STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: RULES AND REGULATIONS	:	
GOVERNING THE RHODE ISLAND	:	DOCKET NO. 3545
TELECOMMUNICATIONS EDUCATION	:	
ACCESS FUND	:	

REPORT ON FINAL RULES

I. Introduction

During the 2003 Legislative Session, the Rhode Island General Assembly passed legislation governing the funding of Internet Access to Rhode Island schools and libraries. Specifically, R.I.G.L. § 39-1-61 provides that commencing on January 1, 2004, a program and funding mechanism be in place and available to qualified schools (K-12) and libraries to assist in paying the costs of acquiring, installing and using telecommunications technologies to access the internet. The Telecommunications Education Access Fund ("Fund") is to be set up as a restricted account within the Public Utilities Commission ("Commission").[1]

The assessment of a monthly surcharge by each telecommunications service provider payable by each residence and business telephone user in the state of Rhode Island, with the exception of state, local or quasi-municipal agencies, is required by R.I.G.L. § 39-1-61. The level of the surcharge will be determined by the General Assembly on an annual basis. Furthermore, the General Assembly will review, on an annual basis, whether or not the surcharge should apply to wireless telephones. For the

[1] On September 2, 2003, the Commission submitted a written request to the State Controller seeking an exemption from the 7% statutory indirect cost recovery collected from restricted receipt accounts under 35-4-20. The State of Rhode Island assesses 7% from every deposit into a restricted receipt account for deposit into the State General Revenue Fund. The request for exemption was denied on October 2, 2003. A copy of the denial has been filed in the docket. Therefore, 7% of all funds collected will be deposited into the General Fund and is not required to be used to fund the Telecommunications Education Access Fund.

first year, 2004, the General Assembly has exempted wireless telephones from assessment of the surcharge.

II. Notice and Hearing

In accordance with the mandate contained in R.I.G.L. §39-1-61, on August 27, 2003, the Commission issued a Notice of Rulemaking and Public Hearing to propose Rules and Regulations Governing the Telecommunications Education Access Fund ("Rules"). On September 17, 2003, the Commission held a public hearing for the purpose of taking verbal comments from interested parties. At the hearing, Mr. William Fiske, Coordinator of Technology for the Rhode Island Department of Education ("RIDE"), explained that the E-Rate year runs from July 1 to June 30 of the following year. Therefore, the next Request for Proposals will be issued in November, awards made in January and submitted to the appropriate FCC department to meet the early February deadline. This also means that Verizon will continue to provide E-Rate services to RIDE through June 30, 2004 under a current agreement. As a result of these comments, questions arose as to whether or not Verizon could draw from the Fund from January 2004 through June 30, 2004 for purposes of compensating its services under the contract covering the E-Rate year 2003-2004. The interested parties were asked to address that issue in their written comments.

At the hearing there was extensive discussion regarding the administration of the Fund within the building where the Commission and the Division of Public Utilities and Carriers ("Division") are housed. The Division responded to data requests designed to determine what needs to be done to comply with R.I.G.L. § 39-61-1. Additionally, the Division clarified that there is actually less work than for the Dual Party Telephone Relay

Program. Mr. Charles Brown and Mr. James Lanni have continued to administer that program on behalf of the Commission despite the fact that the two agencies were split in 1996. The Commission has no staff with a job description similar to Mr. Brown, an Assistant to Chief Public Utilities Accountant ("responsible for supervising and participating in preparing and monitoring the department budget and for ensuring the timely completion of all department general accounting functions").

The Commission has a Rate Analyst V whose primary function, per his job description, is to analyze rate cases. Nothing in his job description seems to address this type of work and unlike Mr. Brown he does not have the catch-all language regarding doing anything else that is asked of him. Furthermore, the Division estimates that the administration of the fund will take 0-7 hours per week after the initial implementation. Finally, it seems to make sense to have the person in the building responsible for the budget for both agencies administer an account that is set up under agency supervision. Therefore, in response to concerns raised at the hearing, the Commission has incorporated changes to Part III, Section 5 and Part IV, Section 5 of the Proposed Rules into the Final Rules. The Commission and Division will continue to work together to refine the process within the building where the two agencies are housed.

III. Written Comments

The deadline for submitting written comments regarding the proposed Rules was September 30, 2003. Verizon-Rhode Island ("VZ-RI"), Cox Communications ("Cox"),

RNK Communications ("RNK"), and the Division submitted written comments within the deadline.[2]

Each commenter requested clarification of the definition of a telecommunications services provider such that retail end users are only assessed the surcharge on their local usage. Furthermore, the commenters requested clarification that the surcharge is only to be applied to retail end users and not to wholesale customers, who are most likely telecommunications services providers. The Commission adopted VZ-RI's suggested language in Part III, Section 3 and also accepted VZ-RI's definition of telecommunications services provider with the exception of the term "land wire." Although the R.I.G.L. § 39-61-1 does not apply the surcharge to wireless communications at present, the law does indicate that the General Assembly will review the status of the fund periodically to determine whether the surcharge should apply to wireless. If, in fact, the General Assembly changes the law to include wireless, the Rules are currently written in such a way that there would be no need to make any adjustment for that type of change in the law.

VZ-RI suggested specific language regarding assessment of the surcharge on centrex equivalent trunks. However, this is unnecessary because the language of the Rules mirrors R.I.G.L. § 39-1-61(d)(1) which is the same as that in the E-911 statute. Thus, the Telecommunications Education Access surcharge can be assessed in the same manner as the E-911 surcharge, and the relay surcharge without changing the language of the Rules. With regard to VZ-RI's suggested language regarding the assessment on ISDN/PRI systems, the language would create inconsistency in the assessment of state-

[2] VZ-RI and Cox then proceeded to engage in a "war of words", not over the language of the Rules, but over the issue of compensation to VZ-RI during the first half of 2004, through supplemental comments submitted after the deadline and without prior notification to the Commission.

imposed surcharges. Therefore, while the Commission may address the concern as it relates to all state-imposed telecommunications-related surcharges at a later date, it declines to do so at present.

