

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

IN RE:           Application for Compliance Order                                 :  
                  Certificates by Verizon New England, Inc.         :   Docket No. 2007-C-1

**REPORT AND ORDER**

**1. INTRODUCTION**

A. The Instant Application Filing

On March 8, 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 2, 3 and 8. Through this application filing, Verizon seeks 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 2: Providence and North Providence.

Service Area 3: Cranston, Foster, Scituate and Johnston.

Service Area 8: Hopkinton, Richmond, Charlestown, Westerly,  
                                South Kingstown and Narragansett.

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”).<sup>1</sup>

In furtherance of starting the process of adjudicating Verizon’s application, the Division established a filing deadline of April 13, 2007 for all

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<sup>1</sup> Verizon Exhibit 1.

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 April 3, 2007. 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 20, 2007. The notice additionally indicated that the Division would conduct a motion hearing, if required, to hear all intervention-related issues and arguments at 11:00AM on Monday, April 23, 2007 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; and Full Channel TV, Inc. ("Full Channel") 57 Everett Street, Warren, Rhode Island. As Verizon never objected to Cox's or Full Channel's motions to intervene, the motions were granted by operation of law<sup>2</sup> and the pre-scheduled April 23, 2007 motion hearing was cancelled.

The Division's Advocacy Section ("Advocacy Section"), an indispensable party, entered an appearance in the instant docket during a scheduling conference, during which time the parties of record agreed to a comprehensive procedural and hearing schedule for this case.

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<sup>2</sup> See Rule 17(e) of the Division's Rules of Practice and Procedure.

## B. Verizon's Recent Approvals in Service Area 6

As part of this introductory section, the Division takes administrative notice that it recently completed a similar application evaluation process relative to a Verizon application to provide cable television services in CATV Service Area 6, which is comprised of the communities of Coventry, East Greenwich, Exeter, North Kingstown, Warwick, West Warwick and West Greenwich.<sup>3</sup> The Division finds the contemporaneousness of Verizon's Service Area 6 application, the Division's decisions related thereto and the settlement agreement ("*Settlement Agreement*", *infra*) approved by the Division in that docket (Docket No. 2006-C-4) to all be relevant and instructive in the instant docket proceeding.

A brief chronology is also useful. Verizon initiated the three-phase licensing protocol for Service Area 6 on February 7, 2006. The Division completed and approved the first regulatory phase, the "*Compliance Order Certificate*" phase, on December 20, 2006.<sup>4</sup> The second regulatory phase, called the "*Construction Certificate*" phase, was initiated by Verizon with an application filing on January 26, 2007. The Division completed and approved this second regulatory phase on April 5, 2007.<sup>5</sup> The final regulatory phase, referred to as the "*Certificate of Authority to Operate*" phase, was initiated by Verizon with an application filing on April 6, 2007. The Division completed and approved this final regulatory phase on May 21, 2007 and in a final written

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<sup>3</sup> See Docket 2006-C-4.

<sup>4</sup> See Order Nos. 18789 and 18801.

<sup>5</sup> See Order No. 18916

decision authorized Verizon to begin providing cable television services in Service Area 6 on June 5, 2007.<sup>6</sup>

## **2. SUMMARY OF VERIZON'S APPLICATION**

In its introductory comments, Verizon stated that its technical, financial, and managerial qualifications to own and operate a cable system in Rhode Island have already been established. Relying on the Division's decision to award Verizon a Compliance Order Certificate for Service Area 6 in 2006<sup>7</sup>, Verizon asserted that it is "well qualified to own and operate a cable system in Rhode Island."

To buttress its claim of financial strength, Verizon added that its parent company (Verizon Communications) is a Fortune 15 company with over \$80 billion in annual revenues and over 210,000 employees worldwide. Verizon noted that it 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 stated that its new FiOS Solution Center "*has already brought more than 150 new jobs to Rhode Island and will generate even more jobs as Verizon expands its video services.*"<sup>8</sup>

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<sup>6</sup> See Order No. 18962.

<sup>7</sup> See Order Nos. 18789 and 18801, issued in Docket No. 2006-C-4.

<sup>8</sup> Verizon Exhibit 1, p. 1.

Verizon's application also includes twelve sections of information, which directly parallel the informational filing requirements set forth in Section 3.3(c) of the Division's Cable Rules. A summary of this information, along with a corresponding reference to the specific Cable 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 Service Areas 2, 3 and 8, which it notes is similar to its planned number of channels for Service Area 6, and the number of channels it currently offers to customers in Massachusetts, New York, Pennsylvania, Texas, Virginia, Florida, California, Delaware and Maryland. A sample list of channels and content packages from Verizon's service offering in Woburn, Massachusetts was proffered as an exhibit.<sup>9</sup>

Verizon also 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 carry PEG (Public, Educational and Government) programming in its Basic Service.<sup>10</sup>

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 as a new entrant

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<sup>9</sup> Id., p. 2 and "Exhibit 2".

<sup>10</sup> Id.

into the Rhode Island video market, 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 its Basic Service tier.<sup>11</sup>

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

Verizon provided an exhibit that generally describes its proposed FTTP System Architecture.<sup>12</sup> This exhibit provides details regarding the FTTP System’s “end-to-end” and “full build and overlay” architectures, and also Verizon’s planned construction of a “super headend” a “video hub office” and a “video serving office & passive optical network.”<sup>13</sup> 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”), located in Florida and Indiana, 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

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<sup>11</sup> Id., p. 2.

<sup>12</sup> Id. and “Exhibit 3”.

<sup>13</sup> Id., “Exhibit 3”.

