



Agenda Date: 7/11/07

Agenda Item: 3A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

CABLE TELEVISION

IN THE MATTER OF THE ALLEGED FAILURE)
OF RCN TELECOM SERVICES, INC. AND)
HOME LINK COMMUNICATIONS OF)
PRINCETON, L.P. TO COMPLY WITH)
PROVISIONS OF THE NEW JERSEY CABLE)
TELEVISION ACT, N.J.S.A. 48:5A-1 ET SEQ.,)
AND/OR THE NEW JERSEY ADMINISTRATIVE)
CODE, N.J.A.C. 14:18-1.1 ET SEQ.)

ORDER ACCEPTING
STIPULATION OF SETTLEMENT

DOCKET NO. CS03010035

(SERVICE LIST ATTACHED)

BY THE BOARD:

The New Jersey Board of Public Utilities ("Board") and its Office of Cable Television ("OCTV" or "Staff" or "Office"), pursuant to N.J.S.A. 48:5A-1 et seq., have been granted general supervision and regulation of and jurisdiction and control over all cable television systems which operate within the State of New Jersey, subject only to the limitations of federal law. Pursuant to this authority, the within matter was opened to the Board by virtue of a regulatory compliance review conducted by the OCTV which identified certain events and occurrences that are the subject of the Stipulation of Settlement that is presently before the Board for consideration.

RCN Telecom Services, Inc., ("RCN") previously provided cable service as a franchised cable television system operator, as defined by State and federal law, in twenty nine municipalities in the State of New Jersey. On February 6, 2003, in Docket No. CM02090653, the Board approved the sale of RCN's New Jersey cable system to Patriot Media & Communications CNJ, LLC ("Patriot"). Shortly thereafter, by Board Order dated February 13, 2003 in Docket No. CS03010035, the Board approved an Offer of Settlement submitted by RCN for the purpose of resolving allegations by Staff that RCN had failed to comply with certain provisions of the New Jersey State Cable Television Act, N.J.S.A. 48:5A-1 et seq. and the New Jersey Administrative Code, N.J.A.C. 14:18-1.1 et seq. Pursuant to the Offer of Settlement, RCN agreed to escrow an additional \$1,000,000.00 at interest ("Escrow Account"), to cover any potential refund liability stemming from possible refunds to subscribers or municipalities as determined by the Board following the sale of the system.

The OCTV Inspection and Enforcement Bureau has alleged that RCN was not conforming to certain provisions of the New Jersey State Cable Television Act, N.J.S.A. 48:5A-1 et seq. and the New Jersey Administrative Code, N.J.A.C. 14:18-1.1 et seq., as more specifically set forth below:

1. that RCN failed to provide its subscribers with quarterly notification of the availability of outage credits, as outlined in N.J.A.C. 14:18-3.5, and required by N.J.A.C. 14:18-3.18(b) in four quarters between 2002 and 2003;
2. that RCN failed to comply with the FCC Customer Service Standards (30 second hold time), as required by 47 C.F.R. §76.309(c) and N.J.A.C. 14:18-7.8(a) 2 in two quarters between 2002 and 2003;
3. that RCN did not comply with the Board's Order in Docket Number CE94050159, by failing to make the appropriate payment to the Princeton Cable Television Committee of a sum of \$2.00 per Borough subscriber per year from 1998 to 2002, as required by N.J.S.A. 48:5A-30;
4. that RCN did not comply with the Board's Order in Docket Number CX01070460, by failing to:
 - a. provide verified proof to the Office of the customer service enhancements enacted to improve its responsiveness and overall customer service within thirty (30) days of the date of this Order, but in no event later than the closing date of any transfer of assets involving RCN's Central New Jersey cable television systems; and
 - b. within ten (10) days of the payment of the refunds to subscribers notify the Board and the Office, in writing, of the date(s) said refunds were paid and the amounts refunded, and within ten (10) days of effectuating the entire refund to its subscribers, provide verified proof to the Board and the Office that the refunds had been completed and provide a final accounting of said refund;
5. that RCN did not comply with the Board's Order in Docket Number CM02090653, by failing to:
 - a. notify the Board, in writing, within five (5) days of date on which the transaction was consummated;
 - b. file a certification with the Board within thirty (30) days of the closing attesting to the lack of material deviation in the executed closing documents or final terms from those terms and conditions described and/or submitted to the Board with the Petition;
 - c. file journal entries with the Board to record the transactions approved therein within forty-five (45) days of final closing;

- d. provide, within forty-five (45) days of the date of closing, revised Office of Cable Television Forms CATV-1 and CATV-2 reflecting gross revenue, as defined by the applicable statutes for the periods January 1, 2003 through closing, for the CATV system transferred; and
- e. within ninety (90) days from the date of closing of the transaction, certify for each system under its control, as well as each system acquired/transferred as part of this Docket the following items:
 - 1. that all NJ cable television systems under its respective ownership and/or control, were in full compliance with Article 820 of the National Electrical Code as previously certified;
 - 2. that all Board ordered requirements or conditions arising out of any and all Offers of Settlement Certificates of Approval had been satisfied within the time frames set forth therein;
 - 3. that sufficient funds were available to fund all outstanding network extensions, rebuilds, upgrades, or other construction commitments arising from a system's Primary Service Area (PSA), Certificate of Approval, Municipal Consent, Letters of Intent or other Orders or agreements, including but not limited to the Board Order in Docket No. CX01070460 and documentation provided subsequent thereto; and
 - 4. that billing records were available for all customers in New Jersey cable television systems under its respective ownership and/or control and the Board and its Office of Cable Television could be provided with copies of such records for three (3) years in accordance with N.J.A.C. 14:18-3.7;
- 6. that RCN did not comply with the Board's Order in Docket Number CS03010035, by failing to:
 - a. within fifteen (15) days of issuance of the Order Accepting the Offer of Settlement, provide the Director of the Office of Cable Television with proof of the deposit of \$1,000,000.00 in escrow in a third party interest bearing trust account;
 - b. provide verified proof to the Office of the annual and quarterly customer notices in the form of a true copy of the notices sent to each system and proof of mailing within thirty (30) days of the completion of such notices, but no later than April 30, 2003; and
 - c. make modifications to the bill format and disconnection notice within sixty (60) days of the Board's acceptance of the Offer of Settlement with verified proof to the Office no later than April 30, 2003.

As a result of correspondence, telephone conversations and settlement conferences between RCN, the Attorney's General Office and the Office, by letter dated May 24, 2007, RCN submitted a Stipulation of Settlement concerning the alleged non-conforming practices including a monetary offer in the amount of \$250,000.00 in order to resolve all issues concerning the violations alleged by the Office but without any admission by RCN of any violations. As part of the Stipulation of Settlement, RCN has agreed to the following remedial action:

- 1 RCN shall have a continuing obligation to reasonably respond to any correspondence, customer complaints or issues that may arise in conjunction with the operation of its system prior to transfer to Patriot or subsequent owners, and to make whole any former RCN customer who reasonably demonstrates that said customer is entitled to such relief from RCN pursuant to the Act; and
2. upon written request by the Office of Cable Television or the Board, RCN shall provide to the Board within a reasonable period of time such records and documents in the possession of RCN as the Board shall from time to time determine are necessary to ensure compliance with the Stipulation.

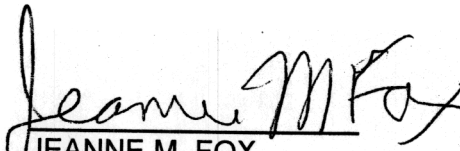
The Board has reviewed the matter and the recommendation of the Office, and HEREBY FINDS the Stipulation of Settlement to be reasonable and in the public interest. Therefore, the Board HEREBY ACCEPTS the Stipulation of Settlement proffered by RCN and incorporates its terms as if fully set forth herein subject to the following provisions, conditions and/or limitations:

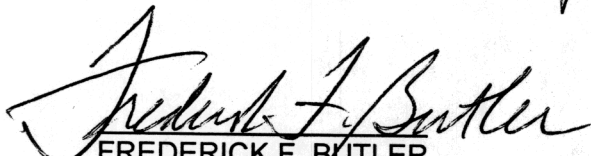
- 1 RCN shall cause to be paid \$250,000.00 by check made payable to Treasurer, State of New Jersey, from the Escrow Account, on or before thirty (30) days after the date on which this Stipulation is approved by the Board.
2. The Board authorizes by this Order the release of \$250,000.00 from the Escrow Account payable to the Treasurer, State of New Jersey pursuant to paragraph 1, above, and further authorizes that, after payment of that amount, the remaining funds in the Escrow Account including accrued interest, shall be released to RCN by check or wire transfer.
3. Approval of this Stipulation of Settlement releases, waives and forgoes any and all claims, demands, suits, allegations, complaints, penalties, or offsets, known or unknown, asserted or unasserted, actual or potential, that the Board has jurisdiction over and that relate to the operation of the cable systems by RCN for the time period up to and including May 24, 2007, and also forever releases, waives and forgoes any and all claims, demands, suits, allegations, complaints, penalties, or offsets, known or unknown, asserted or unasserted, actual or potential, that the Board has jurisdiction over and that relate to the Board's Order requiring RCN to file a franchise for its former SMATV system in the Newport Complex in Jersey City in I/M/O the Alleged Non-Compliance by RCN of NY, A Wholly-Owned Subsidiary of RCN Corporation, with the Requirements of N.J.S.A. 48:5A-15, 16, 17 and 22 Requiring Municipal Consent from the City of Jersey City and a Certificate of Approval from the Board for Newport Community in Jersey City, New Jersey, Docket No. CC03010023. This release does not pertain to any pending or future investigation, suit or proceeding brought against RCN by the State of New Jersey or any agency thereof other than any investigation, suit or proceeding that could have been brought by the Board prior to the above mentioned date.
4. Any future similar violation of the Act or Regulations by RCN shall be deemed to be a third or subsequent violation, as appropriate, pursuant to the provision of N.J.S.A. 48:5A-51(b) for the purpose of determining the amount of any applicable fine or penalty.

