

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8438

In Re: Renewal of the Certificate of Public Good of)
Duncan Cable TV Service to provide cable television)
service in Town of Dover, Vermont, and application to)
expand its service area to include the Towns of)
Marlboro, Stratton, and Wardsboro, Vermont)

Hearing at
Montpelier, Vermont
August 28, 2015

Order entered: 5/26/2017

PRESENT: Lars Bang-Jensen, Esq.
Hearing Officer

APPEARANCES: Clifford C. Duncan, *Pro Se*
for Duncan Cable TV Service

Daniel C. Burke, Esq.
for Vermont Department of Public Service

I. INTRODUCTION

This proceeding concerns a petition filed on March 26, 2015, by Duncan Cable TV Service ("Duncan Cable" or the "Company"), for the renewal of a certificate of public good ("CPG") authorizing the Company to provide cable television service in the Town of Dover, Vermont,¹ and for the expansion of its service area to additional towns. In this Proposal for Decision, I recommend that the Vermont Public Service Board ("Board" or "PSB") issue the Company a CPG for the Towns of Dover, Marlboro, Stratton, and Wardsboro, Vermont, subject to conditions.

1. The Company has a separate CPG to provide cable television service in the adjoining Town of Wilmington, Vermont.

II. PROCEDURAL HISTORY

On November 21, 2014, Duncan Cable filed a request to renew its CPG.

On February 13, 2015, the Board issued an Order opening a proceeding in this matter, appointing a hearing officer, and providing notice of a prehearing conference.

On February 26, 2015, a prehearing conference was held.

On March 5, 2015, the Vermont Department of Public Service ("Department") filed a joint proposed schedule that had been agreed to by the parties.

On March 18, 2015, a Prehearing Conference Memorandum and Procedural Order was issued establishing a schedule for this proceeding and requesting submissions from the parties related to the scope of this proceeding.

On March 26, 2015, the Company formally petitioned the Board to renew its CPG and for authority to extend service to the Towns of Marlboro, Stratton, and Wardsboro (the "Petition"). In support of its Petition, the Company filed an application for a cable television CPG and the prefiled testimony of its sole proprietor, Clifford C. Duncan.

On April 3, 2015, the Department filed a response concerning the scope of this proceeding.

On April 20, 2015, Duncan Cable filed a response to the request in the March 18 Order.

On April 27, 2015, Duncan filed a reply to the Department's response of April 3, 2015.

On April 29, 2015, a public hearing was held in Dover, Vermont.

On July 17, 2015, the Department submitted the prefiled testimony and exhibits of Corey R. Chase and Christine Peterson.

On August 28, 2015, a technical hearing was held in Montpelier, Vermont. At this hearing, the parties' prefiled testimony and exhibits were admitted into the record, and the parties' witnesses were cross-examined.

No briefs or proposals for decision were filed by the parties.²

By memorandum dated March 20, 2017, the parties were provided with a final opportunity to submit comments prior to issuance of this PFD.

2. The briefing schedule provided for the filing of briefs and/or proposals for decision by September 23, 2015, and for any reply briefs to be filed by September 30, 2015. Tr. 8/28/15 at 53.

Following a request by the Company for additional time to submit comments, the period for comments was extended until April 29, 2017.

On April 28, 2017, the Company filed final comments prior to the issuance of this PFD.

III. PUBLIC COMMENTS

A public hearing was held at the Dover Elementary School in Dover, Vermont, on April 29, 2015. Only one person spoke at the public hearing. The speaker commended Duncan Cable's contributions to a video television studio for high school students that provides the content for the Company's local student network channel as well the Company's general responsiveness to service needs and problems. A small number of additional comments were submitted to the Board by customers of the Company during the course of the proceeding. All customer comments were positive about the Company, its service, and the renewal of its CPG. A company in Dover that manages rental properties noted the Company's "excellent service" and cited the numerous times Mr. Duncan had gone out of his way to address unique problems related to rental properties. Two members of the public (who did not identify themselves as Duncan Cable customers) jointly filed a comment in this docket and in Docket 8301 (Comcast CPG renewal) recommending that the Board not approve the CPG renewals in either case until the development of a final state telecommunications plan under 30 V.S.A. § 202d and the authorization and appointment of an independent public advocate to represent the public interest.

