DOCKET NO. HHD-CV-12-6034434-S	:	**SUPERIOR COURT**
SOUND VIEW COMMUNITY MEDIA, INC.	:	**JUDICIAL DISTRICT OF HARTFORD**
VS.	:	**AT HARTFORD**
CONNECTICUT PUBLIC UTILITIES REGULATORY AUTHORITY (PURA)	: : :	**APRIL 15, 2013**

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MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Statement of Facts

Factual Background.[1]

Sound View Community Media, Inc. (Sound View) is a Connecticut non-profit, non-stock corporation in the sole business of community access television.[2] Its service area comprises the towns and cities of Bridgeport, Fairfield, Milford, Stratford, Orange, and Woodbridge ("Area 2").[3] From a 6,000 square feet facility located in downtown Bridgeport, four full-time employees and numerous volunteers

[1] Facts and figures as to programming hours, etc. are from the first 15 pages summarizing the 2012 Annual Community Access Report of Sound View Community Media, Inc., which was filed with the Defendant CT PURA and can be found on its website under "Undocketed Reports." http://www.dpuc.state.ct.us/DPUCUndocketed.nsf?OpenDatabase

[2] The term "community access television" collectively means the public, educational and governmental access television channels found in Federal law. Franchising authorities, such as CT PURA, are authorized by Federal law to require franchisees to provide adequate public, educational, and governmental access channel capacity, facilities, or financial support. 47 U.S.C. Sec. 541 (a) (4) (B) General franchise requirements.

[3] The State of Connecticut has 25 CATV/video franchise areas, 24 of which join several towns and cities grouped together and made distinctive, "stand-alone" franchise areas for cable television and video franchise regulatory purposes. The 25th franchise area is an overlay comprising the entire State. A complete list of the franchise areas and the CATV and video franchises that operate within them can be found on PURA's website at the following link:
http://www.dpuc.state.ct.us/dpucinfo.nsf/3fcf2cde5ae350e98525742e004bf71e/9a54276568ca34d7852565370045ea0f?OpenDocument

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maintain a professional-grade television studio, lend out portable video and audio equipment for off-site use, maintain state-of-the-art editing equipment, and provide television production training, all free of charge. Using Sound View's facilities, equipment and training, over 1000 eligible private individuals, nonprofit organizations, schools, and local governments create public, educational or government television programming. Sound View schedules and televises locally-produced and provided public, educational and government programming on a live or delayed basis over the corresponding public, educational, and government access channels designated by the defendant, the Connecticut Public Utilities Regulatory Authority (PURA). In order to distribute the programming, Sound View maintains transmission equipment in its facility that is interconnected with the systems of the two video distribution companies ("cable companies") that presently operate in the franchise area, Cablevision and AT&T U-Verse. Sound View also provides and maintains a server-based system that allows web-streaming and "on demand" playback of programming over the Internet. Over 200 individuals, nonprofit organizations, educational institutions, and local governments routinely and regularly make use of Sound View's facilities, and Sound View televises and web-streams approximately 10,000 hours of programming each year.

Procedural history of the relevant proceedings in DPUC Docket No. 05-04-09.

The predecessor of PURA, the Connecticut Department of Public Utility Control (DPUC or Department) initially made Sound View the community access provider (CAP) for the Area 2 franchise

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pursuant to its Decision in Docket No. 97-09-09, Application of Sound View Media for Designation as Area 2 Community Access Provider, Final Decision dated November 25, 1998.[4] Eight years later the DPUC re-confirmed Sound View as the manager of community access operations (the "community access provider" or "CAP") in the franchise renewal proceeding that granted Cablevision of Southern Connecticut a renewal of its certificate of public convenience and necessity (CPCN) for a term of 11 years commencing January 1, 2007 and ending December 31, 2018. Application of Cablevision of Southern Connecticut, L.P. For Franchise Renewal, Docket No. 05-04-09, Final Decision dated November 22, 2006, at page 36.[5]

The DPUC found that the most contentious issue during the CATV franchise renewal proceedings conducted in Docket No. 05-04-09 concerned the relative merits of town-specific community access program distribution versus franchise-wide community access program distribution.[6] Sound View's major concern about town-specific distribution was that the three municipalities[7] that wanted an exclusive, town-specific channel did not produce enough programming to adequately fill an access channel on its own, which would result in excessive repeats or a blank channel, neither of which is in subscribers' best interests. Interestingly,

[4] The authority of PURA to assign responsibility for community access television to an independent, community-based nonprofit organization in a franchise proceeding is found in the Connecticut General Statutes. Sec. 16-331a Community access operations and programming at subsection (c).

[5] Because this memorandum will be referring the Final Decision in Docket 05-04-09 frequently, a copy is attached.

[6] Final Decision in Docket 05-04-09, at page 19, first sentence beginning Section 9.

[7] The City of Milford and the Towns of Orange and Woodbridge.

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only the governmental access channel was the subject of the "town specific" debate at that time.[8] "Town specific" meant that only the local town government or its appointees would control the production and dissemination of programming in the town over what it considered to be "its" channel. No programming produced in another town or region would be permitted to be seen by that town's viewers, nor would its programming be allowed to be seen by viewers located outside its town boundaries. Sound View's philosophy was that no one "owns" a community access channel but that they exist for the benefit of all cable subscribers who pay a subscriber fee to support community access. Sound View also testified that its promotion of system-wide distribution represented its long-held belief that open and free access to all public, educational and governmental access programming by all subscribers, regardless of which town they resided in, should be the rule, though there were instances where town-specific programming would be appropriate. The Department concluded that Sound View's concern about excessive repeats of town specific programs "was legitimate."[9] It also found explicitly that "Sound View's current reluctance to provide a municipality with a town-specific channel 100% of the time is justified because of excessive repeats."[10] Specifically, the Final Decision found that

[8] Final Decision in Docket 05-04-09, at page 20, second full paragraph.

[9] Final Decision in Docket 05-04-09, at page 27.

[10] Id.

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> "[T]he Department does not believe that having a town-specific channel 100% of the time is an efficient use of that channel, particularly if a significant percentage of the programming cablecast on a town-specific channel is repeat programming, if the screen is blank or if other community access programming that may be of interest to subscribers does not have an opportunity to be cablecast. The record is clear that, although towns in the franchise, especially Milford and Orange, are producing a variety of programs, the number of original programs being produced does not justify the granting of educational and governmental access channels that are town-specific all the time."[11]

The DPUC explicitly ruled that Sound View deserved to continue as community access provider (CAP) for all public, educational and government access operations.[12] It also made the observation that because there is "value to repeating community access programs so producers' work can be seen by a larger percentage of subscribers, and for the convenience of residents' viewing and work schedules", "it would not unilaterally set forth a blanket weighing scheme to determine how much repeat programming is too much." To resolve these differences and as part of its decision, the Department made available its mediation services for the conduct of discussions between Sound View and the three municipalities that objected to any regionalization of government access programming. The Department found it to be "in the public interest for Sound View and the municipalities to attempt to resolve the town-specific versus franchise-wide distribution issue through negotiation and compromise" and for Sound View and the municipalities to negotiate "mutually acceptable scheduling policies." Sound View was ordered to report to the DPUC no

[11] Id.

[12] Final Decision in Docket No. 05-04-09, at page 36.

later than January 31, 2007 indicating if mutually acceptable programming scheduling policies with the affected municipalities have been negotiated.[13]

Sound View contacted the municipalities and began the process of negotiations.[14] With help from a three-member DPUC mediation panel from the Department's Dispute Resolution Unit, Sound View concluded mutually acceptable agreements with the City of Milford[15] and the Town of Woodbridge.[16] The Town of Orange, however, proved to be intractable even after several negotiating sessions. By February 2008, with Orange refusing further meetings and the passage of nearly 14 months since the Department first ordered negotiations, Sound View requested that the DPUC review the record of negotiations and order a scheduling decision to resolve the issue.[17] The Department declined and instead ordered to ADR Unit to schedule another negotiating session.[18] However, no agreement ever was reached between Sound View and the Town of Orange. Only in retrospect did Sound View learn that the likely reason for the Town of Orange's recalcitrance was to buy time for local legislators to pass legislation that would effectively overrule

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[13] Final Decision in Docket 05-04-09, at page 49, Order No. 2.

[14] Order No. 2 Compliance Report of Sound View dated January 31, 2007 in Docket 05-04-09. (Copy attached).

[15] Order No. 2 Compliance Report of Sound View dated April 25, 2007 in Docket 05-04-09. (Copy attached).

[16] Order No. 2 Compliance Report of Sound View dated January 15, 2008 in Docket 05-04-09. (Copy attached).

[17] Motion 21 of Sound View dated February 21, 2008 in Docket 05-04-09. (Copy attached).

[18] Response of DPUC to Motion 21 of Sound View dated March 28, 2008 in Docket 05-04-09. (Copy attached).

the DPUC's decision in this docket. Indeed, at the end of the 2008 Legislative Session, Public Act 08-159 was enacted, the constitutionality and applicability of which is challenged by Sound View in this Action for a Declaratory Ruling.

Argument

The cross-motions for summary judgment properly come before the court at this time.

Plaintiff's Motion for Summary Judgment is in the context of an Action for Declaratory Ruling wherein the plaintiff Sound View challenges the applicability and constitutionality of a state law. A party may move for summary judgment and request the trial court to render judgment in its favor if there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. In fact, the rules of practice in Connecticut do not provide a trial court with authority to determine dispositive questions of law, before trial, in the absence of a party's motion to strike or a motion for summary judgment. Vertex, Inc. v. City of Waterbury, 278 Conn. 557 (2006). Counsel for all parties to this action have agreed to scheduling orders for cross motions and times for responses and oral argument that include provision for the exchange of documents that will be used without objection in support of their respective motions and supporting legal memoranda. These documents primarily consist of the records of various administrative proceedings at PURA and the Department of Public Utility Control (PURA's predecessor agency), and the legislative

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history of Public Act 08-159. The parties to this action also are unified in believing that a decision on the cross-motions for summary judgment will be dispositive of this case.

The provision of general statutes to be addressed is Public Act 08-159, which has been codified at §§16-331ff and 16-331gg of the Connecticut General Statutes and reads as follows:

> **§ 16-331ff. Certain third-party nonprofit community access provider requirements re education and government access channels and town-specific community access programming.**
>
> (a) Any third-party nonprofit community access provider serving six municipalities, one of which has a population of more than one hundred thirty thousand, shall, upon request from any town organization, authority, body or official within its service territory, provide written consent, pursuant to its service provider agreements, for said town organization, authority, body or official to (1) operate education and government public access channels in that town, and (2) engage freely and directly the community antenna television company providing services in that town to use their headend equipment for dissemination of town-specific community access programming on such channels. Said third-party nonprofit community access provider must grant such written consent to said requesting town organization, authority, body or official within three business days. Written consent not provided within three business days shall be deemed granted.
>
> (b) If a third-party nonprofit provider fails to provide written consent within three days, pursuant to subsection (a) of this section, the Department of Public Utility Control shall, upon a request from a town organization, authority, body or official within the service territory of that third-party nonprofit community access provider serving six municipalities, one of which has a population of more than one hundred thirty thousand, (1) terminate, revoke or rescind such third party nonprofit provider's service agreement to provide public access programming within one hundred eighty days, and (2) reopen the application process to secure a community access provider for each of the towns within the affected service territory.

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§ 16-331gg. Funds for development of town-specific education and government community access programming. Distribution of funds. Report to Department of Public Utility Control re disbursement of funds.

(a) A community antenna television company, a certified competitive video service provider that was providing service as a community antenna television company pursuant to section 16-331 on October 1, 2007, or a holder of a certificate of cable franchise authority that provides services within a service territory of a third-party nonprofit community access provider that serves six municipalities, one of which has a population of more than one hundred thirty thousand, shall direct the sum of one hundred thousand dollars per year from the funds collected from sub-scribers in said service territory that it provides to the existing third-party nonprofit community access provider serving six municipalities, one of which has a population of more than one hundred thirty thousand, directly to the service territory's community antenna television advisory council for developing town-specific education and government community access programming.

(b) A community antenna television advisory council that receives funds pursuant to subsection (a) of this section shall distribute said funds in their entirety to a town organization, authority, body or official in the service territory of a third-party nonprofit community access provider serving six municipalities, one of which has a population of more than one hundred thirty thousand, to support the development of production and programming capabilities for town-specific education and government public access programming, pursuant to grant procedures and processes established by said council.

(c) Any community antenna television advisory council that receives funds pursuant to subsection (a) of this section shall report annually to the Department of Public Utility Control all completed or planned disbursements of funds and certify that said funds were spent in their entirety and used for the public good in the creation of town-specific education and government public access programming for at least one of the towns in its service territory.

Prior to the enactment of P.A. 08-159, Sound View, as the designated CAP, received all per-subscriber funding collected by the cable companies in the Area 2 franchise in accordance the established the

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"per subscriber" pass-through collected by all cable companies for the support of community access.[19] Public Act 08-159, however, tightly defined its applicability to "[a]ny third-party nonprofit community access provider serving six municipalities, one of which has a population of more than one hundred thirty thousand" thereby ensuring that Sound View would be the only nonprofit community access provider (CAP) in the entire State that would be affected by the law's draconian and non-appealable procedure. It provided that if any town organization, authority, body, or official requests to directly engage in government or educational access management, the CAP (read "Sound View") must "consent" to relinquish control of the local governmental and educational access channels in that town. Furthermore, if only one "request" was made, the mandatory "consent" causes the cable operator (Cablevision) to divert annually the sum of $100,000 of "per subscriber" funding from the CAP to the local cable advisory council (the Area Two cable advisory council), which then would divide up the funds amongst the managers of the "town specific" governmental and educational access channels. In a further provision that only students of the writer Franz Kafka could fully appreciate, should Sound View fail to consent in writing within three business days of any such request the request is deemed granted anyway. But the "punishment" for the CAP's (Sound View's) failure to "consent" is the death penalty. Specifically, the refusal to consent in writing within three business days of any request would require the Department to "(1) terminate, revoke or rescind [Sound View's] service agreement to provide public access programming within one hundred eighty days, and (2) reopen the

[19] This funding mechanism was enacted as Public Act 95-150, which is codified in Section 16-331a (k) of the Connecticut General Statutes.

application process to secure a community access provider for each of the towns within the affected service territory." If Sound View so much as raised a peep in protest, it would be out of business.

To make matters even worse, soon after the first town's "request" for town specific authority to run governmental access was made, Cablevision and the cable advisory council informed Sound View that the $100,000 diversion from Sound View's funding source would be taken in one "lump sum" immediately from the next quarterly subscriber funds due. This would have put an immediate strain on Sound View's cash flow and was protested by Sound View. Fortunately, in response to a request from Sound View to clarify the situation, the DPUC ruled that the diversion of the $100,000 of subscriber funds annually from Cablevision subscribers would be made in $25,000 quarterly payments.[20]

First Argument: Public Act 08-159 is invalid.

P.A. 08-159, as applied, violates Sound View's equal protection rights. Another plaintiff successfully presented an equal protection argument under similar circumstances in City Recycling, Inc. v. State of Connecticut, et al., 257 Conn. 429 (2001). In City Recycling, the legislature passed an amendment to the Environmental Protection laws that prohibited the DEP Commissioner from approving a new volume

[20] Letter from DPUC dated August 11, 2007 in Docket No. 08-06-03. (Copy attached). [editor's note: The date of 2007 was a typographical error and should have read "August 11, 2008]

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reduction plant or a transfer station in for any city with a population of 100,000 or more and within one-quarter mile of a child daycare center. The Court found the legislation in that case not to be rationally related to the State's ability to protect its citizens from environmental hazards as there was nothing about proximity to a day care center or size of the municipality that made any difference in the safety of its operations. Rather, the legislative history demonstrated that the sole purpose of the statute was to prevent the plaintiff from building the volume reduction facility. Similarly, with respect to Public Act 08-159 there is nothing about the size of the largest municipality in a franchise area having a population of more than 130,000 or about a third-party, nonprofit CAP serving at least six municipalities in the franchise area that makes any rational difference as to whether that nonprofit CAP is the best-suited entity to manage community access operations. In fact, prior to the consideration of this very issue the DPUC, after months of receiving written and oral testimony in a formal, contested administrative hearing, ruled that Sound View was best-suited to continue to serve as the CAP in the Area Two franchise area.[21] There is no rational basis for the legislation based on the criteria that singles out Sound View. In addition, the State is put to the test of requiring a compelling interest in imposing the legislation because it implicitly involves Sound View's First Amendment rights of freedom of speech as it also frustrates its ability to distribute television programming to several of the cities and towns in the Area Two franchise. When a statute either intrudes on the exercise of a fundamental right or burdens a suspect class of persons, the court will apply a strict scrutiny standard [under

[21] Final Decision in Docket 05-04-09.

which] the state must demonstrate that the challenged statute is necessary to the achievement of a compelling state interest. Contractor's Supply of Waterbury, LLC v. Commissioner of Environmental Protection, 283 Conn. 86 (2007). The plaintiff, Sound View, does not concede that the present case does not involve plaintiff's fundamental rights under the First Amendment to the U.S. Constitution and Article 1, Section 4 of the Connecticut Constitution.

The equal protection clause of the fourteenth amendment to the United States constitution provides: "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1. Article first, § 20, of the constitution of Connecticut provides: "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin." Under the rational basis test, Sound View must first establish that the State is affording different treatment to similarly situated groups of individuals. See, e.g., Stuart v. Commissioner of Correction, 266 Conn. 596, 602, 834 A.2d 52 (2003). This is a simple matter. According to the latest reports available on PURA's website, there are a total of 39 community access studios run by both the companies operating under the local franchise or by independent, nonprofit organizations. Public Act 08-159 is applicable to none of them except for the plaintiff, Sound View. The legislation causes only Sound View to be prevented from exercising certain rights as the franchise area's community access provider. These are rights it acquired in full and fair

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contested hearings before the Connecticut Department of Public Utility Control, including the right to manage all community access within its service territory and receive all community access support fees paid by subscribers and designated for the support of the community access provider (CAP). The legislation so specifically targeted Sound View, however, that the rights of all other CAPs in Connecticut were not touched. Note that with equal protection claims, there does not even have to be an inquiry made as to whether Sound View's rights are "protectable property interests."[22]

The similarities between P.A. 08-159 and the legislation that the Connecticut Supreme Court invalidated in City Recycling are striking. For example, P.A. 08-159, § 1, begins with the language "(a) Any third-party nonprofit community access provider serving six municipalities, one of which has a population of more than one hundred thirty thousand . . . ." Only one city, Bridgeport, where Sound View is based, meets this population criterion. The legislation in City Recycling, P.A. 97-300, § 2, similarly prohibited the commissioner of the department of environmental protection from approving, "for a city with a population of 100,000" "a new volume reduction plant or transfer station . . . ." Only Stamford, the city that was home to the targeted business, and four other Connecticut cities, met this population criterion. This was justification

[22] The doctrine requiring a plaintiff to show that it clearly was entitled to a protectable property interest in order to proceed applies to "due process" claims, not to "equal protection" claims. City Recycling, Inc. v. State of Connecticut, et al., 257 Conn. 429 (2001), discussion at page 454.

enough for the Connecticut Supreme Court to invalidate the law at issue in that case, P.A. 97-300, because it targeted and applied to only one entity, violated that plaintiff's right to equal protection under the laws.

Like the legislation in City Recycling, the sole and clear purpose of the sponsors of Public act 08-159 was to disenfranchise only Sound View by crafting the legislation so precisely so as to ensure that it would be the only nonprofit community access television organization that fit its criteria. The true intentions of the sponsoring Legislators were to overrule the DPUC's decision re-confirming Sound View as the Area 2 community access provider (CAP) through specifically-targeted legislation and not for any rational basis. The presumption of constitutionality can be overcome by the most explicit demonstration that the classification is a hostile and oppressive discrimination against particular persons and classes. City Recycling, 257 Conn. 429, at 445. This is made clear by the legislative history of House Bill 5814 during the 2008 Legislative Session.[23]

As the 2008 Legislative Session wound down it appeared that Sound View's efforts to defeat H.B. 5814 had prevailed. The final days of the Legislative Session had come and H.B. 5814 had not even made it out of committee. Then, what Sound View's detractors could not achieve with a front-on battle over philosophical differences at committee hearings they accomplished with a last-minute parliamentary sleight-

[23] H.B. 5814, "An Act Concerning Community Access Television." (copy attached)

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of hand. A legislator commandeered another Bill, S.B. 677, "An Act Concerning the Use of State Mobile Computing and Storage Devices,"[24] and got it amended by deleting all of its text and substituting the language of the defeated H.B. 5814. Senate Bill 677 was then brought to the floors of the House and Senate, but with the misdirection of keeping the original title on the bill, "An Act Concerning the Use of State Mobile Computing and Storage Devices." Senate Bill 677, now H.B. 5814 in disguise, passed with only ten minutes to spare before adjournment. Even legislators supporting Sound View's position unwittingly voted for its passage. Only later would the misleading title get "corrected" when it was signed into law. The final irony is that the senator, who along with a representative who engineered this "slick parliamentary move" that misdirected legislators' attention, was the Senate Co-Chair of the Legislature's Ethics Committee.[25]

The legislative history and the debate on the amendment to substitute the language of HB 5814 for S.B.677 clearly emphasize the sponsor's specific purpose of targeting Sound View, and to this day no rational basis for why such a measure would apply only to nonprofit CAPs that serve six municipalities, one of which has a population of more than 130,000, has been offered. Senator DeBicella summarized the true purpose of the legislature best in his statements as follows:

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[24] S.B. 677, "An Act Concerning the Use of State Mobile Computing and Storage Devices." (copy attached)

[25] Senator Gayle Slossberg, D – Milford, and Representative Kim Fawcett, D — Fairfield, bragged about this "slick parliamentary move" in a newspaper article. Connecticut Post, Sunday, June 8, 2008, page A1. (Copy attached)

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> SEN. DEBICELLA:
> Thank you, Mr. President. Mr. President, I rise in opposition to the amendment. I think the intention behind this is good. But as so often happens, we're passing legislation, whereas something's happening outside of this Chamber that could solve the problem. Right now, this legislation is narrowly tailored to apply to only a few situations, one of which is happening in the Greater Bridgeport region where six such towns, as Senator Slossberg mentioned, are trying to get some local access programming. And the issue of why I oppose this is twofold. One is that the person and the company who control the current license are in negotiations with the towns to actually give them that right to have local access programming. And I believe we should allow those negotiations to continue. But second, Mr. President, is more of a philosophical point, is that we are essentially, by passing this, overruling the DPUC in their decision to actually give out a license. And so if we believe it is good practice for us to second-guess the DPUC, for us to be going in and to changing licenses that they've determined should be given out, then you should vote for this bill or this amendment. I do not believe that's appropriate, Mr. President, so I will be opposing this amendment. Thank you.[26]

The presumption of the constitutionality of Public Act 08-159 has been overcome by clear evidence from the record that the legislation was a hostile and oppressive discrimination against the plaintiff.

Second Argument: Public Act 08-159 no longer applies to Sound View because in the Area Two Franchise there no longer is an authorized advisory council.

The Defendant Connecticut Public Utilities Regulatory Authority ("PURA") explicitly acknowledged the legal cessation of the purported Area Two Cable Advisory Council. Specifically, in an administrative proceeding in which Sound View questioned the applicability of certain statutes, PURA stated

[26] From the Floor Debate, proceedings in the Senate on May 7, 2008.

that "Since the passage of these statutes and the cessation of the existence of the Advisory Council, the Legislature has had ample opportunity to amend Conn. Gen. Stat. §16-331ff and has failed to do so." (emphasis added)[27]

To understand why the purported CAC[28] in the Bridgeport area franchise has ceased to exist requires a brief discussion of the evolution of the cable television regulatory landscape beginning in 2007. In Connecticut for several years immediately preceding and leading up to the 2007 legislative session the technology used to transport television signals to cable television subscribers was undergoing a transformation. The traditional cable television companies were offering telephone service, and the traditional telephone companies were getting into the video distribution business. Public Act 07-253 created two new certificates of authority. One, the "Certificate of Video Franchise Authority" (CVFA), would be for new entrants that wanted to compete with traditional cable TV companies and get into the video distribution business. Any company, including a phone company or even another traditional cable company, was eligible to apply for and receive a CVFA to compete with an incumbent cable company, thereby allowing it to offer video distribution services under greatly relaxed rules.[29] In addition, a traditional cable television that operated under "Certificate of Public Convenience and Necessity" (CPCN) was free to apply for and receive

[27] Final Decision in PURA Docket No. 11-07-09 dated February 1, 2012, page 4. (Copy attached).

[28] A "community antenna television advisory council" commonly is referred to as a "local cable advisory council" or just "local advisory council."

[29] Section 16-331e of the Connecticut General Statutes.

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a CVFA in other parts of the State where it had not operated a legacy cable system under a CPCN. However, the traditional cable company was prohibited from obtaining a CVFA within its CPCN franchise area."[30] So, to help out the traditional cable operators that now faced competition from holders of CVFAs within its incumbent franchise area, the Connecticut Legislature created a new certificate, the "Certificate of Cable Franchise Authority" (CCFA). This certificate greatly relaxed the requirements that the traditional "CPCN" cable operators had labored under, and it was available only to incumbent cable operators that had competitors in their incumbent franchise areas.[31]

The drafters of Public Act 07-253 surely expected that all traditional or so-called "legacy" cable television companies operating under the traditional "Certificates of Public Convenience and Necessity" (CPCNs) soon would be applying for and obtaining the lesser-regulated CCFAs upon their facing competition from new CVFA companies who had invaded their franchises areas. What is critically important and relevant to the present argument involving this present action, however, is that only the CCFA provisions "save" the local advisory councils from legal extinction. Once the traditional CPCNs were gone,

[30] Id., subparagraph (b).

[31] Sec. 16-331p of the Connecticut General Statutes.

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the law imposed only on the CCFA companies the obligation to maintain the local advisory councils in their franchise areas.[32]

The next part of the story, however, takes a legal twist unforeseen by the drafters of Public Act 07-253. Cablevision is what is commonly regarded as a multi-system operator or MSO. It operated three cable franchises under traditional CPCNs in Connecticut. But when a competitor, AT&T began operating under authority of a state-wide CVFA in their franchises, Cablevision was dissatisfied with having only the CCFA option to operate its entities. In fact the CCFA regulatory regimen still required those companies to shoulder more obligations than the even greater-relaxed rules of CVFA held by its competitor, AT&T. One of the holdover obligations required of the holders of CCFAs is continued reporting to and supporting each franchise area's local cable advisory council.[33] Cablevision would not have this obligation if it were able to operate in its territories with the more favorable CVFA as AT&T did. But again, and unfortunately for Cablevision, the regulatory regimen prohibited a legacy cable operator from applying for a CVFA in a service area in which it previously operated under a traditional CPCN.

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[32] Sec. 16-331t of the Connecticut General Statutes.

[33] Specifically, § 16-331t of the C.G.S. requires the holder of a CCFA to fund the local advisory council and meet with it at least twice each year. This essentially keeps the local advisory council that advised the company while it operated under a CPCN in legal existence. Holders of CVFAs fund and meet only with a state-wide video advisory council.

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There was, however, a loophole in the laws setting up these new certificates of authority. Cablevision, a multi-system operator, actually comprised three legally distinct operating entities under its Cablevision umbrella.[34] And, the law allowed for the free transfer of CVFAs to other entities,[35] so Cablevision availed itself of this provision. First, one of its three entities, Cablevision of Litchfield, Inc., applied for a CVFA for the entire State of Connecticut.[36] But because it asked for a CVFA franchise for the whole state, it received a favorable decision, in part, and a denial, in part. Because an entity that had operated under a traditional CPCN was prohibited from obtaining a CVFA in its incumbent territory, the Connecticut DPUC granted Cablevision of Litchfield, Inc.'s application for a CVFA for the entire State except for the Litchfield franchise area.[37] Next, on June 17, 2008, legal counsel for Cablevision of Connecticut, LP and Cablevision Systems of Southern Connecticut, LP, applied for certificates of video franchise authority (CVFAs) from the Department for all of the State of Connecticut, this time, however,

[34] Cablevision of Litchfield, Inc. held a CPCN to provide cable television service in the Litchfield franchise area pursuant to an October 1, 1998 Decision in DPUC Docket No. 98-06-10; Cablevision Systems of Southern Connecticut, LP held a CPCN to provide cable television service in the Bridgeport franchise area pursuant to a November 22, 2006 decision in DPUC Docket No. 05-04-09; and Cablevision of Connecticut, LP held a CPCN to provide cable television service in the Norwalk franchise area pursuant to a January 11, 2007 final decision in DPUC Docket No. 05-04-10.

[35] Specifically, paragraph (h) of § 16-331e of the C.G.S., provides that "The certificate of video franchise authority issued by the department is fully transferable to any successor in interest to the applicant to which it was initially granted. A notice of transfer shall be filed with the department not later than fourteen business days after the completion of such transfer. The certificate of video franchise authority issued by the department may be terminated by the certified competitive video service provider by submitting notice to the department."

[36] Application filed by letter from Paul Jamieson, Cablevision Counsel, dated January 17, 2008, to the CT DPUC (Copy attached).

[37] Decision of CT DPUC in Docket No. 08-01-14 granting application in part and denying application in part, dated February 1, 2008. (Copy attached)

excluding from each company's application that area in which it operated a traditional cable TV system.[38] These CVFAs were granted. One of these, Cablevision of Connecticut, LP, then operating a traditional cable franchise in the Norwalk area (Area 9), received a certificate of video franchise authority (CVFA) from the Connecticut DPUC for nearly all of the State, excluding the Norwalk area, but including the Bridgeport franchise area where Sound View manages community access television.[39] Then, to finalize its maneuver, Cablevision gave notice of the transfer of its three CVFAs, round-robin style, amongst its three entities: Cablevision of Connecticut, LP, Cablevision Systems of Southern Connecticut, LP and Cablevision of Litchfield, Inc.[40] The end result was that in Sound View's service area, the Bridgeport franchise area, Cablevision Systems of Southern Connecticut, LP was now the sole Cablevision-affiliated company operating a video distribution company, and it now was doing it under a CVFA. That meant that the only two video distribution companies, Cablevision and AT&T,[41] operated as CVFAs in the Bridgeport franchise area. In fact, this development rendered the local cable advisory councils in the Litchfield, Norwalk and Bridgeport franchise areas to cease their legal existence. In each of these three franchise areas, no CPCN or

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[38] Application filed by letter from Paul Jamieson, Cablevision Counsel, dated June 17, 2008, to the CT DPUC (Copy attached).

[39] Letter dated July 2, 2008 from Nicholas E. Neeley, Acting Executive Secretary, written to Paul Jamieson, Senior Counsel for Cablevision Systems Corporation, reference 08-06-12 CATV in Docket No. 08-06-12. (copy attached).

[40] Letter from Paul J. Corey, Cablevision Counsel, dated July 7, 2008 to CT DPUC. (Copy attached).

[41] The only other company providing video distribution services in the Bridgeport franchise area, AT&T, operates under a CVFA for the entire State.

CCFA holder was operating a video distribution system. Holders of CVFAs are required to report only to a single, state-wide video advisory council.[42]

Cablevision made clear to the groups formerly comprising the local advisory councils that each local advisory council no longer has any legal authority. At the Area Two Advisory Council meeting held on April 10, 2008, the representative from Cablevision, Jennifer Young, reported that Cablevision, through its entity that operated under a traditional cable franchise in the Litchfield area, had been granted permission to operate under a Certificate of Video Franchise Authority (CVFA) in the Bridgeport franchise Area Two and Norwalk franchise Area Nine. She explained that though the Cablevision entity operating in Area Two had not yet relinquished its traditional CPCN, they "as of now have no plans to reduce their commitment." However, she went on to explain that Cablevision felt that the CVFA certificate "had the least reporting requirements and regulations." The Chairman of the Area Two Advisory Council thereupon "questioned the future of the Area Two Advisory Council and by what means future funding would get back to the towns for community access."[43]

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[42] Section 16-331i of the Connecticut General Statutes.

[43] Minutes of Area Two Cable Advisory Council, from meeting April 10, 2008, filed under undocketed documents as part of 2008 Annual Reports, from CT DPUC Website. (Copy Attached.)

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The Area Nine local advisory council members, from the Norwalk franchise area, particularly were alarmed by this development, and at its meeting on September 17, 2008, one of the members of the now-defunct local advisory council, Donald Saltzman, reported that "he could not find a local advisory council designation in the new law for this [CVFA] certificate."[44] The Cablevision representative, Jennifer Young, now also alerted to this problem, stated only that Cablevision would continue to "recognize" the local area cable advisory council as before, but that she would provide an analysis of the issue at the next local advisory council meeting. On October 29, 2008, the now-ceased Area Nine Cable Advisory Council's Chairman, Hal Levy, noted that "the status of the ANCC under a CVFA was in question." Then he called upon the Cablevision representative, Jennifer Young for a report. She reported that Cablevision's attorneys "interpret the law to mean that the 3 councils serving Cablevision's three franchise areas no longer exist." [45] (emphasis added). The Cablevision representative, Jennifer Young, stated nonetheless that Cablevision finds its relationship with the ANCC to be "valuable" and "would like to keep the status quo for now." Donald Saltzman, a member of purported ANCC, commented that he had received the same opinion from the Office of Consumer Counsel [that ANCC no longer had any legal status].[46] The meeting of the purported Area

[44] See Minutes of the purported Area Nine Cable Advisory Council (ANCC), September 17, 2008, filed under undocketed documents as part of 2008 Annual Reports, CT DPUC Website. (Copy Attached)

[45] See Minutes of the purported Area Nine Cable Advisory Council, dated October 30, 2008 report of meeting held October 29, 2008, filed under undocked documents as part of 2008 Annual Reports, CT DPUC Website. (Copy attached).

[46] Id.

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Nine Cable Council of December 5, 2008 reported that Cablevision was not supportive of amending the statutes to clarify the status of local cable advisory councils.[47]

The Area Two Advisory Council ceased to exist as of July 7, 2008 when notice was given to the Connecticut DPUC that the Norwalk CVFA had been transferred to the Cablevision entity operating in the Bridgeport franchise area, leaving no entity operating under either a CPCN or CCFA. And in a further demonstration of the transferability of CVFAs, the two Cablevision entities operating in the Bridgeport and Norwalk franchise areas transferred their CVFAs to the entity known as Cablevision of Litchfield, Inc. The legal result remains that no entity operates in the Bridgeport franchise area under a CPCN or CCFA, thereby continuing the legal condition that no local advisory council, including the group purporting to be the Area Two Cable Advisory Council, has any legal existence with the Area Two franchise. [48]

Concluding Summary

The predecessor agency to the defendant PURA, the Department of Public Utility Control, re-confirmed that the Plaintiff, Sound View, deserved to continue as the designated community access provider (CAP) for the six cities and towns comprising the Area Two franchise in its final decision in Docket 05-04-

[47] See Minutes of the purported Area Nine Cable Advisory Council, dated December 5, 2008 report of meeting held December 3, 2008, filed under undocked documents as part of 2008 Annual Reports, CT DPUC Website. (Copy attached).

[48] See Letter from Michael A. Chowaniec, Area Director of Government Affairs, to PURA dated July 29, 2011. (Copy Attached)

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09. The DPUC, in this contested proceeding, considered voluminous written submissions and oral testimony from Sound View, the cable operator, members of the then-existing Area Two Cable Advisory Council, town and city officials, state officials, a professional firm that conducted a Needs Assessment, and private citizens. The process lasted many months and was arduous for all participants. Yet, in the final analysis the Final Decision authorized Sound View to continue in its role as the CAP while recognizing the divisions that existed between Sound View and the three of the towns, Milford, Orange and Woodbridge. These three towns had strong feelings about wanting to have their own, town-specific government access channels, while Sound View and the remaining three towns, Bridgeport, Fairfield and Stratford, supported a regional approach.

The Final Decision imposed an obligation on Sound View and the three towns in disagreement to negotiate and settle their differences alternative dispute resolution sessions sponsored by the DPUC. Two of the three towns, Milford and Woodbridge, in fact settled their difference with written agreements and commitments by Sound View to provide funding for their operations.

Whether the Town of Orange never intended to work out an agreement, or while participating in negotiations their officials decided they could not come to an agreement with Sound View is left to speculation. What is known is that Orange pursued a second strategy that enlisted some of the local state legislators to draft and support P.A. 08-159, which was designed and intended to trump the negotiations and

the DPUC decision. In addition to giving these towns what they wanted, the legislation also called for the diversion of $100,000 from the subscriber funds annually from Sound View to the Area Two Cable Advisory Council and a "death penalty" provision if Sound View dared to challenge the law by refusing to "consent" to a request by any of the towns to be "town specific."

Sound View has shown two reasons why P.A. 08-159 fails. First, the legislation so specifically targets Sound View that it is a violation of the equal protections accorded under our laws. There is no rational basis for carving out a nonprofit community access provider that serves six towns, one of which has a population of at least 130,000. Its only basis is to serve as a means to get at Sound View, and no other community access provider. Also, since it frustrates Sound View's ability to transmit programming to over the educational and governmental channels to some of the towns in the Area Two franchise, it implicates rights under the First Amendment to the U.S. Constitution and Article 1, Section 4 of the Connecticut Constitution. There certainly is no demonstrated "compelling" interest of the State seen in its passage of this legislation.

Secondly, Public Act 08-159 no longer is applicable because no local advisory council remains in the Area Two franchise to serve as the recipient of the annual $100,000 fund diversion from Sound View. The

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Area Two Advisory Council ceased to exist as of July 7, 2008. Cablevision and the defendant PURA has admitted this on the record, yet will continue to ignore this legal state of affairs unless the Court rules.

For the foregoing reasons the Plaintiff respectfully asks the Court to find in its favor on its Motion for Summary Judgment.

Respectfully Submitted,

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