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

IN RE: Petition filing by New England Cable :
 Television Association for a Show Cause :
 Order and Declaratory Ruling :

Docket No. D-01-14

FINAL DECLARATORY RULING

Whereas, on July 9, 2001, the New England Cable Television Association (“NECTA”) filed a petition with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking a Show Cause Order and a Declaratory Ruling against Starlight Communications Holding, Inc., d/b/a Starlight Communications (“Starlight”) and/or one or more related parties (individually and collectively referred to as “Starlight”).

Whereas, through its petition, NECTA sought to have Starlight appear before the Division and, after investigation, show cause why it should not be ordered to cease and desist from operating a Community Antenna Television (“CATV”) System in Rhode Island until such time as it has obtained the necessary CATV certificates required under federal and State law. Additionally, NECTA sought a declaratory ruling from the Division, which addresses the issue of whether Starlight has engaged in and is continuing to engage in the operation of a CATV system without having first obtained CATV certificates required under law.

Whereas, in response to a number of procedural and jurisdictional questions raised by Starlight during a procedural conference conducted on August 6, 2001,

the Division invited the parties^[1] to submit legal memoranda in support of their respective positions.

Whereas, predicated on the arguments proffered by the parties, the Division issued an “INTERIM DECLARATORY RULING” (“interim ruling”) on December 12, 2001. The Division’s interim ruling, issued through Order No. 16791, fully identifies the procedural and jurisdictional questions considered in this docket and the parties’ arguments and positions thereon. The Division’s findings relative to these questions are also contained in the interim ruling. Due to the connected and dispositive findings contained in the interim ruling, the Division must incorporate that ruling with the instant final ruling. Accordingly, all readers are instructed to refer to Order No. 16791 and consider that order to be the Division’s adjudicative precursor to this final ruling and order.

Whereas, in its interim ruling the Division decided NECTA’s petition as follows:

1. *That the Division hereby issues this “Interim Declaratory Ruling” in response to the New England Cable Television Association’s July 9, 2001 petition for a Declaratory Ruling.*
2. *That based on the findings discussed herein, the Division declares on an interim basis, that Starlight Communications Holding, Inc. is not operating as a CATV system in Rhode Island, and accordingly, is not subject to the State’s CATV franchising laws.*
3. *That the Division’s will issue a final declaratory ruling in this matter after it has received and evaluated the written responses from Starlight Communications Holding, Inc. and Verizon- Rhode Island, infra.*
4. *That Starlight Communications Holding, Inc. and Verizon- Rhode Island are hereby directed to submit written responses to the Division, in affidavit form, which address the details of their business relationship and also the following issues:*
 - (A) *Whether Starlight Communications Holding, Inc. or any of its principals own and/or control facilities on public property or in the public right-of-way?*

- (B) *Whether Starlight exercises any control relative to Verizon’s cable network?*
- (C) *Whether, the Verizon facilities used by Starlight were constructed at Starlight’s request?*
- (D) *Whether Starlight is paying for the service it receives from Verizon pursuant to approved rates contained in Verizon’s “Supertrunking Video Service” tariff; and*
- (E) *Whether other programmers may use the Verizon cables that are being used by Starlight?*
5. *The written responses identified in paragraph “4”, above, shall be submitted within 60 (sixty) days from the issue date of this ruling.*
6. *The Division shall reserve judgment on deciding the issues of whether a formal investigation and hearing are appropriate or necessary and/or whether the Division possesses the authority to issue a cease and desist order in this matter.*
7. *The New England Cable Television Association’s petition for the initiation of a rulemaking proceeding for the purpose of amending Section 1.2(a) of the Division’s CATV Rules is hereby denied.*
8. *That the New England Cable Television Association is encouraged to pursue the instant Starlight issue before the Federal Communications Commission. In the event the Federal Communications Commission determines that Starlight’s operation in Rhode Island is distinguishable from the factual bases surrounding the ECI decision, for local regulatory purposes, the Division will entertain a motion from the New England Cable Television Association to revisit the matter. (Order No. 16791, pp. 44-46).*

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Whereas, in response to the directives contained in ordered paragraphs “4” and “5” of Division Order No. 16791, supra, Starlight and Verizon submitted sworn affidavits on February 8, 2002^[2] and February 12, 2002, respectively.

Whereas, the Division has examined the responses contained in the Starlight and Verizon affidavits and now definitively finds that Starlight is not using any public rights-of-way within the federal law definition of a “cable system”.

Now, therefore, it is

(16956) ORDERED:

1. That the Division hereby issues this “Final Declaratory Ruling” in response to the New England Cable Television Association’s July 9, 2001 petition for a Declaratory Ruling.

2. That the “Interim Declaratory Ruling” issued by the Division through Order No. 16791, on December 12, 2001, is hereby incorporated by reference and shall constitute the adjudicative precursor to the instant “Final Declaratory Ruling”.

3. That based on a review of the affidavits recently submitted by Starlight Communications Holding, Inc. and Verizon-Rhode Island, the Division hereby affirms its previous declaration in Order No. 16791, that Starlight Communications Holding, Inc. is not operating as a CATV system in Rhode Island, and accordingly, is not subject to the State’s CATV franchising laws.

4. As the Division has determined and declared through a preliminary administrative evaluation of NECTA’s petition that Starlight Communications Holding, Inc. is not operating as a CATV system in Rhode Island, the remaining issues of whether a formal investigation and hearing are appropriate or necessary, and whether the Division possesses the authority to issue a cease and desist order in this matter, are hereby deemed moot.

Dated and Effective at Warwick, Rhode Island on March 20, 2002.

John Spirito, Jr., Esq.
Chief Legal Counsel

Thomas F. Ahern
Administrator

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- [1] In addition to Starlight and NECTA, the Division's Advocacy Section and the Department of Attorney General also participated in this docket. Albeit Verizon – Rhode Island (“Verizon”) was named by NECTA as an indispensable party to the matter, NECTA agreed to dismiss, without prejudice, any action against Verizon in exchange for Verizon's agreement to cooperate with the parties by providing relevant documents and a witness to explain its relationship with Starlight.
- [2] Starlight's February 8, 2002 affidavit omitted a referenced exhibit, which was subsequently provided on February 21, 2002.

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