

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 19-4845-PET

Petition of Southern Vermont Cable )  
Company for consent, pursuant to 30 )  
V.S.A § 109, to sell substantially all of its )  
Vermont assets to Comcast of )  
Connecticut/Georgia/Massachusetts/New )  
Hampshire/New York/North Carolina/ )  
Virginia/Vermont, LLC, approval, )  
pursuant to 30 V.S.A. § 505, of such )  
entity’s abandonment of cable-television )  
service in Vermont and revocation of its )  
Certificates of Public Good )

Petition of Comcast of Connecticut/ )  
Georgia/Massachusetts/New Hampshire/ )  
New York/North Carolina/Virginia/ )  
Vermont, LLC for a Certificate of Public )  
Good, pursuant to 30 V.S.A. §§ 503 & )  
504 and Vermont Public Utility )  
Commission Rule 8.200, to own and )  
operate the cable-television systems in )  
Vermont currently owned and operated by )  
Southern Vermont Cable Company )

**BRIEF OF DEPARTMENT OF PUBLIC SERVICE**

The Department of Public Service (“Department”) hereby respectfully submits this Brief in support of the joint petition filed with the Public Utility Commission (“Commission”) by Southern Vermont Cable Company (“SVCC”) and Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (“Comcast”) (collectively, the “Joint Petitioners”) for approval of (1) acquisition by Comcast of the cable television system owned and operated by SVCC; (2) revocation of SVCC’s Certificate of Public Good (“CPG”); and (3) issuance of a new CPG to

Comcast to serve the towns of Newfane, Putney, Townshend and Dover. It is the position of the Department that the proposed transaction will promote the general good of the state. The Department therefore recommends that the Commission (1) issue a certificate of consent for the sale of SVCC assets to Comcast; (2) approve the acquisition of the SVCC system by Comcast; and (3) issue a new CPG to Comcast to serve the towns of Newfane, Putney, Townshend and Dover.<sup>1</sup> The Department finds that Comcast has met the statutory requirements of 30 V.S.A. § 504 and Commission rule 8.214 (otherwise known as the “EMCO” Criteria) for issuance of a CPG and that Comcast has demonstrated that it has the financial, technical, and commercial capability to acquire, own and operate the SVCC cable system.

### **I. Legal Standard**

The transactions proposed by the Joint Petitioners require approval from the Commission under 30 V.S.A. §§ 109, 231, 232, 503, 504, 505 and Commission Rule 8.214.

Under 30 V.S.A. §§ 109 and 232, a corporation subject to the Commission’s jurisdiction shall not make a sale without a finding by the Commission that the sale will promote the general good of the state. Several factors are considered when evaluating whether an acquisition will promote the general good, including the competence of management, the financial strength of the company, the company’s reputation and conduct in dealing with the citizens of Vermont, any expected efficiencies that will benefit the company’s customers, and the impact of the acquisition on competition.<sup>2</sup>

To obtain a CPG for the ownership and operation of a cable television system under 30

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<sup>1</sup> The Department acknowledges that certain cases currently before the Commission have or will be delayed due to the current COVID-19 pandemic. Because regulatory review for this proceeding does not appear to be impaired by the current state of emergency, the Department concludes that this case should proceed as originally scheduled.

<sup>2</sup> *Joint Petition of Otelco, Inc., et al.*, Docket No. 7735, Order of 9/30/11 at 6-9.

V.S.A. § 503, it must be found that an applicant complies with the procedures and criteria set forth in Sections 231 and 504(b) and (c), as well as the “EMCO criteria” set forth in Commission Rule 8.214.

Section 504(b) of Title 30 requires approval of a CPG to be based on findings that an applicant has complied or will comply with requirements adopted by the Commission to ensure that the system provides the following:

1. Designation of adequate channel capacity and appropriate facilities for public, educational, or governmental use;
2. Adequate and technically sound facilities and equipment, and signal quality;
3. A reasonably broad range of public, educational, and governmental (“PEG”) programming;
4. The prohibition of discrimination among customers of basic service; and
5. Basic service in a competitive market, and if a competitive market does not exist, that the system provides basic service at reasonable rates determined in accordance with 30 V.S.A. § 218.

Pursuant to 30 V.S.A. § 504(c), it must be ensured that a cable system provides or utilizes:

1. A reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest and cost;
2. Construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electrical Safety Code;
3. A competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and department complaints and problems;
4. Unless waived by the Commission, an office which shall be open during usual business hours, have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received; and

5. Reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices.

Under Board Rule 8.214, the so-called "EMCO" criteria must be considered in determining whether to grant a CPG for a cable system service area. The criteria include the following:

1. Financial soundness and stability, both of the applicant generally and the particular proposal;
2. The 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;
3. The commitment to a construction and in-service schedule;
4. The experience and ability of the applicant to run and manage a cable tv system;
5. The rates proposed to be charged to customers;
6. Consumer policies, particularly re: complaints and problems;
7. Availability of service to maximum number of residences;
8. The quality of the engineering and materials used in the system; and
9. Logical fit with neighboring systems.

Finally, 30 V.S.A § 505 provides that an existing cable television company may not abandon any service or facility under the Commission's jurisdiction without first obtaining Commission approval based on a finding that the abandonment is consistent with the public interest.

## **II. PROPOSED FINDINGS**

### **a. Procedural History**

On December 11, 2019, the Joint Petitioners filed the joint petition, prefiled testimony and exhibits in support of the transaction.

On January 7, 2020, the Department filed a joint proposed schedule and request for scheduling conference.

On January 10, 2020, the Commission held a scheduling teleconference.

On January 21, 2020, Brattleboro Community Television (“BCTV”) filed a motion to intervene.

On January 31, 2020, the Department served its first set of discovery inquiries on the Joint Petitioners.

On February 3, 2020, the Commission held a public hearing, preceded by an information session led by the Department, at Landmark College in Putney, Vermont.

On February 4, 2020, the Department and Comcast made separate filings stating that neither party opposed BCTV’s motion.

On February 12, 2020, the Commission issued an order approving BCTV’s motion to intervene.

Also on February 12, 2020, the Joint Petitioners filed a motion for approval of protective agreement (“Protective Agreement”), to which the Department stipulated. The Joint Petitioners asserted that certain information they may be requested to produce is protected, confidential information, the disclosure of which could cause cognizable harm.

On February 14, 2020, Comcast filed a response to the Department’s first set of discovery inquiries.

On February 20, 2020, SVCC filed a response to the Department's first set of discovery inquiries.

On March 3, 2020, Comcast filed a finalized Memorandum of Understanding ("MOU") between Comcast and BCTV.

On March 4, 2020, the Department filed prefiled testimony finding the transaction to promote the general good of the state and recommending that the Commission approve the joint petition.

On March 9, 2020, the Commission issued a procedural order finding good cause to implement the Protective Agreement.

On March 16, 2020, Comcast filed a notice informing the Commission that the Joint Petitioners had no discovery inquiries to serve on the Department.

On March 18, 2020, the Joint Petitioners filed a motion for protection of proprietary and commercially sensitive information, specifically regarding the purchase price referenced in the prefiled testimony of Department witness Scott G. Wheeler.

On March 19, 2020, the parties filed a letter in support of holding a remote evidentiary hearing.

On March 23, 2020, the Commission held a status conference to discuss the parties' ability and willingness to hold a remote evidentiary hearing.

On March 25, 2020, Comcast filed supplemental prefiled testimony that responded to the Department's concerns regarding migration of SVCC customers to the Comcast network, rates and franchise fees and service quality plan and reporting.

On March 30, 2020, the Commission issued a procedural order scheduling a remote evidentiary hearing to be held on April 3, 2020.

On April 1, 2020, Comcast filed a stipulated joint list of prefiled testimony and exhibits.

On April 2, 2020, the Commission issued a protective order granting confidential treatment of evidence in response to the Joint Petitioners' March 18, 2020 motion.

On April 3, 2020, the Commission held a remote evidentiary hearing.

#### **b. Proposed Transaction**

1. Pursuant to an Asset Purchase Agreement between the Joint Petitioners, they have agreed to the sale of virtually all SVCC assets, including accounts receivable and tangible personal property, to Comcast. Petition at 2; Daniel M. Glanville, Comcast ("Glanville") pf. at 5.

2. To effectuate the transaction, the Joint Petitioners must receive approval to complete the transaction, SVCC must obtain consent from the Commission to abandon its cable system and Comcast must obtain a CPG to serve the communities of Newfane, Putney, Townshend and Dover. Petition at 2-3; Ernest Scialabba, SVCC ("Scialabba") pf. at 3-4; Glanville pf. at 5.

3. Comcast intends to maintain and operate the SVCC system in accordance with SVCC's existing CPG conditions, and following the integration of SVCC customers to the Comcast network, in accordance with the terms and conditions substantially similar to the CPG conditions governing Comcast's ownership and operation of other Vermont cable television systems. Petition at 3-4.

#### **c. Applicable Review Criteria**

##### **Facilities**

**[30 V.S.A. §§ 109, 231, 504(b)(2) and (c)(2); and  
Commission Rule 8.214(B)(3), (7), (8), and (9)]**

4. Comcast provides adequate and technically sound facilities and equipment, and signal quality. Glanville pf. at 8; Aaron Brassard, Department of Public Service (“Brassard”) pf. at 3.

5. Comcast continues to invest in its network in Vermont in order to support provision of advanced video services like HD TV, video-on-demand and digital video recorder (“DVR”) service, having completed its Digital Network Enhancement project in 2012 and introducing the X1 entertainment system in 2013. Glanville pf. at 12.

6. Comcast’s system in Vermont was built according to all applicable state and federal regulations, including FCC rules and the National Electric Safety Code as they apply to cable television systems. Glanville pf. at 12, 15; Brassard pf. at 5.

7. Comcast’s Vermont system is part of a national, fiber-based backbone used to transport signals, which adds a layer of redundancy to the network for the benefit of Vermont customers. Glanville pf. at 12.

8. The proposed transaction will expand Comcast’s existing systems in Vermont and be a logical fit with neighboring systems that could potentially achieve a system migration from the SVCC system to the Comcast network with limited interruption to SVCC customers. Glanville pf at 12, 23; Brassard pf. at 9.

**Provision of Service and Service Quality**  
**[30 V.S.A. §§ 109, 504(b)(5) and (c)(1); and**  
**Commission Rule 8.214(B)(2) and (5)]**

9. Comcast offers a broad range of programming that includes basic service as well as enhanced packages. Comcast offers 53 basic service channels, over 100 channels of high-definition programming and a minimum bandwidth of 750 megahertz in Vermont, which is

enough capacity to provide an enhanced range of channels and services. Glanville pf. at 14; Brassard pf. at 4, 6.

10. Comcast operates in a competitive market for video services in Vermont and offers basic cable service in accordance with federal law. Glanville pf. at 13-14; Brassard at 3-4.

11. Comcast's Vermont consumers have a choice among several video programming providers, including satellite providers and over-the-top content providers. Glanville pf. at 13-14; Brassard at 3-4.

**Customer Experience**  
**[30 V.S.A. §§ 231, 504(b)(4) and (c)(3), (4), and (5);**  
**Commission Rule 8.214(B)(6)]**

12. Comcast does not and will not discriminate between customers regarding the type of service they receive. Glanville pf. at 13-14; Carol Flint, Department of Public Service ("Flint") at 2-3.

13. Comcast's customer service includes customer care advisors in its call centers and in its local office in Greenfield, Massachusetts, which is open during normal business hours to assist Comcast's customers. Glanville pf. at 16-17; Flint pf. at 4.

14. Comcast's customer care advisors are available 24 hours a day, 365 days a year and can be reached by calling Comcast's toll-free number. Customers can also use Comcast's online chat features through Comcast's website. Glanville pf. at 16-17.

15. Comcast's customer service includes employees that communicate directly with the Department's Consumer Affairs and Public Information Division ("CAPI") to quickly respond to and resolve complaints and problems reported to the Department. Glanville pf. at 15-16; Flint pf. at 3.

16. Comcast provides several notices per year to customers informing them of company policies and procedures, including how to file customer complaints. Courtesy copies of these notices are provided to the Department. Glanville pf. at 22; Flint pf. at 4.

17. Comcast's policies related to line extensions, disconnections, customer deposits, and billing practices are and will continue to be consistent with Vermont law and the conditions specified in Comcast's line extension tariff. Glanville pf. at 18; Brassard pf. at 5; Flint pf. at 4.

**Technical and Managerial Competence**  
**[30 V.S.A. §§ 109 and 231; and Commission Rule 8.214(B)(4)]**

18. Comcast has a long history of running and managing cable television systems and has approximately 105,500 cable customers in Vermont. Glanville pf. at 20-21; Scott G. Wheeler, Department of Public Service ("Wheeler") at 3-4.

19. The proposed transaction will add approximately 2,450 customers, or a 2.3% increase, to Comcast's customer base. Wheeler pf. at 4.

20. Comcast will continue to have an experienced and technically proficient staff of technicians in the field in Vermont. Glanville pf. at 21.

