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-3

ORDER

Whereas: The Division takes administrative notice of Order Nos. 19141 and 19229, which were previously issued in this docket on December 10, 2007 and March 7, 2008, respectively.

Whereas: On September 28, 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 1 and 4. After a comprehensive evaluation of the filing, the Division issued a final Report and Order approving Verizon's application on March 7, 2008, Order No. 19229, supra.

Whereas: On March 13, 2008, CoxCom, Inc., d/b/a Cox Communications ("Cox"), an Intervenor in this docket, filed a "*Motion…For Relief From Order*," pursuant to Rules 31(a) and 31(d) of the Division's Rules of Practice and Procedure. In its motion, Cox requests that the Division "correct or amend…[its] findings on page 49 of the Report and Order because they misstate Cox's position in this matter." The specific Division findings in issue, as referenced in Cox's motion, are reproduced below:

> "Finally, the Division rejects Cox's cryptic assertion that unless Verizon can promise lower rates than Cox's

> existing rates in Service Areas 1 and 4 its entry into those cable markets is not in the public interest. To demand such a result as a condition of licensing would be a violation of both State and federal law."

In support of its motion, Cox makes the following argument:

> "The above findings…are inconsistent and conflict with Cox's written position in this matter: Cox did not oppose Division approval of the Verizon Applications, but urged that any 'consistent with public interest' ruling made by the Division not be based upon findings regarding the relationship between cable rates in single provider and two provider franchise areas. Cox has taken the position that competition and competitive choice are in the public interest, so long as level playing field requirements are met and the same cable market entry standards in the Division's Cable Rules apply to all applicants. Cox never made an argument that Verizon's Applications should be denied unless Verizon offered cable rates lower than those of Cox".[1]

Whereas: The Division understands and appreciates Cox's concern that its position in the instant docket regarding the "consistent with the public interest" criterion be properly stated for the record. Accordingly, the Division will expound on the findings in issue and address Cox's motion for relief.

The Division accepts that Cox never opposed Verizon's application. The Division clearly acknowledged this fact on page 25 of its Report and Order. However, the Division also recognized that Cox invested a good amount of time in this docket attacking Verizon's "public interest statement" and two related exhibits that were attached to Verizon's application. The statement and exhibits were ostensibly offered by Verizon as evidence to suggest that effective

[1] Cox Motion For Relief From Order, p. 2.

competition is in the public interest.[2] These exhibits, comprised of (1) a 2003 U.S. General Accounting Service (GAO) Report to the U.S. Senate Chairman of the Committee on Commerce, Science, and Transportation, and (2) a 2005 *Report on Cable Industry Prices*, issued by the Federal Communications Commission (FCC), were offered by Verizon as the basis for its observation 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…"[3] Cox took great exception to the value of Verizon's "15% lower rates" observation and these older reports during this docket and repeatedly urged the Division to disregard the stated observation and the related reports (studies) in making its determination about whether the Verizon applications are consistent with the public interest.

In response to the issue of the value of the Verizon's observation and the reports, the Division made it clear early on in this docket, in a discovery order issued on December 10, 2007, that Cox's discovery requests regarding this issue were *"neither relevant to the subject matter of the instant proceeding nor reasonably calculated to lead to the discovery of admissible evidence."*[4] The Division concluded that "*Verizon's observation 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*' is not tantamount*

[2] Exhibits 12 and 13 to the application filing.
[3] Verizon Exhibit 1, p. 9.
[4] See Order No. 19141, p. 2, supra.

to a claim that Verizon's rates are or will be 15% lower than Cox's rates."[5] Also in its December 10, 2007 discovery order, the Division held that "*[i]f Cox disputes the national studies referenced by Verizon, Cox is free to provide evidence to the contrary.*"[6] Most importantly, the Division emphasized that because it "is *preempted under the federal law from exercising any jurisdiction over cable television rates in service areas subject to "effective competition," the…issue serves no material purpose in this proceeding.*[7]

The Division has also made it abundantly clear from its final Report and Orders in Verizon's last two compliance order certificate application dockets (related to Service Area 6 and Service Areas 2, 3 and 8), that in deciding whether a proposed CATV operation is "consistent with the public interest," a requirement mandated under R.I.G.L. §39-19-4 and Section 3.3(d) of the Cable Rules, the Division will narrowly limit its review to a determination of whether the proposed entry "would not unfavorably impact the general public."[8] The Division stressed that "a net benefit" (e.g., reduced rates for consumers) "is not a prerequisite for approval."[9]

Notwithstanding the Division's aforementioned documented findings that the issue of rates and prices in a competitive cable market is wholly irrelevant, outside the scope of the Division's jurisdiction, and not an appropriate determinant in evaluations of whether the proposed competitive entry is

[5] Id.
[6] Id.
[7] Id.
[8] See Order No.18676, pp. 51-52 and Order No 19021, pp. 39-40.
[9] Id.

"consistent with the public interest," Cox inexplicably continued to focus on the issue of rates and pricing during the hearing.[10] Indeed, its cross-examination of Verizon's witnesses related exclusively to this very issue. This same issue also subsequently became the primary argument in Cox's post-hearing brief.

Turning to the Division's most recent Report and Order and the finding that Cox finds objectionable, the Division found sufficient evidence and argument on the record, as described above, to conclude that Cox may have been suggesting that competition, in and of itself, is not necessarily in the public interest. It appeared from the direction that Cox was approaching the issue of Verizon's prospective rates and prices that Cox was questioning the actual benefit that would confer to consumers from Verizon's competitive entry into the Service Areas 1 and 4 cable television markets.

The Division has endeavored to make it clear in its decisions throughout these recent Verizon licensing dockets that applicants seeking any of the three relevant licensing certificates must satisfy the specific respective burdens of proof established in the Division's Cable Rules, within the concomitant limitations imposed under State and federal law. The Division simply cannot permit an expansion of these mandated and unambiguous burdens of proof. If the Division misinterpreted Cox's intentions in this docket, the Division is not averse to correcting the record. The Division accepts that Cox does not contend that a prospective competitor must promise and deliver lower rates than Cox for their entry to be in the public interest.

[10] Tr. 17-26.

Now, Accordingly, it is

(19251) ORDERED:

1. That the March 13, 2008 "Motion…For Relief From Order," filed by CoxCom, Inc., d/b/a Cox Communications, is hereby granted.

2. That the Division hereby amends Order No. 19229 by excising the following two sentences on page 49:

> "Finally, the Division rejects Cox's cryptic assertion that unless Verizon can promise lower rates than Cox's existing rates in Service Areas 1 and 4 its entry into those cable markets is not in the public interest. To demand such a result as a condition of licensing would be a violation of both State and federal law."

Dated and Effective at Warwick, Rhode Island on March 25, 2008.

_____
John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator