

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

Re: Burlington Broadcasters, Inc. d/b/a WIZN; Charlotte Volunteer Fire & Rescue; & John Lane	Land Use Permit Application #4C1004-EB
Burlington Broadcasters, Inc. d/b/a WIZN; Charlotte Volunteer Fire & Rescue; & John Lane	Land Use Permit Application #4C1004R-EB
Burlington Broadcasters, Inc. d/b/a WIZN	D.R. Request # 322
NYNEX Mobile Limited Partnership 1 d/b/a Bell Atlantic NYNEX Mobile (Now "Verizon")	D.R. Request # 323

CONTINUANCE ORDER

This matter is a consolidation of the above appeals and Declaratory Ruling Petitions, all concerning the WIZN radio tower located in Charlotte, Vermont.

I. BACKGROUND

On June 4, 1999 the District #4 Environmental Commission (Commission) issued Land Use Permit # 4C1004R (Permit) and supporting Findings of Fact, Conclusions of Law, and Order (Reconsidered Decision) to Burlington Broadcasters, Inc. d/b/a WIZN (Burlington Broadcasters), Charlotte Volunteer Fire and Rescue Services, Inc. (CVFRS), and John Lane (collectively Permittees). The Permit authorizes a previously constructed 199-foot communication and broadcast tower and an equipment building (Project). The Project is located on 17 acres of land on the northwest side of Pease Mountain, off Church Road in Charlotte. The tower currently contains broadcast antennae used by WIZN and CVFRS, as well as four antennae presently used and maintained by Bell Atlantic Mobile (BAM). BAM's use of the tower is authorized under Land Use Permit #4C0901.

On July 2, 1999, Mary Beth Freeman, Graeme Freeman, Elaine Ittleman, Dr. Frank Ittleman and Citizens for Appropriate Siting of Telecommunications Facilities (Appellants) filed an appeal with the Board from the Permit and the Reconsidered Decision alleging that the Commission erred in its conclusions concerning 10 V.S.A. § 6086(a)(1), (9)(K), (10) and with respect to its rulings on party status. Appellants' July 2, 1999 appeal incorporates by reference their previously filed appeal dated July 6, 1998 of the Commission's initial decision dated June 5, 1998 (1998 Decision). On July 14, 1999, BAM filed a cross-appeal pertaining to the Project, wherein it contests the Commission's denial of BAM's party status in the #4C1004R proceeding. BAM's cross-appeal supersedes a Notice of Appeal filed on July 6, 1998 relative to the Commission's 1998 Decision.

The issuance of the Permit by the District Commission vested jurisdiction with the Environmental Board to hear several other appeals that were filed in June and July of 1998 (Other 1998 Appeals). The Other 1998 Appeals were held in abeyance pending the Commission's proceedings on Motions to Alter and Reconsider the Commission's Decision. The Other 1998 Appeals include, an appeal filed by Charlotte Congregational Church, an appeal filed by Burlington Broadcasters, and an appeal filed by the Charlotte Central School Board. Also pending on the Board's Docket are Declaratory Rulings #322 and #323, each of which appeals Jurisdictional Opinion # 4-116, dated March 29, 1996, which pertains to the Project.

There was also a Revocation proceeding relative to a Permit #4C0901 issued to Steve Korwan d/b/a Contel Cellular, to which BAM is a successor in interest. By a decision dated August 7, 2000, the Board dismissed the revocation petition. That decision has now become final.

On May 23, 2002, Chair Harding convened a status conference with the following participants:

Gerald Tarrant, Esq on behalf of Appellants
John Cain, Esq. on behalf of Burlington Broadcasters
Liam Murphy, Esq. on behalf of Burlington Broadcasters
Jeremy Farkas, Esq. on behalf of Verizon
Tom Heilman, Esq. on behalf of Charlotte Volunteer Fire and Rescue Services, Inc.

II. PRELIMINARY RULING

Pursuant to EBR 16(B), the Chair may make preliminary rulings as to party status and other procedural matters as are necessary to expedite and facilitate the hearing process. Any such ruling may be objected to by any interested party and the matter then resolved by the Board.

III. DISCUSSION

This matter has been continued on the basis that Burlington Broadcasters is attempting to relocate its FM transmission facility to one of four alternate locations.

During the May 23, 2002 status conference, Burlington Broadcasters reported its progress finding an acceptable alternative location for its transmission facility. In summary, Burlington Broadcasters reported that it continues to make substantial progress with the alternate location designated as "C."

Under prior Board Order, Burlington Broadcasters is required to file on the first business day of each month a status report indicating the progress of the

above matters. The parties jointly agreed that these matters be continued and that all future written status reports be required every other month with the first written report due on July 1, 2002, the second due on September 1, 2002 and so on. In addition to the bi-monthly written status reports, Burlington Broadcasters has agreed to provide prompt notice to all parties and the Board of significant substantive events, including but not limited to, the grant or denial of permits. Burlington Broadcasters has also agreed to certify to the Board, and provide a copy of the certification to all parties, that a Jurisdictional Opinion as to the applicability of Act 250 jurisdiction over the alternate location designated as "C" and Burlington Broadcasters' plans to cite a new antenna thereon has been requested and again when the opinion has been rendered, including whether or not jurisdiction applies. Lastly, the parties jointly agree that the Board convene a telephone status conference on Thursday, September 12, 2002 at 2:00 p.m.

III. ORDER

1. The Board grants a continuance relative to each of the captioned matters. This Continuance shall be operative from the date of this Order until **September 12, 2002**. On **September 12, 2002 at 2:00 p.m.**, Chair Harding, or her duly authorized delegate, will convene a telephone status conference. The Board will arrange the conference call.
2. Prior Board Orders relative to filing monthly written status reports are revised as follows. Future status reports should focus on alternate location "C" unless circumstances warrant reporting relative to the other alternate locations. The written reports shall continue to include a projected schedule for tasks that remain to be completed with any modified dates being noted with highlighted text. All future written status reports are required **every other month** with the first written report due on **July 1, 2002**, the second due on **September 1, 2002** and so on. In addition to the bi-monthly written status reports, Burlington Broadcasters shall provide prompt notice to all parties and the Board of significant substantive events, including but not limited to, the grant or denial of permits. Burlington Broadcasters shall certify to the Board, and provide a copy of the certification to all parties, that a Jurisdictional Option as to the applicability of Act 250 jurisdiction over the alternate location designated as "C" and Burlington Broadcasters' plans to cite a new antenna thereon has been requested and again when the opinion has been rendered, including whether or not jurisdiction applies.
3. This Continuance Order is a Chair's Preliminary Ruling issued pursuant to Environmental Board Rule 16(B). It is binding on all parties unless a written objection to it, in whole or in part, is filed on or before **Tuesday, June 4, 2002 at 4:30 P.M.**

Dated at Montpelier, Vermont this 24th day of May, 2002.

ENVIRONMENTAL BOARD

/s/ Marcy Harding
Marcy Harding, Chair