

REPLY COMMENTS OF COX COMMUNICATIONS NEW ENGLAND

4. ***Do the community access funding requirements of Conn. Gen. Stat. § 16-331a(k) apply to AT&T from the time it connected its first subscriber through October 2007? If not, explain why?***

In its response to this question, AT&T Connecticut (“AT&T/CT”) acknowledges that this statute applies. However, Cox can find no record of AT&T/CT requesting that the Department establish AT&T/CT’s access support levels pursuant to General Statutes § 16-331a(k). Rather, the issue of AT&T/CT’s access support was raised by Cox Communications in its exceptions to the Department in Docket No. 07-01-07. It seems, therefore, slightly disingenuous for AT&T/CT to state that it “. . . reiterates its intention to support community access funding for each of its valued Connecticut customers from the date service is provided.” See Written Comments of AT&T/CT at 10. This statement by AT&T/CT also shows that AT&T/CT does not appreciate that community access is currently not limited to just existing customers; Cox currently allows residents of its franchise area communities who are customers of DirecTV, for example, to utilize community facilities and equipment. If, as AT&T/CT suggests, this usage is limited to only “valued” customers, then Cox will have to consider its existing usage policies.

The other point of the question and AT&T/CT’s response is the assumption that October, 2007 is a “magic date.” As the comments of the Office of Consumer Counsel (“OCC”) demonstrate, it is far from clear that AT&T/CT is eligible to provide cable service as anything other than a cable operator under the language of Public Act No. 07-253. Therefore, the October 2007 date probably has no legal or regulatory relevance to the determination of AT&T/CT’s access obligations. Because AT&T/CT has been providing cable service through a cable system in Connecticut by its own admission since December 29, 2006, it has been doing so without the legal authorizations required under federal and Connecticut law; therefore, retroactive applications of the funding and other access support requirements are certainly appropriate.

5. ***What level of community access funding is appropriate for AT&T pursuant to Conn. Gen. Stat. § 16-331a(k)?***

Comments offered by Comcast of Connecticut, the Hartford Area Cable Television Advisory Council, Sound View Community Media, Inc., North Haven Community Television, Inc, and West Hartford Community Television, as well as AT&T/CT, suggest that the Department establish AT&T/CT’s access support levels on a franchise-by-franchise area basis. Cox respectfully suggests that a more detailed review of this question should be done by the Department. First, unless AT&T/CT obtains a stay of the federal court ruling, it seems likely that AT&T/CT will need a traditional cable franchise, as the language of Public Act No. 07-253 with respect to the “certificate of video franchise authority” does not apply to cable operators. Second, it appears, based on its response to question 3, that AT&T/CT is operating in portions of 30 discrete municipalities, which cover but do not encompass fully existing franchise areas.

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Therefore, it may very well be that AT&T/CT's "franchise area" can be considered to encompass the entire the State of Connecticut. Third, based on the federal court ruling, AT&T/CT must obtain a cable franchise under existing law, which will require the Department to establish the access funding level in that proceeding, based on evidence in the record that would also be consistent with General Statutes § 16-331(g). Because AT&T/CT is operating, more or less, on a state-wide level, some level of regulatory certainty can be achieved by establishing a state-wide average, but again this should be done on the record in a franchise proceeding.

6. ***Should AT&T's funding obligations be based upon an incumbent cable operator franchise-by-franchise basis, a statewide basis, or some other basis?***

Please see the response to Question 5 above.

8. ***In determining the appropriate initial community access funding amount for AT&T, do all the Conn. Gen. Stat. § 16-331a(k) 1-6 criteria apply? If not, explain why.***

AT&T/CT relies on Public Act No. 07-253 in its response, which is questionable for two reasons: First, as set forth in the response to Question 4, the funding obligations appear to exist as of December 29, 2006, which precedes the effective date of that enactment. Second, because AT&T/CT has been determined by the United States District Court for the District of Connecticut to be a cable operator providing cable service over a cable system – at this time in contravention to federal and Connecticut law as it does not have the necessary legal right to do so – it is unlikely that Section 5 of Public Act No. 07-253 applies to AT&T/CT, as it will not be eligible for a certificate of video franchise authority. See Written Comments of the Office of Consumer Counsel, dated Aug. 13, 2007, at 4-6. Therefore, it does not appear that the Department can rely on the response of AT&T/CT in determining how to establish the appropriate initial community access funding level.

9. ***Reference Conn. Gen. Stat. § 16-331a(c)(1). Has AT&T discussed its community access proposals with municipal leaders and advisory councils in the areas in which it has deployed or plans to deploy video service? Describe the community access proposal(s) discussed.***

In fairness to AT&T/CT, this provision does not seem to be applicable unless AT&T/CT is interested in managing community access in its franchise area, which would seem to be the entire State of Connecticut.

Rather than point out the inapplicability of the provision, however, AT&T/CT endeavors to answer this question by indicating that it has had "preliminary discussions" with "Soundview [sic] Community Media, North Haven [sic] Television, and community access providers offering services to subscribers in the towns of West Hartford,

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Wethersfield, Newington, and Trumbull. . . .” Response of AT&T/CT to Question 9. Two points are noteworthy, however: First, West Hartford Community Television, which has been a well established group for nearly 25 years, disavows any such conversation. *See* Response of West Hartford Community Television to Question 43; *see also* Response of Sound View Community Media to Question 43. Second, in its three franchise areas, Cox is responsible for the management of community access and AT&T/CT will need to address interconnection issues with Cox. In the Manchester franchise area, there are three town user groups, but these groups are not responsible for the administration or management of community access, contrary to the suggestion in AT&T/CT’s response.

