

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6768

Petition of Duncan Cable TV Service for a)
certificate of public good to provide cable television)
service in the Town of Dover, Vermont)

Order entered: 11/14/2002

CERTIFICATE OF PUBLIC GOOD ISSUED
PURSUANT TO 30 V.S.A. §§ 231 AND 504

IT IS HEREBY CERTIFIED that the Public Service Board ("Board") of the State of Vermont on this date finds and adjudges that the issuance of a Certificate of Public Good ("Certificate") to Duncan Cable TV Service ("Duncan Cable" or "Company") to serve the Town of Dover, Vermont, and the operation of cable systems in said town, will promote the general good of the State of Vermont subject to compliance with the following conditions:

1. Duncan Cable must file tariffs pursuant to Vermont law.
2. Duncan Cable may not show gross revenue tax as a line item on customer bills.
3. For the purpose of calculating the gross revenue tax under 30 V.S.A. § 22 and for calculating funding for PEG access administrative entities in the absence of an agreement between Duncan Cable and the respective administrative entities, Duncan Cable shall use the following definition of gross revenues: all cash, credit, property of any kind or nature, or other consideration received directly or indirectly by Duncan Cable derived from the operation of its cable systems including, but not limited to, monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional service; pay television fees; pay-per-view fees, premium service fees, monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection and reconnection fees; leased channel fees; fees, payments or other consideration received from programmers; fees, payments or other consideration received from third parties for lease of space on either fiber or coaxial cable;

converter rentals or sales; studio rental, production equipment and personnel fees; advertising revenues; revenues from home shopping networks; and revenues from Internet access service to the extent permitted by state and federal law.

4. Duncan Cable shall at all times provide a reasonable quality of service, having regard to Federal Communications Commission ("FCC") minimum service standards, available technology, subscriber interest, and costs.

5. Duncan Cable shall at all times offer a reasonably broad range of programming, having regard to available technology, availability of such programming, the interests of subscribers, the revenues and potential revenues of the system, and costs.

6. The Board shall, to the extent permitted by law, retain jurisdiction to prescribe broad categories of programming.

7. Prices for services not subject to rate regulation by the Board shall at all times be reasonable, having regard to the costs of providing such service. Tariffs of current rates, terms and conditions for provision of service and any change thereto shall at all times be filed with the Clerk of the Board and the Vermont Department of Public Service ("Department").

8. Duncan Cable shall notify the Clerk of the Board and the Department forty-five (45) days prior to any:

- change in rates, terms or conditions of service;
- change in channels offered;
- retiering of any channel; and
- any lien, mortgage, pledge or other encumbrance on assets in the Vermont service territories owned by Duncan Cable.

9. If Duncan Cable begins doing business in the State of Vermont under any name other than the name in use on the date of the Order in this Docket, it shall file a notice of the new trade name with the Clerk of the Public Service Board and the Department fifteen (15) days prior to so doing.¹

1. For a corporate name change, *see* 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.

10. At the time of filing its Annual Report pursuant to 30 V.S.A. § 22, Duncan Cable shall file with the Department and the Board the following:

- a. Duncan Cable's public access Plan and a description of its access facilities and services and the use thereof during the preceding calendar year or annual period;
- b. a copy of all written consumer complaints and notations regarding oral and telephone complaints received during the preceding calendar year or annual period;
- c. a map sufficiently outlining the service territory and describing its existing plant and the location of all nodes with the number of fibers to each, and any extensions and replacements planned for commencement or completion within one calendar year from the close of the preceding calendar year or annual period; the fiber runs and node locations shall be shown on the map;
- d. a listing of services, the rates charged for each service as of the date of the filing of the report, a statement of any changes in any such rates from the preceding calendar year or period, and a statement of the revenue derived from each service during such calendar year or annual period;
- e. a statement of significant changes to be implemented during the current calendar year or annual period in Duncan Cable's business structure, operating procedures and services to be offered;
- f. a balance sheet, an income statement, a statement of changes in financial condition and a statement of assets used and useful for the provision of service in Vermont, all as of the close of the preceding calendar year or annual period;
- g. a current copy of the complete corporate System of Accounts, with on-going updates;
- h. house count surveys of all unserved areas of the franchised territory, both at the ends-of-lines and unserved interior areas, and a construction budget providing for construction of all areas identified as meeting Duncan Cable's tariffed criteria for line extensions without a contribution-in-aid-of construction;
- i. the construction budget shall list separately each line extension, with the length and total estimated cost of each extension; each extension shall be keyed to the appropriate area on the individual town house count survey map and the individual road data sheets.

11. Duncan Cable's deposit and disconnection policies shall at all times be consistent with Board Rules 3.200, 3.400 and 8.000, as they may be amended from time to time.

12. Duncan Cable shall comply with all regulations of the Federal Communications Commission, including the regulations governing commercial leased access. Compliance with the commercial leased access rules requires Duncan Cable to provide non-discriminatory access to its facilities to all video programmers qualified by the leased access regulations to such access.

13. This Certificate shall expire eleven years from the date of this Certificate.

14. This Certificate shall be subject to revocation upon good cause, including a substantial or continuous failure to abide by its material terms.

15. This Certificate may not be transferred without the consent of the Public Service Board.

16. Duncan Cable shall make not more than 10% of its total bandwidth available for PEG access purposes. Such bandwidth shall be provided in accordance with Board rules, including any demonstration of need required by those rules.

17. Duncan Cable must work with relevant access group(s) prior to any PEG access channel reassignment, and shall pay the access entity's reasonable costs of such reassignment. Duncan Cable shall not reassign a PEG access channel without advance warning and consultation with the access group.

18. At a minimum, Duncan Cable must provide PEG access outreach by providing on-screen advertising and promotion of PEG access channel programming and facilities.

19. Duncan Cable shall supply two-way capable service to every school and library and at least one municipal building in every town that it serves. Duncan Cable shall make the two-way service available at such time that the Company activates two-way services in the area surrounding the school, library, or municipal building. This condition does not require Duncan Cable to provide two-way capable service to schools, libraries, or municipal buildings that are neither passed by nor within a reasonable distance of cable plant.

20. Duncan Cable shall create and maintain a plan for reasonable public access ("Plan"). The Company shall keep a current Plan on file with the Public Service Board. The Plan shall address each of the criteria set forth in Board Rule 8.421, as amended. In those service areas where an administrative entity as defined under Board Rule 8.430 exists, Duncan Cable and the administrative entity should agree on an appropriate Plan for that service area.

21. If the Company modifies the Plan, it shall file a copy of the modified Plan with the Department and Board within fifteen (15) days of such modification.

22. Duncan Cable shall provide each PEG access administrative entity and each school and municipality within its service area with a modem and a 128 kbps access circuit at no charge. This condition does not require Duncan Cable to provide a modem and high-speed internet

access to schools, libraries, or municipal buildings that are neither passed by nor within a reasonable distance of cable plant.

23. Duncan Cable shall, within twenty-four months of the completion of the required makeready work by the Pole-Ownning Utilities, construct and activate eleven miles of 750 MHz HFC cable plant in the Town of Dover, as described in its application for a Certificate.

24. Line extensions shall be built without customer contribution where:

- a. the average density of equivalent year-round residential and business units **passed** per mile, starting at the nearest end of the existing trunk or distribution system, equals or exceeds "H"² (to be calculated using the most recent annual report figures);
or
- b. where the number of **verified** equivalent units per mile equals or exceeds the product of "H" and the Company's penetration ratio (using the value stated in the Company's most current annual report).

25. For the purposes of implementing Duncan Cable's line extension policy, the Company shall calculate equivalent units in the following manner:

- a. count a dwelling as a year-round residential unit if the subscriber is paying for year-round service, regardless of the period of actual occupancy;
- b. count a subscriber as verified if the subscriber has entered into a two-year contract for year-round service;
- c. count seasonal dwellings as one-third of a year-round residential unit unless there is credible evidence that a higher or lower percentage should be used;
- d. count seasonal subscribers that enter into two-year contracts on a pro-rata basis, based on the number of months of service paid for;
- e. count all dwellings within 500 feet of the proposed extension (customers may be charged for the costs of providing a service connection that exceed the cost of a standard 300-foot drop);
- f. count multiple unit business establishments such as hospitals, homes for the elderly, and nursing homes, as a subscriber per unit if the occupants of the units can subscribe as individuals;
- g. in multiple unit business establishments where the occupants of the units cannot subscribe as individuals but where there is cable service to a number of the units, such as hospitals, homes for the elderly, nursing homes, hotels, motels and other lodging establishments, count the units in a manner similar to seasonal residential

2. The density parameter in the "Newfane formula." See Board Rule 8.313.

dwellings, with the ratio of units to equivalent year-round dwellings equal to the ratio of the unit rate to the basic service rate, plus one year-round subscriber for the business as a whole;

- h. dwellings or business establishments passed by a cable television company other than the Company shall be excluded.

26. For the purposes of implementing Duncan Cable's line extension policy, the Company include in the length of possible line extensions that part of the house drop (the facilities located between the dwelling and the Company's distribution facilities generally located in the road right-of-way) which is constructed of coaxial cable.

