

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7077

Joint Petition of all Vermont affiliates of Adelphia)
Communications Corporation ("Adelphia") and Time)
Warner Cable Inc. for (1) consent to sell substantially)
all of Adelphia's Vermont assets to Cable Holdco)
Exchange III LLC, (2) approval of such affiliates')
abandonment of cable-television service in Vermont;)
and (3) revocation of the Docket No. 7077 affiliates')
Certificates of Public Good; AND **Joint Petition** of)
Time Warner Cable Inc. and Cable Holdco Exchange)
III LLC, for a Certificate of Public Good for Cable)
Holdco to own and operate said cable television)
systems; AND **Joint Petition** of Time Warner Cable)
Inc. and Comcast of Georgia, Inc., for authority to)
acquire control of Cable Holdco Exchange III LLC)

Hearings at
Montpelier, Vermont
October 24 and 26, 2005

Order entered: 12/29/2005

PRESENT: James Volz, Board Chairman
David C. Coen, Board Member
John D. Burke, Board Member

APPEARANCES: See Appendix A

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I. INTRODUCTION

This matter concerns a petition filed by all of the affiliates of Adelphia Communications Corporation that operate cable-television systems in Vermont (the "Adelphia Affiliates"),¹ Comcast of Georgia, Inc. ("Comcast"), Time Warner Cable Inc. ("Time Warner Cable") and an indirect subsidiary of Time Warner Cable named Cable Holdco Exchange III LLC ("Holdco," and together with the Adelphia Affiliates, Comcast, and Time Warner Cable, the "Joint Petitioners").

The Joint Petitioners seek various approvals required under Vermont law, first, for the Adelphia Affiliates to sell and Holdco to acquire substantially all of the assets used by the Adelphia Affiliates to provide cable-television service in Vermont² and, second, for Comcast to acquire from Time Warner Cable control of Holdco. Although unlikely, it is possible that Time Warner Cable, rather than Comcast, will retain control of Holdco. These transactions require the following actions by this Board:

- Under 30 V.S.A. §§ 109 and 232, a finding that the sale of the assets by the Adelphia Affiliates to Holdco will promote the general good of the state and an order consenting to the sale;
- Under 30 V.S.A. § 505, an order consenting to the revocation of all of the Certificates of Public Good ("CPGs") held by the Adelphia Affiliates to operate cable-television systems in Vermont;
- Under 30 V.S.A. § 504 and Board Rule 8.214, findings that Holdco meets each criterion established by that statute and that rule for issuance of a CPG authorizing Holdco to build and operate a cable-television system in Vermont; and
- Under 30 V.S.A. § 515, an order finding that Comcast's acquisition of control of Holdco is not contrary to the public good of the state.

After reviewing the Joint Petitioners' application and the evidence of record and based on the findings of fact contained in Part II of this decision, we find that the approvals sought by the

1. Mountain Cable Company, L.P., a Vermont limited partnership; Better TV, Inc. of Bennington, a Vermont corporation; FrontierVision Operating Partners, L.P., a Delaware limited partnership; Adelphia Cablevision of New York, Inc., d/b/a Adelphia Cable Communications (formerly Harron Communications Corporation), a New York corporation; Lake Champlain Cable Television Corporation, a Vermont corporation; Multi-Channel T.V. Cable Company, an Ohio corporation; Richmond Cable Television Corporation, a Vermont corporation; and Young's Cable TV Corp., a Vermont corporation (all d/b/a Adelphia Cable Communications).

2. The Cities, Towns, and Gores now served by the Adelphia Affiliates are listed in Appendix B.

Joint Petitioners should be granted with conditions, and that with these conditions Holdco's operation of a cable-television system in Vermont to serve the areas previously franchised to the Adelphia Affiliates will promote the public good.

A. Procedural History

The Joint Petitioners submitted their joint petition on June 20, 2005. On July 6, 2005, the Board gave notice of its receipt of the petition, a prehearing conference to be held on July 13, 2005, and a public hearing to be held on July 19, 2005. At the prehearing conference, the parties agreed and the Board subsequently issued a procedural order establishing the schedule for this docket.

The Prehearing Conference Memorandum required Holdco to file a proposed CPG. In accordance with that Order, on July 22, 2005, on behalf of Holdco, Comcast filed a proposed CPG and supporting supplemental testimony.

The Prehearing Conference Memorandum also established a deadline for intervention of July 27, 2005. Vermont Access Network ("VAN"), acting on behalf of 23 access-management organizations (or "AMOs"), the Town of Brattleboro and the City of Burlington all filed requests to intervene. No party objected to these parties' intervention. The Joint Petitioners asked, however, that the interventions be limited to the issues stated in their respective intervention motions, and the Board issued an order allowing these parties to intervene on that basis on August 11, 2005.

On July 19, 2005, the Board held a Public Hearing via Vermont Interactive Television. The Public Hearing was carried at twelve sites around the state; a total of twenty-one members of the public spoke. In addition, the Board received six letters and ten e-mail messages from concerned members of the public.

In accordance with the Prehearing Conference Memorandum, the parties engaged in discovery on the Joint Petitioners in August. On September 2, 2005, the Department of Public Service (the "Department") and VAN prefiled testimony stating their recommendations to the Board with respect to the joint petition. Following discovery on these filings, on September 29,

2005, the Joint Petitioners and the Department prefiled rebuttal testimony.³ Following further discovery on these filings, the Board held technical hearings on the joint petition on October 24 and 26, 2005. The parties have subsequently filed proposals for decisions and briefs.

B. Positions of the Parties

As previously noted, the Joint Petitioners seek various approvals required under Vermont law for Holdco to acquire and operate a cable-television system that will serve the areas now franchised to the Adelphia Affiliates. Holdco has proposed a single, uniform CPG for these franchises that substantially accepts all of the conditions imposed on the various Adelphia Affiliates, including each specific condition imposed on them with respect to line extensions. Holdco, however, objected to certain of the other existing Adelphia conditions; it also proposed modifications to certain conditions relating to Public, Educational, and Governmental (or "PEG") access, asking that they reflect the complete rewrite of the PEG-access rules adopted by the Board in March 2005; and the proposed CPG also included modified and additional conditions reflecting recent CPGs issued by the Board for cable franchises (*e.g.*, *Pet. 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*, Docket No. 7044, Order of 9/13/2005 ("*Burlington Telecom*").

Initially the Department recommended that the Joint Petitioners receive the approvals sought but that additional conditions be imposed in Holdco's CPG. On October 23, 2005, the Department, Holdco, Comcast, and Time Warner Cable filed a Memorandum of Understanding (the "Settlement") attached to which was an agreed CPG that resolved those parties' differences as to the conditions to be imposed in the Holdco CPG. While the Settlement had many laudable provisions which we would have been glad to accept, only the Department and the Joint Petitioners joined in that Settlement or the negotiations that led to it. The issues of concern to the other parties to this docket were settled without their participation or consent. The Board sees merit in some of the positions advocated by those non-participants and which are not

3. On September 8, 2005, the Town of Brattleboro filed a request to enlarge the time for it to prefile testimony. Ltr. from Robert M. Fisher, Esq., Fisher & Fisher to Susan M. Hudson of September 8, 2005. The Town of Brattleboro prefiled its testimony on the date when the parties' prefiled rebuttal testimony was due (September 29, 2005), no party objected to the Town's filing and the Board admitted the testimony. Tr. 10/26/05 at 6.

reflected in the Settlement. By its terms, the Settlement is void if the Board does not accept it in its entirety; because of these circumstances, we cannot.

VAN did not oppose issuance of a CPG to Holdco but made a number of recommendations for PEG conditions. Generally these recommendations would require Holdco to comply with Rule 8.400 and assume the existing PEG contracts between the various Adelphia Affiliates and AMOs — conditions to which Holdco does not object — and would also require Holdco to provide additional financial support to AMOs, offer certain statewide applications and address matters that VAN argues have arisen subsequent to the Board's adoption of revised PEG rules.

The Town of Brattleboro also seeks various conditions governing Holdco's PEG-access obligations in the Town as well as in neighboring New Hampshire towns and to other cable companies operating in the area. The Town also requests five courtesy Internet services for the municipality and generally asks that the Board enforce the existing conditions that apply to Adelphia with respect to line extensions, PEG access, and requests for proposals to provide institutional networks.

The City of Burlington did not prefile testimony but examined Comcast witnesses at the technical hearings and asks that Holdco perform certain obligations under an existing agreement between the City of Burlington and the Adelphia Affiliate serving customers in Burlington with respect to senior discounts. The City also seeks to ensure that Holdco will assume any liabilities that Adelphia has with respect to existing pole attachments.

C. Background

The transactions for which approval is sought in this docket relate to the bankruptcy of Adelphia Communications Corporation and its filing for reorganization, on behalf of itself and all of its affiliates including the Vermont Adelphia Affiliates, under Chapter 11 of Title 11 of the United States Code. As is noted in our findings of fact below, Comcast and Time Warner Cable proposed and Adelphia Communications Corporation accepted a plan by which Comcast and Time Warner Cable (through affiliates) will acquire, and divide up between, them the assets of essentially all of the Adelphia franchises in the country. If the transactions close as planned, Comcast is to control the Adelphia Affiliates' assets in Vermont by acquiring control of Holdco.

This matter is now ready for decision. In Part II we make findings of fact and conclusions of law under each relevant criterion established by Chapter 13 of Title 30 and by the Board's regulations (Rule 8.214, known as the "EMCO Criteria"). In accordance with our past practice in issuing cable television CPGs, we organize our findings under the four criteria established by federal law (47 U.S.C.A § 546(a)) governing franchise renewals. These findings also support our conclusions of law with respect to the other approvals sought by the Adelphia Affiliates and with respect to Comcast's planned acquisition of control of Holdco. Findings of fact proposed by the parties that are inconsistent with ours are hereby rejected.

II. FINDINGS OF FACT

A. Company Background

1. Adelphia Communications Corporation is organized in Delaware. Pet. at 2.
2. The Adelphia Affiliates are eight corporations or limited partnerships affiliated with Adelphia Communications Corporation, all of which do business in Vermont as "Adelphia," and which own various assets used to operate cable television systems in Vermont serving approximately 110,000 subscribers in 184 cities, towns, and gores.⁴ *Id.* at 1–2.
3. Comcast Corporation is a Pennsylvania corporation that indirectly controls Comcast of Georgia, Inc., a Colorado corporation, which does business as "Comcast." *Id.*
4. Comcast Corporation is the largest provider in the United States of cable services and is also providing high-speed Internet and voice-communications services, with 21.5 million cable customers, seven million Internet customers and about one million telephone customers in 35 states and the District of Columbia. Exh. TWC/Comcast 1, exh. D (Comcast Annual Report) at 16; Hackley pf. at 6, 14–15; Martin pf. at 3.
5. Time Warner Cable Inc. is a Delaware corporation and a subsidiary of Time Warner Inc. Pet. at 1; *see* exh. TWC/Comcast 1, exh. D (Annual Report of Time Warner Inc.).

4. The cities, towns, and gores are identified in Appendix B.

6. Time Warner Cable is one of the largest cable television systems in the country; as of December 31, 2004, it served approximately 10.9 million subscribers in 29 states. Rosenblum pf. at 4.⁵

7. Time Warner Cable, through its indirect subsidiary Time Warner NY Cable LLC, has organized Cable Holdco Exchange III LLC ("Holdco") as a Delaware limited-liability company for purposes, among others, of acquiring from the Adelphia Affiliates essentially all of the assets used by them in Vermont to build and operate cable television systems. Pet. at 4; Hackley pf. at 4.

B. The Transactions

8. Adelphia Communications Corporation and the Adelphia Affiliates have filed for bankruptcy reorganization under Chapter 11 of Title 11 of the United States Code. Pet. at 2.

9. As part of the reorganization proceedings, Adelphia Communications Corporation solicited proposals to purchase the assets of, among other entities, the Adelphia Affiliates. *Id.*

10. Time Warner Cable and Comcast submitted a joint bid to purchase essentially all of the cable television franchises owned by Adelphia Communications Corporation and its affiliates throughout the country. Hackley pf. at 4.

11. Various affiliates of Time Warner Cable and Comcast will acquire the assets of certain of Adelphia's cable systems, and these systems, along with some cable systems that each company already owns, will be exchanged with the other company under an Exchange Agreement. *Id.*

12. Holdco is one of the entities organized by Time Warner Cable (through its indirect subsidiary, Time Warner NY Cable LLC) to effect these transactions and is the entity that will acquire the Adelphia Affiliates' Vermont assets. *Id.*

13. Contemporaneously (and in direct succession) in a separate transaction, Comcast will acquire all the voting securities of Holdco and thereby take control of the company that will then

5. Mr. John Fogarty, Vice President and Assistant General Counsel of Time Warner Cable, adopted Mr. Rosenblum's testimony, which for purposes of identification is referenced herein as "Rosenblum pf."

own substantially all of the assets used by the Adelphia Affiliates today to provide cable television service in Vermont. *Id.* at 5.

14. While it is the expectation of the parties that the two transactions will occur contemporaneously (and in direct succession), it is possible that the Adelphia acquisitions by Time Warner Cable and Comcast will occur but that any or all of the exchanges planned by them will not occur. *Id.*

15. The parties' intention is that most Adelphia assets in the New England/Northeast region will be acquired by Time Warner Cable and that control of these systems will then be exchanged with Comcast, which would lead to a better grouping of Comcast's systems in the area. *Id.* at 5–6.

16. Comcast, for example, has franchises in New Hampshire, Massachusetts, and Connecticut. *Id.* at 21; Lackey pf. at 22.

17. Grouping of systems in regions has a number of advantages, including cost savings, infrastructure efficiencies and marketing efficiencies that will foster greater competition with national satellite-service providers and incumbent telephone companies. Hackley pf. at 6.

C. Substantial Compliance with Existing Franchise and with Applicable Law

18. Comcast, Time Warner Cable, and their affiliates, including Holdco, do not currently have any franchises in Vermont and accordingly this federal criterion is not applicable. *See* Pet.

19. Notwithstanding, Comcast and Time Warner Cable have a record of meeting their franchise commitments, and no record evidence establishes that their respective companies do not comply with applicable law and fulfill their franchise commitments. Hackley pf. at 19; *see generally* FCC Form 394, exh. 5 and 6.

20. Comcast and Time Warner Cable are in substantial compliance with the terms of existing franchises and applicable law. Findings 18–19, *supra*.

D. Quality of Service**(1) Section 504(b)(2): Designation of adequate and technically sound facilities and equipment**

21. With one exception, the existing systems of the Adelphia Affiliates in Vermont have been upgraded to at least 750 MHz, and Holdco has proposed CPG conditions requiring it to finish building approximately 1,262 miles of new line extensions previously identified by the Adelphia Affiliates by December 31, 2008, and up to 300 miles of additional extensions to be built by December 31, 2009, all of which will be built to 860 MHz. Exh. TWC/Comcast 2.

22. The existing systems will allow Holdco to provide facilities, equipment, and signal quality that is adequate today because Holdco will use already-installed equipment acquired from the Adelphia Affiliates, and the equipment is comparable to the best equipment used by cable systems operated by both Comcast and Time Warner Cable and other carriers throughout the country. Hackley pf. at 9; Lackey pf. at 21; *see generally* exh. TWC/Comcast 1, Supplementary Questionnaire.

23. Comcast Corporation has spent nearly \$8 billion over the past two years in capital improvements. Hackley pf. at 18–19.

24. Time Warner Cable has similarly invested billions of dollars in recent years to rebuild and upgrade its cable systems and related equipment. Rosenblum pf. at 4.

25. Over the long term, Holdco will construct facilities and use equipment that are adequate and technically sound. The service-quality results reported to the Department and the level of consumer complaints made directly to the Department will likely reveal any degradation in service that might result from use of inadequate facilities. Lackey pf. at 23.

26. A portion of the Newport system is two-way capable but built to 550 MHz. *Id.* at 26.

27. The Newport system is the only Adelphia system currently operating at 550 MHz. All other systems operate at 750 MHz and line extensions are being built at 860 MHz. Lackey pf. at 24–25; tr. 10/26/05 at 27 (Reilly); Hackley pf. at 9.

28. A 550 MHz cable television system can provide a number of advanced services, such as High Definition (or "HD") and Internet access, but on a more limited basis. Reilly pf. at 10; Lackey pf. at 25; tr. 10/26/05 at 27 (Reilly).

29. The Newport system carries five HD channels as compared with fourteen or fifteen on Adelpia's other systems, and it does not yet provide Video-On-Demand ("VOD") service. Reilly pf. at 10; Lackey pf. at 25.

30. Holdco should upgrade the Newport system to 750 MHz bandwidth or more within a reasonable period after closing the acquisition unless it can demonstrate that the system is otherwise capable of offering VOD service equivalent in scope and features to the service it offers elsewhere in Vermont and unless it offers to Newport subscribers at least three-fourths of the maximum number of High Definition channels Holdco then offers elsewhere in Vermont. Holdco should report to the Board and Department the completion date of any such upgrade, or shall report within a reasonable period of closing the acquisition and each two years thereafter that VOD and High Definition programming are offered in Newport at the levels required for deferral of the system upgrade. Lackey pf. at 24–29.

Discussion

The Department recommended that Holdco's CPG be conditioned to require it to upgrade the Newport system to 750 MHz within two years unless Holdco shows that it is otherwise providing to Newport VOD services comparable to services offered, and at least three-quarters of the HD channels provided, elsewhere in Vermont.⁶ In the Settlement, Holdco agreed that it would upgrade the Newport system to 750 MHz if, by December 31, 2009, the Newport system is not capable of providing (1) HD and VOD services equivalent in scope and features to the VOD service Holdco offers elsewhere in Vermont, and (2) at least three-quarters of the maximum number of HD channels the company offers elsewhere in Vermont. We have not accepted the Settlement; however, we are persuaded by the Department's testimony that provision should be made to avoid leaving the Newport system behind, and we view the Settlement as an indication that a four-year period will allow enough time for Holdco to provide a level of service in Newport comparable to that in the rest of its systems.⁷ Therefore, we will include a condition to this effect in the CPG that we issue to Holdco.

6. Lackey pf. at 24–28.

7. Exh. Joint-1, ¶ 71; tr. 10/26/05 at 27–28, 50 (Reilly); Lackey pf. at 24–28.

Findings

31. As conditioned above, Holdco will have adequate and technically sound facilities, equipment, and signal quality. Findings 21–30, *supra*.

(2) Section 504(b)(4): Prohibition of discrimination among customers of basic service

32. Holdco will provide its basic cable service at uniform rates in accordance with applicable law, although it may offer promotional discounts and negotiate from time to time discounted contracts with businesses and institutions. Hackley pf. at 10.

33. Employees also receive discounts for cable service, a common practice in the industry. *Id.* at 10.

34. The Department has no evidence to suggest that Holdco's commitment with respect to uniform rates is not adequate to comply with the requirements of 30 V.S.A. § 504(b)(4). Frankel pf. at 33.

35. Except as permitted by federal and state law, Holdco will not discriminate among customers of basic service. Findings 32–34, *supra*.

(3) 30 V.S.A. § 504(c)(1): Reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest, and cost

36. Holdco will provide high-quality service and channels, having regard to available technology and subscriber interests and costs, because it will be controlled ultimately by companies, either Comcast Corporation or Time Warner Cable, that have historically demonstrated their financial stability and sound management. Hackley pf. at 10–11; Rosenblum pf. at 3–5.

37. Comcast Corporation's systems nationwide ("Comcast Systems") now provide digital cable service to 8.8 million subscribers, representing over 40% of the systems' cable-customer base. Hackley pf. at 11.

38. The Comcast Systems' digital-cable services normally provide more than 250 channels nationwide, including dozens of commercial-free premium movie channels and over 40

commercial-free music channels, as well as electronic programming guides that offer improved navigation functionality and parental-control technology. *Id.*

39. The Comcast Systems currently provide over 90% of their customers with as many as 15 HD channels including (in most areas) all of the major broadcast networks as well as PBS, ESPN, HBO, Discovery HD, and other familiar services (up sharply from four years ago when only 15% of the Comcast Systems' customers could receive HD service). Approximately 1.5 million subscribers had HD service as of March 2005. *Id.* at 12.

40. The Comcast Systems have been at the forefront of deploying innovative digital and broadband services, such as VOD and wireless broadband, and the Comcast Systems offer "On Demand" VOD service to cable systems passing approximately 34 million homes. *Id.*

41. The Comcast Systems' VOD content contains more than 2,000 hours of programming, over 70% of which is not charged to digital-cable customers, and by the end of 2005 subscribers will be able to choose from up to 10,000 television programs, new movies, and "library" titles (for example, classic movies and select children's programming). *Id.* at 13.

42. The Comcast Systems' high-speed Internet service currently has 7.4 million customers and is available to 40 million homes; its customers enjoy broadband with speeds of up to 6 Mbps downstream and 768 Kbps upstream. The speed of the Comcast Systems' cable-modem service has quadrupled in the last four years. *Id.* at 14.

43. The Comcast Systems are providing facilities-based telephone service to approximately 1.225 million customers. *Id.* at 15.

44. Comcast Corporation elected not to expand its systems' circuit-switched offerings during the past few years, but instead focused on launching a new Internet-protocol cable-phone service, and it plans full deployment of this service to all of the current Comcast Systems by the end of 2006. *Id.*

45. The new service — Comcast Digital Voice — relies on the high-speed data network of the Comcast Systems, rather than the public Internet, to ensure voice quality and reliability and deliver features that compete well with traditional, circuit-switched, phone service; as Comcast Digital Voice becomes established, the Comcast Systems intend to offer such innovations on its systems as television caller ID, voice-activated dialing, video-phone service, unified messaging, and anywhere account access. *Id.*

46. Time Warner Cable similarly has significant experience operating large, technologically-advanced cable systems, and nearly all of its systems have been upgraded to at least 750 MHz. Rosenblum pf. at 4.

47. Time Warner Cable provides enhanced video service over almost all of its systems, including digital cable, VOD, HD television, and digital-video recorders, and it offers advanced broadband services in nearly all of its systems. *Id.*

48. Time Warner Cable typically makes available more than 250 channels of programming. *Id.* at 5.

49. Time Warner Cable has been a leader in the deployment of digital phone services, which as of December 31, 2004, were available to at least two-thirds of the homes passed by Time Warner Cable's systems. *Id.* at 4.

50. Holdco has promised to continue offering all of the same systems, facilities, and services currently offered by the Adelpia Affiliates, which today meets the requirements for issuance of a CPG. Frankel pf. at 8–9.

51. Throughout the New England region, Comcast appears to be aggressive in its roll-out of VOD, is increasing its cable-entertainment as well as its high-speed Internet service offerings, and offers telephony, a service that the Adelpia Affiliates do not offer in Vermont. *Id.* at 9–10.

52. Adelpia currently offers FM radio rebroadcast service in Bennington, Brattleboro, Lebanon, New Hampshire (serving Hartland, Hartford, and Norwich, Vermont areas), Montpelier, Newport, Rutland, Springfield and Williston. Adelpia pulls in FM signals it can get off the air at its head end and rebroadcasts these signals so they can be accessed via cable connected to a radio. *Id.* at 11.

53. The FM radio rebroadcast service is uniquely important to Vermont consumers because the state's topography prevents many consumers from pulling Vermont-based FM stations off the air. *Id.* at 12.

54. Many cable companies offer radio packages, but those offerings cannot substitute for the local medium which broadcasts local school closings, local sports results, local news, and other local programming of interest to Vermont residents. *Id.*

Discussion

Since Holdco has agreed to accept all of the conditions imposed upon Adelphia in its various CPGs, and since Adelphia is presently required to offer FM rebroadcast service in many of its systems, that service will continue in the short term. Holdco must ensure that its customer service representatives handling calls from Vermont have sufficient training to respond effectively to questions about the FM rebroadcast service. In addition, Holdco may not eliminate FM rebroadcast service except upon forty-five days' advance written notice to the Department and the Board. This provision gives the company flexibility to determine its service offerings while providing the Department an opportunity to inquire about the reasonableness of removing the service.

Findings

55. Holdco will continue operating the Adelphia channel — which consists of primarily Vermont-related programming — immediately after the acquisition, but long-term plans for the channel are unknown at this time. The company wants the flexibility to change programming to meet consumer needs and interests. Tr. 10/26/05 at 26, 32–33 (Reilly).

56. Comcast currently operates a New England regional channel called "CN8." The channel offers a range of programming of interest to consumers of Comcast's New England cable systems, as well as its systems in Pennsylvania, Delaware, Maryland, and New Jersey. Hackley pf. at 23.

57. Holdco will provide a channel with a reasonable amount of Vermont-related programming on its Vermont systems after the acquisition. This commitment will ensure an adequate amount of local and state programming. Findings 55–56, *supra*.

58. At least annually, Holdco should report to the Board and the Department on services that are being provided to customers of Holdco systems in the New England region but that are not available to Vermont customers. If some services are available to one-half or more of Holdco's non-Vermont customers in the New England region that are not offered in Vermont, the Department may petition the Board to require Holdco to either justify the disparity or make those services available here. Frankel pf. at 17–18.

Discussion

As the Department's witness suggested, we find that Holdco should be required to notify the Board and the Department every two years as to any services offered to one-half or more of the non-Vermont subscribers in its New England region that are not being offered in Vermont. We will include in a condition to the CPG a process under which Holdco must offer the service in Vermont unless it demonstrates that it cannot recover its incremental capital and operating costs within four years of completing the roll-out of the service in Vermont.

Findings

59. Time Warner Cable has committed to accept all of the CPG conditions accepted by Comcast for Holdco. Fogarty reb. pf. at 2.

60. Holdco will provide a reasonable quality of service for basic service, premium service and otherwise, having regard to available technology, subscriber interests and cost. Findings 36–59, *supra*.

(4) Section 504(c)(2): Construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electric Safety Code; Board Rule 8.214(B)(8): Quality of engineering and materials used in the system

61. The Adelphia Affiliates have built and are building their systems to meet applicable laws and regulations including the National Electric Safety Code ("NESC"), and Holdco has committed to meet these requirements and the NESC. Hackley pf. at 16.

62. The Department has not in recent years had any reason to doubt the quality of the Adelphia Affiliates' engineering or the materials it used. Lackey pf. at 20–21; *see generally* exh. TWC/Comcast 1, Supplementary Questionnaire.

63. As Holdco will acquire the Adelphia Affiliates' Vermont-located plant and intends initially to operate the Vermont systems without major modifications, the transfer of control should have no immediate adverse effect on the quality of engineering and materials used in the system. Lackey pf. at 21.

64. Holdco's construction and installation of equipment and facilities will conform to all applicable state and federal laws and regulations and to the NESC. Findings 61–63, *supra*.

(5) Section 504(c)(3): Competent staff sufficient to provide adequate and prompt service and respond quickly and comprehensively to customer and Department complaints and problems; Rule 8.214(B)(6): Consumer policies particularly re: complaints and problems

65. Comcast has accepted essentially all of the consumer-protection conditions imposed on the Adelphia Affiliates and other cable operators in Vermont designed to ensure good service and address complaints by consumers and the handling of those complaints by the Department. Hackley pf. at 3; Hackley supp. pf. at 1–3.

66. Holdco has accepted a current Adelphia CPG condition that will require Holdco to employ a Regulatory Affairs Manager. Frankel pf. at 26; tr. 10/24/05 at 54–55 (Reilly).

67. Holdco has agreed to a condition (not currently applied to the Adelphia Affiliates) that sets standards for reading-level and readable-type sizes for Holdco notices to consumers. Frankel pf. at 27.

68. Holdco has accepted a requirement that it inform regulators about major changes in the delivery of customer service. *Id.* at 23–24.

69. Holdco's proposed CPG contains a condition governing the time by which Holdco must respond to formal complaints communicated by the Department to Holdco. Exh. TWC/Comcast 2 (¶¶ 42–43).

70. Consumers seeking to purchase basic service might be confused if the word "Basic" were used to describe a service other than Holdco's lowest-cost service. Frankel pf. at 24–25.

71. Comcast uses the term "Expanded Basic" in other New England states to describe the next tier of its service — part of its "Standard Cable" service which includes Basic service and Expanded Basic service — and wants to have the ability to use in Vermont the service names it uses elsewhere because the company advertises region-wide and because using the same names for services in the region will help customer-care representatives, at various regional call centers, to communicate clearly with subscribers from all of the region's states. Reilly reb. pf. at 3–4; tr. 10/26/05 at 18 (Reilly).

72. Holdco has committed to use the word Basic to describe a service other than its lowest-cost service only if it uses an adjective preceding the term "Basic" that a reasonable consumer

would understand describes a service that costs more than Basic, such as "Expanded." Tr. 10/26/05 at 18–21 (Reilly).

Discussion

We conclude that the commitment by Holdco always to include the word "Expanded" when referring to a service that costs more than the lowest service tier provides sufficient protection to consumers. However, as was noted during the technical hearing⁸ there may be a limitation on the use of the term "basic."

(3) the term "basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

Cable Act of 1984 § 602, 47 U.S.C. § 522. We have no information as to whether there may be broadcast channels on the "Expanded Basic" tier that Comcast offers, so we cannot tell whether Comcast's use of this term complies with the federal law.

Findings

73. Although Holdco did not propose a Service Quality and Reliability Plan, it ultimately agreed to adopt the plan recommended by the Department. Truman pf. at 6–7; Reilly pf. reb at 3.

Discussion

We will require Holdco and the Department to file an agreed form for the Service Quality Plan within 60 days of the date of this Order.

Findings

74. Holdco accepted all of the other condition modifications proposed by Mr. Truman on behalf of the Department. *See* Reilly reb. pf. at 3, 13; *see generally* Truman pf.

75. Comcast has made significant efforts to improve the quality of its customer service. Hackley pf. at 17.

8. Tr. 10/26/05 at 21.

76. Initially, Holdco will continue to use the Adelphia system for customer service, which has been determined to meet the requirements of the statute. *See* Frankel pf. at 28.

77. There is no reason to believe, based on the infrastructure Holdco will have acquired and its track record in other franchise territories, that it will not meet the Board's customer-service criteria after acquisition. *See id.*

78. Holdco will provide call centers that ensure prompt call answering as well as a system for providing installation and repair. *See id.*

79. As conditioned above, Holdco will have a competent staff sufficient to provide adequate and prompt service to respond quickly and comprehensively to customer and Department complaints and problems. Findings 65–78, *supra*.

(6) Section 504(c)(4): An office should be open during usual business hours, have a listed toll-free telephone so that the complaints and requests for repairs or adjustments may be received

80. Holdco will have customer care centers that respond to toll-free calls 24 hours a day, 7 days a week. Frankel pf. at 28.

81. After acquisition of the Adelphia Affiliates' assets, Holdco will maintain all the offices that the Adelphia Affiliates now maintain in the state, which are generally open between 8:30 a.m. and 5:00 p.m., and customers will continue to call the Adelphia call centers at 1-888-683-1000. Hackley pf. at 18; Frankel pf. at 32–33.

82. Like Adelphia, Holdco should have flexibility to make changes in their offices (open new ones, close existing ones, alter hours, etc.) so long as Holdco continues to meet the criterion of § 504(c)(4). Frankel pf. at 31–32.

83. Holdco will maintain offices open during usual business hours and have a listed toll-free telephone number so that complaints and requests for repairs or adjustments may be received. Findings 80–82, *supra*.

(7) Section 504(c)(5): Reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices

84. Holdco will adopt and maintain rules and policies for disconnections, customer deposits, billing practices, and customer aid-in-construction policies that are consistent with the Board's rules. Hackley pf. at 18.

85. Holdco has accepted all of the Adelphia Entities' existing CPG conditions that apply to line extensions. *Id.* at 4; Lackey pf. at 14.

86. Holdco has also accepted certain modifications to these conditions for line extensions proposed by the Department. *See* Lackey pf. at 15–20; Reilly reb. pf. at 3.

87. Comcast's and Time Warner Cable's track records in other jurisdictions provide no evidence to suggest that Holdco will not or cannot comply with rules and regulations governing line extensions, disconnection, customer deposits and billing practices. Frankel pf. at 29.

88. Holdco will have reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices. Findings 84–87, *supra*.

(8) Rule 8.214(B)(7): Availability of service and maximum number of residences

89. Holdco's service will be available to a maximum number of residences as determined by the Adelphia line-extension policy, which will be adopted by Holdco. *See* Findings 21–34, *supra*; *see also* Findings 108–110, *infra* (concerning Holdco's acceptance of Adelphia's commitments to build line extensions.)

E. Financial, Legal, and Technical Ability

(1) Rule 8.214(B)(1): Financial soundness and stability, both of the applicant generally and the particular proposal; Rule 8.214(B)(4): Experience and ability of the applicant to run and manage a cable television system

90. Comcast Corporation is financially strong and stable. Hackley pf. at 20; *see* exh. TWC/Comcast 1, exh. D (Comcast Annual Report).

91. Through its subsidiaries, Comcast Corporation will provide financial support as necessary to ensure that its systems, including Holdco, provide a quality of service that is competitive. Hackley pf. at 20.

92. Standard & Poor upgraded Comcast Corporation's debt rating from BBB to BBB+ on June 14, 2005, citing factors such as the company's improved operating earnings. *Id.*

93. Comcast (as noted) is the largest cable system in the nation, serving 21.5 million customers. Finding 5, *supra*.

94. Comcast is a capable and experienced cable operator and should be able to run and manage the Vermont systems as well as or better than has Adelphia. Martin pf. at 4.

95. Time Warner Cable, as well, is financially strong and a subsidiary of a larger, financially strong corporation, Time Warner Inc. *See* exh. TWC/Comcast 1, exh. D (Time Warner Inc. Annual Report).

96. Time Warner Cable serves approximately 10.9 million subscribers in 29 states. Rosenblum pf. at 4.

97. Comcast and Time Warner Cable have the financial, legal and technical ability to own and manage a cable television system. Findings 90–96, *supra*.

F. Holdco's Proposal in Relationship to Future Cable-related Community Needs and Interests, Taking into Account the Cost of Meeting Such Needs and Interests

98. Holdco has agreed to accept all of the existing conditions imposed on the Adelphia Affiliates (other than a few out-dated conditions, such as the maintenance of specific offices, that are not included in recent Board decisions, such as the CPG for *Burlington Telecom*) and to add additional conditions that have been imposed on other carriers in recent CPGs. Hackley supp. pf. at 1–3; Frankel pf. at 32–33.

99. An agreed-upon CPG condition requires Holdco to fund a statewide cable advisory board and request to meet with it annually, while another condition requires Holdco to meet with city and town government officials in its franchise areas bi-annually for the purpose of exchanging information about community needs and the company's plans. Exh. TWC/Comcast 2 (¶¶ 7 and 8).

(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

100. Comcast has been aggressive in rolling out services, including innovative services, in cable franchises served by Comcast in New Hampshire, Massachusetts, and Connecticut. Hackley pf. at 21; Frankel pf. at 10.

101. Similarly, Time Warner Cable is rolling out services aggressively throughout the country. Rosenblum pf. at 4–5.

102. In view of the substantial investment Holdco will have to make to fulfill Adelphia's line-extension obligations — estimated (based on Adelphia's costs) to be at least \$35 million — Holdco will have a strong incentive to roll out new services to recover these costs. Hackley pf. at 21; *see* Reilly reb. pf. at 7, 13.

103. At the time it files its annual report (pursuant to 30 V.S.A. § 22) Holdco should report to the Board and the Department on services that are being provided to customers of Comcast systems in the New England region but that are not available to Vermont customers. If there are some such services, the Department may petition the Board to require Holdco to either justify the disparity or make those services available here. Frankel pf. at 17–18; Reilly pf. reb. at 8.

Discussion

The Department originally suggested that Vermonters should be offered services that are available to subscribers in Comcast systems with 500,000 or more customers. In the Settlement, Holdco agreed that it would notify the Board and the Department as to services rolled out to one-half or more of its non-Vermont subscribers in the New England region that are not being offered in Vermont and to a procedure by which the Department can require Holdco to roll the service out in Vermont unless Holdco demonstrates through a business-case analysis that it cannot recover its incremental operating and capital costs within four years. We agree that it is important that Vermont customers not be left behind, and we will include a condition in the CPG similar to that in the Settlement, which we find to be more reasonable than the Department's original proposal.

Findings

104. Holdco has promised to continue offering all of the same systems, facilities, and services currently offered by the Adelphia Affiliates, which today meets the requirements for issuance of a CPG. Frankel pf. at 8–9.

105. Both Comcast's and Time Warner Cable's systems usually offer 250 or more channels on their digital offerings. Hackley pf. at 11; Rosenblum pf. at 5.

106. Under Board rules, Holdco must reserve three channels for PEG access, and an AMO has the opportunity to ask for additional PEG channels or other PEG applications, with the Board authorized to decide whether the service or functionality should be provided if the AMO and Holdco are unable to reach agreement. Board Rules 8.403, 8.405.

107. Holdco's present proposed service offerings to customers, including the number of channels and the ability and the capacity of the system to offer additional varied services in the future, are adequate, and Holdco will have the ability to provide public access. Findings 100–106, *supra*.

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

108. Holdco will be bound by the same conditions that apply to the Adelphia Affiliates with respect to the line extensions that must be built under Rule 8.214, as specified in the stipulation approved in Docket Nos. 6445 and 6877. Hackley pf. at 4; Lackey pf. at 13–14.

109. This commitment involved line extensions totaling 1,262 miles by the end of 2008, plus between 150 and 300 miles of additional line extensions by the end of 2009, and is backed by a significant bond. Exh. TWC/Comcast 2 (¶ 39); *see* Lackley pf. at 13.

110. Holdco is aware of the magnitude of capital expenditures that will be necessary to complete construction of the remaining line extensions. Lackey pf. at 14.

Discussion

Holdco has acknowledged that Adelphia undertook in 2003 construction of some line extensions that were identified, in Attachment A to a Stipulation between Adelphia and the Department of Public Service, as Remaining Docket 6445 Line Extensions. Holdco acknowledges that any of the Remaining Docket 6445 Line Extension miles built by Adelphia in 2003 cannot be counted towards any of Holdco's cumulative Milestones until the final year of construction; provided, however, that to the extent Adelphia constructed and activated more than 60 such line extension miles by December 31, 2003, then any incremental amount over and

above 60 miles could be counted toward Adelphia's 2004 Milestone which affects cumulative Milestone obligations of Holdco.⁹

Finding

111. Holdco has demonstrated a commitment to construction and an in-service schedule. Findings 108–110, *supra*.

(3) Section 504(b)(5): Basic service in a competitive market; Rule 8.214(B)(5): Tariffs and rates proposed to be charged to customers

112. Holdco intends to offer basic service. Martin pf. at 5; tr. 10/26/05 at 19–21 (Reilly).

113. Holdco has promised to file with the Board tariffs and individual customer agreements for its cable services to the extent required by Vermont law, and the Board's tariff-review process offers an opportunity to assure that any subsequent revisions that Holdco may propose to its services, terms, and conditions are reasonable. Exh. TWC/Comcast 2 (¶ 3); Reilly reb. pf. at 11; Martin pf. at 4.

Discussion

The Board's authority, however, to revise cable rates or suspend changes in rates proposed by a cable operator has, for the most part, been preempted by federal law. The FCC has previously concluded that Adelphia faces effective competition in most of its Vermont service market, and this finding will transfer automatically to Holdco, thereby preempting the Board's authority to set prices for basic cable service. Holdco shall file tariffs stating the rates proposed to be charged to customers for its cable services.

Findings

114. Holdco will provide Basic service in a competitive market. Findings 112–113, *supra*.

9. Exh. TWC/Comcast 2.

(4) Rule 8.214(B)(9): Logical fit with neighboring systems

115. Comcast's acquisition of Adelphia's Vermont assets through Holdco would incorporate the Vermont systems into a much larger cluster that includes much of Massachusetts and southern New Hampshire. Lackey pf. at 22.

116. Holdco will not alter the existing Adelphia territory or change the geographical relationship of these systems to those operated by other companies. *Id.*; see Docket Nos. 6101 and 6223, Order of 4/28/00 at 143–44.

117. Holdco's system has the capability to fit logically with neighboring systems. Findings 115–116, *supra*.

(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

118. Rule 8.400 requires a cable operator to reserve three channels for PEG and allows for the designation of additional channels or provision of other applications if certain criteria are met, including a demonstration of community needs and interests taking into account the costs. Board Rules 8.403, 8.405.

119. Holdco proposed to have the same PEG conditions that apply to the Adelphia Affiliates be part of Holdco's CPG, except that Holdco modified these conditions to reflect the fact that the Board revised Rule 8.400 subsequent to imposition of these conditions on the Adelphia Affiliates. Hackley pf. at 21; Hackley supp. pf. at 2; tr. 10/26/05 at 62–63 (Reilly).

120. Holdco will form a statewide advisory board and meet with city and town officials bi-annually to obtain input on community needs and interests. Exh. TWC/Comcast 2 (¶ 7).

121. Holdco has committed to proposed CPG conditions requiring it to comply with Rule 8.400 and assume and be subject to liability under the Adelphia Affiliates' existing contracts with AMOs if and to the extent the Adelphia Affiliates are liable. Reilly reb. pf. at 14–15, 20–21.

122. To the extent AMOs seek funding, including capital funding, or other cable channels or application not already required under a condition to the Adelphia CPG, Rule 8.400 provides a procedure by which an AMO can seek to negotiate the provision of such channels or application

from Holdco and appeal the matter to the Board if the AMO is not satisfied with Holdco's response. *Id.* at 15; *see* Board Rules 8.405, 8.416, 8.417, 8.435(C).

123. Contracts between Holdco and the AMOs are the appropriate documents in which to memorialize the obligations of Holdco and the AMO to one another. Lackey pf. at 38.

124. Among other benefits, this approach allows for periodic revision without necessitating a Board investigation to amend the Holdco CPG. *Id.*

125. Under the terms of Holdco's proposed CPG, Holdco must provide fiber-optic or coaxial-cable drops, capable of two-way service and remote origination service, upon request, at every school, library, and PEG-access studio, and to at least one municipal building in a municipality in which Holdco is obligated to provide cable service. Exh. TWC/Comcast 2 (¶ 20).

Discussion

The testimony on the subject of remote origination was unclear; we suspect that the parties did not actually understand each other's positions. Holdco's witness was emphatic¹⁰ that Holdco would not install remote origination equipment at all of the sites called for in Finding 125, expressing concern that the cost of such equipment would not be justified by the level of use to be expected. However, testimony by VAN's witness¹¹ made it clear that the only equipment that Holdco is expected to provide at each site is the connection; the request for automatic switching capability would be satisfied by a single installation of switching equipment at the AMO's studio, plus some sort of signaling gear that would be brought on-site and connected during live broadcast, then removed. VAN is correct that many remote-origination sites are required, but Holdco is correct that actual installation of costly equipment must depend on the cost/benefit analysis of Rule 8.400. Finally, contrary to the testimony of an Adelphia witness, we think it is clear that the provision of two-way service to various sites required in Finding 125 means that they are to be capable of remote origination, not merely of signaling through a return path.

10. Reilly pf. reb. at 18–19.

11. Tr. 10/24/05 at 120–125 (Epler Wood).

Findings

126. Holdco should be required to negotiate with the operator of an overbuild on technical matters, such as interconnection. Either operator could then appeal to the Board if no agreement is reached or, if an agreement is reached, an AMO could appeal to the Board if the AMO is not satisfied that the agreed terms will ensure that each operator will fulfill its respective PEG obligation under Vermont or federal law. Tr. 10/26/05 at 22–23, 36–37 (Reilly).

Discussion

The Department proposed a condition that would require Holdco to offer PEG services comparable to any operator that overbuilds Holdco's system, which was designed to ensure competitive neutrality.¹² Holdco was concerned that this condition would require it to provide services to which it had not agreed and believes that, in a competitive-overbuild situation, issues about PEG should be addressed through Rule 8.400, and we agree.¹³

Findings

127. It is not unreasonable for a non-profit organization like an AMO to have a cash reserve on hand, and the cable operator should not regard the mere existence of such a reserve as a reason to reject a request for additional funding under Rule 8.405. Such a reserve fund should not exceed 50% of the average of the past three years of operating and capital funds, and the AMO should be able to demonstrate its plans for the use of these funds, consistent with its strategic plan. Davitian pf. at 7, 33–36; exh. VAN 21.

128. It is reasonable for the AMOs to now request connection to the higher speed commercial service, as they make ever-increasing use of digitally formatted materials. Epler Wood pf. at 20–22.

12. Lackey pf. at 42.

13. Reilly reb. pf. at 5.

Discussion

Two recommendations of VAN are not in dispute. VAN seeks to ensure that CPG conditions bind Holdco to comply with Rule 8.400 and to assume the Adelphia Affiliates' liabilities under AMO contracts.¹⁴ Holdco has accepted those obligations.

VAN also seeks to have the Board impose a condition that would ensure that Holdco matches Adelphia's current obligations with respect to PEG access. Holdco has agreed to accept a CPG that matches the existing Adelphia PEG obligations, and we find that such a condition is warranted.¹⁵

VAN asks for a condition similar to that included in the Adelphia CPG that would require a re-evaluation of the AMOs' requirements for digital equipment and corresponding "spike" capital payments to upgrade equipment. Holdco's proposed CPG included a single evaluation in 2006; the Department recommended eliminating this requirement altogether, relying instead on Rule 8.400. The problem with fixing a particular year for the digital evaluations is that there is no way of predicting when major changes in the operation of the cable systems will take place, only that such changes are likely to take place. It will be to the advantage of Holdco as well as the AMOs if the PEG programming can be carried on a digital tier; it would not be surprising if all programming is digital before the end of the CPG issued here. We agree with VAN that there should be two re-evaluations of the need for different digital equipment.¹⁶

Holdco proposed to continue the condition from the Adelphia Docket 6101 CPG that called for the operator to provide 5 MB storage on its server to each AMO. VAN suggests that this be increased to 1 GB. We find Holdco's offer inadequate, considering the price of storage; 5 MB is barely enough to store a single song in mp3 format.¹⁷ We will require Holdco to provide 1 GB of internet storage space to each AMO.

The language suggested by VAN for the statewide access channel is actually more restrictive than that in the Adelphia CPG, since it now clearly contemplates that the access

14. Davitian pf. at 6–7; Reilly reb. pf. at 14, 23–24.

15. Davitian pf. at 6; tr. 10/26/05 at 62–63 (Reilly).

16. Davitian pf. 20–21; exh. TWC/Comcast 2; see exh. DPS-DLF 2.

17. Exh. TWC/Comcast 2 (¶ 21); Epler Wood pf. at 22–23.

"channel" is really a file-sharing network for the AMOs. The condition agreed to by Adelphia could well have required a separate, viewable PEG channel on all the affected systems.

VAN asked for a condition mandating negotiation of a standard form of AMO contract within 120 days of our issuance of a CPG.¹⁸ We welcome any efforts by Adelphia or Holdco and the AMOs to negotiate a standard form of contract but decline to mandate any time period in which the negotiations must conclude.

VAN has asked that each AMO receive commercial class internet service without charge. The Docket 6101 CPG already required "high-speed Internet access" to each AMO, school, and municipality. In this context, "high-speed" access was in contrast to dial-up. Holdco has argued that we should not require commercial-grade internet connections for the AMOs because we lack jurisdiction to regulate the provision of high-speed, Internet-access service in light of a recent decision from the Federal Communications Commission. *In re Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities*, 17 FCC Rcd. 4798, 2002 WL 407567 (2002), *aff'd Nat'l Cable Telecomm. Ass'n v. Brand X Internet Servs.*, — U.S. —, 125 S.Ct. 2688 (2005) [referenced herein as *Brand X*]. That decision held that the provision of such service via a cable modem is an "information service" and not a "telecommunications service" within the meaning of the Telecommunications Act of 1996. *Brand X*, 125 S.Ct. at 2697; *see* 47 U.S.C. §§ 153(20), 153(26) (2005). But no one is asking this Board to regulate internet access; we are asked to require Holdco to provide a modem and internet access to certain entities as part of its PEG access requirements. The Board does not claim to regulate cable modems, but Holdco has not argued that we cannot mandate their provision to the AMOs and others.

We recently said, in adopting the Hearing Officer's proposed decision in *Burlington Telecom*:

In the past, the Board has incorporated extensive and specific PEG access requirements into CPG's issued to cable operators. However, since those Orders, the Board substantially revised its rules relating to cable television, including Rule 8.400 relating specifically to PEG access. The new rules were effective on March 1, 2005. Continuation of the practice of including all PEG access requirements in a cable operator's CPG diminishes the effectiveness of the framework established in the new Rule 8.400 and,

18. Davitian pf. at 6–7.

therefore, the Board should include only those PEG access requirements that are imposed outside of the negotiations and requirements of the Rule.

Burlington Telecom at 31¹⁹ (internal citations omitted). The Department has taken this language to mean that many of the provisions of the CPGs issued in recent Adelfia cases, especially Docket 6101, have now been obviated by Rule 8.400. To a certain extent this is true. We will no longer set out PEG requirements in great detail as was our past practice, but only such general terms as seem necessary. However, *Burlington Telecom* was a newly formed company, without any history of strained relations with regulators or the PEG groups. Many of the conditions requested by VAN in this case relate to conditions imposed upon Adelfia either because of past inaction (or worse) by Adelfia or because VAN (or certain member AMOs) persuaded the Board that they would promote the general good.

Findings

129. Holdco has designated adequate channel capacity and appropriate facilities for PEG use that provides a reasonably broad range of PEG programming. Findings 118–128, *supra*.

G. Town of Brattleboro

The Town of Brattleboro prefiled testimony in which it (1) stated that its principal objective is to ensure that Holdco will continue to comply with the Adelfia Affiliates' obligations to Brattleboro, such as line extensions; (2) urged that we require Holdco to continue to provide Brattleboro's existing PEG service to certain neighboring jurisdictions in New Hampshire; (3) said that it intended to pursue the process for requests for proposals established

19. We note that we have not received a petition to form a statewide AMO under Rule 8.425.

by the Adelpia Affiliates' CPG (and included in the CPG that Holdco has agreed to accept) for an Institutional Network; and (4) asked for courtesy Internet service to five municipal buildings in Brattleboro.²⁰ During the hearings, the Town raised issues as to whether agreed Condition No. 5 in the CPG included revenue received to provide PEG service to non-Holdco cable companies and as to whether Holdco should be required to build fiber-optic (as opposed to coaxial-cable) facilities for remote-origination ties to the area's PEG provider, BCTV.²¹

To state the obvious, the Board fully intends to enforce Holdco's CPG obligations, including the obligations for line extensions and to respond to requests for proposals for an institutional network. The Adelpia Affiliates are presently in compliance with their line-extension obligations as stipulated and approved in Docket Nos. 6445 and 6877.²²

The Town seemed to be making claims concerning the provision of PEG programming to towns in both Vermont and New Hampshire that do not contribute to the support of the AMOs designated for the Brattleboro system.²³ We will not make findings on these issues because the record is confused, at best. The allegations were made in the form of questions put to a witness for Holdco who, as he stated, had no knowledge of the situation. We encourage Holdco to fully consider the complaint by the Brattleboro AMOs, and to negotiate with them to resolve any problem. Holdco's brief in this docket argues that the Board lacks jurisdiction over cable service in New Hampshire and that at least that issue is moot. We are not convinced that the question is so simply answered, and ask that Holdco take a fresh look. The claim seems to be that some subscribers are benefitting from the programming produced by the Brattleboro AMOs but are not making a contribution. In both the New Hampshire system and the Southern Vermont system, we tend to agree with counsel for Holdco:

At least from the company's perspective if AMO service is provided, somebody, some subscriber, should be paying for it like every other subscriber, but we don't want to pay twice is really our concern.²⁴

20. *See generally* Remillard pf.

21. Tr. 10/26/05 at 39–45 (Billingsley).

22. Lackey pf. at 13–14.

23. Tr. 10/26/05 at 39–45.

24. Tr. 10/26/05 at 48.

Finally, based on the record evidence we are satisfied that it is not necessary to prescribe whether the tie between a remote-origination site and an AMO should be furnished using fiber-optic rather than coaxial-cable facilities, as coaxial cable may be adequate.²⁵ We note again that AMOs and cable operators are expected to negotiate such terms, and Rule 8.400 provides for resolution of such terms if the parties are unable to reach agreement.

H. City of Burlington

The City of Burlington introduced into the record an existing contract between one of the Adelpia Affiliates and the City — providing for the payment of an annual fee by that affiliate to the City — as well as a discovery response by Holdco to the effect that Holdco is prepared to assume that contract insofar as the fee is used for a City program offering discounts to seniors.²⁶ The City also sought to establish that one of the Adelpia Affiliates may have liabilities to the City under the Burlington Electric Department pole-attachment tariff. Tr.10/24/05 at 49–51 (Reilly).

As Holdco's commitments depend in part on whether the agreements/liabilities are accepted or rejected by Adelpia Communications Corporation as part of its bankruptcy-reorganization plan, we note as to the latter that the City could bring pole-attachment matters to our attention if not resolved satisfactorily after the acquisition.²⁷ As to the annual fee, however, our jurisdiction is limited. While the legality of a senior discount is within our jurisdiction, the amount of a municipal fee or the enforcement of a settlement agreement is not.²⁸

III. CONCLUSION

As summarized in Part I of this decision, we must decide here whether to approve the Adelpia Affiliates' sale of essentially all of the assets used by them to provide cable television service in Vermont to Holdco and at the same time whether to revoke the Adelpia Affiliates'

25. See tr. 10/26/05 at 40–41 (Reilly).

26. Exhs. Burlington 1 and 2; see tr. 10/24/05 at 48 (Reilly). We note that the fee agreement between Mountain Cable Company, L.P., and the City of Burlington does not apply solely to senior discounts. See exh. Burlington 1.

27. See tr. 10/24/05 at 48, 51 (Reilly); Board Rule 3.710.

28. Trybulski v. Bellows Falls Hydro-Elec. Corp., 112 Vt. 1, 10 (1941).

CPGs, under 30 V.S.A. §§ 109, 231, and 505. We must further decide whether Holdco meets the criteria established by statute and Board rule to receive a CPG to own and operate a cable television system in Vermont. We must last decide whether Comcast's acquisition of control of Holdco — an indirect subsidiary of Time Warner Cable organized to acquire the Adelphia assets — is not contrary to the public good under 30 V.S.A. § 515.

All parties in this proceeding agreed that the proposed sale was in the public interest, provided that certain conditions were imposed. The disputes in this case were over exactly what conditions should be imposed. We have reviewed the record carefully to satisfy ourselves that Holdco is capable of assuming responsibility for operating the Adelphia Affiliates' existing cable systems in Vermont and to determine what conditions should be imposed on Holdco's CPG.

Of particular importance to the Board is Holdco's commitment to bring broadband to rural Vermont by finishing construction of the 1,262 miles of previously-identified line extensions that the Adelphia Affiliates are obligated to construct — as well as between 150 and 300 miles of additional line extensions that the Adelphia Affiliates are obligated to construct because of their failure to build required line extensions on a timely basis — notwithstanding the fact that neither Comcast nor Time Warner Cable were responsible for the failure of the Adelphia Affiliates.²⁹ Holdco's commitment advances telecommunications policy in Vermont, which is to bring broadband to 90% of Vermonters by the end of 2007 and to achieve universal availability by 2010.³⁰

Holdco has also proposed that all of the Adelphia Affiliates' systems be franchised under a single CPG with a single expiration date.³¹ We agree, as this should simplify the franchise-renewal process as compared to the existing situation, in which the Adelphia Affiliates operate under multiple CPGs with different expiration dates.

In general, we have no difficulty concluding that Vermonters will benefit if Holdco acquires the assets used by the Adelphia Affiliates to operate their cable television systems in Vermont. This conclusion is supported by the facts that Holdco has agreed to accept essentially the same CPG conditions applied to the Adelphia Affiliates, including a commitment to line

29. *See, e.g.*, Hackley pf. at 9.

30. Vermont Telecommunications Plan at ix.

31. *See* Hackley supp. pf.

extensions that Adelphia estimates will cost at least \$35 million, and that Holdco is a financially stronger company. The evidence satisfies us, moreover, that both Comcast and Time Warner Cable are aggressively rolling out new services — such as a VOD program with substantially more titles than the Adelphia Affiliates now offer or telephony which Adelphia does not offer. We conclude that Holdco should receive a CPG.

Time Warner Cable and Comcast intend that Comcast ultimately control Holdco, and they believe it is highly unlikely that Comcast will not acquire control of Holdco contemporaneously and in direct succession with Holdco's acquisition of the Adelphia Affiliates' Vermont assets.³² The Department has indicated in its brief that it has reviewed information about the practices of Time Warner Cable's Albany Division — into which Holdco would be integrated if Comcast does not acquire control — and it is satisfied that Time Warner Cable will be a competent cable operator.³³ No party has presented any evidence that questions either Time Warner Cable's or Comcast's capabilities (through control of Holdco) to own and operate a cable television system in Vermont. Based on all of our findings, therefore, we conclude that transfer of the Adelphia Affiliates' assets in Vermont to Holdco, revocation of their CPGs, and the planned acquisition of control of Holdco by Comcast is not contrary to and will promote the public good of Vermont.

32. Fogarty reb. pf. at 2.

33. *See id.* at 3.

IV. ORDER

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

1. Subject to the conditions imposed in the Certificate of Public Good that accompanies this Order, the sale of substantially all of the assets of the Adelpia Affiliates³⁴ used to operate their cable television systems in Vermont to Cable Holdco Exchange III LLC will promote the general good of the state in accordance with 30 V.S.A. §§ 109, 232.
2. Effective upon closing of the acquisition of such assets by Cable Holdco Exchange III LLC, all certificates of public good issued to any of the Adelpia Affiliates shall be revoked in accordance with 30 V.S.A. § 505.
3. Cable Holdco Exchange III LLC meets each of the requirements established by 30 V.S.A. § 504 and Board Rule 8.214 to own and operate one or more cable television systems in Vermont, and the Board shall issue a certificate of public good to that effect, which certificate shall take effect upon closing and be subject to each of the conditions stated therein.
4. The acquisition of control of Cable Holdco Exchange III LLC by Comcast of Georgia, Inc., is not contrary to the public good of the state, subject to the conditions imposed in the Certificate of Public Good that accompanies this Order.
5. No later than ten (10) days following the closing of the sale of assets, Cable Holdco Exchange III LLC shall notify the Board and the parties in writing that such closing has occurred, such notice to specify either that Comcast of Georgia, Inc., has acquired control of Cable Holdco Exchange III LLC or that such acquisition has not occurred in which case the notice shall state when such acquisition is expected to take place.
6. No later than sixty (60) days following the date of this Order the Department and Cable Holdco Exchange III LLC shall file an agreed form of the Service Quality Plan.

34. Mountain Cable Company, L.P., a Vermont limited partnership; Better TV, Inc. of Bennington, a Vermont corporation; FrontierVision Operating Partners, L.P., a Delaware limited partnership; Adelpia Cablevision of New York, Inc., d/b/a Adelpia Cable Communications (formerly Harron Communications Corporation), a New York corporation; Lake Champlain Cable Television Corporation, a Vermont corporation; Multi-Channel T.V. Cable Company, an Ohio corporation; Richmond Cable Television Corporation, a Vermont corporation; and Young's Cable TV Corp., a Vermont corporation (all d/b/a Adelpia Cable Communications).

Dated at Montpelier, Vermont, this 29th day of December, 2005.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: December 29, 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)

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.

Appendix A: Appearances

John H. Marshall, Esq.
Nancy S. Malmquist, Esq.
Suzanne M. Monte, Esq.
Downs Rachlin Martin PLLC
for Time Warner Cable Inc., Cable Holdco Exchange III LLC and Comcast
of Georgia, Inc.

Shapleigh Smith, Jr., Esq.
Dinse, Knapp & McAndrew, P.C.
for Adelfia Communications Corporation

Alan D. Mandl, Esq.
Mandl and Mandl, LLP
for Adelfia Communications Corporation

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
for City of Burlington

Robert M. Fisher, Esq. (not present at hearings)
Fisher & Fisher
for Town of Brattleboro

Douglas R. Marden, Esq.
Little & Cicchetti, P.C.
for Vermont Access Network

Sarah Hofmann, Esq.
Leslie A. Cadwell, Esq.
James H. Porter, III, Esq.
for Vermont Department of Public Service

Appendix B: List of Cities, Towns, and Gores

Vermont cities, towns, and gores presently served by Adelpia under one or more of its CPGs:

Addison, Andover, Arlington, Athens, Avery's Gore,
Baltimore, Barnard, Barton, Belvidere, Bennington, Benson, Berlin, Bethel, Braintree, Brandon,
Brattleboro, Bridgewater, Bridport, Brighton, Bristol, Brookfield, Brookline, Brownington,
Burlington,
Cabot, Calais, Cambridge, Castleton, Cavendish, Charleston, Charlotte, Chester, Chittenden,
Clarendon, Colchester, Cornwall, Coventry, Craftsbury,
Danby, Derby, Dorset, Dummerston, Duxbury,
East Montpelier, Eden, Elmore, Essex,
Fair Haven, Fairfax, Fairfield, Ferdinand, Ferrisburgh,
Georgia, Glastenbury, Glover, Goshen, Grafton, Greensboro, Guilford,
Halifax, Hancock, Hardwick, Hartford, Hartland, Highgate, Hinesburg, Holland, Hubbardton,
Huntington, Hyde Park,
Ira, Irasburg,
Jamaica, Jay, Jericho, Johnson,
Killington,
Landgrove, Leicester, Lewis, Lincoln, Londonderry, Lowell, Ludlow,
Manchester, Marlboro, Marshfield, Mendon, Middlebury, Middlesex, Middletown Springs,
Milton, Monkton, Montpelier, Moretown, Morgan, Morristown, Mt. Holly, Mt. Tabor,
New Haven, Newark, Newport City, Newport Town, Norwich,
Pawlet, Peru, Pittsfield, Pittsford, Plainfield, Plymouth, Pomfret, Poultney, Pownal, Proctor,
Randolph, Reading, Richmond, Ripton, Rochester, Rockingham, Roxbury, Rupert, Rutland City,
Rutland Town,
Salisbury, Sandgate, Searsburg, Shaftsbury, Sharon, Sheffield, Shelburne, Sheldon, Shrewsbury,
South Burlington, Springfield, St. Albans City, St. Albans Town, St. George, Stamford,
Stannard, Starksboro, Stockbridge, Stowe, Strafford, Stratton, Sudbury, Sunderland, Sutton,
Swanton,
Thetford, Tinmouth, Troy,
Underhill,
Vergennes, Vernon,
Walden, Wallingford, Waltham, Wardsboro, Warner's Grant, Warren's Gore, Waterbury,
Waterville, Weathersfield, Wells, West Haven, West Rutland, West Windsor, Westfield,
Westford, Westminster, Westmore, Weston, Weybridge, Wheelock, Whiting, Williston,
Windham, Windsor, Winhall, Winooski, Wolcott, Woodbury, Woodford, Woodstock, and
Worcester