



General Assembly

February Session, 2012

Raised Bill No. 5473

LCO No. 1731

01731_____ET_

Referred to Committee on Energy and Technology

Introduced by:

(ET)

AN ACT CONCERNING PUBLIC ACCESS OPERATIONS AND THE PERIODIC REVIEW OF VIDEO PROVIDERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2012*) The Public Utilities
2 Regulatory Authority shall conduct a performance review of every
3 person, entity or company holding a certificate of public convenience
4 and necessity to provide community antenna television service, a
5 certificate of cable franchise authority or a certificate of video franchise
6 authority, as such terms are defined in section 16-1 of the general
7 statutes, to review the state of the industry and to ensure compliance
8 with the terms and conditions of each such certificate as applicable.
9 The performance review may include, but not be limited to, issues
10 concerning customer service, community access providers,
11 management of outages, service to handicapped and low-income
12 customers, cooperation with the authority and such person's, entity's
13 or company's funding and budget. After the initial review required
14 pursuant to this section, the authority shall conduct subsequent
15 reviews every five years. Each performance review pursuant to this
16 section shall be conducted as a contested case and include an

17 opportunity for a hearing in accordance with chapter 54 of the general
18 statutes. The Attorney General and the Office of Consumer Counsel
19 shall be parties to any such contested case. The authority may
20 designate the applicable advisory council as an intervenor in any such
21 contested case.

22 Sec. 2. (NEW) (*Effective July 1, 2012*) Any company or nonprofit
23 organization, including any municipality, responsible for community
24 access operations that receives funds pursuant to subsection (k) of
25 section 16-331a of the general statutes, may use such funds for the
26 creation and development, including, but not limited to, labor and staff
27 expenses, of town-specific community access programming.

28 Sec. 3. (NEW) (*Effective from passage*) Any community antenna
29 television company or nonprofit organization providing community
30 access operations that supplied original programming from locally run
31 operations and provided funding to town-specific programming on
32 January 1, 2008, shall continue to fund town-specific programming in
33 such proportions to funding for original programming from locally
34 run operations as of January 1, 2008.

35 Sec. 4. Section 16-331a of the general statutes is repealed and the
36 following is substituted in lieu thereof (*Effective July 1, 2012*):

37 (a) As used in this section, "multichannel video programming
38 distributor" means a multichannel video programming distributor, as
39 defined in 47 CFR 76.1300, as from time to time amended, and includes
40 an owner of an open video system, as defined in 47 CFR 76.1500, as
41 from time to time amended.

42 (b) Each company holding a certificate of public convenience and
43 necessity to provide community antenna television service, a certificate
44 of cable franchise authority or a certificate of video franchise authority,
45 or any organization or entity selected pursuant to subsection (c) of this
46 section, in consultation with the franchise's or service area's advisory
47 council, shall provide facilities, equipment, and technical and

48 managerial support to enable the production of meaningful
49 community access programming within its franchise or service area,
50 provided nothing in this subsection shall require any such company
51 holding a certificate of video franchise authority to provide studios for
52 community access operations. Each such company shall include all its
53 community access channels in its basic service package. Each such
54 company, [or] organization or entity shall annually review its rules,
55 regulations, policies and procedures governing the provision of
56 community access programming. Such review shall include a period
57 for public comment, a public meeting and consultation with the
58 franchise's or service area's advisory council.

59 (c) If a community-based nonprofit organization or other entity in a
60 franchise or service area desires to assume responsibility for
61 community access operations, it shall [, upon timely petition to the
62 department, be granted intervenor status in a franchise proceeding
63 held pursuant to this section. The department] petition the authority.
64 The authority shall assign [this] such responsibility to the most
65 qualified community-based nonprofit organization or [the company]
66 entity based on the following criteria: (1) The recommendations of the
67 advisory council and of the municipalities in the franchise or service
68 area; (2) a review of the organization's or [the company's] entity's
69 performance in providing community access programming; (3) the
70 operating plan submitted by the organization [and the company] or
71 entity for providing community access programming; (4) the
72 experience in community access programming of the organization or
73 entity; (5) the organization's [and the company's] or entity's proposed
74 budget, including expenses for salaries, consultants, attorneys, and
75 other professionals; (6) the quality and quantity of the programming to
76 be created, promoted or facilitated by the organization or [the
77 company] or entity; (7) a review of the organization's or entity's
78 procedures to ensure compliance with federal and state law, including
79 the regulations of Connecticut state agencies; and (8) any other criteria
80 determined to be relevant by the [department] authority. If the
81 [department] authority selects an organization or entity to provide