27. Duncan Cable shall provide the Board, the Department, affected municipalities, and affected PEG access administrative entities, if any, complete descriptions of all rebuilds and upgrades sufficiently in advance of their construction so as to allow time for meaningful comments and possible integration of those comments into the construction projects.

28. Duncan Cable shall file, within 180 days of the effective date of this Certificate, a request for certificates for the towns contiguous to its service area: Marlboro, Newfane, Searsburg, Somerset, Stratton, Wardsboro, and Whitingham. Duncan Cable shall not be obligated to overbuild existing cable plant in these areas, but shall extend service to these towns when economically feasible to do so under the Company's line extension policy.

29. If Duncan Cable currently offers FM radio rebroadcast service, the Company will not eliminate the service without proper notice.

30. On at least an annual basis, Duncan Cable shall invite city and town government officials in each community served by the Company to meet for the purpose of exchanging information about community needs and the Company's plans.

31. Within 90 days of the granting of the Certificate, Duncan Cable shall negotiate with any PEG access administrative entity in its service territory, and with the Department, and file with the Board, a procedure for handling issues, questions, and complaints which arise from the PEG administrative entities. The procedure shall include an identification of the types of issues that are likely to arise, levels of urgency, designation of liaisons between the PEG entity and the Company, respective roles and responsibilities, escalation procedures, and a periodic review

process. If the parties are unable to reach an agreed upon procedure through negotiation, the dispute shall be submitted to the Board for resolution.

32. At least annually, Duncan Cable management shall meet with the governing board and management of any Public, Educational, and Governmental access administrative entity in its service territory to discuss any issues that may have arisen during the prior period and future plans and needs of the two entities.

33. Duncan Cable shall respond in writing within fourteen days to any information request from the Department or the Board concerning the status of line extension plans or construction progress.

34. Duncan Cable shall adhere to the customer service standards contained in 47 C.F.R. § 76.309. The Company must monitor its customer service performance in relation to all FCC and Board customer service standards on a monthly basis in a manner to be negotiated between the Company and the Department. If the parties cannot agree, the dispute shall be submitted to the Board for resolution. Quarterly, the Company must submit these data to the Department and the Board.

35. Duncan Cable must respond to written inquiries from the Department regarding consumer complaints within fourteen days commencing upon receipt by Duncan Cable of the Department's written notification of a complaint. Written notification includes notification by electronic mail, facsimile, hand-delivery, or U.S. mail. In any case in which the Company is unable to respond fully, providing all information necessary to resolve the complaint, within fourteen days, it must provide notice to the Department before the elapse of the initial fourteen days that an extension of time is required. In no case may the total response time, including the initial fourteen days and any extension, exceed twenty-one days. Although the initial transmittal of the complaint must be in writing, the Department and the Company are permitted to discuss the complaints in person or by telephone.

36. Duncan Cable shall provide customers at the time of any service order with a clear and understandable description of the terms, conditions, rates and charges for all requested services and appropriate alternatives, which shall include the least cost alternatives to the requested service. The Company shall disclose, at a minimum, any non-recurring charges, such as for

installation, the recurring charges for services, and any charges that apply to a change in service or periods in which such charges are waived.

37. Duncan Cable shall provide upon customer request a written confirmation of all service orders, describing the requested service(s) and associated rates no later than the first billing cycle following the order. The notice shall also inform consumers of significant terms and conditions affecting the rates.

38. Required annual notices. Duncan Cable shall annually provide to each of its subscribers the following notices, and shall, on or before January 30 of each year, certify to the Board, that it has distributed the notices during the previous calendar year:

- a. A notice, approved by the Board that states that the Board and the Department desire to hear the views of subscribers regarding the quality of services provided by the Company and as to the reasonableness of the terms upon which such services are provided; and informs the subscribers how they may communicate their views to the Board, to the Department, and to the Company.
- b. The notices required by Public Service Board Rule 8.341 and 47 C.F.R. § 6.1602(b)–(c).
- c. A notice of the complaint and appeal procedure for complaints against the Company and complaints against any PEG access entity in the Company's system and the right of the customer to file a complaint with the Department of Public Service Division of Consumer Affairs & Public Information if the customer is dissatisfied with the resolution of a complaint filed directly with the Company. The form of this notice shall be approved by the Department prior to its distribution.

39. Duncan Cable agrees not to use the term "Basic" in reference to any service tier other than the lowest level of cable service a subscriber can select.

Dated at Montpelier, Vermont, this 14th day of November, 2002.

s/Michael H. Dworkin)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

s/John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

FILED: November 14, 2002

ATTEST: s/Susan M. Hudson
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: Clerk@psb.state.vt.us)