

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6521

Petitions of The Helicon Group, L.P. , d/b/a Charter	)	Public Hearings at
Communications, for renewal of its Certificates of Public	)	Barre, Vermont
Good for its cable systems located in the Towns of Barnet,	)	December 16, 2002
Barre (City & Town), Berlin, Bradford, Burke, Cabot,	)	and
Calais, Chelsea, Concord, Danville, East Montpelier,	)	St. Johnsbury, Vermont
Groton, Kirby, Lyndon, Marshfield, Newbury, Orange,	)	December 17, 2002
Peacham, Plainfield, Royalton, Ryegate, Sheffield, St.	)	
Johnsbury, Sutton, Tunbridge, Washington, Waterford,	)	Technical Hearing at
Wells River (Village), Wheelock, Williamstown,	)	Montpelier, Vermont
Woodbury, and Worcester, Vermont	)	March 6, 2003

Order entered: 9/8/2003

PRESENT: John P. Bentley, Esq.  
Hearing Officer

APPEARANCES: Sarah Hoffman, Esq.  
for Vermont Department of Public Service

John Marshall, Esq.  
Downs, Rachlin, and Martin, P.C.  
for The Helicon Group, L.P.

Jamie Dimick, Administrative Coordinator  
for Kingdom Access Television

**I. INTRODUCTION**

This docket concerns requests by The Helicon Group, L.P., d/b/a Charter Communications ("Charter"), to renew all of its existing Certificates of Public Good ("Certificates") to operate cable television systems in the state of Vermont. During this case there has been intense negotiation between the company and the Vermont Department of Public Service ("Department"), resulting in a stipulation that encompasses all issues raised. In this

proposed decision I recommend that the Public Service Board ("Board") renew the subject Certificates, on the terms negotiated by the parties, for a period of eleven years.

## **II. PROCEDURAL HISTORY**

By letters dated May 22, 2000, and January 16, 2001, Charter notified the Board, three years in advance of the expiration of two of its Certificates and in accordance with Section 626(a) of the Cable Communications Policy Act of 1984, as amended, 47 V.S.A. § 546(a), of its request to renew all of its existing Certificates and merge them into a single Certificate, authorizing Charter to continue providing cable television service to the areas it currently serves and to extend service to additional areas in adjacent municipalities in accordance with its line extension policy. The Board initiated this docket and appointed me as its Hearing Officer to review Charter's request, and on July 5, 2001, the Board provided notice of a prehearing conference to be held on July 27, 2001, which was held as scheduled for the purpose of hearing requests to intervene and establishing a schedule for this docket.

In advance of Charter's filing a formal application, Charter and the Department agreed to undertake a joint assessment of community needs and interests in the municipalities served by Charter, which took place in late 2001 and the first part of 2002. Following that assessment, informal exchanges of information and settlement negotiations, on September 20, 2002, Charter filed its formal application to renew its Certificates pursuant to 30 V.S.A. § 506 and 47 U.S.C. § 546. In support of its application, Charter filed the information required by Appendices A and B to Board Rule 8.211 and the prefiled testimony and supporting exhibits of Edward Goldstein, Bea Welch, Cindy Ely, and Peter Gorga. Pet. exh. Charter-1.

Kingdom Access TV, the public-access entity for Charter's St. Johnsbury service area, filed a motion to intervene in this docket, which I granted effective September 11, 2001. Central Vermont Television, the public-access entity for Charter's Barre service area, requested an extension of the deadline for motions to intervene, but ultimately did not file an intervention motion.

Charter and the Department entered into a Protective Agreement on September 5, 2002, which I approved by Procedural Order Re: Protective Agreement on September 30, 2002.

In this docket, Charter seeks renewal of all of its outstanding Certificates in Vermont that have varying expiration dates, the earliest of which was November 22, 2001. At Charter's and the Department's request, I recommended and the Board ordered that the approaching expiration dates for certain of the Certificates be extended to September 30, 2003, to allow time for adequate review of Charter's renewal proposal. Order of 10/9/02.

I issued Scheduling Orders on November 19, 2002, and January 16, 2003, which scheduled two public hearings, several rounds of discovery, an opportunity for the prefiling of testimony by the Department and other parties, initial and rebuttal technical hearings, and the submission of proposals for decision and briefs. I also conducted public hearings in Barre and St. Johnsbury. One member of the public attended the Barre public hearing, and no members of the public attended the St. Johnsbury hearing.

The Department prefiled testimony and exhibits of Christopher Campbell, Deena Frankel, Lawrence Lackey, Charles Larkin, and Susan Martin on December 17, 2002. I held an initial technical hearing at the Board's Hearing Room in Montpelier on March 6, 2003, at which I admitted the testimony and exhibits prefiled by Charter and the Department, and counsel for the parties then provided a status report on settlement negotiations but agreed to defer examination of witnesses until the scheduled rebuttal hearings.

Throughout the docket Charter and the Department (the "Stipulating Parties") engaged in extensive settlement negotiations. On April 18, 2003, the Stipulating Parties filed a Memorandum of Understanding ("MOU") agreeing that, subject to certain conditions attached to the MOU as Appendix A, renewal of Charter's existing Certificates and issuance of a single, merged Certificate would promote the general good of Vermont and would be consistent with and meets the requirements of federal law, state law and the Board's rules and regulations regarding the renewal of a cable operator's franchise. MOU, ¶ 7.

Attached as Appendix A to the MOU was a table of proposed Certificate conditions (the "Certificate Conditions"). Appendix A in turn contained an attachment regarding guidelines for a cable advisory council (Attachment A to the MOU) and a Service Quality Plan (Attachment B). The MOU resolved all issues in this docket between Charter and the Department.

On May 29, 2003, I notified the parties that I was inclined to accept the MOU but would conduct a technical hearing if any party requested, or if any party believed that its concerns had not been met. No party requested a hearing.

Charter and the Department jointly filed a proposal for decision on July 31, 2003. No other parties filed comments or briefs.

The case is now ready for decision. 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.

### **III. FINDINGS**

#### **A. Company Background**

1. The Helicon Group, L.P. ("Helicon"), is a Delaware limited partnership authorized to do business in Vermont under the trade name "Charter Communications," has a principal place of business in Vermont at One Telecom Way, P.O. Box 350, Danville, VT 05828, and is engaged in owning and operating cable-television systems in Vermont. Pet. at 1.

2. Charter and its affiliates are the third-largest operator of cable-television systems in the United States with an estimated 6.7 million subscribers nationwide. Goldstein pf. at 3.

3. Charter serves approximately 12,100 subscribers in Vermont. *Id.*

4. Charter is a "company" within the meaning of 30 V.S.A. § 501(3) and is therefore subject to regulation by the Board under 30 V.S.A. § 502. Pet. at 1.

5. Charter is authorized to operate and is operating cable television systems in Vermont pursuant to Certificates issued in Dockets 5674, 5688, 5775, and 5776, allowing it to serve Vermont communities as follows:

a. in Docket 5674, by Order dated September 22, 1993, the Board authorized Vermont Cablevision Associates, L.P. ("Vermont Cablevision") to transfer its assets to Helicon and issued to Helicon a new Certificate to serve the City of Barre and the Towns of Barre, Barnet, Berlin, Burke, Concord, Danville, Groton, Kirby, Lyndon, Newbury, Orange, Passumpsic,<sup>1</sup> Peacham, Ryegate, St. Johnsbury, Sheffield, Sutton, Washington,

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1. The town of Passumpsic was served by Vermont Cablevision's predecessor, but its name was inadvertently left out of the Docket 5408 Certificate granted to Vermont Cablevision.

Waterford, Wells River (Village), Wheelock and Williamstown, which Certificate was due to expire on July 22, 2003;

b. in Docket 5688, by Order dated November 12, 1993, the Board issued Helicon a Certificate authorizing it to serve Cabot, Calais, East Montpelier, Marshfield, Plainfield, Woodbury, and Worcester, which Certificate is due to expire on November 11, 2004;

c. in Docket 5775, by Order dated January 17, 1995, the Board issued Helicon a Certificate authorizing it to serve Bradford, Royalton, and Chelsea, which Certificate was due to expire on November 22, 2002; and

d. in Docket 5776, by Order dated January 17, 1995, the Board issued Helicon a Certificate authorizing it to serve the Town of Tunbridge, which Certificate was due to expire on November 22, 2002.

*Id.* at 1–2.

6. By Order dated July 26, 2002, issuing CPG No. 693, the Board amended Charter's existing Certificates, referenced in Finding 5 above, to authorize Charter to serve, subject to its line extension policy, the following additional towns: Barnard, Corinth, Fairlee, Lunenburg, Pomfret, Sharon, Stannard, Strafford, Topsham,<sup>2</sup> Vershire, Victory, Walden, and West Fairlee, Vermont. *Id.* at 2.

### **B. Substantial Compliance With Existing Franchise and With Applicable Law**

7. Charter represents that it has acted in good faith and that it is in substantial compliance with its franchise obligations and applicable law. Goldstein pf. at 6.

8. The Department brought to Charter's attention in February 2002 Charter's obligation to apply for a non-exclusive franchise to serve thirteen towns contiguous to its existing service area, and required by the Board's Order in Docket 5932. *Id.* at 3–4.

9. Charter immediately applied to amend certain of its existing Certificates to serve the thirteen towns. *Id.* at 4.

10. The Board issued CPG No. 693 on July 26, 2002, authorizing Charter to serve the thirteen towns. *Id.*

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2. Charter applied to serve the town of Topsham and all notice requirements were met for that application, but the town was omitted from CPG No. 693.

11. Charter has therefore come into compliance with the condition established in Docket 5932 to add the thirteen towns to its service area. *Id.*

12. Charter has since conducted a build-out survey of the thirteen towns, which revealed that under its existing line extension policy Charter is not presently obligated to extend its lines to any of the thirteen towns. *Id.*

13. Charter's delayed petition for a Certificate to serve the thirteen towns does not constitute substantial non-compliance with its existing franchise and with applicable law. MOU, ¶ 7.

14. The Department also brought a few filing matters to Charter's attention, which it has corrected. Goldstein pf. at 4.

15. Charter now offers business networking services under the trade name Charter Business Network. In the event that Charter decides in the future to form a separate corporate entity to offer these services, the MOU contains a Certificate Condition that requires Charter Business Network to apply for a Certificate to provide telecommunications services in Vermont. MOU, App. A, ¶ 34.

16. The MOU also contains Certificate Conditions by which Charter and the Department agree on the calculation of gross revenue for purposes of funding Public, Educational, and Governmental ("PEG") access and paying the gross operating-revenue tax. *Id.*, ¶ 3; *see* Martin pf. at 7–9.

17. The Department also raised a number of issues about Charter's tariffs, annual customer notices, billing procedures and bill content, outage credits, and other consumer practices. *See* Martin pf. at 9–10; Frankel pf. at 4–7.

18. The compliance issues raised by the Department are not impediments to the conclusion that Charter has substantially complied with the material terms of its existing franchise with respect to its customer service. Frankel pf. at 7.

19. The MOU contains Certificate Conditions that address the various compliance issues raised by the Department. MOU, App. A, ¶¶ 51, 52, 55–62.

20. Charter is in substantial compliance with the material terms of its existing franchise and with applicable law. Findings 7–19, *supra*; *see* Frankel pf. at 7.

**C. Quality of Charter Service****(1) Section 504(b)(2) – Designation of adequate and technically sound facilities and equipment, and signal quality.**

21. Charter completed the rebuild of its entire system to 860 megahertz ("MHz") in June, 2002. Goldstein pf. at 6, 7, 13, 16, 18; *see* Larkin pf. at 6, 11.

22. Charter has acted when necessary to ensure its facilities, equipment, and signal quality are adequate and technically sound. Goldstein pf. at 6.

23. Charter's facility is state of the art and adequate to provide cable services; the technical quality of Charter's services is excellent. *Id.* at 6–7.

24. Charter has adequate and technically sound facilities from the aspect of the specific facilities used in the construction of its infrastructure. Larkin pf. at 10.

25. There is more than sufficient capacity on Charter's system for any capacity needed for any near- and mid-term future programming and service needs. *Id.*

26. As such, Charter has adequate and technically sound facilities, equipment, and signal quality. Findings 21–25, *supra*.

**(2) Section 504(b)(4) – Prohibition of discrimination against customers of basic service.**

27. Charter provides Basic service at uniform rates. Goldstein pf. at 7.

28. As allowed by federal and state law, Charter offers a uniform discount to all senior citizens, negotiates bulk discounts with businesses and institutions, and offers service to its employees free of charge. *Id.*

29. The MOU contains a Certificate Condition requiring Charter to continue to offer a Basic-only discount to senior citizens. MOU, App. A, ¶ 67.

30. Except as permitted by federal and state law, Charter does not discriminate among customers of Basic service. Findings 27–29, *supra*.

**(3) Section 504©)(1) – Reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest and cost. Board Rule 8.363(A) – System complies with technical standards contained in Subpart K of Part 76 of FCC Rules.**

31. Charter's system is a hybrid fiber-coaxial system built to 860 MHz with 500 homes per node. Goldstein pf. at 7, 13; Larkin pf. at 6, 11.

32. Given the available technology today, subscriber interest in expanded channel offerings and other services, and the cost of providing these services, Charter's facilities are adequate to provide a reasonable quality of service for Charter's Basic, premium, and pay-per-view services as well as other non-cable services. Goldstein pf. at 7–8.

33. Charter currently provides a reasonable quality of services having regard to available technology, subscriber interest, and cost. Larkin pf. at 11.

34. The MOU contains a Certificate condition requiring Charter to roll out new services offered on other Charter systems in the Northeast if a business-case analysis shows that Charter will recover its costs over four years. MOU, App. A, ¶ 32.

35. Charter's system provides a reasonable quality of service for Basic, premium or otherwise, having regard to available technology, subscriber interest and cost. Findings 31–34; Larkin pf. at 11; Frankel pf. at 13.

36. Charter's system meets the technical standards contained in subpart K of Part 76 of the Federal Communications Commission ("FCC") Rules and Regulations, as amended. Goldstein pf. at 7.

**(4) Section 504©)(2) – Construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electric Safety Code.**

37. Charter built its Vermont systems to National Electric Safety Code ("NESC") requirements and, to the best of its knowledge, to meet all Vermont and federal requirements. Goldstein pf. at 8; Larkin pf. at 11.

38. Charter's construction and installation of equipment and facilities conform to all applicable state and federal laws and regulations and to the NESC. Finding 37, *supra*.



**(5) Board Rule 8.214(B)(8) – Quality of engineering and materials used in the system.**

39. Charter rebuilt its system to a very high standard. For example, Charter used top-of-the-line SA 6940 fiber-node, high-grain, dual amplifiers; AM status equipment monitors the status of power supplies and fiber nodes; and Charter has built the nodes to every 500 homes. Goldstein pf. at 8; *see* Larkin pf. at 10.

**(6) Section 504©(3) – Competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and Department complaints and problems. Board Rule 8.214(B)(6) – Consumer policies particularly re: complaints and problems.**

40. Charter processes customer calls, including complaints and questions about billing practices, at its "Massachusetts Call Center" in Worcester, Massachusetts. Goldstein pf. at 10; Welch/Andrews pf. at 2, 4.

41. Customer-service representatives ("CSRs") are trained to handle the vast majority of customer calls and "escalate" to a supervisor any calls they are unable to resolve. Goldstein pf. at 10; Welch/Andrews pf. at 2, 6.

42. Charter uses call-management software to monitor the compliance of its Massachusetts Call Center with FCC guidelines and has agreed to establish additional procedures for tracking the FCC's non-telephone standards and for monitoring Charter's handling of complaints. Goldstein pf. at 10; Welch/Andrews pf. at 4–5; MOU, App. A, ¶¶ 53–54.

43. Charter provides customer services, such as installations, upgrades or responses to trouble reports, from its Danville Service Center and maintains offices in Barre and St. Johnsbury that customers may visit. Goldstein pf. at 10; Welch/Andrews pf. at 2, 8.

44. In addition to the Barre and St. Johnsbury offices, Charter provides for payment of bills at several locations throughout its service area including all branches of the Woodsville Guaranty Savings Bank, the Lyndonville and St. Johnsbury branches of the Citizens Savings Bank, and the Quality Market in Barre. Goldstein pf. at 10; Welch/Andrews pf. at 3.

45. The Department raised concerns as to Charter's disconnection notice and procedures, billing practices, consumer notices, refunds and credits for outages policies, use of the term "Basic" except to refer to the lowest tier of service, communications between the Vermont system and the Massachusetts Call Center, and complaint-handling procedures. These concerns have been addressed in the MOU by various agreed Certificate Conditions governing submission of Charter's disconnection notice for Board approval, response times to written inquiries from the Department and written complaints from subscribers, customer-notice requirements, refund and outage-credit practices, restrictions on use of the term "Basic," the provision of various services to subscribers, and the requirement that Charter implement a Service Quality Plan that establishes standards for the handling of subscriber inquiries and complaints. Frankel pf. at 4–16; MOU, App. A, ¶¶ 52–59, 60–65, 74; MOU, Attachment B (Service Quality Plan).

46. Charter's current staff does an "outstanding job" of working with the Department to resolve consumer complaints. Frankel pf. at 7.

47. The Department commended Charter on its flexibility in making payment arrangements and its liberal policies on issuing credits for outages. *Id.*

48. Charter's ratios of 1,377 customers per CSR and 953 subscribers per installer/repair person exceeds the industry convention of approximately 2000 subscribers per CSR and 1,500 subscriber per installer/repair person. Larkin pf. at 11–12.

49. Charter has a competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and Department complaints and problems. Findings 40–48, *supra*.

**(7) Section 504©(4) – An office which shall be open during usual business hours, have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received.**

50. Charter's offices in Barre and St. Johnsbury are open on Monday, Wednesday, and Friday from 8:30 a.m. to 5:30 p.m., on Tuesday from 8:30 a.m. to 6:30 p.m., on Thursday from 9:00 a.m. to 5:30 p.m., and on Saturday from 9:00 a.m. to 12:00 p.m. Goldstein pf. at 11.

51. Customers may call the Massachusetts Call Center toll-free 24 hours a day and 365 days a year. Goldstein pf. at 11; Welch/Andrews pf. at 4, 7; Frankel pf. at 10.

52. Charter's offices are open during usual business hours and its Massachusetts Call Center may be accessed by a toll-free telephone number 24 hours a day, 365 days a year. Findings 50–51, *supra*; see Frankel pf. at 10.

**(8) Section 504©(5) – Reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices.**

53. Charter's current line extension policy and disconnection policy adhere to Board rules, and Charter does not require customer deposits. Goldstein pf. at 11; see Frankel pf. at 15.

54. In the MOU, Charter has responded to certain Department concerns about its billing and disconnection practices. MOU, App. A, ¶¶ 51, 73.

55. Charter's original proposal asked to substitute a new line extension policy that would require extensions after premarketing of potential subscribers meets a specified threshold, but the Department objected to this aspect of Charter's proposal as unnecessary and potentially inconsistent with Board rules. Goldstein pf. at 11–12; Gorga pf. at 6–9; Larkin pf. at 12–13, 14–15.

56. In the MOU, Charter has agreed to certain Certificate conditions requiring "simple" line extensions without customer contribution if the "H" factor is between 11 and 17 (initially the factor is set at 11) and "complex line extensions" (defined to require installation of amplifiers, power supplies, line extenders, nodes or fibers) if the "H" factor is 23. MOU, App. A, ¶¶ 38–48.

57. Charter must conduct a build-out survey annually, using E-911 maps and a ride-out every third year. *Id.*, ¶ 38.

58. The agreed-upon line extension policy otherwise contains conditions that are typical of those required by the Board in connection with franchise renewals. See Dockets 6101 and 6223 (renewal of Adelpia's Certificates) and Docket 6718 (renewal of White Mountain Cable's Certificate).

59. Charter has reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices. Findings 53–58, *supra*; see Frankel pf. at 15.

**(9) Rule 8.214 – Availability of service to maximum number of residences.**

60. Charter's service will be available to a maximum number of residences as determined by Charter's line extension policy. *See* findings 53–58, *supra*; Larkin pf. at 14.

**(10) Conclusion.**

61. The quality of Charter's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been and will be reasonable in light of community needs. Findings 21–60, *supra*; *see* Frankel pf. at 13.

**D. Financial, Legal, and Technical Ability**

**(1) Rule 8.214(B)(1) – Financial soundness and stability, both of the applicant generally and the particular proposal.**

62. Charter has already incurred the major financial commitment of rebuilding its entire system to 860 MHz, with fiber nodes to every 500 customers. Goldstein pf. at 7, 13.

63. Charter has had and will have the financial ability to meet and maintain its financial commitments with respect to the system rebuild and going forward. *Id.* at 13.

64. Charter has adequate financial capability to provide continuing services at reasonable rates and to maintain and operate these services. Martin pf. at 3.

65. Charter's parent, Charter Communications, Inc. ("CCI"), is the third-largest operator of cable systems in the United States. Goldstein pf. at 3, 13, 16.

66. CCI's Annual Report and financial statements demonstrate that it has the financial ability to provide the services, facilities and equipment Charter is currently providing and will provide in the future. *Id.* at 13; exh. Charter-3.

67. Charter has never defaulted on any of its financial obligations, and its cable operations have maintained a positive cash flow since Charter's establishment in 1993. Goldstein pf. at 13.

68. In 2001, CCI had assets of approximately \$25 billion and revenue of approximately \$4 billion. *Id.*

69. At the Department's recommendation, the MOU contains a Certificate condition that requires Charter to take all prudent actions to maintain an investment-grade rating on any long-term debt that directly or indirectly finances Charter's Vermont cable operations. Martin pf. at 7; MOU, App. A, ¶ 72.

70. Charter's Vermont system was "marginally profitable" in 2001, but Charter believes it will realize a fair return on its investment in the future. Goldstein pf. at 15; *see also* Martin pf. at 4–5; Gorga pf. at 9.

71. Charter and its parent, CCI, are financially sound and stable as is Charter's renewal proposal. Findings 62–70, *supra*.

**(2) Rule 8.214(B)(4) – Experience and ability of the applicant to run and manage a cable-television system.**

72. Based on the experience of Charter's Vermont management, Charter has the requisite experience and ability to run and manage a cable-television system. Larkin pf. at 13.

73. Moreover, Charter and its affiliates are the third largest operator of cable systems in the United States. Goldstein pf. at 3, 13, 16.

74. Charter and its affiliates provide cable services to approximately 6.7 million subscribers nationwide, with Charter serving approximately 12,100 subscribers in Vermont. *Id.* at 16.

75. Charter's recent upgrade of its plant system in Vermont to 860 MHz will allow it to provide more services at a higher level of quality. *Id.* at 6, 7, 13, 16, 18; *see* Larkin pf. at 6, 11.

76. Charter is authorized to serve the various municipalities in Vermont to which it provides service and is not aware of any restraints on its legal ability to operate these systems. Goldstein pf. at 16.

77. Charter has the experience and ability to run and manage a cable-television system. Findings 72–76, *supra*.

78. Charter has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in its renewal proposal, including the conditions contained in the MOU. Findings 62–77, *supra*.

**E. Charter's Proposal is Reasonable to Meet the Future Cable-Related Community Needs and Interests, Taking Into Account the Cost of Meeting Such Needs and Interests**

79. Charter funded and participated in a joint assessment of community needs, which was designed by the Department and a consultant (with input from Charter). Goldstein pf. at 17; Frankel pf. at 31–32; exhs. Charter-4 (survey) and Charter-5 (focus groups).

80. Charter proposes to evaluate community needs going forward in a variety of ways, including monitoring civic developments in the area, periodic surveys of the market, customer feedback, and a proposed Cable Advisory Council. Goldstein pf. at 18; exh. Charter-6 (Cable Advisory Council).

81. The MOU contains Certificate conditions that require Charter to establish a Cable Advisory Council and meet bi-annually with civic and governmental leaders. MOU, App. A, ¶¶ 49–50.

**(1) Rule 8.214(B)(2) – Present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future and the ability to provide public access.**

82. Charter has already upgraded its system to 860 MHz. Goldstein pf. at 6, 7, 13, 16, and 18.

83. Charter's system presently has the capacity to provide 79 analog channels and 378 digital channels, which could increase if compression is added beyond the current compression of six to one; Charter currently provides 238 channels, 159 of which are digital and include cable and FM programming. *Id.*; see Larkin pf. at 10.

84. Charter has the ability and capacity to offer the services needed or expected at present and such future services as Video-on-Demand, Home Networking, and telephony. Larkin pf. at 13.

85. The built system has the capacity to provide, and is providing, cable-modem access to the Internet. It also has the capacity to provide additional services in the future (if demanded by the market and assuming Charter can earn a reasonable return on its incremental investment) such as telephony, additional channels, and video-on-demand. Goldstein pf. at 18.

86. The Department raised concerns about the process by which Charter would assess community needs and interests (including PEG needs and the needs of Vermont broadcasters) and would introduce or "roll out" new services, and about the availability of Charter's network for institutional networks and wide-area networks. Campbell pf. at 5–7, 12–19; Larkin pf. at 11; Frankel pf. at 30.

87. The MOU contains Certificate conditions requiring Charter to establish a Cable Advisory Council, meet with governmental officials bi-annually, comply with a procedure for addressing PEG-access-provider concerns, undertake PEG planning (either itself or through an Access Management Organization ("AMO")), have ultimate responsibility to ensure that PEG access is provided, negotiate in good faith with Vermont television stations to add their digital services to Charter's offerings, negotiate with AMOs to carry Vermont Public Radio on PEG-access channels when not telecasting programs that have audio content, and determine whether services offered on comparable Charter systems elsewhere in the Northeast are economical to introduce in Vermont. MOU, App. A, ¶¶ 16–18, 32, 33, 37, 49, 50, 69.

88. Other Certificate Conditions require Charter or its designated agent to provide institutional and wide-area networks under certain conditions, and Charter has agreed that Charter Business Network will apply for a Certificate to provide these and other telecommunications services. MOU, App. A, ¶¶ 24–29, 34.

89. Charter's present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, is adequate and Charter has the ability to provide public access. Findings 82–88, *supra*.

**(2) Rule 8.214(B)(3) – Commitment to a construction and in-service schedule.**

90. Charter has already completed a rebuild of its system to 860 MHz. Goldstein pf. at 13, 16, 18; Larkin pf. at 6, 11.

91. The MOU contains Certificate conditions that generally require Charter to build line extensions the year after a build-out survey shows the extension to be required and to roll-out new services when a business-case-analysis test is met. MOU, App. A, ¶¶ 32, 38–48.

92. As Charter's system is already rebuilt, a specific commitment to a construction and in-service schedule (other than the agreed line extension and new services roll-out policies) is not necessary. Findings 90–91, *supra*; *see* Larkin pf. at 13.

### **(3) Section 504(b)(5) – Basic service in a competitive market.**

#### Rule 8.214(B)(5) – Tariff and rates proposed to be charged to customers.

93. The FCC has determined that Charter is subject to effective competition<sup>3</sup> in all of the municipalities Charter currently serves; Charter is pursuing and expects to obtain FCC determination that it faces effective competition in the additional thirteen bordering towns that were the subject of CPG No. 693. Goldstein pf. at 20.

94. Satellite penetration in Vermont is estimated to be 34% statewide with an estimated town penetration of as much as 71%. *Id.*; Gorga pf. at 5.

95. Charter's policy to date has been to charge no more than the FCC's maximum permitted rate for Basic service. Goldstein pf. at 20; exh. Charter-1, exh. G (Charter's tariff); *see* Lackey pf. at 12.

96. The MOU contains Certificate conditions requiring Charter to maintain tariffs for its service, limiting use of the term "Basic" to its Basic service, provide a discount to senior citizens for Basic-only service, notify customers as to the cost of and services provided by Basic service, and explain increases to rates if implemented more than once in any year. MOU, App. A, ¶¶ 1, 60, 64, 67, 68.

97. Charter currently provides Basic service in a competitive market at no more than the FCC's maximum permitted rate. Findings 93–96; *supra*.

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3. An FCC determination of effective competition means, among other things, that there is no enforceable maximum rate for any cable service.



**(4) Rule 8.214(B)(9) – Logical fit with neighboring system.**

98. Charter's service areas, the St. Johnsbury-Lyndon area and the Barre area (which are linked via fiber to a main headend in Danville), are relatively contiguous. Goldstein pf. at 21.

99. The additional, thirteen bordering towns that the Board authorized Charter to serve in CPG No. 693 fills in many of the towns between and adjacent to Charter's existing areas of service. *Id.*

100. Charter's system can be integrated with other systems in Vermont through fiber-optic links (*e.g.*, a fiber-optic link connects Charter's head-end in Danville with its Barre "hub") or microwave or satellite transmission. *Id.*

101. Based on Department concerns and recommendations, the MOU contains Certificate Conditions requiring Charter to be able to transmit PEG programming from one part of its system to another and to interconnect with Adelpia and other systems to carry statewide networks. MOU, App. A, ¶¶ 30, 31; *see* Campbell pf. at 22–24.

102. Charter logically fits with neighboring systems. Findings 98–101, *supra*; *see* Larkin pf. at 16.

**(5) Section 504(b)(1)–Designation of adequate channel capacity and appropriate facilities for PEG use. Section 504(b)(3) – Reasonably broad range of PEG programming.**

103. Charter currently provides two PEG services to its customers: Kingdom Access Television ("KATV") provides service to subscribers in the St. Johnsbury-Lyndon area; and Central Vermont Television ("CVTV") provides service to subscribers in the Barre area. Goldstein pf. at 22.

104. Charter is not aware of any other entity that wishes to provide PEG-access service to subscribers in its Vermont system. *Id.*

105. Charter has negotiated the renewal of its PEG-access contract with CVTV. Charter is negotiating the renewal of its KATV contract, and has agreed with the Department to continue providing the current level of PEG-access funding until either an agreement is reached or the Board determines Charter's PEG obligations. *Id.*; ltr. from Charter's counsel (July 30, 2003).

106. Charter filed with the Board and the Department the CVTV contract and proposed an additional Certificate Condition requiring it to file with the Board and the Department its PEG-access contracts with AMOs (and any amendment thereto) within 30 days of execution. Ltr. from Charter's counsel (July 30, 2003).

107. Currently, Charter reserves three channels for PEG access, although the PEG providers only use one channel. CVTV has proposed adding a second channel in the Barre area to provide educational services. Goldstein pf. at 22.

108. The PEG entities provide a televised community bulletin board when not showing original programming. *Id.*

109. The Department raised a number of concerns about Charter's PEG-access planning, reservation of bandwidth for PEG access, provision of capital equipment for PEG access providers, PEG outreach, retiering of PEG channels, and procedures for addressing AMO concerns. Campbell pf. at 16–26; Frankel pf. at 26–30.

110. The MOU contains Certificate Conditions requiring Charter or its designee to do PEG-access planning, provide fiber-optic or coaxial-cable drops to every school, library, PEG-access studio and at least one municipal building in each municipality, allow PEG providers to originate simultaneous live programs, provide capital funds to AMOs at a stipulated level or as agreed with an AMO, reevaluate such needs in 2007 and 2010, reserve PEG-access channels, conduct PEG outreach, notify PEG providers of any retiering of PEG channels, and respond, under an agreed procedure, to PEG-provider concerns. MOU, App. A, ¶¶ 16–18, 21–23, 35–37, 70–71.

111. Charter has designated adequate channel capacity and appropriate facilities for PEG use and provides a reasonably broad range of PEG programming. Findings 103–110, *supra*.

#### **IV. CONCLUSION**

Charter has been providing cable television service to many Vermont communities for a decade, and has established a reputation as a reliable system operator. I conclude that the renewal of the Certificates of Public Good now held by Charter will promote the good of the state of Vermont, and that the Board ought to accept the stipulations and the Memorandum of Understanding reached by the parties. This Proposal for Decision has not been served on all

parties to this proceeding in accordance with 3 V.S.A. § 811, because it is not adverse to the interest of any party.

Dated at Montpelier, Vermont, this 5<sup>th</sup> day of September, 2003.

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

### **V. BOARD DISCUSSION**

Below, we accept the Hearing Officer's findings and recommendation. While agreeing with the Proposed Decision's description of Charter as a cable operator that clearly meets the criteria of statutes and Board Rules, we emphasize that Charter also meets one critical measure: its system makes broadband internet service available to all its 12,000 subscribers in Vermont, and can extend that availability to more Vermonters as Charter's service area grows. As we stated in our Order approving the renewal of cable franchises in Docket 6101, "[making broadband telecommunications available to Vermonters by the thousands — and by the hundreds of thousands — is an important part of building Vermont's fundamental infrastructure for the next century."<sup>4</sup>

### **V. ORDER**

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

1. The Hearing Officer's findings and conclusion are adopted.
2. The Memorandum of Understanding between the Vermont Department of Public Service and Charter Communications is approved.
3. The Certificates of Public Good issued in Dockets 5674, 5688, 5775, 5776 and CPG No. 693 are hereby renewed; a single, merged, certificate shall be issued to The Helicon Group, L.P. In accordance with past Board practice, the Certificate shall apply to entire towns, not only to portions of towns that may have been mentioned in the existing Certificates.
4. The merged Certificate shall contain, and the Board expressly conditions, the Certificate on the 74 conditions agreed in Appendix A to the Memorandum of Understanding between the Vermont Department of Public Service and Charter Communications.

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4. *Petitions for renewal of Certificates of Public Good held by Mountain Cable Company and Better TV, Inc. of Bennington, both d/b/a Adelpia Cable Communications*, Order entered April 28, 2000.

Dated at Montpelier, Vermont, this 8<sup>th</sup> day of September, 2003.

<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: September 8, 2003

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)*

*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.*