**Financial Soundness**  
**[30 V.S.A. §§ 109 and 231; and Commission Rule 8.214(B)(1)]**

21. Comcast is a *Fortune 500* company, and a global media and technology company providing video, Internet, and voice services to approximately 21.4 million subscribers covering parts of 39 states and the District of Columbia. Glanville pf. at 18-19; Wheeler pf. at 2-3.

22. For the year ending December 31, 2019, Comcast generated approximately \$108.9 billion in revenue. Wheeler pf. at 3.

23. Comcast does not need to obtain financing for the proposed transaction. Glanville pf. at 19.

24. Through its subsidiaries, Comcast Corporation will provide financial support as necessary to ensure that its cable systems, including the SVCC system, provide a quality of service that is competitive. Glanville pf. at 19.

**Programming and Public Access**  
**[30 V.S.A. §§ 504(b)(1) and (3); and Commission Rule 8.214(B)(2)]**

25. Comcast has designated adequate channel capacity and appropriate facilities for public, educational, and governmental (“PEG”) access. Glanville pf. at 11-12, 20; Brassard pf. at 2-3; Flint pf. at 2.

26. Comcast will comply with the terms of the PEG agreement between SVCC and BCTV and will continue to provide the same channel capacity to BCTV, which currently provides community access and programming to SVCC customers. Glanville pf. at 11-12, 20; Brassard pf. at 2-3; Flint pf. at 2.

**Construction and In-Service Schedules**  
**[Commission Rule 8.214(B)(3)]**

27. Comcast is committed to construction and minimal impact on customers as it transitions SVCC customers to its own network. Glanville pf. at 20; Brassard pf. at 6.

28. The migration of SVCC customers to the Comcast system will occur in three phases, including (1) preparatory work such as strategic planning and making necessary engineering changes to Comcast’s facilities in order to support additional customers, and conducting network and systems testing; (2) upon approval of the joint petition, notification to SVCC customers of the pending sale of its network to Comcast, including direct calls, and implementation of planned

engineering modifications; and (3) migration of SVCC customers to the Comcast network on specific dates. Glanville supp. pf. at 4-5.

29. Within 45 days after any order is issued approving the joint petition, Comcast will provide to the Commission and the Department a detailed migration plan. Glanville supp. pf. at 3.

**Customer Rates**  
**[Commission Rule 8.214(B)(5)]**

30. Comcast customers are provided with a competitively priced basic service, which includes a broad range of analog, digital and HD channels. Glanville pf. at 21.

31. Package prices offered by Comcast are not significantly higher than those offered by SVCC. Wheeler pf. at 6.

32. SVCC customers will be considered new customers and will thus eligible for Comcast new customer promotions in the market at the time of migration. Glanville supp. pf. at 5.

33. Comcast sales representatives will work with customers to find the combination of products and services that best fits the customer's needs, interests and budget. Glanville supp. pf. at 5.

**Commitment to Act as a Fair Partner in Business Transactions with Vermont Citizens**  
**[30 V.S.A. §§ 109 and 231]**

34. After completion of the proposed transaction, Comcast will commit to own and operate SVCC assets in accordance with all SVCC's existing CPG conditions. Petition at 4.

35. Following integration of the SVCC cable system with Comcast's other cable systems in Vermont, Comcast will commit to own and operate the assets in accordance with terms and

conditions substantially similar to the CPG conditions governing Comcast's ownership and operation of other Vermont cable television systems. Petition at 4.

**Benefits to Customers**  
**[30 V.S.A. §§ 109 and 231]**

36. The sale of SVCC assets to Comcast will increase the technical and operational resources currently available to SVCC customers with delivery of 24/7 support. Scialabba pf. at 4.

37. Comcast will provide to SVCC customers the same services and products currently offered in the company's Brattleboro, Vermont system. Glanville pf. at 9. Scialabba pf. at 4.

38. Comcast will provide increased reliability and system capacity which allows the company to offer more programming and service options to SVCC customers. Glanville pf. at 9.

**Effect on Competition**  
**[30 V.S.A. § 109]**

39. SVCC and Comcast do not compete in the provision of cable television service or the provision of any other product or service. Ex. DPS-AJB-1.

**III. Discussion**

Based on the evidence presented, and the proposed findings above, it is the position of the Department that the sale of substantially all SVCC assets to Comcast will promote the general good of the state. The Joint Petitioners have provided sufficient evidence to demonstrate that the proposed sale of SVCC assets to Comcast, subject to the conditions discussed herein, will comply with all applicable statutory and regulatory criteria.<sup>3</sup> Specifically, the joint petition and prefiled testimony addressed all the factors required by 30 V.S.A. § 504 and Commission

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<sup>3</sup> The Joint Petitioners also provided the appropriate notice of their application to affected school systems and municipalities along with a certificate of authority from the Vermont Secretary of State consistent with Commission Rule 8.212.

