

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 18-0491-PET

Joint petition of Champlain Broadband, LLC, City of Burlington d/b/a Burlington Telecom, and 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	
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Order entered: 05/09/2018

ORDER GRANTING MOTION TO INTERVENE

I. INTRODUCTION

This case concerns the petition filed on February 26, 2018, by Champlain Broadband, LLC, the City of Burlington d/b/a Burlington Telecom (“City” or “Burlington Telecom”), and Blue Water Holdings, LLC (collectively, the “Joint Petitioners”) with the Vermont Public Utility Commission (“Commission”) for approval pursuant to 30 V.S.A. §§ 109, 231, and 504; 47 U.S.C. § 214(e); and Section 438(c)(1) of the City of Burlington Charter of a transaction in which Champlain Broadband proposes to acquire Burlington Telecom’s assets (the “Transaction”).

In today’s Order, we grant the motion to intervene filed by Sandra Baird, Jared Carter, Dean Corren, Steven Goodkind, Solveig Overby, and Shay Totten (“Citizen Intervenors”).

II. PROCEDURAL HISTORY

On March 28, 2018, the Citizen Intervenors filed a motion to intervene in this proceeding.

On March 30, 2018, the Vermont Department of Public Service (“Department”) filed its response to the Motion stating that it does not oppose the Citizen Intervenors’ request to intervene. However, the Department asks the Commission to require that the Citizen Intervenors be joined for their participation in this case pursuant to Rule 2.209(C).

On April 11, 2018, the City filed a response opposing the motion to intervene filed by the Citizen Intervenors.

On April 25, 2018, the Citizen Intervenors filed a reply to the City's response. No other comments were filed.

III. POSITIONS OF THE PARTIES

The Citizen Intervenors argue that the taxpayers of the City are owed at least \$16.9 million “from the investor or investors who have owned, own, or will own Burlington Telecom’s assets” and that the terms of the proposed certificate of public good (“CPG”) would transfer all assets to Champlain Broadband “free of any lien, mortgage, or other security or condition to ensure repayment to taxpayers of the \$16.9 million.”¹ The Citizen Intervenors assert that the Commission “lacks authority” to approve the CPG without a provision for repayment because Section 438(c)(1) of the City’s charter states that the Commission,

in considering any application for a certificate of public good, shall ensure that any and all losses from these businesses, and, in the event these businesses are abandoned or curtailed, any and all costs associated with the investment of cable television, fiber optic, and telecommunications network and telecommunications business-related facilities, are borne by the investors in such a business, and in no event are borne by the City’s taxpayers...

The Citizen Intervenors assert that they can demonstrate that the \$16.9 million loss is “entirely avoidable” and argue that they will directly suffer harm if the transaction is approved because they will have to pay more taxes than would otherwise be necessary.² The Citizen Intervenors state that they have demonstrated a substantial interest which may be affected by the outcome of these proceedings and that these proceedings offer an “exclusive means” by which they can protect that interest. The Citizen Intervenors argue that the City “manifestly does not adequately represent [their] interests” and state that “it is not known at this juncture whether the Department will challenge the Petition” and that they will commit to not unduly delay the proceedings.³

In response, the City argues that the motion must be denied because the Citizen Intervenors have asserted a generalized interest as taxpayers in an issue unrelated to this proceeding. The City asserts that the Commission “has previously resolved the legal and

¹ Motion at 1 and 2.

² *Id.* at 3-4.

³ *Id.* at 5-6.

regulatory issues regarding Burlington Telecom’s prior use of City funds for its operation.”⁴ Should the motion to intervene be granted, the City asks that the intervention be “strictly limited to the single issue raised by the [Citizen Intervenors] under the City’s municipal charter” and that the Citizen Intervenors “be barred from offering testimony, propounding discovery, engaging in cross-examination at hearings or advancing legal arguments... regarding the qualifications of Champlain Broadband to offer telecommunications services and to operate a cable television system in the State of Vermont.”⁵

IV. DISCUSSION AND CONCLUSION

The City asserts that the Commission previously resolved the issues surrounding Burlington Telecom’s prior use of City funds for its operations. While the Commission made certain determinations regarding Burlington Telecom’s CPG violations, the Commission did not specifically address whether, how, and when the \$16.9 million would be reimbursed to the City and its taxpayers.

Pursuant to 30 V.S.A. § 509, if the Commission finds that a company has violated any “material provision” of its CPG, it “shall allow the company a reasonable opportunity to cure the violation” and “in the event of failure to cure, the Commission may enter an order revoking the certificate.” In Docket 7044, the Commission found that Burlington Telecom was operating in violation of the terms of its CPG, including Condition 56 requiring that any losses or costs incurred by Burlington Telecom not be “borne by the City of Burlington taxpayers, the City of Burlington Electric Department ratepayers or the state of Vermont” and Condition 60 requiring that if Burlington Telecom uses the City’s pooled cash management system, it must reimburse the City within two months.⁶ In its October 8, 2010, Order, the Commission ordered that “[t]o the extent a reasonable opportunity to cure the violations of Conditions 2, 17, 56, and 60 of the CPG is dependent for purposes of 30 V.S.A. § 509(b) on the [Commission] first finding such violations, Burlington Telecom’s opportunity to cure its CPG violations begins with the entry of this Order.”⁷ The docket was remanded to the Hearing Officer for further proceedings.

⁴ Response at 1.

⁵ *Id.* at 2.

⁶ Docket 7044, Order of 10/8/10 at 9, 13, and 16.

⁷ *Id.* at 33.

On November 3, 2014, the Commission issued an Order in Docket 7044 concluding that all existing and ongoing violations of Conditions 2, 17, 56, and 60 of the CPG, as found and described in the October 8, 2010, Order, are “resolved” based on the following considerations: (1) the amount of unreimbursed advances from the City’s general fund had not increased since 2009, and Burlington Telecom had been operating on a positive net cash flow basis since 2010; (2) the elected mayor and the City’s management staff that were in place at the time of the conduct that led to the CPG violations had “long since been replaced;” and (3) if the CPG were to be revoked or penalties imposed, the City’s taxpayers and Burlington Telecom’s customers would “bear additional consequences.”⁸ The Commission decided that “no constructive purpose would be served by revoking [Burlington Telecom’s] CPG or imposing monetary penalties that effectively would be visited upon [the] City[’s] taxpayers and [Burlington Telecom’s] customers.”⁹ The resolution of the CPG violations is based on the Commission’s decision not to revoke Burlington Telecom’s CPG and not to impose financial penalties. While the Commission did approve certain structural elements of a future sale, the Commission did not resolve all issues related to the \$16.9 million loss and any recovery of such losses at that time.¹⁰ Issues related to the recovery of the \$16.9 million loss that occurred due to Burlington Telecom’s CPG violations may be raised in the current proceeding.

Rule 2.209(B) reserves to the Commission the power to grant intervenor status on a permissive basis when an applicant “demonstrates a substantial interest which may be affected by the outcome of the proceeding.” In exercising its discretionary authority under this provision, the Commission considers three factors:

⁸ Docket 7044, Order of 11/3/14 at 32.

⁹ *Id.*

¹⁰ *Id.* at 23.

- (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.

Rule 2.209(C) further provides that the Commission may impose certain restrictions on an intervenor's participation in a proceeding. Specifically, the Commission may restrict such party's participation to only those issues in which the party has demonstrated an interest; may require such party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters; or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

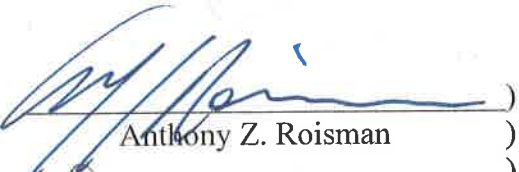
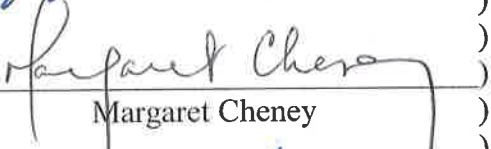

Accordingly, given the Citizen Intervenors' articulated concerns around the impact of the Transaction on the repayment of the losses, they have demonstrated an interest in this proceeding and the motion to intervene is hereby granted on a permissive basis. Furthermore, the Citizen Intervenors have agreed to "work diligently so as to avoid any delay of these proceedings" and to be joined pursuant to Rule 2.209(C).¹¹

The City has asked that certain limitations be imposed on the Citizen Intervenors' participation regarding "the qualifications of Champlain Broadband to offer telecommunications services and to operate a cable television system in the State of Vermont." However, we are not persuaded by the arguments presented by the City for imposing limitations on intervention for the Citizens Intervenors at this time. In any case, the Commission does not expect that the Citizen Intervenors would use their participation in the current proceeding to challenge Champlain Broadband's qualifications.

¹¹ Reply at 13.

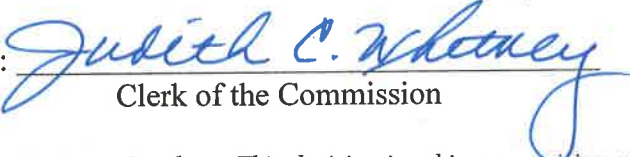
SO ORDERED.

Dated at Montpelier, Vermont, this 9th day of May, 2018.

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Anthony Z. Roisman)	PUBLIC UTILITY
)	
)	
Margaret Cheney)	COMMISSION
)	
)	
Sarah Hofmann)	OF VERMONT

OFFICE OF THE CLERK

Filed: May 9, 2018

Attest: 
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 18-0491-PET - SERVICE LIST

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