

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

IN RE: RULES GOVERNING COMMUNITY :
ANTENNA TELEVISION SYSTEMS : DOCKET NO. 2012-C-2

REPORT AND ORDER

1. Introduction

On July 6, 2012, the Rhode Island Division of Public Utilities and Carriers (“Division”) published a “Notice Of Rulemaking And Public Hearing” wherein interested persons were invited to submit data, views, or arguments, orally or in writing, and/or attend a public hearing in response to the Division’s decision to amend three (3) rules contained within the Division’s *Rules Governing Community Antenna Television Systems* (“Cable Rules”). The proposed amendments are detailed below:

Section 1.7 Fees

- (a) Pursuant to § 39-19-9 of the General Laws, the State Controller shall determine the expenses of the Public Utilities Commission and of the Division of Public Utilities and Carriers associated with the regulation of operational CATV Systems, including the cost of Commission and Division personnel and consultants performing duties directly associated with such systems. The State Controller shall notify the Administrator of the Division in writing of the amount of such expenses. The Administrator shall thereupon apportion and assess such expenses among the several operational CATV franchise holders located in this State in the proportion that the Gross Revenue of each CATV franchise shall bear to the Gross Revenues of all of the CATV franchises issued and operational; provided however, that the sum so apportioned and assessed shall not exceed ~~two hundred and fifty thousand dollars~~ (\$250,000) for any fiscal year and the

~~amount of any individual assessment shall not exceed three percent (3%) of its Gross Revenues. Such sum so apportioned and assessed shall be in addition to any taxes payable to the State under any other provision of law.~~

Section 14.2 Fixed Studio Production Capability

~~(a) RIPTA may provide one (1) fixed studio in any Service Area. Provided however in no case shall RIPTA shall provide no less than five (5) fixed six (6) studios statewide. Prior to any relocation of a fixed studio, RIPTA shall provide advance notice to the Division. The Division reserves the right to conduct a proceeding to determine if the relocation is in the public interest. Each Electing CATV Operator shall also provide one (1) fixed studio in each of its Service Area(s). Each such studio shall be equipped for full-color production and transmission of live, videotape, and film television programs on specially designated access channels. (Such programs may be furnished or produced by residents of that Service Area and institutions or groups within that Service Area.)~~

Section 16.6 Annual Access Provider Report

~~Every Electing CATV Company and RIPTA shall file a report with the Division each year (January 1 through December 31) or portion of a year concerning its efforts in the administration of access. The report shall be due on March 31 of the following year and shall be in a form and contain such information that is acceptable to the Administrator.~~

RIPTA shall file a report with the Division each fiscal year concerning its efforts in the administration of access. The report shall be due within 90 days of the conclusion of RIPTA's prior fiscal year and shall be in a form and contain such information that is acceptable to the Administrator.

After publishing the aforementioned "Notice Of Rulemaking And Public Hearing", the Administrator appointed the undersigned hearing officer to conduct a rulemaking proceeding in accordance with the requirements and procedures delineated in R.I.G.L. §§42-35-3 and Rule 12(f)(1) of the Division's *Rules of*

Practice and Procedure. The Division thereupon established the instant docket and scheduled and conducted a duly noticed public hearing to take comments relative to the amendments identified above.

Additionally, in keeping with the requirements of R.I.G.L. §42-35-3(a)(4) and §42-35-3.3, the Division provided notification of the instant rulemaking to the Governor’s Office and the Rhode Island Economic Development Corporation (“RIEDC”). Neither office expressed any concern that the Division’s contemplated rule change would, if adopted by the Division, have a significant adverse economic impact on any small business.

The Division conducted a public hearing to take comments on the proposed amendments to its Cable Rules on August 9, 2012. The hearing, which began at 10:00am, was conducted in the Division’s hearing room, located at 89 Jefferson Boulevard in Warwick, Rhode Island. The following counsel entered an appearance:

For the Division’s Advocacy
Section (“Advocacy Section”):

Leo Wold, Esq.
Asst. Attorney General

For Full Channel TV:

William C. Maaia, Esq.