IV. APPLICABLE LEGAL CRITERIA

Companies that own or operate cable television systems are governed by both state and federal law. State and federal law applicable to CPG renewal proceedings includes 30 V.S.A. §§ 506 and 504, Board Rules 8.214 and 8.230, and 47 U.S.C. § 546.

30 V.S.A. § 506 governs the renewal of CPGs for cable systems in Vermont. It provides that CPGs may be renewed "according to the criteria for the granting of an original certificate in section 504 of [title 30] and after the Board has made the finding required by that section." The issuance of a CPG under Section 504(b) requires that the Board first make findings that the

applicant has complied or will comply with requirements adopted by the Board to ensure that a cable system provides:

- (1) designation of adequate channel capacity and appropriate facilities for public, educational, or governmental use;
- (2) adequate and technically sound facilities and equipment, and signal quality;
- (3) a reasonably broad range of public, educational and governmental programming;
- (4) the prohibition of discrimination among customers of basic service; and
- (5) basic service in a competitive market, and if a competitive market does not exist, that the system provides basic service at reasonable rates determined in accordance with section 218 of this title.

In addition, under 30 V.S.A. § 504(c), the Board must also ensure that the cable system provides or utilizes:

- (1) a reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest and cost;
- (2) construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electric Safety Code;
- (3) a competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and department complaints and problems;
- (4) unless waived by the board, an office which shall be open during usual business hours, have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received; and
- (5) reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices.

PSB Rule 8.214 provides as follows:

In determining whether to approve or reject a petition requesting a certificate of public good for a cable system area, the Board shall consider:

- A. The criteria of 30 V.S.A. Chapter 13 [*i.e.*, 30 V.S.A. §§ 501 - 518].
- B. The criteria known as the EMCO criteria:
 - (1) financial soundness and stability, both of the applicant generally and the particular proposal;
 - (2) the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access;
 - (3) the commitment to a construction and in-service schedule;
 - (4) the experience and ability of the applicant to run and manage a cable tv system;
 - (5) the rates proposed to be charged to customers;

- (6) consumer policies, particularly re: complaints and problems;
- (7) availability of service to maximum number of residences;
- (8) the quality of the engineering and materials used in the system;
- (9) logical fit with neighboring systems.

PSB Rule 8.230 requires the Board in any cable CPG renewal proceeding to ascertain whether:

- (A) The cable operator has substantially complied with the material terms of the existing certificate of public good and with applicable law;
- (B) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, has been reasonable in light of community needs;
- (C) The operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- (D) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

Federal law applicable to Duncan Cable's application is set forth in 47 U.S.C. § 546(h)³

which provides that:

a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time.

The Board is designated as "the franchising authority in the state empowered to grant, renew and revoke certificates of public good for all cable television systems" in 30 V.S.A. §502(b).

Many of the applicable criteria related to cable television CPGs are similar and have a significant overlap with other criteria. To the extent practicable, the related criteria are grouped together in the findings below to avoid repetition.

V. FINDINGS

Pursuant to 30 V.S.A. § 8(c), and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

3. The provisions of 47 U.S.C. § 546(a)-(g) do not apply to Duncan Cable's renewal application because Duncan Cable did not submit a written renewal notice, and no renewal proceeding was commenced, within the time period specified in 47 U.S.C. § 546(a).

A. Background

1. Clifford C. Duncan owns Duncan Cable as a sole proprietorship with a registered office in Wilmington, Vermont. Petition at 1; Clifford C. Duncan ("Duncan") for Duncan Cable pf. at 1.

2. Duncan Cable operates a cable television and telecommunications system in Windham County, Vermont, under two separate CPGs, one for the Town of Wilmington and the other for the Town of Dover. As of March 25, 2015, Duncan Cable served a total of approximately 2,450 subscribers. Duncan pf. at 1-2.

3. Duncan Cable was issued a CPG to operate a cable television service in the Town of Dover in 2002. Duncan pf. at 1; exh. CRC-1 at 2; Docket 6768, *Petition of Duncan Cable TV Service for a CPG to provide cable television service in the Town of Dover, Vermont*, Order and CPG of 11/14/02.

4. Duncan Cable subsequently acquired the cable system of Gateway Cablevision Corporation ("Gateway") in the Town of Dover in 2003. The acquisition was provided for as part of a stipulation resolving an investigation into Gateway's business and operating practices and the possible revocation of Gateway's CPG. Exh. CRC-1 at 2; Docket 6885, *Joint Petition of Gateway Cablevision Corporation and Clifford C. Duncan d/b/a Duncan Cable TV for approval to transfer cable television assets in the Town of Dover*, and Docket 6670, *Petition of Department for an investigation and sanctions against Gateway and an order directing Gateway to show cause why its CPG should not be revoked*, Order of 10/29/03.

5. As of June 2015, Duncan Cable served 1,546 subscribers in the Town of Dover. Exh. CRC 1 at 2.

6. Duncan Cable acquired ownership of Wilmington Cable Television Service in 1972 and has operated a cable television business in the Town of Wilmington since the acquisition pursuant to a separate CPG issued in 1970.⁴ Duncan pf. at 2.

4. The seller obtained prior Board approval for the transfer to Mr. Duncan of this Wilmington cable business and of the existing CPG (which had been issued on December 30, 1970). Docket 3571, *Petition of Kenneth D. Rafuse to transfer the ownership of the Wilmington Cable Television Service to Clifford Duncan*, Order of 5/7/72 at 3. The Wilmington CPG is not the subject of this proceeding.

B. Financial, Legal, & Technical Ability; Experience; Financial Soundness & Stability

[PSB Rules 8.214(B)(1) & (4), and 8.230(C)]

7. Duncan Cable has the financial, legal, and technical ability to provide the services, facilities, and equipment as proposed in its CPG renewal application. Findings 8 to 23, below; Duncan pf. at 2; Corey R. Chase (“Chase”) for the Department pf. at 3-7.

8. As of the end of 2014, Duncan Cable had total net assets of approximately \$1.5 million, debt of approximately \$250,000, and total owner’s equity of approximately \$1.2 million. Exh. CRC-1 at 10 and attachment.

9. A review of Duncan Cable’s financial statements from 2010 through 2014 demonstrates Duncan Cable’s financial stability and soundness. Chase pf. at 3; Duncan pf. at 2; tr. 8/28/15 at 43 (Chase); exh. CRC-1 (response to DPS-32).

10. Mr. Duncan has owned and operated Duncan Cable since 1972 and has the experience and has demonstrated the ability to run and manage a cable television system. Duncan pf. at 2 and 3. Chase pf. at 3-7.

C. Facilities, Equipment, & Signal Quality; Construction & Engineering; Upgrades

[30 V.S.A. § 504(b)(2), (c)(2);
PSB Rules 8.214(B)(2) & (8) and 8.230(B)]

11. Duncan Cable provides adequate and technically sound facilities and equipment, and signal quality. Duncan pf. at 4; findings 12 to 23, below.

12. Duncan Cable provides service through a fiber-coaxial network. Duncan pf. at 4.

13. Duncan Cable has a headend in Wilmington that feeds all services available in Wilmington to Dover via a fiber optic cable backbone. Duncan Cable’s headend facility in Wilmington is orderly and well-maintained. Cable television services are provided through several satellite antennae that appear to be in good repair. Chase pf. at 4; exh. CRC-1 at 3.

14. Duncan Cable has nine fiber nodes in Dover and serves approximately 171 customers per node in Dover, which increases the bandwidth capacity of the network. Chase pf. at 5-6.

15. After its purchase of Gateway’s cable system in Dover in 2003, Duncan Cable replaced much of the mainline cable, components, and connectors. Exh. CRC-1 at 4.

16. Based on Duncan Cable's representations as to its hybrid fiber-coaxial network, the replacement of materials in Dover, and a site visit by the Department, the quality of materials and engineering in Duncan Cable's network satisfies applicable criteria. Chase pf. at 4 and 6; exh. CRC-1 (response to discovery request 8).

