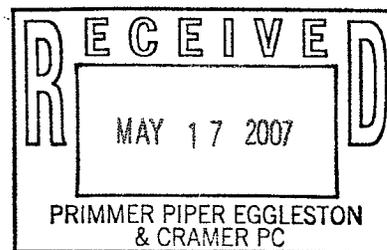


# **EXHIBIT 3**

STATE OF VERMONT  
PUBLIC SERVICE BOARD



Docket No. 7316

Investigation into regulation of Voice over )  
Internet Protocol ("VoIP") services )

Order entered: 5/16/2007

**ORDER OPENING INVESTIGATION**  
**AND NOTICE OF PREHEARING CONFERENCE**

**I. INTRODUCTION**

On April 9, 2007, the Vermont Department of Public Service ("Department") filed a letter recommending that the Public Service Board ("Board") open a generic investigation into Voice over Internet Protocol ("VoIP") services. The Department states that some of the regulatory rights and responsibilities of the companies offering these services have not been squarely addressed by the Board. The Department argues that, although it believes that the Federal Communications Commission ("FCC") has placed some VoIP services beyond the Board's jurisdiction, state regulation has not been preempted with respect to all such services.

To clarify the responsibilities of the various VoIP providers, the Department recommends that the Board open a generic investigation to address the following:

- The extent to which Vermont law under Title 30 applies to VoIP services;
- The extent to which federal law preempts Vermont law with regard to VoIP services;  
and
- To the extent that Vermont law applies and federal law does not preempt, the degree to which it is necessary or desirable to apply the same or different regulations and levels of regulations to VoIP carriers as apply to other telephone services.

The Department also recommends that the Board take no immediate action in this docket, but instead wait until the FCC issues a decision later this year that is expected to address some of the jurisdictional issues.

We agree with the Department that it is appropriate to open an investigation into state regulation of VoIP services. A significant number of Vermont residents have begun to take advantage of these services; with Comcast<sup>1</sup> beginning to offer its Comcast Digital Voice service, it is likely that the use of IP-based telephone services in Vermont will continue to grow. It would be useful for both customers and providers to have a clearer understanding of the requirements that apply to these carriers.

At this time, we do not adopt the Department's proposal to simply open this investigation and delay action until early next year. Such an approach may be appropriate considering the FCC's present reviews, but this issue should be addressed at the prehearing conference.

## **II. ORDER**

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

1. Pursuant to 30 V.S.A. Sections 203 and 209, an investigation is opened into state regulation of VoIP services.
2. Pursuant to 30 V.S.A. Section 8, George Young, Deputy General Counsel, is appointed to serve as the Hearing Officer in this proceeding.
3. Pursuant to 30 V.S.A. Section 10, a Prehearing Conference shall be held in this matter on Monday June 4, 2007, at 1:00 P.M., at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont.

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1. The full name of Comcast is: Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, d/b/a Comcast

Dated at Montpelier, Vermont, this 16th day of May, 2007.

<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: May 16, 2007

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: psb.clerk@state.vt.us)*

# **EXHIBIT 4**

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7316

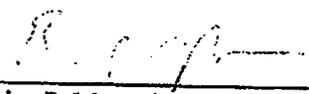
Investigation into regulation of Voice over )  
Internet Protocol ("VoIP") services )

**MOTION TO INTERVENE**

NOW COMES City of Burlington Electric Light Department ("BED"), by and through its attorneys, McNeil, Leddy & Sheahan, P.C., and pursuant to Rule 2.209 of the Board's Rules of Practice, moves to intervene in the above-captioned proceeding. In support of this motion, BED respectfully submits the accompanying Memorandum of Law.

DATED at Burlington, Vermont, this 19<sup>th</sup> day of March 2008.

BURLINGTON ELECTRIC DEPARTMENT

By: 

Brian P. Monaghan, Esq.  
McNeil, Leddy & Sheahan, P.C.  
271 South Union Street  
Burlington, VT 05401  
Attorneys for Movant

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO INTERVENE**

BED respectfully submits this Memorandum of Law in support of its Motion to Intervene in the above-captioned matter.

**I. BED IS ENTITLED TO INTERVENTION AS OF RIGHT**

BED seeks intervention as of right under Rule 2.209(A), which provides in part:

Upon timely application, a person shall be permitted to intervene in any proceeding... when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.

Vt. P.S.B. Rule 2.209(A)(3). As outlined below, BED satisfies the criteria entitling it to intervention as of right.

