

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

I. INTRODUCTION

This docket concerns an application by Duncan Cable TV Service ("Duncan Cable") for a certificate of public good ("CPG") to serve the Town of Dover, Vermont (CPG filing No. 716). Duncan Cable filed its application on September 1, 2002. On October 2, 2002, the Vermont Department of Public Service ("Department") filed a letter recommending that the certificate of public good be issued without the need for hearings, but with a substantial number of conditions to be included in the certificate.

However, the town for which Duncan Cable has applied, Dover, is already served by a cable television company, Gateway Cablevision Corporation ("Gateway"). As the Department notes in its October 2 letter, issuance of competing certificates of public good has been standard Public Service Board ("Board") policy for many years; indeed, 30 V.S.A. § 504(d) states, "[a] certificate granted to a company shall represent *nonexclusive* authority of that company to build and operate a cable television system to serve customers only within specified geographical boundaries" (emphasis added).

The complication is that Duncan Cable did not apply to serve the other area served by Gateway, the Town of Whitingham.¹ It is certainly possible that Duncan Cable will oust Gateway from its service area in Dover. While it is irrelevant to this case, another docket

1. Note that the town presently served by Duncan Cable, Wilmington, lies *between* the Towns of Dover and Whitingham.

currently before the Board involves a petition by the Department to revoke the certificate now held by Gateway for both Dover and Whitingham. If the Department prevails in that case, then Whitingham will be without a certificated cable television company. Even if the Department does not prevail, that docket indicates the tenuous nature of Whitingham as a stand-alone system. The Dover system has something less than 2000 subscribers, while there are not more than 75 subscribers in the two Gateway systems in Whitingham. If Duncan Cable takes over Dover, it is difficult to imagine that Gateway will continue to operate just in Whitingham. These considerations led me to have Duncan Cable's application assigned a docket number and to hold a prehearing conference on October 25, 2002.

During the prehearing conference, the Department reiterated its support for granting Duncan Cable the certificate of public good for Dover. However, counsel did indicate that it supported the petition only on condition that Duncan Cable, as well as accepting the conditions previously suggested, also agree to serve the Town of Whitingham under its line extension policy. Duncan Cable responded that it was willing to accept all of the conditions in the Department's letter, but was, at that time, unwilling to agree to add Whitingham as a future territory for expansion. I have concluded that this ought to be included as a condition of the certificate of public good.

Finally, an appearance was entered at the prehearing conference for Southern Vermont Cable Company ("Southern Vermont"). Southern Vermont provides cable service in several nearby towns; it is also considering purchasing an interest in the Gateway systems in Dover and Whitingham, although no petition for a purchase has been filed at the Board. The main argument put forward by Southern Vermont is that Duncan Cable might unfairly compete in the service area by "cream skimming." By this Southern Vermont apparently means that Duncan Cable might not serve all of the existing customers of Gateway; however, Duncan Cable clearly stated that it would indeed serve all areas already served by the incumbent in Dover, plus other areas including the Dover Elementary School. Southern Vermont's main argument seemed to be that the Board ought to investigate Duncan Cable's petition more fully, but it raised no particular facts about which evidence would be helpful. In fact, it seems clear that Southern Vermont's interest is in delaying Duncan Cable's application. While I allowed Southern Vermont an opportunity to

be heard at the prehearing conference, it did not even move to intervene, and I was unpersuaded that further proceedings would benefit either the Board or the citizens of Dover and Whitingham.

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

II. FINDINGS

The findings below are founded upon the undisputed representations contained in the petition and in the October 2 filing by the Department.

1. Duncan Cable TV has provided service in Wilmington, Vermont, for 30 years. Petition at 1.
2. The Dover system would be an extension of the Wilmington system and would provide the same services. Department letter at 1.
3. The incumbent service in Dover (Gateway) offers 39 channels, while Duncan Cable offers 67 channels and internet access. *Id.*
4. Both Duncan Cable and the proposed extension are financially sound and stable. *Id.* at 2.
5. Duncan Cable rebuilt its entire system within the last four years. Petition exh. G.
6. The current Duncan Cable system is 55 miles of hybrid fiber/coaxial cable plant; the Dover extension would be 11 additional miles of fiber/coax. Petition exh. D.
7. Duncan Cable expects to complete the initial 11-mile construction within 24 months of completion of make-ready work by the pole-owning utilities. This is a reasonable amount of time, especially since this will be an overbuild of an existing system. Petition exh. E; Department letter at 2.
8. The Department reports that it has no record of any *bona fide* consumer complaint against Duncan Cable since January, 1998, and that it has received no indication at any time of poor service. *Id.*
9. The tariffs and rates to be charged and the consumer policies in Dover will be the same as those already in effect in Wilmington. Petition exh. G.

10. The system design, as well as the existing cable plant and headend, are all first-rate and provide high quality signal. Petition exh. E; Department letter at 3.

11. The Dover extension will be a logical fit with the existing Duncan Cable system. *Id.*

III. DISCUSSION

The findings above clearly show that Duncan Cable's application satisfies the criteria of 30 V.S.A. § 504. As noted above, Duncan Cable has agreed to all of the certificate conditions proposed in the Department's October 2 filing. The only issue left in contention after the prehearing conference is whether an additional condition ought to be that Duncan Cable apply for a certificate for the Town of Whitingham. The Department's proposed condition for Whitingham (and for six other adjoining towns) calls for construction only when service would be economically feasible under Duncan Cable's line extension policy. I believe that Duncan Cable's reluctance to accept this condition would be allayed by including a provision, included in several competitive certificates in the past, that construction would not be required in any area already receiving service from another cable system. Duncan Cable has not asked for such relief in Dover, where it expects to actually overbuild the existing system and compete head-to-head; but construction of a system into Whitingham will be an expensive project to serve relatively few customers, and should not be expected in the face of opposition by an incumbent provider. The accompanying proposed certificate of public good, therefore, includes the Department's proposed conditions, with a modification to condition 28 concerning adjoining towns.

IV. CONCLUSION

I conclude that issuance of a certificate of public good to Duncan Cable to provide service in the Town of Dover, Vermont, will promote the general good of the state, and that the Board should grant a certificate of public good to that effect. This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 12th day of November, 2002.

s/John P. Bentley
John P. Bentley, Esq.
Hearing Officer

V. ORDER

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

- 1. The findings and conclusions 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 Town of Dover, Vermont.
- 2. Duncan Cable shall file, within 180 days of the effective date of this Order, a request for certificates of public good for the Towns of Marlboro, Newfane, Searsburg, Somerset, Stratton, Wardsboro, and Whitingham. Construction into said towns by Duncan Cable shall be required only when such construction is in accordance with Duncan Cable's line extension tariff; in no event shall Duncan Cable be required to overbuild any existing cable television system in those seven towns.

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

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

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)

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.