

State of Rhode Island and Providence Plantations

Public Utilities Commission

Minutes of Open Meeting Held August 22, 2003

Attendees: Chairman Elia Germani, Commissioner Kate Racine, Commissioner Robert Holbrook, Steve Frias, Cindy Wilson, Thomas Massaro, Alan Nault, Douglas Hartley and Luly Massaro.

Chairman Germani called the open meeting to order at 9:30 A.M. in the first-floor hearing room of the Public Utilities Commission. A quorum was present.

Minutes of Open Meeting held August 1, 2003: Chairman Germani asked for a motion to approve the draft minutes of open meeting held on August 1, 2003. Commissioner Racine moved to approve the draft minutes. The motion was seconded by Commissioner Holbrook and unanimously passed. **Vote 3-0.**

Minutes of Open Meeting held August 5, 2003: Chairman Germani moved to approve the draft minutes of open meeting held on August 5, 2003. The motion was seconded by Commissioner Racine and unanimously passed. **Vote 2-0.**

Competitive Telecommunications Service Providers:

The following company registered to operate in RI. The Division has reviewed the registration and recommends approval of:

2262(Q18) - Worldnet Communications, Inc. d/b/a WCI of New York

Chairman Germani asked for a motion and Commissioner Racine moved to approve the registration. The motion was seconded by Commissioner Holbrook and unanimously passed. **Vote 3-0.**

The following companies submitted tariff revisions. The Division has reviewed the tariff filings and does not recommend suspension of:

2426 - Teleport Communications Group Communications

2449 - Brooks Fiber Communications

2472 - Sprint Communications

2535 - Cox Rhode Island Telcom

3036 - CTC Communications Corp.

3098 - A.R.C. Networks, Inc. d/b/a InfoHighway

3196 - Z-Tel Communications, Inc.

2618 - AT&T Communications of New England, Inc.

2621 - MCI Telecommunications

2702 - Verizon Select Services, Inc.

3028 - Qwest Communications Corp.

3526 - National Grid Communications, Inc.

2262(P7) - MCI Telecommunications

2262(G16) - NYNEX Long Distance Co.
2262(F16) - Bell Atlantic Communications, Inc.
2262(O) - VarTec Telecom
2262(A6) - Southwestern Bell Communications
2262(L10) - Paetec Communications, Inc.

After review, the Commission followed the Division's recommendation that the tariff filings be allowed to go into effect without suspension.

The following companies ceased operations and requested that their authority to operate be rescinded:

2262(X12) - Metro Teleconnect Companies, Inc.
2262(X2) - Broadwing Communications Services, Inc.
2262(Q16) - TelecomEZ Corp

After review, Chairman Germani asked for a motion and Commissioner Racine moved to rescind the authority to operate of the companies. The motion was seconded by Commissioner Holbrook and unanimously passed. **Vote 3-0.**

2262(U) - Touch 1 Communications, Inc. – In October 2002, Touch 1 Long Distance Co. notified that it has ceased operations and requested that its authority to operate be rescinded. Touch One Long Distance was mistaken for Touch 1 Communications and the authority to operate of Touch 1 Communications was rescinded in November 2002. Touch 1 Communications recently learned that its authority was rescinded and filed a letter requesting that it be reinstated. After review, Chairman Germani asked for a motion and Commissioner Racine moved to reinstate the authority to operate of Touch 1 Communications. The motion was seconded by Commissioner Holbrook and unanimously passed. **Vote 3-0.** (Touch One Long Distance authority to operate was rescinded for non-payment of annual dues on December 22, 1999. Order No. 16129).

Verizon RI Interconnection Agreements (ICAs):

The following ICA was submitted for approval. The Division has reviewed the ICA and recommends approval of:

3538 - ICA between Verizon RI and NEON Connect, Inc.

After review, Chairman Germani asked for a motion and Commissioner Racine moved to approve the ICA. The motion was seconded by Commissioner Holbrook and unanimously passed. **Vote 3-0.**

3540 – Verizon Rhode Island: Verizon submitted a tariff filing proposing to clarify tariff language for Enhanced ISDN PRI Hub Service for effect August 29, 2003. After review, the Commission followed the Division's recommendation that the tariff filing be allowed to go into effect without suspension.

