer call that originates from Connecticut will be routed to the first available customer service representative (CSR) regardless of physical location. Cablevision believes that this approach minimizes customer wait-times and provides its customers with superior service. Response to Interrogatory CATV-79. Cablevision states that these four calling centers employ a total of 1,713 CSRs, of which 259 are employed in Connecticut. Late Filed Exhibit No. 9. Cablevision stated that the existing Connecticut call center is served by 138 inbound trunks while for the four call centers in aggregate have a total of 3,580 trunks available. Response to Interrogatory CATV-74, Attachment; Tr. 6/19/06, p. 388. Cablevision's call centers are open 24-hours per day, every day of the year. In addition, Cablevision states that it does not utilize third-party providers to answer customer service calls. Response to Interrogatory CATV-77.

In the Needs Assessment, M&B was assigned to evaluate Cablevision's compliance with the telephone response time requirements of Conn. Gen. Stat. § 16-333k(3).² According to M&B, its review indicated that in certain instances the wait time for customers to be connected to a Company customer service representative appeared very high in relationship to the two-minute requirement of Conn. Gen. Stat. § 16-333k(3). M&B further noted a wait time on hold as long as one hour, and an average speed of answer in excess of ten minutes. Needs Assessment, p. 13. M&B's subscriber survey done for the Needs Assessment indicated that 12% of those calling Cablevision reported receiving a busy signal before getting through and 35% reported that their call was not answered within two minutes. Id. M&B further noted that

² Conn. Gen. Stat. § 16-333k(3) requires, in part, that each cable operator connect each customer call to a company customer service representative within two minutes during normal business hours, unless there is an emergency in which case the customer should receive a recorded message describing the problem and offering assistance.

Cablevision's difficulties in meeting the two minute requirement did not appear to be limited to any particular day of the week or time of the month. The conclusion that M&B reached from its review of Cablevision's telephone answering responsiveness was that the Company required additional CSRs and that its staffing does not match incoming call levels. Needs Assessment, pp. 13 and 14.

Noting the findings of the Needs Assessor, the OCC expressed concern regarding Cablevision's telephone answering responsiveness. The OCC recommended that the Department order Cablevision to comply with the applicable statutes as well as file ongoing compliance reports. OCC Brief, pp. 12 and 13. This opinion was shared by the AG who was also very concerned with Cablevision's ability to meet the requirements of Conn. Gen. Stat. § 16-333k(3). The AG believed that the Department should take specific and firm steps including oversight of the Company's hiring practices to ensure Cablevision's compliance with applicable regulations. AG Brief, pp. 4-6.

The telephone answering responsiveness statistics submitted by Cablevision indicate that the Company has had some success with meeting the requirements of Conn. Gen. Stat. § 16-333k(3). However, the statistics do not indicate that Cablevision is fully meeting the statutory telephone answering requirements. For example, for the first six months of 2006, the percentage of calls answered within two minutes has ranged from 69% to 99.2%. A review of the telephone statistics for calendar years 2003, 2004 and 2005 also points to the Company's partial compliance with the telephone answering requirements. In 2005, the percentage of calls answered within two minutes ranged from 80% to 96.8%; in 2004 that range was from 83% to 96.4%; and in 2003, that range was from 56% to 96%. Late Filed Exhibit No. 35. Not only were there deficiencies in meeting the two-minute requirement, Cablevision also experienced some difficulties with its abandoned call rate. On two occasions during 2003, the abandoned call rate exceeded 20%. From January 2005 through June 2006, the abandoned call rate has fluctuated from a low of 1.7% in September of 2005 to a high of 14.2% in January of 2006. Id.

