

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Joint Petition of Champlain Broadband LLC, City)
of Burlington d/b/a Burlington Telecom, Blue)
Water Holdings LLC for approvals, pursuant to)
30 V.S.A. § 109, 231, 504, 47 U.S.C. § 214(e),)
and Section 438(c)(1) of the City of Burlington)
Charter)

Case No. 18-0491 PET

**THE BURLINGTON ACCESS MANAGEMENT ORGANIZATIONS'
MOTION TO INTERVENE**

NOW COME the Burlington Access Management Organizations, by and through their attorney, Douglas R. Marden of the Law Offices of Douglas R. Marden, PLLC, and hereby move to intervene in the above captioned matter pursuant to Rule 2.209(B) of the Public Utility Commission Rules for the limited purpose of addressing conditions relating to public, educational, and governmental (“PEG”) access. In support of this motion, Applicant states as follows.

Background

1. The Joint Petition filed by Champlain Broadband, LLC (“Champlain”), the City of Burlington d/b/a Burlington Telecom (the “City” or “BT”) and Blue Water Holdings, LLC (“Blue Water”) (collectively referred to as the “Joint Petitioners”) requests the Public Utility Commission (the “Commission or PUC”) to, *inter alia*:

- Approve a transaction through which Champlain will acquire the Burlington Telecom system assets so as to continue operating the system as a turn-key business providing superior cable television, broadband Internet access, and telecommunications services to residential and business customers in the greater Burlington area (the “Transaction”). Joint Petition at 1;
- Issue a new cable television certificate of public good (“CPG”) under 30 V.S.A. § 504(b) authorizing Champlain to own and operate a cable television system in the City and surrounding communities for a statutory period of 11 years under 30 V.S.A. § 504. Joint Petition at 2; and
- Revoke the existing CPG that currently authorize Blue Water and the City to own and operate Burlington Telecom. *Id.*

2. Specifically, the Joint Petitioners request the PUC to revoke the existing Docket 8719 Certificate of Public Good (“CPG”), including those conditions related to PEG access, and issue a new CPG which is likely to incorporate conditions related to PEG access. Such PEG-related conditions are likely to address: funding (including operating and capital funding and access to “spike” funding); several procedural matters such as access plans, PEG policies and procedures, complaint procedures, and annual meetings between BT, BAMOs and community members; operational matters including channel reassignment, PEG outreach (advertising/TV Guide listings/on-screen advertising/contact with BT subscribers); issues related to interconnectivity including interconnection between BT and other cable operating systems, interconnection with the statewide channel, and interconnection between the BAMOs, and the provisioning of remote origination sites and INETs; and access to commercial features of BT’s cable system such as the Interactive Program Guide (IPG), High Definition (HD) Channels, and Video on Demand (VOD), as well as access to new or advanced technological features as they are rolled out by BT, and sufficient capacity for the BAMOs to undertake these existing and developing features.

3. The Burlington Access Management Organizations (“BAMOs”) consists of the three (3) Burlington-based PEG access management organizations including:

[Channel 17 Town Meeting Television](#)¹ which provides government access programming and PEG-related services for communities in Burlington, Colchester, Essex, South Burlington, St. George, Williston, Winooski.

[Regional Educational Television Network](#) which provides educational access programming and PEG-related services for communities in Burlington, Charlotte,

¹ The website for each BAMO can be accessed by clicking on the name of the AMO.

Colchester, Essex, Ferrisburg, Hinesburg, Shelburne, South Burlington, St. George, Vergennes, Waltham, Williston, Winooski.

[Vermont Community Access Media](#) which provides public access programming and PEG-related services for communities in Burlington, Charlotte, Colchester, Essex, Ferrisburg, Hinesburg, Shelburne, South Burlington, St. George, Vergennes, Williston, Winooski and government access programming for communities in Charlotte, Ferrisburg, Hinesburg, Shelburne and Vergennes.

4. The City and Blue Water Holdings own a cable television system in the City of Burlington known as Burlington Telecom (“BT”) and operate the system pursuant to terms and conditions set forth in the March 17, 2017 CPG issued in Docket 8719. Conditions 9(b), 21-34 and 38(c) of said CPG specifically relate to PEG access.

5. The City of Burlington and its successor, Blue Water Holdings, have a significant history of supporting PEG Access. As part of the Docket 8719 CPG renewal process, the BAMOs and BT negotiated a progressive access management agreement which allows the community public access needs and interests to be met within BT’s competitive cable overbuild environment. This agreement, titled the “Amended and Restated Agreement Regarding Cable Television Public Access” (“BT-AMO Agreement”) not only met current PEG Access needs but anticipated future PEG Access needs by incorporating terms which, *inter alia*, allowed the BAMOs to access “additional capital funding” in order to maintain parity with future cable related improvements; allowed the BAMOs to request improvements related to contemporary applications of cable capacity incorporated by BT; guaranteed signal quality of PEG channels in the event of changes to BT’s signal delivery technology; provided the BAMOs with access to HD channels; gave the BAMOs the ability to control signals received from remote origination sites;

provided access to Video on Demand (“VOD”) service; provided for interconnection with a statewide channel should one be activated; and incorporated terms allowing the BAMOs to gain access to “Dark Fiber”, “Internet 2Connection”, Internet Protocol multicast video remote origination, and live streaming capacity. *See* the Memorandum of Understanding filed by the BAMOs on August 9, 2016 in connection with Docket 8719.

6. To date, the agreement between the BAMOs and BT incorporates terms which are unique in the State of Vermont.

Legal Standard and Argument

VPUC Rule 2.209(B) regarding permissive intervention states:

Upon timely application, a person may, in the discretion of the Commission, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the Commission shall consider (1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

As the rule states, the Commission’s decision to grant permissive intervention is discretionary and may be exercised broadly. *See* [In re GMPSolar-Richmond, LLC, 2017 VT 108, ¶ 19](#); *In re MVP Health Ins. Co.*, 2016 VT 111, ¶ 19, 203 Vt. 274, 155 A.3d 1207 (“This Court will not interfere with the decision of an administrative board made in the performance of a discretionary duty in the absence of a showing of abuse of discretion resulting in prejudice to one of the parties.” (quotation omitted)).

In this case, the BAMOs have a substantial interest in this proceeding which may be affected by the outcome. It is worth noting that, in granting intervenor status to the Vermont Access Network (“VAN”) in Comcast’s appeal of the Commission’s Order and Certificate of Public Good entered on January 13, 2017 in connection with VPUC Docket 8301, the United

States District Court of Vermont stated that since “public access stations lack their own broadcast or cable networks, these stations depend on networks maintained by cable operators like Comcast to reach their viewers. Any change in the conditions under which Comcast must carry their programming affects them greatly.” *Comcast of Connecticut/Georgia/ Massachusetts/New Hampshire/New York/North Carolina/ Virginia/Vermont, LLC, d/b/a Comcast v. The Vermont Public Utility Commission et al*, No. 5:17-CV-00161-GWC, Order on Motion to Intervene, Document 37 at 5 (Feb. 8, 2018). Similarly in this Docket, it is clear that, if granted, a new CPG will incorporate many PEG-related conditions. It is equally clear that many current PEG-related terms and conditions which apply in this matter are specific and unique to BT. Accordingly, no other party is in a position to represent the BAMOs in this case as it relates to the continued incorporation of PEG-related conditions in the new CPG. Moreover, due to the fact that the BAMOs face the PEG-related issues identified in Paragraph 2, above, on a daily basis, routinely perform community needs assessments to identify the needs of the Burlington community, and develop AMO Access Plans which incorporate and meet the CPG conditions and other PEG Access issues, it is clear that the BAMOs are best positioned to address the PEG access issues raised in Champlain’s petition and have an interest in ensuring that terms of the BT-AMO Agreement continue in full force and effect.

Other parties will not adequately protect the BAMOs’ interests. In past dockets, the Vermont Department of Public Service (“DPS”) and Access Management Organizations including the BAMOs have often not agreed on PEG access requirements that should be incorporated in a certificate of public good. Most recently in Comcast’s CPG renewal, Docket 8301, the DPS and Access Management Organizations disagreed on requirements related to access plans, funding, remote origination service, the requirement to provide high definition channels, access to the interactive program guide and other PEG-related issues. *See, e.g.*, Docket 8301. In the past, DPS and VAN also have had divergent views on whether a CPG condition should address the relative “strength” between a cable operator and an individual AMO in

connection with negotiating operator-AMO contract renewals, appropriate CPG conditions, and whether certain CPG conditions had been satisfied or required enforcement. See, *e.g.* Docket 7044 Order at Page 32.² The cable operators—BT and Champlain—are also not in a position to represent the BAMOs as their interests are typically at odds with the interests of PEG Access. In short, there are no alternative entities in the position or with the ability to adequately protect the BAMOs' interests.

There is not an alternative means by which VAN's interests can be adequately protected absent its intervention. Champlain petitioned the Commission to issue a new CPG for a period of eleven (11) years. The criteria to renew include criteria specifically related to providing PEG access services. See *e.g.*, Board Rules 8.214(B)(2) and (8), 8.230(C) and (D), and 8.231, 30 V.S.A. § 504(b)(2) and (3), and 504(c)(1), and 47 U.S.C. §§ 531 and 546. This is the only opportunity for the BAMOs to be heard in regard to the nature and extent of BT's PEG access obligations.

Finally, the BAMOs' intervention will not delay the proceeding. The only filing as of March 26, 2018 has been Champlain's Petition to be issued a CPG. This Docket is just beginning. In addition, Champlain has already corresponded and met with BAMO representatives, and have included the BAMOs in scheduling discussions.

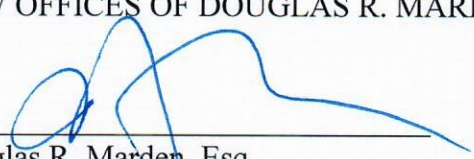
WHEREFORE, the BAMOs respectfully requests that it be permitted to intervene in the above captioned matter pursuant to Rule 2.209(B) to the extent that Champlain Broadband, LLC's petition directly or indirectly relates to PEG access issues.

² The BAMOs note that the Board's practice of not burdening the CPG with too much specificity and leaving many PEG-related matters to individualized contract negotiations between a cable operator and individual access management organizations ("AMOs") was originated in Docket 7044 but has been carried forward in subsequent CPGs issued to cable operators by the Board (*see, e.g.*, Docket 7077 (Comcast) and Docket 7746 (VTel)). From the AMOs perspective, this has resulted in a general lack of "leverage" for AMOs, protracted and costly negotiations for AMOs, and poor results in terms of incorporating necessary terms in the operator/AMO agreements. Docket 7044

Dated at Shelburne, Vermont this 27th day of March, 2018.

LAW OFFICES OF DOUGLAS R. MARDEN, PLLC

By: _____


Douglas R. Marden, Esq.
145 Pine Haven Shores Road
Suite 2212
Shelburne, VT 05482
(802) 495-5120
doug@mardenlaw.com

Attorney for the Burlington Access Management
Organizations