Rule 8.214. Comcast also filed supplemental testimony on March 25, 2020 addressing concerns raised by the Department in its prefiled testimony pertaining to Commission Rule 8.214(B)(2) (PEG access and franchise fees), (B)(3) (proposed customer migration) and (B)(5) (customer rates and service quality).<sup>4</sup>

Regarding customer rates, Comcast confirmed that SVCC customers will be treated as new Comcast customers eligible for Comcast new customer promotions. Comcast rates are not significantly higher than those offered by SVCC but may ultimately become higher over time.<sup>5</sup> The Department asserts that promotional discounts over a defined period of time are a prudent method of allowing SVCC customers time to adjust to what will ultimately be higher cable package rates. Comcast also indicated that it would commit to SVCC's current PEG obligations with BCTV. The MOU between Comcast and BCTV outlines an increase in franchise fees from 2.25% to 5% over a period of three years.

Comcast has also committed to fulfilling service quality requests from the Department. Specifically, within 30 days of completing the transaction, Comcast will reach out to the Department to establish an updated service quality plan for its Vermont cable franchise areas. It is the expectation of the Department that service quality reporting for the former SVCC system will become part of Comcast's traditional quarterly service quality reporting, and that Comcast's high service quality performance in its current franchise areas will translate to the former SVCC area without incident.

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<sup>4</sup> Clay Purvis, Department of Public Service ("Purvis") pf. at 4.

<sup>5</sup> The Department notes that the Commission, as the regulatory authority in Vermont, lacks jurisdiction to impose specific cable rates upon cable providers. Generally, under 47 U.S.C. § 543, cable rates are dictated by market conditions and not subject to federal or state regulation.

Finally, Comcast detailed a three-phase migration process, the second and third phases for which will include advance notice to SVCC customers regarding the system migration, as well as installation appointments set up on an individual basis that will be free of charge. Also, during the discovery portion of this proceeding, at the request of the Department, SVCC provided a notice to all its customers of the pending sale to Comcast. The steps the Joint Petitioners took or will take to make the transition of SVCC customers to the Comcast network as smooth as possible potentially resolves concerns the Department has regarding interruptions of service for SVCC customers.

Regarding SVCC's request to abandon service and revoke its CPG, the Department recommends that the Commission approve the request. Because the transaction involves the sale of operating assets and not the transfer of existing CPGs, SVCC has requested approval to abandon service in its respective franchise area through the revocation of its CPG consistent with Commission practice.<sup>6</sup> The Department finds that abandonment of service by SVCC is consistent with the public interest because cable service will continue for SVCC customers with an optimal provider, and therefore recommends that the Commission consent to the sale under 30 V.S.A. § 109 and approve the company's abandonment of service under 30 V.S.A. § 505.

The Department recommends that the Commission issue an order approving the sale of SVCC assets and granting Comcast a CPG under 30 V.S.A. §§ 231 and 503 subject to the following conditions:

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<sup>6</sup> Joint Petition of Midwest Fibernet Inc. and Consolidated Network Inc. for Approval to Merge, Docket No. 5868, Order of 5120/96 at 2-3; Application for Authority to Transfer Control of Corporate Telemanagement Group, Inc. to LCI International, Inc. and LCI Telemanagement Corp., Docket No. 5838, Order of 8124/95 at 3.

1. During the integration period, Comcast shall collaborate with the Department to develop and file with the Department quarterly service quality reports specific to SVCC customers, the metrics for which will be jointly determined by the Department and Comcast;
2. Following the first full quarter following completion of the transition of all SVCC customers to the Comcast system, Comcast shall provide an integrated service quality report to the Department;
3. Within six months of any order approving the joint petition, Comcast shall collaborate with the Department on a revised service quality plan, which includes certain enhanced metrics, to be filed with the Commission and Department;
4. Within 45 days of any order approving the joint petition, Comcast shall submit with the Commission and the Department a detailed migration plan subject to Department comment that includes plans for isolated migration testing to occur before implementation; and
5. Any migration assistance, including set-top box and modem setup, shall be provided by Comcast to SVCC customers at no charge.

Dated at Montpelier, Vermont, this 10<sup>th</sup> day of April, 2020.

VERMONT DEPARTMENT OF PUBLIC SERVICE

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