

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

IN RE: Compliance Order Certificate Application :
Filing by Verizon New England, Inc. : Docket No. 2006-C-4
For Rhode Island CATV Service Area 6 :

ORDER

On February 7, 2006, Verizon New England, Inc. (“Verizon”) filed an application with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking a Compliance Order Certificate for Rhode Island CATV¹ Service Area 6. Through this application filing, Verizon seeks the first of three licensing certificates, which if all were granted by the Division, would enable Verizon to provide cable television services in the communities of Coventry, East Greenwich, Exeter, North Kingstown, Warwick, West Warwick and West Greenwich. The application was filed in conformance with the requirements of Section 3.3 of the Division’s “Rules Governing Community Antenna Television Systems” (“Cable Rules”).

In furtherance of starting the process of adjudicating Verizon’s application, the Division established a filing deadline of April 7, 2006 for all motions to intervene in the docket. Notification of Verizon’s application filing and the prescribed deadline for intervention was published in the Providence Journal on March 28, 2006. The Division indicated in the notice that all motions would be considered in accordance with the requirements contained in Rule 17 of the Division’s “Rules of Practice and Procedure” (“P&P Rules”). The

¹ “CATV” stands for Community Antenna Television Systems

notice also directed that responsive pleadings be submitted by April 21, 2006. The notice additionally indicated that the Division would conduct a motion hearing to hear all intervention-related issues and arguments at 10:00AM on Thursday, April 27, 2006 in the Division's Hearing Room, located at 89 Jefferson Boulevard in Warwick, Rhode Island.

In response to the published notice of deadline to intervene, the Division received timely motions to intervene from CoxCom, Inc., d/b/a Cox Communications ("Cox"); the New England Cable and Telecommunications Association, Inc. ("NECTA"); Full Channel TV, Inc. ("Full Channel"); and the Town of Foster ("Foster") (collectively, the "Movants").

After receiving copies of these formal intervention requests, Verizon filed a timely objection to only Foster's motion to intervene. Verizon maintains that Foster has failed to satisfy the intervention standards set forth in Rule 17, supra.

In response to the Verizon's objection to Foster's participation in this docket, the Division conducted a duly noticed public hearing on April 27, 2006, for the limited purpose of hearing oral arguments on all disputed intervention-related issues. The following counsel entered appearances:

For Verizon:	Joseph DeAngelis, Esq.
For Cox:	Alan D. Mandl, Esq.
For Full Channel:	William C. Maaia, Esq.

For the Division's Advocacy
Section²:

Leo J. Wold, Esq.
Special Asst. Attorney General

For NECTA:

William D. Durand, Esq.

For Foster:

Nicholas Gorham, Esq.

The Division has carefully considered the arguments proffered by the Movants and Verizon regarding the pending intervention motions. In reaching its findings, the Division relied on the provisions of Rule 17 of the Division's Rules of Practice and Procedure, Rule 24 of the Superior Court Rules of Civil Procedure, related case law, the arguments articulated at the April 27, 2006 hearing, and the related pleadings filed in this proceeding.

As an initial finding, the Division will permit the intervention of Cox, NECTA and Full Channel. The Division finds that because Verizon does not oppose these intervention requests, the requests must be approved by operation of law.³

In its motion to intervene, Foster questions why Verizon cannot, through this application process, extend its proposed cable television services into the town of Foster. Foster reasons that it is "a town adjacent to service area 6", which also shares "telephonic exchanges with Coventry", and for these reasons Verizon should be compelled by the Division to provide service to Foster. Foster argues that it would be unfair for the Division to permit Verizon to compete with Cox in Service Area 6 while Foster remains, for the most part,

² The Division's Advocacy Section, an indispensable party, also entered an appearance in this docket.

³ See Rule 17(e).

without cable television or high speed internet services. Foster asserts that the “Division should allow or, if necessary, require Verizon to offer cable television in such parts of Foster...where it is technologically feasible or otherwise reasonable...”

Verizon strongly objects. Verizon argues that through this application process it seeks authority to provide cable television services in CATV Service Area 6 only, not CATV Service Area 3, which includes Foster. Verizon relates that although it may seek to provide cable services in Service Area 3 some time in the future, it does not seek or want that authority now.

Verizon additionally argues that Foster has not satisfied the intervention requirements contained in Rule 17, which mandates that Foster must demonstrate that it either has: (1) *a right [to intervene] conferred by statute*, (2) *an interest which may be directly affected and which is not adequately represented by existing parties and as to which...[Foster] may be bound by the Division’s action in the proceeding...* or (3) *any other interest of such nature that...[Foster’s] participation may be in the public interest*. Verizon contends that Foster “does not identify a right conferred by statute or a direct interest which is not adequately represented by existing parties...” or that “its participation is in the public interest”.

Additionally, Verizon argues that permitting Foster to intervene would unreasonably and unnecessarily enlarge the scope of the issues presented in this docket. Verizon asserts that Foster, as a member community of CATV Service Area 3, has no legitimate interest in this docket. Verizon argues that

Foster's "only direct interest in receiving cable television relates to accessing service through that service area and not any other service area."

The Division's Advocacy Section also questioned Foster's attempt to participate in this docket. The Advocacy Section described the logic behind Foster's requested intervention as "misplaced." The Advocacy Section emphasizes that the instant application process is limited to CATV Service Area 6 and that Foster's interest "is inapposite in the pending docket."

The Advocacy Section reminded the hearing officer that the boundaries of Service Area 3, which includes the communities of Cranston, Johnston, Scituate and Foster, were fixed "only after lengthy proceedings had taken place, with careful consideration given to Foster's situation."⁴ The Advocacy Section notes that prior to these proceedings Foster "had been an undesignated geographical region, without any access to cable service...for over twenty years." The Advocacy Section relates that Foster now has access to cable television service, and that further, as a consequence of a recent rule-making proceeding the Division has reduced the prescribed density requirements from 60 homes per mile to 15 homes per ¼ mile, which additionally benefited Foster.

In its final comments, the Advocacy Section contended that Foster has not demonstrated "a legal right to intervene or a relevant interest which is not represented by the Advocacy Section or that [its concern] is in the public

⁴ The Advocacy Section cites Division Orders Nos. 16795, 16988 and 17535 issued in Docket No. D-01-C-2.

interest”. For these reasons the Advocacy Section could not support Foster’s request to participate in this docket.

DISCUSSION AND CONCLUSIONS

To start, the Division finds that Foster has not demonstrated a statutory right to intervene or a “directly affected” interest that is not adequately represented by the Division’s Advocacy Section. Accordingly, the issue boils down to whether it would be in the public interest to permit Foster to participate in this proceeding?

In deciding whether the “public interest” demands Foster’s participation, the Division must logically find that Foster’s interests warrant recognition and protection in furtherance of the general welfare of the public.⁵ In considering this issue, the Division must also balance several related factors, specifically, whether the Division ultimately has the authority to grant the relief requested, whether Foster may more effectively pursue its interests in another forum, and whether the intervention would unduly delay or prejudice the adjudication of the rights of Verizon and other parties.

While the Division finds a modicum of evidence that Foster’s articulated interest is consistent with the public interest, the Division is unable to reconcile the other determining factors, which unfortunately must lead to the rejection of Foster’s bid to intervene in this docket. First, the Division just does not have the requisite authority to grant the relief requested. The Division’s Cable Rules prescribe specific procedural requirements for the

⁵ See definition of “public interest” in Black’s Law Dictionary, Seventh Edition.

various cable proceedings conducted by the Division. Under Rule (Section) 3.3, the scope of the certification or licensing proceeding is limited to the specific authority being requested by the applicant. In this docket, Verizon's request is exclusively for Service Area 6. Neither the Division's Cable Rules nor the Division's statutory authority confers the powers necessary to entertain Foster's request in this docket. Simply stated, the Division cannot force an unwilling Verizon to provide cable television service to Service Area 3.

Next, the Division finds that there is an appropriate forum for Foster to pursue its request for an expansion of cable television service in its town. Although Mr. Gorham expressed slim hopes and reticence during the hearing when the hearing officer broached the subject, the Division finds that the proper forum to address Foster's interests would be through a Rule 13(b) petition, wherein Foster could legitimately seek a waiver or amendment to the Division's current cable television service density rules.⁶

Finally, the Division must agree with Verizon in its assertion that Foster's participation in this docket would unduly delay and prejudice the adjudication of Verizon's application.⁷ The Division also finds that Foster's interests would unreasonably broaden the issues in this docket.⁸ In view of Verizon's adamant rejection of Foster's recommendation that it amend its

⁶ Reference to Rule 13(b) refers to the rule contained in the Division's P&P Rules. The Division's cable television service density rules are contained in Rule 10.2 of the Division's Cable Rules.

⁷ See Chariho School Committee v. Broadwell, 703 A.2d 622 (R.I. 1997).

⁸ See Town of Smithfield v. Fanning, 602 A.2d 939 (R.I. 1992).

application to include a portion of Service Area 3, Foster's participation in this docket would serve no practical or efficacious purpose.

In conclusion, the Division finds that Foster has failed to satisfy the required quantum of proof required under Rule 17 in order to be granted the right to intervene in this docket.

Now, therefore, it is

(18594) ORDERED:

That based on the findings contained herein:

1. That the motions to intervene filed by Cox, NECTA and Full Channel, are hereby granted.
2. That the motion to intervene filed by Foster is hereby denied.

Dated and Effective at Warwick, Rhode Island on May 5, 2006.

Division of Public Utilities and Carriers

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator