

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

IN RE: Application for a Compliance Order :
 Certificate by Verizon New England, Inc. : Docket No. 2006-C-4

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REPORT AND ORDER

1. INTRODUCTION

On February 7, 2006, Verizon New England, Inc. (“Verizon”) filed an application with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking a Compliance Order Certificate for Rhode Island CATV¹ Service Area 6. Through this application filing, Verizon seeks the first of three licensing certificates, which if the Division granted all, would enable Verizon to provide cable television services in the communities of Coventry, East Greenwich, Exeter, North Kingstown, Warwick, West Warwick and West Greenwich. The application was filed in conformance with the requirements of Section 3.3 of the Division’s “Rules Governing Community Antenna Television Systems” (“Cable Rules”).²

As part of its filing Verizon also petitioned the Division for partial waivers from the requirements of Section 7.3 (A) and Sections 14.2 –14.7 of the Cable Rules. Verizon indicated that it was “seeking a waiver of the portion of Section 7.3 that requires cable operators to construct a physically separate I-Net.” Regarding its Section 14 waiver petition, Verizon proposed to share the cost of operating the existing PEG Access Studio in Service Area 6 with the incumbent

¹ “CATV” stands for Community Antenna Television Systems

² Verizon Exhibit 1.

cable operator in lieu of building a duplicative PEG access studio. The petitions for partial waivers were filed in conformance with the requirements of Section 1.12 of the Division's Cable Rules.³

In furtherance of starting the process of adjudicating Verizon's application and related waiver petitions, the Division established a filing deadline of April 7, 2006 for all motions to intervene in the docket. Notification of Verizon's application filing and the prescribed deadline for intervention was published in the Providence Journal on March 28, 2006. The Division indicated in the notice that all motions would be considered in accordance with the requirements contained in Rule 17 of the Division's "*Rules of Practice and Procedure*." The notice also directed that responsive pleadings be submitted by April 21, 2006. The notice additionally indicated that the Division would conduct a motion hearing to hear all intervention-related issues and arguments at 10:00AM on Thursday, April 27, 2006 in the Division's Hearing Room, located at 89 Jefferson Boulevard in Warwick, Rhode Island.

In response to the published notice of deadline to intervene, the Division received timely motions to intervene from CoxCom, Inc., d/b/a Cox Communications ("Cox") 9 J.P. Murphy Highway, West Warwick, Rhode Island; the New England Cable and Telecommunications Association, Inc. ("NECTA") 100 Grandview Road, Suite 310, Braintree, Massachusetts; Full Channel TV, Inc. ("Full Channel") 57 Everett Street, Warren, Rhode Island; and the Town of Foster ("Foster").

³ *Id.*, See "Exhibit 4" and "Exhibit 5" respectively.

After receiving copies of these formal intervention requests, Verizon filed a timely objection to only Foster's motion to intervene. Verizon maintained that Foster had failed to satisfy the intervention standards set forth in Rule 17, supra. In response to Verizon's objection to Foster's participation in this docket, the Division conducted a duly noticed public hearing on April 27, 2006, for the limited purpose of hearing oral arguments on the disputed Foster intervention issue. After hearing arguments from the parties on the merits, the Division found for Verizon and agreed that Foster had failed to satisfy the required quantum of proof required under Rule 17 in order to be granted the right to intervene in this docket. Foster's motion to intervene was consequently denied.⁴

The Division subsequently conducted an "electronic" pre-hearing conference (via e-mail) beginning on May 8, 2006. A procedural and hearing schedule was later established on May 12, 2006. The Division's Advocacy Section ("Advocacy Section"), an indispensable party, also entered an appearance in the instant docket at that time.

NECTA later withdrew from the case during the discovery phase of the procedural schedule.

2. SUMMARY OF VERIZON'S APPLICATION

In its introductory comments, Verizon stated that its parent company (Verizon Communications) is a Fortune 15 company with over 71 billion in annual revenues and over 210,000 employees worldwide. Verizon added that it

⁴ See Order No. 18594, issued on May 5, 2006.

has “over 100 years of experience providing high quality services and unparalleled customer care to residents of Rhode Island.” Verizon stated that it employs 1,119 people in Rhode Island, with an annual payroll of more than \$65 million. Verizon further stated that it has recently located its new regional “FiOS” Solution Center in Providence, to provide customer service for video services for customers throughout the Northeast. Verizon added that “its new FiOS Solution Center has already brought more than 100 new jobs to Rhode Island and will generate even more jobs as Verizon expands its video services.”⁵

Verizon’s application includes twelve sections of information, which directly parallel the informational filing requirements set forth in Section 3.3(c) of the Division’s Rules. A summary of this information, along with a corresponding reference to the specific Division Rule is provided below:

A. Section 3.3(c)(1) – Channel Capacity

According to Verizon’s application, the channel capacity of its “FTTP” (fiber-to-the-premises) network in Rhode Island is 860 MHz. Verizon expects to offer more than 330 channels upon launch of its proposed video services in Rhode Island. A sample list of channels and content packages from Verizon’s service offering in Woburn, Massachusetts was proffered as an exhibit.⁶ Verizon indicated that it expects to offer an all-digital expanded basic package as well as several premium service packages. The application also reflects that Verizon will also offer an analog service tier that will provide broadcast, PEG

⁵ Verizon Exhibit 1, p. 1.

⁶ Id., p. 2 and “Exhibit 1”.

(Public, Educational and Government) access, weather, and select commercial programming channels.⁷

B. Section 3.3(c)(2) - Programming Services

According to its application, Verizon plans to offer Rhode Island residents a channel lineup and set of content packages similar to those currently offered by Verizon in Woburn, Massachusetts. Verizon stated that its actual Rhode Island channel lineup and content packages are currently under development, but it offered an exhibit, based on the Woburn model, to illustrate the likely channel lineup and content packages it will offer in Rhode Island.⁸ Verizon also stated that it intends to offer a fully competitive set of channel options to its customers, “including access to a basic service group of channels and an expanded basic service package...multiple premium channel groupings, plus international channels, movie and music channels and high definition television, in addition to an extensive offering of video and demand titles and an array of multicultural channels...” Verizon also noted that it plans to carry all local broadcast stations and PEG access channels on both its analog and digital service tiers.⁹

C. Section 3.3(c)(3) – Description of Proposed System and Operations

Verizon provided an exhibit that generally describes its proposed FTTP System Architecture.¹⁰ This exhibit provides details regarding the FTTP System’s “end-to-end” and “full build and overlay” architectures, and also

⁷ Id.

⁸ Id. and “Exhibit 2”.

⁹ Id., p. 2.

¹⁰ Id. and “Exhibit 3”.

Verizon’s planned construction of a “super headend” a “video hub office” and a “video serving office & passive optical network.”¹¹ In further conformance with Section 3.3(c)(3), Verizon also provided information on the following topics:

1. General Area for Location of Headend and Antennas - Section 3.3(c)(3)(i).

In describing the location of its headends and antennas, Verizon explained that it would rely on two “Super Head Ends” (“SHE”) that will serve as national points for content aggregation. Verizon stated that the SHEs are completely redundant to ensure that there are no interruptions in the national broadcast feeds. Verizon explained that national content travels from the SHE to a regional “Video Hub Office” (VHO) where it is off loaded and integrated with local and regional content. Content is then transported to local “Video Serving Offices” (VSO) for transport to the end users.¹²

2. Extent and Type of Information Services to be Offered on Both the Residential and Institutional Networks - Section 3.3(c)(3)(ii).

Verizon states that it also plans to offer “advanced high speed data capabilities over its Title II FTTP [FiOS] network” to its subscribers in Service Area 6. Verizon explains that the FiOS data product provides consumers with upstream and downstream data capacity that far exceeds anything currently offered in Rhode Island. Verizon also notes that because Title II of the Communications Act governs the FiOS data product, providing the service does not require a cable license. Consequently, Verizon relates that it has already

¹¹ Id., “Exhibit 3”.

¹² Id., p. 3.

launched FiOS data service for residential customers served out of its wire centers in North Kingstown and Warwick.¹³

With respect to an Institutional Network (I-Net), Verizon reiterated that it is seeking a waiver of the portion of Rule 7.3 that requires cable operators to construct a physically separate I-Net, supra.¹⁴

3. Extent and Type of Automated Services to be Provided – Section 3(c)(3)(iii).

Verizon indicated that it currently has no plans to provide automated services related to PEG access facilities or programming.

4. Location of Origination Points and Origination Facilities – Section 3(c)(3)(iv).

Verizon stated that it has no plans to operate such facilities.

5. The Number of Channels, Facilities, Equipment, and Staff to be Made Available for Access and Institutional Uses - Section 3.3(c)(3)(v).

Verizon stated that it plans to carry all Public, Education, and Government (PEG) access channel capacity currently offered by the incumbent cable provider in Service Area 6. However, Verizon stated that it opposes the construction of a duplicate PEG Access studio in the service area, and instead proposed “to share the cost of operating the existing studio with the incumbent cable operator unless and until an alternative arrangement is implemented.” Verizon thereupon referred to its related waiver petition on the subject, supra.¹⁵

¹³ Id.

¹⁴ Id., “Exhibit 4”.

¹⁵ Id., pp. 3-4, “Exhibit 5”.

6. Provisions for Expansion of Channel Capacity and Other Upgrading as Technological Improvements Become Available - Section 3.3(c)(3)(vi).

Verizon explained that its FTTP network is a “state of the art” all fiber upgrade to its existing telecommunications network. Verizon stated that this network, constructed under authority granted by Title II of the Communications Act, will be used to provide high quality voice, and advanced data services, and is also capable of providing video services.¹⁶

D. Section 3.3(c)(4) – Timetable for Completion of Construction

According to its application, Verizon “has all but completed the Title II FTTP upgrade in its wire centers in North Kingstown and Warwick and has begun the upgrade of the East Greenwich wire center.” Verizon expects to complete the Title II FTTP upgrade of the East Greenwich, Coventry, West Warwick, and the Providence–Broad Street (Providence) wire centers by the end of 2006. Verizon noted that its Hope Valley wire center will be the final upgrade and that it will be completed in accordance with the timetable provided in Section 8.2(h) of the Cable Rules. Verizon stated that it will make cable television service available to customers served by any given central office in Service Area 6 when Verizon completes FTTP upgrades of that central office area and makes the central office video capable.¹⁷

E. Section 3.3(c)(5) – Tariff

Verizon stated that its entry into the cable television market of Service Area 6 “will be subject to effective competition as defined in 47 U.S.C. §543

¹⁶ Id., p. 4.

¹⁷ Id.

(l)(1),” and consequently its rates will not be subject to federal or state regulation. Accordingly, Verizon intends to file a tariff for informational purposes only.¹⁸ Verizon indicated that the rates it will charge for its video services in Rhode Island would be similar to the rates it currently charges in Woburn, Massachusetts.¹⁹

F. Section 3.3(c)(6) – Terms and Conditions Under Which Service is to be Provided to Educational, Charitable, and Governmental Entities

Verizon stated that it will provide standard video installation and Basic Service at no charge to fire stations, police stations, municipal buildings, hospitals, public and private universities, public libraries, public and private schools, and religious institutions throughout Service Area 6 as required under Section 7.3 of the Cable Rules.²⁰

G. Section 3.3(c)(7) – Qualifications and Experience

Verizon identified the following individuals as its cable television leadership personnel, and provided a brief description of their educational and work experience backgrounds:

<u>Name</u>	<u>Title</u>
Donna Cupelo	Region President (Massachusetts and Rhode Island)
Terry K. Denson	Vice President of Programming and Marketing – FIOS TV
Shawn M. Strickland	Director of FIOS TV Product Management
M. James Ho	Director of Video Services Architecture

¹⁸ Id.

¹⁹ Id.

²⁰ Id., p. 5.