3256 – Verizon Rhode Island: This docket relates to the Commission's continued review of Verizon's services provided to CLECs and penalties under the Performance

Assurance Plan (PAP). The Commission recently adopted the Verizon's February 12, 2003 revised PAP on an interim basis subject to final order. On August 18, Verizon filed a letter suggesting two additional changes to the February 12 revised PAP. Specifically, Verizon requested that the Commission delete metric MR-2-02 (trouble report rates for two-wire digital and DSL lines) from the PAP, and shifting metric PR-6-01 to Critical Measure 3. After review, Chairman Germani asked for a motion and Commissioner Racine moved to adopt the changes suggested by Verizon. The motion was seconded by Commissioner Holbrook and unanimously passed. **Vote 3-0.**

3541 – Habitat for Humanity of West Bay & Northern RI: The organization, a non-profit housing development corporation, filed a petition pursuant to R.I.G.L. 39-2-15.1 seeking that the Commission required the utilities to temporarily remove lines, conduits, etc in order to relocate a dwelling to be used as affordable housing. Commissioner Racine noted that the petitioner met the requirements of RIGL 39-2-15.1 and moved to grant the petition. The motion was seconded by Commissioner Holbrook and unanimously passed. **Vote 3-0.**

3483 – Narragansett Bay Commission: On August 20, 2003, NBC's submitted its amended compliance tariff filing designed to generate total revenues requirements in the amount of \$50,758,978. The Division filed a memo indicating that it has reviewed the rates and calculations in support of the rates and recommended approval of NBC's amended compliance filing. After review, Commissioner Racine moved to approve NBC's amended compliance filing. The motion was seconded by Commissioner Holbrook and unanimously passed. **Vote 3-0.**

3162 – Narragansett Bay Commission: Discussion related to the Commission's process to retain an independent overseer for NBC's Combined Sewer Overflow Abatement project.

Chairman Germani reviewed the travel of the case that led to the July 15, 2003 hearing. He stated that he did not dissent with the Commission's right to retain an independent overseer, but instead, he dissented to the January 19, 2001 open meeting majority decision to retain an independent overseer. He opined that at this juncture, there is no reason to engage an independent overseer and recommended that the Commission not retain an independent overseer. The Commission reserves its right to appoint an independent overseer.

Commissioner Holbrook agreed with the majority that there is concern for monitoring NBC's CSO project since it is the largest public works project in the state's history. He questioned the need for another layer of bureaucracy when the record indicates that NBC possesses excellent professional and fiscal integrity and responsibility. He is satisfied that NBC should proceed with the project without the need of an independent overseer. He recommended and moved that the Commission not retain the services of an independent overseer subject to review and reconsideration after a 90-day period. During

the 90-day period, a significant effort should be made by the parties to have a series of meetings to review the reporting and status of the project. The reporting requirements should focus on: 1) periodic changes in the budget estimates and actual vs. budgeted expenditure variances; 2) the timeline and schedule of the contracts and projects; and 3) any significant variances in project specifications and costs. Commissioner Holbrook stated that he would be receptive to requesting the services of specific consultants or an independent overseer in the future to monitor or clarify Commissioner concerns should they arise.

Commissioner Racine expressed her continued support for an independent overseer due to the magnitude of NBC's CSO project. She noted the \$150,000 to fund the independent overseer would represent only \$1.87 per year to the ratepayer. Commissioner Racine also stated for the record, that consideration must be given to administrative finality. This case had been appealed to the Supreme Court and the Supreme Court upheld the majority decision of the Commission. If administrative finality is conceded on this issue, than change must be present in order to be place back before the body for consideration. Commissioner Racine questioned why we were revisiting the expenditures of \$15,000 in order to proceed with the RFP and meet with consultants in order to determine that was ultimately the road to travel. That relying on reports from NBC and the Division is not the independent review that is necessary to regulate NBC and the enormity of the 1/4 billion project. Commissioner Racine also quoted from a July 25, 2003 letter attributed to Sheldon Whitehouse, Attorney General at the time of the NBC decision, commenting upon the importance of oversight and the continuation of the NBC majority regarding independent overseer; Mr.Whitehouse referencing the NBC CSO project that "an ounce of prevention is worth a pound of cure". He further stated when expenditures of a public utility rise to the level of imprudence, imprudent charges could be disallowed from utility rates. However, when a public agency is allowed, after the fact, pursuit of imprudent expenditures is a folly because the costs end up being borne by the public. Whitehouse further commented that he was astounded at the reconsideration of the question of independent overseer by the Commission.

Vote 2-1. The Commission agreed that the \$150,000 being collected in rates annually and set aside for Commission use to fund the independent overseer would remain restricted.

Narragansett Bay Commission: NBC is in the process of preparing an abbreviated rate filing and requested to use the rate year (FYE June 30, 2004) as the test year for the abbreviated rate filing. The Division submitted a response stating that it does not oppose NBC's request subject to conditions set forth in its response. NBC replied agreeing to the conditions set forth by the Division. After review, Commissioner Racine moved to approve NBC's request to use fiscal year ending June 30, 2004 as its test year for the upcoming abbreviated rate filing. The motion was seconded by Commissioner Holbrook and unanimously passed. **Vote 3-0.**

There being not further business to discuss, the open meeting adjourned at 10:30A.M.