82 community access operations, the company holding a certificate of
83 public convenience and necessity to provide community antenna
84 television service, a certificate of cable franchise authority or a
85 certificate of video franchise authority in such franchise or service area
86 shall provide financial and technical support to the organization or
87 entity in an amount to be determined by the [department] authority.
88 On petition of the Office of Consumer Counsel, [or] the [franchise's]
89 advisory council of any franchise or service area or any organization or
90 entity that desires to assume responsibility for community access
91 operations for a franchise or service area in which another
92 organization or entity currently provides such operations pursuant to
93 this section, or on its own motion, the [department] authority shall
94 hold a hearing, with notice, on the ability of the organization or entity
95 currently providing community access operations to continue its
96 responsibility for [community access] such operations. In its decision
97 following such a hearing, the [department] authority may reassign the
98 responsibility for community access operations to another organization
99 or the company in accordance with the provisions of this subsection.

100 (d) Each company, [or] organization or entity shall conduct outreach
101 programs and promote its community access services. Such outreach
102 and promotion may include, but not be limited to (1) broadcasting
103 cross-channel video announcements, (2) distributing information
104 throughout the franchise or service area and not solely to its
105 subscribers, (3) including community access information in its regular
106 marketing publications, (4) broadcasting character-generated text
107 messages or video announcements on barker or access channels, (5)
108 making speaking engagements, (6) holding open receptions at its
109 community access facilities, and (7) in multitown franchise or service
110 areas, encouraging the formation and development of local community
111 access studios operated by volunteers or nonprofit operating groups.

112 (e) Each company, [or] organization or entity shall adopt for its
113 community access programming a scheduling policy which
114 encourages programming diversity. Said scheduling policy shall

115 include (1) limiting a program, except instructional access and
116 governmental access programming, to thirteen weeks in any one time
117 slot when a producer of another program requests the same time slot,
118 (2) procedures for resolving program scheduling conflicts, and (3)
119 other measures which the company, [or] organization or entity deems
120 appropriate. A company, [or] organization or entity may consider the
121 availability of a substantially similar time slot when making
122 community access programming scheduling decisions. Each company,
123 or organization or entity responsible for community access operations
124 pursuant to this section, shall make any final scheduling decisions.

125 (f) In the case of any initial, transfer or renewal franchise proceeding
126 held on or after October 1, 1990, the [department] authority may, on its
127 own initiative, in the first six months of the second, fifth, eighth and
128 eleventh years of the franchise term, review and evaluate the
129 company's or the organization's provision of community access
130 programming. The [department] authority shall conduct such review
131 or evaluation in any such proceeding held on or after October 1, 1990,
132 if the Consumer Counsel or any interested party petitions the
133 [department] authority for such a review during the first six months of
134 the review year. During any such review year, if an organization
135 desires to provide community access operations it shall petition the
136 [department] authority and the [department] authority shall follow the
137 procedures and standards described in subsection (c) of this section in
138 determining whether to assign to the organization the responsibility to
139 provide such operations. No community access programming
140 produced using the facilities or staff of [an organization or] a company,
141 organization or entity providing community access operations shall be
142 utilized for commercial purposes without express prior written
143 agreement between the producer of such programming and the
144 organization or company providing community access operations the
145 facilities or staff of which were used in the production of the
146 programming. Such an agreement may include, without limitation, a
147 provision regarding the producer and the company or organization
148 sharing any profit realized from such programming so utilized. An

149 organization providing community access operations shall consult
150 with the company in the franchise area prior to making such an
151 agreement.

