

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7044

Petition of City of Burlington, d/b/a Burlington Telecom,)
for a certificate of public good to operate a cable)
television system in the City of Burlington, Vermont)

Entered: 9/13/2005

CERTIFICATE OF PUBLIC GOOD
ISSUED PURSUANT TO 30 V.S.A. §§ 231 AND 503

IT IS HEREBY CERTIFIED that the Public Service Board ("Board") of the State of Vermont on this date finds and adjudges that the issuance of a Certificate of Public Good ("CPG") to the City of Burlington, d/b/a Burlington Telecom ("BT"), to serve the City of Burlington ("the City") and that the operation of a cable television system in said City will promote the general good of the State of Vermont subject to compliance with the following conditions:

General Provisions

1. This CPG does not grant to any entity, other than BT, which may intend to provide cable television service over BT's network utilizing an open access arrangement, authority to provide cable television service in Vermont. To the extent required by law, any entity, other than BT, which seeks to offer cable television service using BT's cable network shall first obtain a separate CPG from this Board pursuant to 30 V.S.A. §§ 231 and 503.

2. BT shall at all times conduct its operations consistent with Board rules or regulations, as amended from time to time, this CPG, and Vermont law, including all applicable provisions of the City of Burlington Municipal Charter 24 V.S.A. App. Chapter 3.

3. BT shall obtain all necessary Board approvals as required by 30 V.S.A. §§ 109 and 232 prior to entering into any leases or other arrangements subject to those provisions. BT shall not transfer title to or possession of any property or assets constituting 10% or more of BT's property used in or required for the provision of regulated public services under this CPG, including any equipment subject to a lease, without first obtaining Board approval as required by Vermont law.

4. In no event shall BT abandon or curtail its service or abandon all or any part of its facilities, except after receiving approval of the Board, as provided in 30 V.S.A. §§ 231 and 505.

5. BT shall notify the Board and the Department of Public Service ("Department") in writing immediately if it is in arrears of any scheduled lease payment or if a Lessor invokes, or provides BT notice of, one or any combination of remedial steps in a lease of equipment used in, or required for, the regulated public service operations of BT.

6. Construction, including installation, of BT's cable system shall conform to all applicable state and federal laws and regulations and the National Electric Safety Code.

7. BT shall file tariffs and all individual customer service agreements for its cable services, and tariffs and service agreements for its wholesale "open access" services if and when they are offered, with the Board to the extent required by Vermont law.

8. BT shall not show gross operating revenue tax pursuant to 30 V.S.A. § 22 as a line item on customer bills.

9. Gross Revenues.

- a. For the purpose of calculating the gross operating revenue tax, BT shall use the following definition of "gross operating revenues": all cash, credit, property of any kind or nature or other consideration received directly or indirectly by BT and derived from the operation of its cable systems, including, but not limited to monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional service; pay-television fees; pay-per-view fees; premium-service fees; monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection and reconnection fees; leased-channel fees; fees, payments or other consideration received from programmers; fees, payments or other consideration received from third parties for lease of space on either fiber or coaxial cable; converter rentals or sales; studio-rental, production-equipment and personnel fees; advertising revenues; revenues from home-shopping networks and revenues from internet access service until such time that a gross revenue tax is paid on such revenues as telecommunications services.
- b. For purposes of calculating funding for Public, Educational, and Governmental ("PEG") access in the absence of an agreement otherwise, BT shall use the definition of gross revenues in section 9a above, except that Internet-access service revenues shall be excluded from the calculation unless and until Congress, the Federal Communications Commission, or a court of competent jurisdiction or governmental agency of competent jurisdiction issues a final ruling or order, not subject to appeal, that such revenues shall be included in such a calculation of gross cable-service revenues.

10. BT shall at all times offer a reasonably broad range of programming, having regard to available technology, availability of such programming, the interests of subscribers, the revenues and potential revenues of the system, and costs.

11. The Board shall, to the extent permitted by law, retain jurisdiction to prescribe broad categories of programming.

12. Prices for services not subject to rate regulation by the Board shall at all times be reasonable, having regard to the costs of providing such service. Unless otherwise specified by state law or Public Service Board rule, tariffs of current rates, terms and conditions for provision of service, and any change thereto shall at all times be filed with the Clerk of the Board and the Department of Public Service.

13. Unless otherwise specified by state law or Board administrative rule, BT shall notify the Clerk of the Board and the Department forty-five (45) days prior to any changes in rates, terms or conditions of service; changes in channels offered; retiring of any channel; and any lien, mortgage, pledge, or other encumbrance on assets in the City of Burlington used by BT.

14. If BT begins doing business in the State of Vermont under any name(s) other than the name(s) in use on the date of the final Order in this Docket, it shall file notice of the new trade name(s) with the Clerk of the Board and the Department at least fifteen (15) days prior to so doing.¹

15. At the time of filing its Annual Report pursuant to 30 V.S.A. §§ 22 and 514, BT shall file with the Department and the Board the following:

- a. A listing of services, the rates charged for each service as of the date of the filing of the report, a statement of any changes in any such rates from the preceding calendar year or period, and a statement of the revenue derived from each service during such calendar year or annual period;
- b. A balance sheet, an income statement, a statement of changes in financial condition and a statement of assets used and useful for the provision of service in Vermont, all as of the close of the preceding calendar year or annual period;
- c. A current copy of the System of Accounts used by BT;

1. For a corporate name change, *see* 11A V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.

- d. A statement of any significant changes to BT's business structure, operating procedures or services that were made during the preceding calendar year;
- e. A statement of any significant changes to BT's business structure, operating procedures or services that are planned for the current calendar year; and
- f. A construction budget for the current calendar year, which shall separately identify each line extension and list the length and total estimated cost of each extension, and each extension shall be keyed to the appropriate area on the individual town's house-count survey map and the individual road-data sheets.

16. At the time of filing its Annual Report pursuant to 30 V.S.A. § 22, BT shall also file with the Department and Board a map sufficiently outlining the service territory and describing its existing plant and any extensions and replacements planned for commencement or completion within one calendar year from the close of the preceding calendar year or annual period; the fiber runs and node locations shall be shown on the map. This map shall be filed in paper format and in electronic format. The electronic map shall be provided in one of the standard formats: ArcView shapefile (preferred); .E00 Arc/Info Export format; MapInfo interchange format; Microstation .DGN format; or AutoCAD .DWG, or .DXF format. The filing should identify the cartographic projection of the electronic map file or that it is in unprojected coordinates (i.e., latitude and longitude). BT may seek confidential treatment of this required filing, if appropriate.

17. BT shall build its network to serve every residence, building, and institution in the City of Burlington within 36 months of the date of this CPG. Until such time as BT's network meets this requirement, the Company shall file a line extension report with the Department by April 15 of each year that provides the following information relative to line extensions completed during the preceding calendar year:

- a. Location of line segment, including location of line segment by reference to nearest road(s);
- b. Length of strand, in feet or miles;
- c. Number of dwellings and multiple-unit business establishments passed, without discounting seasonal dwellings or dwellings with a satellite dish;
- d. Date on which line was placed in service;
- e. A street map and description of the streets and areas of the City to which BT does not yet provide service. BT shall, at that time, also file with the Department a projected completion date for line extensions to any areas of the City to which BT does not yet

provide service and an explanation of the reasons for delay, if any, relative to the build-out plan described by BT in its petition for a CPG.

18. BT shall comply with all regulations of the Federal Communications Commission, including the regulations governing commercial leased access. Compliance with the commercial leased-access regulations requires BT to provide non-discriminatory access to its facilities to all video programmers qualified by the leased-access regulations for such access.

19. Subject to applicable law, including statutes governing or rules and regulations promulgated by the Federal Communications Commission, BT shall respond to and negotiate with any entity that offers, on commercially-reasonable terms, digital-broadcast services, including but not limited to any service that provides High Definition TV or Standard Definition TV multicast services to BT for carriage over its cable system. This condition requires BT to use its best efforts to reach agreement on such terms but does not require that BT reach agreement for such carriage.

20. This Certificate shall expire eleven years from the date of this Certificate.

21. This Certificate shall be subject to revocation upon good cause, including a substantial or continuous failure to abide by its material terms.

22. This Certificate may not be transferred without the consent of the Board, which shall not be unreasonably delayed or withheld.

Public, Educational, and Governmental ("PEG") Access

23. PSB Rule 8.400 shall apply to BT, to any access management organizations ("AMOs") with which BT may designate and contract, and to any organizations that seek BT's designation as an AMO. BT shall comply with Rule 8.400 as may be amended from time to time.

24. BT shall designate one or more AMO's as provided in Rule 8.400. BT shall provide levels and types of financial, operational, and technical support to those AMO's that are fair, reasonable, and comparable to the levels and types of support provided by Mountain Cable, L.P., d/b/a Adelphia Cable Communications ("Adelphia"), to the AMOs designated by Mountain Cable. This condition shall not preclude BT from designating the same or additional AMO's than has Adelphia, nor preclude BT from offering different or additional public access content to its cable subscribers.

25. The contracts BT negotiates with the AMOs shall not be materially inconsistent with the terms of the *Aide Memoire* introduced as an exhibit in this docket. In addition, BT shall provide 5MB of server space and IP support, paid access to its electronic programming guide, and on-screen and semiannual newspaper promotion for PEG programming and community courtesy services similar to those required of Adelphia.

26. BT shall provide fiber-optic or coaxial-cable drops, capable of two-way service, to every school, library, and PEG-access studio and to at least one municipal building in the City of Burlington. BT may provide the two-way service through a drop that is separate from any drop used to provide cable television service or high-speed Internet access service to that entity. BT shall provide and activate each drop within 6 months of receiving a request from the respective school, library, AMO or municipality, provided however BT is able to obtain all necessary approvals and permits pursuant to Rule 3.700. This condition does not require BT to provide drops to buildings that are neither passed by nor located within 500 feet of cable plant unless an entity is willing to reimburse BT for the incremental cost of the non-standard installation. BT shall provide basic cable service at each coaxial drop, and shall provide an aerial drop (standard installation), both at no charge. Upon request, BT shall provide an entity described in this paragraph with a non-standard installation, provided the entity pays the difference in cost between the standard and non-standard installation. Non-standard installations include underground installation or installation to an entity located more than 500 feet from cable plant.

27. BT shall interconnect its system to all AMO studio locations providing programming to Burlington, at BT's expense. If the Board designates an entity to act as a statewide PEG AMO, BT shall interconnect, directly or indirectly, with the statewide PEG AMO or Adelphia or its successor, whichever is the technically appropriate solution, to provide transmission of PEG-access programming between the two companies' systems. BT shall bear its own costs associated with this interconnection. In the event that interconnection with Adelphia is appropriate, BT shall negotiate in good faith with Adelphia or its successor and shall attempt to conclude an interconnection agreement within 120 days of the day when the requirement is triggered. Such an agreement shall include, but not necessarily be limited to, interconnection

points, testing, repair and maintenance obligations, means of interconnection, and adherence to transmission standards. If the cable operators cannot reach an interconnection agreement within 120 days, BT shall submit all unresolved issues to the Board for resolution.

28. If the Board has designated an entity to act as a statewide PEG AMO, BT shall upon request of the AMO provide as minimum support for the statewide PEG network the capability of transmitting signals from the statewide network to any PEG forward channel and transmitting to the statewide network signals originating on any PEG reverse channel on the cable system. Such a request by the AMO for statewide PEG-network capability is to be made at least one year prior to activation of the statewide channel on a BT system. Additionally, BT is not obligated to pay for statewide PEG-programming content in addition to its PEG-access obligations.

29. BT shall file with the Board and Department copies of all PEG-access contracts with AMOs, and any amendments thereto, within 30 days of execution.

30. BT shall fund the establishment of a cable advisory council in its territory in accordance with the guidelines contained in Attachment A to this Certificate. The advisory council shall meet for the first time no later than 120 days following the Board's issuance of this CPG.

Institutional Networks

31. BT shall be obligated to offer service, upon request, enabling every school, library, and PEG-access studio, and at least one municipal building in the City of Burlington to have access to an institutional network or networking on a fee-for-service basis.

32. BT shall develop and submit a proposal within 90 days in response to any qualified request for proposals ("RFP") issued by a state or local government agency, educational institution (accredited elementary schools, secondary schools, colleges and universities, and libraries open to the general public), or educational or governmental access entity ("institutions") seeking an institutional network for voice, video, or data within its franchised area. An RFP shall be deemed qualified if it contains the following information:

- a. the specific locations to be linked (which may include interconnection points with other cable systems or telecommunications providers to be determined later);
- b. the desired transmission capacity or amount of dark optical fiber;
- c. a description of the desired applications to be operated over the institutional network.

BT shall not be required to construct dedicated facilities for institutional networks, where facilities shared with other services and networks meet the requirements of the institutions. Fulfillment of an RFP involving dark fiber shall not require interconnection of that dark fiber with BT's network or with BT's headend, nor shall the institution or the users have access to or rights in the headend. It is understood that BT may lease, but will not be required to sell dark fiber. It is understood that BT may not fulfill an RFP requiring dark fiber if the necessary labor and/or material is unavailable or is not available on customary and satisfactory terms.

33. BT's response to a qualified RFP shall include the terms and conditions, including but not limited to rates, tolls, or charges, under which it would make available the institutional network to the requesting entity. Charges for institutional networks shall not exceed BT's fully-allocated costs to provide the network.

34. BT shall not charge institutions for construction or extension of facilities used for institutional networks that are required to meet other obligations under its Certificate, or to provide services to other customers. BT may charge institutions a proportional share of line extensions not otherwise required that will be used for institutional networks but may also be used to serve cable customers.

35. BT shall offer institutions on a fee-for-service basis the ability to create Wide-Area Networks (WANs) between points in BT's franchise area whether or not the institutions utilize BT as an Internet Service Provider.

36. BT shall offer Service Level Agreements (SLA) to institutions using institutional networks covering committed throughput rates, service availability, reliability, repair times, and other service-quality elements customarily offered for comparable services.

37. BT shall respond 24 hours a day, 7 days per week to outages or degradation of service below contracted service for institutional networks. If a reported problem with an institutional network cannot be corrected immediately, BT staff shall promptly explain the status to the institution in person or via phone and provide the approximate time in which the problem will be resolved. A BT representative will verify with the institution that services are working either in person or via telephone before the trouble call is closed out. BT shall provide institutions to

which it provides institutional networks with a local manager to whom it can escalate unresolved problems.

Customer Care and Communications

38. BT's deposit and disconnection policies shall at all times be consistent with Board Rules 3.200, 3.400, and 8.000, as they may be amended from time to time.

39. BT shall respond within fourteen (14) calendar days, unless otherwise specified by the Department, to written or verbal inquiries from the Department regarding consumer complaints, the status of a line extension and construction progress. The fourteen-calendar-day period commences upon receipt by BT of the Department's notification of an inquiry or complaint. Notification includes notification by electronic or web-based mail, facsimile, hand-delivery, U.S. mail or verbal contact. In any case in which BT is unable to respond fully, providing all information necessary to resolve the inquiry or complaint, within fourteen days, it must provide notice to the Department before the elapse of the initial fourteen days that an extension of time is required. The Department and BT are permitted to discuss the inquiry or complaint in person or by telephone.

40. BT shall designate a staff person to serve as primary liaison to the Consumer Affairs and Public Information Division of the Department ("CAPI"), providing on an on-going basis current contact information for that individual.

41. BT shall adhere to the customer service standards contained in 47 C.F.R. § 76.309.² BT must monitor and report on its customer-service performance in relation to all FCC and Board customer-service standards in accordance with its Service Quality Plan, which may be amended as needed with the agreement of the Department. The initial Service Quality Plan shall conform to Attachment B to this Certificate and any amendment(s) must be filed with the Board prior to becoming effective. Quarterly, beginning with the quarter following Board approval of this CPG, BT shall submit monitoring reports on its performance to the Department and the Board. Where quarterly performance falls more than 10 percent below any standard, or where

2. All references to sections of 47 C.F.R. are intended to refer to those sections as they shall be amended from time to time.

performance does not meet any standard for two consecutive quarters, BT shall submit to the Department and Board a corrective-action plan indicating how it will meet the failed standards.

42. Should consumer complaints to the Department concerning BT exceed a rate of 2.5 escalations per 1000 customers, BT must track and analyze consumer complaints in a manner that will enable their periodic analysis. ("Escalation" is a complaint to the Consumer Affairs and Public Information Division of the Department in which, following investigation, CAPI staff determines reasonably there is something BT could and should have done differently prior to the consumer having to contact the Department for assistance.) Specifically, BT must work with the Department to develop a complaint-tracking protocol that defines what is considered a complaint to BT and complaint categories to be tracked. The system should permit customer-service and sales representatives to capture written, telephonic, e-mail, web-based and face-to-face complaints and to allow easy tabulation and analysis of those complaints by system and topic. If this provision is triggered, on an annual basis BT must submit a report to the Department and the Board indicating the number and nature of complaints received, how they were analyzed by BT, what systemic issues were identified, and what responses were implemented to address those systemic issues. Measurement of the consumer-complaint rate to determine whether this provision is triggered shall be calculated on a calendar-year basis. If this provision is triggered, the requirements of this provision will continue for a period of the subsequent three years.

43. BT shall treat all written complaints from subscribers in accordance with 47 C.F.R. § 76.1619(b) and Board Rule 8.345. BT shall not limit such responses to those complaints that cannot be resolved by a customer-service representative.

44. BT shall annually cause to be mailed to each of its subscribers a notice or notices, developed in consultation with the Department and approved by the Board, to the extent required by law that:

- a. state that the Board and the Department desire to hear the views of subscribers regarding the quality of services provided by BT and as to the reasonableness of the terms upon which such services are provided;
- b. inform the subscribers how they may communicate their views to the Board, to the Department, and to BT;
- c. notify subscribers of the complaint and appeal procedure for complaints against any PEG-access entity and complaints against BT itself; and

d. include the notices required by Board Rule 8.341 and 47 C.F.R. § 6.1602(b)–(c).

45. On or before January 30 of each year, BT shall certify to the Board, under oath, that it has distributed the notice(s) required in Condition No. 44, above, during the previous calendar year.

46. BT shall ensure that all customer notices are in plain English, at no greater than a sixth-grade reading level, and that type sizes and layouts are sufficient to render the notices readable to the average consumer. The Flesch-Kincaid Reading Level test, or equivalent instrument that may widely supersede it, shall be used to determine compliance with the grade-level requirement.

47. BT shall provide customers at the time of any service order with a clear and understandable description of the terms, conditions, rates and charges for all requested services and appropriate alternatives, which shall include the least-cost alternatives to the requested service. BT shall disclose, at a minimum, any non-recurring charges, such as for installation, the recurring charges for services, any charges that apply to a change in service or periods in which such charges are waived, and information about equipment, policies and procedures.

48. BT shall not use the term "Basic," alone, in a phrase, or as an abbreviation, in reference to any service tier other than the lowest level of cable service that a subscriber can select. BT shall provide all consumers at the time of installation with a clear written notice complying with 47 C.F.R. §76.1618 that the basic tier of service is available, its cost per month, and a list of all services included in the basic tier.

49. BT shall list the toll-free telephone number of the Department on its bills and in the "complaint procedures" section of its annual notices along with the following language: "You should first try to resolve any complaint or dispute directly with Burlington Telecom. If you remain unsatisfied by Burlington Telecom's response, you may request assistance from the Vermont Department of Public Service Consumer Hotline by calling 1-800-622-4496, or email consumer@state.vt.us." BT shall provide a draft of its disconnection notice language to the Department for review and comment.

50. BT's complaint procedure and any other relevant sections of the annual notice provided to consumers shall comply with 47 C.F.R. § 76.1602(b), including to provide specific reference

to the "Vermont Public Service Board" as the local-franchising authority for all Vermont systems. At no time shall BT represent to customers, either in writing or orally, that the City of Burlington is the local franchising authority in Vermont.

51. BT shall at all times ensure that its annual customer notice is specific and detailed with respect to Vermont policies and procedures and that all contents are consistent with BT's tariff.

52. BT shall ensure compliance with 47 C.F.R. § 76.309(c)(3), which requires that refund checks due to customers shall be issued no later than (a) the earlier of the next billing cycle following resolution of the request or thirty (30) days, or (b) the return of equipment supplied by the operator if service is terminated.

53. If BT decides to raise rates more than once in any calendar year, BT shall include with its rate-change notice to the Board, and provide a copy to the Department of, a written explanation of the circumstances or other reasons that necessitate BT's need to increase its rates.

54. BT shall, no later than sixty (60) days from the Board Order in this docket, submit its disconnection notice to the Board for approval. Such notice shall conform to the requirements of Board Rule 3.403. BT shall not disconnect any customer unless such customer receives a valid disconnection notice in a form that has been approved by the Board.

55. BT shall provide outage credit and/or refunds to customers without the necessity of the customer contacting BT in those instances in which BT knows an outage has occurred and has affected a particular system or portion of a system. BT's outage-credit policies and practices shall at all times be consistent with Board Rule 8.343.

Provisions Specifically Related to City Charter 24 V.S.A. App. § 3-438(c)

56. In no event shall any losses or costs, in the event the enterprise is abandoned or curtailed, incurred by BT be borne by the City of Burlington taxpayers, the City of Burlington Electric Department ("BED") ratepayers or the state of Vermont, nor shall the City of Burlington expend any funds received from the State of Vermont to cover any losses or costs, in the event the enterprise is abandoned or curtailed, incurred by BT, as provided in 24 V.S.A. App. § 3-438(c)(1).

57. BT shall comply with 24 V.S.A. App. § 3-438(c)(2) and shall pay, pursuant to tariffs, to attach to poles wholly owned by BED the same pole attachment fee that would be required from any other, non-City entity, and BT shall pay to attach to poles owned jointly by BED and Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), or solely by Verizon pursuant to pole attachment agreements or pole attachment tariffs as are generally applicable to other attaching entities.

- a. BT shall be prohibited from accepting any preference from the City or BED in the construction, operation, and maintenance of its plant and facilities in the public rights of way, in underground conduit or ducts, or as attached to utility poles.
- b. BT shall pay the same rate for conduit access, make ready surveys, and make ready labor rates as other cable or telecommunications providers.
- c. BT shall not receive make-ready or other outside plant services from BED on a schedule more favorable than that performed by BED for Adelphia. Within 30 days of the date of this certificate, the City shall establish a tracking mechanism that measures the time from request to completion of work performed by BED for BT, Adelphia, Verizon, and other pole-attaching entities. The City shall submit a quarterly report during the three-year construction period for the system.
- d. BT shall place its aerial facilities in the communications space on utility poles, not in the power space. This provision shall not be construed to prevent placement of facilities in the safety or unusable space that is normally allowed for facilities belonging to Adelphia or Verizon.

58. The City shall establish BT as a separate enterprise fund and shall assure that within thirty (30) days of issuance of this CPG that a separate Chart of Accounts, and accounting books and records, are established consistent with BT's operation as an enterprise fund. The accounting system shall be capable of tracking in a transparent and auditable manner the direct and indirect costs from BT's financing, construction, operation, and maintenance of its facilities including cable plant, equipment, expenses, and other cable expense categories. The cost accounting system shall have sufficient detail to be capable of tracking, in an auditable manner: (i) all costs during the applicable accounting period that have been directly assigned to Phase III and the accounts to which such costs have been booked; (ii) all indirect costs (costs incurred in support of multiple City services or functions) that have been allocated to Phase III from the City, from BED, or from any other City operation, the accounts charged, the allocator used and the derivation of the allocator, including a demonstration that the amounts allocated to Phase III are

appropriate when considered in light of the amounts allocated to all other City activities; (iii) an explanation of the allocation of any centralized costs charged by the City to BED and in turn allocated by BED to the BT; and (iv) identification of any benefits BT receives from the City or any City activity but for which, for any reason, no allocation of costs is made to the cable system. The Accounts of the fund shall recognize start-up costs beginning on January 1, 2002.

59. The City shall develop, maintain, and update with appropriate frequency a Cost Allocation Manual ("CAM") that includes protocols for the allocation of direct and indirect expenses between BT and other City activities, and between BT's provisioning of telecommunications services to other City departments (the so-called "Phase I" activities) and its provision of cable television and other services to non-City entities on a common carrier basis ("Phases II and III" activities). The CAM shall identify all common and joint costs, describe the allocators used to allocate all joint and common costs, describe the method(s) by which the allocation factors are calculated, describe the sources of information from which costs shall be allocated, and describe the frequency and times at which direct and indirect costs shall be assigned to BT. The CAM should be applied not only going forward, but should be applied to costs incurred from January 1, 2002.

60. The City shall make payments on behalf of Phase III only when and to the extent that Phase III has cash reserves, revenues receivable, or other payments receivable that, collectively, equal or exceed the sum of the payments to be made by the City plus the balance of any other current payments owed to the City. BT may participate in the City's pooled cash management system provided, however, that BT shall reimburse the City within two months of the City's expenditure for any expenses incurred or payments made by the City in support of services that BT provides to non-City entities. The City shall obtain Board approval prior to appropriating any funds other than as described above in the support of BT's Phase III activities.

61. BT shall make payments in lieu of local and state taxes in an amount consistent with such taxes imposed on other private cable operators' businesses in Burlington.

- a. In anticipation of the obligation to make such payments, BT shall identify in writing through a PILOT agreement, the methodologies used for the valuation of BT's various properties, including all real, personal business and nonresidential property, and clearly identify the in lieu of tax rate or rates that will be applied to the various categories of property in order to determine the payment in lieu of taxes that BT is

required to make is comparable to payments made by private cable operators in Burlington. BT shall file its valuations with the Board and the Department.

- b. Not less than sixty (60) days from date of this Order, BT shall file with the Board and Department a copy of a fully executed payments in lieu of taxes agreement with the City. Thereafter, within ten (10) days of executing any amended or successor agreement, BT shall likewise file copies of such agreements with the Board and Department. The Board, as a condition of this CPG, may direct BT and the City to modify or enter into substitute payments in lieu of tax agreements as necessary to assure compliance with 24 V.S.A. App. § 3-438(c)(2).

62. BT shall pay any lawful, applicable municipal and street excavation fees, as would apply if BT were a private, non-governmental entity.

63. BT shall obtain an independent appraisal of the property to be used for its headend antenna(e) and building, and shall pay a fair rental (or purchase) to the City department that owns it.

64. Miscellaneous Provisions

- a. Unless granted prior, express consent of this Board, BT may not obtain access to or use customer proprietary network information or other personally identifiable information of BED electric customers or the City.
- b. Except with prior, express consent of this Board, BT shall not offer its cable television services in a service bundle with electric services offered by BED, nor shall BT tie the availability, price or other terms and conditions upon which it offers cable television service to a consumer's purchase of electric service or other municipal service, except non-cable services provided by BT.
- c. The City may not exercise its power or authority in any area, including zoning or land use regulation, to require any person, including residents of a particular development, to use or subscribe to any BT cable service.

65. For the duration of this CPG, BT shall retain written records, including workpapers, invoices and records of payment remittance, of all payments in lieu of taxes and franchise fees paid to the City, and of any payments to public access management organizations.

Dated at Montpelier, Vermont, this 13th day of September, 2005.

s/James Volz)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

s/John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

FILED: September 13, 2005

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)