

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

IN RE: Application Filing for a Construction :
 Certificate by Verizon New England, Inc. : Docket No. 2007-C-3

REPORT AND ORDER

A. INTRODUCTION

On September 28, 2007, Verizon New England, Inc. (“Verizon”) filed an application with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking Compliance Order Certificates for Rhode Island CATV Service Areas 1 and 4. Through this application filing, Verizon sought the first of three licensing certificates (for each Service Area), which if the Division granted all, would enable Verizon to provide cable television services in the following communities:

Service Area 1: Burrillville, North Smithfield, Smithfield, Woonsocket,
 Cumberland, Gloucester, Lincoln and Central Falls.

Service Area 4: Pawtucket and East Providence.

Verizon’s application was filed in accordance with the requirements of Rhode Island General Laws, Section (“R.I.G.L. §”) 39-19-3 and the Division’s “*Rules Governing Community Antenna Television Systems*” (the “Cable Rules”).

Applications filed pursuant to R.I.G.L. §39-19-3 precipitate a three-phase regulatory response from the Division.¹ The first phase, called the “*Compliance*

¹ The three-phase CATV regulatory process was comprehensively described by the Division in a previous order issued in this docket (See Order No. 19229, issued on March 7, 2008).

Order Certificate” phase, requires the Division to conduct a thorough evaluation of the applicant’s fitness, willingness, technical qualifications and financial ability to perform the proposed CATV services.² Additionally, the Division must be satisfied that the applicant is willing and able to comply with the Division’s Cable Rules and the laws of the State of Rhode Island. The Division must also find that the proposed operation will be consistent with the public interest.³

The Division completed the first regulatory phase with respect to Verizon’s September 28, 2007 application filing on March 7, 2008. On this date the Division issued a report and order granting Verizon Compliance Order Certificates for CATV Service Areas 1 and 4.⁴ Verizon formally accepted the Division’s grant of Compliance Order Certificates on March 7, 2008, a condition-subsequent required under the Rules.⁵

In satisfaction of the timetable filing requirements contained in Section 8 of the Rules, Verizon next filed an application for a “Construction Certificate” on March 7, 2008. This filing began the second regulatory phase regarding Verizon’s quest for authority to construct and operate a cable television system in Service Areas 1 and 4. The instant report and order summarizes Verizon’s application and direct case for a Construction Certificate and the positions of the Intervenors. It also contains the Division’s findings thereon.

² See Section 3.3(d) of the Rules.

³ See R.I.G.L. §39-19-4.

⁴ See Order No. 19229.

⁵ Rule 3.3(e).

B. SUMMARY OF VERIZON'S APPLICATION

Verizon filed its Construction Certificate application in conformance with the requirements established in Section 3.4 of the Cable Rules. The filing requirements mandated under Section 3.4 of the Cable Rules were enumerated and identified in the Division's March 7, 2008 report and order, previously issued in this docket, supra.⁶ In response to the obligatory filing requirements contained in Section 3.4 of the Cable Rules, Verizon addressed ten issues in its application filing. The ten relevant issues and Verizon's comments thereon are discussed in detail below.

1. Map and description of certified service area (Rule 3.4(b)(1)):

In its application, Verizon states that because it is a common carrier as defined in Title II of the Communications Act, federal and state law "give Verizon the legal authority to access the public rights-of-way in the Service Area."⁷ Relying on this authority Verizon states that it is not required to provide the Division with the "strand maps" mandated under Section 3.4 (b)(1) of the Cable Rules. Verizon relates that under its "Title II authority" it is placing fiber cable in the public rights-of-way that is capable of supporting various services including voice, data and video services. Verizon maintains that "detailed maps of its Title II facilities are proprietary, competitively sensitive, and beyond the scope of this application." Nevertheless, for "illustration purposes" Verizon

⁶ Order No. 19229, pp. 17-19.

⁷ Verizon Exhibit C-1, pp. 2-3.

provided a map showing its “plan for delivering CATV services” in Service Areas 1 and 4 from the relevant Verizon Video Service Offices (VSO).⁸

2. Technical and narrative description of system design (Rule 3.4 (b)(2)):

Verizon next proffered a technical and narrative description of the proposed CATV system it plans to construct in Service Areas 1 and 4. The description provided by Verizon in its “Construction Certificate” application directly paralleled the description previously provided in the context of the Company’s application for a “Compliance Order Certificate”. Consequently, the Division will accept that the proposed system design remains as originally described and planned for Service Areas 1 and 4.⁹

3. Proof of conformance with technical, engineering and safety standards (Rule 3.4(b)(3)):

In its application Verizon states that its network fully complies with all technical, engineering, and safety standards and codes required under the Cable Rules (Id.).¹⁰

4. Location of towers and headend facilities (Rule 3.4(b)(4)):

As reported during the Compliance Order Certificate phase of this docket, Verizon still plans to provide CATV services to Service Areas 1 and 4 through two of the Company’s national Super Head Ends (SHEs) located in Florida and Indiana, a Video Hub Office (VHO) located in Burlington,

⁸ Id., p. 2 and “Exhibit 3”.

⁹ Id., pp. 3-4 and “Exhibit 5”. An additional summary of the system’s technical description can be examined in Order No. 19229, at pp. 23-24.

¹⁰ Id., p. 4 and “Exhibit 6”. The Division’s technical and design standards requirements are set forth in Chapter 7 of the Rules.

Massachusetts, and ten Video Service Offices (VSOs) located in Pascoag, Woonsocket, Ashton, Scituate, Centredale, Pawtucket, Glocester, East Providence, Riverside, and Washington Street (Providence).¹¹

5. Proof that applicant has obtained all licenses and other forms of permission required by state and local government bodies prior to commencement of construction (Rule 3.4(b)(5)):

Regarding this criterion, Verizon reiterates that it is not constructing a new network but instead “upgrading” its existing network. Verizon observed that “[g]enerally, state and local governments do not require Verizon to obtain a license or permission merely to install new plant on poles or in existing conduit.” However, Verizon states that where such governments do require a license or other permission, “for example where Verizon must replace a pole, install a new pole or excavate in the public way”, it “has applied for and/or obtained all licenses and other forms of permission known to be required.”¹²

6. Copies of consummated pole attachment, conduit occupancy and right-of-way agreements (Rule 3.4(b)(6)):

Verizon states that it has an ownership interest in the poles and conduit used in its network upgrade, and, as such, “has not needed to enter into any arrangements with other common carrier communications companies in order to perform...[the] upgrade”.¹³

¹¹ Id., p. 4.

¹² Id., p. 5 and “Exhibit 6”.

¹³ Id., p. 5.

7. Copies of all arrangements with common carrier communications companies for services (Rule 3.4(b)(7)):

Verizon identified itself as a common carrier communications company in Rhode Island and, as noted above, claims an ownership interest in the poles and conduit used in the upgrade of its network. Verizon therefore declares that no “arrangements” are needed to perform the upgrade.¹⁴

8. Proof of satisfactory method of maintenance and continuing records of operations to show adequacy of service and performance and continuing financial responsibility (Rule 3.4(b)(8)):

In response to the issue of whether Verizon will be able to provide adequate service and performance, Verizon states that it has been providing high quality telecommunications services, satisfactory maintenance of its telecommunications system and unparalleled customer service for its customers in Rhode Island for over one hundred years. Verizon emphasizes that it employs more than 1400 people in Rhode Island and utilizes an advanced customer service center that provides valuable services to Verizon customers throughout the northeast. Verizon also emphasizes that it has previously provided the Division with ample evidence of its financial strength in this docket.¹⁵

¹⁴ Id., p. 5.

¹⁵ Id., p. 6 and “Exhibit 9”.

9. Satisfactory evidence of liability insurance coverage in amounts specified by Chapter 12 of the Division's Rules (Rule 3.4(b)(9)):

Verizon expressed its willingness to comply with Section 12 of the Cable Rules by offering a copy of an insurance certificate with its application filing.¹⁶ The insurance certificate evidences liability coverage limits that exceed the requirements prescribed under Section 12.

10. Any corrections, updates or amplifications to items filed at the time of application for a Compliance Order Certificate, including especially system design parameters required to be filed by Section 3.3(c)(3) of the Cable Rules (Rule 3.4(b)(10)):

Verizon indicates that no such corrections, updates or amplifications are required.¹⁷

C. HEARINGS AND APPEARANCES

The Division conducted a duly noticed public hearing on Verizon's application on May 7, 2008. The hearing was conducted at the Division's hearing room located at 89 Jefferson Boulevard in Warwick. The following counsel entered appearances¹⁸:

For Verizon: Alexander W. Moore, Esq.

For Cox: Alan D. Mandl, Esq.

For Full Channel
TV, Inc.: William C. Maaia, Esq.

¹⁶ Id., p. 6 and "Exhibit 7".

¹⁷ Id.

¹⁸ All of the following parties and counsel participated in the Compliance Order Certificate phase of this docket.

For the Division's
Advocacy Section:

Leo J. Wold, Esq.
Special Assistant Attorney General

D. VERIZON'S DIRECT CASE

Verizon presented a brief direct case during the instant proceeding. In furtherance of its direct case, Verizon proffered one witness in support of its application. The witness was identified as Mr. Edward J. Gee, Verizon's Director of Network Engineering. The Division notes that Mr. Gee previously testified for Verizon during the Compliance Order Certificate phase of this docket.

Mr. Gee began his testimony by briefly addressing Verizon's line extension policy. Mr. Gee related that Verizon has filed its line extension policy in conformance with Section 10.3 of the Cable Rules and plans to hold to that policy.

Mr. Gee next emphasized that Verizon will "comply with the timetable" set forth in Section 8.2(h) of the Cable Rules "while upgrading its Title II network facilities to carry video services."¹⁹ Mr. Gee related that Verizon will install and activate its Video Hub Office facilities and the Video Serving Office facilities within its wire centers during the final stages of its Title II network upgrade. Mr. Gee testified that once the Division grants all the required certificates, Verizon will make cable television service available to customers in

¹⁹ Verizon Exhibit C-2, p.1.

Service Areas 1 and 4 as the upgrades of each central office service area are completed and each central office is made video capable.²⁰

Mr. Gee also testified that to the best of his knowledge Verizon has complied with all applicable federal, state, and local technical, engineering, and safety standards in performing the upgrade of its network. He stated that the work involved in the construction, operation, and installation of the network has been performed in a safe, thorough, and reliable manner in compliance with all state, federal, and local safety codes, including the National Electric Code and the National Electric Safety Code.²¹

Mr. Gee additionally testified that Verizon has applied for and/or obtained all necessary licenses and other forms of permission necessary for the construction and upgrade of its network in the communities comprising Service Areas 1 and 4.²²

E. PUBLIC COMMENTS

There were no public comments received at the May 7, 2008 public hearing.

F. COX'S FINAL POSITION

Cox did not proffer a direct case in this matter. It also did not have any cross-examination questions for Verizon's only witness.

Cox did not oppose Verizon's application for a Construction Certificate. However, in a "Position Statement", filed with the Division on April 28, 2008,

²⁰ Id.

²¹ Id., pp. 1-2.

²² Id., p. 2.

Cox asked that the Division “take steps to assure that Verizon complies with all applicable legal standards.”²³ Specifically, Cox asserted that the Division “must find that Verizon has met the requirements of Rule 3.4 of the Cable Rules” and be assured that “Verizon understands and is able to meet the construction timeline provided under Rules 8.2 of the Cable Rules.”²⁴

Cox indicated that it was taking this position because “while Verizon has stated that it will build out its system in accordance with the Division’s build out regulations, it has not explained how it will do so.” As an example, Cox observed that Cable Rule 8.2(h) contains a specific build out and service availability requirement that during the first year after receipt of a Construction Certificate, the certificate holder must build out 20% of the Service Area or 100 miles whichever is greater. Cox questions how Verizon will satisfy this requirement when, in the past, it has “claimed not to know what portion of its system would be built under its line extension policy...”²⁵ Cox thereupon argued that the Division should “obtain from Verizon specific information on the portions of the Service Areas to be served solely under Verizon’s line extension policy in order to be able to determine whether Verizon will be in compliance with build out requirements within the portions of Service Areas that fall within the Division’s density requirements for build out.”²⁶

²³ Cox Position Statement, p. 1.

²⁴ Id., p. 2.

²⁵ Id.

²⁶ Id.

G. FULL CHANNEL'S FINAL POSITION

Full Channel also did not oppose Verizon's application for a Construction Certificate. Like Cox, Full Channel neither proffered a direct case nor cross-examined Mr. Gee.

In its "Position Statement", also submitted on April 28, 2008, Full Channel reiterated the concern it raised last year in Verizon's Service Areas 2, 3 and 8-application docket.²⁷ In sum, Full Channel warns "that Verizon may be moving too fast."²⁸ Believing this to be the case, Full Channel suggested that the Division, as the proper regulator in this area, must "keep a watchful eye on Verizon's aggressive growth into the cable market."²⁹

In its concluding Position Statement remarks, Full Channel stated that it "merely requests" that the Division "follow the law and the rules" in order to ensure "that equity, fairness and justice be applied regarding any operator regardless of market share (i.e., all requirements met, line extension policy, permits for construction, etc.)."³⁰

Subsequently at the hearing, Full Channel indicated that it was not objecting to Verizon's application.³¹

H. VERIZON'S FINAL POSITION

At the hearing, Verizon contended that it has shown that it is in compliance with all conditions, terms and requirements of the Compliance

²⁷ Docket No. 2007-C-1.

²⁸ Full Channel Position Statement, p. 1.

²⁹ Id.

³⁰ Id., p. 2.

³¹ Tr. 18-19.

Order Certificate and the Division's Cable Rules. Accordingly, Verizon asserted that Section 3.4 (c) of the Cable Rules requires the Division to issue a Construction Certificate if it finds that the applicant "...has met all of the conditions, terms, and requirements of the compliance order certificate and of the Division's rules..."³² Verizon maintains that it has met this standard.³³

I. ADVOCACY SECTION'S FINAL POSITION

At the conclusion of the public hearing conducted on May 7, 2008, the Advocacy Section indicated that based on its review of the Company's application, the data responses and other documents that have been filed in connection with this proceeding it was recommending that the Division approve Verizon's application for a Construction Certificate.³⁴

The Advocacy Section also addressed Cox's concerns about Verizon's ability to comply with the build out requirements mandated under Rule 8.2(h) of the Cable Rules. Regarding this matter, the Advocacy Section stated that it had discussed the issue with Verizon and that Verizon had agreed to provide the Division with a report each year detailing its compliance efforts with the build out requirements mandated under Rule 8.2(h). The Advocacy Section indicated that the report would be due "30 days after each annual date from the date that the license is approved, so that the Division will have a record of

³² Tr. 7

³³ Id.