A. BED's Motion to Intervene Should be Considered Timely.

In its Scheduling Order dated March 7, 2008, the Board set an intervention deadline of March 10, 2008. In the past, the Board has allowed untimely intervention requests where the movant has indicated its willingness to accept the proceedings as they find them. BED is willing to accept the procedural schedule as set forth in the Board's Scheduling Order and forego the ability to propound discovery requests upon the Petitioners. Since no party will be prejudiced by BED's willingness to accept the docket as is, its application to intervene should be considered timely.

B. BED has a Substantial Interest that may be Adversely Affected by the Outcome of this Proceeding.

BED is the majority owner of utility poles located throughout its service territory. Ownership is governed by a 1955 agreement between BED and Verizon Vermont's predecessor-in-interest. Under the agreement, BED owns 55% and Verizon owns 45% of each jointly owned pole in the City of Burlington. An existing tariff permits BED to charge rental fees for use of singly-owned and jointly-owned poles. On August 24, 2005, the Board entered an order in Docket No. 6604 that accepted a stipulation between the parties regarding rents to be paid by attaching utilities. The heart of the stipulation is that cable television utilities shall pay \$9.00 per pole attachment, while all other attaching

entities<sup>1</sup> shall pay \$18.00 per attachment. In response to BED's billing Comcast for pole attachment as both a cable provider and telephone provider, Comcast has refused to pay as anything but a cable provider, claiming to be a cable company, and not a telephone company<sup>2</sup>. Incidentally, Comcast failed to disclose this relationship, a violation of Article XVII of BED's regulations under Tariff No. 6604.

BED has a substantial interest in the continuation of the agreed-upon rents for use of its utility poles. At the time of the consummation of the stipulation, none of the parties presented Voice over Internet Protocol ("VoIP") as a basis for charging, or not charging, for use of utility poles. Nevertheless, Comcast now asserts that, its provision of telephone services notwithstanding, it is not a telephone company. Absent participation by those utilities which host VoIP providers' wires, the Board's investigation into regulations applicable to VoIP providers could adversely affect BED's substantial interest in use of its utility poles.

C. Docket 7316 Provides BED with the Exclusive Means by Which it can Protect its Interests.

Docket 7316 is the exclusive forum within which BED can protect its substantial interests as outlined above. BED is unaware of any other forum within which BED can protect these interests.

D. BED's Interests will not be Adequately Represented by Existing Parties.

Finally, the existing parties to the Docket are providers or would-be providers of VoIP services. These parties are not likely to advance the interests of those utilities whose poles they will be using to provide their services. Additionally, Comcast's failure

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<sup>1</sup> Except for incumbent local exchange carriers ("ILECs") and electric utilities.

<sup>2</sup> On August 24, 2006, the Board issued CPG 834-CR, authorizing Comcast to operate as a provider of telecommunications services in Vermont, including service to the local exchange. A review of Vermont-

to disclose its operating status to BED is further evidence that it will not advance the interests of BED or other similarly-situated utilities. Only by making BED a party can there be assurance that its interests are adequately represented in this proceeding. In light of the foregoing, BED is entitled to intervene in this matter as of right.

## II. IN THE ALTERNATIVE, BED IS ENTITLED TO PERMISSIVE INTERVENTION

In the alternative, BED moves for permissive intervention. Rule 2.209(B) provides in part that the Board, in its discretion, may permit a person to intervene when that person "demonstrates a substantial interest which may be affected by the outcome of the proceeding." Vt. P.S.B. Rule 2.209(B). In exercising its discretion, the Board is to consider the following:

(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.

*Id.* As set forth above, it is unlikely existing parties will adequately represent BED's substantial interest in this proceeding, and no alternative means for protecting BED's interests exist. In addition, BED's intervention will not unduly delay the proceeding or prejudice the interests of the parties or the public given its willingness to accept the proceedings as it finds them.

## CONCLUSION

WHEREFORE, based upon the foregoing, BED's motion to intervene as of right should be granted. In the alternative, BED should be granted permissive intervention.

DATED at Burlington, Vermont, this 19<sup>th</sup> day of March 2008.

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registered corporations reveals six with variations of "Comcast Phone" or "Comcast Long Distance" in

Respectfully submitted,



Brian P. Monaghan, Esq.  
McNeil, Leddy & Sheahan, P.C.  
271 South Union Street  
Burlington, VT 05401  
Attorneys for Burlington Electric  
Light Department

cc: Docket 7316 Service List

211050/00054

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their names.