2. Summary of Rulemaking Authority

The Division notes that its authority to promulgate rules and regulations for CATV system operators is derived from the following statutory law:

- R.I.G.L. § 39-19-6, which in pertinent part provides:

The division shall supervise and regulate every CATV company operating within this state so far as may be necessary to prevent the operation from having detrimental consequences to the public interest, and for this purpose may promulgate and

enforce such reasonable rules and regulations as it may deem necessary with reference to issuance of certificates....

3. Rationale for the Proposed Amendments

Mr. Thomas F. Kogut, the Division's Associate Administrator of Cable TV Services, offered a detailed explanation for why he is recommending that the Division's Administrator adopt and implement the Cable Rules amendments being proposed in this docket.

With respect to the proposed Section 14.2 amendment, supra, Mr. Kogut testified that the Division became aware in 2011 that the public access studio in Bristol (CATV Service Area 5) "was being significantly underused" and that the Rhode Island Public Telecommunications Authority ("RIPTA"), the State agency that operates the studio, was advocating for its closure. Mr. Kogut explained that in furtherance of RIPTA's effort to close the Bristol studio, RIPTA recommended to the Division that the Division amend its Cable Rules in order to reduce the number of required studios in Rhode Island from six to five.¹

Mr. Kogut related that in response to RIPTA's recommendation, the Division's Cable Section has examined the studio usage data compiled and provided by RIPTA. Mr. Kogut testified that based on that data, the Bristol studio was only being used by four producers when RIPTA first proposed to close the studio and that one of those producers has since left the area. In contrast, Mr. Kogut related that the Service Area 1 studio is being used by 28 producers, the Service Area 2 studio by 104 producers, the Service Area 3 studio by 36

¹ Tr. 4-6.

producers, the Service Area 4 studio by 54 producers, the Service Area 6 studio by 32 producers, and the Service Area 7 studio by 33 producers.²

Mr. Kogut next testified that when the Division's Cable Section agreed to conduct a rulemaking proceeding in response to RIPTA's proposal to eliminate the Bristol studio, the Cable Section mailed notices of the rulemaking to "each and every individual who produces and/or drops off programming at the Bristol studio." Mr. Kogut related that "there were 16, now there are 15, with three actually producing on site." Mr. Kogut further related: "I had received no comments of any sort from any of those producers."³

In view of its limited usage, Mr. Kogut testified that he agrees with RIPTA's decision to close its Service Area 5 studio in Bristol. Mr. Kogut also explained that for those few producers that wish to remain in the Bristol area, they will have the option of using the nearby studio that is operated by Full Channel TV in Bristol, which Mr. Kogut described as "a fully functional and utilized facility."⁴ Mr. Kogut also testified that the Bristol producers also have the option of using the Portsmouth studio (Service Area 7), which is located five miles from the Bristol studio.⁵

Mr. Kogut next addressed that portion of the proposed Section 14.2 amendment that would, if adopted, require RIPTA to notify the Division of any proposed relocation of a public access studio. Mr. Kogut related that he supports the amendment as clarification that the Division has the option of conducting a

² Tr. 8-10.

³ Tr. 11-12.

⁴ Tr. 11.

