

**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. 2009-C-1

REPORT AND ORDER

1. Introduction

On October 16, 2009, the Rhode Island Division of Public Utilities and Carriers (“Division”) published a “Notice Of Rulemaking And Public Hearing” in the Providence Journal, 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 its currently effective *Rules Governing Community Antenna Television Systems* (“Cable Rules”). The amendments generally relate to requirements associated with cable company regulatory assessments, the maintenance of business offices, mandatory service outage notifications, public access studios, Service Area Advisory Committees, annual reporting requirements, Statewide Technical Committees, and prohibited practices. The Division’s planned amendments to the Cable Rules are identified in a redacted version of the Cable Rules, which is attached herewith as “Appendix 1.”¹

The amendments identified in Appendix 1 were developed by the Division’s Cable Television Section in cooperation with the State’s three

¹ Appendix 1 is incorporated by reference.

licensed cable operators and the Rhode Island Public Telecommunications Authority (“RIPTA”) (a.k.a. the Rhode Island Public Broadcasting Service), which operates Rhode Island’s public access network. The amendments have been determined to be necessary in order to update certain provisions in the Cable Rules that date back to the beginning of cable television regulation in Rhode Island; and additionally, to promote a competitive enhanced cable television marketplace in Rhode Island.

After the aforementioned amendments were developed, 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 on the instant amendments. 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”).

The Division conducted a public hearing to take comments on the planned amendments to the Cable Rules on November 4, 2009. 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 Cable Advocacy
Section (“Advocacy Section”):

William K. Lueker, 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. Advocacy Section's Introductory Remarks

At the outset of the hearing, the Division's Advocacy Section provided a detailed description of the various amendments being made to the existing Cable Rules, including proffering the requisite demonstration of "need for the adoption, amendment, or repeal of any rule," mandated under R.I.G.L. § 42-35-3(3).² The Advocacy Section additionally detailed the means by which the instant rulemaking matter was publically noticed.³ The Advocacy Section proffered the Division's Cable Section's Associate Administrator, Mr. Eric A. Palazzo, to provide these introductory remarks. Mr. Palazzo additionally responded to questions and concerns that were raised by those offering comments during this rulemaking proceeding.

Mr. Palazzo additionally declared that the Advocacy Section had decided to withdraw and/or modify four of the amendments it had originally proposed

² Tr. 9-45 and Advocacy Section Exhibit 1.

³ Tr. 7-9 and Advocacy Section Exhibits 2-4.

to the existing Cable Rules. Mr. Palazzo related that the first change involves the Division's earlier decision to increase its annual assessment authority in Section 1.7(a) from \$250,000 to \$300,000. Mr. Palazzo explained that as this assessment is linked to statutory law, the Division will wait until the statute is amended before seeking a corresponding change to the Cable Rules. Mr. Palazzo therefore indicated that the Division has decided to withdraw this amendment to the Cable Rules at this time.⁴

A modification to Section 15.1 was also discussed. Specifically, Mr. Palazzo related that amendment language in Section 15.1(b) makes reference to an effective date of "December 1, 2009." He explained that the Hearing Officer ought to replace this originally planned effective date with an effective date that coincides with the issue date of the Division's Report and Order and the actual effective date of the amended Cable Rules.⁵

Mr. Palazzo next corrected a "typo" in the amendment to Section 14.2(b) by striking the word "proposed" in the provision that states that "each studio shall be reasonably located within the proposed service area." Mr. Palazzo related that the word "proposed" was unintentionally included in the sentence and ought to be eliminated.⁶

Finally, Mr. Palazzo explained that due to the large number of individuals that were expressing opposition to the planned closing of the "Portsmouth Studio" in Service Area 7, he agreed to modify the proposed

⁴ Tr. 9-11.

⁵ Tr. 11-12.

⁶ Tr. 12-13.

amendment to Section 14.2(a) of the Cable Rules by increasing the number of studios to six (6) statewide.⁷ Mr. Palazzo related that RIPTA, who operates the State's public access studios, has agreed to the revised amendment to Section 14.2(a) and to keep the Portsmouth Studio open for the time being.⁸ Mr. David W. Piccerelli, RIPTA's Vice President and CFO, later verified this decision to maintain six studios and keep the Portsmouth Studio open during his comments in this docket.⁹

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

The Division received oral comments from those members of the public who appeared at the hearing, as well as written comments submitted from interested persons both before and during the public hearing. The Division has also accepted and considered the written comments that were submitted following the hearing from individuals who requested permission to supplement their oral commentary. The following nine individuals offered oral comments at the hearing on November 4, 2009: Mr. David W. Piccerelli, RIPTA's Vice President and CFO; Ms. Cynthia Killavey; Mr. Robert A. Poniatowski; Mr. Charles Berluti¹⁰; Mr. William C. McGowan, Business Manager, IBEW Local 2323; Mr. John Wolfe, Vice President, Government & Public Affairs, CoxCom, Inc. d/b/a Cox Communications ("Cox"); Mr. Peter J. McIntyre, Town Council

⁷ The original amendment would have decreased the number of studios in Rhode Island from one each in Service Areas 1-8 to a total of five (5) statewide. Under the original plan, the Portsmouth Studio was going to be consolidated into the "Bristol Studio."

⁸ Tr. 20-26.

⁹ Tr. 46-49.

¹⁰ Mr. Berluti also sponsored two Newport Daily News articles (from October 15 and 20, 2009), which cover the local reaction of the public access community in response to the planned closing of the Portsmouth Studio (Public Comments 3(a) and 3(b)).

President, Town of Portsmouth; Ms. Judy Staven; and Mr. Thomas Chinigo. Written comments were also received from the Honorable Representative Amy G. Rice, representing District 72 (Portsmouth, Middletown and Newport)¹¹; Mr. Robert A. Poniatowski (who also offered oral comments at the hearing)¹²; Mr. David W. Piccerelli, on behalf of RIPTA (who also offered oral comments at the hearing)¹³; Mr. William C. McGowan, on behalf of IBEW Local 2323 (who also offered oral comments at the hearing)¹⁴; Mr. Peter J. McIntyre, Town Council President, Town of Portsmouth (who also offered oral comments at the hearing)¹⁵; Mr. John Wolfe on behalf of Cox¹⁶; Linda Jane Maaia, on behalf of Full Channel TV, Inc. (“Full Channel”)¹⁷; and Alexander W. Moore, Esq., on behalf of Verizon New England, Inc. (“Verizon”).

Most of the comments expressed during this rulemaking process were offered in opposition to the Division’s and RIPTA’s plan to close the Portsmouth Studio and consolidate its operations into the Bristol Studio. The comments offered by Representative Rice, Mr. Poniatowski, Ms. Killavey, Mr. Berluti, Ms. Staven and Portsmouth Town Council President McIntyre were principally linked to this singular amendment issue. However, in view of the Advocacy Section’s and RIPTA’s reconsideration of this matter, and their joint decision to maintain six public access studios in Rhode Island, including one in

¹¹ Public Comments Exhibits 2(a) and 2(b).

¹² Public Comments Exhibit 1.

¹³ RIPBS (RIPTA) Exhibit 1.

¹⁴ Mr. McGowan’s letter, dated November 5, 2009, was received by the Division on or about November 9, 2009.

¹⁵ Mr. McIntyre’s letter, dated November 5, 2009, was received by the Division on or about November 9, 2009.

¹⁶ Cox Exhibit 1.

¹⁷ Full Channel Exhibit 1.

Portsmouth, the Division finds that the dispute regarding this issue has been effectively remedied.

The record also reflects that RIPTA, Cox, Full Channel and Verizon universally support the amendments to the Cable Rules that the Advocacy Section has prepared and determined to be in the public interest.

Mr. William C. McGowan, on behalf of IBEW Local 2323, expressed opposition to the amendment to Section 13.1, which calls for the elimination of the requirement that cable operators maintain a local business office in each Service Area in which they are licensed to operate.¹⁸ Mr. McGowan explained that IBEW Local 2323 represents “bargained for Verizon employees in the State of Rhode Island,” who work in business offices in Narragansett, Warwick, Cranston, Pawtucket, Providence and Smithfield. Mr. McGowan urged the Division to keep all the existing business offices open, arguing that “customers need these local business offices within a reasonable commuting area.”¹⁹ Mr. McGowan argues that the “concept to have a local business office in every service area is neither obsolete nor costly.”²⁰ Mr. McGowan additionally expressed concerns that his members may lose their jobs at Verizon if these local business offices are allowed to close.²¹

¹⁸ The amendment to Section 13.1 would make the requirement to operate a business office in each Service Area optional. However, the amendment would require that each cable operator providing service in six (6) service areas “have a minimum of three (3) local business offices statewide.”

¹⁹ This quote comes from the November 5, 2009 letter from William C. McGowan to the Division’s Administrator, Thomas F. Ahern.

²⁰ Id.

²¹ Tr. 57-58.

Mr. Thomas Chinigo first offered an historical perspective on several of the Cable Rules slated for amendments.²² However, regarding the proposed amendment to Section 13.1, Mr. Chinigo opined that the Division could alternatively require cable operators to maintain “one local business office for two adjacent service areas.”²³ Indeed, Mr. Chinigo proffered the same recommendation for public access studios. He observed that “eliminating one service area and allowing two service areas per studio, you would have the same net result.”²⁴ Although, with respect to the location of the studios, Mr. Chinigo suggested that rather than leaving the decision to RIPTA, the Division ought to retain the authority to determine the final location of public access studios in Rhode Island.²⁵

Mr. Chinigo next turned his attention to the planned amendments to Section 15.1, or the elimination of the requirement for Service Area Citizens’ Advisory Committees. Mr. Chinigo acknowledged that active Citizens’ Advisory Committees only exist in three of the State’s nine service areas. However, in lieu of a Citizens’ Advisory Committee, Mr. Chinigo recommended that the Division adopt a “czar” or “chairman” substitute in those service areas without an active Citizens’ Advisory Committee. Mr. Chinigo volunteered to fulfill that role in Service Area 8, which currently does not have an active Citizens’ Advisory Committee.²⁶

²² Tr. 67-74.

²³ Tr. 74-75.

²⁴ Tr. 75.

²⁵ Tr. 75-76.

²⁶ Tr. 76-80.

5. Findings

The Division appreciates the data, views and arguments that were offered by Cox, Verizon, Full Channel, RIPTA, Representative Rice and those members of the public who appeared at the public hearing on November 4, 2009. The Division has considered the many comments and recommendations and has reached related findings, as described below:

a. Should the “local business office” requirements in Section 13.1(a) be amended as planned?

The Division’s decision to permit its regulated cable operators to reduce their number of “local business offices” is based on the dramatic transformation that has taken place in the State’s cable services marketplace since the current rule was originally promulgated in January 1981. There are no longer separate cable operators in each of the State’s Service Areas. Today we have only three cable operators doing business in eight Service Areas; two of these cable companies (Cox and Verizon) have nearly a statewide service presence. We also have true competition in seven of those eight Service Areas. Moreover, today, we have cable operators offering “bundled” services, which in addition to cable (video) service, also includes telephone and internet (broadband) services. In view of this reality it has become more pragmatic, both from a business and marketing standpoint, to offer customers a “regional” approach to business office services. The Division supports this decision by the cable operators to transition from smaller payment and equipment drop-off centers to larger marketing centers that offer a panoply of the many broadband and telecommunications services and entertainment options now available to

Rhode Island consumers. The Division finds this change positive and in the public interest.

The Division also understands Mr. McGowan's concern that members of his Union may be adversely impacted by this conversion. While the Division regrets the possibility that employment opportunities at Verizon may be affected by this change, the Division is unable to deny or impede the progress and enhanced services that would come from the modernization of these business offices. Furthermore, the Division is not convinced that staffing levels at business offices will diminish as a result of this change. In fact, the record suggests that staffing levels may actually increase from this business office redesign effort. This very issue was addressed at length by Mr. Wolfe, who related that Cox expects to expand its workforce at its business offices next year. Mr. Wolfe explained that Cox plans on "building bigger retail facilities with a more consultative sales approach." Mr. Wolfe related that "it's not just equipment or a bill transaction" anymore. He related that in these larger facilities Cox's customers will be "test driving our product and services, working with our employees to figure out how best to get the most out of their services; and we're talking about expanded retail hours, not local business hours where we close at five like all the other businesses on Main Street do, but evening hours, Saturday hours." Mr. Wolfe asserted: "[i]t's going to take more people, not fewer people."²⁷ The Division has no reason to believe that

²⁷ Tr. 61.

Verizon's business offices will not similarly expand to meet consumer demands and the competitive challenge.

The Division has, however, discerned a problem with the Section 13.1(a) amendment that requires corrective modification. It appears that in its efforts to facilitate the transition from many small business offices to fewer larger regional service centers, the Advocacy Section inadvertently removed the regulatory requirement for a cable operator to maintain at least one business office. The Division will modify the amendment to Section 13.1(a) to remedy this oversight.

b. Should the "fixed studio production capability" requirements in Section 14.2(a) be amended as planned?

The public opposition to the planned amendment to Section 14.2(a) was exclusively predicated on the fact that RIPTA and the Division had intended to close the Portsmouth Studio as part of the decision to reduce the number of public access studios in Rhode Island from eight (8) to five (5). In response to the public outcry from Portsmouth's elected representatives as well as the local public access producers, the Advocacy Section and RIPTA agreed to modify the originally planned amendment to preserve an additional public access studio, for a total of six (6) statewide. RIPTA has also agreed to keep the sixth studio in Portsmouth. The Division finds this agreement and the resulting modification to the original amendment to Section 14.2(a) to be reasonable. The Division will therefore adopt the proposed modification to require that RIPTA provide no fewer than six (6) studios statewide.

c. Should the “Service Area Citizens’ Advisory Committees” requirements in Section 15.1(b) be amended as planned?

It has been the experience of the Division over at least the last ten (10) years that only two Service Area Citizens’ Advisory Committees have actively operated in Rhode Island. These Service Area Citizens’ Advisory Committees, which the Division expects to grandfather in under the planned amendment to Section 15.1(b), have functioned in varying capacities in Service Areas 4 and 5. Despite repeated efforts by the Division to promote the creation of additional Service Area Citizens’ Advisory Committees, no additional Committees were ever formed. Perhaps the reason is connected to the fact that the cable services marketplace is no longer as novel or undeveloped as it was back in 1981 when the notion of having a Service Area Citizens’ Advisory Committee in each Service Area made regulatory sense. In response to this truth, the Division sees little value or purpose in perpetuating a regulatory requirement that appears impossible to satisfy.

The Division has considered Mr. Chinigo’s suggestions on this matter and finds that it would not be appropriate to formulate different types of Service Area Citizens’ Advisory Committees. The instant amendment provides for the creation of new Service Area Citizens’ Advisory Committee, on an ad hoc basis, at the discretion of the Division’s Administrator. Accordingly, Mr. Chinigo is free, and encouraged, to petition his municipality to request that it contact the Division to seek the establishment of a Service Area Citizens’ Advisory Committee in his Service Area.

Additionally, the Division finds the Advocacy Section's request to modify the stated effective date of this amendment, from December 1, 2009 to a date that coincides with the issue date of the Division's Report and Order and the actual effective date of the amended Cable Rules.

6. Conclusion

The Division has responded to the data, views and arguments offered by the State's regulated cable companies, the Advocacy Section and the public who actively participated in the instant rulemaking. The Division also acknowledges the Advocacy Section's decision to withdraw and/or modify four of the amendments it had originally proposed to the existing Cable Rules. From the comments and recommendations proffered by the participants, the Advocacy Section's indicated final changes to the originally crafted amendments, and based on its perception of an oversight regarding one of the amendments, the Division has decided to modify the provisions of Sections 1.7(a), 13.1(a), 14.2(a) and (b) and 15.1(b) 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 2", which is attached to this report and order. All the other amendments identified in "Appendix 1," not modified by the Division, shall also be incorporated, as is, into the Division's finished Cable Rules. They are similarly reflected in "Appendix 2." The Division notes that "Appendix 2" also includes minor non-substantive modifications to correct typos, spacing irregularities and table of contents paging errors.

Accordingly, it is

(19844) 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 2" to this report and order.
2. That "Appendix 1" and "Appendix 2" are 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 2) 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 December 18, 2009.
4. That the new amended "*Rules Governing Community Antenna Television Systems*" shall take effect on January 15, 2010.

Dated and Effective at Warwick, Rhode Island on December 9, 2009.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator