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.<sup>14</sup>

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 Areas 2, 3 and 8. 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 I of the Telecommunications Act governs the FiOS data product, providing the service does not require a cable license.<sup>15</sup>

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 Use - 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 Rhode

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<sup>14</sup> Id., p. 3.

<sup>15</sup> Id.

Island Public Telecommunications Authority (“RIPTA”) in Service Areas 2, 3 and 8. Verizon stated that it is already in the process of interconnecting with RIPTA’s Providence studio to provide PEG programming in Service Area 6 and will do the same for Service Areas 2, 3 and 8 if its application is approved.<sup>16</sup>

Verizon added that it recognizes its obligation to provide support for a PEG Access studio in Service Areas 2, 3 and 8. Verizon related that pursuant to the terms and conditions of the *Settlement Agreement* filed in Docket No. 2006-C-4, Verizon will provide RIPTA with a grant of \$50,000 plus \$2 per household for each Service Area.<sup>17</sup> Verizon observed that according to “Exhibit 1 of the *Settlement Agreement*” (included with Verizon’s application as “Exhibit 4”) Service Area 2 has 76,740 households, Service Area 3 has 47,466 households, and Service Area 8 has 34,196 households. Based on these totals, Verizon calculated that it will provide RIPTA with grants of \$203,480 for Service Area 2, \$144,932 for Service Area 3, and \$118,392 for Service Area 8. Verizon further declares that it will also provide Eligible Institutional Users (as that term is defined in the *Settlement Agreement*) with access to its FiOS data product.<sup>18</sup>

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

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<sup>16</sup> *Id.*, pp. 3-4, “Exhibit 4”.

<sup>17</sup> The “Settlement Agreement” referred to by Verizon in the instant application was approved by the Division in Docket No. 2006-C-4. Docket No. 2006-C-4 was established in response to Verizon’s February 7, 2006 application filing seeking a Compliance Order Certificate for Service Area 6. The Division granted Verizon’s application and adopted the Settlement Agreement in a report an order issued on December 20, 2006 (See Order No. 18789).

<sup>18</sup> Verizon Exhibit 1, pp. 3-4.



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.<sup>19</sup>

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

According to its application, Verizon will activate cable service in Service Areas 2, 3 and 8 in accordance with the timetable set forth in Section 8.2 of the Cable Rules. Verizon adds that service will also be provided to subscribers in accordance with all applicable Cable Rule requirements, including Density Standards (Section 10.2 of the Cable Rules) and Verizon’s Line Extension Policy (Section 10.3 of the Cable Rules).<sup>20</sup>

Verizon also states that it will install and activate its VHO facilities and its VSO facilities within its wire centers during the final stages of its Title II network upgrade. Verizon states that it will make cable service available to customers served by any given central office in Service Areas 2, 3, and 8 when it completes upgrades of that central office area and makes the central office video capable. Verizon expects that it will be able to provide service to portions of Service Area 2, 3 and 8 shortly after the Division grants the requisite Certificates of Authority to Operate pursuant to Section 3.5 of the Cable Rules.<sup>21</sup>

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<sup>19</sup> Id., p. 4.

<sup>20</sup> Verizon attached a copy of its Line Extension Policy to the instant application, as “Exhibit 5”.

<sup>21</sup> Verizon Exhibit 1, p. 4.

E. Section 3.3(c)(5) – Tariff

Verizon stated that its entry into the cable television market of Service Areas 2, 3 and 8 “*will be subject to effective competition as defined in 47 U.S.C. §543 (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.<sup>22</sup> Verizon indicated that the rates it will charge for its video services in Service Areas 2, 3 and 8 would be similar to the rates it plans to charge in Service Area 6.<sup>23</sup>

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 Areas 2, 3 and 8 as required under Section 7.3 of the Cable Rules.<sup>24</sup>

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)

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<sup>22</sup> Id., pp. 4-5.

<sup>23</sup> Id., p. 5. Verizon attached an exhibit to its application (“Exhibit 6”) that depicts the rates it plans to charge its customers in Service Area 6.

<sup>24</sup> Id., p. 5.

Terry K. Denson

Vice President – FiOS TV Content  
Strategy and Acquisition

Shawn M. Strickland

Vice President - FIOS TV Product Management

Mr. James Ho

Video Services Architecture

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

Verizon stated that it currently holds a Compliance Order Certificate in Rhode Island Service Area 6 and also holds cable franchises in 41 communities in Massachusetts.<sup>25</sup>

Verizon also indicated that affiliated Verizon companies in California, Texas, Florida, Pennsylvania, Delaware, Maryland, Virginia and New York have been providing cable services to consumers since the third quarter of 2005.<sup>26</sup>

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 Fortune 15 company that is publicly traded on the New York Stock Exchange and other stock exchanges.<sup>27</sup>

Verizon's application also provided the names of five directors and nineteen current officers.<sup>28</sup>

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<sup>25</sup> Id., p. 6. Verizon also proffered an exhibit ("Exhibit 7") showing the 41 franchising authorities that have granted licenses to Verizon in Massachusetts.

<sup>26</sup> Id., pp. 6-7.

<sup>27</sup> Id., p. 7.

<sup>28</sup> Id., pp. 7-8.

