

VERMONT PUBLIC  
SERVICE BOARD

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

2003 OCT 14 P 4: 3

**Docket No. 6885**

**Joint Petition of Gateway Cablevision )  
Corporation And Clifford C. Duncan d/b/a )  
Duncan Cable TV Pursuant to 30 V.S.A. §§109, )  
108 and 505 For Board Approvals to Transfer )  
Cable Television Assets Located in )  
Dover, Vermont )**

- and -

**Docket No. 6670**

**Petition of the Department of Public Service )  
for Investigation of and Sanctions )  
Against Gateway Cablevision Corporation, )  
and for an Order Directing Gateway to )  
Show Cause why its Certificate of Public )  
Good Should not be Revoked for Failure )  
to Comply with Board Rules, Board Orders )  
and Vermont Statutes )**

**MEMORANDUM OF UNDERSTANDING**

The Department of Public Service (“Department”), Gateway Cablevision Corporation (“Gateway”), Duncan Cable TV (“Duncan Cable”) (collectively “the parties”) hereby enter into the following Memorandum of Understanding (the “MOU”) concerning the above-captioned Dockets

WHEREAS, on August 20, 2003, Gateway and Duncan Cable filed a joint petition (the “Joint Petition” ) with the Vermont Public Service Board (“the Board”) for approval to transfer ownership of substantially all of Gateway’s television assets located in Dover, Vermont to

Duncan Cable;

WHEREAS, Gateway and Duncan Cable have since engaged in negotiations with the Department to resolve all outstanding issues between Gateway and the Department arising from the execution or enforcement of the Docket 6670 Settlement Agreement (hereinafter “the Docket 6670 Agreement”);

WHEREAS, the parties assert that the approval and integration of this Memorandum of Understanding into a final order by the Board without further litigation is in the best interests of Gateway’s subscribers, the public at large, the Department, Duncan Cable and Gateway;

NOW THEREFORE, in consideration of the mutual promises and representations contained herein, the parties agree and stipulate as follows:

1. Based on the provisions of this MOU as outlined below, the Department supports the proposed sale of substantially all of Gateway’s assets to Duncan Cable. Moreover, the Department has concluded that full performance of the terms of this MOU will obviate the need for any further proceedings in Docket 6670. See generally *Prefiled Testimony of Deena Frankel On Behalf Of The Vermont Department Of Public Service*, dated October , 2003 (hereinafter “Frankel Prefiled at p. ”).

Abandonment of Service to Jacksonville/Whitingham

2. The following facts are relevant to this issue:
  - a. Gateway presently has 34 customers of record in Jacksonville and Whitingham. Gateway seeks permission from the Board pursuant to 30 V.S.A. §505 to abandon service to these customers in Jacksonville and Whitingham. Duncan Cable does not intend to purchase the Gateway assets used to provide service to these 34

customers, nor does Duncan propose to deploy new facilities to serve these customers as it would not be economically feasible for Duncan Cable to do so. Joint Petition at ¶20; Isabel Prefiled at p.2. Duncan Prefiled at p. 2.

- b. Duncan Cable recognizes it has an obligation to begin serving the Jacksonville Village and Whitingham Town areas as extensions of the Duncan Cable system if and when the density in that territory equals the threshold density prescribed in Duncan Cable's line extension policy as described in Duncan Cable's existing tariff. Duncan Prefiled at p. 2.
  - c. On August 14-15, 2003, Gateway conducted a survey of the 34 customers of record who potentially would be affected by the abandonment of service to Jacksonville and Whitingham. Based on the outcome of that survey, the Parties have concluded that most, if not all, of the potentially affected customers would be willing to accept modest compensation for the loss of cable service in the Jacksonville/Whitingham service territory. Isabel Prefiled at p. 2; Frankel Prefiled at pp. 3-5.
  - d. The survey revealed that of the 34 Gateway customers of record on August 14, 2003, 5 have left the area, while 29 remain in Vermont. Frankel Prefiled at p.4.
3. To compensate the communities of Jacksonville and Whitingham generally and specifically for the abandonment of Gateway's cable service in their respective areas, Gateway has agreed to the following measures:
    - a. Within 14 days of approval by the Board of this MOU, Gateway shall pay a lump sum of \$9,200 to The Whitingham Free Public Library. The purpose of this compensation

is to generally offset the loss to the communities of Jacksonville and Whitingham of cable service in Gateway's Jacksonville/Whitingham service territory.

b. Within 14 days of approval by the Board of this MOU, Gateway shall pay a total of \$5,800 to the 29 Gateway customers who, as of the survey on August 14-15, 2003, were still in Vermont. The purpose of this compensation is to specifically offset the loss to these 29 customers of cable service in Gateway's Jacksonville/Whitingham service territory. Each of these 29 customers shall receive compensation of \$200.00, to be paid by check made out to the customer of record and mailed by first class mail, postage prepaid, to that customer's address of record. Each check shall be accompanied by a letter explaining the payment, said letter to be drafted by Gateway subject to approval by the Department. In the case of checks that prove to be non-deliverable after three attempted first-class mailings or that are not cashed on or before the 120th day after issuance, Gateway shall remit the funds backing such checks to the Whitingham Free Public Library. No later than 120 days after approval by the Board of this MOU, Gateway shall compile a list of the names, contact information, dates on which each check initially was mailed to its intended recipient, and any dates on which subsequent deliveries by first class mail were attempted. This list shall be filed with the Department no later than 30 days after Board approval of this Memorandum.

#### Gateway's Non-Compliance with the Docket 6670 Agreement

4. The following facts are relevant to this issue:
  - a. Pursuant to the Docket 6670 Agreement, Gateway was obliged to repair the antenna serving Jacksonville and Whitingham to ensure that all channels offered to

consumers in those communities as part of their cable package would be consistently available without service interruption. Failure to comply with this obligation would result in a fine of \$1,000 per day of non-compliance after July 8, 2003. Docket 6670 Agreement at ¶5.a.

- b. On July 23, 2003, Gateway advised the Department that it had not yet complied with this obligation. Letter of Victoria Brown, Esq. to Vermont Public Service Board dated August 1, 2003.
  - c. Beginning with the first day of Gateway's non-compliance -- July 8, 2003-- through the date on which Gateway disclosed its non-compliance to the Department -- July 23, 2003, Gateway technically became liable to pay a fine of \$15,000 for its failure to repair the antenna serving Jacksonville and Whitingham. Docket 6670 Agreement at ¶5.a.
  - d. On August 1, 2003, Gateway and the Department jointly recommended to the Board that any accrual of additional fines beyond July 23, 2003, be tolled pending the review and approval of the proposed sale of substantially all of Gateway's television assets to Duncan Cable. Letter of Victoria Brown, Esq. to Vermont Public Service Board dated August 1, 2003.
5. Because the Parties were able to reach agreement that focuses on compensating affected consumers in Jacksonville and Whitingham and the two communities in general, the Parties have agreed to compromise concerning fines to be paid for non-compliance. The Parties agree that Gateway shall pay a fine of \$6,800 for non-compliance with condition ¶5.a. of the Docket 6670 Agreement. This fine shall be paid to the Vermont Public

Service Board for deposit in the General Fund no later than 15 days from the date of Board approval of this MOU.

Performance of Gateway's Remaining Obligations Under the Docket 6670 Agreement

6. The following facts are relevant to this issue:
  - a. Pursuant to the Docket 6670 Agreement, Gateway assumed a continuing obligation to compensate certain of its customers for service quality problems caused by the Company's misconduct that was the subject of the Docket 6670 enforcement proceeding. Docket 6670 Agreement at ¶¶ 2-4.
  - b. Subsequent to the issuance of the Board's final order in Docket 6670, Gateway began the process of implementing the terms detailed in Paragraphs 2-4 of the Docket 6670 Agreement.
  - c. On October 2, 2003, Gateway filed a report with the Department detailing its progress in executing the terms of Paragraphs 2-4 of the Docket 6670 Agreement.
7. After Board approval of this MOU, if any further claims are raised by Gateway customers based on either the facts at issue in Docket 6670 or based on Gateway's conduct prior to approval of this MOU, Duncan Cable shall forward to the Department any such claims for further review. Within 30 days of receipt of notice of a consumer claim from Duncan Cable, the Department shall be authorized to direct Duncan Cable as to what action to take to resolve the claim.
8. For one year beginning from the date of Board approval of this MOU, Duncan Cable shall hold back from the sale proceeds the sum of \$1,000 for purposes of compensating any Gateway consumers for claims based on the facts at issue in Docket 6670 that are either 1)

pending as of the date of Board approval of this MOU; or 2) that are raised after Board approval of this MOU.

9. For purposes of compensating any Gateway consumers for claims that may arise after Board approval of the MOU based on Gateway's conduct prior to approval of this MOU, and separate and apart from the facts at issue in Docket 6670, Duncan Cable shall have the right to offset the amount paid out to resolve any such claim against the \$500,000 seller note referenced in ¶2.02(a) of the Asset Purchase Agreement dated August 6, 2003.
10. Nothing in this Stipulation shall be construed to preclude the Department from assisting any consumers in obtaining redress of complaints against Gateway based on any conduct, circumstances or events arising at any time before or after the date on which the MOU is executed by the Department.
11. Nothing in this MOU shall be construed to waive the rights of consumers to file suit (or to avail themselves of other remedies) to obtain redress of any complaints they may have against Gateway based on any conduct, circumstances or events arising at any time before or after the date on which this MOU is executed by the Department.
12. This Stipulation shall not be construed by any party or tribunal as precedent for resolving any future proceeding involving the parties, except to the extent necessary to implement the terms of this MOU or to enforce an order of the Board.
13. Should the Board not approve this MOU in its entirety, without material modification, then this MOU shall be null and void, shall have no further force or effect, shall not constitute any part of the record in this proceeding and shall not be used for any other purpose. In the event the Board rejects this MOU, whether in whole or in part, then either

party shall be placed in the position that it enjoyed in this proceeding before entering into this MOU, and all negotiations and proceedings connected with the MOU shall be without prejudice to the rights of the parties.

All terms, conditions and provisions of this MOU are made in accordance with, and shall be interpreted and enforced pursuant to, the laws, administrative regulations and rules of the State of Vermont and the federal laws of the United States of America. If any action or other proceeding shall be brought in connection with this MOU, the venue of any such action shall be before the Vermont Public Service Board in Montpelier, Vermont, to the extent such action falls within the Board's competent jurisdiction, else venue shall lie strictly in the Vermont Superior Courts of Washington County or Windham County.

All terms, conditions and provisions of this MOU shall be binding upon, inure to the benefit of, and be enforceable by the respective parties, including their assignees and successors in interest.

16. This MOU may be signed in counterparts and the counterparts combined shall constitute a binding agreement among all the Parties.
17. The parties hereby jointly move that the Board approve this MOU as part of the full and final disposition of the Joint Petition pending in this Docket.

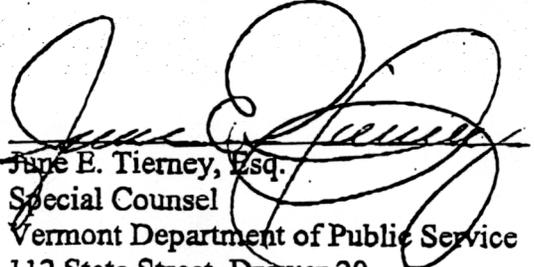
Dated at \_\_\_\_\_, on \_\_\_\_\_, 2003.

GATEWAY CABLEVISION CORPORATION

\_\_\_\_\_  
Gateway Cable Corporation  
6 Genesee Lane  
Amsterdam, NY 12010

Dated at Montpelier, Vermont, on October 14, 2003.

VERMONT DEPARTMENT OF PUBLIC SERVICE

  
~~Jane E. Tierney, Esq.~~  
Special Counsel  
Vermont Department of Public Service  
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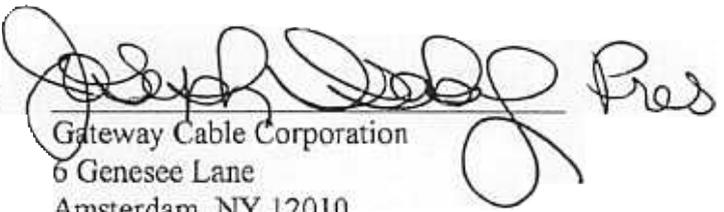
Dated at Montpelier, Vermont, on \_\_\_\_\_, 2003.

DUNCAN CABLE TV

By: \_\_\_\_\_  
Clifford C. Duncan  
d/b/a Duncan Cable Television  
P.O. Box 685  
Wilmington, Vermont 05363

Dated at \_\_\_\_\_, on \_\_\_\_\_, 2003

**GATEWAY CABLEVISION CORPORATION**

By:   
Gateway Cable Corporation  
6 Genesee Lane  
Amsterdam, NY 12010

Dated at Montpelier, Vermont, on \_\_\_\_\_, 2003

**VERMONT DEPARTMENT OF PUBLIC SERVICE**

By: \_\_\_\_\_  
June E. Tierney, Esq.  
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112 State Street, Drawer 20  
Montpelier, Vermont 05620

Dated at Montpelier, Vermont, on \_\_\_\_\_, 2003.

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P.O. Box 685  
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Dated at \_\_\_\_\_, on \_\_\_\_\_, 2003.

GATEWAY CABLEVISION CORPORATION

By: \_\_\_\_\_  
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Dated at Montpelier, Vermont, on \_\_\_\_\_, 2003.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: \_\_\_\_\_  
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Dated at Montpelier, Vermont, on 10/14/, 2003.

DUNCAN CABLE TV

  
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