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)	:	**MAY 24, 2013**

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MEMORANDUM IN REPLY TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Preliminary Statement

The Defendant (PURA)'s Memorandum,[1] in its efforts to find the "rational basis" on which to support the legislature's enactment of Public Act 08-159, reaches back to a contested administrative proceeding that was concluded by the DPUC[2] nearly two years before its introduction by the sponsoring legislator. On April 25, 2005, the then-incumbent cable operator filed for a renewal of its traditional cable television (CATV) franchise, causing the DPUC to open Docket No. 05-04-09, Application of Cablevision of Southern Connecticut, L.P. for Franchise Renewal.

The franchise under which the cable operator, Cablevision, and the community access provider, Sound View, then were operating was set to expire on October 31, 2007. The cable operator, Cablevision

[1] The Memorandum filed by the Defendant PURA in support of its Motion for Summary Judgment dated April 15, 2013 will be referred to as "Defendant PURA's Memorandum" in this reply memorandum of the Plaintiff, Sound View Community Media, Inc.

[2] In 2011 Public Act 11-80, An Act Concerning the Establishment of the Department of Energy and Environmental Protection and Planning For Connecticut's Energy Future, the term "Department of Public Utility Control" (DPUC) was changed to" Public Utilities Regulatory Authority" (PURA).

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Systems of Southern Connecticut, L.P., was one of several legal entities comprising the multi-system operator generally known as "Cablevision." Cablevision of Southern Connecticut, L.P. had been operating under a franchise grant of authority known as a "Certificate of Public Convenience and Necessity" (CPCN) that had been awarded in DPUC Docket No. 94-03-05, Application of Cablevision Systems of Southern Connecticut, Limited Partnership for Franchise Renewal.[3] The renewal application filed on April 25, 2005 if granted would allow Cablevision to continue to operate in the six towns comprising the Bridgeport Area Franchise or "Area 2" franchise beyond the term that was permitted in the 1994 docket. It also would allow Sound View to continue as the community access provider (CAP) during the new franchise term. Cablevision's application predictably asked for the maximum term of 15 years[4].

Evidence, hearings and testimony about how the cable operator performed in terms of its service and past performance would determine whether the cable operator should be rewarded with a new longer or shorter franchise term. Community access issues in franchise renewal proceedings, in contrast, generally are considered ancillary to the examination of the cable operator's past performance and future plans. As it turned out in this franchise renewal application, however, community access and Sound View took center

[3] In addition, Sound View, the plaintiff in the instant action, had been operating as the designated community access provider (CAP) under the authority of its own docket, DPUC Docket No. 97-09-09, Application of Sound View Community Media, Inc. for Designation as Area 2 Community Access Provider. However, since its designation ran concurrent with Cablevision's franchise term, thereby also expiring on October 31, 2007, Sound View's continuation as the designated as the Community Access Provider was taken up as part of Cablevision's renewal application in DPUC Docket No. 05-04-09.

[4] Notice of Request for Franchise Renewal filed on behalf of Cablevision of Southern Connecticut, L.P. by Paul J. Corey, Esq., dated April 25, 2005, page 2. See DPUC Docket No. 05-04-09, Application of Cablevision of Southern Connecticut, L.P. for Franchise Renewal.

stage. Consideration of Sound View's past performance and plans for community access eclipsed the issues related to the cable operator, no doubt a welcome development from Cablevision's point of view.[5]

The Defendant PURA's use of administrative proceedings of DPUC Docket 05-04-09 claiming that they provide a "rational basis" for Public Act 08-159 is both improper and incongruous.

The proceedings of DPUC Docket No. 05-04-09 began on April 25, 2005, the date Cablevision filed its renewal application, and concluded on November 22, 2006, the date of the final decision. As part of the final decision the DPUC granted Sound View an exclusive designation as the community access provider (CAP). It is incongruous to claim that two years later this administrative record would provide a "rational basis" for Public Act 08-159, particularly when the statute negated the DPUC's decision and, in effect, threw out its previous "rational basis" findings in the same record for its decision supporting Sound View.

First, Defendant PURA's Memorandum "cherry-picks" only testimony and oral and written comments from the record of Docket No, 05-04-09 that were unfavorable to Sound View, claiming this supports Public Act 08-159. But leaving out the whole story is misleading. Defendant fails to explain why the DPUC, notwithstanding the comments relied on in Defendant PURA's Memorandum, ruled in favor of Sound View as CAP. It fails to explain why the DPUC did not grant the three out of six disgruntled municipalities or the disgruntled cable advisory council the exceptions they were seeking to Sound View's

[5] The Final Decision in DPUC Docket No. 05-04-09 granted Cablevision an eleven-year franchise term beginning January 1, 2007 and extending to December 31, 2017 and granted Sound View its exclusive designation as the CAP for the franchise area.

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exclusive CAP status. It cites not one bit of evidence from the voluminous filings and testimony submitted in the proceedings by Sound View because Sound View's written submissions, oral testimony and cross examination of the adverse witnesses overcame all negative submissions and mud thrown by its opponents, causing Sound View to prevail.

The administrative record below serves as the basis for the DPUC's decision that designated Sound View the exclusive community access provider (CAP) and the recipient of all community access subscriber funding during the new franchise term. This whole record, and not the parts "cherry-picked" in the Defendant PURA's Memorandum, serves as the "rational basis" for that decision. How strange it is for the Defendant PURA now to claim that DPUC Docket No. 05-04-09 serves as the "rational basis" for a bill enacted nearly two years later whose sole purpose is to overturn its own final decision!

Quoting from the Final Decision in Docket No. 05-04-09 the DPUC ruled that "The Department has reviewed the voluminous record regarding community access. The record supports the finding that Sound View continue to be the community access manager, responsible for public access, educational access and governmental access operations." DPUC Docket No. 05-04-09, Final Decision dated November 22, 2007, pages 35-36. (SV Exhibit 3).

The Defendant PURA's "cherry picked" excerpts from DPUC Document 05-04-09 should not be resurrected and allowed to show a "rational basis" for the legislation that nullified the DPUC's decision. The

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Court should find it particularly disconcerting that the senator who, through deception[6] caused the enactment of Public Act 08-159, advanced outright misrepresentations of what happened in that docket on the floor of the Senate Chambers. The Defendant PURA's Memorandum at page 21 restates the false claim made by the state senator during debate over P.A. 08-159 that " . . . there are six towns, have been unable have been denied the ability to have town-specific programming on their public access television." That statement, on its face, is untrue and easily disproven. Throughout the record in DPUC Docket No. 05-04-09 only three of the six municipalities were opposed to Sound View's continuing as the designated CAP for the term of the proposed franchise renewal. Bridgeport, the largest municipality in the franchise area, Stratford and Fairfield all were "on board" with Sound View throughout the administrative proceedings. Also, at the time the senator was making her statements on the floor of the Senate, Sound View had concluded mutually acceptable agreements with the City of Milford and the Town of Woodbridge with help from a three-member DPUC mediation panel. The record of DPUC Docket No. 05-04-09 establishes that Sound View never disallowed so-called town-specific programming to be televised to any town. It is even ludicrous to believe that Sound View would deny local programming to be televised in a town where it was produced. Rather, the actual issue as made clear in the record involved issues of excessive "repeats" of local programming, and

[6] She termed it a "parliamentary sleight of hand." See Plaintiff's Memorandum for Summary Judgment dated April 15, 2013, page 16, which provides the entire background of how the Senator in the closing minutes of the legislative session used an amendment of a completely unrelated bill as a vehicle, deleted all of its text and substituted the language of the defeated H.B. 5814 which had not been voted out of committee. 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".

whether Sound View's plan to allow some regional programming to be televised on the government access channel should be allowed. See Plaintiff Sound View's Memorandum dated April 15, 2013, pages 3-5.

Therefore, contrary to the impression given by the Defendant PURA's Memorandum, the record in Docket No. 05-04-09 supports the Final Decision in that docket, and goes against the enactment of Public Act 08-159. The issues of community access during the administrative proceedings were well-considered sworn testimony, supporting documentation, and cross-examination by all parties in the quasi-judicial proceedings of that Docket. It further should be noted that no one brought an appeal of the Final Decision.

The Court, in the context of examining Public Act 08-159 should not be put to the task of having to re-examine all the arguments and counter-arguments that were made during the contested proceedings of DPUC Docket No. 05-04-09. The DPUC's final decision in the Docket favoring Sound View may have been the motive for the introduction of the bill that later would become P.A. 08-159. But the proceedings, themselves, do not supply the bill's "rational basis." To the contrary, the subsequent enactment of P.A. 08-159 nearly two years after the Final Decision has placed the Defendant PURA in the incongruous position of defending a statute whose sole purpose is to overrule its own Final Decision in Docket 05-04-09 granting Sound View exclusive CAP status. The Court should disregard all of the record of DPUC Docket No. 05-04-09. It is not part of the legislative history of P.A. 08-159, and it does not provide a rational basis for its enactment.