³⁴ Tr. 8.

the progress that Verizon has made with respect to the construction of its network over the five-year period...”³⁵

Upon hearing of the Advocacy Section’s agreement with Verizon, Cox stated that the annual reporting requirement “completely satisfies the concerns that we raised in our position statement.”³⁶

J. FINDINGS

In order to satisfy the requirements for obtaining a Construction Certificate an applicant must first possess a Compliance Order Certificate. Verizon was issued a Compliance Order Certificate on March 7, 2008.³⁷

As an additional requirement, an applicant seeking a Construction Certificate must also submit documentation in accordance with the information mandate delineated in Section 3.4 (b) (1-10) of the Rules. Verizon proffered detailed information and various documents with the instant application, which Verizon maintains satisfies the filing requirements set forth in Section 3.4 (b) (1-10) of the Rules.³⁸

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 a Compliance Order Certificate, and the Division’s Rules, then the Division must grant a Construction Certificate to the applicant.³⁹

³⁵ Id.

³⁶ Tr. 14.

³⁷ See Order No. 19229, supra.

³⁸ Verizon Exh. C-1.

³⁹ See Section 3.4 (c) of the Rules.

The Division has carefully examined the record in this matter. The Division also notes that none of the parties ever asserted that Verizon failed to satisfy its burden of proof in this case or argued in favor of denying Verizon's application for a Construction Certificate. Based on the record evidence, the Division finds that Verizon has satisfied its requirements under the Cable Rules and that Construction Certificates for Service Areas 1 and 4 must be issued.

Now, Accordingly, it is

(19287) ORDERED:

1. That the March 7, 2008 application filing of Verizon New England, Inc., seeking a Construction Certificate for authority to construct Community Antenna Television Systems in Rhode Island's CATV Service Areas 1 and 4, is hereby granted.
2. That all of the written commitments and representations made by Verizon New England, Inc, through its representatives in the instant docket as contained in their: (i) written application and supporting documents, and (ii) sworn testimony and exhibits that were made part of the record on May 7, 2008, are restated and incorporated as terms and conditions of the certificate and are hereby binding on Verizon New England, Inc.
3. The Division approves and adopts the annual Rule 8.2(h)-related reporting requirement for Verizon as discussed herein.

4. The Construction Certificates approved herein are attached to this Report and Order as “Appendix 1” and “Appendix 2” and are incorporated by reference.

5. That Verizon New England, Inc. shall comply with the relevant timetable mandated in Section 8 of the Rules.

Dated and Effective at Warwick, Rhode Island on May 19, 2008.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS

CONSTRUCTION CERTIFICATE

(For Service Area 1, Consisting Of Burrillville, North Smithfield, Smithfield, Woonsocket, Cumberland, Glocester, Lincoln and Central Falls)

This Construction 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. 19287 in Docket No. 2007-C-3. This Construction Certificate authorizes Verizon to construct a community antenna television ("CATV") system in Service Area 1, 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 has satisfied, and continues to satisfy, all of the terms, conditions and requirements of its Compliance Order Certificate.
3. Construction of its CATV system in the Service Area is consistent with the public interest.
4. Verizon has complied with, and continues to comply with, federal law, the Rhode Island General Laws, the Rules Governing Community Antenna Television Systems (2007), as amended and all Orders of the Division.

John Spirito, Jr., Esq.
Hearing Officer

Thomas F. Ahern
Administrator

Dated this 19th day of May, 2008.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS

CONSTRUCTION CERTIFICATE

(For Service Area 4, Consisting Of Pawtucket and East Providence)

This Construction 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. 19287 in Docket No. 2007-C-3. This Construction Certificate authorizes Verizon to construct a community antenna television ("CATV") system in Service Area 4, 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 has satisfied, and continues to satisfy, all of the terms, conditions and requirements of its Compliance Order Certificate.
3. Construction of its CATV system in the Service Area is consistent with the public interest.
4. Verizon has complied with, and continues to comply with, federal law, the Rhode Island General Laws, the Rules Governing Community Antenna Television Systems (2007), as amended and all Orders of the Division.

John Spirito, Jr., Esq.
Hearing Officer

Thomas F. Ahern
Administrator

Dated this 19th day of May, 2008.

