

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6445

Petition of Vermont Department of Public Service)	
requesting the Board to enforce Condition 43 of the)	Hearing at
Revised Certificates of Public Good issued to Mountain)	Montpelier, Vermont
Cable Company and Better TV, Inc. of Bennington, both)	June 19, 2001
d/b/a Adelphia Cable Communications, in re: house)	
count surveys)	

Order entered: 8/2/2001

PRESENT: Michael H. Dworkin, Chairman
David C. Coen, Board Member
John D. Burke, Board Member

APPEARANCES: John D. Cotter, Esq.
for the Vermont Department of Public Service

Meabh Purcell, Esq.
LeBoeuf, Lamb, Greene & MacRea, L.L.P.
for Mountain Cable Company and Better TV, Inc. of Bennington

I. INTRODUCTION

This docket concerns a matter of great concern: the extension of cable television service and, more critically, the provision of broadband communications, to Vermonters living in relatively remote areas. In the next two years, Mountain Cable Company, d/b/a Adelphia Cable Communications, and Better T.V., Inc. of Bennington, d/b/a Adelphia Cable Communications, (hereafter collectively referred to as "Adelphia") will build up to 1,622 miles of new line extensions, adding 22,000 residences to the 165,000 residences its system passes now and making nearly 55,000 more Vermonters able to receive cable and broadband services.

This result is not only desirable in and of itself, but it is also important as a symbol of what we anticipate to be a productive relationship between Adelphia and the Vermont Department of Public Service ("Department").

By petition dated November 2, 2000, the Department requested that the Public Service Board ("Board") open an investigation into the compliance by Adelphia with Condition No. 43 of Adelphia's Certificates of Public Good issued in Docket 6101 on April 28, 2001, and revised on July 19, 2001. Specifically, Condition 43 required Adelphia to revise its 1999 House Count Surveys ("Surveys") according to certain criteria specified in Condition 43 on or before August 25, 2000. Although Adelphia timely submitted the revised 1999 Surveys, the Department alleged the Surveys failed to satisfy the Board's criteria.

For several months following the November 17, 2000, prehearing conference, Adelphia and the Department met frequently to attempt to settle the case. On May 31, 2001, the parties submitted to the Board for approval a Stipulation¹ settling all issues in this docket. The Stipulation was accompanied by Adelphia's Enhanced Procedures to be Followed for House Court Surveys and Quarterly Line Extension Reports ("Enhanced Survey Procedures").

On June 19, 2001, the Board held a technical hearing to review the Stipulation and heard testimony of Bradley A. Broadwell, Adelphia's Vermont Manager of Regulatory Affairs, and Leslie A. Cadwell, the Department's Director of Telecommunications. The following findings and conclusions are based upon the Stipulation between Adelphia and the Department, the transcript of the hearing, and Board records.

II. FINDINGS

1. During the fall and winter of 2000–2001, Adelphia conducted a root cause analysis of its Survey and quarterly line extension report procedures and developed improvements to these procedures which are the Enhanced Survey Procedures contained in Exhibit A to the Stipulation. Tr. at 15–19 (Broadwell).

2. The Enhanced Survey Procedures reflect organizational changes which focus on incremental resources that Adelphia has dedicated to and made accountable for the Survey process, scheduling improvements that are intended to provide adequate time for preparation and review of the Surveys and reports, format improvements that are intended to significantly improve

1. A copy of the Stipulation is attached to this Order.

the reviewability of the Surveys and reports, and training for all involved Adelpia personnel that is intended to continually improve the process from year to year. Exh. Stip. 1 (att. exh. A).

3. Adelpia's analysis of the Revised 1999 Surveys revealed line extensions that should have been identified in the original 1999 Surveys. Exh. Stip. 1 at 3; tr. at 22 (Broadwell).

4. Adelpia has committed to pay \$25,000 from the Performance Bond for violation of Condition 43 of the Certificates of Public Good. Adelpia further agrees to make a donation in the amount of \$75,000 to the development of the Statewide PEG Access Channel. Until the Channel is established, Adelpia agrees to place the funds in an interest bearing account, and to pay the interest to the Statewide PEG Access Channel. Exh. Stip. 1, ¶ 1.

5. Commencing with the Surveys to be filed with Adelpia's 2002 Annual Report, for all of its Vermont systems, Adelpia will employ the Survey procedures set forth in Exhibit A, and will implement the procedures also described in Exhibit A for filing the quarterly line extension reports with the Department. The procedures set forth in Exhibit A may be modified from time to time as circumstances may require. Any modifications or amendments to the procedures will be filed with the Board and the Department. *Id.* at ¶ 2.

6. For all line extensions that should have been identified as qualifying for construction without customer contribution in the 1999 Survey report and 1999 revised Survey report, but which were not so identified until after the 1999 revised Survey was submitted to the Department, Adelpia has made a commitment to exercise due diligence in the commencement of the line extension construction process for those line extensions in priority over newer or more recently identified line extensions. *Id.* at ¶ 3.

7. For all line extensions that Adelpia identified prior to 1999 but for which construction has been either postponed or delayed by reason of the statewide rebuild and upgrade, Adelpia has committed to exercise due diligence in the completion of construction of these line extensions in priority over other line extensions. *Id.* at ¶ 5.

8. As a result of using the Enhanced Survey Procedures to perform the 2001 Survey, Adelpia identified 1622 miles of line extensions that should be built. Adelpia promises to build these extensions within the next 20 months. These line extensions will pass 22,505 residences,

thus making cable and broadband services available to approximately 54,912 more Vermonters.² Exh. Stip. 3; U.S. Census Bureau, Census 2000.

9. Construction of line extensions identified by October 1 of each year must be completed by December 31 of the following year. This period will be extended as necessary to account for circumstances beyond Adelpia's control including, but not limited to: makeready; availability of materials; availability of labor; number of miles scheduled to be built that year; weather; easements; design changes and other construction. In cases where construction is delayed due to circumstances beyond Adelpia's control,³ Adelpia will provide reasonable advance notice of the delay to the DPS and the Board. *Id.* at ¶ 4; tr. at 57–58 (Cadwell).

10. Following the Board's approval of Adelpia's pending petitions to serve several new towns throughout Vermont, Adelpia will submit to the Board and the Department within 30 days a proposed schedule for completion of Surveys for the new areas. Exh. Stip. 1 at ¶ 6.

11. Adelpia will revise its make-ready procedures within 30 days of the effective date of Board Rule 3.700 and will file the revised procedures with the Board and the Department. *Id.* at ¶ 7.

12. For purposes of conducting annual house count surveys and quarterly line extension reports, Adelpia shall treat any areas identified in one year as a planned line extension (*i.e.*, colored green on the map) as constructed in the next year's survey even if construction of the extension is not yet completed. *Id.* at ¶ 8.

13. Condition 51 of the revised Certificates of Public Good issued in Docket 6101 requires that the annual house count surveys be filed as they are completed; that condition should be amended to reflect that Adelpia will file the annual house count surveys each year along with the Company's annual report. The parties will submit a joint request to the Board in Docket 6101 seeking such amendment. *Id.* at ¶ 9.

14. Adelpia and the Department are committed to regular and ongoing communications in order to continually improve all processes that have regulatory implications, and to avert conflict and litigation whenever possible, by making best efforts to resolve conflicts informally without

2. Assuming average household size of 2.44.

3. Both parties testified that this would only include emergent circumstances that the company *cannot* control. Tr. at 56–59.

waiving the Department's obligation to protect the Vermont public. *Id.* at ¶ 10, tr. at 74–75 (Cadwell).

III. DISCUSSION

We conclude that Condition No. 1 of the Stipulation requiring Adelphia to pay \$25,000 from the Performance Bond for violation of Condition No. 43 of the Certificates of Public Good (*i.e.*, failure to conform the Revised 1999 Surveys to the criteria specified in Condition No. 43 of the Certificates of Public Good), as well as a further donation in the amount of \$75,000 towards the development of the Statewide PEG Access Channel is in the public interest. We also approve the Enhanced Survey Procedures set forth in Exhibit A to the Stipulation, and encourage Adelphia and the Department to regularly monitor these procedures and where necessary, amend them in order to ensure the highest standard of accuracy and reviewability of the Surveys. As we have repeatedly reminded the parties, providing cable service to as many Vermonters as possible is of critical concern to the Board, and Surveys play a key role in achieving this goal.

As provided in Condition No. 3 of the Stipulation, Adelphia must exercise due diligence in the commencement of the line extensions for all line extensions that should have been identified as qualifying for construction without customer contribution in the 1999 Survey report and 1999 Revised Survey report.

We accept the timeline set forth in Condition No. 4 of the Stipulation for completion of line extensions which appears to be reasonable based upon the evidence before us. We further accept all of the other terms of the Stipulation as a reasonable compromise of all the issues before us in this proceeding and trust that we will have no occasion to revisit the question of the quality, accuracy and reviewability of Adelphia's Surveys.

IV. CONCLUSION

We conclude that the payment of \$25,000 from the Performance Board as well as the \$75,000 donation, and the implementation of the Enhanced Procedures for Survey and Line Extension Reports will promote the general good of the State, and the Stipulation is hereby approved.

V. ORDER

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

1. A payment of \$25,000 shall be made from the Performance Bond consistent with its terms and pursuant to the Board's April 28, 2000, Order in Dockets 6101/6223, as amended on July 19, 2001.

2. Within 30 days of the date of this Order, Adelphia shall place \$75,000 in an interest-bearing account for the development of a Statewide PEG Access Channel and shall pay the interest to the Statewide PEG Access Channel.

3. Effective immediately, Adelphia shall adhere to the Enhanced Survey Procedures in Exhibit A to the Stipulation.

4. Adelphia and the Department shall submit a joint petition to amend condition 51 of the Certificates of Public Good issued in Docket 6101.

5. On or before October 1, 2001, Adelphia shall submit to the Board and Department revised make-ready procedures consistent with Board Rule 3.700.

6. The terms of the Stipulation are accepted and approved.

Dated at Montpelier, Vermont, this 2nd day of August, 2001.

s/Michael H. Dworkin)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

s/John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

FILED: August 2, 2001

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 mail) of any technical 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.