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

161 (h) Upon the request of the Office of Consumer Counsel or the
162 franchise's or service area's advisory council, and for good cause
163 shown the [department] authority shall require an organization or
164 entity responsible for community access operations to have an
165 independent audit conducted at the expense of the organization or
166 entity. For purposes of this subsection, "good cause" may include, but
167 not be limited to, the failure or refusal of such company, [or]
168 organization or entity (1) to account for and reimburse the community
169 access programming budget for its commercial use of community
170 access programming facilities, equipment or staff, or for the allocation
171 of such facilities, equipment or staff to functions not directly related to
172 the community access operations of the franchise, (2) to carry over
173 unexpended community access programming budget accounts at the
174 end of each fiscal year, (3) to properly maintain community access
175 programming facilities or equipment in good repair, or (4) to plan for
176 the replacement of community access programming equipment made
177 obsolete by technological advances. In response to any such request,
178 the [department] authority shall state, in writing, the reasons for its
179 determination.

180 (i) Each company, [and] nonprofit organization or entity providing

181 community access operations shall report annually to the [department]
182 authority on or before February fifteenth. The [department] authority
183 shall adopt regulations, in accordance with the provisions of chapter
184 54, to specify the information which shall be required in such report.
185 Such information shall be necessary for the [department] authority to
186 carry out the provisions of this section.

187 (j) The advisory council shall review all community access
188 programming of a company, [or] organization or entity within the
189 franchise or service area which programming has been the subject of a
190 complaint.

191 (k) The [department] authority shall establish the amount that the
192 company, [or] organization or entity responsible for community access
193 operations shall receive for such operations from subscribers and from
194 multichannel video programming distributors. The amount shall be
195 five dollars per subscriber per year, adjusted annually by a percentage
196 reflecting the increase or decrease of the consumer price index for the
197 preceding calendar year, provided the [department] authority may
198 increase or decrease the amount by not more than forty per cent of
199 [said] such amount for the subscribers and all multichannel video
200 programming distributors within a franchise area after considering (1)
201 the criteria set forth in subsection (c) of this section, (2) the level of
202 public interest in community access operations in the franchise or
203 service area, (3) the level of community need for educational access
204 programming, (4) the level and breadth of participation in community
205 access operations, (5) the adequacy of existing facilities, equipment and
206 training programs to meet the current and future needs of the
207 franchise or service area, and (6) any other factors determined to be
208 relevant by the [department] authority. Prior to increasing or
209 decreasing [said] such amount, the [department] authority shall give
210 notice and opportunity for a hearing to the company or multichannel
211 video programming distributor and, where applicable, the
212 organization or entity responsible for community access programming.
213 The amount shall be assessed once each year for each end user

214 premises connected to an open video system, irrespective of the
215 number of multichannel video programming distributors providing
216 programming over the open video system. When the [department]
217 authority issues, transfers or renews a certificate of public convenience
218 and necessity to operate a community antenna television system, the
219 [department] authority shall include in the franchise agreement the
220 amount that the company, [or] organization or entity responsible for
221 community access operations shall receive for such operations from
222 subscribers. The [department] authority shall conduct a proceeding to
223 establish the amount that the company, [or] organization or entity
224 responsible for community access operations shall receive for such
225 operations from multichannel video programming distributors and the
226 method of payment of [said] such amount. The [department] authority
227 shall adopt regulations in accordance with chapter 54 to implement the
228 provisions of this subsection.

229 (l) An organization or entity assigned responsibility for community
230 access operations which organization or entity ceases to provide such
231 operations shall transfer its assets to the successor organization or
232 entity assigned such responsibility or, if no successor organization or
233 entity is assigned such responsibility, to another nonprofit
234 organization or entity within the franchise area selected by the
235 [department] authority.

236 (m) On petition or its own motion, the [department] authority shall
237 determine whether a franchise area is subject to effective competition,
238 as defined in 47 USC 543, as from time to time amended. Upon a
239 determination that a franchise area is subject to effective competition,
240 the provisions of this section shall apply to multichannel video
241 programming distributors operating in the franchise area, provided (1)
242 where multichannel video programming distributors provide
243 programming over a single open video system, the provisions of this
244 section shall apply jointly and not separately to all such distributors
245 providing programming on the same open video system, and (2) the
246 provisions of subsection (k) of this section shall apply to multichannel

247 video programming distributors whether or not such distributors
248 operate in a franchise area subject to such effective competition.

249 (n) No community antenna television company, [or] nonprofit
250 organization or entity providing community access operations shall
251 refuse to engage in good faith negotiation regarding interconnection of
252 such operations with other community antenna television companies
253 serving the same area. No school or facility owned or leased by a
254 municipal government that possesses community access operations
255 equipment shall unreasonably deny interconnection with or the use of
256 such equipment to any such company, [or] nonprofit organization or
257 entity. At the request of such a company, [or] nonprofit organization or
258 entity providing community access operations, the [department]
259 authority may facilitate the negotiation between such company, [or]
260 nonprofit organization or entity and any other community antenna
261 television company regarding interconnection of community access
262 operations.

263 (o) Each company, [or] organization or entity shall consult with its
264 advisory council in the formation of a community access programming
265 policy, the adoption of the community access programming budget
266 and the allocation of capital equipment and community access
267 programming resources.

268 Sec. 5. (NEW) (*Effective from passage*) (a) There shall be a Broadband
269 Internet Coordinating Council, which shall include representatives
270 from both the private and public sectors. The council shall consist of
271 ten members, two of whom shall be appointed by the Governor, two of
272 whom shall be appointed by the president pro tempore of the Senate,
273 two of whom shall be appointed by the speaker of the House of
274 Representatives, one of whom shall be appointed by the majority
275 leader of the Senate, one of whom shall be appointed by the majority
276 leader of the House of Representatives, one of whom shall be
277 appointed by the minority leader of the Senate and one of whom shall
278 be appointed by the minority leader of the House of Representatives.

279 One of each of the two members appointed by the Governor, the
 280 president pro tempore of the Senate and the speaker of the House of
 281 Representatives shall have specific expertise in the area of
 282 telecommunications. Members of the council shall serve without
 283 compensation, except for necessary expenses incurred in the
 284 performance of their duties. Members shall serve on the council for
 285 terms of two years each and no member shall serve for more than two
 286 consecutive terms. The chairperson of the Public Utilities Regulatory
 287 Authority, or the chairperson's designee, and the Secretary of the
 288 Office of Policy and Management, or the secretary's designee, shall be
 289 ex-officio members of the council without vote and shall attend its
 290 meetings. Any member who fails to attend three consecutive meetings
 291 or fifty per cent of all meetings during any calendar year shall be
 292 deemed to have resigned. The president pro tempore of the Senate and
 293 the speaker of the House of Representatives shall jointly choose a
 294 chairperson and a vice-chairperson to act in the chairperson's absence.

295 (b) The council shall meet at least quarterly, commencing on or
 296 before September 1, 2012. A majority of the members in office shall
 297 constitute a quorum.

298 (c) The duties of the council shall be to: (1) Monitor trends and
 299 developments in the state's efforts to develop a state-wide world-class
 300 communications infrastructure; and (2) issue any reports it deems
 301 necessary to the joint standing committee of the General Assembly
 302 having cognizance of matters relating to technology.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	New section
Sec. 2	<i>July 1, 2012</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>July 1, 2012</i>	16-331a
Sec. 5	<i>from passage</i>	New section

Statement of Purpose:

To review any person, entity or company holding a certificate of public convenience and necessity to provide community antenna television service, a certificate of cable franchise authority or a certificate of video franchise authority, to ensure funding for certain programming, to clarify the procedure for changing public access providers and to reestablish the Broadband Internet Coordinating Council.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]