

skye Cable XIII

Skye Cable XIII, Inc. 117 Sharon Road Waterbury, CT 06705 203-755-1113

PUBLIC ACCESS CH. 13 * EDUCATIONAL ACCESS CH. 16 * GOVERNMENT ACCESS CH. 96

March 15, 2016

State of Connecticut
General Assembly
Committee on Energy
and Technology
Legislative Office Building
Hartford, Connecticut

Re: Raised Bill No. 286 (LCO No. 2142) - Written Testimony
and Exhibits offered in Opposition to Section 2 of the
Bill.

Honorable Co-Chairpersons & Distinguished Members:

I am Stephen W. Mindera, Jr., President of Skye Cable XIII, Inc., the designated "Community Access Provider (CAP)" in the Comcast/Waterbury Franchise.

As the "CAP", Skye administers or manages the operation of "Community Access" for five (5) communities in this franchise, to wit: the City of Waterbury and the Towns of Middlebury, Prospect, Wolcott and Plymouth/Terryville.

I have been assisted in the preparation of this testimony and its attached "Exhibits" by Skye's legal counsel.

Skye was first designated as the "CAP" for the franchise in 1998 by decision of the CT DPUC (Docket No. 97-04-12). The franchise holder at that time was Marcus Cable.

Subsequently, the franchise was transferred from Marcus to Tele-Media Company of Western Connecticut (Docket No. 98-04-09).

Thereafter, Tele-Media applied to the CT DPUC for renewal of its franchise (Docket No. 99-03-29) and Skye participated in such proceeding seeking approval of its plan to relocate and expand the "Community Access Facility" in the franchise.

Skye's proposal was favorably recommended to the CT DPUC by both Tele-Media (the cable company) and the Office of Consumer Counsel (OCC). The CT DPUC in its decision approved Skye's plans and again designated Skye as the "CAP" for the franchise.

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The plan of relocation of and expansion of the "Community Access Facility" approved by the CT DPUC in April 2000 led to the "build-out" of the "Community Access Facility" @ 117 Sharon Road, Waterbury, Connecticut in 2001.

As outlined in Skye Exhibit 1 (attached) a Capital Investment of nearly \$1.7 Million Dollars of subscriber funds and PEGPEITA Grant funds has been made by Skye in the "Community Access Facility".

The "Community Access Facility" as planned and constructed by Skye with cooperation from Tele-Media was capable of cablecast of access programming to all five (5) communities in the franchise and on occasions requested by program producers (access users) "narrowcasting" programming to any one of the five communities alone.

As "Cap" Skye manages the operation of "Community Access" on three (3) channels of cablecast usage, to wit: "P"ublic Access, which always involves the cablecast of a signal of programming to all five towns at the same time; "E"ducational Access, which is available for cablecast of a signal of programming to all five towns, or, which can be used to "narrowcast" a different program signal to each of the five towns at the same time, if available programming and scheduling of its distribution call for such signal distribution; and "G"overnmental Access, which can be operated like the "E" channel, as described above.

Therefore, Skye built and operates a "Community Access Facility" capable of distributing 11 different programming signals over its 3 access channels - IF programming and its scheduling for cablecast should require such distribution of signals.

Skye's review of submitted written testimony concerning Bill No. 286 indicates that Section 2 of the bill has been requested to be enacted into law by Mr. Michael Bruce, identified as the wlct96 Co Coordinator, Wolcott Governmental Tv beginning with a letter of January 29, 2015 (?) attached to his three pages of written testimony.

Additional letter of support for Section 2 have been submitted by persons from Wolcott and testimony in written form has been submitted by other persons or organizations involved in "Community Access" in opposition to enactment of Section 2.

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Skye opposes enactment of Section 2 of Bill No. 286 for the following reasons; to wit:

ONE, the proposed repeal and substitution of Sec. 16-331ff misconstrues the purpose and legal effect of this statute when it was enacted in 2008.

Mr. Bruce's written testimony (4th paragraph, face page) states:
"We understand the intent of that proviso. It was designed to affect the Sound View Cable Franchise of Cablevision. As written, it excludes all other Franchises in the State of Connecticut. It is in essence spot legislation!". (Emphasis Added)

Skye represents that this understanding does NOT reflect the purpose of this legislation.

This statute was enacted to address a specific legal issue existing between Soundview, Cablevision and the municipalities in one Cablevision franchise.

The specific legal issue was presented to the CT DPUC in its Docket No. 05-04-09 (Cablevision's application for franchise renewal).

DPUC's decision of November 22, 2006 in that docket states the following pertinent facts; to wit:

- (a) six (6) communities comprised this franchise area - Milford, Orange, Woodbridge, Stratford, Fairfield and Bridgeport,
- (b) the Franchise Agreement between Cablevision and the CT DPUC contained in Section 7.1 thereof the following language - "(t)he 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",
- (c) Soundview expressed its preference to distribute its programming on a system-wide basis,
- (d) the Town of Orange as an Access User stated it wanted to invoke Section 7.1 of the Franchise Agreement to achieve town-specific programming on the Governmental Access Channel,
- (e) Cablevision testified before the CT DPUC that it believed Section 7.1 was still in effect and it supported town-specific programming. (See, Decision Docket No. 05-04-09 @ pages 23-24)

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In its decision in Docket No. 05-04-09, the CT DPUC in its "Analysis of Town-Specific v. Franchise-Wide Programming Distribution" stated:

"..restricting community access programming in a municipality to town-specific meetings and events to the total or near exclusion of other access programming whether regional or general in nature is not in the best interests of subscribers." (Emphasis Added)

However, given the language of Section 7.1 and the Town of Orange's request to implement its language, the CT DPUC ordered Soundview to enter into talks with the municipalities seeking to obtain town-specific programming on "scheduling policies" with respect to such programming.

When these talks did not proceed quickly to agreement on such policies, legislation enacted as P.A. 08-159 (now codified as G.S.C. Sec. 16-331ff) came into being.

Soundview sought to overturn this statute by action in the Superior Court. The Court decision upholding the enactment of this law relied upon the fact that Sec. 16-331ff was in effect implementing Section 7.1 of the Franchise Agreement and that Soundview as the "CAP" for such franchise was bound by the terms of the agreement.

Please note that subsection (a) of Sec. 16-331ff as it now exists states that the "..request from any town organization, authority, body or official..to (a) third-party nonprofit community access provider serving six municipalities..(was being made) pursuant to its service agreements.." (Emphasis Added)

No language such as that set forth in Section 7.1 of the Franchise Agreement pursuant to which Soundview functioned as the "CAP" exists in the Comcast/Waterbury Franchise Agreement.

Sec. 16-331ff is unique to the Soundview and the obligations of the Franchise Agreement of that franchise.

Bill No. 286 as proposed seeks to impose an obligation upon Skye and any other CAP adverse to its license approval made by either the CT DPUC or PURA, the investment of subscriber funds in Community Access Facilities, as well as, restricting programming distribution - a programming distribution deemed by CT DPUC in Docket No. 05-04-09 "..not in the best interests of subscribers".

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Mr. Bruce's testimony includes his assertion that Skye "..has repeatedly denied requests for town-specific use" of the "G" channel 96 and alludes to a PURA Investigation, Docket No. 14-08-02 in regard to that assertion.

PURA in its decision of March 25, 2015 in Docket No. 14-08-02 stated at page seven the following; to wit:

"The Authority finds that Skye did not use undue editorial control under the circumstances outlined in Wolcott's requests... the requests were to secure control of a specific channel for a period of time. Specifically, Wolcott's request were to take ownership of a channel during an emergency, which is not a typical PEG programming request. ..PURA does not believe it has the authority to require SKYE, or any CAP, to give up control of any channel." (Emphasis Added)

PURA in that decision did indicate it believed Skye and the Town of Wolcott should seek an agreement of how the "G" channel might be utilized during an emergency and offered its mediation services as a possible assistance in such discussions.

Section 2 of the Bill now proposed is on a plain reading of its text intended to provide a means to force any third-party nonprofit Community Access Provider (CAP) to turn over "control" or "ownership" of a channel such CAP is obligated by law to manage in a franchise's "Community Access" without regard to the provisions of any franchise/service agreements applicable in any franchise.

This ignores the history of P.A. 08-159 (Sec. 16-331ff) and the true purpose of that enactment - Performance of the terms of the franchise/service agreement in a SPECIFIC FRANCHISE.

Section 2 as proposed invades the established administrative regulation of CATV systems and the "Community Access" component of both the systems and its legally assigned operators.

With regard to whether Skye Cable XIII, Inc. in its management of "Community Access Programming" denies requests for town-specific programming" cablecast to Wolcott subscribers of either Comcast or U-Verse, please examine Skye Exhibit No. 2.

Skye Exhibit 2 outlines the volume of "narrowcast" programs which it has cablecast to Wolcott from 2009 to the end of the month of February, 2016; to wit:

45 Executive Producers have furnished 732 Programs for cablecast on either channel(s) "E"ducational Access or "G"overnmental Access.

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TWO, Section 2 of the Bill as proposed does NOT in Skye's opinion properly take into account many provisions of federal, state laws and regulations and is NOT in compliance with several of these provisions.

Provisions of federal law NOT properly taken into account are 47 U.S.C. Sec. 522(5), (6), (7), (9), (10), (15) and (16), as well as, 47 U.S.C. Sec. 531(a), (b), (c).

These provisions outline federal law with regard to Cable Systems, Franchises, Franchising Authority powers and Cable Channels for PEG Use.

Provisions of state law NOT properly taken into account are 16 G.S.C. Sec. 16-1(a)(1), (3), (10), (11), (12), (30), (41), (42), (43) and (b), as well as, 16 G.S.C. Sec. 16-331a.

Provisions of the Connecticut Uniform Administrative Procedure Act also have potential application to this proposal and its application affecting the "licenses" of "CAPs"; to wit: 4 G.S.C. Sec. 4-166(1), (4), (8) and (9), as well as, 4 G.S.C. Sec. 4-182 and 4-183.

The regulations of Connecticut State Agencies impacted by the bill's proposed Section are: R.C.S.A. Sec.16-333-1(4), (7) and (8) Sec. 16-333-31(1), (2), (3), (4), (5), (6), (7) and (8); Sec.16-333-33a(a),(b) and (c); Sec. 16-331a-1(1); Sec. 16-331a-2; Sec. 16-331a-4; Sec. 16-331a-11 and Sec. 16-331a-13.

To briefly summarize Skye's opinion as to the consequence of these various EXISTING provisions of law, it is our position that federal law states that cable systems are legally established with regard to PEG Channels components under 47 U.S.C. Sec. 531(a) by "franchising authorities" and "enforcement authority" in any franchise regarding the providing OR USE of such channel capacity is reserved to the franchising authority, See, 47 U.S.C. Sec. 531 (c).

Current provisions of law clearly establish that PURA is the "franchising authority" concerning such systems in the State of Connecticut.

Skye is "licensed" by the franchising authority as the "CAP" for the Comcast/Waterbury Franchise and as such possess a legal "property interest" entitled to protection of the law (federal and state).

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Section 2 of the Bill as proposed also fails to take into account various earlier decisions of the CT DPUC and/or PURA and the elements of regulation of "community access operations" covered by these decisions.

As an example CT DPUC Docket No. 05-09-07 DPUC Review of Regulations Regarding the Number of Required Community Access Channels decision of February 22, 2006, which interpreted R.C.S.A. Sec. 16-331a-2(b).

This docket and decision reviewed legal questions of what "in-use" of a community access channel meant with regard to the formula of usage in possible increase of the number of "community access channels" in any given franchise. It addressed but left unresolved the question of how "repeat programming" might impact the formula and its application to any request by a "CAP" for increase of its channel spectrum.

PURA Docket No. 11-08-06, PURA Investigation into Community Access Programming and Operations, Decision dated April 4, 2012, undertook review of seven (7) specific areas of "CAP operations". Among the subjects reviewed was "Town-specific programming". At page 8 of its decision, PURA stated:

"Town-specific programming can be made available over a Certificate Holder's system-wide channel depending upon availability of time slots to cablecast the programming and interest within the service area."

In consequence of a CAP review schedule established pursuant to Docket No. 11-08-06; PURA Investigation into Community Access Programming and Operations - Skye Cable XIII, Docket No. 12-08-20 transpired.

PURA indicated in its decision:

"The Authority has investigated Skye's operations and programming and finds many positive aspects to Skye as the CAP in the Waterbury service area. The amount of programming is among the highest in the state, its training and outreach activities are good... . Most importantly, Skye has a good relationship with Comcast, AT&T and the Advisory Council." (Decision @ page 7)

Please Note: AT&T was still operating its U-Verse system at the time of this docket & decision -- Frontier Communications now operates this system and relations are still good with it.

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THIRD, and lastly, Skye is joined in OPPOSITION to Section 2 of the Bill by separately submitted written testimony of:

(1) Town of Wallingford (a community within the Cablevision Franchise, Docket No. 05-04-09, Soundview) - "This appears to advocate a process that bypasses PURA..As such, the Town cannot endorse Sections 2(a) and (b) as presently constituted."

(2) Nutmeg TV: "This request to change the statute is sought by a town who has made requests to PURA to operate outside of the CAP they are now in and they were denied. ..CAPs are identified in the statute, regulated by PURA and there are many important reasons (why) they were put into place. ... Section 2 - OPPOSED."

(3) West Hartford Community Television: "..regarding Section 2, ..there is already a process in place in which a town may request transfer of a channel...through PURA. ..., we believe further discussion regarding the ramifications of these provisions is warranted."

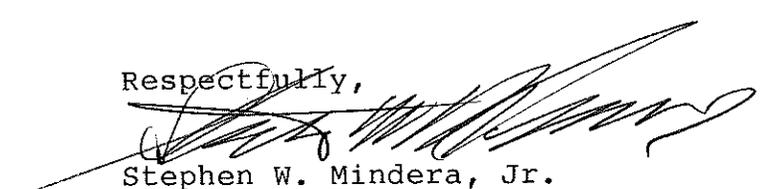
(4) PACTAC (Plainville Area Cable Television Advisory Council): "Section 2 - REPEAL SECTION 2 .. We advocate on behalf of Nutmeg TV who will be hurt by this legislation".

PACTAC offers comments that section 2 invites creation of "redundant system" and additional costs passed unto subscribers.

For the reasons indicated above and for protection of ALL CAPs licensed by the State in their "property interests" and investment of subscriber funding in their respective "Community Access Facilities" please do NOT subvert the established regulatory process, now administered by PURA, with its "Due Process" protections of the U.A.P.A..

Skye Cable XIII, Inc. supports Section 1 of Bill No. 286, but, it OPPOSES enactment of Section 2 of Bill No. 286.

Respectfully,



Stephen W. Mindera, Jr.
President, Skye Cable XIII

SWM/dmb
enc. (2)
cc. Board of Directors
Skye Cable XIII, Inc.

SKYE CABLE XIII, INC. - Designated Community Access Provider (CAP)
Comcast/Waterbury Franchise

SUMMARY OF CAPITAL INVESTMENT made by SKYE in its "Community
Access Facility", 2001 to 2016 (2/29/2016)

* Facility Build-Out Cost	\$ 396,700.38
* Leasehold Cost	\$ 455,636.13
* Facility Wiring, "Narrowcasting"	\$ 21,107.30
* Insurance on Premises/Equipment	\$ 187,282.19
* Facility Equipment Maintenance, Repair, and Replacement	\$ 73,941.11
* Northeast Utilities Grant, Studio B, Lighting Replacement/Installation	\$ 60,000.00
* PEGPETIA GRANT, DPUC Docket #08-10-61 for Portable Equipment & Edite Suite	\$ 73,845.53
*AT&T U-VERSE GRANT, Equipment Purchase & Installation, Signal Connection, Now used in cooperation with Frontier	\$ 68,121.00
* Community Access Facility, Premises Maintenance	\$ 42,103.26
* Community Access Facility, Utilities	\$ 153,605.67
* Interest Cost on Loans for Build-Out, and Equipment Purchases	\$ 54,755.72
* PEGPETIA GRANT, PURA Docket #10-04-28 Studio A Upgrade to Digital	\$ 106,576.00
* AGGREGATE TOTAL	\$1,693,674.29

PLEASE NOTE:

This \$1.7 Million Dollar Investment in the "Community Access Facility" does NOT include expenses incurred for Staff Costs, or such other expenses incurred for items such as Accounting, Legal Services, Bank Fees, Payroll Services, Postage, etc.

The "Community Access Facility" was constructed in 2001, in accordance with the Business Plan outlined by SKYE before the CT DPUC in Docket No. 99-03-29. Such plan was urged to be approved by the cable company, OCC, the Franchise Advisory Council, and several local municipal elected officials. The CT DPUC did approve Skye's plan, which entailed "Narrowcasting" capabilities on the Educational Access Channel and the Governmental Access Channel.

See, Further Exhibit for description of "Narrowcasting" and the Town of Wolcott's Executive Producers usage.

EXHIBIT ONE

tables
Skye Cable
Raised Bill

No. 286

Raised Bill No. 286 (LCO No. 2142) February Session, 2016

SKYE CABLE XIII, INC. - Designated Community Access Provider
(CAP) Comcast/Waterbury Franchise

Summary of "Narrowcast Programming" Cablecast to Wolcott, CT subscribers at the Request of Executive Producers of such Programming on either the Educational of Governmental Access Channel from April 21, 2009 to February 29, 2016.

TOTAL NUMBER OF PROGRAMS CABLECAST for Wolcott Executive Producers: SEVEN HUNDRED THIRTY-TWO (732) PROGRAMS.

TOTAL NUMBER OF EXECUTIVE PRODUCERS submitting programming for "Narrowcast" to subscribers of Comcast: FORTY-FIVE (45)

EXAMPLES OF PROGRAMMING CABLECAST:

(a) Wolcott Town Council Meetings: Executive Producer
David Valletta

125 Live Cablecast of Meetings
139 Replays of Meetings
264 Cablecasts of Meetings

(b) Wolcott Board of Education Meetings: Executive Producer
Pat Najarian

94 Cablecasts of Meetings

(c) Programs Regarding Wolcott Education System; Multiple Executive Producers

43 Cablecasts of Programs

(d) Mr. Michael Bruce - Executive Producer

5 Live Cablecast Programs
53 Pre-Recorded Programs Cablecast
58 Programs in Total (7.92% Usage of Total Programs)

Note: Mr. Bruce requested that Six (6) of these programs be CABLECAST to ALL TOWNS in the franchise on the Governmental Access Channel.

PLEASE NOTE: This report does NOT list ALL PROGRAMMING provided to Wolcott Subscribers on either Comcast or on Frontier U-Verse by SKYE - the Governmental is now used for "Composite Programming", that is when no usage has been requested by producers for the channel "Special Programs" requested by other Program Producers is cablecast on this channel.

