

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6242

Joint Petition of Adelpia Communications Corporation)	Hearing at
("Adelpia") and Harron Communications Corporation)	Montpelier, Vermont
("Harron") for approval of the transfer of control of Harron)	July 16, 1999
to Adelpia via a stock acquisition)	

Order entered: 8/9/99

PRESENT: Gregg C. Faber
Hearing Officer

APPEARANCES: Leslie Cadwell, Esq.
for Vermont Department of Public Service

John Mucha, General Manager
for Harron Communications Corporation

Jacqueline P. Cleary, Esq.¹
Hogan & Hartson, L.L.P.
for Harron Communications Corporation

Henry Hryckiewicz
for Adelpia Communications Corporation

Stuart Feldstein, Esq.²
Fleischman and Walsh, L.L.P.
for Adelpia Communications Corporation

INTRODUCTION

This proceeding concerns the approval of a transaction in which Adelpia Communications Corporation ("Adelpia") will acquire all of the issued and outstanding stock of Harron Communications Corporation ("Harron") (together, "Petitioners"), and become principally responsible for the provision of cable television services in Harron's place. Petitioners request that the Public Service Board ("Board") approve, pursuant to 30 V.S.A. § 515, the transfer of control of Harron's cable system franchise to Adelpia.

1. Notice of Appearance filed, but did not attend hearing.
2. See footnote 1.

The proposed transaction is the latest in a series of stock acquisitions and asset purchases in which the Board, in the recent past, has considered a request by Adelphia or one of its subsidiaries to acquire existing cable television companies in Vermont.³ In the Certificates of Public Good ("CPGs") issued to Adelphia's subsidiaries in Dockets 5847, 5886 and 6003, the Board included a number of conditions, designed to ensure that the acquisition and operation of the cable television franchises would promote the general good.

As the current transaction has been structured as a stock acquisition, Adelphia will operate the Harron system under the existing CPG held by the company. The Vermont Department of Public Service ("Department"), Adelphia, and Harron have entered into a Stipulation and Agreement ("Stipulation") that resolves all of the issues before the Board in this case. I agree and recommend that the Board approve the Stipulation.

BACKGROUND

A. Procedural History

Adelphia and Harron jointly filed the original petition on April 19, 1999. An Amended Petition was filed on May 10, 1999.

A prehearing conference and technical hearing were held on July 16, 1999. In addition to the petitioning parties, the Department appeared. None of the hearing participants sought further evidentiary hearings in this proceeding. Instead, Harron and Adelphia agreed to file a jointly stipulated draft proposal for decision with the Hearing Officer by July 26, 1999.

B. Legal Framework

30 V.S.A. § 515 requires that the Board approve the acquisition by a company of greater than forty percent of the voting securities of a cable television company that is subject to the Board's

3. In Docket 5847, the Board approved Mountain Cable's purchase of First Carolina Cable TV, L.P. ("First Carolina"). *Joint Petition of First Carolina Cable TV, L.P. to sell and Mountain Cable Company to purchase the assets of First Carolina's cable television system*, Order of 6/20/96. In Docket 5886, the Board approved Mountain Cable's purchase of Small Cities Cable Television, L.P. ("Small Cities") and Small Cities Cable of Newport, Inc. ("SCN"). *Joint Petition of Small Cities Cable Television, L.P., and Small Cities Cable of Newport, Inc. to sell and Mountain Cable Company, d/b/a Adelphia Cable Communications to purchase the assets of Small Cities and SCN's cable systems*, Order of 11/4/96. In Docket 6003, the Board also approved an Adelphia subsidiary's acquisition of the cable television assets of Time Warner Cable of Vermont, L.P. and Warner Cable Communications, Inc. *Joint Petition of Time Warner Cable of Vermont, L.P., Warner Cable Communications, Inc. and Multi-Channel TV Cable Company, d/b/a Adelphia Cable Communications*, Order of 12/5/97. In Docket 6141, the Board approved Mountain Cable's stock acquisition and transfer of control of Richmond Cable Television Corporation and Lake Champlain Cable Television Corporation. *Joint Petition of Richmond Cable Television Corporation (Richmond), Lake Champlain Cable Television Corporation (Lake Champlain) and Mountain Cable Company d/b/a Adelphia Cable Communications (Mountain Cable) for authority to transfer all of Richmond and Lake Champlain's issued and outstanding shares to Mountain Cable*, Order of 12/3/98.

jurisdiction. The proposed transaction requires the Board's approval under § 515, because Adelphia is acquiring all of the issued and outstanding stock of Harron, which is a cable television company in Vermont subject to the Board's jurisdiction under § 501(3). Approval under § 515 requires a finding that the acquisition is "not contrary to the public good."

Based upon the evidence of record, therefore, I hereby report the following Findings to the Board in accordance with 30 V.S.A. § 8.

FINDINGS OF FACT

1. Harron is a Delaware corporation, which through its subsidiary, Harron Cablevision of New York, Inc., owns and operates a cable system in Wells, Vermont, under a Certificate of Public Good issued in Docket No. 5418 on June 28, 1990. Joint Petition at 1.
2. Adelphia is a Delaware corporation organized and existing under the laws of the State of Delaware. Adelphia and its affiliates currently operate several cable systems in Vermont pursuant to Board certification. *Id.* at 2.
3. Harron has entered into agreement with Adelphia whereby Adelphia will acquire all of the issued and outstanding stock of Harron, pursuant to the terms of a Stock Purchase Agreement dated as of April 9, 1999, upon approval of the proposed transfer by the Board. *Id.* at 1.
4. Adelphia plans to operate the Harron systems as part of its existing Vermont system, according to the current terms and conditions of service and operation of the system until completion of the transaction. *Id.*
5. Adelphia has the technical ability necessary to operate the subject cable systems and has the financial capacity to operate the subject systems. *Id.* at 2
6. The Department and Petitioners have submitted a Stipulation and Agreement which, in summary, states that they agree that the acquisition by Adelphia of all of the issued and outstanding stock of Harron should be approved. Stipulation and Agreement at ¶ 8.
7. Adelphia will use the FCC annual rate adjustment method for rate changes and will use the rate filing date of May for effect August, and, therefore, will make no changes to the rates and services provided to current Harron customers until August of 2000 at the earliest. *Id.* at ¶ 3c.
8. Harron's CPG to operate a cable television franchise will be amended pursuant to the conditions the Board imposes on any CPG Adelphia's affiliates may receive in Docket No. 6101. *Id.* at ¶ 3a.

9. Adelphia will not impose fees for late payments on customers unless and until the Board permits Adelphia's affiliates to charge such fees, subject to any stays of the late fee decision in the Board's May 3, 1999 Order in Docket Nos. 6117, 6118, and 6119 or any successful appeal on the late fee issue by Adelphia of that Order. *Id.* at ¶ 3d.

10. Harron's CPG will be amended to reflect a line extension policy which allows for line extensions without customer contribution where there is an average density of 15 year-round residential units passed per mile, starting at the nearest end of the existing trunk or distribution system; or there is an average of 12 verified subscribers per mile along the proposed extension. *Id.* at ¶ 3e.

11. Adelphia agrees to file the appropriate tariff revisions with the Board to reflect the late fee and line extension provisions included in the Stipulation and Agreement, and described herein, within 60 days of the date the stock transfer is finalized and Adelphia has assumed ownership of the Harron system. *Id.* at ¶ 4.

12. Harron's CPG will be amended to reflect the settlement reached in Docket No. 5883 regarding the filing of informational tariffs and amendments thereto in the form and manner prescribed by 30 V.S.A. § 225 and Board Rule 8.312, including the timing of such filings. *Id.* at ¶ 3b.

13. Adelphia agrees to notify the Board and the Department in writing of the closing of the stock transfer within one week of the closing. *Id.* at ¶ 5.

14. The Department and Petitioners have submitted a Stipulation and Agreement which, in summary, states that they agree that the acquisition by Adelphia of all of the issued and outstanding stock of Harron should be approved. *Id.* at ¶ 8.

15. The transfer of control will be in accordance with state and federal law and will serve the public interest by allowing Adelphia to consolidate its operations among existing and newly acquired franchises with the result of allowing for economies of scale. The transfer of control should not have any negative effect on the operations, terms and conditions of cable television service in the subject franchise area. Joint Petition at 3.

CONCLUSION

I have reviewed the Joint Petition and Stipulation and Agreement and the evidence in support of it. The Stipulating Parties have agreed that the proposed acquisition should not have a negative effect on operations, terms and conditions of cable television service in Vermont and, therefore, will not be contrary to the public good. Based upon the above findings I reached the same conclusion, and I

thus recommend that the Stipulation and Agreement be accepted because it is supported by the evidence and it is not contrary to the public good to do so. I further recommend that

Therefore, I find that the acquisition of the stock of Harron by Adelpia will not be contrary to the general good of Vermont, and I recommend that the CPG issued to Harron be amended to reflect the conditions included in the Stipulation and Agreement.

The Parties have waived their rights to comment on the Proposal for Decision pursuant to 3 V.S.A. § 811 and to appeal the Board's order on the issues addressed in the Stipulation and Agreement.

Dated at Montpelier, Vermont, this 9th day of August, 1999.

s/ Gregg C. Faber
Gregg C. Faber
Hearing Officer

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. The acquisition by Adelpia Communications Corporation ("Adelpia") of all of the issued and outstanding stock of Harron Communications Corporation ("Harron") and the operation of the cable television system as described in the Findings are approved.
3. The Stipulation between the Vermont Department of Public Service, Adelpia, and Harron is approved.
4. Adelpia shall file a letter notifying the Board of the date of the closings within one week of said closing.
5. Within 60 days of the date the transaction is closed and Adelpia has assumed control of the Harron system, Adelpia shall file the appropriate amendments to the Harron tariff to reflect the current late fee and line extension policy as described in the Findings.
6. Harron's CPG shall be amended to reflect the conditions contained in the Stipulation and Agreement of May 18, 1999.

DATED at Montpelier, Vermont, this 9th day of August, 1999.

s/ Michael H. Dworkin)	PUBLIC SERVICE BOARD OF VERMONT
)	
s/ Suzanne D. Rude)	
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)	
s/ David C. Coen)	

OFFICE OF THE CLERK

Filed: August 9, 1999

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 of any technical errors, in order that any necessary corrections may be made.

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.