DOCKET NO. HHD CV 12-6034434 S	:	SUPERIOR COURT
	:	
SOUND VIEW COMMUNITY MEDIA, INC.	:	JUDICIAL DISTRICT OF
	:	HARTFORD AT HARTFORD
V.	:	
	:	
STATE OF CONNECTICUT PUBLIC UTILITIES REGULATORY AUTHORITY	:	MARCH 31, 2014

MEMORANDUM OF DECISION RE: CROSS MOTIONS FOR SUMMARY JUDGMENT (#123 AND #124)

This declaratory judgment action concerns the constitutionality and the effectiveness of Number 08-159 of the 2008 Public Acts (P.A. 08-159 or act), enacted in the waning minutes of the 2008 legislative session. The act was a legislative response to a long-running dispute between the plaintiff, Sound View Community Media, Inc. (Sound View), and certain of the six municipalities that Sound View serves as a third-party nonprofit provider of community access television. The dispute concerned whether educational and governmental community access programming should be regional or town-specific. Sound View favored regional programming, so that all subscribers throughout the region would generally see the same programming, including educational and governmental programming from towns other than their own. Several of the towns, however, wanted town-specific educational and

governmental programming, so that subscribers in those towns would generally see their own town boards, councils, commissions, and the like, rather than those of other towns in the area. When the towns were unable to achieve their objective through proceedings at the Department of Public Utility Control (DPUC, now the Public Utilities Regulatory Authority, or PURA), they turned to their legislators for relief. All parties agree that P.A. 08-159 was intended to affect only Sound View and the communities it serves. The intended and the practical effect of the act is to require Sound View to consent to town-specific programming and to divert $100,000 of subscriber funds each year from Sound View to a local advisory council for distribution to municipalities to support town-specific educational and governmental public access programming.

Because no other community access provider in the state is affected by the act, Sound View claims that the act violates Sound View's right to equal protection under the federal and state constitutions. If the act is held to be constitutional, Sound View argues that it should be declared "inapplicable" because, under Sound View's reading of the relevant statutes, the local advisory council to which the funds are directed ceased to exist in 2008 as a result of changes in the franchising laws and actions taken by the area franchise holder, Cablevision Systems of Southern Connecticut, L.P. (Cablevision or Bridgeport Cablevision).

For the reasons set out in this decision, the court concludes that P.A. 08-159 is both constitutional and effective. The act addressed a uniquely contentious situation in which an entity charged with serving the public interest had been at odds for years with communities it was supposed to serve. The legislature acted within its constitutional authority in addressing a problem that had persisted despite DPUC's directive to the parties to reach a compromise. It

was also within the legislature's power to choose the local advisory council as the intermediary to administer grants to various municipalities to accomplish the legislative purpose of the act. By so doing, the legislature effectively extended the existence of the advisory council regardless of other changes in the advisory council's role.

I

PROCEDURAL HISTORY

The plaintiff, Sound View, is a Connecticut nonprofit, nonstock corporation in the sole business of community access television. Since 1999, it has served as the community access provider for the cable franchise service area known as "Area Two," which includes Bridgeport, Fairfield, Stratford, Milford, Orange, and Woodbridge. The defendant, PURA, is the state authority charged with the regulation of television services in Connecticut. Intervenors are the city of Milford, the towns of Orange, Woodbridge, and Fairfield, and the Area Two Cable Advisory Council (Area Two council), the legal existence of which Sound View disputes.

Before commencing this action, Sound View petitioned PURA in 2011 for a declaratory ruling that P.A. 08-159 is unconstitutional, or, in the alternative, inapplicable. PURA opened Docket No. 11-07-09 and requested position statements from the parties and intervenors it named.[1] After considering statements from interested parties, public officials, and cable

[1] The parties in PURA Docket No. 11-07-09 were Sound View Community Media, Inc., Cablevision of Litchfield, and the Office of Consumer Counsel. PURA granted intervenor status to Cox Communications, Inc., AT&T of Connecticut, Comcast Communications, Inc., MetroCast Communications, Inc., Thames Valley Communications, Inc.; Verizon New York, Inc., Cablevision of Litchfield Advisory Council, Area Two Advisory Council, Area Nine Advisory Council, and the Statewide Video Advisory Council. See PURA Ex. 36, PURA Docket No. 11-07-09, "PURA Declaratory Ruling of the Sound View Community Media, Inc." p. 3.

subscribers within the franchise area, PURA declined to issue a declaratory ruling. It held that it lacked jurisdiction to decide the constitutionality of a state statute. It also declined to rule on the "applicability" of the act "until such time as the Legislature takes action to amend any applicable statute(s)." PURA Ex. 36, PURA Docket No. 11-07-09, "PURA Declaratory Ruling of the Sound View Community Media, Inc.," p. 4 (PURA Ruling, Docket No. 11-07-09).

After PURA declined to issue a declaratory ruling, Sound View brought this action. PURA and Sound View each moved for summary judgment. All intervenors adopted PURA's positions. PURA and Sound View submitted numerous exhibits to which no objections were made. The exhibits include excerpts from the record of DPUC or PURA proceedings and excerpts from statutes, regulations, and legislative histories. The parties agree that there are no disputed issues of material fact, although they disagree about the legal conclusions to be drawn from the record before the court. They further agree that summary judgment is appropriate. PURA Memorandum (Docket Entry No. 123) at 28-29; Sound View Memorandum (Docket Entry No. 125) at 7-8. At oral argument on the cross motions for summary judgment, all parties stipulated that the court could take judicial notice of the entire record of relevant DPUC and PURA administrative proceedings, as such records are posted on PURA's website. Transcript, September 17, 2013, pp. 108-10. Because there are no disputed issues of material fact and the questions presented are pure questions of law, summary judgment is appropriate. Practice Book § 17-49; *Johnson* v. *Meehan*, 225 Conn. 528, 534-35, 626 A.2d 244 (1993).

II

OVERVIEW OF CABLE TELEVISION REGULATION

An overview of cable television regulation is necessary to place the issues of this case in context. Cable television services have been regulated for decades by a "deliberately structured dualism" of federal and state law. Cable Television Report and Order, 36 F.C.C.2d 143, 207 (1972). Before 1984, cable services were regulated by state and local governments through a franchising process. Local governments are "inescapably involved" in granting franchises because cable services require the use of public streets and rights of way for the laying of cables. Id. In 1984, Congress enacted the Cable Communications Policy Act of 1984 (Cable Act of 1984) to establish a national policy for local, state and federal regulation of cable television. H.R. Rep. No. 98-934, p. 19 (1984), reprinted in 1984 U.S.C.C.A.N. 4655, 4666. Under federal law, cable operators must obtain a franchise from a franchising authority to offer cable services. See 47 U.S.C. § 522 (10). Under Connecticut law, the legislature granted franchising authority first to the Public Utilities Commission (PUC), then to its successor, DPUC, and now to PURA. See *Cox Cable Advisory Council* v. *Dept. of Public Utility Control*, 259 Conn. 56, 58 n.2, 788 A.2d 29 (2002) (noting that DPUC was then designated as the franchising authority for the state).

From the 1960s until changes in the law in 2007, cable providers in Connecticut were required to obtain a certificate of public convenience and necessity (CPCN) to build or operate a community antenna television system, more commonly known as CATV or simply as cable, in a particular service area. See Public Acts 1963, No. 425. By 2007, there were twenty-four cable franchise areas in Connecticut, encompassing every Connecticut municipality. Cable

companies operating under CPCNs were subject to extensive regulation, including lengthy contested procedures for franchise applications and renewals, facility build-out requirements, rate regulation, and consumer protection and community access requirements. See General Statutes §§ 16-331 through 16-333p; Regs., Conn. State Agencies §§ 16-333-1 through 16-333i-1.

As a historical matter, long before the Cable Act of 1984, state and local authorities had required cable companies to set aside certain channels for community access as a condition of the franchise grant. See *Denver Area Educational Telecommunications Consortium, Inc.* v. *Federal Communications Commission*, 518 U.S. 727, 760-62, 116 S. Ct. 2374, 135 L. Ed. 2d 888 (1996). The community access requirement was seen essentially as recompense for the use of public rights of way for the installation of cable facilities. Id., 734. Community access channels include those designated for public access (programming by anyone in the community on a first-come, first-served basis), educational access (programming by and about a community's educational institutions), and governmental access (programming by and about local government operations). Collectively, public, educational, and governmental access channels are known as "PEG" channels. H.R. Rep. No. 98-934, p. 30 (1984), reprinted in 1984 U.S.C.C.A.N. 4655, 4667.

In the Cable Act of 1984, Congress codified existing practices, authorizing franchising authorities to require cable franchise holders to designate some channels for public, educational, or governmental use. See 47 U.S.C. § 531; see also H.R. Rep. No. 98-934, p. 30 (1984), reprinted in 1984 U.S.C.C.A.N. 4655, 4667. Consistent with federal law, Connecticut requires cable franchise holders to designate channels for community access programming,

which includes public, educational, and governmental access. See General Statutes § 16-331 (d) (1) and (3). Connecticut also requires that every cable franchise holder include all its community access channels in its basic service package. General Statutes § 16-331a (b). Funding for community access programming is provided through fees imposed on cable subscribers. General Statutes § 16-331a (k). Under federal and state law, cable operators are generally prohibited from exercising editorial control over PEG channels.[2]

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[2] 47 U.S.C. § 531 provides in relevant part:

> (b) Authority to require designation for public, educational, or governmental use. A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 626, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section. . . .
>
> (e) Editorial control by cable operator. Subject to section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.

General Statutes § 16-331a (g) provides:

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

In Connecticut, community access programming is provided either by the cable company itself or by a third party nonprofit community access provider. Any nonprofit organization may apply, with or without the consent of the cable franchisee, to become the community access provider for a given franchise area or part thereof. See General Statutes § 16-331 (c). Of the twenty-four cable franchise areas in Connecticut, fourteen have community access provided by the cable franchisee, seven have community access provided by a third-party nonprofit organization covering the entire cable franchise area, two have separate nonprofit organizations for each municipality in the area, and one is divided, with the cable franchisee providing community access for one of the area towns and a third-party nonprofit organization providing community access for the remaining towns. See PURA Ex. 2, "Connecticut Public Access Channels and Studios."

In the 1970s, by regulation, PURA's predecessor agency, PUC, created local cable advisory councils in each cable franchise area to "give advice to the management of the cable television company upon such matters affecting the public as it deems necessary." Regs., Conn. State Agencies § 16-333-30. The membership of each local council includes representatives of each of the towns in a franchise area where a CPCN has been granted to a cable television company. Regs., Conn. State Agencies § 16-333-24. Members are appointed for two year terms and serve without compensation. Regs., Conn. State Agencies §§ 16-333-25 through 16-333-28.

Although initially created by regulation, local advisory councils have been incorporated into the statutory scheme governing cable franchises. Cable companies operating under CPCNs are required by statute to meet at least twice annually with the advisory council for their

franchise area; General Statutes § 16-331 (c) (1); advisory councils are designated as intervenors in any contested case involving the franchise holder in their areas; General Statutes § 16-331 (c) (2); and one of the factors to be considered in determining whether to renew a franchise is "the operator's effectiveness in dealing with the advisory council." General Statutes § 16-331 (d) (1) (F). A cable company operating under a CPCN is required to contribute two thousand dollars a year to support the local advisory council. General Statutes § 16-331c. Local advisory councils also play a role in the selection and monitoring of community access providers. See, e.g., General Statutes §§ 16-331a (c); 16-331a (h); 16-331a (j). The local advisory councils serve as the voice of the community in dealing with the cable companies and community access providers with respect to cable services, rates, community access, and other consumer issues.

Although the cable franchise laws expressly provided that cable franchises were nonexclusive, as a practical matter, only one cable company was operating in each franchise area before the mid-2000s. Changes in technology, however, led to substantial changes in the statutes governing cable services at that time.

In or around 2005, two telephone companies – Southern New England Telephone Company, an AT&T subsidiary, and Verizon-NY – announced plans to provide statewide video services through an internet protocol (IP). The DPUC initiated an investigation to determine whether IP video service constituted cable service and thus required the provider to obtain a CPCN. On June 7, 2006, over the vigorous objection of existing cable franchise companies, the DPUC held that IP video services were not cable services and that IP video providers would not be required to obtain a CPCN. See Decision, Department of Public Utility

Control,"DPUC Investigation of the Terms and Conditions Under Which Video Products May Be Offered By Connecticut's Incumbent Local Exchange Companies," Docket No. 05-06-12 (June 7, 2006).

Existing cable franchise holders and consumer advocates were dismayed by DPUC's decision. They feared that unregulated providers of video services would have a significant competitive advantage over heavily regulated cable providers and would have none of the public accountability or obligations to support community access programming. The Office of Consumer Counsel (Consumer Counsel), a statutory party in cable franchise proceedings, commenced an action in federal district court, seeking to have IP video services declared to be cable services under federal law. See *Office of Consumer Counsel* v. *Southern New England Telephone Co.*, 515 F. Supp. 2d 269 (D. Conn. 2007), vacated, 368 Fed. Appx. 244 (2d Cir. March 5, 2010). The Consumer Counsel also filed an administrative appeal of the DPUC decision in state court.

While the various actions were pending, the cable companies and the telephone companies came up with compromise proposed legislation to address the uncertainties created by the DPUC ruling and the ensuing litigation. See 50 H.R. Proc., Pt. 22, 2007 Sess., pp. 7044-45, remarks of Representative Vickie Nardello. The legislation was introduced in the 2007 legislative session and adopted as Number 07-253 of the 2007 Public Acts (P.A. 07-253).

Under the 2007 legislation, two new types of franchises for video services were created: a "certificate of *video* franchise authority" (CVFA) and a "certificate of *cable* franchise authority" (CCFA) (emphasis added). P.A. 07-253, § 2 (CVFA), § 13 (CCFA). Together, the two new franchises substantially deregulated the provision of video services and, in effect and

over time, superseded the CPCN. Although CVFAs and CCFAs are similar in most respects, there are differences that are material to this case.

The CVFA is available to any "entity or person" *except* a cable company providing cable services under a CPCN. See General Statutes §§ 16-331e (a).[3] While an incumbent cable franchise holder is precluded from applying for a CVFA in its own CPCN franchise area, however, it can apply for a CVFA in any other area in the state. Id.

For the providers, a CVFA offers competitive advantages over a traditional cable franchise governed by a CPCN. An applicant for a CVFA does not have to have a contested hearing to obtain the certificate; it merely has to submit an application containing specific information and representations. General Statutes § 16-331e (c). If the application is deemed complete, PURA is required to grant it. General Statutes § 16-331e (e). A CVFA is indefinite in duration, freeing the holder from the necessity of periodic renewal proceedings, and it is fully transferable to any successor in interest of the original holder. General Statutes § 16-331e (h). The holder of a CVFA, unlike the holder of a traditional CPCN, is not required to comply with facility build-out requirements and is not subject to rate regulation. General Statutes § 16-331f.

A CVFA holder is nevertheless subject to certain requirements. It must provide channel

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[3] General Statutes § 16-331e (a) provides as follows: "An entity or person, other than a community antenna television company certified to provide community antenna television service pursuant to section 16-331 on or before October 1, 2007, or an affiliate, successor or assign of such community antenna television company, seeking to provide video service in the state on and after October 1, 2007, shall file with the Public Utilities Regulatory Authority an application for a certificate of video franchise authority, containing such information as required by this section. A community antenna television company may apply for a certificate of video franchise authority pursuant to this section for any service area in which it was not certified to provide community antenna television service pursuant to section 16-331 on or before October 1, 2007. The application shall be accompanied by a fee of one thousand dollars."

capacity and funding for community access programming; General Statutes § 16-331h; it must periodically meet with a statewide video advisory council, composed of one representative from each of the existing local advisory councils, and provide two thousand dollars in annual financial support for the statewide advisory council; General Statutes § 16-331i; and it must comply with a modest number of consumer protection provisions. General Statutes §§ 16-331j through 16-331o.

A cable company that was providing services under a CPCN when the law went into effect could not obtain a CVFA for its existing cable franchise service area. General Statutes § 16-331e (a). It could, however, apply for the second new type of franchise, a CCFA, thirty days after a competitor began offering services under a CVFA in its service area. General Statutes § 16-331p (a).

The CCFA is similar to the CVFA in many respects: it is obtained through a similar application process; it is indefinite in duration; and it frees the holder from facility build-out requirements and rate regulation. Compare General Statutes §§ 16-331e through 16-331o (CVFA provisions) with §§ 16-331p through 16-331aa (CCFA provisions). But the two types of franchises are not identical, and a CCFA subjects its holder to somewhat greater regulation than does a CVFA. One difference concerns community access requirements. While the holder of a CVFA must provide channel capacity and funds from its subscriber fees for community access services, the holder of a CCFA remains subject to the more extensive community access requirements of General Statutes § 16-331a. In addition, a CCFA holder must continue to meet with and provide financial support to the local cable advisory council with which it was associated under its former CPCN, rather than the statewide advisory council.

III

FACTUAL BACKGROUND

The parties do not dispute the facts that are material to this decision. The case concerns the Area Two franchise service area, which consists of Bridgeport, Stratford, Fairfield, Orange, Milford, and Woodbridge. Before P.A. 07-253 was enacted, cable services in Area Two were provided by Cablevision under a CPCN. As the cable operator, Cablevision originally was responsible for managing community access. Section 7.1 of Cablevision's 1997 franchise agreement with DPUC provided as follows:

> The Franchisee shall maintain three channels specially designated for non-commercial community access, including public access, educational access and governmental access programming. The system will be configured to allow each channel to be sent to specific municipalities only or system-wide *at the choice of the access user.* The Franchisee may use any of the access channels for any other purpose whenever they are not fully utilized for community access. Any conflict for the use of channels designated for community access programming shall be resolved in municipalities only or system-wide *at the choice of the access user.*

(Emphasis added.) PURA Ex. 6, DPUC Docket No. 05-04-09, Needs Assessment Ex. C, "Responses to Correspondence Regarding Public, Educational and Governmental Programming," p. 18.

In accordance with § 7.1, Cablevision dedicated channel 77 to public access, channel 78 to educational access, and channel 79 to governmental access programming. PURA Ex. 5, Decision in DPUC Docket No. 05-04-09, "Application of Cablevision of Southern Connecticut, L.P. for Franchise Renewal," p. 18. It developed the technical capacity to "narrowcast" programming, so that each of the three PEG channels can be simultaneously used by the municipalities for town-specific PEG programming. In other words, it is technologically

possible for subscribers in Bridgeport to receive Bridgeport governmental programming on channel 79 at the same time that subscribers in Orange receive Orange governmental programming on channel 79 (and so on for each municipality choosing to make use of town-specific programming).

In 1997, the plaintiff Sound View, an affiliate of the Discovery Museum in Bridgeport, applied to become the community access provider for Area Two. Cablevision submitted a competing access plan, and the DPUC held a contested hearing on the issue. PURA Ex. 4, Decision, Department of Public Utility Control, "Application of Sound View Media for Designation as Area 2 Community Access Provider," Docket No. 97-09-09 (November 25, 1998). The DPUC granted Sound View's application, and in November, 1999, Sound View assumed responsibility for providing community access services. To implement the DPUC orders, Cablevision and Sound View entered into a community access provider agreement. Id., 48. The agreement included a provision that required Sound View's written consent for Cablevision to allow any educational institution or governmental body to use the educational or governmental access channels for town-specific access purposes. See PURA Ex. 5, Decision, Department of Public Utility Control,"Application of Cablevision of Southern Connecticut, L.P. for Franchise Renewal," Docket No. 05-04-09 (November 22, 2006), p. 20; see also DPUC Docket No. 97-09-09, Compliance Filing Order No. 8 (November 30, 1999).[4]

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[4] Section I.5 of the 1999 agreement between Cablevision and Sound View provided as follows: "Town Specific Access Programming. To the extent that any educational institution, organization or authority or any governmental body or related official in Area 2 desires to use the educational and/or governmental channel furnished by Cablevision to Sound View hereunder for their town specific access programming, such institution, organization, authority, body or official shall be directed by Cablevision to contact Sound View directly. Cablevision shall not allow any educational institution, organization or authority or any

In 1998, before Sound View commenced serving as the community access provider late in 1999, the town of Orange began to cablecast local programming under a user access agreement with Cablevision that allowed Orange to use channel 79 on a town-specific basis on a twenty-four hour, seven day a week basis. PURA Ex. 6, DPUC Docket No. 05-04-09, Needs Assessment Ex. C, "Responses to Correspondence Regarding Public, Educational and Governmental Programming," pp. 14-17. Orange invested substantial resources in developing its cablecasting of local government meetings and events over the following year. Woodbridge also operated a town-specific governmental access channel on channel 79. Id., pp. 19-22.

Sound View preferred "system-wide" programming. Although it did not initially attempt to force system-wide programming on Orange and Woodbridge, which were operating town-specific governmental programming when Sound View took over as community access provider late in 1999, it did extend an "incentive" to all the municipalities in Area Two in 2002. It offered to provide free training and some equipment to local governments on the condition that the municipalities agree that all programming would be system-wide. See DPUC Docket No. 05-04-09, Sound View Reply Memorandum to Interim Relief sought by City of Milford, (July 3, 2006), pp. 3-5. Orange and Woodbridge declined such assistance, but Milford – much to its later regret – accepted the incentive.

On the governmental channel that Sound View provided on a system-wide basis,

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governmental body or related official to use the educational or governmental channel furnished by Cablevision to Sound View hereunder for their town specific access programming without the prior written consent of Sound View." DPUC Docket No. 97-09-09, Compliance Filing Order No. 8 dated November 30, 1999. This provision was inconsistent with § 7.1 of Cablevision's 1997 franchise agreement, which allowed town-specific programming "at the choice of the access user."

programming included governmental meetings from all the towns. In addition, Sound View used those channels to cablecast free satellite programming from sources such as NASA and the Pentagon channel. See PURA Ex. 5, Decision in DPUC Docket No. 05-04-09, p. 20. It also broadcast CT-N[5] programming for seven hours a day every weekday. See PURA Ex. 10.[6]

In 2005, Cablevision initiated the renewal proceeding for its CPCN. At that time, it became evident that significant disagreements had developed between Sound View and certain municipalities regarding the issue of town-specific programming. The Cablevision renewal proceeding became a forum in which the philosophical and financial conflicts between Sound View and four dissatisfied municipalities (Milford, Orange, Woodbridge, and Fairfield) were aired in heated debates. See PURA Ex. 5, DPUC Decision in Docket No. 05-04-09, "Application of Cablevision of Southern Connecticut LP for Franchise Renewal," November 22, 2006, p. 20; PURA Ex. 6, DPUC Docket No. 05-04-09, Needs Assessment, pp. 38-42.

By statute, the Consumer Counsel was designated a party to the Cablevision renewal proceeding, and the Area Two council was designated an intervenor. Other intervenors included Sound View, the municipalities of Milford, Orange, and Woodbridge, and the

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[5] CT-N is the Connecticut Television Network, a nonprofit organization authorized by statute to record and broadcast state governmental proceedings. See General Statutes § 16-1 (51) ("'The Connecticut Television Network' means the General Assembly's state-wide twenty-four-hour state public affairs programming service, separate and distinct from community access channels").

[6] PURA Ex. 10 contains a request for interim relief filed by the City of Milford in the Cablevision renewal proceeding in DPUC Docket No. 05-04-09. Milford's letter requesting relief attached as exhibits correspondence between city officials and Sound View, including a letter from Sound View's president, dated March 23, 2005, denying Milford's request for certain town-specific hours. In that letter, Sound View's president stated that the hours of 10 a.m. to 5 p.m. every weekday were reserved for CT-N programming and Tuesday and Thursday evenings were reserved for Bridgeport city council meetings.

Attorney General. See PURA Ex. 5, Decision, DPUC Docket No. 05-04-09, supra, 1. Pursuant to General Statutes § 16-331 (f), an independent consultant, Moss & Barnett, was engaged to conduct a community needs assessment. PURA Ex. 5, Decision, DPUC Docket No. 05-04-09, supra, 1.

Approximately seventy-five persons attended the evening public comment hearing held in the Cablevision franchise renewal proceeding, and thirty-seven attendees offered testimony on the renewal request. Id., 2. State senators and representatives, including the speaker of the House of Representatives, testified regarding the conflict with Sound View over the issue of town-specific programming. Local elected officials and cable subscribers testified to the same effect, asking to have Sound View removed as the community access provider if it continued to insist on blocking town-specific programming. Id. DPUC received eighty-six letters regarding the renewal request, reinforcing the concerns voiced at the public comment hearing regarding Sound View's opposition to town-specific programming. Id.

The controversy was both philosophical and financial. As a philosophical matter, Sound View believed that its position as community access provider gave it the right to determine what programming would be broadcast on the PEG channels, regardless of the wishes of the communities themselves. PURA Docket No. 05-04-09, Sound View Letter Dated April 3, 2006, "Response to 'Town-Specific Community Access Issue,'" p. 6. As a financial matter, Sound View would not provide equipment to support town-specific governmental access programming unless the municipality agreed to system-wide governmental access programming, and it did not provide any direct funding to municipalities.

Sound View deemed it appropriate for all subscribers to receive the same content on the

PEG channels and claimed that town-specific programming would "Balkanize" the communities. Id. It further argued that the municipalities did not generate sufficient town-specific programming to broadcast new material on a twenty-four hour, seven day a week schedule, which led to multiple repeats of programming, times when only a static calendar of events was shown, and sometimes a blank screen. Id., 6-7.

The municipalities of Milford, Orange, and Woodbridge vigorously disagreed with what they regarded as Sound View's paternalistic and autocratic resistance to town-specific programming. Milford, in particular, had been adversely affected by Sound View's position and was forced to seek interim relief from DPUC. See PURA Ex. 10, DPUC Docket No. 05-04-09, Letter from City of Milford to DPUC (April 17, 2006). Milford had accepted Sound View's incentive program in 2002 and had entered into an agreement that gave Sound View the right to determine the time, date and schedule for programming submitted by Milford. During the term of the agreement, Milford's efforts to increase local broadcasts were thwarted by Sound View, which broadcast Bridgeport governmental meetings and CT-N programming on the Milford governmental access channel, rather than acceding to Milford's requests for more consistent, timely, frequent broadcasting of Milford governmental meetings. Id., 2. As Milford observed, the CT-N programming was also broadcast directly by Cablevision on Channel 54, making its broadcast on Channel 79 duplicative. On July 11, 2005, Milford's legislative body voted to terminate its agreement with Sound View. Id. Working directly with Cablevision, Milford then began to cablecast town-specific programming on channel 79, including meetings of its Board of Aldermen, Board of Education, and Planning and Zoning Board, as well as other boards and commissions, and programming that covered events of local interest, such as

parades and civic ceremonies. PURA Ex. 12, DPUC Docket No. 05-04-09, Pre-Filed Testimony of Milford Mayor James L. Richetelli, dated June 15, 2006, p. 3. When Sound View learned of Milford's action, it ordered Cablevision to shut down Milford's access to channel 79 altogether, and Milford had no access to governmental programming on channel 79 for a period of months. Id. DPUC granted Milford's request for interim relief on August 4, 2006, subject to certain restrictions. PURA Ex. 5, DPUC Docket No. 05-04-09, supra, Decision at 22.

Contrary to Sound View's position, the municipalities of Orange, Woodbridge and Milford believed that cable subscribers in their communities strongly preferred to view programming about their own local governmental affairs, rather than that of other communities. They viewed repeat programming as necessary to accommodate subscribers with differing work schedules and viewing habits. Sound View's regional approach significantly restricted the time available for local programming, making it more difficult for local subscribers to find and view programming originating from their own communities at times convenient to them. See, e.g., PURA Ex. 6, Moss & Barnett Needs Assessment Exhibit C, "Responses to Correspondence Regarding Public, Educational and Governmental Programming," pp. 3-8, Letter from Milford City Attorney to Moss & Barnett; pp. 9-13, Letter from Orange First Selectman to Moss & Barnett; p. 14-18, Letter from Area Two Advisory Council Co-Chair to Moss & Barnett; pp. 19–27, Letter from Woodbridge First Selectman to Moss & Barnett. The town of Fairfield also wanted to increase town-specific programming, but observed that Sound View had provided minimal services to assist it. PURA Ex. 6, Needs Assessment, Ex. C, "Responses to Correspondence Regarding Public, Educational and Governmental Programming," pp. 1-2, Letter from Fairfield First Selectman's Chief of Staff to Moss & Barnett .

The municipalities that wanted town-specific programming had devoted, or were prepared to devote, substantial financial resources toward the development of governmental access programming, with little or no assistance from Sound View. The town of Orange had the most fully developed programming. In 1998, Orange had formed a committee to provide cablecasting of local governmental boards, commissions, and town events. It received $3,000 from Cablevision and appropriated $12,000 in its own budget to acquire equipment. PURA Ex. 11, DPUC Docket No. 05-04-09, prefiled testimony of Sol Silverstein, pp. 1-2. In each budget year after 1998, it committed substantial funds to governmental access television, increasing from $28,892 in the 1999-2000 budget year to $65,730 in the 2006-2007 budget year. Id., 2-3. Those funds were used to pay for equipment and some part-time employees. Id., 3-4. By the time of Cablevision's renewal proceeding, Orange was producing 175 to 185 programs a year and its governmental programming was highly valued by its residents. Id., 4-5. Over a thousand cable subscribers signed a petition in support of Orange's town-specific programming in just two days. Id., 9. This number represented over 20 percent of the town's subscribers.

Woodbridge had also dedicated financial resources to developing governmental programming. It informed Moss & Barnett, the needs assessor, that it had spent over $20,000 between 2002 and 2005 to launch and support its governmental programming, and it was prepared to spend more to improve its equipment. PURA Ex. 6, DPUC Docket 05-04-09, Needs Assessment, Ex. C, p. 20, Letter from Woodbridge first selectman December 22, 2005. Of the funds already spent, $3,000 had been provided by Cablevision and the remainder was appropriated through the town budget. As Woodbridge's first selectman pointed out, Woodbridge cable subscribers were paying twice for governmental programming – once

through their subscriber fees, and once through their property taxes.

Moss & Barnett, the independent needs assessor, found from its community survey that there was a "significant level of viewership for access programming." PURA Ex. 6, DPUC Docket No. 05-04-09, Needs Assessment, p. 32. It noted the "strained relationship" between the Area Two council and Sound View; id., 39; and the perception of the municipalities that Sound View was "very adversarial in both tone and position." Id. The needs assessor observed: "Generally, PEG access channels are meant to provide local community programming and information of interest to subscribers. The goal for any PEG access channel is to provide the greatest level of community involvement and offer information of greatest interest to local residents." Id., 40. It recommended that towns that desired town-specific programming should be allowed to provide such programming. Id. It observed that Sound View's total revenue in 2004 was over $607,000, of which $286,643 was budgeted for payroll and personnel expenses.[7] Id. It recommended that 25 to 43 percent of the financial support available for PEG programming should be dedicated to governmental and educational programming. Id., 41. Moss & Barnett concluded that the overall budget for Sound View was high in light of the fact that its studio was used almost exclusively for public access programming (as opposed to governmental access) and that it did not dedicate personnel to the towns or schools to cablecast governmental and educational meetings and events. Id., 40. It concluded: "The current model for PEG access in this Franchise Area should not be retained. There is a high level of dissatisfaction among the towns and the Advisory Council with the

[7] According to the DPUC's Decision, some 97 percent of Sound View's 2005 budget came from subscriber fees, with the remaining 3 percent coming from contributions and interest. PURA Ex. 5, Decision, DPUC Docket No. 05-04-09, p. 29.