

**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-1

REPORT AND ORDER

A. INTRODUCTION

On March 8, 2007, Verizon New England, Inc. (“Verizon”) filed an application with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking authority to construct and operate Community Antenna Television Systems (“CATV” or “cable television system”) in Rhode Island CATV Service Areas 2, 3 and 8, which are comprised of 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.

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 Order Certificate*” phase, requires the Division to conduct a thorough evaluation

¹ The three-phase CATV regulatory process was comprehensively described by the Division in a previous order issued in this docket (See Order No. 19021, issued on August 21, 2007).

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 March 8, 2007 application filing on August 21, 2007. On this date the Division issued a report and order granting Verizon a Compliance Order Certificate.⁴ Verizon formally accepted the Division's grant of a Compliance Order Certificate on August 21, 2007, 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 August 22, 2007. This filing begins the second regulatory phase regarding Verizon's quest for authority to construct and operate a cable television system in Service Areas 2, 3 and 8. This 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.

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

² See Section 3.3(d) of the Rules.

³ See R.I.G.L. §39-19-4.

⁴ See Order No. 19021.

⁵ Rule 3.3(e).

requirements mandated under Section 3.4 of the Cable Rules were enumerated and identified in the Division's August 21, 2007 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 provided a map showing its "plan for delivering CATV services" in Service Areas 2, 3 and 8 from the relevant Verizon Video Service Offices (VSO).⁸ Verizon also

⁶ Order No. 19021, pp. 16-18.

⁷ Verizon Exhibit C-1, pp. 2-3.

⁸ Id., p. 2 and "Exhibit 3".

proffered a chart illustrating the percentage of construction already completed in each community in Service Areas 2, 3 and 8.⁹

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 2, 3 and 8. 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 2, 3 and 8.¹⁰

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.).¹¹

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 2, 3 and 8 through two of the Company’s national Super Head Ends (SHEs) located in Florida and Indiana, a Video Hub Office (VHO) located in Burlington,

⁹ Id., “Exhibit 5”.

¹⁰ Id., pp. 3-4 and “Exhibit 6”. An additional summary of the system’s technical description can be examined in Order No. 19021, at pp. 22-24.

¹¹ Id., p. 4 and “Exhibit 7”. The Division’s technical and design standards requirements are set forth in Chapter 7 of the Rules.

Massachusetts, and seventeen Video Service Offices (VSOs) located in North Kingstown, Warwick, Coventry, West Warwick, Providence (Broad Street), Providence (Washington Street), Hope Valley, Cranston, Centredale, Pawtucket, Glocester, Scituate, Ashaway, Weekapaug, Westerly, Carolina and Narragansett.¹²

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.”¹³

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”.¹⁴

¹² Id., p. 4.

¹³ Id., p. 5 and “Exhibit 7”.

¹⁴ Id., pp. 5-6.

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.¹⁵

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.¹⁶

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

¹⁵ Id., p. 6.

¹⁶ Id. and “Exhibit 8”.

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.¹⁷ 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.¹⁸

C. HEARINGS AND APPEARANCES

The Division conducted a duly noticed public hearing on the instant application on October 15, 2007. The hearing was conducted at the Division's hearing room located at 89 Jefferson Boulevard in Warwick. The following counsel entered appearances¹⁹:

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

¹⁷ Id., p. 7 and "Exhibit 9".

¹⁸ Id.

¹⁹ All of the following parties and counsel participated in the Compliance Order Certificate phase of this docket.

D. VERIZON'S DIRECT CASE

At the outset of the public hearing held on October 15, 2007, Verizon informed the Division that it had inadvertently “provisioned” television service to one customer in the town of Foster mistakenly believing the individual’s home was in Service Area 6.²⁰ Verizon indicated that the customer in Foster is being served through Verizon’s central office in Coventry. Verizon blamed the “glitch” on a software problem “that allowed that order to flow through and we actually provisioned television service to that one customer before it was caught...”²¹

Verizon stated that once the error was discovered it immediately notified the Division and the parties to the instant docket. Verizon’s counsel related that Verizon also notified the customer to report the improper connection, and that the customer objected to a discontinuation of service. Verizon later deferred to the Division on what to do with the single unlicensed connection to Service Area 3, but urged the Division to allow it to provide service to the customer “without charge until we complete this process and are fully authorized to offer service to Foster”.²²

In response to the foregoing issue, none of the parties objected to Verizon’s proposal to continue to provide television service to the one Foster

²⁰ Tr. 5. Verizon currently has authority to provide CATV services in Service Area 6.

²¹ Id.

²² Id.

customer, without charge, until Verizon's Service Area 3 application is fully adjudicated by the Division.²³

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, an issue that Cox focused on during the discovery phase of the docket. In response to Cox's concerns, 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."²⁴ Mr. Gee related that Verizon has currently begun its network upgrade of the Providence (Washington Street), Providence (Broad Street), Centredale, Cranston, Coventry, Warwick, West Warwick, Narragansett and North Kingstown wire centers. Mr. Gee emphasized that Verizon intends to upgrade all of these wire centers in accordance with Section 8.2(h) of the Cable Rules.

²³ Tr. 5-11 and 20-22; and Cox Exhibit C-2.

²⁴ Verizon Exhibit C-2, p.1.

Mr. Gee also testified that Verizon will install and activate its Video Hub Office (VHO) facilities and the Video Serving Office (VSO) facilities within its wire centers during the final stages of its Title II network upgrade and expects these upgrades to be substantially complete by November 30, 2007. Mr. Gee related that the remaining VSO facilities would be completed in accordance with Section 8.2(h) of the Cable Rules. Mr. Gee related that Verizon would make cable service available to customers in Service Areas 2, 3 and 8 as the upgrades of each central office service area are completed and each central office is made video capable.²⁵

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.²⁶

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 2, 3 and 8.²⁷

²⁵ Id.

²⁶ Id., p. 2.

²⁷ Id.

E. PUBLIC COMMENT

One individual appeared to offer public comment in this docket. Mr. Thomas S. Chinigo first questioned the absence of “Channel 69 from Block Island” from Verizon’s proposed channel lineup. Mr. Chinigo also opined that Cox’s PEG Access studio in Westerly (Service Area 8) “is not presently centrally located.” He related that “at some point, we’re going to have to reconfigure the network, so that residents in South Kingstown and Narragansett will be able to air their programming in their two towns from [the] studio.”

In his final comments, Mr. Chinigo objected to Verizon providing free service to the Foster subscriber that was “accidentally hooked up by Verizon.” Mr. Chinigo asserted that providing free service to this individual is not fair “to the rest of us.”²⁸

F. ADVOCACY SECTION’S FINAL POSITION

At the conclusion of the public hearing conducted on October 15, 2007, 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.²⁹

G. 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, however,

²⁸ Tr. 18-20.

²⁹ Tr. 14.

proffer the data responses received from Verizon during discovery as an exhibit in this (the Construction) phase of the docket.³⁰

Cox did not oppose Verizon's application for a Construction Certificate. However, in its brief, Cox requested that in the event the Division awards Construction Certificates to Verizon, "the Division should issue a separate Construction Certificate for each Service Area."³¹ Cox reasoned that this action would be consistent with the Division's issuance of separate Compliance Order Certificates for each of these Service Areas.³²

Cox also requested that the Division require Verizon to apply the same construction standards that were previously adopted by Verizon in Service Area 6 in Service Areas 2, 3 and 8. Cox emphasized that Verizon's adherence to those construction standards remains important to the integrity of Cox's existing network as well as the public interest in the reliability of cable service.³³

Finally, Cox urged the Division to "take seriously" Verizon's offering of cable service prior to its receipt of all necessary certificates. Noting the incident of the inadvertent service connection to the Foster resident, supra, Cox contends that it takes Verizon's provision of cable service without legal authorization seriously and "urges that the Division assure that no charges by Verizon are collected from this customer for any service provided to date and through such time as Verizon is duly authorized to provide cable service in

³⁰ Cox Exhibit C-1.

³¹ Cox's Brief, p. 1.

³² Id.

³³ Id., p.2.

Service Area 3...”³⁴ While not opposing the Division’s allowing Verizon’s continuation of cable service to the single customer in Foster, Cox asserted that the Division should “not tolerate future incidents of this nature.”³⁵

H. 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.³⁶

In its brief, Full Channel states that the Hearing Officer “should judge Verizon’s application to operate based on all the requirements as set forth in the Rhode Island laws and the cable television rules...” Full Channel contends that “[j]ust because Verizon was granted a certificate in the previous service areas [sic], the granting of subsequent authority in other service areas **should not be automatic...**” Full Channel urged the Division to require Verizon to “first develop a ‘*cable television track record*’ before simply approving service area after service area in an almost perfunctory manner.”³⁷

I. VERIZON’S FINAL POSITION

In its brief, Verizon contends that it has shown that it is in compliance with all conditions, terms and requirements of the Compliance Order Certificate and the Division’s Cable Rules.

³⁴ Id.

³⁵ Id.

³⁶ Full Channel’s only exhibit was the data responses it received from Verizon during discovery (Full Channel Exhibit C-1).

³⁷ Full Channel’s Brief, pp. 1-2.

In support of its position, Verizon asserts 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 these rules...’³⁸ Verizon maintains that it has met this standard. Verizon observes that its Compliance Order Certificate contains only three general conditions and that “no party has alleged that Verizon has not complied with them.”³⁹

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 August 21, 2007.⁴⁰

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.⁴¹

If upon receipt and after consideration the Division finds that the applicant for a Construction Certificate has met all of the conditions, terms,

³⁸ Verizon’s Brief, p. 2.

³⁹ Id.

⁴⁰ See Order No. 19021, supra.

⁴¹ Verizon Exh. C-1.

and requirements for a Compliance Order Certificate, and the Division's Rules, then the Division must grant a Construction Certificate to the applicant.⁴²

The Division has carefully examined the record in this matter. As an initial finding, based on the record evidence, the Division finds that Verizon has satisfied its requirements under the Cable Rules and that a Construction Certificate must be issued. The Division also notes that none of the parties ever claimed 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.

With respect to the issue of the one customer Verizon has inadvertently connected in Foster, the Division finds Verizon's proposal to provide the service free of charge until the Division issues a final decision on Verizon's Service Area 3 application is reasonable. Further, the Division agrees with Cox with respect to the seriousness of this issue, and desires to make it abundantly clear that it expects Verizon to do everything in its power to ensure that such an unauthorized cable service connection will not occur again.

The Division also supports Cox's request for the issuance of separate certificates. This request is wholly consistent with past practice and shall be followed in this case.

The Division additionally supports Cox's request that Verizon continue to adhere to the construction practices (and internal construction guidelines) that were adopted in Verizon's Service Area 6 proceedings. While there was no

⁴² See Section 3.4 (c) of the Rules.

evidence presented in this docket that Verizon intended to deviate from these construction practices, the Division agrees that a reminder is appropriate.

The Division has also considered Mr. Chinigo's comments. Regarding the issue of whether the PEG Access studio in Service Area 8, currently in Westerly, is properly located in accordance with the Cable Rules, the Division will direct the Division's Cable Section (the Advocacy Section) to investigate the matter and initiate corrective action if deemed necessary. Concerning the Block Island "Channel 69" matter, the Division recognizes "must carry" channel issues as issues properly decided by the FCC and not the Division.

Now, Accordingly, it is

(19116) ORDERED:

1. That the August 22, 2007 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 2, 3 and 8, 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 October 15, 2007, are restated and incorporated as terms and conditions of the certificate and are hereby binding on Verizon New England, Inc.

3. The Construction Certificates approved herein are attached to this Report and Order as “Appendix 1”, “Appendix 2” and “Appendix 3” and are incorporated by reference.
4. 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 November 7, 2007.

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 2, Consisting Of Providence and North 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. 19116 in Docket No. 2007-C-1. This Construction Certificate authorizes Verizon to construct 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 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 7th day of November, 2007.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS

CONSTRUCTION CERTIFICATE

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

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. 19116 in Docket No. 2007-C-1. This Construction Certificate authorizes Verizon to construct 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 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 7th day of November, 2007.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS

CONSTRUCTION CERTIFICATE

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

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. 19116 in Docket No. 2007-C-1. This Construction Certificate authorizes Verizon to construct 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 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 7th day of November, 2007.