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 2005 revenues in excess of \$80 billion. To further demonstrate the financial strength and stability of the company, Verizon proffered a copy of Verizon Communications, Inc.'s "2005 Annual Report to Shareholders."<sup>29</sup> The Annual Report includes the Company's 2005 Income Statement, Balance Sheet, and Cash Flow Report, along with the Auditor's Letter and the Statement of Management. Verizon also provided copies of its most recent financial reports, its most recent Automated Report Management Information System (ARMIS) report, and the Company's 2006 Form 10-K Report to the Securities and Exchange Commission.<sup>30</sup>

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

Verizon's application indicates that due to the confidential nature of information contained in its pro forma income statements and balance sheets, the Company is submitting the requisite filings under separate cover. Verizon's submittals have been shared with all the parties, pursuant to a confidentiality agreement, and are currently under protective seal.

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<sup>29</sup> Id., p. 8 and "Exhibit 8".

<sup>30</sup> Id., and Exhibits 9-11, respectively.

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 Areas Two, Three, and Eight, which is not currently subject to effective competition. Service Areas Two, Three and Eight are currently served by a single cable operator (Cox Communications, Inc.), and recent national 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 (See Exhibits 12 and 13). 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 subscribers where none currently exists and therefore is in the public interest.”<sup>31</sup>*

At the conclusion of its application, Verizon additionally indicated that it would maintain a local business office in accordance with the requirements of Sections 13.1 (a)-(c) of the Cable Rules. Verizon related that it has yet to determine the exact locations of the business offices but would provide the specific information to the Division when such information becomes available.<sup>32</sup>

Verizon also asked the Division for “expedited consideration” of its application. Verizon noted that it has already demonstrated in the recently completed proceedings on its application for a Compliance Order Certificate for Service Area 6, in Docket No. 2006-C-4, “...that it is fit, willing, and technically

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<sup>31</sup> Id., p. 9.

<sup>32</sup> Id.

*qualified and financially able to provide cable television service in Rhode Island and to conform to the laws of the state and the requirements, orders, rules and regulations of the Division”. Verizon further noted that it “...has also demonstrated to the satisfaction of the Division that Verizon’s operation of a cable television system in the state will bring real competition and its attendant customer benefits to the cable television market and thereby serve the public interest”. Verizon also observes that the Settlement Agreement that it executed with the Advocacy Section in Docket No. 2006-C-4 “...provides the financial and related terms on which Verizon will support PEG access programming and studios, including in Service Areas Two, Three and Eight once Verizon begins offering service in those Areas”. In closing, Verizon asserts that “[w]ith these factors in mind, ...[it] suggests that there are few, if any, substantive issues to be addressed in this proceeding and that this Application is therefore appropriate for expedited consideration.”<sup>33</sup>*

### **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*

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<sup>33</sup> *Id.*, p. 9.

*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.<sup>34</sup>*

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

#### 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

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<sup>34</sup> See Section 1.2 (h),(l) and (m) of the Cable Rules.

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.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup>

#### B. Construction Certificate

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

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<sup>35</sup> See Section 3.3(d) of the Cable Rules.

<sup>36</sup> See Section 3.3(e) of the Cable Rules.

<sup>37</sup> See Section 3.3(g) of the Cable Rules.



- (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.*<sup>38</sup>

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.<sup>39</sup> An

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<sup>38</sup> See Section 3.4(b)(1-10) of the Cable Rules.

<sup>39</sup> See Section 3.4(c) of the Cable Rules.

applicant in possession of a Construction Certificate is then authorized to commence actual construction of a CATV system in Rhode Island.<sup>40</sup>

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.<sup>41</sup> Upon receipt of such notice, the Division is required to conduct a duly noticed public hearing.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup>

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<sup>40</sup> See Section 3.4(d) of the Cable Rules.

<sup>41</sup> See Section 3.5 (b) of the Cable Rules.

<sup>42</sup> See Sections 3.5(a) and (b) of the Cable Rules.

<sup>43</sup> See Section 3.5(c) of the Cable Rules.

<sup>44</sup> See Section 3.5(d) of the Cable Rules.

#### 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.*
- (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.<sup>45</sup>*

#### **4. PUBLIC HEARING AND APPEARANCES**

The Division conducted four duly noticed public hearings in this phase of the docket. A public hearing was conducted in each of the three Service Areas on the dates indicated below:

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|-----------------|--|
| Service Area 2: | Wednesday, May 16, 2007 at 6:00 P.M.<br>Location: Council Chambers at Providence City<br>Hall, 25 Dorrance St., Providence, RI |
| Service Area 3: | Thursday, May 17, 2007 at 6:00 P.M.<br>Location: Cranston Public Library, 140<br>Sockanosset Cross Roads, Cranston, RI         |

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<sup>45</sup> See Section 8.2(a-j) of the Cable Rules.

Service Area 8: Thursday, May 24, 2007 at 6:00 P.M.  
Location: Council Chambers at South Kingstown  
Town Hall, 180 High St., South Kingstown, RI

An additional hearing was held in the Division's hearing room, located at 89 Jefferson Boulevard in Warwick on June 7, 2007. The following counsel entered appearances at the hearings:

For Verizon: Joseph DeAngelis, Esq., and  
Alexander W. Moore, 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.<sup>46</sup>

The panel additionally described the type of video services that Verizon plans to offer in Service Areas 2, 3 and 8 and the proposed pricing for its services.<sup>47</sup> The panel also discussed the terms and conditions under which Verizon will offer free service to educational and governmental entities.<sup>48</sup> The panel also provided details regarding Verizon's ownership in other cable television systems.<sup>49</sup> 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.<sup>50</sup>

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*

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<sup>46</sup> Verizon Exhibit 2, pp. 1-4.

<sup>47</sup> Id., p. 5.

<sup>48</sup> Id., pp. 5-6.

<sup>49</sup> Id., p. 6.

