DOCKET NO. HHD-CV-12-6034434-S	:	SUPERIOR COURT
	:	
SOUND VIEW COMMUNITY MEDIA, INC. *Plaintiff*	: :	JUDICIAL DISTRICT OF HARTFORD
	:	
v.	:	
	:	
STATE OF CONNECTICUT PUBLIC UTILITIES REGULATORY AUTHORITY, ET AL. *Defendants*	: : : :	 JUNE 7, 2013

SUPPLEMENTAL MEMORNADUM OF LAW IN SUPPORT OF PURA'S MOTION FOR SUMMARY JUDGMENT (DOC # 123) AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DOC ## 124, 125, 134)

I. INTRODUCTION

The parties have filed cross motions for summary judgment. The Plaintiff, Sound View Community Media, Inc. (Sound View), filed its Motion for Summary Judgment (see Docket entries ## 124-126) simultaneously with the motion for summary judgment filed by Defendant, State of Connecticut Public Utilities Regulatory Authority (PURA) (Docket Entry # 123).[1] Both PURA and Sound View submitted Responsive Memoranda of Law on May 24, 2013 (Docket Entries ## 134, 136). PURA now submits this supplemental memorandum of law in support of its (PURA's) motion for summary judgment and in opposition to Sound View's motion for summary judgment. The entirety of both of PURA's Memorandum of Law in Support of Motion for Summary Judgment, dated April 15, 2013, Docket Entry # 123), as well as its Responsive

[1] PURA is the successor agency to the Department of Public Utility Control (DPUC).

Memorandum of Law, dated May 24, 2013 (Docket Entry # 136) are hereby incorporated by reference.

As noted in earlier briefs, Plaintiff is currently the cable television community access provider for the Bridgeport area, called Area Two (constituting the municipalities of Bridgeport, Stratford, Fairfield, Milford, Orange and Woodbridge). *See Complaint ¶ 4*. Plaintiff's Complaint alleges that disagreements between it and Milford, Orange and Woodbridge and the Area Two Cable Advisory Council led to the enactment by the General Assembly of P.A. 08-159. *See Complaint, ¶¶ 9-12*. Plaintiff challenges the constitutionality of P.A. 08-159, as well as the applicability of it to itself. P.A. 08-159 is the culmination of years of dispute over whether cable local governmental and educational channels should carry area-wide programming (the same programming for all municipalities in the cable area), generally the philosophy of Plaintiff Sound View, or whether these channels should be utilized mainly for town-specific programming (so that subscribers will see programming of meetings of their town boards and commissions and the like, not those of other towns in the cable area), the position of those towns who have intervened, as well as the Area Two Cable Advisory Council (Council), whose legal existence is challenged in this litigation.

The instant memorandum does not seek to repeat earlier arguments, but rather to answer the latest memorandum by Plaintiff Sound View. Plaintiff's arguments broadly break down into the following: 1) that the record of DPUC Docket No. 05-04-09 (Cablevision Franchise Renewal Decision) does not support a rational basis for the General Assembly's passage of P.A. 08-159, and the Court must disregard it; 2) at the same time, P.A. 08-159 seeks to overturn the DPUC's

administrative decision in P.A. 08-159; 3) that the General Assembly purportedly singled out Sound View without any rational basis so that under the Connecticut Supreme Court's decision in *City Recycling, Inc. v. State of Connecticut*, 257 Conn. 429, 778 A.2d 77 (2001), P.A. 08-159 is unconstitutional; and 4) that both PURA and Cablevision purportedly agree with Plaintiff that the designated recipient of $100,000 a year in cable subscriber funds in accordance with P.A. 08-159, the Area Two Cable Advisory Council, does not exist as a legal entity. None of these contentions have merit.

II. ARGUMENT

As noted in earlier briefs, but bears repeating here, PURA is asking this Court to rule 1) that P.A. 08-159 is constitutional; and 2) the Act should be interpreted as the co-sponsors intended. Plaintiff, to the contrary, is seeking to have the Act declared unconstitutional, or, in the alternative, have the Act interpreted in a manner that renders it meaningless.

A. PUBLIC ACT 08-159 IS CONSTITUTIONAL.

Plaintiff renews its claim is that P.A. 08-159, codified as Conn. Gen. Stat. §§ 16-331ff and 16-331gg, is unconstitutional. Sound View contends that P.A. 08-159 violates its rights to equal protection under the Fourteenth Amendment to the U.S. Constitution and under Article 1, §§ 1 and 20 of the Connecticut Constitution. Plaintiff's opening salvo in its May 24, 2013 Memorandum states that PURA, "in its efforts to find a '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 nearly two years before its introduction by the sponsoring legislator." *See Plaintiff's May 24, 2013 Memorandum, page 1*. Plaintiff then proceeds to

complain that PURA only "cherry-picks" the record in DPUC Docket No. 05-04-09 and that DPUC Docket No. 05-04-09 was decided favorably for Plaintiff. *See Plaintiff's May 24, 2013 Memorandum, pages 1-6*.

Plaintiff misses the mark. First, PURA did not hide anything from the Court, as it produced the entire DPUC decision in DPUC Docket No. 05-04-09. *See Exhibit 5 to PURA's Statement of Material Facts (SMF), Docket Entry # 123*. PURA did not pretend that there were not contrary opinions expressed from those presented by the intervening municipalities, but Plaintiff fails to realize that the rational basis test is not an opportunity for the Court to evaluate whether the legislature made the right policy choice in enacting the challenged legislation. Two decades ago, the Supreme Court of the United States held that rational-basis review in equal protection analysis "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices" and that it does not authorize "the judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." *Heller v. Doe,* 509 U.S. 312, 319, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993). The Supreme Court said that for these reasons, "a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity." *Id*. Finally, the *Heller* Court held:

> A State, moreover, has no obligation to produce evidence to sustain the rationality of a statutory classification. [A] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data . . . A statute is presumed constitutional, and [t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record. Finally, courts are compelled under rational-basis review to accept

> a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality.

Id., 509 U.S. at 320-321 (internal citations and quotation marks omitted).

These principles were more recently reiterated by the Connecticut Supreme Court in *Markley v. Department of Public Utility Control,* 301 Conn. 56, 23 A.3d 668 (2011). In *Markley*, the Court held that under the rational basis test, the equal protection clause is satisfied as long as "there is a plausible policy reason for the classification." *Id.*, 301 Conn. at 69. In order for one challenging the constitutionality of the statute to prevail, "the party challenging the legislation must negative every conceivable basis which might support it." *Id.*, 301 Conn. at 70. Thus, this Court is not charged with balancing the arguments of the municipalities (joined by the Attorney General and the Office of Consumer Counsel – OCC) before the then-DPUC and decide whether Sound View or the other parties were correct. Rather, this Court must uphold the Public Act as long as there is a plausible policy reason to support it.

Plaintiff nevertheless asks this Court to weigh competing arguments. Plaintiff first argues that DPUC Docket No. 05-04-09 was decided in its favor because the DPUC retained Sound View as the community access provider. Plaintiff further argues that because of this, the DPUC must have rejected all of the arguments against Sound View, and that PURA is now precluded from relying upon these arguments as a rational basis for P.A. 08-159. These arguments have no merit. First, the DPUC did not accept Sound View's arguments carte blanche. On November 22, 2006, the DPUC issued its decision granting renewal of Cablevision's franchise

for Area Two. In its decision, the DPUC found that "it is 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." *Cablevision Franchise Renewal Decision (Exhibit 5), page 28; SMF ¶ 10*. The DPUC ordered that, "If negotiations between Sound View and one or more than one municipality have not resulted in mutually acceptable programming scheduling policies by that date [January 31, 2007], Sound View and the municipalities will be subject to mandatory alternative dispute resolution (ADR) and the Department will attempt to resolve the issue by ADR mechanisms, pursuant to Conn. Gen. Stat. § 16-19jj." *Id*. The DPUC thus rejected "either relieving Sound View entirely of its responsibility as the manager of public, educational and governmental access or limiting its responsibility to public access operations only." *Id., at page 36*.[2] This rejection was not a determination that the municipalities' concerns were invalid, but only a policy preference that they be resolved by negotiations and compromise. Second, even if the DPUC had agreed with Sound View on the issues that separated Sound View from the municipalities, the General Assembly had the power to determine otherwise and be persuaded by the arguments of the municipalities.

[2] Plaintiff's May 24, 2013 Memorandum stated on page 6, "It should be further noted that no one brought an appeal of the Final Decision." While that is true, it should be even further noted that the Connecticut Supreme Court held that, pursuant to the Federal Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq., only a cable operator may appeal a franchise renewal decision, and that Connecticut state law to the contrary is preempted. *Cox Cable Advisory Council v. Department of Public Utility Control*, 259 Conn. 56, 68-75, 788 A.2d 29, *cert. den*., 537 U.S. 819, 123 S. Ct. 95, 154 L.Ed.2d 25 (2002). Thus, the affected municipalities could not have appealed the DPUC's franchise renewal decision.

Sound View pleaded that negotiations and DPUC mediation sessions did take place between several of the Area Two municipalities and Sound View subsequent to the Cablevision Franchise Renewal Decision. *Complaint, ¶¶ 10-11*. Nevertheless, by letter dated March 7, 2008, the Town of Orange reported to the DPUC that no agreement had been reached between Sound View and the Town on town-specific versus regional programming. *See Exhibit 17; SMF ¶ 23.*

The General Assembly thus decided upon a different course of action, enacting Public Act 08-159 on June 12, 2008. The dispute was hardly stale, as Plaintiff suggested in the opening sentence of its May 24, 2013 Memorandum. Rather, the dispute that took "center stage" in the Cablevision franchise renewal case (Plaintiff's words – Plaintiff's Memorandum of May 24, 2013, pages 2-3) had clearly been festering before the DPUC franchise renewal proceedings began, and continued up to the passage of P.A. 08-159, and, as evidenced by the instant litigation, to this very day.

Plaintiff's Complaint itself noted that during the DPUC proceedings in DPUC Docket No. 05-04-09 there were differences of opinion between the Area Two Advisory Council and Sound View, saying:

> The differences of opinion between Sound View and some members of the Area Two Advisory Council concerned the relative merits of town-specific community access program distribution versus system wide community access program distribution, and control over the funds paid by Cablevision subscribers in support of community access television.

Complaint, ¶ 8. The Cablevision Franchise Renewal Decision revealed that to be the case, as the DPUC stated:

> The most contentious issue during the proceeding concerned the relative merits of town-specific community access program distribution versus franchise-wide community access program distribution and whether Sound View's performance in facilitating town-specific programming and responding to the needs and interests of the municipalities has been in the public interest. Sound View testified that, even before it became the community access provider in the franchise, its philosophy has favored system-wide programming distribution and that it made that philosophy clear to municipalities when it became the community access manager in 1999. Tr. 6/22/06, pp. 721 and 722.

Cablevision Franchise Renewal Decision (Exhibit 5), page 19.

While Plaintiff's Complaint initially mentioned "some members of the Area Two Cable Advisory Council," *Complaint, ¶ 8*, the Complaint later specifically mentioned three municipalities, Milford, Orange and Woodbridge, as having differences with Sound View over the issue of town-specific programming versus system-wide programming. *Complaint, ¶ 9.*[3] As was shown in the DPUC Cablevision Franchise Renewal Decision

While PURA already discussed the application of the rational basis test to the instant case on pages 29-38 of PURA's Memorandum of Law in Support of Motion for Summary Judgment (Doc. # 123), and that a higher level of scrutiny was not applicable (see pages 3-8 of PURA's Responsive Memorandum, Doc. #136), some elaboration is needed to respond to Plaintiff.

While Plaintiff cites *City Recycling, supra*, the only similarity between that case and the present is that the legislation being challenged in both cases allegedly adversely affected one entity. In *City Recycling, supra,* the Connecticut Supreme Court took great pains to search every

[3] Although Plaintiff's Complaint mention only three of the municipalities, the Town of Fairfield joined them in support of town-specific programming, *Cablevision Franchise Renewal Decision (Exhibit 5), page 23; SMF ¶ 10*, and in this litigation itself in supporting the defense of P.A. 08-159.

conceivable rational basis to uphold the legislation and found none whatsoever. It found no public health, safety traffic, noise, or visibility concerns. *Id.*, 257 Conn. at 438, 439-441. The test the Court must apply is whether there is a "plausible policy reason for the classification." *Markley v. DPUC, supra*, 301 Conn. at 70. In *City Recycling, supra*, there was no such plausible policy reason. By contrast, in the instant case several policy reasons support the Act. They include:

First, Area Two is unique in the nature of Connecticut cable areas with major cities served by a single third-party nonprofit organization. The area is not compact, but rather a line of towns from Fairfield to Woodbridge, divided equally between three Fairfield County municipalities and three New Haven County municipalities, with little interest, in any, in common for area-wide governmental programming. Next, the area has a history of contention between the three New Haven County towns (according to Plaintiff's Complaint) and Plaintiff Sound View (located in Bridgeport), with the DPUC adding Fairfield on the side of the other towns. The contention is between towns favoring town-specific programming and Plaintiff Sound View favoring system-wide programming. Plaintiff has not demonstrated such a conflict anywhere else in Connecticut.

Third, according to Plaintiff's Complaint, the DPUC itself recognized the conflict so that, even when retaining Sound View in its position of third-party nonprofit organization administrator of public access channels in Area Two, DPUC ordered mediation sessions between Sound View and the towns. Finally, notwithstanding Plaintiff Sound View's contention that the mediation was making progress toward a resolution, the Town of Orange indicated that as late as

March 7, 2008, no agreement had been reached (Exhibit 17 to SMF). Shortly thereafter, the General Assembly exercised its prerogative to enact a legislative solution.

The burden is on Plaintiff Sound View to negate "every conceivable basis" which could support P.A. 08-159. *Markley v. DPUC*, *supra*, 301 Conn. at 678; see also *Keane v. Fischetti*, 300 Conn. 395, 406, 13 A.2d 1089 (2011). As the foregoing reasons demonstrate, Plaintiff cannot possibly meet that burden.

Plaintiff raises two additional points. First, as earlier noted, Plaintiff emphasized that the DPUC retained Sound View, suggesting that there is now a contradiction by the successor agency, PURA, defending the municipalities' position as affording a rational basis for P.A. 08-159. There is no contradiction, however, between a belief that resolving the issues dividing the municipalities and Sound View through negotiations and compromise would be the best policy from a recognition that the municipalities had rational concerns and General Assembly has the discretion to chose a different path – resolving those concerns in favor of the municipalities by legislation. Additionally, even if there was a contradiction in agency position, administrative agencies "are ordinarily not restrained under the doctrine of stare decisis or on the grounds of equitable estoppel." *Germain v. Town of Manchester*, 135 Conn. App. 202, 214, 41 A.3d 1100 (2012).

Second, Plaintiff complains that the General Assembly reversed a decision issued by the DPUC. *Plaintiff's May 24, 2013 Memorandum, pages 6-8*. That, however, is the legislature's prerogative and the courts are not immune from the General Assembly reversing its decisions. As the Connecticut Supreme Court noted in *Envirotest Systems Corp. v. Commissioner of Motor Vehicles*, 293 Conn. 382, 978 A.2d 49 (2009), the General Assembly explicitly reversed the rule

of *State v. Courchesne*, 262 Conn. 537, 577-79, 816 A.2d 562 (2003) regarding the use of legislative history in statutory interpretation by enacting Conn. Gen. Stat. § 1-2z. *Envirotest Systems Corp., supra*, 293 Conn. at 391, note 8. Our form of government expressly permits such an action by the legislature.

B. PUBLIC ACT 08-159 IS FULLY APPLICABLE.

Plaintiff's Memorandum of May 24, 2013 again asserts that P.A. 08-159 (which has been codified as Conn. Gen. Stat. §§ 16-331ff and 16-331gg) is no longer applicable because the designated recipient of the funds, the Area Two Cable Advisory Council purportedly ceased to exist as of July 7, 2008. *See Plaintiff's Memorandum of May 24, 2013, pages 12-17.* PURA again notes that Plaintiff's argument is totally irrelevant to the applicability of Conn. Gen. Stat. § 16-331ff, and nothing in Plaintiff's latest memorandum denies it.

The plain language of the portion of P.A. 08-159, § 1, codified as Conn. Gen. Stat. § 16-331ff, is clear and unambiguous. It does not mention any cable advisory council, but rather requires Plaintiff, "upon request from any town organization, authority, body or official within its service territory" to operate education and government public access channels in the town to use Plaintiff's equipment. If Plaintiff fails to provide its consent, PURA shall revoke Plaintiff's authorization as the community access provider. Conn. Gen. Stat. § 16-331ff. Further, even if Plaintiff were correct in its assertion that the Area Two Cable Advisory Council has no longer any legal status, that would, at most, affect the applicability and vitality of P.A. 08-159, Section 2, codified as Conn. Gen. Stat. § 16-331gg, NOT Conn. Gen. Stat. § 16-331ff. Conn. Gen. Stat. § 1-3 explicitly states, "If any provision of any act passed by the General Assembly or its appli-

cation to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of such act." Thus, Conn. Gen. Stat. § 16-331gg survives without regard to the legal status of the Advisory Council.

The argument regarding the existence of the Area Two Cable Advisory Council is relevant to the applicability and vitality of P.A. 08-159, Section 2, codified as Conn. Gen. Stat. § 16-331gg. The funding provision is contained in subsection (a) of § 16-331gg:

> (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 subscribers 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.

Id, emphasis added.

Plaintiff nonetheless claims that PURA already decided that the Area Two Cable Advisory Council no longer had any legal existence. *See Plaintiff's Memorandum of May 24, 2013, pages 12-13.* Plaintiff is of the opinion that PURA did rule on the existence of the Area Two Cable Advisory Council, but was in error for not then following through with the implication for the effectiveness of Conn. Gen. Stat. § 16-331gg. Plaintiff is essentially stating that PURA rendered a declaratory ruling granting part of what Plaintiff asked, but was in error for not following through. If so, Plaintiff's sole remedy is an administrative appeal of PURA's declaratory ruling

(a final decision under the UAPA). Such an appeal was not filed with this Court or served on the agency within the 45 days after the mailing of the final decision as required by Conn. Gen. Stat. § 4-183(c). Thus, this Court has no subject matter jurisdiction over the instant case unless PURA declined to render a declaratory ruling. *Glastonbury Volunteer Ambulance Association, Inc. v. Freedom of Information Commission*, 227 Conn. 848, 854, 633 A.2d 305 (1993). Plaintiff cannot contend that PURA did not issue a declaratory ruling and then contend that it did. If the Court does construe PURA to have made a decision on all or part of Plaintiff's petition for a declaratory ruling, then Plaintiff failed to exhaust its administrative remedies and this Court has no subject matter jurisdiction over the case. *See Payne v. Fairfield Hills Hospital*, 215 Conn. 675, 679-680, 578 A.2d 1025 (1990).

While Plaintiff's arguments regarding the applicability of Conn. Gen. Stat. § 16-331gg were addressed by PURA in its April 15, 2013 memorandum and it is incorporated herein, *see PURA Memorandum in Support of Motion for Summary Judgment, pages 39-42*, as well as its May 24, 2013 memorandum, which is also incorporated herein, *see PURA Responsive Memorandum, pages 8-15,* Plaintiff raises additional arguments that must be addressed.

Plaintiff's Memorandum of May 24, 2013 again asserts that Cablevision "explicitly informed the local cable advisory councils of their cessation of legal existence." *Plaintiff's May 24, 2013 Memorandum, page 15.* In its pleadings filed with PURA on Plaintiff's petition for declaratory ruling, however, Cablevision itself acknowledged the continued existence of the Council for the purposes of P.A. 08-159. On September 16, 2011, Cablevision submitted comments to PURA regarding Plaintiff's Petition that disputed Plaintiff's contentions that the Act was uncon-

stitutional and inapplicable. *SMF ¶ 36; Exhibit 29.* As to the applicability of the Act, Cablevision said:

> Cablevision is "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."
>
> ƒ Cablevision provides video services within the service territory of Sound View, which is "a third-party nonprofit community access provider that serves six municipalities, one of which has a population of more than one hundred thirty thousand."
>
> These "six municipalities, one of which has a population of more than one hundred thirty thousand," are Bridgeport, Fairfield, Orange, Milford, Woodbridge, and Stratford (*i.e.*, the Bridgeport Area).
>
> The Advisory Council is "the service territory's community antenna television advisory council for developing town-specific education and government community access programming."
>
> Accordingly, subsection (a) of Conn. Gen. Stat. 16-331gg applies to Cablevision and the Advisory Council and requires that Cablevision "direct the sum of one hundred thousand dollars per year from the funds collected from subscribers in said service territory . . . directly to the service territory's community antenna television advisory council."

Id. Cablevision's comments show step-by-step that Cablevision is covered by the Act and that the Advisory Council is the intended recipient of the funds.

Pages 16-17 of Plaintiff's Memorandum of May 24, 2013 suggests that for Cablevision's argument and PURA's argument to prevail, Cablevision of Litchfield, Inc. had to be a certified competitive video service provider as of October 1, 2007. Since P.A. 07-253 created that status only as of October 1, 2007, no company would have qualified. Rather, the phrase "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" as used in Conn. Gen. Stat. § 16-331gg

had to refer to a company that was "providing service as a community antenna television company pursuant to section 16-331 on October 1, 2007" and later became a "certified competitive video service provider." Given a choice between interpreting Conn. Gen. Stat. § 16-331gg so as to render it meaningful, and rendering it meaningless, this Court must interpret it in a way that preserves its legislative intent and meaning. *See Housatonic Railroad Company, Inc. v. Commissioner of Revenue Services*, 301 Conn. 268, 303, 21 A.3d 759 (2011).

Further, it bears repeating that the legislators themselves who crafted and supported P.A. 08-159 pointed out to PURA that they shaped the legislation to cover whatever form of regulatory certificate Cablevision might obtain. As previously noted in PURA's earlier Memorandum of May 24, 2013, nine of the area legislators, including two of the co-sponsors of P.A. 08-159 (Representative Kim Fawcett and Senator Gayle Slossberg) submitted a joint response to Plaintiff's Petition. The legislators' letter of September 16, 2011 to PURA stated, in relevant part:

> C.G.S. 16-331gg established the legal requirement that Cablevision annually distribute $100,000 to the [Area Two Cable Advisory] Council to support its local public access programming activity. This statute was adopted in 2008 (a year after the passage of the 2007 Video Franchising Act) for the express purpose of providing the Council with financial resources to support its town-specific public access programming activity. **The legislature was aware of the fact that Cablevision was in the process of obtaining a CVFA certificate when the legislation was pending and it addressed that issue by drafting the statute to broadly apply to all video service providers (CVFA, CCFA and CPCN holders)**. Pursuant to the provision of the 2008 PEG Act, the Council has been receiving funds, expending funds on town-specific PEG programming, and as required filing annual reports with this Authority on its public access activities.

See PURA Docket No. 11-07-09, Exhibit 27; SMF ¶ 33 (emphasis added).

Thus, the legislators expressly drafted P.A. 08-159 to allow the continued existence of the Area Two Cable Advisory Council without regard to the type of certificate held by the cable provider, Cablevision.

Finally, Plaintiff overlooks the existence of a State-wide Video Advisory Council. Conn. Gen. Stat. § 16-331i establishes the "State-wide Video Advisory Council." It provides:

> (a) There shall be a State-wide Video Advisory Council, **whose membership is made up of one representative from each of the existing advisory councils established pursuant to section 16-331**. A certified competitive video service provider shall biannually convene a meeting of said council. No member of the State-wide Video Advisory Council shall be an employee of a community antenna television company or a certified competitive video service provider. For the purpose of this subsection, an employee includes any person working full time or part time or performing any subcontracting or consulting services for a community antenna television company or a certified competitive video service provider.
>
> (b) The certified competitive video service provider shall provide funding to such State-wide Video Advisory Council in the amount of two thousand dollars per year.
>
> (c) Members of the State-wide Video Advisory Council shall serve without compensation. For the purpose of this subsection, compensation shall include the receipt of any free or discounted video service.

Id., emphasis added. Thus, the legislature presumed that, even if service is provided in an area by holders of CVFAs, local area advisory councils will continue to exist and members will serve on the new State-wide Video Advisory Council. Plaintiff is not denying the existence of the State-wide Video Advisory Council. If, for any reason, this Court does not agree that the Area Two Cable Advisory council continues to have legal existence, then the State-wide Video Advi-

sory Council would presumably be the appropriate council for receiving and distributing the funds. Either way, Plaintiff is NOT entitled to the $100,000 in question.

III. CONCLUSION

For the reasons stated in this Supplemental Memorandum, this Court should find P.A. 08-159 both constitutional and viable. PURA thus asks this Court to render summary judgment in favor of PURA and deny Plaintiff's declaratory judgment action.

DEFENDANT,
STATE OF CONNECTICUT
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CERTIFICATION

I hereby certify that a copy of the above was emailed to the following on this 7th day of June, 2013, and subsequently mailed first class mail postage prepaid:

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