⁵ Tr. 13 and 21-22.

duly noticed public hearing for the purpose of confirming that the relocation would be in the public interest.⁶

Mr. Kogut offered brief explanations for why the Division's Cable Section is supporting the proposed amendments to Sections 1.7 and 16.6. Mr. Kogut explained that the amendment suggested for Section 1.7 relates to the matter of regulatory assessments and is simply designed to make the rule consistent with a statutory change that occurred in 2010.⁷

Regarding the Section 16.6 amendment, Mr. Kogut explained that the proposed change is necessary to better coordinate the filing of RIPTA's annual reporting requirements to the Division with RIPTA's fiscal year ending date of June 30.⁸

Mr. David W. Piccerelli, RIPTA's President and CEO, offered testimony to explain why RIPTA has requested the instant amendments to Sections 14.2 and 16.6 of the Cable Rules. Mr. Piccerelli also sponsored written comments in this docket.⁹

In his written comments, Mr. Piccerelli indicated that RIPTA has requested a reduction in the number of studios from six to five due to the very low usage taking place at RIPTA's Bristol studio in Service Area 5. Mr. Piccerelli added that if the Division's Cable Rules are amended, as proposed, RIPTA expects that the few producers currently using the Bristol Studio would move over to RIPTA's nearby studio in Portsmouth (Service Area 7).

⁶ Tr. 15.

⁷ Tr. 6-8.

⁸ Tr. 18-19.

⁹ Division Exhibit 2.

During the hearing, Mr. Piccerelli echoed the statements that were contained in his previously filed written comments. He also testified that RIPTA first recognized the under-utilization of the Bristol studio in January of 2011. Mr. Piccerelli related that he initially proposed to close the studio at that time, and that he communicated this proposal to the Division through a January 28, 2011 correspondence, wherein he recommended that the Division amend Section 14.2 of the Cable Rules to facilitate the planned closure of the studio. However, Mr. Piccerelli related that RIPTA's proposal to amend the Cable Rules and to close the Bristol studio met significant opposition from the Town Councils in Bristol, Warren and Barrington. Based on that opposition, Mr. Piccerelli related that RIPTA rescinded its request for a Cable Rules amendment at that time and decided to work with the Towns to promote greater utilization of the studio.

To promote increased utilization of the Bristol studio Mr. Piccerelli explained that RIPTA altered the hours of operation to make the studio more convenient for individuals to use. He related that the studio's hours of operation, which had been Monday through Friday between 9:00 a.m. and 5:00 p.m., was changed to Monday, Wednesday and Friday between 7:30 a.m. and 4:00 p.m. and Tuesday and Thursday between 11:00 a.m. and 8:00 p.m. Mr. Piccerelli also stated that RIPTA placed "more visible signage in the storefront window" and put "scrolling text with the studio info on a bulletin board that I believe was played back within the service area on Channel 17." Mr. Piccerelli added that RIPTA additionally "sent out two mass e-mails to all non-profits in the service area" and "produced a 30-second spot that plays daily on both Channel 17 and 18 in the

service area “promoting the... studio and what we have there for the community to use.”¹⁰

Mr. Piccerelli also testified that to further foster the success of the studio, RIPTA requested that the Town Councils of Bristol, Warren and Barrington create a “Service Area 5 PEG access users promotion committee” that could meet monthly in a continued effort to advance ideas to promote the studio. Mr. Piccerelli related, that to his knowledge, the Towns never organized such a committee.¹¹

Mr. Piccerelli next testified that after the aforementioned efforts to increase usage at the Bristol studio only a nominal increase in usage was evidenced. Mr. Piccerelli offered the following annual statistics: (1) that show productions increased from 19 to 21; (2) that studio usage hours increased from 69 to 73; (3) that editing hours dropped from 57 to 14; (4) that production equipment loans dropped from 26 to 20; (5) that studio classes increased from 3 to 6; (6) that portable equipment classes increased from 1 to 3; (7) that editing classes went from 3 to 4; (8) that total class hours dropped from 10 to 8; and (9) that the number of people trained increased from 10 to 12.

Mr. Piccerelli testified that in comparison to RIPTA’s other Rhode Island studios, the Bristol studio demonstrates far less usage. Indeed, Mr. Piccerelli opined, that over the same annual period: “...I would say that the usage in the other studios is clearly 200 percent greater than it is in the Bristol studio at a rough estimate.”¹² Given the low usage patterns at the Bristol studio, Mr.

