

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6551

Petitions of Better TV Inc. of Bennington, )  
FrontierVision Operating Partners, L.P., Lake Champlain )  
Cable Television Corporation, Mountain Cable )  
Company, Multi-Channel TV Cable Company, Richmond )  
Cable Television Corporation, and Young's Cable TV )  
Corp., all d/b/a Adelfhia Cable Communications, for )  
certificates of public good to provide cable television )  
service in certain cities and towns in Vermont )  
)

Hearing at  
Montpelier, Vermont  
October 4, 2001

Order entered: 1/4/2002

PRESENT: John P. Bentley, Esq.  
Hearing Officer

APPEARANCES: Richard H. Saudek, Esq.  
Cheney, Brock & Saudek, PC  
and  
Thomas M. Wilson, Esq.  
Adelfhia Communications Corporation  
for Adelfhia Communications Corporation and for its Vermont  
subsidiaries which are the Petitioners

June E. Tierney, Esq.  
for Vermont Department of Public Service

**I. INTRODUCTION**

This docket concerns a group of petitions ("Petitions") brought by several companies for authority to provide cable television service to a total of sixty-seven (67) Vermont towns. Each of the companies is an operating subsidiary of Adelfhia Communications Corporation ("Adelfhia"), and each has one or more current Certificates of Public Good<sup>1</sup> to operate cable

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1. The Certificates of Public Good are held by the seven cable operating companies listed in the caption. However, those companies appear to have limited autonomy; in most ways, Adelfhia acts as though it were a single, large, system operator. Most of the operating companies do business as "Adelfhia," for instance, and Adelfhia employs a regional manager, Mr. Snowdon, who is responsible for the operations of all of the Vermont systems. Mr. Snowdon was the sole

(continued...)

television systems in Vermont. There has been some substitution of parties since the original filing of the petitions; all the Petitioners have, however, always been subsidiaries of Adelphia.

All but one of the Petitions was brought in compliance with previous orders of the Public Service Board ("Board"). Upon further examination it appeared that strict compliance with the Board's Orders would create illogical results. The Petitioners and the Vermont Department of Public Service have, therefore, negotiated a set of amendments to the Petitions that will accomplish the Board's objective of making cable and broadband services accessible to the areas covered by the original orders, with those services to be provided by nearby systems as part of their natural growth.

## **II. FINDINGS**

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.

1. Better TV Inc. of Bennington, FrontierVision Operating Partners, L.P., Lake Champlain Cable Television Corporation, Mountain Cable Company, Multi-Channel TV Cable Company, Richmond Cable Television Corporation, and Young's Cable TV Corp. (respectively "Better TV," "FrontierVision," "Lake Champlain," "Mountain Cable," "Multi-Channel," "Richmond Cable," and "Young's") are all subsidiaries of Adelphia that presently operate cable systems in Vermont. See Petitions, generally.

2. At least once since 1996, each of these companies has been found to be qualified to be a cable system operator in Vermont, both under the Board's criteria<sup>2</sup> and under state law.<sup>3</sup> See Docket 5847, Order issued 6/20/1996 (Mountain Cable and Young's); Docket 5886, Order issued 11/4/1996 (Mountain Cable); Docket 6003, Order entered 12/5/1997 (Multi-Channel); Docket

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1. (...continued)  
witness presented at the hearing in this docket, and he regularly made reference to how "Adelphia" would build line extensions to serve customers in these towns and to "Adelphia's" ways of doing business generally. This is by no means a criticism, but is intended to explain my use of the Adelphia name when referring to the rights and responsibilities of the operating companies generally or collectively.

2. See PSB Rule 8.412.

3. 30 V.S.A. §§ 231 and 503.

6101, Order issued 7/19/2000 (Better TV and Mountain Cable); Docket 6141, Order issued 12/3/1998 (Lake Champlain and Richmond Cable<sup>4</sup>); Docket 6165, Order issued 6/6/2001 (Harron); and Docket 6244, Order issued 8/9/1999 (FrontierVision).

3. The uncontradicted testimony of the Petitioners' witness, Mr. Snowdon, supported by the Department of Public Service, was that the following Certificates of Public Good ought to be amended to add the towns indicated:

Operating Company	Docket Number of Certificate	Towns
Better TV	6101	Glastenbury, Searsburg, Stamford
FrontierVision	6244	Belvidere, Cambridge, Craftsbury, Eden, Elmore, Fairfax, Fairfield, Greensboro, Pomfret, Sharon, Sheldon, Stannard, Stowe, Strafford, Thetford, Walden, Waterville, Westford, West Windsor, Wheelock, Wolcott
Lake Champlain	6141	Fairfax, Westford
Mountain Cable	5847	Barnard, Benson, Goshen, Hubbardton, Jamaica, Landgrove, Pittsfield, Pomfret, Rupert, Sandgate, Sudbury, West Haven, Windham
	5886	Addison, Avery's Gore, Bridport, Craftsbury, Ferdinand, Greensboro, Holland, Lewis, Lowell, Newark, Ripton, Sheffield, Stannard, Sutton, Waltham, Warner's Grant, Warren's Gore, Westmore, Wheelock
	6101	Addison, Bridport, Brookfield, Cornwall, Elmore, Goshen, Hancock, Pittsfield, Ripton, Roxbury, Salisbury, Shrewsbury, Stockbridge, Stowe, Sudbury, Walden, Wells, Westford, Whiting, Wolcott
Multi-Channel	6003	Brookline, Dummerston, Halifax, Marlboro

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4. Docket 6141 approved the purchase of the shares of Lake Champlain and Richmond Cable by Mountain Cable; the existing Certificates, issued in Dockets 4443 (Lake Champlain) and 5891 (Richmond Cable) were not extinguished. However, the stipulation and the Order in Docket 6141 modified the terms of those Certificates, so that it is most useful to refer to Docket 6141 for the controlling conditions.

Operating Company	Docket Number of Certificate	Towns
Richmond Cable	6141	Belvidere, Cambridge, Stowe, Waterville, Westford
Young's	5847	Andover, Baltimore, Barnard, Jamaica, Landgrove, Pomfret, Wardsboro, West Windsor, Windham

Adelphia exh. A.

4. In one of the Petitions, Mountain Cable requests authority to serve the town of Jamaica. Unlike the other towns in this docket, Jamaica has already been reviewed under Mountain Cable's Docket 5847 line extension policy, and a map of proposed service areas was submitted with the Petition. Service will be provided by the Mountain Cable system with its headend in Manchester, Vermont, although other parts of the town may also be served by the Young's system in the future. I find that Mountain Cable's application for Jamaica meets the criteria of 30 V.S.A. § 503 and Board Rule 8.412. See the petition, generally.

5. When a cable operator has a franchise to serve a town, one of its duties is to perform a review of all the roads in the town (referred to as a "ride-out" of the town) to find areas that meet the line extension criteria, then to build the extensions and provide service. The towns included in the listing above include a large number of roads, with very few areas that will actually qualify for construction. I find that it is reasonable to allow Adelphia to add the sixty-seven towns in this docket to its existing ride-out process over a period of time. Tr. at 25–28.

### **III. DISCUSSION**

The final Orders in Dockets 5847, 5886, 6002, and 6003 required that the subject Adelphia operating company apply for authority to provide cable television service in specified additional towns. These towns are generally not close enough to existing systems, or are not sufficiently populated (or both), to be the targets of future petitions by any cable operator. The Board concluded that, if a nearby Adelphia operating company did not accept a certificate for those towns, the towns might be excluded from access to cable and broadband services for many

years. With the exception of the petition for the town of Jamaica, the Petitions analyzed in this docket were filed in compliance with those Orders of the Board. However, the Board's Orders, in some cases, required companies to file applications for towns that could more logically be served by other Adelfia operating companies. Therefore, after a lengthy meeting between Board staff, Department staff, and officials and counsel for the various companies, plus additional meetings between the parties, the original Petitions have been substantially rearranged to provide service from the nearest system, rather than strict compliance with the Orders. The Petitions are, therefore, with the express consent of the parties, hereby amended to conform to the evidence received in this docket, pursuant to V.R.C.P. 15(b).

As stated in those Orders, and as provided in the Petitions, these towns are being franchised with the conditions that they need only be provided service if and when the Adelfia operating company's line extension policy requires construction. Each of the Certificates of Public Good listed above has a slightly different line extension policy, and it is logical that these towns be served under the extension policy (and other conditions) of the system to which they will be added. The Department of Public Service mentioned the desirability of attaching the most up-to-date certificate conditions to these towns, that is, the conditions of Docket 6101. The Petitioners argued, however, that having different conditions for a few fringe towns in each system was likely to lead only to confusion, rather than better service. The Department then noted that it reserved the right to petition the Board to amend all of the certificates, as they apply to all the towns, to make their provisions parallel to those of Docket 6101. Such an amendment would certainly make the Department's consumer affairs job simpler, since the conditions offered to any Adelfia customer would be the same everywhere. It might even make Adelfia's job simpler. However, as I have previously ruled, such an amendment is beyond the scope of this docket and, consequently, the existing certificates should not be so modified in the present proceeding.

Because of the peculiar circumstance of these Petitions, it is appropriate to dispense with the rather thorough analysis ordinarily applied to petitions for cable television franchise areas. As noted in the findings, each of the Adelfia operating companies has recently been through a full-scale examination of its qualifications under Vermont statutes and Board rules. Further, these

franchise extensions are being sought at the insistence of the Board, to prevent residents of these towns from being more or less permanently relegated to a lack of cable and broadband services.

A cursory examination of the chart of franchises and towns in the Findings will show several towns that are to be included in more than one amended certificate. This is because many towns are situated between two or more systems, so that it is possible that either system will reach them first, or that some will be served by more than one system. Therefore, those towns ought to be inserted into the certificates of all of the systems that may, in the end, provide service.

The parties agreed that Adelpia should, within sixty days of the date of the final order in this Docket, file a proposed schedule for inclusion of the towns in the ride-out and construction schedules of the certificated companies. That schedule should have all towns included within five years of the date of this certificate.<sup>5</sup>

#### **IV. CONCLUSION**

I reach the following conclusions:

1. The Board should insert authority to serve the sixty-seven towns into the respective Certificates of Public Good, as set out in the Findings and Discussion above.
2. The Board should require that, within sixty days of the date of this Order, Adelpia file a schedule for the inclusion of the sixty-seven towns in the system ride-outs.

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 19<sup>th</sup> day of December, 2001.

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

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5. Again, many of these towns are extremely rural. For instance, Warner's Grant, Warren's Gore, Avery's Gore, and Lewis have a combined population of 1. To be fair, they also, combined, have only 5 miles of road.



## **V. BOARD DISCUSSION**

Both parties to the docket filed comments on the Proposal for Decision. Adelpia noted that the ride-out process is both expensive and time-consuming, and asked that the Order be modified to allow Adelpia to exclude particular towns from the ride-out when there is no likelihood that service will be extended to these locations. The Department objected to the proposed changes, but did note that Adelpia could seek a waiver or exception from the ride-out requirement on a case-by-case basis.

We have modified the final paragraph of the Order to permit Adelpia, when there are no existing Adelpia customers in a town, to perform a ride-out at least once every three years, rather than annually. In addition, we affirm the Department's suggestion that, in appropriate cases, Adelpia may seek an exemption from the ride-out process for particular towns for a period of years.

## **VI. 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. Extension of a cable television system operated by one or more of the following Adelpia operating companies: Better TV Inc. of Bennington, FrontierVision Operating Partners, L.P., Lake Champlain Cable Television Corporation, Mountain Cable Company, Multi-Channel TV Cable Company, Richmond Cable Television Corporation, and Young's Cable TV Corp. in the following towns: Andover, Baltimore, Barnard, Glastenbury, Searsburg, Stamford, Addison, Avery's Gore, Belvidere, Benson, Bridport, Brookfield, Brookline, Cambridge, Cornwall, Craftsbury, Dummerston, Eden, Elmore, Fairfax, Fairfield, Ferdinand, Goshen, Greensboro, Halifax, Hancock, Holland, Hubbardton, Jamaica, Landgrove, Lewis, Marlboro, Newark, Pittsfield, Pomfret, Ripton, Roxbury, Rupert, Salisbury, Sandgate, Sharon, Sheffield, Sheldon, Shrewsbury, Stannard, Stockbridge, Stowe, Strafford, Sudbury, Sutton, Thetford, Walden, Waltham, Wardsboro, Warner's Grant, Warren's Gore, Waterville, Wells, West Haven, West

Windsor, Westford, Wheelock, Whiting, Windham, and Wolcott, will promote the general good of the state.

3. In serving the above-named towns, the Adelpia operating company need only provide service in compliance with its line extension policy, and shall not be required to overbuild any existing cable system.

4. Adelpia shall, within sixty days of the date of this Order, file a schedule for the inclusion of the above-named towns in its ride-out and construction processes within five years. Towns in which Adelpia has no customers shall be ridden-out at least once each three years.

Dated at Montpelier, Vermont, this 4<sup>th</sup> day of January, 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: January 4, 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 mail) 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.*