29. *What community access obligations are appropriate for AT&T in light of its provision of video services in Connecticut?*

As long as there are franchising requirements for cable companies, AT&T/CT should have identical community access obligations consistent with General Statutes § 16-331(g). For Cox, those obligations can be summarized as follows:

1. Dedicated “channel” capacity: AT&T/CT should be subject to comparable provisions and requirements as is Cox and other cable operators regarding dedicated channel capacity for community access programming. In Cox’s Enfield franchise area, there are two activated PEG access channels; in the Manchester franchise area, there are three activated PEG access channels; and in Meriden, there are three activated PEG access channels, all exclusive of carriage of CT-N and other public interest programming.
2. Equipped Studio: AT&T/CT should be providing an “equipped studio” under the specifications set forth in the Department’s regulations (§ 16-333-33a(c)). Because AT&T/CT appears to be operating throughout the state, currently in portions of 30 municipalities, the Department needs to consider whether these studios should be established on a regional basis.
3. Financial support: Most existing community access facilities were constructed and/or funded by cable operators. In the case of Cox, the studios were constructed before the per-subscriber funding provisions of Public Act. No. 95-150 became effective to provide support for ongoing operational and equipment needs. AT&T/CT should be responsible for paying for its own studios, with the Department establishing an additional per subscriber funding amount. This view is also consistent with that offered by some other commenters in this Docket. *See* Comments of West Hartford Community Television at Question 48; *accord* Comments of Comcast of Connecticut.
4. Operations consistent with law: AT&T/CT should be responsible for adopting operating rules (*i.e.*, Conn. Agencies Reg. § 16-331a-4) and following other established principles (*i.e.*, Conn. Agencies Reg. § 16-331a-3) concerning community access operations.

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30. *If the community access funding obligations of Conn. Gen. Stat. § 16-331a(k) apply to AT&T, what level of community access funding is appropriate for AT&T?*

Please see the response to CATV-29. The same access funding obligations for ongoing operational and equipment needs should be required of AT&T/CT as of any other cable operator.

31. *Should AT&T's funding obligations be based upon an incumbent cable operator franchise-by-franchise basis, a statewide basis, or some other basis? Discuss the pros and cons of each approach.*

Based on the recent federal court ruling, AT&T/CT is required to obtain a franchise in order to provide video service. Until such time as AT&T/CT decides what, if any, franchise areas it intends to serve lawfully pursuant to such a duly authorized franchise, Cox cannot comment. In the event that AT&T/CT seeks a state-wide franchise as did SNET Personal Vision, its funding obligations should be based upon a state-wide average, which is established every year by the Department under General Statutes § 16-333a(k).

32. *In determining the appropriate initial community access funding amount for AT&T, should all the Conn. Gen. Stat. § 16-331a(k) 1-6 criteria apply through October 2007? If yes, explain how each criteria should be considered.*

If AT&T/CT seeks a state-wide franchise, its funding obligations should be based upon a state-wide average, which is established every year by the Department under General Statutes § 16-333a(k). Otherwise, the funding obligations should be established in a franchise proceeding and, at a minimum, match that of the existing cable franchisee, consistent with the level playing field statute, General Statutes § 16-331(g).

33. *What consumer price index/inflation adjustment is warranted for AT&T in 2007 and 2008?*

AT&T/CT should be subject to the same inflation adjustment as is used by the Department in its annual inflation adjustment for cable operators.

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34. *How and when should AT&T pass funds to designated community access providers?*

As set forth in the response to question 29, AT&T/CT should be establishing its own PEG access facilities. Cox has no view on whether a designated community access provider should be selected to manage those facilities.

35. *Will your cable company voluntarily interconnect with AT&T? If not, explain why.*

As set forth in the response to question 29, AT&T/CT should be establishing its own PEG access facilities. At this time, Cox has no position on interconnection with AT&T/CT in Connecticut as AT&T/CT is currently providing cable service without a statutorily required franchise. Please note that Cox has cooperated with Verizon in establishing a joint interconnection arrangement for access in Rhode Island, the difference being that Verizon became a duly and lawfully authorized cable operator with the appropriate certifications from the Rhode Island Division of Public Utilities and Carriers.

36. *Do you believe that a cable operator may legally prohibit a non-profit third party provider of community access programming from interconnecting with AT&T?*

As set forth in the response to questions 29 and 35, AT&T/CT should be establishing its own PEG access facilities. At this time, Cox has no position on interconnection with AT&T/CT in Connecticut as AT&T/CT is currently providing cable service without a statutorily required franchise.

37. *What reporting requirements should apply relative to AT&T's community access obligations?*

At this time, AT&T/CT has been found to be providing cable service in Connecticut without a franchise. AT&T/CT should be required to abide by all federal and Connecticut laws concerning franchised cable service. In the event that AT&T/CT is exempted from any such requirements, Cox respectfully requests that it also be so exempted. To the extent that AT&T/CT is allowed to submit reports concerning access funding and operations “. . . under a proprietary designation . . .,” Cox would request that its reports be afforded the same treatment.

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38. *Provide any other information the Department should consider this proceeding.*

Under the recent federal court ruling, AT&T/CT is required to obtain a cable franchise before offering video service in Connecticut. Accordingly, AT&T/CT does not appear to be eligible to obtain the Certificate of Video Franchise Authority (“CVFA”) set forth in Public Act 07-253, because that is available only to those persons or entities that were not providing cable service prior to October 1, 2007. On a going forward basis, Cox is willing to work with the Department, the OCC and AT&T/CT to eliminate unnecessary and anachronistic legacy cable regulations and requirements, whether through this Docket or any other proceeding.