17. The construction and installation of Duncan Cable's system conform to all applicable laws and regulations and the National Electrical Safety Code. Duncan pf. at 6-7; Chase pf. at 7.

18. Duncan Cable has upgraded its system to provide premium cable and high definition service. Duncan pf. at 2.

19. The installation of Duncan Cable television service in Dover requires a cable ready television, but does not require a set top box or other equipment. Exh. CRC-1 at 5.

20. Duncan Cable believes that its system and network are capable of meeting the performance requirements of its customers for the next several years without further upgrades to its 742 mhz hybrid fiber-coaxial network. Chase pf. at 4.

21. The Company's network has the capacity to support 123 standard 6 MHz analog channels. Some of the Company's bandwidth capacity is used to provide broadband internet access. Chase pf. at 5.

22. The Company's cable television systems are designed and built so that closed caption data can pass through as required by PSB Rule 8.363(B). Exh. CRC-1 at 7.

23. To the best of its knowledge, Duncan Cable complies with all current regulations contained in Subpart K of Part 76 of the rules and regulations of the FCC and provides signal quality that adheres to applicable regulations and technical standards. Exh. CRC-1 at 5; Chase pf. at 7.

D. Service Quality and Offerings; Basic Service; Rates

[30 V.S.A. § 504(b)(4)& (5); 30 V.S.A. § 504(c)(1);
PSB Rules 8.214(B)(2) & 5 and 8.230(B)]

24. Duncan Cable provides a reasonable quality of service, having regard to available technology, subscriber interest, and cost. Chase pf. at 5; Duncan pf. at 6.

25. Duncan Cable provides signals in both digital and analog format. It offers at least 43 channels in high definition (“HD”) and at least 72 analog channels as well as internet service. Chase pf. at 5; Duncan pf. at 3; exh. CRC-1 at 5 & 6.

26. Duncan Cable has added 33 HD channels in recent years as well as several new networks. Exh. CRC-1 at 6.

27. Duncan Cable offers three tiers of program service: broadcast basic (12 channels); family friendly (32 channels); and classic cable television (123 channels). Chase pf. at 8-9; Duncan pf. at 3; exh. CRC-1 (attachment).

28. There is no additional charge for the provision of HD service as HD channels are provided to all customers that subscribe to the classic cable television tier of service. Tr. 8/28/15 at 40 (Duncan).

29. Duncan Cable does not discriminate among customers of basic service, and all basic service subscribers receive the same service and pay the same rate. Duncan pf. at 6.

30. Customers and potential customers of Duncan Cable have access to two providers of satellite television services and to video services provided over the internet by companies such as Netflix and Hulu. Duncan pf. at 6.

31. Duncan Cable’s rates for its various tiers of service appear to be reasonable. Chase pf. at 9.

Discussion

Although the FCC determinations that certain cable operators in Vermont are subject to effective competition did not make a specific determination about Duncan Cable, the Department believes that the Board should refrain from rate regulation of Duncan Cable to the same extent as required in the case of larger cable operators in Vermont.⁵ In addition, Mr. Chase provided testimony about the reasonableness of the Company’s rates. Accordingly, I conclude that the Company meets the applicable requirements of 30 V.S.A. § 504(b)(5).

5. Chase pf. at 10.

E. Staff & Office; Consumer Policies & Complaints

[30 V.S.A. § 504(c)(3)& (c)(4);
PSB Rule 8.214(B)(6) & PSB Rule 8.230(B)]

32. Duncan Cable has competent staff sufficient to provide adequate and prompt service and to respond to customer and Department complaints and problems. Findings 33 to 38, below.

33. Duncan Cable maintains an office that is open Monday through Friday from 8 a.m. to 5 p.m. Duncan Cable has a listed local telephone number so that complaints and requests for repairs may be received. Duncan pf. at 7; exh. CRC-1 (attachment).

34. Duncan Cable has an office staff of four full-time employees who manage customer service needs. Duncan pf. at 3.

35. Mr. Duncan maintains and manages Duncan Cable's cable system with the assistance of three technicians. In addition, Duncan Cable obtains technical assistance as needed from experienced contractors. Duncan pf. at 3.