<sup>50</sup> 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.”<sup>51</sup>*

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.<sup>52</sup> The panel also compared Verizon’s proposed CATV system to the CATV system currently used by Cox in Service Areas 2, 3 and 8, as follows:

*“The current system in use in Service Areas Two, Three and Eight 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; it is the equipment/technology on the ends that limit the bandwidth. As services requiring more bandwidth are offered, the equipment on the ends of the fiber can be modified to provide the additional*

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<sup>51</sup> *Id.*, pp. 7-8.

<sup>52</sup> *Id.*, pp. 8-10.

*bandwidth. The FIOS system, unlike standard wire, is able to handle multiple upstream and downstream transmissions at a much faster speed and will allow greater capabilities for video on demand services than the old-fashioned copper wire system.”*<sup>53</sup>

In their 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 related that Verizon is seeking to bring competition and its attendant benefits to the cable television market in Service Areas 2, 3 and 8. The panel reiterated that recent national 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. The panel related that they “...expect that, as it has in other industries, competition will bring greater innovation in products, services and options to cable subscribers in the Area.”<sup>54</sup> The panel also alluded to the *Settlement Agreement* entered into between Verizon and the Advocacy Section in Docket No. 2006-C-4, wherein Verizon agreed to provide substantial grants to the Division to support PEG access programming in Service Areas 2, 3 and 8 and will provide eligible institutional users with access to Verizon’s high speed FiOS business data product. The panel also opined that “*the issuance of a competitive cable certificate will provide choice to Rhode Island subscribers where none currently exists, additional resources for PEG Access programming, and access by institutional users to services that are not*

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<sup>53</sup> *Id.*, p. 10.

<sup>54</sup> *Id.*, p. 10.



*currently available to them...*<sup>55</sup> The panel subsequently contended that this competition will “*serve the public interest.*”<sup>56</sup>

## **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 Areas 2, 3 and 8, it has a substantial and specific interest in assuring that any Compliance Order Certificates awarded to Verizon “*contain 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.*”<sup>57</sup>

Mr. Wolfe asserted that the Division’s award of a Compliance Order Certificate to Verizon for Service Area 6 “*is not determinative of whether Verizon has met the requirements applicable to an award of Compliance Order Certificates for Service Areas 2, 3 and 8.*”<sup>58</sup> He related that each application must be evaluated on its own merits. He also opined that in each case, the Division must assure that applicable level playing field requirements have been satisfied.

Mr. Wolfe contended that a failure to apply existing entry requirements to Verizon in an even-handed manner would result in unfair competition. He related that market entry rules of the Division should apply equally to all

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<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> Cox Exhibit 1, p. 2.

<sup>58</sup> Id., p. 3.

entrants, irrespective of when they seek to enter the cable market, in order to maintain a competitively neutral licensing process. Mr. Wolfe contended that it is of critical importance to an incumbent cable operator that the terms and conditions of any certificate awarded to a second cable operator “...*be not more favorable or less burdensome than those terms and conditions under which the incumbent cable operator is required to operate.*”<sup>59</sup>

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. He testified that in the event that the Division awards any Compliance Order Certificates to Verizon for Service Areas 2, 3 and 8, Cox expects Verizon to “*recommit to the public access requirements covered by its Stipulation in Docket No. 2006-C-4 and by the Division’s Cable Rules and that it maintain its data-related I-Net obligations under the Division’s Cable Rules.*” Mr. Wolfe additionally recommended: “*(1) inclusion of construction build out requirements that ensure that Verizon will make cable service available to all residents in the Service Area, subject to the density standards of the Division; (2) front counter and related staffing commitments; and (3) demonstrated compliance with all Division technical standards (including any applicable signal leakage requirements), EAS obligations and general reporting requirements.*”<sup>60</sup>

Mr. Wolfe further contended that the Division cannot rely on Verizon’s cable operations in other states or its recently granted Compliance Order

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<sup>59</sup> Id.

<sup>60</sup> Id., p. 5. “EAS” stands for “Emergency Alert System” (See Section 7.5 of the Cable Rules).

Certificate for Service Area 6 as proof that Verizon meets the requirements for the award of Compliance Order Certificates for Service Areas 2, 3 and 8. Mr. Wolfe asserts that, “*Verizon is required to demonstrate, after investigation, that it has met the burden of proof established under Section 3.3 of the...[Cable] Rules.*” Mr. Wolfe observed that Cox was required to satisfy the requisite burden of proof when it applied for authority to provide cable service in Bristol County. He testified that “[t]he same standards should apply to Verizon.”<sup>61</sup> Similarly, Mr. Wolfe opined that the Division “*should give little weight to Verizon’s past history as a provider of telephone service.*”<sup>62</sup>

Mr. Wolfe next turned his attention to the use of “return paths” now owned, used and maintained by Cox to transport PEG programming from remote origination locations to the PEG studios now operated by RIPTA (Rhode Island Public Telecommunications Authority). Mr. Wolfe related that as part of its obligation to manage and operate public access, Cox has historically owned, operated and maintained return paths that are used to transport remotely originated PEG programming, such as meetings at town halls, to public access studio facilities. He explained that this programming is then transported from these public access studio facilities to subscribers over its cable system. Mr. Wolfe testified that the transfer of public access facilities by Cox to RIPTA following the passage of legislation in 2006 and the Division’s related subsequent rulemaking did not include or address the transfer of these return path facilities.

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<sup>61</sup> *Id.*, p. 6.

<sup>62</sup> *Id.*, p. 7.

Mr. Wolfe further related that RIPTA currently receives and enables remotely originated programming in Service Areas 2, 3 and 8 through Cox's video return paths or feeds "*at no expense to RIPTA or indirectly, to Verizon.*"<sup>63</sup> Mr. Wolfe testified that "*with PEG operation and management now in the hands of RIPTA and given the Division's intention that PEG obligations be funded equitably by all competitors, it no longer is equitable for Cox to incur all of the costs of providing and maintaining these return feeds.*"<sup>64</sup> Mr. Wolfe testified that there are approximately 16 video feeds or returns in the State. As a recommendation on the matter, and describing the issue as a level playing field concern, Mr. Wolfe opined that the Division should "*direct discussions among Cox, Verizon and RIPTA to resolve this issue in an equitable manner...and instruct the parties to submit a proposed resolution of this issue for approval by the Division.*" He suggested that "*any resolution that meets with the approval of the Division should be included in any Verizon compliance order certificates issued for Service Areas 2, 3 and 8.*"<sup>65</sup>

Described as another level playing field matter, Mr. Wolfe testified that Cox would also like the Division to require Verizon "*to certify its compliance with PEG funding requirements as they arise and serve copies of its certifications upon incumbent cable operators...*"<sup>66</sup> Mr. Wolfe related that such certification would provide a ready means for interested parties to insure that level playing field obligations of Verizon are being met.

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<sup>63</sup> *Id.*, p. 8.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*, p. 9.

<sup>66</sup> *Id.*

Mr. Wolfe also asked the Division to require Verizon to adhere to applicable FCC technical requirements under the Division's Cable Rules. Mr. Wolfe specifically identified "*obligations relating to signal leakage*" as Cox's primary concern.<sup>67</sup>

## **7. PUBLIC COMMENTS**

Twelve individuals, including one elected public official offered public comment during the hearings conducted in this docket. All the comments were in support of Verizon's application. These individuals included the Honorable Representative Nicholas Gorham, representing House District 40 (Foster, Glocester and Coventry); Mr. John Longo of Providence; Mr. William Shuey of Providence; Ms. Hilary P. Salmons, representing the Providence After School and a resident of Providence; Mr. William McGowan, Business Agent for IBEW Local 2323, representing approximately 1100 Verizon employees in the State of Rhode Island; Mr. Richard E. Mason of Foster; Mr. Robert A. Boyden of Foster; Ms. Marie Sweet of Cranston; Mr. Angelo Mellop of Foster; Ms. Valerie Forti of Cranston; Mr. Thomas Plunkett of South Kingstown (a Verizon employee); and Mr. Thomas D'Amato of Wakefield.

The Division additionally received letters and e-mails of support from over 100 individuals, including the Honorable David N. Cicilline, Mayor of Providence; and the Honorable Senator James C. Sheehan, representing Senate

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<sup>67</sup> Id., p. 10.

District 36 (Narragansett and North Kingstown). All the letters and e-mails were identified on the record.<sup>68</sup>

None of the public comments received in this docket reflected any expressed opposition toward Verizon's application. Generally speaking, the tenor of the comments indicated support for the "choice" and "competition" that Verizon's proposed cable television services would bring consumers in Service Areas 2, 3 and 8.

### **8. FULL CHANNEL'S POSITION**

Full Channel did not proffer any witnesses in this docket. However, Full Channel did file a "Position Memorandum" prior to the commencement of hearings.<sup>69</sup> 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.*"<sup>70</sup>

Full Channel also argues that the Division 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.*"<sup>71</sup>

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<sup>68</sup> Public Comments 1-4.

<sup>69</sup> Full Channel Exhibit 1.

<sup>70</sup> Id., p. 1.

<sup>71</sup> Id.

Full Channel also argued that the Division “*must be careful not to provide favoritism over another operator by waiving rules not waived for other cable operators*”.<sup>72</sup> Full Channel added: “*just because Verizon was awarded a Certificate of Compliance for Service Area 6...doesn’t mean that they automatically should receive a Compliance Order Certificate for Service Areas 2, 3 and 8...Every applicant, including Verizon, is required to demonstrate that it meets the burden set forth in the rules under section 3.3.*”<sup>73</sup>

Full Channel additionally urged the Division to “*take particular attention to the revised rules and the new obligation(s) and requirements Verizon is responsible for regarding the public access in new PEG circumstances.*” Full Channel indicated that it “*supports Intervenor Cox’s concerns in this regard...and that all that was promised [by Verizon] will be delivered in terms of PEG access and all the facts and circumstances surrounding the rule changes that make it possible for Verizon to not be required to participate in the public access in the same way the other operators like Full Channel and Cox had to in the past be met and followed by them.*”<sup>74</sup>

Regarding the FCC signal leakage reporting requirements matter raised by Cox, Full Channel maintains that, “*Verizon should not be allowed to escape scrutiny or responsibility regarding signal leakage just because it uses a different network design.*”<sup>75</sup> Based on these design differences, Full Channel urges the Division to require Verizon to fully explain how its FiOS design differs

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*, p. 2.

<sup>74</sup> *Id.*, pp. 2-3.

<sup>75</sup> Full Channel Post-Hearing Memorandum, p. 3 (submitted on 7/12/07).

from “*the HFC design...[and] how signal leakage occurs.*” Full Channel asserts that the “*Administrator should not render a decision until Verizon has provided this information.*”<sup>76</sup>

Full Channel also commented on Cox’s assertion that Verizon must share in the cost of maintaining Cox’s return paths in Rhode Island. Full Channel recommended that the Division seek additional “*information and exhibits*” before rendering any decision on the issue.<sup>77</sup>

## **9. ADVOCACY SECTION’S POSITION**

The Advocacy Section also decided not to proffer any witnesses in this proceeding. At the conclusion of the June 7, 2007 hearing the Advocacy Section offered comment on several of the disputed issues, but ultimately recommended approval of Verizon’s application.

Regarding Cox’s dispute over the issue of return paths, the Advocacy Section indicated that, “*there has simply been not enough factual information relating to the costs of that maintenance to make any affirmative decision at this point in time.*” The Advocacy Section continued, “*if the Division feels that the issue is material or is one that requires further investigation, we would be happy to assist...in connection with that docket that may or may not be established.*”<sup>78</sup>

The Advocacy Section did express some trepidation however, over a recent Providence Journal article that suggested that the quality of Verizon’s telephone customer service had been declining. The Advocacy Section stated

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<sup>76</sup> Id., pp. 4-5.

<sup>77</sup> Id., p. 4.

<sup>78</sup> Tr. 106, (6/7/07).



that it hoped “*that Verizon’s cable operations would not suffer from the same detriment.*”

## **10. COX’S FINAL POSITION**

Cox principally proffered its final position in this docket through a post-hearing memorandum submitted on July 12, 2007. It also briefly addressed the issues in dispute at the close of the June 7 hearing.

Cox argues that it is “*not convinced at this point that Verizon fully understands its responsibilities relating to signal leakage occurring within the home.*” Cox argued that “*regardless of what Cox or Verizon say...the Division’s rules do require Verizon to comply with the FCC’s technical standards to the extent they apply.*”<sup>79</sup> Cox maintains that Verizon is subject, at the very least, to 47 CFR 76.605(b), which, according to Cox, requires Verizon to “*...make a showing...that their operation benefits the public interest.*”<sup>80</sup> Cox further argues that, “*they are subject to special technical requirements that may be prescribed by the FCC to ensure that subscribers to such systems are provided with an equivalent level of good quality service.*”<sup>81</sup>

Cox also observed that the *Settlement Agreement* that Verizon reached with the Advocacy Section in its Service Area 6 application docket, wherein Verizon agreed to make certain payments in lieu of constructing public access studios and providing related equipment and staff, did not address the issue of return paths. Cox argues that just because the issue of return paths is not

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<sup>79</sup> Tr. 109, (6/7/07).

<sup>80</sup> Cox Post-Hearing Memorandum, p. 7.

<sup>81</sup> Id.

addressed in the *Settlement Agreement* does not mean that Verizon doesn't have to share in the cost. Cox contends that equity dictates that the cost to maintain these existing remote feeds be shared among all cable operators within a given Service Area.<sup>82</sup> Cox also contends that the return path-cost issue must be addressed by the Division in the context of the level-playing field protections afforded Cox under the law.<sup>83</sup>

Cox additionally contends that level playing field protections also extend to the number of certificates that the Division awards. Cox argues that Verizon's application should be treated as an application for three separate Compliance Order Certificates, one for each of the three Service Areas identified in the application. Accordingly, Cox contended that if the Division grants Verizon's application it should award separate Compliance Order Certificates for Service Areas 2, 3 and 8.<sup>84</sup>

## **11. 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 Cable 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.

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<sup>82</sup> Tr. 109-111, (6/7/07).

<sup>83</sup> Tr. 111, (6/7/07).

<sup>84</sup> Cox Post-Hearing Memorandum, pp. 2-3.

Section 3.3 of the Cable 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.

In this docket, Verizon filed its application with the Division on March 8, 2007. Upon receipt and review by the Division, Verizon's application was determined to be in compliance with the minimum filing requirements noted above, and was officially docketed on March 15, 2007. 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”<sup>85</sup>*

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.

B. 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.

**12. 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 application for a Compliance Order Certificate is sufficient proof of its willingness to perform the proposed services.

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<sup>85</sup> See Section 3.3(d) of the Cable Rules and R.I.G.L. §39-19-4.

With regard to the issue of Verizon's fitness and technical qualifications, the Division observes that the related evidence offered by Verizon in this docket is indistinguishable from the evidence the Company proffered in its earlier February 7, 2006 application for authority to operate as cable television service provider in Service Area 6 (Docket No. 2006-C-4), supra.

For the same reasons the Division concluded that Verizon had satisfied this requisite burden of proof in its Service Area 6 case, the Division finds that Verizon has met its burden of proving that it is fit and technically qualified in the instant docket. To start, the record reflects that the parties do not dispute Verizon's fitness and technical qualifications to perform the service for which it has applied. The Division notes that Verizon is currently operating successful CATV systems in Massachusetts, and that Verizon-affiliated companies also operate successful CATV systems in California, Texas, Florida, Pennsylvania, Delaware, Maryland, Virginia and New York. The Division also finds that Verizon's 860 MHz FTTP network design constitutes state-of-the-art broadband technology.

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 Areas 2, 3 and 8.

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 \$80 billion in annual revenues and over 210,000 employees worldwide. 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 that the Applicant possesses the financial wherewithal to construct and operate a cable television system in Service Areas 2, 3 and 8.

In determining whether Verizon has the financial strength to carry out its plans in Service Areas 2, 3 and 8, 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?

When Verizon was before the Division last year seeking a Compliance Order Certificate for Service Area 6, the question of whether Verizon's proposed CATV operation would be "consistent with the public interest" was addressed at length by the parties. The reason, Cox and Full Channel had both 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. However, in its final decision on the matter, the Division concluded that the question of whether the proposed operation is "consistent with the public interest" must be evaluated on its own merit, apart from "level playing field" considerations.

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 interest" must be

controlling<sup>86</sup> and consequently concluded that the proper test must simply be whether the proposed transaction “would not unfavorably impact the general public.”<sup>87</sup> The Division determined that a “net benefit” is not a prerequisite for approval.

Again, 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 Areas 2, 3 and 8.

E. “Level Playing Field” Statute

Historically, prior to 2006, most level playing field issues revolved around PEG access and institutional network (I-Net)-related disputes. However, in 2006, the General Assembly enacted legislation that authorized existing cable television operators to transfer their PEG access functions to the Rhode Island Public Telecommunications Authority (a/k/a “RIPTA” and “RIPBS”). This change in the law occurred at the same time the Division was adjudicating Verizon’s Service Area 6 application. Due to this change in the State’s PEG access cable television laws, Verizon was able to negotiate a settlement agreement with the Advocacy Section in the Service Area 6 docket on October 2, 2006 (amended on October 4, 2006) that contained several level playing field-related PEG access financial commitments, infra. 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

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<sup>86</sup> Citing Bristol County Water Company v. PUC, 363 A.2d 444 (R.I. 1976).

<sup>87</sup> Order No. 18676, pp. 51-52.



obligations of existing and new cable operators. The new Cable Rules, which became effective on January 1, 2007, provided the regulatory details on how cable operators were to effectuate a transfer of their PEG access studios to RIPTA, and their prospective financial support obligations thereunder. The new Cable Rules also dramatically altered previous institutional network obligations (Section 7.3), providing 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.*”<sup>88</sup>

The Division believes that these recent developments have effectively ended the likelihood of level playing field disputes between competing cable service providers regarding their respective obligations to provide PEG access and I-Net facilities. Interestingly, despite the sea change that has dramatically altered the legal obligations of cable providers to construct and maintain PEG studios and I-Nets, and the concomitant reduction in associated level playing field disputes, three level playing issues have surprisingly surfaced in this docket, as identified and discussed below:

#### 1. Return Paths

The record reflects that there are approximately 16 remote video feeds or return paths in the State, and that Cox has historically owned, operated and maintained these return paths in order to transport remotely originated PEG programming to cable service subscribers. Cox emphasizes that the transfer of

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<sup>88</sup> The new I-Net rules also provide that “[n]othing in this section shall be construed to preclude a CATV Operator from voluntarily constructing, operating or maintaining an Institutional Network in this state”; and that physically separate Institutional Networks existing as of December 31, 2006 shall be preserved, unless otherwise authorized by the Division.

public access facilities by Cox to RIPTA following the passage of legislation in 2006 and the Division's related subsequent rulemaking did not address the transfer of these return path facilities or the costs associated with their future maintenance. In essence, Cox argues that it is unfair that neither RIPTA nor Verizon are sharing in the costs of maintaining these return paths.<sup>89</sup> Cox argues that *"with PEG operation and management now in the hands of RIPTA and given the Division's intention that PEG obligations be funded equitably by all competitors, it no longer is equitable for Cox to incur all of the costs of providing and maintaining these return feeds."*<sup>90</sup> Cox has characterized this matter as a level playing field concern, and has urged the Division to *"direct discussions among Cox, Verizon and RIPTA to resolve this issue in an equitable manner...and instruct the parties to submit a proposed resolution of this issue for approval by the Division."* Cox has also suggested that, *"any resolution that meets with the approval of the Division should be included in any Verizon compliance order certificates issued for Service Areas 2, 3 and 8."*<sup>91</sup>

The Division has considered the "return paths" issue raised by Cox in this case and finds insufficient justification for treating the matter as a CATV system-related level playing field problem. In reaching this conclusion, the Division first observed that Cox could have sought a Division ruling on this issue in Verizon's Service Area 6 docket, but chose not to express concern at

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<sup>89</sup> Cox Exhibit 1, p. 8.

<sup>90</sup> Id.

<sup>91</sup> Id., p. 9.

that time.<sup>92</sup> The Division must question why the return paths issue, previously ignored in Docket No. 2006-C-4, now must rise to a level playing field issue in the context of this docket.

The Division also finds it interesting that Cox is currently unable to ascribe an actual dollar value cost to the annual maintenance of these remote feeds, despite the fact that Cox has been providing these remote feeds for many years.<sup>93</sup> In view of this inability to quantify the cost of providing these remote feeds the Division concludes that the related expense is de minimis in nature and consequently insufficient to warrant any serious level playing field consideration.

More importantly, the Division is additionally reluctant to take up the matter of return paths in this docket knowing that Cox itself has described the return paths service it now provides as a video transport service and “not a cable service”.<sup>94</sup> Indeed, Cox has even indicated that it plans to file a tariff petition with the Public Utilities Commission in order to add an appropriate rate to its rate schedules to allow it to charge for such video transport services.<sup>95</sup>

In conclusion, the Division finds little support on the record for treating Cox’s return paths concern as a potential level playing field problem. While Cox remains free to pursue closure on this matter in other forums, the Division

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<sup>92</sup> Tr. 89-90, (6/7/07).

<sup>93</sup> Tr. 92, (6/7/07).

<sup>94</sup> Tr. 93, (6/7/07).

<sup>95</sup> Tr. 93-94, (6/7/07).

will not condition Verizon's Compliance Order Certificates on a resolution of this issue.

## 2. FCC Signal Leakage Compliance

Cox has also urged the Division to require Verizon to adhere to applicable FCC technical requirements under the Division's Cable Rules, which Mr. Wolfe specifically identified as "obligations relating to signal leakage". The Division notes that Cox made the same request earlier this year in the *Construction Certificate* phase of Verizon's Service Area 6 case.

In the Service Area 6 docket, the Division made the following findings with respect to the issue of Verizon's obligations to comply with the FCC's signal leakage requirements:

*"...the Division finds no compelling reason to condition Verizon's Construction Certificate with a mandate that it comply with any applicable FCC signal leakage requirements. The record does not provide clear evidence of whether Verizon's Title II network is actually subject to the FCC's signal leakage reporting requirements. As such, the Division is reluctant to condition Verizon's Construction Certificate without clear evidence of its applicability. Cox is free to file an independent complaint with the FCC for a determination of applicability. Alternatively, after Verizon becomes operational in Service Area 6, Cox may file a request with the Division for a detailed evaluation of this matter, after which the Division may, after it has completed a more thorough investigation of the issue, conduct a hearing into the FCC-related requirements".*<sup>96</sup>

The Division finds that Cox has failed to offer any evidence in the instant docket that would cause the Division to modify its earlier findings on this

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<sup>96</sup> See Order No. 18916, issued on April 5, 2007.

issue. Accordingly, the Division reiterates and adopts the foregoing findings and will take no further action on this issue in the context of this docket.

### 3. Separate Certificates

Cox argues that Verizon's application should be treated as an application for three separate Compliance Order Certificates, one for each of the three Service Areas identified in the application. While the Division is unwilling to characterize this issue as a level playing field issue, the Division agrees that separate certificates would be appropriate.

#### F. The Settlement Agreement

As noted above, the Division previously approved and adopted most of the provisions in the *Settlement Agreement* submitted by Verizon and the Advocacy Section in Docket No. 2006-C-4 (Verizon's Service Area 6 Docket). The approved provisions, described as the "PEG Grant" and "Verizon FiOS Business Service for Eligible Institutional Users" provisions were found to be reasonable and in the public interest.<sup>97</sup> The applicable provisions are reproduced below:

#### **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*

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<sup>97</sup> Order No. 18789, pp. 69-70.

*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.*

*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.*

**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.*

The parties in this docket have repeatedly referred to Verizon’s obligations under the Docket No. 2006-C-4 *Settlement Agreement*, contending that the commitments made in that docket extend to the instant docket as well. To be clear, the Division agrees that Verizon’s duties and obligations under its Service Area 6 *Settlement Agreement* commitments are inextricably linked to

any other Service Area approvals, including the Service Areas 2, 3 and 8 approvals in issue.

### **13. 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. With respect to the miscellaneous issues and concerns raised by the parties that were not specifically addressed in this decision, the Division found these concerns and ancillary issues to be immaterial or lacking in sufficient evidence to warrant any additional action. The Division has prepared appropriate Compliance Order Certificates, which shall be issued as appendices to this report and order.

Now, Accordingly, it is

(19021) ORDERED:

1. That the March 8, 2007 application filing of Verizon New England, Inc., seeking Compliance Order Certificates for authority to construct and operate a competitive Community Antenna Television System in Rhode Island's CATV Service Areas 2, 3 and 8 is hereby granted.
2. The Compliance Order Certificates approved herein for CATV Service Areas 2, 3 and 8 are attached to this Report and Order as "Appendix 1", "Appendix 2", and "Appendix 3", respectively, and are incorporated by reference.
3. That Verizon's duties and obligations under the Settlement Agreement approved and adopted by the Division in Docket No. 2006-C-4, as

identified and discussed herein, shall also be binding on Verizon with respect to the Service Areas 2, 3 and 8 Compliance Order Certificates approved herein.

4. 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 these Compliance Order Certificates within thirty (30) days. In the event that Verizon New England, Inc. fails to accept the Compliance Order Certificates 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.
5. Verizon New England, Inc. shall also comply with all applicable provisions contained in the Division's Cable Rules, especially the timetable mandated in Section 8 of the Cable Rules; and the data-related I-Net obligations mandated in Section 7.3 of the Cable Rules.

Dated and Effective at Warwick, Rhode Island on August 21, 2007.

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John Spirito, Jr., Esq.  
Hearing Officer

APPROVED: \_\_\_\_\_  
Thomas F. Ahern  
Administrator

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**DIVISION OF PUBLIC UTILITIES AND CARRIERS**

**COMPLIANCE ORDER CERTIFICATE**

(For Service Area 2, Consisting Of Providence and North Providence)

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. 19021 in Docket No. 2007-C-1. This Compliance Order Certificate authorizes Verizon to own a community antenna television ("CATV") system in Service Area 2, 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.

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John Spirito, Jr., Esq.  
Hearing Officer

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Thomas F. Ahern  
Administrator

Dated this 21st day of August 2007.

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**DIVISION OF PUBLIC UTILITIES AND CARRIERS**

**COMPLIANCE ORDER CERTIFICATE**

(For Service Area 3, Consisting Of Cranston, Foster, Scituate and Johnston)

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. 19021 in Docket No. 2007-C-1. This Compliance Order Certificate authorizes Verizon to own a community antenna television ("CATV") system in Service Area 3, 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.

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John Spirito, Jr., Esq.  
Hearing Officer

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Thomas F. Ahern  
Administrator

Dated this 21st day of August 2007.

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**DIVISION OF PUBLIC UTILITIES AND CARRIERS**

**COMPLIANCE ORDER CERTIFICATE**

(For Service Area 8, Consisting Of Hopkinton, Richmond,  
Charlestown, Westerly, South Kingstown and Narragansett)

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. 19021 in Docket No. 2007-C-1. This Compliance Order Certificate authorizes Verizon to own a community antenna television ("CATV") system in Service Area 8, 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.

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John Spirito, Jr., Esq.  
Hearing Officer

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Thomas F. Ahern  
Administrator

Dated this 21st day of August 2007.