In its defense, Cablevision stated that it always seeks to comply with the statutory telephone answering requirements but recognizes that the requirements are sometimes difficult to meet. Response to Interrogatory CATV-76. According to Cablevision, it tracks its telephone call volume by 15-minute increments every day. The information that is tracked includes how long the call is on hold and how long the call takes with the CSR. Tr. 6/19/06, pp. 248 and 249. Further, Cablevision determines its call center staffing by call trends, based upon three-year call center history as well as taking into account current conditions such as marketing campaigns and large pay-per-view events. Cablevision's objective is to have its CSRs handling a telephone call 70% of the time, while the other 30% of the time the CSR is preparing to handle the next call. Tr. 6/19/06, p. 249. Cablevision also states that it would not be cost effective to its customers to staff its call centers to always meet its peak telephone volume, nor is it possible to predict the proper staffing for uncontrollable events such as weather or storms. Id., pp. 251 and 358. As an example, Cablevision testified regarding a situation during the summer months of 2005. According to the Company, an anomaly in its telephone switch rendered certain customer telephone calls unanswerable, thus negatively impacting hold times. Id., p. 250. Cablevision states that this problem has

not occurred since 2005 and that it monitors the situation on an ongoing basis. Id., pp. 265 and 266.

The Company also intends to construct an additional call center in Shelton, Connecticut to further improve its customer service and telephone response time abilities. Response to Interrogatory CATV-76. At the time of the hearings, Cablevision believed that this new call center would be staffed and capable of taking customer telephone calls by September of 2006. While at the time of the hearing Cablevision was not able to specify how many CSRs would staff the new Connecticut call center, the new center would be capable of housing an additional 300 employees. Tr. 6/19/06, pp. 266 and 267.

The Department recognizes the value of an additional call center that services Cablevision's incoming customer telephone calls. However, Cablevision is statutorily required to meet and comply with specific telephone answering obligations. It is clear that this situation requires monitoring by the Department. The AG has requested that the Department require from Cablevision a plan that details the steps it will take to meet the statutory telephone answering requirements, including financial penalties for any failure to meet the requirements. AG Reply Brief, pp. 3 and 4.

Before considering imposition of fines, the Department finds that ongoing monitoring of the Company's efforts should be implemented. Accordingly, Cablevision will be ordered to file quarterly telephone statistics that include information such as the average speed of answer, percent of calls abandoned, percent of calls answered within two minutes, the longest time on hold for the month and the total number of employees available to directly handle incoming calls. These filings will be submitted until three consecutive quarters indicate that Cablevision has been able to meet the statutory telephone answering response time provisions, as determined by the Department.

Cablevision defines a complaint as any written or oral contact by a customer in which that customer expresses dissatisfaction with an act, omission, product or service. Response to Interrogatory CATV-81. Cablevision's customer database is able to segregate customer complaint records by franchise area. Response to Interrogatory CATV-83. Under Cablevision's policies and procedures for handling customer complaints, all complaints are initially handled by a Company CSR. Should the customer not be satisfied at this level, Cablevision has an escalation policy to pass the complaint on to supervisors, or if specialized expertise is required, to the Company's Shared Service Department. Response to Interrogatory CATV-82. Cablevision formed its Shared Service Department in 2002 to assist its call centers with specialized support in areas such as processing electronic payments over the telephone, billing research, and responding to customer e-mail inquiries. According to Cablevision, these initial tasks have now grown to include an additional 70 other specialized functions. Id.

Cablevision has satisfactorily demonstrated its compliance with applicable statutes and regulations concerning customer notification procedures, billing practices, billing information, subscriber complaint information and termination procedures. Responses to Interrogatories CATV-87, CATV-88, CATV-89, CATV-92, CATV-93 and CATV-94.

In the Bridgeport franchise, Cablevision employs a total of 60 technicians who are responsible for the installation and repair of all Company services as well as for the servicing and maintenance of system integrity. In addition, Cablevision has 36 other contractors that perform installation for all of the Company's services. Late Filed Exhibit No. 9. For weekday evenings and weekend days Cablevision has four on-call service technicians available. The Company also has the ability to call in an additional 19 technicians if needed. *Id.* Cablevision utilizes three-hour appointment windows that are available seven days a week. Response to Interrogatory CATV-98. The Company's appointment windows are typically between 9 a.m. and 6 p.m. On certain occasions, the Company will offer appointment windows prior to 9 a.m., as well as extend the appointment window during summer months to 8 p.m. Tr. 6/19/06, pp. 285 and 286. Cablevision offers its customers a \$20 On-Time Guarantee Credit in the event the Company is unable to keep a scheduled appointment. Furthermore, when Cablevision is unable to keep a scheduled appointment, it will contact the customer to notify them of the problem as well as to offer the opportunity to reschedule the appointment to the customer's earliest convenience. Response to Interrogatory CATV-96. Cablevision states that installation and relocation appointments are resolved within 14 days of a customer's request. Disconnection requests may be performed after the requested date provided by the customer, however Cablevision assures that customers are not responsible for any charges past that requested disconnection date. Late Filed Exhibit No. 10.

In the last four years, Cablevision has not been required to issue refunds or credits to customers as a result of customers experiencing outages of a duration of 24 or more consecutive hours pursuant to Conn. Gen. Stat. § 16-333e(b). Response to Interrogatory CATV-17. In addition, according to Cablevision, over the last four years on a month-to-month basis, the Company has not fallen below the minimum required reliability rate of 99.975%. Response to Interrogatory CATV-16. Cablevision states that it utilizes a comprehensive set of procedures to ensure prompt restoration of service when the Company is made aware of a service outage. Response to Interrogatory CATV-101.

In a renewed franchise term, Cablevision commits, absent extraordinary circumstances, to restore service from planned or unplanned interruptions within 24 hours. PFR, Section 5.5. Cablevision also plans to employ a service and repair force of competent technicians capable of maintaining the system in accordance with the technical performance and customer service standards mandated by the PFR and applicable statutes and regulations. June 5, 2006 PFR, Section 5.6.

In a renewed franchise term, Cablevision will make available at cost, by rental, sales or installment sales agreement, equipment which receives and decodes closed captions to each subscriber who is deaf or hearing impaired. June 5, 2006 PFR, Section 5.9. Cablevision has made closed caption equipment available to its subscribers but has not any requests by customers for such equipment. Response to Interrogatory CATV-105.

The Department notes that Cablevision's proposed franchise agreement does not include any language regarding parental control devices or other means to block objectionable programming. The Department recommends that Cablevision revise PFR

Section 5.9 to include a commitment to make available, at cost and upon request, parental control devices to its customers.

The Department also notes that Cablevision's proposed franchise agreement does not include any language regarding discounts for any class of customers, such as senior citizens. According to Cablevision, it does not presently offer any type of discounted rate to any class of subscriber. Response to Interrogatory CATV-104. Further, the Company has never offered a senior citizen discount nor were there plans to introduce a discounted rate. According to Cablevision, it does not receive many requests for a senior discounted rate. Tr. 6/19/06, pp. 291 and 292.

On balance, the Department finds that Cablevision has provided good customer service to its subscribers throughout the franchise area. Cablevision's customer service policies, procedures and PFR commitments are in the public interest and can be reasonably expected to meet the community's foreseeable needs. However, as noted in this section, the Company's telephone answering responsiveness must be effectively addressed to insure that Cablevision is providing the best possible service to its customers.

F. COMMUNITY ACCESS

1. Background and Overview

Conn. Gen. Stat. § 16-331a provides for "meaningful community access" as a component of CATV service. Community access is defined as non-commercial programming produced or sponsored by members of the community and made available to all subscribers in a cable operator's basic service tier. Community access encompasses public, educational and governmental access. Cable operators are required to provide technical, managerial and financial support, channels specifically allocated to access, production facilities and equipment and training and promotion efforts that meet or exceed the specifications under Conn. Agencies Regs. § 16-331a-11.

In the Cablevision of Southern Connecticut franchise, community access has been managed by a third party non-profit organization, Sound View Community Media, Inc. (Sound View), since November 1999, pursuant to the Department's November 25, 1998 Decision in Docket No. 97-09-09, Application of Sound View Media for Designation as Area 2 Community Access Provider. Sound View does not manage community access operations in any other franchise area, but has requested that the Department designate it as the community access operator as part of its Decision in the pending Cablevision of Connecticut franchise renewal proceeding, Docket No. 05-04-10, Application of Cablevision of Connecticut, L.P. for Franchise Renewal.

Sound View, a qualified charitable organization under Section 501(c)(3) of the Internal Revenue Code, is run by a Board of Directors, which is made up of 13 voting members and seven ex-officio, non-voting members. Response to Interrogatory CATV-144, Exhibit 144-A; 2005 Annual Community Access Provider Report, (unnumbered) p. 11. In 2005, Sound View received approximately 96% of its revenues from Cablevision subscribers, with the remainder coming from interest on bank accounts and corporate

contributions. 2005 Annual Community Access Provider Report, (unnumbered) p. 5. Sound View testified that in the last three years, it has not applied for any grants because subscriber revenues were sufficient to provide meaningful community access in the franchise. Response to Interrogatory CATV-156. Sound View receives its funding from Cablevision on a quarterly basis and stated that the process whereby access funds flow to it from Cablevision subscribers works satisfactorily. Response to Interrogatory CATV-150.

2. Facilities and Operations

Sound View operates a 4,500 square foot community access facility on State Street in Bridgeport, Connecticut, consisting of a 650 square foot main studio, a control room, a headend/cablecast room, a field equipment shop and seven edit suites. The facility also includes a green room and reception area, a make-up room and administrative suites. 2005 Annual Community Access Provider Report, (unnumbered) p. 2. In 2005, 32 public access programs, eight educational access programs and six governmental access programs were produced at the facility. *Id.*, (unnumbered) p. 3.

The business hours of the facility are weekdays, from 9 a.m. to 5 p.m. The facility can be reserved Monday through Friday, from 9 a.m. through 10 p.m., and Saturday, from 9 a.m. through 4 p.m. The facility is handicapped accessible and soundproofed. The approximate studio ceiling height is 18 feet. *Id.*, p. 2. Sound View's 2005 Annual Community Access Provider Report includes an exhibit listing the community access equipment inventory. 2005 Annual Community Access Provider Report, Attachment to Access Equipment Inventory. Sound View testified that the equipment is shared and that the rule of thumb on who gets to use it is first come, first served. Sound View does not dedicate specific equipment for public access purposes, educational access purposes or governmental access purposes. The equipment and the facility can be used for any type of access production. Tr. 6/21/06, p. 611. The current lease on the facility expires in July 2013. Response to Interrogatory CATV-153.

Sound View testified that the facility has no shortcomings or deficiencies and that no major modifications or renovations are needed. Sound View recently installed server-based playback and archiving capabilities. Tr. 6/21/06, pp. 651 and 652. An elevator was replaced in the building in 2005. Response to Interrogatory CATV-153. Additional changes and enhancements planned by Sound View involve the further transition from analog technology to digital technology, the integration of Internet technology, high speed program on demand, live video streaming and eventually high definition technology. Sound View has not identified the exact equipment it will purchase, but is considering acquiring three digital studio cameras, a digital switcher, two or three digital VCRs and associated microphones, monitors and cables. Sound View believes that the current facility and control room are in excellent working condition. Responses to Interrogatories CATV-143 and CATV-147.

The Needs Assessor testified that, given the current usage of the studio and edit facilities, no studio expansion is needed. Needs Assessment, p. 40. M&B was impressed with the quality of the access facility. Tr. 6/19/06, p. 198. M&B confirmed that the facility is available for public, educational and governmental access productions. Tr. 6/19/06, p. 213; Tr. 6/21/06, p. 606.