VZ-RI requested the Rules require funds to be transferred to the Commission on the 15th day of each month rather than the first and that the Rules include the billing address of where the funds should be sent. The Commission has adopted those changes. Because the General Assembly will review the level of the surcharge and set it each year, a couple of the carriers requested time from the change in the level of the surcharge and implementation. VZ-RI suggested 120 days, but the Commission believes that 90 days is sufficient.

The Commenters also requested that the Commission delineate those entities that will be exempt from the assessment of the surcharge. As Cox noted, although the General Assembly used the term "quasi-governmental agency" and "local agency," no where in the Rhode Island General Laws does the General Assembly define the term quasi-governmental agency. Therefore, the Commission has clarified the Rules to direct parties to the Rhode Island Government Manual published by the Secretary of State's Office, as an official publication of the State of Rhode Island for guidance. State and quasi-governmental Agencies shall be those listed in the section of the Manual entitled "Rhode Island State Departments and Agencies." The local agencies shall be those departments listed in the section "Rhode Island City and Town Officials." However, to the extent the City and Town officials are listed either with or without their home addresses, they are not personally exempt from the surcharge under the law.

The Division's comments suggested several word changes that would clarify provisions of the Rules without changing the intended meaning. Many of those changes were included in the Final Rules. Additionally, with regard to the timing of the filing of the RFP for the Commission's review and the appeal process, the Commission will address the specifics in a separate docket when RIDE files its proposed 2004-2005 RFP for review. However, with regard to the Division's comment that the term "Schools and Library Fund" should not appear on the bill because it could cause confusion, the Commission notes that this is the term that appears on customer bills in Maine, a state that has implemented a similar funding source for internet access. Therefore, the Commission is comfortable with the name as it appears in the Rules.

IV. Order Regarding Request By VZ-RI to Utilize the Funds Collected in 2004

In accordance with a Settlement approved by the Commission in Docket No. 3445, VZ-RI is required to fund internet access to schools and libraries in the amount of $2 million per year until December 31, 2004. However, the legislature, in passing R.I.G.L. § 39-61-1 has provided an alternative funding mechanism to commence January 1, 2004. Therefore, VZ-RI has taken the position that its obligation to fund internet access to schools and libraries ceases on December 31, 2003.

Cox has argued that because the bid for the current fiscal year was awarded prior to the passage of the law, VZ-RI should not be allowed to utilize any of the money and should continue to subsidize the program (Cox does not take issue with the manner in which the bid process was conducted last year). Furthermore, Cox argued that because VZ-RI did not know this legislation would definitely be passed in 2003, it should not be able to reap the benefit. Finally, Cox indicated concern that the surcharge would not be

enough to fund the program and therefore, the balance should be allowed to build up prior to the start of the next E-Rate year.

The Commission finds that there is nothing in the statute that precludes VZ-RI from utilizing the funds collected through the surcharge during the last half of fiscal year 2004. In other words, there is nothing that says the funds may not be distributed until after the first bid process is completed after passage. The funds are to be collected for the purposes of providing the internet access.

The General Assembly set the surcharge at a level it deemed reasonable. While the Commission may have set the level differently, it is irrelevant to the Commission at this time whether or not the General Assembly set the charge at an adequate level. Additionally, Cox's attempt to build up a balance before July 1, 2004 (albeit for good reason) is not necessarily prudent in light of the decision made in FY 2003 to utilize Renewables Funds for non-renewables activities. Furthermore, even if the Commission allows VZ-RI to utilize the funds, VZ-RI may find that sufficient funds are not collected through the surcharge once the June 30, 2004 funds are finally deposited with the Commission, but that is their risk and they should not be able to utilize any funds to cover FY 2004 costs unless those funds were collected for usage on and before June 30, 2004. In other words, VZ-RI may not receive any money from the fund that is collected for usage on and after July 1, 2004 for compensation for the e-rate year July 1, 2003 through June 30, 2004. VZ-RI must pay any shortfall between the resources expended prior to July 1, 2004 and the funds collected through the surcharge for usage on and before June 30, 2004.

V. Conclusion

Normally, when Rules are promulgated under the Administrative Procedures Act, the Commission provides an Order Number only for administrative filing purposes. However, in this docket, the Commission has been asked to interpret the statute with regard to the disposition of funds. Therefore, while the Rules were promulgated in accordance with R.I.G.L. § 42-35-3, there is an element of the Commission's jurisdiction under Title 39 of the Rhode Island General Laws. The Final Rules and Regulations Governing the Rhode Island Telecommunication Education Access Fund were filed with the Secretary of State's Office on November 18, 2003 for effect January 1, 2004. The effective date of the ruling regarding VZ-RI's request to cease funding internet access is also January 1, 2004.

Accordingly, it is

(17623) <u>ORDERED</u>

1. That VZ-RI may utilize money collected for usage on and before June 30, 2004 for providing internet access to schools and libraries, provided that VZ-RI is prohibited from utilizing any funds collected for usage on and after July 1, 2004 for purposes of compensating itself for resources expended during the E-rate year July 1, 2003 through June 30, 2004.

EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 1, 2004 PURSUANT TO AN OPEN MEETING HELD ON OCTOBER 30, 2003. WRITTEN ORDER ISSUED ON DECEMBER 1, 2003.

PUBLIC UTILITIES COMMISSION

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Elia Germani, Chairman

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Kate F. Racine, Commissioner

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Robert B. Holbrook, Commissioner