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Public Act 08-159 is a hostile and oppressive discrimination directed specifically against and intended only to apply to Sound View alone. There is no conceivable basis that might otherwise support it.

The Plaintiff is well aware of the presumption of constitutionality that statutes enjoy. Fortunately, the Equal Protection Clauses of both the Constitution of the United States and the Constitution of the State of Connecticut place some limitations on legislators who otherwise arbitrarily and capriciously could adopt laws applicable to just one entity, while similarly-situated entities are untouched. The Equal Protection Clauses of both the Constitution of the United States[7] and the Constitution of the State of Connecticut[8] require that the government treat all similarly-situated individuals equally.

The real record of legislative intent leading to the enactment of Public Act 08-159 shows by the most explicit demonstration that its only rationale was to establish a classification of "one." All along the intent was that only Sound View and Sound View, alone, would be subjected to its hostile and oppressive discrimination. As argued above, the Defendant PURA's bringing to the fore the record of DPUC Docket No. 05-04-09 belies the lack any rational basis for the legislation. The actual legislative history detailed in Sound View's April 15 Memorandum shows clearly that the sponsoring legislators' laser beam-like focus was to nullify a specific decision of the DPUC in which Sound View successfully prevailed.

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[7] "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1.

[8] "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." Article first, § 20, of the Constitution of Connecticut.

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Senator Dan Debicella got it right when he spoke in opposition to the bill that would become Public Act 08-159. His remarks bear repeating:

> Thank you, 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. (emphasis added).
>
> And so if we believe it is good practice for us to second-guess the DPUC for us to be going in and to be changing licenses that they determined should be given out, then you should vote for this bill or this amendment. (Sound View Exhibit 13)

One part of Senator Debicella's statement that the Plaintiff Sound View does quibble with, however, is where he says that the legislation is narrowly tailored to apply to only a few situations. What he should have said is that it was tailored to fit only one specific situation. He did say, however, that the bill would "overrule the DPUC in their decision to actually give out a license." (Emphasis added.)

There is legal precedence whereby 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. Furthermore, without any other basis that is rational, the State cannot enact legislation to prevent an entity from doing what it otherwise could lawfully do. City Recycling, Inc. v. State, 257 Conn. 429, 778 A.2d 77 (2001). The offending legislation that was found unconstitutional in City Recycling, Inc. prevented the plaintiff there from presenting an application to construct a volume reduction plant to the Connecticut Department of Environmental Protection. In that case the court held that the plaintiff had been deprived of receiving full and fair consideration of its proposal. In Sound View's situation, we submit that the issue is even more egregious. The offending legislation negates an application that had already been presented and granted, depriving Sound View of $100,000 per year in subscriber fees.

The instant case presents a situation in which Sound View is being prevented from exercising rights it already has been granted in a contested hearing that was concluded in Docket No. 05-04-09. These are rights that every other community access provider, whether company-run or third-party nonprofit, receives when they have been designated the CAP for their franchise area. Absolutely no other CAP in any of the other 24 franchise areas is required to "consent" to a reduction of $100,000 each year from the subscriber fees if would receive if an entity requests to be a "town specific" program provider.

As detailed in Plaintiff's Memorandum dated April 15, 2013, (Reference Sound View Exhibits 10, 12, and 13) the real legislative history is replete last-minute subterfuge and misrepresentation by the sponsoring legislator. The efforts to get the Act passed are so focused and directed that they negate every other conceivable basis that might support it.

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The further proffer of a "rational basis" offered by the Defendant PURA's Memorandum on all other grounds falls short as well. First, on page 8 of the Defendant PURA's Memorandum, there is an analysis of how many cable franchises with third party, nonprofit CAPS there are that contain municipalities with populations that exceed 100,000. This is misleading. First, the language of Public Act 08-159 actually targets franchises that have municipalities with populations that exceed 130,000, not 100,000.[9] According to the census figures of the Defendant PURA's Exhibit 3, only one municipality in the entire state has a population that exceeds 130,000, and that is Bridgeport. So that targets only the franchise in which Sound View operates. Secondly, the triggering mechanism of Public Act 08-159 requires that there be six municipalities in the franchise area, not five as is indicated in the Defendant PURA's Memorandum.[10] There are no other CAPs in the entire State of Connecticut that serve at least 6 municipalities, one of which has a population exceeding 130,000 other than the Bridgeport area franchise.

Defendant PURA's Memorandum on page 34 claims that Lavoie-Francisco v. Town of Coventry, 581 F.Supp.2d 304 (D.Conn.2008), affirmed by summary order, 352 Fed.Appx.464 (2d Cir. 2009) requires Sound View, a "class of one plaintiff," to "show, among other things, an extremely high degree of similarity between [itself] and the persons to whom [it] compares [itself] in order to succeed on an equal production claim." The Defendant tries to distinguish Sound View as being "unique" and not similarly situated to all

[9] Sec. 16-331ff (a)
[10] Id.

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other CAPS because it serves municipalities that are not "compact" and because the six municipalities it serves are from two different counties. (Defendant PURA's Memorandum, page 34-35.) An analysis of CAPS in the State of Connecticut discloses, however, that Sound View is not unique in that regard. There are a total of nine CAPs that serve towns in multiple Connecticut counties. A complete analysis of CAPs that serve towns in multiple counties is attached as proposed "SV Supplemental Exhibit A." It is based on Defendant PURA's Exhibit 1 (Franchise Map), Exhibit 2 (Community Public Access Channels and Studios), and Sound View's Exhibit 2 (List of CATV and Video Franchises in Connecticut). It also relies on a final decision released recently in PURA Docket No. 13-01-06 which lists all CAPS and the funding levels they are to receive for the current year. (The final Decision in PURA Docket No 13-01-06 is attached as proposed "SV Supplemental Exhibit B.) A further analysis of the breakdown of all community access providers in the State, indicating whether the CAP is cable operator-run, or a nonprofit organization, along with how many municipalities are served is attached as proposed "SV Supplemental Exhibit C." These show no rhyme or reason for singling out Sound View.

In summary, there is nothing about the magic number of having "six" municipalities in a franchise, one of which has a population in excess of 130,000[11], that provides any rational basis for determining that the nonprofit community access provider operating in that franchise should have its funding cut by $100,000

[11] It is of interest to note that the two largest municipalities in the franchise comprising more than half of the cable subscribers, Bridgeport and Stratford, to this day are "on board" with Sound View operating all the community access channels in the franchise. Neither has requested to be designated its own "town specific" program manager under the provisions of Public Act 08-159.

per year, and disenfranchised from operating educational and government community access by any "town organization, body or authority" who serves three business days' notice.

In City Recycling, Inc. v. State of Connecticut, et al., 257 Conn. 429 (2001), the court found the legislation 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. (Emphasis added). Similarly, there is nothing about a franchise's number of municipalities or the size of the largest one that makes any difference in how community access should be operated. In like manner, this court should invalidate Public Act 08-159.

The Defendant PURA's argument that Public Act 08-159 is applicable to holders of CVFA's is flawed. It misses the issue that the only recipient of the funds under the Act has ceased to exist legally. It is for this reason Public Act 08-159 no longer is applicable in the Bridgeport area franchise.

The Defendant PURA'S Memorandum left out important details of its recitation of the facts regarding applicability. First, the Defendant, PURA, explicitly acknowledged the legal cessation of the purported Area Two Cable Advisory Council in an administrative proceeding that has been made an exhibit in the instant case. (SV Exhibit 14.) When Sound View questioned the continued applicability of Public Act 08-159, the PURA opened a docket, PURA Docket No. 11-07-09. In declining to rule on Sound View's questions, it stated that "Since the passage of these statutes and the cessation of the existence of the

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Advisory Council, the Legislature has had ample opportunity to amend Conn. Gen. Stat. §16-331ff and has failed to do so." (emphasis added)[12]

While the Plaintiff understands the Defendant PURA's reluctance to render a decision on the constitutionality of Public Act 08-159, it was extremely disappointed it did not rule on the Act's applicability. It is telling, however, that the Defendant PURA neither in PURA Docket 11-07-09 nor, for that matter, in any other circumstances until this case, has ever taken the position that the Area Two Cable Advisory Council continues to have legal existence.

In its Final Decision in Docket 11-07-09, PURA provides a concise summary of the circumstances showing how Cablevision had transformed itself in a holder of a CVFA, which thereby creates a legal relationship solely with the state-wide video advisory council and nullifies the legal purpose of the local advisory council. First it summarizes the docket:

> In this Decision, the Public Utilities Regulatory Authority, formerly known as the Department of Public Utility Control, finds that it does not have the jurisdiction to rule on the constitutionality of §§16-331ff and 16-331gg of the General Statutes of Connecticut. Additionally, since the Legislature has not made any substantive changes to these statutes, the Public Utilities Regulatory Authority cannot assume that the failure to act was not intentional. Accordingly, the Public Utilities Regulatory Authority at this time declines to issue a declaratory ruling in response to Sound View's petition until such time as the Legislature takes action to amend the applicable statute.
> (SV Exhibit 14, page 1)

[12] Final Decision in PURA Docket No. 11-07-09 dated February 1, 2012, page 4. Sound View Exhibit 14.

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Next, it recites the chain of events undertaken by Cablevision to shed the restrictions of its having held CPCNs in the past:

> On January 18, 2008, Cablevision of Litchfield, Inc. (Cablevision or Company) filed an application (Application) for a certificate of video franchise authority (CVFA). By its February 1, 2008 letter in Docket No. 08-01-14, Application of Cablevision of Litchfield, Inc. for a Certificate of Video Franchise Authority, the PURA awarded Cablevision a CVFA, except for its legacy Litchfield franchise area, pursuant to Conn. Gen. Stat. §16-331e(e). By its July 2, 2008 letter in Docket No. 08-06-12, Application of Cablevision of Connecticut, L.P and Cablevision Systems of Southern Connecticut, L.P., the PURA approved the Cablevision of Connecticut, L.P. and Cablevision Systems of Southern Connecticut, L.P. CVFAs each of the company's franchise area except for their respective legacy franchise areas.
>
> By letter dated July 29, 2011 in Docket Nos. 08-01-14 and 08-06-12, Cablevision requested three separate CVFAs that reflected a transfer of certificates between the Cablevision companies. As a result of these transfers, Cablevision's Litchfield certificate encompasses all 169 towns in Connecticut. (SV Exhibit 14, page 4)

Finally, in a very telling manner, PURA explains its reason for not ruling on the applicability. It states as follows:

> Regarding the applicability of Conn. Gen. Stat. §§16-331ff and 16-331gg to SVCM, the PURA must look at the language of the applicable provisions and to the rules of statutory construction for guidance. These statues provide in relevant part that the holder of a CVFA in a specified service area shall direct the sum of one hundred thousand dollars per year from the subscriber funds that it provides to the existing third-party nonprofit community access provider (SVCM) directly to the service area's community antenna television advisory council. SVCM's contention is that the provision is no longer valid since the cable advisory council ceased to exist as of July 7, 2008.

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> It is a well-established rule of statutory construction that the Legislature is presumed to be aware of existing statues. Board of Public Utilities Commissioners v. Yankee Gas Services, 236 Conn. 287,295 (1996). Therefore, the PURA must assume that the legislature is aware of the provisions of Conn. Gen. Stat. §§16-331ff and 16-331gg. It is also a well-established rule that the Legislature is presumed to be aware of the impact of its actions or inactions on an existing statute. CL&P vs. Texas –Ohio Power, Inc., 243 Conn 635 (1998). 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. The PURA cannot assume that the failure to act was not intentional. Furthermore, the PURA cannot at this time make any determination as to the validity or invalidity of the terms of Conn. Gen. Stat. §§16-331ff and 16-331gg in regards to SVCM. (Emphasis added. SV Exhibit 14, page 4.)

In other words, PURA was reluctant to decide whether the Legislature's failure to address this lapse was intentional, particularly since by its inaction to amend Public Act 08-159 in the face of the legal cessation of the Area Two Cable Advisory Council it puts the continued efficacy of the law into doubt. This is precisely why Sound View has brought the instant Declaratory Judgment action, so that the Court can take up and decide the issue.

Secondly, Defendant PURA's Memorandum leaves out that Cablevision explicitly informed the local cable advisory councils of their cessation of legal existence. Plaintiff Sound View's Memorandum, pages 23-25, and accompanying Exhibits 21, 22, 23, 24. Even the Office of Consumer Counsel weighed in on the

issue finding no legal existence on the part of the local advisory council. Plaintiff Sound View's Memorandum, page 24. It appears that no one, even the defendant, believes the Area Two Cable Advisory Council has legal existence.

Yet another, novel argument by the Defendant arguing for the continued legal existence of the advisory council is proposed, but it also fails. The Defendant PURA's Memorandum on page 40 first quotes the definition of "Certified competitive video service provider" in Sec. 16-1 of the Connecticut General Statutes. This includes the provision where an entity or its predecessor entities that were holders of certificates of public convenience and necessity (CPCNs) cannot be regarded as such. It in essence means that the present holder of the CVFA in the Bridgeport area franchise, Cablevision of Litchfield, Inc., as a former holder of a CPCN, cannot be considered as certified competitive video service provider. But the Defendant PURA's argument is that the language in Sec. 16-331gg states that it applies to "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." In other words if Cablevision of Litchfield, Inc. an admitted prior holder of a CPCN was a certified competitive video service provider, Sec. 16-331gg still applies to it and that "saves" the Area Two Cable Advisory Council's legal existence.

Here are two problems with that line of reasoning. First, it is unknown if, on October 1, 2007, Cablevision of Litchfield, Inc. was a certified competitive video service provider. In order to qualify, Cablevision of Litchfield, Inc. would have needed meaningful competition from another video service

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provider such as AT&T. However, October 1, 2007 is the effective date of Public Act 07-253, which marks the beginning of the Connecticut's opening the door for "cable competition" under the present regulatory regime. AT&T was just getting traction as a video service provider, and more importantly its competitive video delivery product at that time was being rolled out only in more densely-populated areas of the State. It is unlikely that Cablevision of Litchfield, Inc., as the incumbent cable provider in rural Litchfield, had any competition from AT&T in 2007 that would qualify it to be certified as a competitive video service provider.

More importantly, however, the argument is not about whether Public Act 08-150 may be applicable to the video service operators who serve as collectors and aggregators of the subscriber funds. The applicability argument is about whether the designated recipient of the funds, the Area Two Cable Advisory Council, has ceased to exist. It is clear from the circumstances laid out in Plaintiff Sound View's Memorandum, pages 17-25, that because there exist in the franchise area no holders of CPCNs or CCFAs, the Area Two Cable Advisory Council has no legal existence. The logic employed by the Defendant PURA is a desperate attempt "conjure up" the Area Two Cable Advisory Council from the dead.

Concluding Summary

The Defendant PURA's use of excerpts from an administrative proceeding does not provide a rational basis for Public Act 08-159. On the contrary, the whole record of that administrative proceeding supported a final decision that the legislation overrules. Nearly two years prior to the introduction of the

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legislation the Defendant used the record in DPUC Docket No. 05-04-09 to support a just and rational basis for a decision that designated Sound View the community access provider for the renewed franchise term. It now makes the incongruous argument that the same record supports a rational basis for the legislation that overrules its decision nearly two years later. The Defendant cannot have it both ways.

The "real" legislative history of Public Act 08-159 is record of misrepresentation and deception to enact legislation that constitutes a hostile and oppressive discrimination directed specifically against and intended only to apply to Sound View. There is no conceivable rational basis that might otherwise support it.

Finally, the legal cessation of the Area Two Cable Advisory Council has been acknowledged by the Defendant PURA, Cablevision[13], the Office of Consumer Council, and even by the purported advisory council itself within its own minutes. In short, the only designated recipient of the funds that Public Act 08-159 would divert from Sound View no longer has any legal existence. Defendant PURA's arguments about the applicability of the law to Cablevision of Litchfield, Inc. misses the point. No one is arguing that the law's "breakdown" is on account of its inapplicability to the collector and aggregator of the subscriber funds. The "breakdown" is the legal cessation of the recipient of the funds, and for this reason the Act no longer can operate or be applicable in the present legal circumstances.

[13] All holders of Certificates of Video Franchise Authority (CVFAs) including Cablevision of Litchfield, Inc., are obligated to support the legally existing State-Wide Video Advisory Council and contribute $2,000 to it annually pursuant to Sec. 16-331i of the Connecticut General Statutes. A holder of a CVFA has no legal obligation to report to or support any local advisory council, notwithstanding Cablevision's stated commitment to "voluntarily" continue to work with the group that formerly existed as the legally-constituted Area Two Cable Advisory Council, presumably when it serves its purposes.

For the foregoing reasons the Plaintiff respectfully asks the Court to find in its favor on its Motion for Summary Judgment and to deny the Summary Judgment Motion of the Defendant PURA.

Respectfully Submitted,
SOUND VIEW COMMUNITY MEDIA, INC.

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CERTIFICATION

I hereby certify that a copy of the above was both emailed and mailed first class mail postage prepaid to the following parties, on this 24th day of May, 2013:

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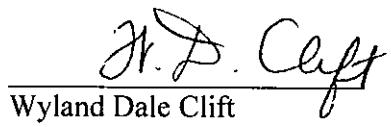

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