

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

IN RE: Rules and Regulations Governing The :  
Telecommunications Education Access : Docket No. D-05-10  
Fund Required Under Rhode Island :  
General Laws Section 39-1-61 :

**REPORT AND ORDER**

1. Introduction

Pursuant to the provisions of Rhode Island General Laws §§39-1-3(b), 39-1-15, 39-3-33 and 42-35-3, the Division of Public Utilities and Carriers (hereinafter "Division") conducted a public hearing on Monday, April 11, 2005, at 10:00 a.m., in the Division's hearing room located at 89 Jefferson Boulevard, Warwick, Rhode Island, for the purpose of adopting rules and regulations designed to assist the Division in implementing the requirements of Rhode Island General Laws, Section 39-1-61, as newly amended.

Rhode Island General Laws, Section 39-1-61 provides that commencing on January 1, 2004 a program and funding mechanism be in place and available to qualified libraries and schools (Kindergarten through Grade 12) to assist in paying the costs of acquiring, installing and using telecommunications technologies to access the internet. This funding mechanism is described in Section 39-1-61 as the "Rhode Island Telecommunications Education Access Fund" (hereafter "TEAF"). The law further provides that an assessment of a monthly surcharge shall be billed by each telecommunications service provider and shall be payable to the telecommunications service provider by the

subscriber of the telecommunications services. State, local and quasi-municipal agencies are exempt from the surcharge. The level of the surcharge will be determined by the General Assembly on an annual basis. The surcharge is currently \$.26 per access line or trunk.

At the time the TEAF went into effect, the Rhode Island Public Utilities Commission (“Commission”) was charged with the responsibility of administering the TEAF, with input from the Rhode Island Department of Education (“RIDE”). The Commission promulgated rules and regulations in furtherance of its charge of administering the TEAF on January 1, 2004. However, during the 2004 legislative session, Rhode Island General Laws, Section 39-1-61 was amended to transfer the administration duties from the Commission to the Division. The proposed rules and regulations are designed to effectuate this change and essentially adopt the Commission’s previously promulgated rules and regulations.

During the hearing conducted on April 11, 2005, the Division heard testimony from Mr. Thomas Kogut, the Division’s Rules Coordinator, who explained the need for the instant rulemaking process.<sup>1</sup> Mr. Kogut also sponsored the Division’s rules and regulations, entitled “*Rules and Regulations Governing The Rhode Island Telecommunications Education Access Fund*” (hereafter “Rules”). The proposed Rules had been available since March 4, 2005 for public inspection. A “Notice of Rulemaking and Public Hearing” was also published in the *Providence Journal* on March 4, 2005. A copy of the proposed Rules is attached to this report and order as “Appendix 1”.

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<sup>1</sup> Leo J. Wold, Esq., Special Assistant Attorney General, entered an appearance on behalf of the Division’s Advocacy Section. Mr. Kogut was an Advocacy Section witness.

## 2. Public Comments

The only comments received by the Division regarding the instant rulemaking were from Cox Communications (“Cox”). Cox filed written comments on April 8, 2005, infra.<sup>2</sup>

## 3. Findings

First, with respect to Cox’s comments, the Division finds that Cox’s written remarks unfortunately far exceeded the scope of the instant rulemaking docket. In short, albeit Cox expressed support for the proposed Rules, Cox also seeks substantive modifications/additions to the Rules that transcend the Division’s simple adoption of the former Commission Rules. As noted earlier, the instant rulemaking is narrowly limited, predicated on a recent amendment to Rhode Island General Laws, Section 39-1-61, to the Division’s adoption of the Rules that were previously promulgated by the Commission. Accordingly, the Division shall omit any consideration on Cox’s proposed modifications/additions to the Rules at this time. To the extent that Cox wishes to unilaterally pursue any amendments, revisions, or repeals to the Division’s Rules, it is free to file an appropriate petition with the Division under Section 13(b) of the Division’s *Rules of Practice and Procedure*.

In view of the lack of comments and/or criticisms expressed relative to the proposed Rules, the Division finds the proposed Rules reasonable as currently drafted and proposed.

Now, Accordingly, it is

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<sup>2</sup> Public Comment Exhibit 1.

(18203) ORDERED:

1. The Division hereby adopts the “*Rules and Regulations Governing The Rhode Island Telecommunications Education Access Fund*”, 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 *Rules and Regulations Governing The Rhode Island Telecommunications Education Access Fund* (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 Rules with the Rhode Island Secretary of State on or before April 18, 2005 in order to facilitate an effective date of May 9, 2005.
4. That the *Rules and Regulations Governing The Rhode Island Telecommunications Education Access Fund* shall take effect on May 9, 2005 and shall supersede the currently effective Commission *Rules and Regulations Governing The Rhode Island Telecommunications Education Access Fund* thereafter.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON APRIL 11, 2005.

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John Spirito, Jr., Esq.  
Hearing Officer

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Thomas F. Ahern  
Administrator



**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**DIVISION OF PUBLIC UTILITIES AND CARRIERS**

**RULES AND REGULATIONS GOVERNING THE RHODE ISLAND**  
**TELECOMMUNICATIONS EDUCATION ACCESS FUND**

Date of Public Notice: March 4, 2005

Date of Public Hearing: April 11, 2005

Effective Date: May 9, 2005

**PART 1      INTRODUCTION**

Pursuant to R.I.G.L. § 39-1-61, establishing the Rhode Island Telecommunications Education Access Fund, the Division of Public Utilities and Carriers, pursuant to the mandate contained in Section 39-1-61(d)-(e), hereby promulgates these rules to effectuate the Act of the Rhode Island General Assembly.

**PART II      DEFINITIONS**

SECTION 1. “Department of Education” means the Rhode Island Department of Elementary and Secondary Education.

SECTION 2. “Division” means the Rhode Island Division of Public Utilities and Carriers.

SECTION 3. “Telecommunications Education Access Fund” means the programs and funding made available to qualified libraries and schools to assist in paying the costs of acquiring, installing and using telecommunications technologies to access the internet.

SECTION 4. “Qualified library” means a public library as defined in the Library Services and Technology Act, Public Law No. 104-208, section 211 et seq., 110 Stat 3009 (1996) and must be eligible for assistance from a state library administrative agency under that Act. Only libraries, which have budgets, that are completely separate from any schools (including, but not limited to, elementary and secondary, colleges and universities), shall be eligible to receive support. Libraries operating as a for-profit business shall not be eligible for support.

SECTION 5. “Qualified school” means a public or private school that is eligible for the federal Universal Service (E-Rate) support and meets the definition of “elementary school” or “secondary school” in the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. § 8801). Schools operating as a for-profit business or with endowments exceeding fifty million dollars (\$50,000,000) are not eligible for support.

SECTION 6. “Telecommunications,” for purposes of this program, means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

SECTION 7. “Telecommunications services provider” means any person, party or entity which provides local telecommunications services.

SECTION 8. “Telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used.

### **PART III     ASSESSMENT**

SECTION 1. Pursuant to R.I.G.L. § 39-1-61(d)(1), a surcharge, in an amount determined by the General Assembly, is to be assessed upon each residence and business telephone access line or trunk in the state, including PBX trunks and centrex equivalent trunks and each service line or trunk, and upon each user interface number or extension number or similarly identifiable line, trunk, or path to or from a digital network.

SECTION 2. Pursuant to R.I.G.L. § 39-1-61(d)(1), the surcharge listed in Part III, Section 1 of these Rules shall not be assessed on state, local and quasi-governmental agencies. For purposes of this Section, state, local and quasi-governmental agencies shall



mean those state departments and agencies and those city and town offices listed in the Rhode Island Government Owner's Manual as published annually by the Rhode Island Secretary of State's Office. The State and quasi-governmental agencies shall be those listed in the section "Rhode Island State Departments and Agencies." The local agencies shall be those departments listed in the section "Rhode Island City and Town Officials."

SECTION 3. Pursuant to R.I.G.L. § 39-1-61(d)(1), commencing January 1, 2004, the surcharge shall be billed by each telecommunications services provider to its retail end users and shall be payable to the telecommunications services provider by the subscriber of the telecommunications services.

SECTION 4. The surcharge shall appear on subscriber bills as "Schools and Library Fund."

SECTION 5. Commencing March 15, 2004, and continuing on the fifteenth calendar day of each month, each telecommunications services provider shall transfer to the Telecommunications Education Access Fund of the Rhode Island Division of Public Utilities and Carriers, the amount collected from its subscribers through the Telecommunications Education Access Fund surcharge during for the month ending forty-five (45) days prior to the month of transfer. Such transfers shall be directed to the Telecommunications Education Access Fund Restricted Receipt Account, Care of Division Clerk, 89 Jefferson Boulevard, Warwick, Rhode Island 02888. The deposits shall then be forwarded to the Assistant to the Chief Accountant of the Division of Public Utilities and Carriers for recordation and deposit into the Telecommunications Education Access Fund Restricted Receipt Account.

SECTION 6. In the event that the General Assembly changes the amount of the surcharge, each telecommunications services provider shall commence billing the new surcharge amount no later than 90 days after the effective date of the General Assembly's act instituting such change.

**PART IV     ADMINISTRATION**

SECTION 1. The Department of Education shall file draft request(s) for proposals ("RFP(s)") for products and services to serve the internet access needs of schools and libraries with the Division for its review to ensure competitive neutrality at least forty-five (45) days prior to its issuance. The Division will review the draft RFP(s) to ensure competitive neutrality.

SECTION 2. The Department of Education shall select the winning bidder in accordance with the RFP(s) approved by the Division. A losing bidder may file an appeal with the Division.

SECTION 3. The Department of Education shall endeavor to obtain all available E-Rate matching funds and is encouraged to seek matching funds from all local, state, and federal public or private entities.

SECTION 4. The Department of Education shall approve disbursements of funds from the Telecommunications Education Access Fund in accordance with the terms of the successful bid(s) to the annual RFP(s) to provide products and services that best serve the internet access needs of schools and libraries.

SECTION 5. The Division will transfer funds from the Telecommunications Education Access Fund at the request of the Department of Education. The Department of Education shall submit an accounting to the Division indicating the identity of the

payee and the dollar amount of the invoices for which the Department of Education is responsible under the statute together with a letter affirming that it is spending the funds from the Telecommunications Education Access Fund in accordance with the requirements of R.I.G.L. § 39-1-61. The Department of Education shall file an accounting of all disbursements from the Telecommunications Education Access Fund with the Division once annually for its review to ensure that the Department of Education's decisions do not favor any competitor.

SECTION 6. The Division shall not transfer funds from the Telecommunications Education Access Fund in excess of the amount accrued in the account at the time the request is made by the Department of Education.

SECTION 7. The Department of Education shall follow all requirements of the federal Universal Service E-Rate program in evaluating bids and selecting products and services.

**PART V      ELIGIBILITY**

SECTION 1. All Qualified Schools and Qualified Libraries shall be eligible for support from the Telecommunications Education Access Fund.