¹⁰ Tr. 30-31.

¹¹ Tr. 31-32.

¹² Tr. 33-34.

Piccerelli opined that the continued operation of the studio is “a waste of resources.” Of particular concern to Mr. Piccerelli is the under-utilization of the studio’s public access coordinator, who he characterized as “an extremely talented individual.” Mr. Piccerelli related that RIPTA plans to move this individual to the Pawtucket studio if the Division approves RIPTA’s request to close the studio. Mr. Piccerelli also related that the studio’s equipment would likely be moved to the nearby Portsmouth studio.¹³

In further support for RIPTA’s proposal to close the Bristol studio, Mr. Piccerelli explained that producers in the Bristol area that use their own equipment, rather than studio equipment, will still be able to have their programming aired by dropping “their programs off at the studios for playback either at the interconnect A or B or within the service area on Channel 18.” Mr. Piccerelli noted that these producers would be free to drop their programs off at a “drop box” at Full Channel TV’s in Bristol or any other studio in the State.¹⁴ Mr. Piccerelli related that RIPTA also plans to have a second “drop box somewhere centrally located in Bristol so that... they have a facility... that’s not so far away to make it to the Full Channel facility.” Mr. Piccerelli testified that these drop boxes “will be picked up no less than twice a week and the tapes will be returned to a secure filing cabinet that has a combination code.”¹⁵

Mr. Piccerelli also spoke in support of the added provision to Section 14.2 that would require RIPTA to notify the Division before relocating any existing studio, and if required by the Division, to offer proof of why the relocation would

¹³ Tr.34-36.

¹⁴ Tr. 36-38

¹⁵ Tr. 37-39.

be in the public interest. Mr. Piccerelli also supported the proposed amendment to Section 16.6 of the Cable Rules.¹⁶

4. Submitted Data, Views and Arguments (Public Comments)

Written comments were submitted by Verizon Rhode Island (“Verizon RI”) on August 8, 2012¹⁷; and by the Towns of Bristol and Barrington (the “Towns”) on August 7, 2012.¹⁸ Verbal comments were offered by two members of the public during the hearing. These comments are summarized below:

Verizon RI’s written comments are summarized below:

Verizon RI does not object to the change to Section 1.7 of the Rules. For clarity and to ensure alignment with R.I.G.L. §39-19-9, however, Verizon RI suggests replacing the term “its” appearing before “Gross Revenues” in the penultimate sentence with the statutory phrase “any individual CATV franchise holder’s.” Further, Verizon RI notes that the three percent (3%) of Gross Revenues is a cap; that is, the amount of the fee is allowed to be less than three percent. Since the financial burden of this fee is passed along to subscribers, RIPTA should do its utmost to keep its expenses at a reasonable level so that the fee is below the three percent maximum.

Verizon RI does not object to the proposed reduction in the number of studios that RIPTA is required to provide. That reduction should also reduce RIPTA’s studio expenses, and the Division should pass along those savings to CATV subscribers by reducing the per-subscriber PEG Access and Interconnect Fee collected by cable providers and paid to RIPTA quarterly. Section 17.2(c) of the Rules expressly authorizes the Division to make such an adjustment upon finding that it is appropriate, “in light of the prudent and reasonable expenses incurred, or projected to be incurred, by RIPTA in operating and maintaining PEG access facilities, playback equipment, and Interconnect equipment as required and allowed by these Rules.”

¹⁶ Tr. 39-42.

¹⁷ Division Exhibit 3.

¹⁸ Division Exhibit 4.

Verizon RI supports the second proposed change to Section 14.2, requiring RIPTA to provide the Division with advance notice of any relocation of a fixed studio. In addition to the Division, CATV franchise holders too have an interest in the relocation of a studio, because they will need to build connections to the new site. Verizon RI strongly urges the Division to insert additional language in Section 14.2 to address those interests. First, RIPTA should be required to consult with any affected CATV franchise holders prior to choosing a new studio site, to allow them to provide input as to the cost-effectiveness of extending their facilities to the locations under consideration. Second, RIPTA should be required to reimburse CATV franchise holders for the reasonable construction costs they incur as a result of a decision by RIPTA to relocate a studio. Any such reimbursements would be appropriate to include in the expenses of RIPTA that are supported by the PEG Access and Interconnection Fee. Verizon RI's proposed changes to Section 14.2 are attached hereto in redline.

Verizon RI has no comment on the proposed change to Section 16.6 of the Rules.¹⁹

The Towns, through their common Solicitor, expressed opposition to the Division's proposal "to amend the regulations which would reduce by one the 'minimum number of fixed public access studios operated statewide..." The Towns argue that "the closing of the studio located in Bristol would be highly detrimental to the citizenry of those areas which the studio serves." The Towns further argue that "every cable subscriber is paying a fee to ensure that a public access studio be made available within a reasonably accessible geographic area..." and "that closing this studio would not serve the best interests of the public."²⁰

Mr. Michael McGonagle identified himself as currently retired, but having had 46 years of experience in broadcasting and cable TV. Though retired, Mr.

¹⁹ Division Exhibit 3, pp. 1-4.

²⁰ Division Exhibit 4.

McGonagle related that he serves “as the ad hoc liaison to the three towns in Bristol County in facilitating their use of the government access channel...”²¹

Mr. McGonagle began his comments by offering a brief history on public access television in Rhode Island. After which, Mr. McGonagle related that he had recently attended Town Council meetings in Bristol, Warren and Barrington and that he wished to report to the Division that the three Town Councils had expressed opposition to the closing of RIPTA’s Bristol studio. Mr. McGonagle also personally opposed the proposal to close the Bristol studio.²²

Mr. Anthony Arico also offered comments in this docket. Mr. Arico related that he has been a public access director for 11 years. He too opposed the proposal to close the Bristol studio.²³

Mr. Arico testified that his programming mostly covers high school sports and graduations. Mr. Arico stated that after he tapes these events he drops his tapes off at the Bristol and Full Channel studios for later airing on public access TV.²⁴ Mr. Arico suggested that the Division and RIPTA “talk to the Councils...to come up with a positive solution.”²⁵

4. Findings

The Division appreciates the data, views and arguments that were offered by the towns of Bristol, Warren and Barrington, Verizon, Messrs. Piccerelli, McGonagle and Arico and the Advocacy Section (through Mr. Kogut) during this

²¹ Tr. 47-48.

²² Tr. 48-65.

²³ Tr. 67-68.

²⁴ Tr. 68-69.

²⁵ Tr. 72.

rulemaking proceeding. The Division has considered the many comments and recommendations and has reached related findings, as described below:

a. Amendment to Section 1.7

There was no opposition to the proposed amendment to Section 1.7 during this proceeding. Verizon did however recommend a minor wording change for clarification purposes, supra. The Division finds Verizon's recommendation reasonable and will adopt and incorporate the change in these amended Cable Rules.

b. Amendment to Section 16.6

There was no opposition to the proposed amendment to Section 16.6 during this proceeding. Accordingly, the proposed amendment will be adopted without modification.

c. Amendment to Section 14.2

In responding to the several comments offered regarding the proposed amendments to Section 14.2, the Division will start with Verizon's comments. Although Verizon offers no opposition to the proposal to reduce the number of statewide studios to five, Verizon does urge the Division to adopt some additional language for inclusion in the amended rule that would require RIPTA to (1) consult with the CATV franchise holders concerning plans to relocate a studio; and (2) reimburse CATV franchise holders for the reasonable construction costs they incur as a result of a decision by RIPTA to relocate a studio, supra.

The Division finds Verizon's proposed modification to have RIPTA consult with the CATV franchise holders concerning its plan to relocate a studio to be reasonable. Clearly, if the Division is to properly review a RIPTA decision to

locate a studio it would be beneficial for the local CATV franchise holder(s) to have an opportunity to participate in the process. The local CATV franchise holder's early knowledge of the reasons for, and details of, the proposed studio relocation will better facilitate that participation. The Division finds Verizon's recommendation reasonable and will adopt and incorporate the change in these amended Cable Rules.

The Division, however, cannot support Verizon's recommendation to further amend Section 14.2 to add language that specifies that RIPTA must reimburse CATV franchise holders for the reasonable construction costs they incur as a result of a decision by RIPTA to relocate a studio. This proposed modification was not contemplated in this rulemaking proceeding, and is clearly beyond the scope of the notice of rulemaking that was published in this matter. The Division notes that the comments Verizon submitted in this proceeding were received by the Division on August 8, 2012, the day before the hearing, and that the submittal was not copied to RIPTA or the other CATV franchise holders operating in Rhode Island (i.e., Full Channel and Cox). Verizon also decided against offering verbal comments during the hearing, which, as a result, offered no opportunity for the hearing participants to comment on Verizon's proposal. In short, as this recommendation is beyond the scope of the instant proceeding and improperly vetted at this time, the Division must decline to adopt Verizon's proposed further modification to Section 14.2. Nevertheless, the Division invites Verizon to file an appropriate petition with the Division, pursuant to Rule 13(b) of the Division's "*Rules of Practice and Procedure*," through which Verizon may propose "the issuance, amendment, waiver or repeal" of any rule.

Moving on, the Division's proposal to amend Section 14.2 in order to add a requirement that RIPTA provide advance notice to the Division prior to relocating a fixed studio met no opposition from those offering comments in this docket. Accordingly, the proposed amendment will be adopted without modification.

With respect to the proposed amendment to reduce the number of fixed studios from six (6) to five (5), and as a result, eliminate the Bristol studio, the Division acknowledges that the Towns oppose the proposed amendment. As do Messrs. McGonagle and Arico. However, there is overwhelming evidence that, despite the good intentions of the Towns and Mr. Arico, a producer who uses the Bristol studio for drop offs only, the Bristol studio is grossly under-utilized, and has been for some time now. Predicated on this evidence, the Division finds that the annual costs associated with operating the Bristol studio, approximately \$107,000, would be better allocated to the operation of the State's other five studios, which, according to the record, are far more utilized by the State's active public access producers. Accordingly, the proposed amendment will be adopted without modification.

5. Conclusion

The Division has responded to the data, views and arguments offered by RIPTA, two of the State's regulated cable companies, the towns of Bristol and Barrington, the Advocacy Section and the public who actively participated in the instant rulemaking. From the comments and recommendations proffered by the participants, the Division has decided to modify the provisions of Sections 1.7 and 14.2 as described herein. The adoption of these modifications shall now be

incorporated into the Division's Cable Rules. The modified Sections are memorialized in "Appendix 1", which is attached to this report and order.

Now, Accordingly, it is

(20829) ORDERED:

1. That predicated upon and modified by the findings contained herein, the Division hereby adopts the amended "*Rules Governing Community Antenna Television Systems*" as reflected in "Appendix 1" to this report and order.
2. That "Appendix 1" is hereby incorporated by reference.
3. That the Division's Rules Coordinator is hereby instructed to file a certified copy of the attached amended "*Rules Governing Community Antenna Television Systems*" (Appendix 1) with the Rhode Island Secretary of State as soon as practicable, and also to fully comply with the filing requirements contained in R.I.G.L. §42-35-3.1 and §42-35-4. The Division will endeavor to file the instant amended *Rules Governing Community Antenna Television Systems* with the Rhode Island Secretary of State on or before October 15, 2012.
4. That the new amended "*Rules Governing Community Antenna Television Systems*" shall take effect on November 15, 2012.

Dated and Effective at Warwick, Rhode Island on October 1, 2012.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator

