

**STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

**APPLICATION OF SERVICE AREA 5)
CABLE, LLC TO PARTICIPATE IN)
FINANCING ARRANGEMENTS)** **Docket No. D-22-07**

REPORT AND ORDER

Application Filed: April 18, 2022

On April 18, 2022, Service Area 5 Cable, LLC (“Area 5 Cable” or “Applicant”) filed with the Division of Public Utilities and Carriers (“Division”) an Application to Participate in Financing Arrangements. In its application, Area 5 Cable requests the Division to approve Applicant’s participation in certain Financing Arrangements and to waive “any hearing requirements” so that the Financing Arrangements can be completed “as promptly as possible.”¹

Accompanying the application, Applicant also filed a Request for Confidential Treatment. In the request, Applicant averred that “Exhibit 1” entitled “Description and Terms of the Proposed Financing Arrangements” contains commercial and financial information, which is proprietary and

¹ *Application at 3.*

confidential, and therefore exempt from public disclosure under the Rhode Island Access to Public Records Act, R.I. Gen. Laws § 38-2-1, *et seq.*

On April 20, 2022, the Division's Advocacy Section forwarded the Applicant a First Set of Data Requests seeking further information regarding the application. On April 28, 2022, the Applicant responded to the data requests. Accompanying the response, Applicant filed a second Request for Confidential Treatment. In this request, Applicant requested the Division to find that Applicant's Responses to Data Requests Regarding Financing Related to Service Area 5 Cable, LLC ("Responses") and Exhibit 2 entitled "*Pro Forma* Balance Sheet" contain commercial and financial information, which is proprietary and confidential, and therefore exempt from public disclosure under the Rhode Island Access to Public Records Act, R.I. Gen. Laws § 38-2-1, *et seq.*

On May 3, 2022, Applicant orally amended its two requests for confidentiality. As amended, Applicant's new request seeks confidentiality as to Exhibit 1, Exhibit 2, Div 1-1 and Div 1-3.² Applicant withdrew its request for confidentiality as to its responses to Data Request 1-2, Data Request 1-4, Data Request 1-5 and Data Request 1-6.

² Hereafter, in referring to the Advocacy Section's data requests, the term "Div 1-1, Div 1-2," *etc.* will be denoted as "Data Request 1-1, Data Request 1-2," *etc.*

Standard of Review

Section 1.4.1(A)³ of the Division's *Rules Governing Community Antenna Television Systems (815-RICR-10-05-1)* ("Rules") provides, in pertinent part, as follows:

A Certificate or substantial control thereof may not be sold, assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to, or vest in any person, firm, corporation or other organization, group or body, either through an act of the awardee or operator, by merger, consolidation, or by operation of law, whether by foreclosure, judicial sale, receivership, bankruptcy, reorganization, condemnation or other action or proceeding, without the approval of the Administrator in a written order, following a duly noticed public hearing.⁴

Section 1.4.1(E) of the *Rules* further provides that "[n]othing in this section contained shall be deemed to prohibit a mortgage, pledge or sale and lease back of a system, or any part thereof, for financing purposes with the consent of the Administrator."⁵ & ⁶

As conveyed to the Division, upon approval of the application, Applicant's indirect parent, WH i3 B Bidco, LLC ("Parent"), is entitled to grant a security interest in its assets and certain of its current and future subsidiaries, including

³ Sections 1.4.1 (A) & (E) are the same rules as Section 4.1(A) & (E) cited in Area 5 Cable's application. Section 4.1 was given a new section number when the Rules were re-promulgated in May of 2018.

⁴ *Rules, Section 1.4.1(A).*

⁵ *Rules, Section 1.4.1(E).*

⁶ The term, "Division," as used herein, is used interchangeably with the term "Administrator."

Area 5 Cable.⁷ For secured facilities, moreover, the equity of Parent and that of its current or future subsidiaries, including Area 5 Cable, may be pledged as additional security.⁸ Furthermore, under the proposed Financing Arrangements, Parent and certain of its subsidiaries, including Applicant, will become a guarantor of the Financing Arrangements up to the specified Aggregate Amount.⁹ Since the Financing Arrangements may only result in a grant of a security interest in and/or a pledge of Applicant's assets and/or equity, or participation by Applicant as a guarantor of the Financing Arrangements, the hearing process outlined in Section 1.4.1(A) of the *Rules* is not required.¹⁰ The *Rules*' only requirement is that the Division examine the Record and provide its "consent" to the Application.¹¹

While the *Rules* do not specify the grounds on which the Division may give or withhold its consent, R.I. Gen. Laws § 39-19-2 provides that "every company owning or operating a CATV plant in this state is hereby declared to be a communications carrier and, as such, subject to the jurisdiction of and to such reasonable rules and regulations as the division may prescribe..."¹² R.I. Gen. Laws § 39-19-6 further provides that the "Division shall supervise and regulate

⁷ *Exhibit 1.*

⁸ *Id.*

⁹ *Application, Para. 3.*

¹⁰ In other words, the Financing Arrangements do not result in the sale, assignment or transfer, lease, sublease or mortgage of the Applicant's Compliance Order Certificate, Construction Certificate or Certificate of Authority to Operate under Section 1.4.1(A) of the *Rules*.

¹¹ *Rules, Section 1.4.1(E).*

¹² *R.I. Gen. Laws § 39-19-2.*

every CATV company operating within this state so far as may be necessary to prevent the operation from having detrimental consequences to the public interest...”¹³ As a general principle, then, the Division will give its consent under Section 1.4.1(E) if the request of an applicant is reasonable and will not any have detrimental consequences to the public interest.¹⁴

Findings

In the pending matter, a review of the Record reflects that Area 5 Cable’s participation in the Financing Arrangements is reasonable and will not adversely affect the public interest. The Division finds that the Financing Arrangements are a reasonable means to refinance and expand the existing debt of Parent to fund certain growth initiatives of that company and its subsidiaries, including Area 5 Cable.¹⁵ As the Applicant explains, telecommunications is a highly competitive and capital intensive industry that requires continual investments in technological advancements to ensure high-quality internet, video and voice offerings.¹⁶ Through the envisioned growth initiatives, Applicant will be able to invest in and upgrade its facilities and other operating equipment to better serve its Rhode Island customers.¹⁷ These initiatives will enable Area 5 Cable to

¹³ *R.I. Gen. Laws § 39-19-6.*

¹⁴ Since Section 1.4.1(E) does not require that the Division conduct a hearing for filings such as the application, Applicant’s request for a “waiver of any hearing requirements” is deemed moot.

¹⁵ *Applicant Response to Data Request 1-3.*

¹⁶ *Applicant Response to Data Request 1-4.*

¹⁷ *Applicant Response to Data Request 1-2.*

expand its broadband network into new service areas, thus providing Rhode Island consumers with a greater choice of service offerings and with the best technology in the marketplace for their broadband dollars.¹⁸

While the Financing Arrangements may create a certain amount of incremental risk for Area 5 Cable in that the company's assets and/or equity will serve as collateral for the debt of Parent, the Division finds this risk does not impact the *status quo* of Area 5 Cable's operations or financial status. As to the former, Area 5 Cable's participation in the Financing Arrangements "will not result in any discontinuance, reduction, loss or impairment of service for customers, nor will there be any change in providers."¹⁹ As to the latter, the Financing Arrangements will occur at the holding company level.²⁰ Excess cash flow from Area 5 Cable and other Parent subsidiaries already may be used to assist servicing Parent's debt.²¹ Area 5 Cable's participation in the Financing Arrangements does not alter Parent's ability to access Area 5 Cable's excess cash flow.²²

Conversely, Area 5 Cable currently possesses access to the consolidated entity's excess cash flow and balance sheet strength to invest in its network,

¹⁸ *Id.*

¹⁹ *Applicant Response to Data Request 1-5.*

²⁰ *Applicant Response to Data Request 1-6.*

²¹ *Id.*

²² Even after the first draw on the Financing Arrangements, Applicant avers that Parent "is not considered highly leveraged." *Id.*

service its debt (if necessary), *etc.*²³ Participation in the Financing Arrangements does not alter this relationship either.²⁴ Should Area 5 Cable require access to additional capital, the company will have access to the consolidated entity's resources for these purposes.²⁵

Lastly, the Division observes it does not set rates for Area 5 Cable. Thus, Area 5 Cable's participation in the Financing Arrangements does not implicate ratepayer funds. Generally, in such circumstances, the Division affords broad latitude to management to determine the financing arrangements that are in the best interest of their company.²⁶

After a careful review of the record in this docket, the Division determines that the Applicant has shown that its participation in the Financing Arrangements are reasonable and will not any have detrimental consequences to the public interest.

Accordingly, it is

(24400) ORDERED:

1. That the application requesting the consent of the Division to participate in the Financing Arrangements is granted. The Applicant may participate

²³ *Applicant Response to Data Request 1-6.*

²⁴ *Id.*


²⁵ *Id.*

²⁶ *See Interstate Navigation Company General Rate Filing, Docket 4373, Order No. 21069 (2013) at 8 (where Commission put policies in place to allow Interstate the ability to exercise its management discretion and respond more efficiently to market forces impacting the more discretionary portions of its business).*

in the Financing Arrangements up to the Aggregate Amount as provided for in Exhibit 1; and

2. Applicant's requests for confidentiality, as amended, are granted. Exhibit 1, Exhibit 2, and Applicant's Responses to Data Requests 1-1 and 1-3 shall be deemed confidential and propriety, commercial and financial information that are exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-1, *et seq.* As such, they shall be maintained in a segregated, secure and nonpublic file under seal.

Dated And Effective At Warwick, Rhode Island, May 11, 2022.



Linda George, Administrator



**STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES & CARRIERS**

89 Jefferson Boulevard
Warwick R.I. 02888
(401) 941-4500

FAX (401) 941-9461
TDD (401) 941-4500

**NOTICE OF AVAILABILITY OF JUDICIAL REVIEW
(PROVIDED PURSUANT TO R.I.G.L. § 42-35-12)**

Please be advised that if you are aggrieved by this final decision (report and order) of the Rhode Island Division of Public Utilities and Carriers (“Division”) you may seek judicial review of the Division’s final decision by filing an appeal with the Rhode Island Superior Court. You have thirty (30) days from the mailing date (or hand delivery date) of the Division’s final decision to file your appeal. The procedures for filing the appeal are set forth in Rhode Island General Laws, Section 42-35-15.

Proceedings for review may be instituted by filing a complaint in the Superior Court of Providence or Kent Counties. Copies of the complaint must be served upon the Division and all other parties of record in your case. You must serve copies of the complaint within ten (10) days after your complaint is filed with the Superior Court.

Please be advised that the filing of a complaint (appeal) with the Superior Court does not itself stay enforcement of the Division’s final decision. You may, however, seek a stay from the Division and/or from the Court.

The judicial review shall be conducted by the Superior Court without a jury and shall be confined to the record. The Court, upon request, shall hear oral argument and receive written briefs.