H. Section 3.3(c)(8) – Current Cable Television and Other Media Holdings

Verizon stated that it currently holds two franchises in Massachusetts, in the City of Woburn and the Town of Reading, and has applications for cable television franchises pending in several other cities and towns in Massachusetts. Verizon indicated that it is also in active negotiations with several municipalities in New Hampshire.²¹

Verizon also provided a list of cable television franchises held by affiliated Verizon companies in California, Texas, Florida, Virginia and New York.²²

I. Section 3.3(c)(9) – Officers, Directors and Ownership Interests

Verizon identified itself as a corporation, incorporated in New York on October 19, 1883. Verizon stated that it is 100% owned by NYNEX Corporation, and that NYNEX Corporation is 100% owned by Verizon Communications, Inc., which is a Dow 30 Industrials company that is publicly traded on the New York Stock Exchange and other stock exchanges.²³

Verizon's application also provided the names of five directors and nineteen current officers.²⁴

J. Section 3.3(c)(10) – Financial Plan

Verizon stated that it intends to finance the provision of cable television service within Rhode Island from a variety of internally and externally generated funds. The Company noted that its parent company had 2004 revenues in excess of \$71 billion. To further demonstrate the financial

²¹ Id., p. 6.

²² Id., pp. 7-9.

²³ Id., p. 10.

²⁴ Id.

strength and stability of the company, Verizon proffered a copy of Verizon Communications, Inc.'s "2004 Annual Report to Shareholders."²⁵ The Annual Report includes the Company's 2004 Income Statement, Balance Sheet, and Cash Flow Report, along with the Auditor's Letter and the Statement of Management. Verizon also provided a website link to the Company's 2004 Form 10-K Report to the Securities and Exchange Commission.²⁶

K. Section 3.3 (c)(11) – Pro Forma Income Statements and Balance Sheets

Verizon initially omitted a response to this filing requirement in its application filing, but later complied during the discovery phase of the case. Verizon's response has been shared with all the parties, pursuant to a confidentiality agreement, and is currently under protective seal.

L. Section 3.3(c)(12) – Statement that Public Interest is Served by the Application

Verizon made the following assertion regarding "public interest" and its application filing:

"Granting the application would allow Verizon to bring competition and all its attendant benefits to the cable television market in Service Area Six, which is not currently subject to effective competition. Service Area Six is currently served by a single cable operator (Cox Communications, Inc.), and recent annual studies have shown that areas with more than one cable operator have cable rates that are on average 15% lower than areas with a single provider. We expect that, as it has in other industries, competition will bring greater innovation in products, services and options to cable subscribers in the Area. The issuance of a competitive cable certificate will provide choice to Rhode Island

²⁵ Id., p. 11 and "Exhibit 6".

²⁶ Id.

subscribers where none currently exists and therefore is in the public interest.”

3. REGULATORY RESPONSE TO VERIZON’S APPLICATION FILING

In Rhode Island, prospective cable television companies must satisfy a three-phase regulatory process before CATV services may actually be provided to subscribers. Each time an applicant successfully completes one of the three regulatory phases, it receives a particular type of “certificate”, issued by the Division. The three certificate types are identified and defined below:

- *“Compliance Order Certificate”: a Certificate issued by the Administrator designating a particular applicant as grantee and holder of franchise and ownership rights to a CATV System within a specified Service Area. Such Certificate does not constitute authority to construct or operate a CATV System.*
- *“Construction Certificate”: a Certificate issued by the Administrator to a holder of a valid Compliance Order Certificate, authorizing construction of a CATV System which will meet specific design and operational criteria set forth in these rules and orders of the Administrator. Such Certificate shall specify the information required by these rules and the laws of this State. Issuance of a Construction Certificate does not confer authority to operate a CATV System.*
- *“Certificate of Authority to Operate”: a Certificate issued by the Administrator to a holder of a valid Construction Certificate and a valid Compliance Order Certificate, authorizing the operation of a CATV System in compliance with applicable laws, regulations, and orders of the Administrator. Such Certificate shall authorize the holder to begin provision of actual service to the public.²⁷*

The instant application seeks issuance of a Compliance Order Certificate, in order to complete the first phase of the regulatory process.

²⁷ See Section 1.2 (h),(l) and (m) of the Cable Rules.

A. Compliance Order Certificate

Procedurally, applicants seeking a Compliance Order Certificate must file an application that, inter alia, provides complete responses to twelve informational questions contained in Section 3.3(c)(1-12) of the Division's Cable Rules, supra. Applicants are also encouraged to submit supporting documents with their applications.

Based on the information provided in the application, and, if after public hearing and investigation, the Division finds that the applicant is fit, willing, technically qualified, and financially able to perform the service for which it has applied, and is willing and able to comply with the Cable Rules and the laws of the State of Rhode Island, then the Division is required to issue a Compliance Order Certificate to the applicant.²⁸

Once a Compliance Order Certificate has been issued, the applicant must notify the Division within thirty (30) days to indicate whether it will accept or decline the certificate.²⁹ Acceptance of a Compliance Order Certificate thereafter authorizes and obligates the applicant to meet all requirements set forth in the Cable Rules regarding the second phase of the process, the prerequisite requirements for a Construction Certificate.³⁰

B. Construction Certificate

Procedurally, applicants who possess a Compliance Order Certificate, who are seeking a Construction Certificate, must submit the following

²⁸ See Section 3.3(d) of the Cable Rules.

²⁹ See Section 3.3(e) of the Cable Rules.

³⁰ See Section 3.3(g) of the Cable Rules.

information and documentation to the Division to satisfy the requirements of the second phase of the regulatory process:

- (1) *a map and metes and bounds description of the certified Service Area, showing the planned phases of construction for the entire CATV System, and complete strand mapping showing the routes of all aerial and underground trunk and feeder cables in the distribution system of the initial phase of construction. Upon the request of the Division, the applicant shall submit complete strand maps detailing all aerial and underground trunk and feeder cables of all subsequent construction phases. Such map and description shall also indicate those parts of the Service Area that the applicant anticipates would receive service only through application of the proposed line extension policy;*
- (2) *a complete technical and narrative description of the system design, including system and equipment specifications;*
- (3) *proof of conformance with the technical, engineering, and safety standards and codes set forth in these rules;*
- (4) *location of towers and headend facilities;*
- (5) *proof that the applicant has obtained or applied for all known licenses, and other forms of permission required by State and local government bodies prior to commencement of construction;*
- (6) *copies of applications and/or consummated pole attachment, conduit occupancy, and right-of-way agreements;*
- (7) *copies of all arrangements with common carrier communications companies or services;*
- (8) *proof of a satisfactory method of maintenance and continuing records of operations to show adequacy of service and performance and continuing financial responsibility;*
- (9) *satisfactory evidence of liability insurance coverage in amounts specified by Chapter 12 of these rules; and*

- (10) *any corrections, updates or amplifications, to items filed at the time of application for a Compliance Order, including especially system design parameters required to be filed by Section 3.3(c)(3) of these rules.*³¹

If upon receipt and after consideration the Division finds that the applicant for a Construction Certificate has met all of the conditions, terms, and requirements for the Compliance Order Certificate, and the Cable Rules, then the Division must grant a Construction Certificate to the applicant.³² An applicant in possession of a Construction Certificate is then authorized to commence actual construction of a CATV system in Rhode Island.³³

C. Certificate of Authority to Operate

The holder of a Construction Certificate must give the Division sixty (60) days prior written notice before the anticipated date when the CATV system (or initial segment thereof) will be ready for commencement of delivery of services to the public.³⁴ Upon receipt of such notice, the Division is required to conduct a duly noticed public hearing.³⁵

Applicants for a Certificate of Authority to Operate are required to file a complete copy of the proposed customer contracts; rules and regulations; and any and all changes, corrections, additions and clarifications to documents previously filed with the Division.³⁶

³¹ See Section 3.4(b)(1-10) of the Cable Rules.

³² See Section 3.4(c) of the Cable Rules.

³³ See Section 3.4(d) of the Cable Rules.

³⁴ See Section 3.5 (b) of the Cable Rules.

³⁵ See Sections 3.5(a) and (b) of the Cable Rules.

³⁶ See Section 3.5(c) of the Cable Rules.

After the Division has had an opportunity to conduct a hearing, and upon the Division's determination that the applicant has complied with applicable statutes, the Cable Rules, and any additional terms, conditions, and requirements that may be imposed upon the applicant by the Division, the Division shall issue a Certificate of Authority to Operate to the applicant.³⁷

D. Timetable

Section 8 of the Cable Rules establishes a mandatory timetable for the completion of the above-described three-phase regulatory process. The timetable is reproduced below:

- (a) *All known necessary governmental permits, licenses, authorizations, and certificates (except a Construction Certificate) shall be applied for within ninety (90) days of the date of acceptance of a Compliance Order Certificate.*
- (b) *The holder of a Compliance Order Certificate shall meet all requirements for granting of a Construction Certificate (as set forth in Section 3.4 of these rules) within two hundred seventy (270) days from and after the applicant's acceptance of a Compliance Order Certificate.*
- (c) *Construction of a CATV system shall begin within ninety (90) days of completion of contiguous make-ready work for the first phase of construction; provided further that applications for such make-ready work shall be made within thirty (30) days of receipt of a Construction Certificate.*
- (d) *The Certificate holder shall maintain current duplicate copies of all as-built design maps for its system at its local business offices, one of which shall be deemed to be the Division's copy.*

³⁷ See Section 3.5(d) of the Cable Rules.

- (e) *The Certificate holder shall give the Division at least sixty (60) days written notice of the date on which the CATV System or portion thereof is expected to be ready for commencement of service to the public.*
- (f) *Subscriber service shall commence as soon as practicable following receipt of a Certificate of Authority to Operate.*
- (g) *The CATV Company's complaint department, in compliance with Section 13.2 of these rules, shall begin operation at the same time as service commences.*
- (h) *Within one year after receipt of a Construction Certificate, the holder thereof shall have completed sufficient construction to make service available to both potential residential Subscribers and institutional Subscribers and/or users in at least twenty percent (20%) of the Service Area, or have completed construction of at least one hundred (100) plant miles of Residential Network cable, whichever is greater. Thereafter, service on both the Residential and Institutional Networks shall be made available to potential Subscribers and users at the rate of twenty (20%) percent of the Service Area per year.*
- (i) *Unless the Administrator shall have waived the requirement, within five years from the receipt of the Construction Certificate the holder thereof shall have made service available to all potential residential Subscribers and designated institutions in those portions of its service area meeting the density tests described in section 10.2 of these rules.*
- (j) *For the purposes of this section, "to make service available" shall mean to pass homes or designated institutions with energized Residential Network or Institutional Network trunk cable (as appropriate) so that those homes or institutions may be connected to the system.³⁸*

³⁸ See Section 8.2(a-j) of the Cable Rules.

4. PUBLIC HEARING AND APPEARANCES

The Division conducted a duly noticed public hearing in this docket on October 4, 2006. The hearing was held in Service Area 6, at the Division's hearing room, located at 89 Jefferson Boulevard in Warwick. The following counsel entered appearances at the hearing:

For Verizon:	Joseph DeAngelis, Esq.
For Cox:	Alan D. Mandl, Esq.
For the Division's Advocacy Section:	Leo Wold, Esq. Special Assistant Attorney General
For Full Channel:	William C. Maaia, Esq.

5. VERIZON'S DIRECT CASE

Verizon presented three witnesses in support of its application. The witnesses were identified as Mr. Paul Trane, the Principal Consultant at Telecommunications Insight Group (TIG), 38 Union Square, Somerville, Massachusetts; Ms. Theresa L. O'Brien, Vice President of Regulatory Affairs at Verizon, 234 Washington Street, Providence, Rhode Island; and Mr. Edward J. Gee, Director in Network Engineering for Verizon, 251 Locke Drive, Malborough, Massachusetts.

Verizon's three witnesses, presented as a panel, began their direct testimony by providing an introductory discussion regarding their individual work experiences and educational backgrounds. The panel initially discussed Verizon's business structure and the telecommunications services that Verizon

currently offers in Rhode Island; and also the qualifications and experience of Verizon's video management team in Rhode Island.³⁹

The panel additionally described the type of video services that Verizon plans to offer in Service Area 6 and the proposed pricing for its services.⁴⁰ The panel also discussed the terms and conditions under which Verizon will offer free service to educational and governmental entities.⁴¹ The panel also provided details regarding Verizon's ownership in other cable television systems.⁴² The panel also briefly confirmed that Verizon plans to fully comply with all Division requirements related to the maintenance of a local business office, emergency communications services, line extension policies, and construction timetables.⁴³

The panel next discussed Verizon's proposed system architecture. The following description was offered:

“A national Super Head End (SHE) serves as a single point to aggregate national content. The content is encoded into MPEG2 streams and transported over a SONET ring to a VHO. The VHO serves as a point where local or metro content is collected. Content from the SHE is combined with local content and Interactive Program Guides are created before being sent out to the end user subscribers. Cable television traffic is converted to optical data signals at the VHO and transported over Verizon's metro area, inter-office facilities (IOF) to VSOs. At the VSO, voice and high-speed data signals may be combined with cable television data before its final transport to end user subscribers over Verizon's FTTP Passive Optical

³⁹ Verizon Exhibit 3, pp. 1-4.

⁴⁰ *Id.*, p. 5.

⁴¹ *Id.*, pp. 5-6.

⁴² *Id.*, p. 6.

⁴³ *Id.*, pp. 6-7.

Network (PON). Once the signal reaches the end user subscriber, the optical cable television signal is converted to an electrical signal which is distributed to cable ready TVs and standard set top boxes (STBs) through standard coaxial cables. Verizon will monitor and control the cable television platform from a remote Network Operations Center (NOS) location twenty-four hours per day, seven days a week.”⁴⁴

The panel next explained how the SHE (super headend), VHO (video hub office) and VSO (video service office) function together and how the optical signal ultimately reaches the customer.⁴⁵ The panel also compared Verizon’s proposed CATV system to the CATV system currently used by Cox in Service Area 6, as follows:

“The current system in use in Service Area 6 uses a combination of fiber optic cable and standard copper coaxial cable to reach customers’ premises. Fiber cable is extended from a cable head-end location to optical nodes typically serving 250-400 customers. The optical signal is converted to electrical at these node locations and coax cable is used to transport the signal from the node to the customer’s premise [sic]. This coax cable is shared by the customers served from the node and therefor limits the amount of bandwidth available to each customer. Verizon New England’s system brings fiber optic cable all the way from the central office to the customers’ premises. The advantage to Verizon New England’s system is that there is no loss of speed or capabilities as when using copper. Additionally, the current copper wire system in use has limited capabilities, while Verizon’s FIOS system is limited only by the technology itself; as the technology develops the capabilities of the FIOS system will increase. The fiber essentially has unlimited bandwidth. As services requiring more bandwidth are offered, the equipment on the ends of the fiber can be modified to provide the additional bandwidth. The FIOS system, unlike standard wire, is able to handle multiple upstream and

⁴⁴ *Id.*, pp. 7-8.

⁴⁵ *Id.*, pp. 8-10.

downstream transmissions at a much faster speed and will allow greater capabilities for video on demand services than the old-fashioned copper wire system.”⁴⁶

The panel next discussed Verizon’s petition for a partial waiver of Section 14 of the Cable Rules, which requires cable operators to operate separate PEG access studios in each Service Area that they serve. The panel opined that a second studio in Service Area 6 would “be duplicative and would confer no tangible benefits to the cable subscribers in Service Area Six above and beyond those provided by a single studio.”⁴⁷ According to the panel, Verizon’s proposal would allow the company to share the cost of operating the existing PEG access studio in Service Area 6 with Cox unless and until an alternative arrangement is implemented. The panel related that Verizon proposes to “pay a pro-rata share of the costs of running the PEG access studio, calculated on a per-subscriber basis.”⁴⁸ Verizon also contends that not having to construct a second studio in Service Area 6 is in the public interest, as it would eliminate costs that Verizon “could lawfully pass through to its cable subscribers.”⁴⁹ Verizon adds that the public interest would also be served by a shared studio arrangement because subscribers “would receive uniform PEG access programming through an interconnection of the multiple service providers’ systems for transmission of PEG programming.”⁵⁰

⁴⁶ Id., p. 10.

⁴⁷ Id.

⁴⁸ Id., p. 11.

⁴⁹ Id.

⁵⁰ Id.

The panel next discussed Verizon’s petition for a partial waiver of Section 7.3(A) of the Cable Rules, which requires the construction of a physically separate I-Net. Instead, Verizon proposed to provide institutional users in Service Area 6 with access to FIOS data services. The panel related that Verizon’s proposal would provide schools, government service agencies, and institutional users in Service Area 6 with data capacity and technology options not currently available to them under “the Cox I-Net Waiver.”⁵¹ The two tiers of the FIOS service that Verizon will make available are: “5 Mbps downstream/2 Mbps upstream for \$39.95/month and 15 Mbps downstream/2 Mbps upstream for \$59.95/month.”⁵² The panel related that in addition to high speed web surfing and site hosting, institutional users will be able to use the increased capacity available to them for web casting, video conferencing, distance learning and a host of other next generation communications and data services. The panel testified that Verizon will provide free installation and one router per building to eligible institutional, educational and government buildings, and is willing to provide equipment grants to municipalities that could be used to purchase equipment.⁵³ The panel also asserted that the requested waiver is also in the public interest because it would provide schools, government service agencies and institutional users with data capacity and technology options not currently available.⁵⁴

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Id., pp. 11-12.

In its closing remarks the panel discussed the advantages of competition and why the granting of Verizon's application would be in the public interest. The panel observed that competition provides choices to consumers. They related that when companies compete they are motivated to offer a better product for a better price in order to attract consumers' business from the incumbent. The panel opined that competition forces the market participants to constantly improve their technology and lower their pricing. The panel contended that this competition is in the public interest.⁵⁵

6. COX'S DIRECT CASE

Cox proffered pre-filed direct testimony from one witness. The witness was identified as Mr. John Wolfe, Vice President of Government and Public Affairs for Cox's New England operations.

Mr. Wolfe testified that because Cox currently operates a cable system in Service Area 6, it has a substantial and specific interest in assuring that any Compliance Order Certificate awarded to Verizon "contains terms and conditions not more favorable or less burdensome than those applicable to Cox, as provided for under Rhode Island's level playing field statute."⁵⁶ Mr. Wolfe related that "how the Division addresses Verizon's public access and I-Net waiver requests is a major component of the level playing field issues in this case." Mr. Wolfe also stated that the Division's action on Verizon's first Compliance Order Certificate filing is "especially critical because it could set a standard for the determination of level playing field requirements in future

⁵⁵ Id., p. 12.

⁵⁶ Cox Exhibit 1, p. 3.

Verizon cable franchising proceedings involving other Rhode Island service areas in which Cox operates.⁵⁷ Mr. Wolfe contended that a failure to apply existing entry requirements to Verizon in an even-handed manner would result in unfair competition. Mr. Wolfe further contended that granting Verizon's waiver requests without providing similar relief to Cox would afford Verizon undue competitive advantages.⁵⁸

Mr. Wolfe opined that the Division should apply its existing Compliance Order Certificate standards to Verizon's application, just as it would apply them to any other party seeking a Compliance Order Certificate. Mr. Wolfe also opined that Verizon's construction and operation of cable systems in communities in other states does not, by itself, establish that it satisfies the requirements under Section 3.3(d) of the Cable Rules.⁵⁹ Mr. Wolfe also asserted that the Division should give little weight to Verizon's past history as a provider of telephone service.

Mr. Wolfe testified that Cox is required to adhere to the Division's Cable Rules and other requirements under state and federal law. He asserted that these same obligations should be placed upon Verizon. Mr. Wolfe testified that Cox agrees with the Division's past practice application of the level playing field statute, namely to examine each of the terms and conditions imposed upon the additional certificate holder "and determine whether, taken as a complete package, they are not more favorable or less burdensome than those imposed

⁵⁷ Id.

⁵⁸ Id., pp. 3-4.

⁵⁹ Id., p. 7.

on the incumbent carrier.”⁶⁰ However, Mr. Wolfe asserted that satisfying the following terms and conditions would be minimally required in order to satisfy the State’s level playing field law:

1. *the filing of all rates and charges, informational or otherwise;*
2. *public access-related obligations;*
3. *I-Net-related obligations, including staffing and the making available of video capabilities;*
4. *statewide interconnect;*
5. *construction build out requirements;*
6. *leased access requirements;*
7. *front counter requirements;*
8. *payment of Division assessments; and*
9. *miscellaneous requirements, such as subscriber privacy, technical standards, Division reporting requirements and EAS standards.*⁶¹

Mr. Wolfe next discussed Verizon’s request for a waiver from certain public access obligations contained in Sections 14.2 through 14.7 of the Cable Rules. He objected to the request and argued, “granting this waiver would allow Verizon to avoid the legal responsibility for management of public, educational and governmental access.”⁶² He contended that, if the waiver is granted, Verizon would also avoid substantial economic obligations and operational burdens now placed on Cox and gain an unfair competitive advantage. Mr. Wolfe testified that Cox has dedicated substantial economic and human resources to its public access operations in Rhode Island. He related that Verizon’s waiver request would enable it to substitute a ‘pay-as-you-go’ method of funding public access and thereby avoid these substantial,

⁶⁰ *Id.*, p. 9; citing findings contained in the Division’s Report and Order from Docket No. D-00-C-5.

⁶¹ *Id.*, pp. 9-10.

⁶² *Id.*, p. 10.

up-front economic and ongoing operational obligations that have applied to all cable operators since the inception of the Division's Cable Rules.⁶³

Mr. Wolfe next discussed the issue of how this proceeding has become affected by the July 2006 passage of new legislation authorizing the Rhode Island Public Telecommunications Authority ("RIPTA") to take over the provision of public access facilities ownership, management and operation (R.I.G.L. §§16-61-6 and 16-61-6.2). He related that though Cox is generally supportive of the new law, the new law does not contain a gross receipts tax funding mechanism for public access and leaves it to the Division to address funding issues in future rulemaking or related proceedings.⁶⁴ Mr. Wolfe observed that while the new law "creates an opportunity for shifting public access management in Rhode Island to a third party, it does not, in and of itself, "support the grant of Verizon's waiver request...or resolve level playing field requirements applicable to this case."⁶⁵ Mr. Wolfe observed that the new law requires the Division to complete by December 31, 2006, a rulemaking that would provide for the transition of public access responsibilities from cable operators to RIPTA. He related that the new law authorizes, but does not require RIPTA to assume responsibility for the ownership and operation of public access facilities or for any other existing public access obligations of cable operators. He emphasized that the new law also does not require a cable operator to transfer its public access management functions to RIPTA. Based

⁶³ Id., pp. 10-14.

⁶⁴ Id., p 14.

⁶⁵ Id., p. 15.

on these variables, Mr. Wolfe concluded that at present it is “uncertain whether RIPTA will have any public access management role.”⁶⁶ Mr. Wolfe added that the new law also “does not address critical level playing field issues, including the funding of public access management by RIPTA.” He related that it also does not address Verizon’s obligation to make capital contributions in the amount and at the time that a cable operator would be required to do under existing Cable Rules.⁶⁷ Mr. Wolfe also asserted that because Verizon has not based its public access waiver request upon the passage of recent legislation authorizing RIPTA to provide public access management functions, “the Division cannot grant Verizon’s waiver request on the basis of this legislation.”⁶⁸

Also related to Verizon’s waiver request, Mr. Wolfe questioned how Verizon could seek a waiver of Section 14.6 of the Cable Rules. He opined that this section, which contains leased access channel obligations, also exists under federal law.⁶⁹

Mr. Wolfe next addressed Verizon’s I-Net waiver request. He testified that Cox does not object to Verizon being permitted to provide I-Net services without having to construct a physically separate I-Net, but Mr. Wolfe insisted that Verizon “should be subject to the same terms and conditions applicable to Cox...”⁷⁰ He contended that “any relief from this obligation granted to Verizon

⁶⁶ Id., p. 15.

⁶⁷ Id.

⁶⁸ Id., p. 17.

⁶⁹ Id., p. 18.

⁷⁰ Id., p. 19.

should also be extended to Cox, consistent with level playing field requirements.”⁷¹ Mr. Wolfe asserted that unless Cox is afforded the same relief, Verizon should be required to assume the following I-Net obligations that now apply to Cox:

(a) provide upstream and downstream technical capability comparable to the capabilities specified in Sections 7.3(c) and 7.3(d) of the Cable Rules;

(b) maintain logs of all requests for use of the Institutional Network;

(c) provide for an Institutional Network coordinator whose duties shall include, but are not limited to, coordinating institutional user use of the Institutional Network, handling complaints, serving as a point of contact, answering basic technical questions from eligible institutions, providing basic technical assistance, and preparing training and instructional materials;

(d) provide adequate staffing, as required by the Division, taking into account demand;

(e) offer adequate training to eligible institutions concerning the operation and use of the Institutional Network;

(f) be responsible for providing, operating and maintaining all trunk, distribution plant and signal processing equipment for the Institutional Network up to the termination point of a standard or non-standard installation;

(g) provide a toll-free telephone contact number for Institutional Network questions from eligible institutions (which may be answered by Automatic Response Unit (ARU)/Interactive Voice Response (IVR), so long as one selection will provide callers with a “live voice selection” answered by a live voice during normal business hours);

⁷¹ Id.

(h) designate an email address or other electronic interface for eligible institutions to use to submit inquiries regarding the Institutional Network;

(i) develop an outreach program, after consultation with the Division, which shall include, but need not be limited to: (a) maintaining copies of instructional manuals and instruction materials to facilitate use of the Institutional Network; (b) publicizing by mail or other means the availability of the Institutional Network, its capabilities, the availability of instructional materials, and the availability of training; (c) conducting informational meetings as to the capabilities of and terms and conditions for use of the Institutional Network; and (d) establishing and maintaining a web-page which contains information relating to the establishment and maintenance of the Institutional Network, forms, frequently asked questions and related links;

(j) maintain signal quality of the Institutional Network in accordance with all applicable requirements of the Federal Communications Commission, and provide proofs of performance tests if requested by the Division;

(k) provide an annual report to the Division regarding Institutional Network usage, maintenance and performance, including but not limited to complaints, complaint resolutions, signal quality data, video proofs of performance, actual staffing, training assistance, community research measures, and actual usage by eligible institutions;

(l) make its best efforts to remedy signal outages, material interference and/or other technical problems that arise in connection with the Institutional Network as soon as practicable after the Certificate holder receives notice from an institutional user regarding the same;

(m) adopt dispute resolution procedures, which shall include a provision that any dispute between the Certificate holder and an eligible institution may be brought before the Division if the parties are unable to

resolve their dispute within thirty (30) days after the Certificate holder initiates or receives notice of the issue;

(n) take reasonable measures to resolve any situation where the Institutional Network cannot accommodate two or more eligible institutions at the same time; and

(o) adopt such other practices and procedures as the Division may reasonably require in light of the specific technology to be used by the Certificate holder to provide an Institutional Network.⁷²

Mr. Wolfe also criticized Verizon's proposed build out of a cable system in Service Area 6. He related that although Verizon has stated that it will comply with the Division's build out rules, it has refused to provide any detail to demonstrate this commitment. Mr. Wolfe testified that Cox has a concern that Verizon's may be adding 'cable only' components to its system prior to receiving a Construction Certificate from the Division. He also questioned whether Verizon intends to serve residents within Service Area 6 "if they are not now served from wire centers located within Area 6." Mr. Wolfe contended that the Division should require Verizon "to document its proposed build out and expressly require Verizon to comply with Rule 8 of the Cable Rules."⁷³

Mr. Wolfe also questioned Verizon's proposed line extension policy. He related that Section 3a of Verizon's policy "suggests that a potential subscriber in Area 6 would be denied service if he or she lived in a section which was not served out of an existing video service office, or VSO." He questioned whether this policy would preclude a potential subscriber who is located within a

⁷² *Id.*, pp. 21-22.

⁷³ *Id.*, p. 23.

section of Service Area 6 that meets density requirements from receiving service...”⁷⁴ Mr. Wolfe also questioned whether all line extensions will be delayed until after the entire Service Area is built out.⁷⁵

7. FULL CHANNEL’S DIRECT CASE

Full Channel did not proffer any witnesses in this docket. However, in response to a directive imposed by the Division, Full Channel did file a “Position Memorandum” prior to the commencement of hearings.⁷⁶

In its Position Memorandum, Full Channel contended that before the Division grants Verizon a Compliance Order Certificate, the Division must evaluate Verizon’s past and current performance in its Massachusetts cable operations in order to “determine whether or not Verizon has performed as promised” (Id., p. 1). Full Channel states that Verizon has provided “little evidence regarding its ability to deliver cable television to customers other than the location of the City or Town that Verizon claims it operates cable services.”⁷⁷

Full Channel argues that the Division also needs to determine if Verizon will comply with the Cable Rules and comply “with the standard(s) required by all other applicants.” Full Channel observed that the “level playing field statute [R.I.G.L. §39-19-3] applies to Verizon in the same manner as it applies to all operators in the State now and in the past.”⁷⁸

⁷⁴ Id., pp. 23-24.

⁷⁵ Id., p. 24.

⁷⁶ Full Channel Exhibit 1.

⁷⁷ Id.

⁷⁸ Id.

Full Channel asserted that the Division must consider whether creating competition warrants “waivers and/or radical changes in the rules on the ‘theory’ that to require said rules is burdensome and that the benefit (i.e. competition) to the public...would be greater to allow these rule changes.”⁷⁹ Full Channel argued that the Division “must be careful not to provide favoritism over another operator by waiving rules not waived for other cable operators”.⁸⁰

Regarding Verizon’s petitions for partial waivers, Full Channel argued:

*“There is no question that the requirements of the existing regulations are ‘Burdensome’ – more burdensome, in fact, than in any other state – because they were promulgated in lieu of franchise fees and surtaxes - on the theory that the benefit to the public and the community would be great, while the initial capitalization and ongoing expense to the cable company could easily be accommodated with normal business operations, at a substantial overall savings to both the company and the subscribers.”*⁸¹

Full Channel argued that the Division must examine the technology that Verizon is proposing to use. Full Channel questioned the utility of this technology, as evidenced by the following critical comments:

1. *It is not possible to ‘inject digital television of data program streams into existing ‘Downstream’ program bundles (as would be required in the absence of a dedicated ‘B’ or ‘I/P’ separate plant) without exquisitely complex synchronization and timing procedures not available to institutional users, if at all, now or in the foreseeable future.*

⁷⁹ *Id.*, pp. 1-2.

⁸⁰ *Id.*, p. 2.

⁸¹ *Id.*, p. 4.

2. It is not possible to 'inject' analog television channels into 'Downstream' paths for point to point distribution in the absence of dedicated 'Blank (unmodulated) blocks of spectrum reserved for that purpose.

3. The fiber optic node-to-coax design of the cable system precludes RF transmission from node-to-node, making I/I distribution from the coaxial RF plant served by one node to other nodes serving the same community impossible.

4. The 'upstream' (reverse) capacity of the coaxial plant is limited to less than 50 mega hertz, and of that spectrum the data carriers for internet access, telephony, set-top box communications, and system monitoring occupy such a substantial portion that use of the 'sub-low' return paths for point-to-point analog television will not be possible.

5. The use of 'sub-low' reverse path is also limited to the local node, and cannot 'cross over' from node to node for backhaul from one part of the service area to another.

6. No representation of 'equivalency' is made from the requirement that the forward and reverse transmissions on the 'I/I' system be available for throughput on the access channels designated for the service area.

7. No...representation is made for 'equivalency' to the requirement that dedicated access channels be available independently for simultaneous local programming unique to each service area. Prior petitioner for waiver proposes only one set of access channels common to and shared by all service areas, with no provisions for transmission and retrieval of local program content for inclusion on even these 'super-regional' channels.

8. In the absence of the dedicated 'I/I' network required by the Regulations, no interconnection of multiple cable TV providers (all also required by the regulations) can be accomplished to provide common

*access for government, educational, and public access users with the service area.*⁸²

In its concluding remarks, Full Channel stated that it is in favor of competition, but also expects that the Division will require that “every applicant ‘follow the rules.’” Full Channel contended that “parity, equity, fairness and public interest demand that the Administrator hold each applicant to the same standard, the same test, at least until such time as rules actually change.” Full Channel related that “maintenance of a level playing field, one that allows for the giants, and the established independent(s) must be preserved...”⁸³

8. ADVOCACY SECTION’S DIRECT CASE

The Advocacy Section also decided not to proffer any witnesses in this proceeding. It too submitted a position statement.

The Advocacy Section indicated that it perceived two potential areas of contention “as they relate to the level playing field requirement contained in G.L. §39-19-3”, namely Verizon’s compliance with (1) the requirements related to PEG access studio and equipment and, (2) the requirements related to an I-Net.⁸⁴

The Advocacy Section related that the General Assembly has recently addressed the PEG studio and equipment issue through amendments made to the Rhode Island Public Telecommunications Authority Act.⁸⁵ The Advocacy

⁸² Id., pp. 4-6.

⁸³ Id., p. 7.

⁸⁴ Advocacy Section Exhibit 1, p. 1.

⁸⁵ Id., citing R.I.G.L. §16-61-6, - 6.1 and - 6.2

Section noted, however, that the details for implementing the statute through a rule-making proceeding have yet to be undertaken. As such, the Advocacy Section stated that before it could offer the Division a recommendation in this docket, it “would like to obtain some degree of assurance that the terms of the statute will be successfully implemented by and among the parties.”⁸⁶

Regarding Verizon’s I-Net requirements, the Advocacy Section indicated that it was still “assessing Verizon’s I-Net position” and felt it was premature to provide a position. The Advocacy Section stated that it would submit a recommendation with the Division after “hearing the testimony of the various parties, reviewing the further documents they submit, and engaging in further discussions with the parties.”⁸⁷

9. PUBLIC COMMENTS

Twenty individuals, including several elected public officials offered public comment during the hearing conducted in this docket. These individuals included the Honorable Scott Avedisian, Mayor of Warwick; the Honorable Senator John Tassoni, representing Senate District 22 (Smithfield and North Smithfield); the Honorable Senator Kevin Breene, representing Senate District 34 (Exeter and West Greenwich); the Honorable Senator Leo Blais, representing Senate District 24 (Coventry, Foster and Scituate); the Honorable Representative Peter Ginaitt, representing House District 22 (Warwick); Ms. Arlene Stoltz, Director of Development at the Kent Center; Ms. Julie Valladares from Coventry; Ms. Deborah DeBare, representing the Rhode

⁸⁶ Id., p. 1.

⁸⁷ Id., p. 2.

Island Coalition Against Domestic Violence; Mr. William McGovern, the business manager for IBEW Local 2323; Mr. Matthew Adams of North Kingstown; Mr. Mark Lataille, Chief Information Officer, O. Ahlborg & Sons; Ms. Betty Capaldo, President, Junior Achievement of Rhode Island; Mr. William Sequino, East Greenwich Town Manager; Mr. James Vincent; Mr. Peter Montiero, owner of Atomic Salon; Mr. Cliff Montiero; Mr. David Small, representing Family Service of Rhode Island; Mr. Robert Fish, President of Channel 36 WSBE TV; Mr. Michael McGovern, Executive Director, Special Olympics of Rhode Island; and Mr. Patrick Mouligne from Bristol.⁸⁸

None of the public comments received in this docket reflected any expressed opposition toward Verizon's application. Indeed, the great majority was supportive of Verizon's proposal to offer competitive cable television services in Rhode Island. Generally speaking, the tenor of the comments indicated support for the "choice" that Verizon's proposed cable television services would bring consumers in Service Area 6. Many supporters also opined that Verizon's business plan would improve the job market, foster technological innovation, and expand educational opportunities in Rhode Island.

Many members of the public also voiced support for Cox, which several described as a very good corporate citizen. These individuals encouraged the Division to facilitate non-discriminatory competition between Cox and Verizon.

⁸⁸ Tr. 7-40.

10. VERIZON'S REBUTTAL CASE

The same three-member panel that prepared and proffered Verizon's pre-filed direct case also submitted pre-filed rebuttal testimony in this docket. The panel testified that Verizon understands the requirements of the level playing field statute and "agrees that its compliance order certificate should be granted on terms no more favorable or less burdensome than the incumbent operator taking the certificate as a whole and considering all relevant circumstances."⁸⁹

Verizon's panel also expressed full support for the recently passed legislation, codified at R.I.G.L. Sections 16-61-6 and 16-61-6.2. The panel maintained that transferring PEG access studio operations to RIPTA would benefit the residents of Rhode Island and all Rhode Island cable providers.⁹⁰ The panel emphasized that the cost-sharing proposal outlined in Verizon's "PEG Access Studio Waiver predates the passage of the PEG Access Studio Legislation." The panel contended that the cost-sharing proposal is fair and equitable to all parties since it would require all operators to provide equivalent funding on a per-subscriber basis. However, the panel testified that "once the Division implements the Legislature's mandate, promulgates PEG studio transfer rules and establishes a funding mechanism for those studios that will allocate costs equivalently between cable providers based on market share, Verizon's cost sharing proposal will be moot."⁹¹

⁸⁹ Verizon Exhibit 4, p 2.

⁹⁰ Id., pp. 3-4.

⁹¹ Id., p. 4.

Regarding Cox's assertion that Verizon must also make a capital contribution toward the cost of PEG studios and equipment, the panel testified that Verizon would satisfy the level playing field law by providing RIPTA "with grants to be used for PEG Access equipment and operations." The panel related that Verizon is working with the Advocacy Section to determine the exact amounts of the grants.⁹² However, the panel asserted that the grants should not be determined by Cox's assessment of the costs it incurred in the past associated with building and operating its studios. The panel observed that the new law "empowers RIPTA to purchase the existing PEG studios and interconnect equipment at book value, so that incumbent operators may have the opportunity to recover much of the capital expenditures made to build and equip the existing studios."⁹³

The panel also allayed Cox's concern over leased access rules, stating that Verizon would comply fully with all federal rules and regulations. The panel also stated that Verizon would agree to withdraw its petition that the Division waive § 14.6 of the Cable Rules if any questions remain.⁹⁴

Moving next to Verizon's request for an I-Net waiver, the panel related that "the terms of the I-Net waiver are intended to cover not only the construction of an I-Net (physically separate or otherwise), but also the attendant obligations of operating such a network. The panel stated that in lieu of constructing a duplicate I-Net in Service Area 6, Verizon proposes to

⁹² Id., p. 5.

⁹³ Id.

⁹⁴ Id., p. 6.

provide eligible users with FiOS high-speed data services. The panel reiterated that Verizon’s proposal would provide schools, government service agencies, and institutional users with data capacity and technology options “not currently available to them under Cox’s I-Net Settlement.”⁹⁵ The panel thereupon recapitulated the full details of Verizon’s I-Net proposal.⁹⁶

With respect to the issue of “video functionality” over an I-Net, the panel contended, “the mere fact that Cox is required to provide video functionality does not mean that Verizon must do the same, nor must Verizon comply with the other obligations...[asserted in] Mr. Wolfe’s direct testimony. The panel opined, “taken in its entirety, the terms of Verizon’s waiver request are no more favorable or less burdensome to Verizon than the terms of Cox’s waiver are to Cox.”⁹⁷

The panel also assured the Division that despite Cox’s concerns, Verizon plans to fully comply with the construction timetable set forth in Section 8.2 of the Cable Rules, and Sections 10.2 (Density Standards) and 10.3 (Line Extension Policy) of the Cable Rules. The panel asserted that “there are no grounds for imposing special rules on Verizon alone.”⁹⁸

The panel also rejected Cox’s request that Verizon ‘certify’ that it will not place ‘cable only’ facilities before receiving a Construction Certificate. The

⁹⁵ Id., p. 7.

⁹⁶ Id., pp. 7–9.

⁹⁷ Id., p. 9.

⁹⁸ Id., pp. 11-12.

panel declared that Verizon “has not placed any ‘cable only’ equipment in the public way, and there is no basis to suggest otherwise.”⁹⁹

The panel also addressed Full Channel’s recommendation that Verizon be required to demonstrate its compliance with the Cable Rules. The panel observed that Full Channel provided “no evidence that Verizon does not intend to comply with the Cable Rules, aside from inappropriately and erroneously citing Verizon’s I-Net and PEG waiver requests.”¹⁰⁰ The panel related that if Verizon were to fail to comply with an applicable Rule once in business, the Division “presumably would bring its enforcement mechanisms to bear on the issue.”¹⁰¹

The panel also rejected Cox’s and Full Channel’s assertions that the Division should not consider Verizon’s record of providing telecommunications service in Rhode Island and/or its record of providing cable services in other jurisdictions in assessing its technical and financial qualifications to operate a cable system in Service Area 6. The panel contended that Verizon’s “superior record of service” should be considered.¹⁰²

11. COX’S SURREBUTTAL CASE

Cox’s surrebuttal case was presented through Mr. John Wolfe. Mr. Wolfe testified that notwithstanding Verizon’s claimed recognition of the State’s level playing field law, Cox believes that Verizon still has not adequately addressed its PEG access obligations under the Cable Rules. Mr. Wolfe related that

⁹⁹ Id., p. 12.

¹⁰⁰ Id., pp. 12-13.

¹⁰¹ Id., p. 13.

¹⁰² Id., pp. 13-14.

Verizon's request for a waiver of Section 14 is based upon a plan to interconnect with public access facilities owned or leased and operated by Cox. He testified that because Cox has not agreed to any such interconnection with its system the waiver request must be denied.¹⁰³ Mr. Wolfe also emphasized that until the new law is fully implemented, Verizon "remains subject to the same requirements that apply to Cox today..."¹⁰⁴ He added that Verizon's negotiations with the Advocacy Section are no substitute for the Division's application of level playing field requirements.¹⁰⁵ Mr. Wolfe contended that if "a new entrant is not required to construct and equip public access studio facilities, it must be required to make an equivalent capital contribution within 6 months after commencement of service, as spelled out in the Cable Rules..."¹⁰⁶ He maintained that the new law does not change this requirement.¹⁰⁷ Mr. Wolfe stated that Cox agrees that one public access studio in Service Area 6 would be sufficient to meet existing demand. However, Mr. Wolfe asserted that level playing field requirements mandate at least an equal capital and operating costs burden on each cable operator.¹⁰⁸

Mr. Wolfe also criticized Verizon's continued avoidance of the I-Net obligations mandated under the Cable Rules. Mr. Wolfe opined that if Verizon's waiver were granted, Verizon would gain terms and conditions that violate the

¹⁰³ Cox Exhibit 2, p. 2.

¹⁰⁴ Id.

¹⁰⁵ Id., p. 3.

¹⁰⁶ Id.

¹⁰⁷ Id., p. 4.

¹⁰⁸ Id., p. 4.

level playing field law.¹⁰⁹ Mr. Wolfe insisted that Verizon must be compelled to make available video capability over its cable system to eligible users of an I-Net.¹¹⁰ With respect to the data services being offered by Verizon, Mr. Wolfe contended that “making available data capabilities supports a waiver of the physically separate network requirement, but it does not relieve a cable operator from making available to I-Net users the video capabilities required by the Cable Rules.”¹¹¹ In closing, Mr. Wolfe stated that Cox would only be agreeable to the Division’s removal of video-related I-Net requirements if the Division amended its Cable Rules and removed these requirements for all cable operators simultaneously.¹¹²

12. SETTLEMENT AGREEMENT

On October 2, 2006, Verizon and the Advocacy Section filed a settlement agreement that had been negotiated between the two parties.¹¹³ In the settlement agreement, the two parties recommend that the Division grant Verizon permanent waivers of Sections 7.3, Sections 14.2 - 14.5, and Section 14.7 of the Cable Rules for Service Area 6 and all subsequent Service Areas for which Verizon may later apply. These parties agreed that in lieu of complying with these sections of the Cable Rules, and in full compliance with the level playing field provisions of R.I.G.L. §39-19-3, “Verizon shall be bound by the terms and conditions of this settlement agreement upon approval of this

¹⁰⁹ Id., p. 5.

¹¹⁰ Id., pp. 5-6.

¹¹¹ Id., p. 7.

¹¹² Id., p. 8.

¹¹³ Verizon Exhibit 5.

Agreement by the Division and grant of a Compliance Order Certificate consistent with the terms of this Agreement.”¹¹⁴

Verizon and the Advocacy Section subsequently supplemented the settlement agreement on the day of the public hearing (October 4, 2006), adding the following provision to the “General Terms” Section of the Agreement:

*Nothing in this Agreement eliminates the requirement of the Cable Rules that Verizon file an application and petition for all appropriate waivers of the Cable Rules, including the Rules governing Institutional Networks and PEG access, for each subsequent service area for which it seeks to offer CATV service.*¹¹⁵

The specific terms and conditions of the Settlement Agreement are detailed below:

A. PEG Grants

1. *Verizon shall provide the following grants to support PEG Access programming in Rhode Island and the purchase of PEG Access equipment.*
2. *Verizon will provide the Division with a grant in the amount of \$400,000 (the “Initial PEG Equipment Grant”).*
3. *In addition, for each service area for which Verizon receives a Certificate of Authority to Operate, Verizon will provide the Division with a PEG Equipment Grant of fifty thousand dollars (\$50,000) and a PEG Access Support Grant. Each PEG Access Support Grant shall be in an amount equal to two dollars (\$2) for each household in the service area. For purposes of this Agreement, the numbers of households in each service area are stated in Exhibit 1 hereto, which shows the most recent figures published by the United States Census Bureau.*

¹¹⁴ *Id.*, p. 2.

¹¹⁵ Verizon Exhibit 6.

4. Verizon shall pay the \$400,000 Initial PEG Equipment Grant, the \$50,000 PEG Equipment Grant for Service Area Six and the PEG Access Support Grant for Service Area Six (in the amount of \$159,118, representing two dollars (\$2) per household for each of the 79,559 households in Service Area Six) as follows: three hundred sixty thousand dollars (\$360,000) within 30 days after the Division grants Verizon a Certificate of Authority to Operate in Service Area Six and two hundred forty nine thousand one hundred eighteen dollars (\$249,118) on the first anniversary of the initial payment.

5. The PEG Equipment Grant and the PEG Access Support Grant for any service area other than Service Area Six will be paid in one lump sum within 30 days after the Certificate of Authority to Operate is awarded for that service area.

6. All grants provided to the Division pursuant to this Settlement Agreement shall be allocated by the Division in its sole discretion to best provide for the PEG Access needs of the residents of Rhode Island.

7. In addition, Verizon acknowledges that the Division intends to promulgate rules requiring all CATV carriers providing service in Rhode Island to assess a monthly surcharge of approximately \$0.50 on each video customer as a means of supporting ongoing PEG operations of the Rhode Island Public Television Authority under R.I.G.L. 16-61(21) [sic]. Verizon intends to comply with any such applicable rule validly enacted.

B. Verizon FiOS Business Service for Eligible Institutional Users

1. FiOS Business Service – Verizon will provide the Eligible Users designated below with access to high speed data service via Verizon’s Business Service. The products, rates and charges referenced in this Section III (B) are subject to change but only in the event that, and only in the manner and extent to which, Verizon changes the products, rates or charges generally available to other customers of Verizon’s FiOS Business Service, and any change in the products, rates and

charges made available hereunder shall be consistent with such broader changes.

2. Eligible Users – Eligible Institutional Users in a given service area shall include all State and municipal buildings, including but not limited to all police and fire stations, all public libraries, and all public primary and secondary schools. Within each municipality in a Service Area, a Designee shall be responsible for applying for FiOS Business Service installation and activation from Verizon on behalf of one or more eligible users, purchasing equipment and time and materials services, and managing use of the FiOS Business Service. The Designees shall be: 1) the school Superintendent or his/her designee having responsibility for coordinating all public school buildings in the municipality; and 2) the Town Manager, Mayor or other town official or his/her designee, having coordination responsibility for all other municipal buildings, including city and town halls, police and fire stations, and all public libraries. On a statewide basis, there shall be one authorized representative with overall coordination responsibility for state-owned buildings.

3. Product Specifics – Verizon will make available its FiOS Business Service to eligible institutional users at one of the 2 speeds below:

- 5 Mbps downstream/2 Mbps Upstream for \$39.95/month per location*

Or

- 15 Mbps downstream/2 Mbps Upstream for \$59.95/month per location.*

Both speeds include 1 Dynamic address and 10 Verizon.net e-mail boxes per location. The primary e-mail box has a capacity of thirty (30) megabytes of memory allotment, and each of the remaining nine mail boxes have ten (10) megabytes of memory allotment. In addition, Verizon will waive the normal onsite installation cost of ninety nine dollars (\$99). This includes the installation of an Optical Network Terminal, a Battery Backup Unit, a data jack (RJ45), and the configuration of one PC. Additional data work, such as an installation of a second data jack, will be billed on a time and materials basis. Any additional PC configuration after the primary PC will be billed at the

flat rate of seventy five dollars (\$75) per computer. A subsequent premises visit for any additional PC configuration will also incur a fifty dollar (\$50) visit charge. Verizon will also waive the cost of a 4-port wired router to support one dynamic IP address.

4. Time Frames – Within six (6) months of the commencement of FiOS TV service to a community, Verizon will begin offering the FiOS Business Service to Eligible Users within that community. Verizon commits to performing a minimum of twenty (20) installations per month, if requested by designated authorized representatives, to FiOS – enabled buildings.

5. Outreach – Within 180 days of the receipt of a Certificate of Authority to Operate for a designated Service Area, a representative of Verizon will contact each of the authorized representatives of the eligible users in the municipalities of that Service Area to arrange for a meeting to inform the eligible users of the availability of services under the terms of this proposal. Verizon will provide such representatives with materials such as instruction manuals, forms and promotional information setting forth the rates, terms and conditions of use of Verizon’s FiOS Business Service and ordering and customer service information.

6. Reporting – Verizon shall maintain a written log of its Outreach efforts. The log shall contain: the identity of each Designee Verizon has contacted pursuant to paragraph III.B.5 above; the date of such contact; the date (if any) on which the Designee ordered any Verizon FiOS Business Service offered pursuant to this Agreement; the type of service ordered; and the date on which Verizon completed installation of that service. Verizon shall provide a copy of the log to the Division within nine months of receipt of its initial Certificate of Authority to Operate and quarterly thereafter for a period of two years from receipt of such Certificate.

7. Technical Support – the Verizon Fiber Solutions Center provides live technical support 7 days a week, 24 hours a day. An online tutorial, user guides, frequently asked questions (FAQs), and Verizon’s extensive online help site are also available. In addition, Verizon shall appoint an employee to serve as

a single point of contact between Verizon and the Designees of eligible users (as described in paragraph III.B.2 above) to address questions, issues or complaints regarding Verizon's FiOS Business Services provided pursuant to this Agreement.

8. Discontinuance of Service for Non-Payment – Service may be denied or discontinued at any time in the event that payment is not made when due.

9. Compliance with Law – In making its FiOS Business Service available to Eligible Users pursuant to this Agreement, Verizon will remain subject to, and comply with, applicable state and federal law, and all valid and applicable: Orders of the Division, the Division's Rules of Practice and Procedures; and the Division's Cable Rules. Verizon reserves all rights and remedies afforded to it under state and federal law, Orders of the Division, the Division's Rules of Practice and Procedure and the Division's Cable Rules.

13. CONTEMPORANEOUS CHANGES TO THE CABLE RULES

On November 2, 2006 the Division published a “Notice of Rulemaking and Public Hearing” in the Providence Journal, for the purpose of affording all interested persons an opportunity to submit data, views, or arguments, orally or in writing, in response to the Division's decision to amend its current Cable Rules. The Division's November 2, 2006 Notice of Rulemaking stated that:

The proposed amendments specifically relate to requirements associated with the provision and maintenance of PEG (Public, Educational and Government) access television and institutional networks by cable television companies operating in Rhode Island. Through these proposed amendments, the Division: (1) satisfies the legislative charge contained in recently enacted law that requires the Division to promulgate rules to allow the transition of management of PEG access television including responsibility for programming the three statewide interconnect channels, and managing interconnect playback in conjunction with its management of PEG

playback, from current cable television certificate holders to the Rhode Island Public Telecommunications Authority; and (2) abrogates the requirement that cable television companies construct and operate an institutional network. Excepting, physically separate institutional networks existing as of December 31, 2006 shall be preserved.

A public hearing was conducted on November 17, 2006, during which time a number of interested persons, including Verizon, Cox and Full Channel offered comments. The Division subsequently issued a report and order on December 8, 2006, Order No. 18785, adopting permanent amendments to the State's Cable Rules, to become effective on January 1, 2007. (The Division notes that the November 17, 2006 public comment hearing on the proposed amendments to the Division's Cable Rules, and the concomitant rule adoption decision that was issued on December 8, 2006 followed the close of the record and the filing of post-hearing memoranda/briefs in the instant docket.)

The relevant changes to the Cable Rules are summarized below:

- The amended Cable Rules recognize the enactment of changes to R.I.G.L. §§ 16-61-6 and 16-61-6.2, which enables CATV Operators to transfer their existing PEG access studios throughout the state to RIPTA.
- The amended Cable Rules (Section 18.1) specifically provide that on or after January 1, 2007 any existing CATV Operator may transfer to RIPTA the ownership of its PEG access studios (or where applicable the operation of its PEG access facilities) and the ownership of playback equipment and existing Interconnect playback equipment. The amended Rules mandate that no later than thirty (30) days prior to the effective date of any such transfer, the

contracting parties shall provide the Division with a copy of the agreement effecting the transfer, a notice designating the effective date of the transfer, and a notarized affidavit that each lease entered into between the parties or assumed by RIPTA is at fair market value, and that the transferor's employees working in public access facilities shall become employees of RIPTA.

- The amended Cable Rules (Section 18.2) also provide that on or before June 30, 2007, and by the last day of the second month of each calendar year quarter thereafter, RIPTA shall forward an itemized statement to each CATV Operator that reflects RIPTA's operating and maintenance expenses for PEG access facilities, playback equipment and Interconnect equipment and other PEG related expenses for the preceding calendar year quarter. Each CATV Operator that receives quarterly statements from RIPTA shall provide to RIPTA a PEG access and Interconnect fee in an amount equal to \$.50 per month (or such other amount set by the Division) for each subscriber of the CATV Operator in the preceding quarter, and may pass through such expenses to its subscribers as provided by federal law. The amended Cable Rules further provide that the total annual amount of itemized operating and maintenance expenses reflected in RIPTA's statement for calendar years 2007 and 2008 shall not exceed the sum which is currently generated by the \$.50 per subscriber per month PEG access and regulatory fee and any additional revenue the Division receives pursuant to settlement agreement dated October 4, 2006 in Docket No. D-2006-C-4. On or after January 1, 2009, RIPTA may modify this amount, not more than once annually, with the consent of the Division.

- With respect to Section 7.3, entitled “Institutional Networks,” the amended rules provide that “due to the advent of facilities-based competition for Cable Services in Rhode Island... CATV Operators shall not be required to construct, operate or maintain Institutional Networks in this state. Nothing in this section shall be construed to preclude a CATV Operator from voluntarily constructing, operating or maintaining an Institutional Network in this state.”

- Also with respect to Section 7.3, the amended rules provide that physically separate Institutional Networks existing as of December 31, 2006 shall be preserved, unless otherwise authorized by the Division; and that all existing or to be negotiated settlement agreements with respect to Information Services provided over Institutional Networks shall remain in full force and effect.

14. FINAL POSITIONS OF THE PARTIES

All the parties submitted post-hearing memoranda/briefs in this docket.¹¹⁶ As noted above, the submission of these pleadings came days before the November 17, 2006 rulemaking public hearing, and weeks before the issuance of the December 8, 2006 final report and order that detailed and adopted permanent changes to the Division’s Cable Rules.

In its concluding arguments, Verizon stated that it has “demonstrated in its Application, its pre-filed testimony, responses to data requests, testimony and exhibits at public hearing that it is ready, willing and able to provide cable service in Service Area Six and that the proposed operation will be consistent

¹¹⁶ Briefs and Reply Brief were submitted on November 6 and November 13, 2006, respectively, in accordance with the procedural schedule previously adopted in the docket.

with the public interest as required by Section 3.3(f) of the Cable Rules.”¹¹⁷ Verizon additionally argued that the Division should approve its petitions for partial waivers of Sections 7.3 and 14 of the Cable Rules. Verizon maintained that the Cable Rules that require each CATV operator to provide an I-Net and build and operate a PEG studio in each service area are “anachronistic, no longer reflect the cutting edge of electronic communications desired by Rhode Island consumers and would result in wasteful, duplicative PEG studios at the expense of consumers.”¹¹⁸ To buttress this contention, Verizon noted that the Division itself “has recently proposed revisions to the Cable Rules that would remove any I-Net obligations on new CATV Applicants.”¹¹⁹ In lieu of complying with these rules, Verizon observes that its settlement agreement with the Advocacy Section would require it to provide “a package of substantial grants to support PEG studios and operations throughout the state and provide high-speed Internet access service to eligible institutional users.” Verizon asserted that because the terms of the settlement are more beneficial to the public than enforcement of the Cable Rules would be in this case, the settlement serves the public interest and the waivers should be granted.

Verizon also contended that the terms and conditions imposed on Verizon by the settlement “are no more favorable or less burdensome than the PEG and I-Net obligations currently imposed on Cox, the incumbent provider in Service Area 6, and therefore satisfy the level playing field requirements of

¹¹⁷ Verizon’s Brief, p. 1.

¹¹⁸ *Id.*, pp. 1-2.

¹¹⁹ *Id.*, p. 5. See also related Division Docket No. 2006-C-7.

R.I.G.L. 39-19-3”.¹²⁰ Verizon rejected Cox’s level playing field-related assertions that Verizon should be required to make a capital contribution toward the cost of PEG studios and operations, and offer video functionality over an I-Net. Verizon pointed to the recent amendment of R.I.G.L. §§ 16-61-6 and 16-61-6.2, which enables Cox to transfer its existing PEG access studios throughout the state to RIPTA, thereby according to Verizon, relieving Cox of any obligation to operate such facilities. Additionally, Verizon emphasized that the settlement requires Verizon to “provide I-Net eligible customers with its FiOS Internet access services at more advantageous combinations of speed and price than Cox makes available under its waiver terms...” Verizon also noted that its FiOS service “is capable of supporting video transmission over the Internet.”¹²¹

In its post-hearing brief, Cox focused almost exclusively on level playing field considerations, copiously emphasizing that the application of level playing field standards to Verizon had been complicated by developments that occurred during the pendency of this proceeding.

Cox observed that since Verizon filed its application on February 7, 2006, the General Assembly enacted legislation, in July 2006, that authorizes, but does not require or fund, the transfer of PEG access functions from existing cable operators to the Rhode Island Public Telecommunications Authority (RIPTA). Cox also observed that following this legislative enactment, Verizon negotiated a settlement agreement with the Advocacy Section, which was filed

¹²⁰ *Id.*, p. 2.

¹²¹ *Id.*, p. 6.

on October 2, 2006, two days before the public hearing and subsequently modified on the day of the public hearing. Cox further observed that on November 2, 2006, the Division issued proposed changes in its Cable Rules that would affect the PEG access and I-Net obligations of existing and new cable operators.

Not knowing whether the Division would accept the settlement agreement between Verizon and the Advocacy Section, and further because of uncertainty regarding the effect of final rule changes on the PEG access and I-Net obligations of Cox and Verizon or whether all the rule changes would be in place before the issuance of the final decision in this docket, Cox structured the arguments in its brief to cover a multiplicity of possible outcomes.¹²²

However, due to the fact that the Division was able to complete the aforementioned rulemaking prior to the issuance of this report and order, supra, and has approved and adopted the offer of settlement proffered by Verizon and the Advocacy Section in this docket, infra, the Division will confine its attention to Cox's comments regarding this narrow scenario only. Specifically under such circumstances, Cox opines that the "Settlement Agreement, taken together with the proposed rule change...[which requires Verizon to make payments of 50 cents per subscriber per month in support of PEG operating expenses] would result in Verizon bearing approximately the economic equivalent of providing PEG access on its own, as Cox does today."¹²³ Similarly, regarding I-Net issues, "Cox submits that for level playing field

¹²² Cox's Brief, p. 2.

¹²³ Id., p. 17.

purposes the proposed rule change, coupled with approval of the Verizon Settlement Agreement, would satisfy its I-Net related level playing field concerns.”¹²⁴ Cox later reiterated these sentiments in its Reply Brief. In effect, under these combined circumstances, Cox concluded that its previous concerns over level playing field disparities had been adequately resolved.

Cox never questioned Verizon’s managerial, technical or financial ability to construct and operate a cable system in Service Area 6. However, Cox did reserve its right in future proceedings “to question Verizon’s satisfaction of these standards in the event that Verizon applies for certificates relating to other service areas in Rhode Island.”¹²⁵

In its final comments in the docket, Full Channel declared that the “idea of whether a giant telecommunications enterprise the size of Verizon is capable to construct and operate a cable system in Service Area 6 is irrefutable by any intervenor.” However, Full Channel expressed the same level playing field uncertainties in its brief that were raised in Cox’s brief. In its final analysis, mindful of the settlement agreement reached in this docket and the Division’s pending proposed changes to its Cable Rules, Full Channel urged the Division

¹²⁴ *Id.*, p. 18. This position is based on Cox’s understanding that “if the proposed rule changes were adopted: (1) neither Cox nor Verizon would have video-related I-Net obligations in Service Area 6 or other service areas, except that Cox would be required (absent a Division order) to maintain its legacy I-Net for use by those eligible users covered by its I-Net Settlement Agreement in Docket No. 2007-C-7; and (2) Cox and Verizon would have obligations pertaining to information services (e.g., data transmission) under their respective settlements in Docket Nos. 2000-C-7 and the present case (assuming Division approval of the I-Net portion of the Verizon settlement agreement).”

¹²⁵ *Id.*, p. 3.

to defer its decision on Verizon's application and waiver petitions "until the finalization of the cable rules are completed."¹²⁶

In its post-hearing position statement, the Advocacy Section related that it and Verizon entered into a Settlement Agreement dated October 4, 2006. The Advocacy Section asserts that "no evidence has been presented which tends to undermine the terms of the Settlement, or for that matter, raises any other issue suggesting that either Verizon's application or the Settlement does not satisfy the standard for granting a cable certificate under State... or federal law."¹²⁷

The Advocacy Section contends that the General Assembly addressed the Public, Educational and Governmental ("PEG") studio and equipment 'level playing field' issue in R.I.G.L. §§ 16-61-6 & -6.2. The Advocacy Section remarks that the new law permits Rhode Island CATV operators to transfer their PEG studio, PEG equipment and Interconnect equipment interests to RIPTA or its designee. The Advocacy Section observes "in this manner, existing Rhode Island CATV operators possess the opportunity to free themselves of their historic PEG studio, PEG equipment and Interconnect equipment obligations, thereby receiving equal regulatory treatment with that to be imposed upon competitive CATV operators such as Verizon in the

¹²⁶ Full Channel's Brief, p. 6.

¹²⁷ Advocacy Section Post-Hearing Position Statement, p. 1.

future.”¹²⁸ The Advocacy Section added: “[a]t the same time, the public’s interest in maintaining PEG studios, PEG equipment and Interconnect equipment is preserved as the ownership and operation of these facilities is turned over to a well-financed, experienced television provider, namely RIPTA.”

Regarding I-Net obligations, the Advocacy Section stated as follows:

Although additional legislation was unnecessary, Rhode Island CATV operators’ “level playing field” concerns in connection with their existing I-Net obligations have been resolved in much the same way. The Advocacy Section has prepared and circulated a revised draft of the Division’s Rules Governing Community Antenna Television Systems (“Cable Rules”). The revised draft eliminates existing video I-Net obligations for Rhode Island CATV operators on a prospective basis while preserving existing physically separate B-Cables and the data components of existing I-Net settlements. Competition by and between at least two well-financed, facilities-based CATV operators will drive the provisioning of institutional services over the operators’ respective broadband networks in the future.

In its concluding comments, the Advocacy Section declared that together, R.I.G.L. §§ 16-61-6 & -6.2, the proposed revised Cable Rules, and the Settlement Agreement dated October 4, 2006 in this docket provide a comprehensive framework for the Division to grant a Compliance Order Certificate to Verizon, while ensuring that the ‘level playing field’ requirement of

¹²⁸ The Advocacy Section stated in its position statement that: “[a]s of the date of this letter, it is the Advocacy Section’s understanding that CoxCom, Inc., d/b/a Cox Communications (“Cox”) intends to transfer its PEG studio, PEG equipment and Interconnect equipment interests to RIPTA, and that RIPTA will assume these operations, as contemplated by the statute. By the same law, Full Channel possesses the same opportunity to transfer its PEG operations and Interconnect equipment to RIPTA, now or at any time in the future. Under the new structure, Both Cox and Full Channel will be required to provide PEG and Interconnect channels on their networks as is true under the existing regime.”

R.I.G.L. § 39-19-3 is satisfied as it relates to I-Net, PEG studio, PEG equipment and Interconnect equipment obligations.¹²⁹

15. DISCUSSIONS AND CONCLUSIONS

A. Burden of Proof - Compliance Order Certificate

In considering applications for Compliance Order Certificates, the Division is charged with the responsibility of determining whether the applicant has satisfied the specific burden of proof established in Section 3.3 of the Division's Rules, supra, and Rhode Island General Laws, Section 39-19-4 ("R.I.G.L. §39-19-4"). If the applicant has satisfied the requisite burden of proof the Division must grant the application.

Section 3.3 of the Rules sets forth minimum filing requirements that a prospective CATV company must incorporate into its application for a Compliance Order Certificate (See Section 3.3(c)(1-12), supra). Specifically, all applications must include information on twelve categories of detail relative to the proposed CATV system. In addition to the minimum filing requirements, applicants may proffer whatever other additional relevant information they desire, in furtherance of buttressing the application.

Upon receipt of the application and the requisite quantum of supporting documents and information, the application is officially assigned a docket number and a public hearing is noticed and conducted. During the hearing the applicant may present witness testimony and other relevant and admissible evidence in support of the application.

¹²⁹ Advocacy Section Post-Hearing Position Statement, p. 2.

In this docket, Verizon filed its application with the Division on February 7, 2006. Upon receipt and review, the Division sought supplemental information from Verizon, which was submitted to the Division on March 16, 2006. With this additional information, Verizon's application was determined to be in compliance with the minimum filing requirements noted above, and was officially docketed on March 21, 2006. Thereafter the Division bifurcated itself into advocacy and adjudicative components and the Administrator appointed a hearing officer. Subsequently, a procedural schedule was adopted and a public hearing was noticed and conducted.

Predicated on the totality of the record evidence compiled during the hearing held in this docket, the Division must now decide whether Verizon:

“... is fit, willing, technically qualified, and financially able to perform the service for which it has applied, and to conform to the requirements, orders, rules, and regulations of the Division and the laws of Rhode Island and that the proposed operation will be consistent with the public interest”¹³⁰

The aforementioned language, from the Cable Rules and statute, constitutes the precise burden of proof that Verizon must satisfy in order to be granted a Compliance Order Certificate in this docket. Notwithstanding the burdens of proof that exist in the subsequent CATV certificate application phases and the so-called “level playing field” issues raised by some of the Intervenors, the issuance of a Compliance Order Certificate must hinge exclusively upon the burden of proof described above.

¹³⁰ See Section 3.3(d) of the Cable Rules and R.I.G.L. §39-19-4.

B. Burden of Proof - Waivers

As part of its Compliance Order Certificate filing Verizon has also petitioned the Division for partial waivers from the requirements of Section 7.3(A) and Sections 14.2 – 14.5 and 14.7 of the Cable Rules. Specifically, Verizon is seeking a waiver of not only the portion of Section 7.3 that requires cable operators to construct a physically separate I-Net, but also the attendant obligations of operating such a network. In its Section 14 partial waiver petition, Verizon initially proposed to share the cost of operating the existing PEG Access Studio in Service Area 6 with the incumbent cable operator in lieu of building a duplicative PEG access studio. Verizon now questions whether the waiver is needed at all in view of the recent legislative changes related to RIPTA.

Regarding Verizon's waiver petitions, the relevant burden of proof is established in Section 1.12 (d) of the Cable Rules, which provides in pertinent part as follows:

The Administrator [Division], after public hearing, shall determine on the basis of the petition, written comments, and testimony received, whether the public interest would be served by granting, in whole or part, or by the denial of the request.

Accordingly, in evaluating Verizon's waiver requests, the Division must narrowly determine, based on the evidence of record, whether the proposed waivers will advance the public interest.

C. Level Playing Field

With respect to “level playing field” issues, the concomitant burden is on the Division and not the applicant. In short, the Division must ensure that fair competition between CATV companies is fostered and preserved. An otherwise qualified applicant cannot be denied a Compliance Order Certificate on the basis of “level playing field” deficiencies. If potential deficiencies are identified, the Division is charged with the regulatory responsibility of correcting them.

16. FINDINGS

A. Verizon’s Fitness, Willingness and Technical Qualifications to Perform the Service for Which It has Applied?

The question of Verizon’s “willingness” to perform the service for which it has applied is obvious. Clearly, the time and resources expended by Verizon in furtherance of its quest for a Compliance Order Certificate is sufficient proof of its willingness to perform the proposed services.

In 2000 the Division needed to determine whether a start-up cable television company, American Broadband of Rhode Island, Inc. (“ABI”), possessed the requisite “fitness” and “technical qualifications” necessary for the issuance of a Compliance Order Certificate.¹³¹ Because ABI was a neophyte to the Rhode Island CATV market, the Division needed to carefully scrutinize its principals and officers and their individual and collective abilities to construct and operate the state-of-the-art CATV system that ABI claimed it would

¹³¹ Docket No. D-00-C-3

build.¹³² The Division finds that this type of analysis is not required in the case of Verizon.

Verizon is currently operating two successful CATV systems in Massachusetts. Verizon-affiliated companies also operate successful CATV systems in California, Texas, Florida, Virginia and New York. Verizon's 860 MHz FTTP network design constitutes state-of-the-art broadband technology. Additionally, while Full Channel urged the Division to examine the technology that Verizon is proposing to use, the parties in this docket never seriously questioned Verizon's fitness and ability to provide its proposed services. Further, in response to Full Channel's concern regarding Verizon's proposed technology, the Division notes that Verizon is currently successfully using the same technology in other states.

Predicated on Verizon's current subscriber bases in Massachusetts and the successful FTTP platform it has constructed (and operates) in this state the Division finds that Verizon has more than adequately demonstrated its fitness and technical qualifications to build and operate a CATV system in Service Area 6.

B. Verizon's Financial Ability to Perform the Service for Which It Has Applied?

The record in this docket reflects the following undisputed facts:

- That Verizon's parent company, Verizon Communications, is a Fortune 15 company with over \$71 billion in annual revenues and over 210,000 employees worldwide. Verizon Communications is

¹³² See Order No. 16339

also the largest wireline and wireless telecommunications provider in the United States. Additionally, in 2004 the Company became one of the 30 companies that comprise the Dow Jones Industrial Average;

- That Verizon New England, Inc. (the Applicant) has provided telephone services in Rhode Island for over 100 years, employs over 1100 people in the State, and has an annual payroll of over \$65 million; and
- That Verizon and its affiliated companies have successfully financed and constructed cable television operations in several other states, including neighboring Massachusetts.

In addition to the foregoing evidence of the Applicant's financial strength, the record also reveals no question from the other parties, in particular Verizon's prospective chief competitor, Cox, that the Applicant possesses the financial wherewithal to construct and operate a cable television system in Service Area 6.

In determining whether Verizon has the financial strength to carry out its plans in Service Area 6, the Division considered Verizon's current presence in Rhode Island, the breadth of its national infrastructure, and the financial data it has provided to the Division. The Division also recognizes that Verizon has successfully financed the expansion of its cable television business in Massachusetts and elsewhere in the Country. From an examination of the

record evidence, the Division finds that Verizon is financially able to perform the services for which it has applied.

C. Verizon's Willingness and Ability to Comply with the Division's Rules and the Laws of Rhode Island?

Based on the instant record, and also upon Verizon's enduring presence in Rhode Island as a regulated public utility, the Division must find that Verizon is unconditionally willing and able to comply with the Division's Cable Rules and all applicable statutory laws.

D. Is the Proposed Operation Consistent with the Public Interest?

From an examination of the record in this matter it appears that Cox and Full Channel have combined the "consistent with the public interest" licensing criterion contained in R.I.G.L. §39-19-4 and the "level playing field" mandate contained in R.I.G.L. §39-19-3 into a single unified legal argument. The following near identical assertions from Full Channel's and Cox's briefs clearly confirm the attempted merger of these two distinctly different legal issues:

*Full Channel believes that video competition also has the potential to serve the interests of the public and its consumers so long as the terms and conditions for Verizon's Compliance Order Certificate are not more favorable or less burdensome than those applicable to Full Channel.*¹³³

*Cox believes that video competition also has the potential to serve the interests of Rhode Island and its consumers in Service Area 6, so long as the terms and conditions for Verizon's Compliance Order Certificate are not more favorable or less burdensome than those applicable to Cox.*¹³⁴

¹³³ Full Channel's Brief, p. 1.

¹³⁴ Cox's Brief, p. 1.

The question of whether the proposed operation is “consistent with the public interest” however, must be evaluated on its own merit, apart from “level playing field” considerations. As there is no instructive caselaw in Rhode Island on how this R.I.G.L. §39-19-4 criterion should be interpreted, the intervening parties have argued in favor of a broad interpretation, requesting that the Division incorporate a “level playing field” analysis into the deliberative process.

In a recent unrelated docket involving a joint petition filing from National Grid USA and the Southern Union Company (seeking approval of an asset purchase agreement), the Division was faced with a similar interpretation issue involving the same phrase, “consistent with the public interest.” In that docket, the phrase was being addressed in the context of another statute, specifically R.I.G.L. §39-3-25, but its application is exactly consistent with its use in R.I.G.L. §39-19-4.¹³⁵ Some of the parties in that docket similarly argued for a broader interpretation and further opined that the phrase “consistent with the public interest” means that the proposed transaction must result in a “net benefit” to ratepayers and/or members of the general public in order to be properly approved by the Division.¹³⁶

However, recognizing that the law in Rhode Island has yet to be developed regarding this question, the Division ultimately found that the plain meaning of the words making up the phrase “consistent with the public

¹³⁵ See Docket No. D-06-13.

¹³⁶ See Division Order No. 18676, issued on July 25, 2006.

interest” must be controlling¹³⁷ and consequently concluded that the proper test must simply be whether the proposed transaction “would not unfavorably impact the general public.”¹³⁸ The Division determined that a “net benefit” is not a prerequisite for approval.

Therefore, as discussed above, the Division has previously concluded that the approval criterion, “consistent with the public interest” requires only a finding that the proposed operation or transaction will not unfavorably impact the general public. The Division will not expand the parameters of this criterion, as suggested by Cox and Full Channel. The Division finds that such an expansion would constitute an improper attempt to augment the Division’s jurisdiction through a strained interpretation of an unambiguous statute.¹³⁹ Relying on this narrow interpretation, the Division finds that the record abundantly supports a conclusion that Verizon’s proposed operation will not, if approved, unfavorably impact the ratepayers and/or members of the general public in Service Area 6.

E. Would the Public Interest be Served by Granting Verizon’s Requested Waivers?

Verizon urges the Division to approve its petitions for a partial waiver of Section 14 and a total waiver of 7.3 of the Cable Rules, “as modified by the Settlement Agreement between Verizon and the Advocacy Section.” Verizon characterizes the PEG access and I-Net obligations it seeks waivers on as “anachronistic” and offers instead, through its settlement agreement with the

¹³⁷ Citing Bristol County Water Company v. PUC, 363 A.2d 444 (R.I. 1976).

¹³⁸ Order No. 18676, pp. 51-52.

¹³⁹ See City of East Providence v. PUC, 566 A.2d 1305 (R.I. 1989)

Advocacy Section, “a package of substantial grants to support PEG studios...and high-speed Internet access service to eligible institutional users.”¹⁴⁰ Verizon asserts that this “package of services and grants offers the citizens of Rhode Island far greater benefits than would be provided were the Division to enforce the current rules on these matters instead.”¹⁴¹

Cox and Full Channel respond by adamantly arguing that granting Verizon’s original waiver requests would violate Rhode Island’s level playing field statute (R.I.G.L. §39-19-3), by allowing Verizon to avoid the substantial economic obligations that applied to them. However, addressing Verizon’s requested waivers in the context of the settlement agreement negotiated with the Advocacy Section, Cox and Full Channel significantly softened their positions. Cox first pointed out that the “Division should find and rule that the Settlement Agreement does not confer any statewide waivers upon Verizon.”¹⁴² However, Cox next declared that it was “satisfied that the PEG access portion of the Settlement Agreement would require Verizon to make capital payments equal to or greater than what would need to be spent to establish and equip public access studios under the existing Cable Rules that now apply to Cox in Service Area 6.”¹⁴³ Cox also acknowledged that the “upfront capital payments of over \$600,000 associated with Verizon’s entry into Service Area 6...[is] sufficient to meet Cox’s level playing field concerns...”¹⁴⁴

¹⁴⁰ Verizon’s Brief, p. 2.

¹⁴¹ Id., p. 4.

¹⁴² Cox’s Brief, p. 13.

¹⁴³ Id., p. 15.

¹⁴⁴ Id.

After the Division issued proposed revisions to its Cable Rules, including the I-Net provisions contained in Section 7.3, Cox and Full Channel changed course completely, and indicated that they could now accept the proposed Cable Rules changes, coupled with the Settlement Agreement, as a comprehensive resolution to the waiver issues in dispute. In short, since the amendments to the Cable Rules have been officially finalized (and are substantially similar to the proposed Cable Rules changes previously examined and commented on by Cox and Full Channel), and because the Settlement Agreement has been approved by the Division, infra, the Division finds that all the conditions have been satisfied for an effectively constructive withdrawal of Cox's and Full Channel's objections to Verizon's waiver petitions.

Moreover, the Division finds the totality of the new legislative provisions in R.I.G.L. §§ 16-61-6 and 16-61-6.2, the Settlement Agreement approved herein, and the finalized amendments to the Division's Cable Rules (effective on January 1, 2007) to represent a dispositive resolution to the matter of Verizon's Section 7.3 and Section 14 waiver requests. Accordingly, predicated on these aggregate factors, the Division finds the matter moot and declines to make a finding on the question of whether the public interest would be served by granting Verizon's waiver requests. If any party believes the matter is not moot, that party is encouraged to make that position known to the Division. The Division will thereupon determine whether or not to revisit the issue.

F. “Level Playing Field” Statute

In their direct cases Cox and Full Channel both focused on level playing field arguments, contending that Verizon’s public access and I-Net waiver requests would, if approved by the Division, result in unfair competition, by affording Verizon undue competitive advantages. Cox later repeated these arguments in its surrebuttal case.

However, as the proceeding advanced, a number of extraneous developments caused a change in Cox’s and Full Channel’s positions on the level playing field issue. After Verizon filed its application on February 7, 2006, the General Assembly enacted legislation in July that authorizes existing cable television operators to transfer their PEG access functions to RIPTA. Subsequently, Verizon negotiated a settlement agreement with the Advocacy Section on October 2, 2006 (amended on October 4, 2006) that contained several level playing field-related PEG access financial commitments. This development was later followed, on November 2, 2006, by an announcement by the Division that it would be amending its Cable Rules and changing the PEG access and I-Net obligations of existing and new cable operators.

In their post-hearing briefs, Cox and Full Channel recognized that the aforementioned developments had dramatically changed the dynamic associated with the previously disputed PEG access and I-Net waiver petition issues. In fact, but for the timing of the final promulgation of the amendments to the Cable Rules, Cox and Full Channel agreed that the previously disputed level playing field issues in the docket had in point of fact become moot.

In conclusion, as the effective date of the Cable Rules changes is now known, January 1, 2007, the Division finds that all of the level playing field issues previously in dispute between the parties in this docket have been fully resolved.

G. The Settlement Agreement

As discussed in detail above, the Division has carefully examined the settlement agreement submitted by Verizon and the Advocacy Section in this docket. The Division finds that the “PEG Grant” and “Verizon FiOS Business Service for Eligible Institutional Users” provisions are reasonable and in the public interest. However, as indicated above, the Division has determined that it is unnecessary to reach any findings on whether to grant Verizon the waivers it seeks concerning Sections 7.3, Sections 14.2 – 14.5 and Section 14.7 of the Cable Rules. Therefore the Division will not approve or adopt this specific provision of the settlement agreement.

17. CONCLUSION

In conclusion, the Division finds that Verizon has substantially satisfied the burden of proof required pursuant to Section 3.3 of the Cable Rules for the issuance of a Compliance Order Certificate. The Division has prepared an appropriate Compliance Order Certificate, which shall be issued as an appendix to this report and order.

Now, Accordingly, it is

(18789) ORDERED:

1. That the February 7, 2006 application filing of Verizon New England, Inc., seeking a Compliance Order Certificate for authority to construct and operate a competitive Community Antenna Television System in Rhode Island's CATV Service Area 6, is hereby granted.
2. The Compliance Order Certificate approved herein is attached to this Report and Order as "Appendix 1" and is incorporated by reference.
3. That Verizon New England, Inc.'s petitions for partial waivers from the requirements of Section 7.3, Sections 14.2 – 14.5 and Section 14.7 of the Cable Rules are deemed moot, as discussed herein.
4. That the Settlement Agreement filed in this docket by Verizon New England, Inc. and the Advocacy Section, as modified on October 4, 2006, is hereby approved and adopted, except for the recommendation that the "Division grant Verizon permanent waivers of Sections 7.3, Sections 14.2 – 14.5, and Section 14.7 of the Cable Rules for Service Area Six and all subsequent Service Areas for which Verizon may later apply."
5. Pursuant to Section 3.3(e) of the Rules, Verizon New England, Inc. shall indicate in writing to the Administrator of the Division whether it will accept or decline the award of this Compliance Order Certificate within thirty (30) days. In the event that Verizon New England, Inc. fails to accept the Compliance Order Certificate within the required time, Verizon New England, Inc. shall be deemed to have rejected and repudiated the award and thereafter shall have no rights, remedies or redress to said authority.

6. Verizon New England, Inc. shall also comply with the relevant timetable mandated in Section 8 of the Cable Rules.

Dated and Effective at Warwick, Rhode Island on December 20, 2006.

John Spirito, Jr., Esq.
Hearing Officer

COMMENTS FROM THE ADMINISTRATOR:

Pursuant to the authority contained in Rhode Island General Laws, Section 39-1-15, I have decided to approve the Hearing Officer's recommended decision in this docket.

Though the regulatory process that the applicant in this docket was compelled to follow was lengthy and difficult, the procedure was necessary to ensure a level playing field for competition and an offering of reliable state-of-the-art cable television and related services. The regulatory evolution that has resulted through this docket has modified the former franchise requirements to more accurately reflect the demands of a competitive environment and eliminate those assurances often found in a monopolistic marketplace. The former cable rules and statutory law did not reflect the technological and competitive realities of the 21st century.

The cable industry is on the move in our state; real competition will now exist in two of the State's nine CATV Service Areas, and further competition is expected in the years to come as these 1980s era regulatory barriers are eliminated and the companies will compete with – products, price, features and speed. Currently, this competition brings meaningful choice and potential savings to tens of thousands of Rhode Island consumers.

This development has been made possible, in part, through proactive legislative and Division rule changes, which has made the prospect of CATV

system overbuilding more attractive to cable companies. While cable operators will retain their obligations to financially support public access in Rhode Island, these changes in the law and rules allow cable operators to focus on their core business of providing cable services, a development that is good for both cable companies and consumers. Additionally, as discussed in this report and order, the Division has effectuated changes in its Cable Rules that further improve the business climate for cable companies choosing to do business in Rhode Island by removing the need to construct and maintain institutional networks that have rarely been utilized since conceived and mandated in the 1980s. The Division has also been very active in promoting the availability of low-cost non-regulated data transmission services, as evidenced by the settlement agreement struck in this docket, which brings additionally attractive competitive communications services to Rhode Island consumers.

The Division welcomes these developments and shall continue to endeavor to adopt and follow regulatory policies that foster competition, improve services and deliver potential savings to consumers. The customer must come first; cable companies via technology must deliver the innovative products and services demanded by their customers to enhance their lives. A cable company not willing or able to provide this technology will find it impossible to compete in today's marketplace.

APPROVED: _____
Thomas F. Ahern
Administrator

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS

COMPLIANCE ORDER CERTIFICATE

(For Service Area 6, Consisting Of Warwick, West Warwick, East Greenwich, North Kingstown, Coventry, West Greenwich and Exeter)

This Compliance Order Certificate is issued to Verizon New England, Inc., d/b/a Verizon Rhode Island (“Verizon”) by the Division of Public Utilities and Carriers (“Division”) pursuant to Order No. 18789 in Docket No. D-2006-C-8. This Compliance Order Certificate authorizes Verizon to own a community antenna television (“CATV”) system in Service Area 6, and is issued upon, and subject to, Verizon’s compliance with the following findings, terms and conditions:

1. Verizon is, and continues to be of, good character, fit, willing, financially and technically able properly to provide cable service to the residents of the Service Area.
2. Verizon’s ownership of the CATV system in the Service Area is, and remains, consistent with the public interest.
3. Verizon’s complies with, and continues to comply with, federal law, the Rhode Island General Laws, the Division’s Rules Governing Community Antenna Television Systems, and all Orders of the Division.

John Spirito, Jr., Esq.
Hearing Officer

Thomas F. Ahern
Administrator

Dated this 20th day of December 2006.