36. Duncan Cable has a reasonable number of full-time technicians and customer service staff for its business. Chase pf. at 3; Duncan pf. at 7.

37. Almost all service disruptions are processed and repairs facilitated within 24 hours of the receipt of a customer's complaint. Exh. CRC-1 at 3.

38. The Consumer Affairs and Public Information Division ("CAPI") of the Department has received few complaints from customers of Duncan Cable. Between January 1, 2010 and June 30, 2015, CAPI received six complaints from customers. Christine Peterson ("Peterson") for the Department pf. at 2.

F. Compliance with Existing CPG & Applicable Law; Disconnections, Deposits, & Billing

[30 V.S.A. § 504(c)(5); PSB Rule 8.230(A)]

39. The Company has substantially complied with the material terms of its CPG and with applicable law in most respects. Findings 40 to 47, below.

40. The Department has not found any violation of CPG conditions by Duncan Cable. Chase pf. at 3.

41. There are no records of any PSB Rule violations in the CAPI database. Peterson pf. at 4.

42. Duncan Cable's business practices, including its disconnection, customer deposit, and billing practices, generally comply with PSB Rules. Peterson pf. at 4.

43. Duncan Cable's customer bills do not include CAPI contact information as required by PSB Rule 8.342(B). Peterson pf. at 4.

44. Without notice of the Department's phone number on customer bill statements, most customers would not know that they can contact the Department about any issues. Whenever the Department is contacted by a customer regarding a bill, the Department always asks if the customer has discussed the issue with the company. If the customer has not contacted the company, the customer is requested to try to resolve the issue with the company and to call the Department back if there is still an issue. Tr. 8/28/15 at 35-36 (Peterson).

45. Duncan Cable requires a \$30 deposit for subscribers who do not own their residence or business location and does not provide an alternative means for such customers to provide proof of creditworthiness under PSB Rule 3.203. Peterson pf at 4.

46. Duncan Cable's disconnection notice only shows one date for disconnection. Peterson pf. at 4.

47. Duncan Cable did not file an application to renew the CPG for the Town of Dover ("Docket 6768 CPG") prior to its expiration. Duncan Cable has made a good faith effort to rectify its failure to apply for renewal of this CPG on a timely basis. Tr. 8/28/15 at 41 (Chase).

Discussion

The Department notes that Duncan Cable's customer bills do not include contact information for the Department as required by Board Rule 8.342(B). In response to concerns expressed by Mr. Duncan at the technical hearing about this requirement, Ms. Peterson explained CAPI's policies about handling customer calls and the need for CAPI contact information on customer bills. Based on the foregoing, I recommend that the Board include an express condition in any renewal CPG requiring the Company to change its customer bills to include CAPI contact information.⁶

The Department also notes that the Company does not provide an alternative means (in lieu of a \$30 deposit) for subscribers who do not own their premises to provide proof of

6. *Id.* at 36.

creditworthiness under PSB Rule 3.203. Mr. Duncan acknowledged the need to comply with the rule and stated that he would work with the Department to determine an appropriate standard for creditworthiness.⁷

PSB Rule 3.403(B) contemplates that a disconnection notice shall state “the dates and times of day when the utility may disconnect service,” and PSB Rule 3.404 states that “disconnection shall occur only . . . [on] the business day, specified on the notice of disconnection, or within four business days thereafter.” Duncan Cable’s disconnection notice specifies a single date for disconnection and does not indicate that disconnection could also occur on subsequent business days. At the technical hearing, Mr. Duncan explained that, as a small cable company, Duncan Cable has relatively few customers at any time subject to disconnection for non-payment, and the Company, therefore, is able to disconnect a customer on the date set forth in the notice. He believes that specifying a single date for disconnection provides more certainty and is less confusing for a customer.⁸ Given Mr. Duncan’s testimony that the Company performs disconnections only on the date specified in the disconnection notice, the Company’s disconnection notice would appear to comply with the requirements of PSB Rule 3.400.

One compliance issue that requires particular consideration, consistent with the Board’s Order opening this CPG renewal proceeding, is the failure of the Company to file for renewal of the CPG that is the subject of this proceeding (the Docket 6768 CPG) prior to its expiration. Duncan Cable states that it regrets its failure to apply for renewal of the Docket 6768 CPG in a timely manner. Because its other CPG for Wilmington was of indefinite duration, the Company says it did not have a clear understanding of the CPG renewal process and had expected that it would receive notification of the need for it to apply for renewal of its CPG for Dover.⁹

The Department cites the Company’s good faith efforts to remedy the situation and regards the failure as inadvertent. During the course of this proceeding, the Department has also noted the underlying circumstances related to the Company’s 6768 CPG and the service that Duncan Cable performed, at the request and with the encouragement of the Department, in

7. Tr. 8/28/15 at 22-23 (Duncan).

8. Tr. 8/28/15 at 18-20 (Duncan).

9. Company comments filed on 4/28/17 at 3.

acquiring the assets of Gateway. Since acquiring Gateway's assets, the Company has upgraded the cable plant in Dover, expanded channel and service offerings (including the provision of broadband internet access), and extended service to previously unserved areas of Dover. Without the Company's efforts, this relatively rural area of Vermont would likely be underserved in terms of cable television and internet services.

In addition, the record indicates that Duncan Cable has otherwise continued to comply with requirements of the Docket 6768 CPG and applicable law since the expiration of its Docket 6768 CPG, including with respect to annual report filings and gross revenue tax payments. There is also no evidence that the Company's failure to apply for renewal of its CPG on a timely basis has had any adverse consequences for its customers or the State.

Based on all these considerations, I recommend that the Board give retroactive effect to the renewal CPG and deem its effective date to be November 14, 2013, thereby curing the period of non-compliance during which the Company might otherwise be deemed to have operated a cable company in the Town of Dover without a CPG under 30 V.S.A. § 508.

The Company requests that the renewal CPG issued in this proceeding be of an indefinite term as is the case with its CPG for Wilmington.¹⁰ The Company's CPG for Dover was issued subsequent to the enactment of 30 V.S.A. § 504(a), which provides that cable CPGs "shall be for a period of 11 years."¹¹ Accordingly, the statute would preclude the Board from granting this request.

10. Company's comments filed on 4/28/17 at 1.

11. At some time in the future, the Board may wish to consider whether to open a separate proceeding about the Company's CPG for Wilmington as it has done in the case of other CPGs of indefinite duration. 30 V.S.A. § 503(e) provides that cable CPGs "of indefinite duration may be amended to provide for a duration of eleven years and such other terms as the Board, after opportunity for hearing, may find appropriate." In such a proceeding, the Board might also consider whether the Company's two CPGs should be merged into one CPG.

G. Public Access; Extensions of Service; Community Needs and Interests; CPG Terms

[30 V.S.A. § 504(b)(1) &(3); 30 V.S.A. § 504(c)(5);
PSB Rule 8.214(B)(3), (7) &(9); PSB Rule 8.2309(D)]

PEG access and other local programming

48. Duncan Cable has designated adequate channel capacity and appropriate facilities for public, educational, and governmental access and provides a reasonably broad range of public access programming. Findings 50 to 57, below.

49. Duncan Cable has allocated 12 MHZ of its bandwidth for public, educational, and governmental (“PEG”) access. The allocated bandwidth is sufficient to support six PEG access channels. Duncan pf. at 5.

50. Duncan Cable has designated two channels (8 and 9) on its network for PEG programming, although it does not have an agreement with any Access Management Organization (“AMO”).¹² Peterson pf. at 4; tr. 8/28/17 at 8 (Duncan); exh. CRC-1 at 7.

51. Duncan Cable started Channel 8 in 1978 to provide members of the community with the opportunity to make and post PEG announcements. The channel is also capable of playing back video content of community interest. The channel is administered and managed by Duncan Cable. Exh. CRC-1 at 7-8.

52. The Student Network has been broadcast on Channel 9 since 2006. The channel arose out of the efforts of a member of the community to develop a curriculum at a local school to teach video production, script writing, and general television skills. In addition to telecasting this channel on its network, Duncan Cable has provided technical guidance, support, and expertise to this venture as well as free internet access and direct financial assistance for the purchase of cameras, video servers, microphones, and other equipment. The channel’s studio is connected by fiber to the Company’s headend facility. The Student Network has provided video content on topics of interest to the Company’s subscribers and has helped foster careers in broadcasting for participating students. Peterson pf. at 3; tr. 8/28/17 at 7-10 (Duncan); exh. CRC-1 at 8.

12. An Access Management Organization is defined in PSB Rule 8.100(B) as “a nonprofit entity apart from the cable television operator designated to receive PEG access support through the cable operator and contracted to manage public, educational, and governmental access channels and facilities for non-commercial purposes.”

53. Duncan Cable records public meetings for playback. Peterson pf at 3; exh. DPS-CRC-1 at 8.

54. Duncan Cable has allocated HD channel capacity on its system for its two PEG channels if and when they broadcast in HD in the future. Duncan pf. at 5; Chase pf. at 9; exh. CRC-1 at 7.

55. In the absence of a designated AMO, Duncan Cable has done a good job in providing local programming to customers through its independent efforts. Peterson pf. at 3.

56. Duncan Cable has met the applicable requirements related to PEG access. Chase pf. at 9; Duncan pf. at 9.

57. In addition to its PEG channels, Duncan Cable launched the Vermont Television Network in December 2013. The Vermont Television Network seeks to inspire interest in Vermont culture, history, recreational attractions, and business opportunities among both residents and visitors and to offer Vermont-based programming that is valuable and entertaining. The network also provides an advertising and marketing platform for the products and services of Vermont businesses. It is broadcast on two channels, one in standard definition and the other in high definition. Tr. 8/28/15 at 10-13 (Duncan); exh. DPS-CRC-1 at 9.

58. Duncan Cable contributes a great deal to the local community through the local programming it provides and its other efforts. Peterson pf. at 4.

Line Extensions and Proposed Expansion of Service Area

59. Duncan Cable seeks to build out its system to add new customers. At minimum, it will meet the build-out requirements of its line extension policy and tariff. Duncan pf. at 3 & 4.

60. The Company's line extension policy and tariff are compliant with Board rules. Tr. 8/28/15 at 39 (Chase); exh. CD-2.

61. Between 2002 and 2008, Duncan Cable extended service in Dover to previously unserved areas of the town. Exh. CRC-1 at 4.

62. The Company appears to have largely built its network out in the Towns of Dover and Wilmington to the extent reasonably possible given population density constraints in its service area. Chase pf. at 9; exh. CRC-2.

63. Because the Company has already built out its network in the Towns of Dover and Wilmington to the extent reasonably possible, a consideration of the Company's commitment to

a construction and in-service schedule under PSB Rule 8.214(B)(3) is not applicable. Chase pf. at 9; exh. CRC-2.

64. The Department supports the expansion of Duncan Cable's service area to provide the Company with the right to provide cable service to the Towns of Marlboro, Stratton, and Wardsboro. Tr. 8/28/15 at 40 (Chase).

65. Prior to the Company's acquisition of the Gateway system, Gateway was serving some customers on Route 100 in Stratton that Duncan Cable has continued to serve. Tr. 8/28/15 at 25 (Duncan).

66. Duncan Cable has plans for more than four miles of cable plant expansion to extend service in Wilmington and Marlboro. Exh. CRC-1 at 4.

67. Duncan Cable provides a logical fit with neighboring cable systems. Duncan pf. at 4; Chase pf. at 10.

Discussion

The Department was unable to complete a community needs assessment ("CNA") specific to Duncan Cable's service area despite its efforts.¹³ The Department compiled a list of various stakeholders in the area (including selectboard members, school board members, school administrators, as well as representatives from healthcare, social services, and non-profit groups) and invited them to participate in a focus group meeting on April 29, 2015. None of these stakeholders attended the scheduled focus group meeting. The Department also sent a survey to all invitees after the scheduled meeting, but did not receive any responses to the survey, although two people informally voiced support for Duncan Cable's CPG renewal. One stakeholder sent an email supporting renewal of the CPG, and an elementary school principal mentioned in conversation that Duncan Cable has assisted in the recording of various events and productions at the school.

The Department also explored the feasibility of conducting a scientific survey in Duncan Cable's service territory. The Department was advised by the Center for Rural Studies, which has previously contracted with the Department in connection with community needs assessments, that the largely seasonal population of the territory would make it impossible to get a statistically

13. Peterson pf. at 2; exh. DPS-CP-1 at 1.

valid sample.¹⁴ In its assessment of community needs, the Department relied on data from the 2014 Telecommunications Survey, which includes statistically valid data regarding statewide attitudes about PEG Programming.¹⁵

Despite its difficulties in completing a CNA, the Department did file a CNA Report (exh. CP-1). This report concluded that Duncan Cable is successfully meeting community needs.¹⁶

The Company proposes that its renewal CPG not include any conditions. The Company's Docket 6768 CPG included 38 numbered conditions, which the Board previously determined to be reasonable to meet the future cable-related community needs and interests. Duncan Cable does not provide any basis, other than its long operational history and compliance record, for concluding that these conditions are no longer reasonable in light of community needs and interests or related costs. I find that most of the existing conditions contained in the Docket 6768 are still reasonable in light of community needs and interests.

However, a review of the Docket 6768 CPG indicates that it includes some conditions that either are no longer relevant or covered by applicable law, and are no longer included in other cable company CPGs. Accordingly, the draft CPG that this PFD proposes for Board adoption has fewer conditions than the Docket 6768 CPG. It should be understood that the absence of a condition in the renewal CPG that was included in the Docket 6768 CPG should not in any way be construed as affecting the binding effect on the Company of any provision of law, including PSB Rule 8.000, that is applicable to it. In addition, as discussed above, the CPG adds a condition that the Company change its bills to include CAPI contact information.

Based on the entirety of the evidence in the record, I conclude:

- pursuant to PSB Rule 8.230(B) that the quality of the Company's service, including signal quality, response to customer complaints, and billing practices, has been reasonable in light of community needs; and
- pursuant to PSB Rule 8.230(D) that the Company's renewal application, subject to the CPG conditions set forth in the draft renewal CPG provided to parties with this PFD, is

14. Peterson pf. at 3.

15. Peterson pf. at 3; exh. CP-1.

16. Exh. CP-1 at 4.

reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

The Department supports the expansion of Duncan Cable's service area to include the Towns of Marlboro, Stratton, and Wardsboro.¹⁷ Based on the record and the Department's support, I find the grant of such authority will promote the general good of the state and recommend that the renewal CPG grant Duncan Cable the authority to provide cable service in the Towns of Marlboro, Stratton, and Wardsboro, Vermont as well as in Dover.

VI. CONCLUSION

Based on the foregoing, I conclude, pursuant to 30 V.S.A. §§ 231, 503, 504, and 506, that the issuance of a renewal CPG to Duncan Cable to provide service in the Towns of Dover, Marlboro, Stratton, and Wardsboro, Vermont, on the terms and subject to the conditions recommended above, will promote the general good of the state, and recommend that the Board issue a renewal CPG to Duncan Cable in accordance with such terms and conditions.

This Proposal for Decision will be served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 2nd day of May, 2017.

s/Lars Bang-Jensen

Lars Bang-Jensen, Esq.
Hearing Officer

17. Tr. 8/28/15 at 40 (Chase).

VII. BOARD DISCUSSION

Neither the Company nor the Department filed comments on the Proposal for Decision. The Board has determined to adopt the findings, conclusions, and recommendations set forth in the Proposal for Decision.

VIII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted.
2. A certificate of public good shall be issued to authorize Duncan Cable TV Service ("Duncan Cable") to provide cable service in the Towns of Dover, Marlboro, Stratton, and Wardsboro, Vermont.

Dated at Montpelier, Vermont, this 26th day of May, 2017.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/Margaret Cheney</u>)	BOARD
)	
)	OF VERMONT
<u>s/Sarah Hofmann</u>)	

OFFICE OF THE CLERK

FILED: May 26, 2017

ATTEST: s/Judith C. Whitney
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.