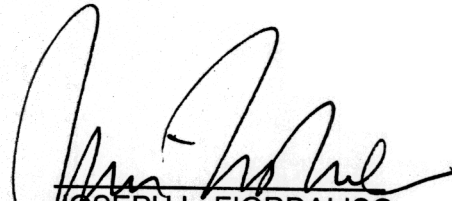
5. The Office will monitor RCN's compliance with the terms of the Stipulation and this Order.

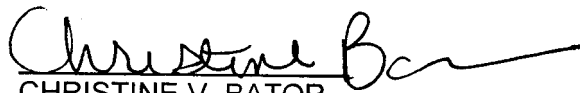
DATED: 7/12/07

BOARD OF PUBLIC UTILITIES
BY:

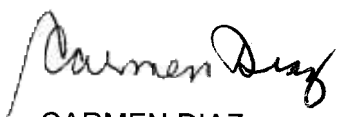

JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

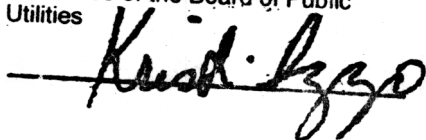

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


CARMEN DIAZ
ACTING SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**IN THE MATTER OF THE ALLEGED FAILURE OF RCN TELECOM SERVICES, INC.
AND HOME LINK COMMUNICATIONS OF PRINCETON, L.P. TO COMPLY WITH
PROVISIONS OF THE NEW JERSEY CABLE TELEVISION ACT, N.J.S.A. 48:5A-1 ET SEQ.,
AND/OR THE NEW JERSEY ADMINISTRATIVE CODE, N.J.A.C. 14:18-1.1 ET SEQ.**

STIPULATION OF SETTLEMENT

DOCKET NO. CS03010035

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STATE OF NEW JERSEY
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OFFICE OF CABLE
TELEVISION

IN THE MATTER OF THE ALLEGED FAILURE OF
RCN TELECOM SERVICES, INC. AND HOME LINK
COMMUNICATIONS OF PRINCETON, L.P. TO
COMPLY WITH PROVISIONS OF THE NEW JERSEY
CABLE TELEVISION ACT N.J.S.A. 48:5A-1 ET SEQ.
AND/OR THE NEW JERSEY ADMINISTRATIVE
CODE, N.J.A.C. 14:18-1.1 ET SEQ.

STIPULATION

Docket No. CS03010035

RCN Telecom Services, Inc. ("RCN") by Robert Goode, Esquire, Arturi,
D'Argenio, Guaglardi & Meliti, LLP and

Staff of the Board of Public Utilities ("Staff") by Todd Steadman, Esquire, and Anne
Marie Shatto, Esquire, Deputy Attorneys General

WHEREAS, the New Jersey Board of Public Utilities ("Board" or "BPU") is an agency
within the Executive Branch of the State Government, with principal offices at Two Gateway
Center, Newark, Essex County, New Jersey; and

WHEREAS, the Office of Cable Television ("Office" or "Staff" or "OCTV") is a separate
Office within the Board, established by the Cable Television Act, N.J.S.A. 48:5A-1 et seq., ("Act")
and authorized to supervise and regulate cable television companies to the extent necessary to
carry out the purposes of the Act; and

WHEREAS, the Board, pursuant to N.J.S.A. 48:1-1 et seq. and 48:5A-1 et seq., has been
granted general supervision and regulation of and jurisdiction and control over all cable
television systems which operate within the State of New Jersey, subject only to the limitations
of federal law; and

WHEREAS, RCN Telecom Services, Inc., ("RCN") was previously a cable television system
operator, as defined by State and federal law, which had been operating in the State of New
Jersey, with its principal office currently at 196 Van Buren Street, Herndon, Virginia 20170;
and

WHEREAS, by Board Order dated February 6, 2003, I/M/O the Petition of RCN Telecom Services, Inc. and Patriot Media & Communications CNJ, LLC for Approval of the Transfer of Certificates of Approval, for the Transfer of Partnership Interests and for Approval of the Sale of Assets, Docket No. CMO2090653, ("Order of Approval") the Board found the sale of RCN's New Jersey cable system to Patriot Media & Communications CNJ, LLC ("Patriot") to be in accordance with law, in the public interest and with no adverse impact on the financial integrity of the affected cable companies and authorized the transfer of RCN's Certificates of Approval (COAs), partnership interests and assets, including its right, title and interest in the IRU Agreement to Patriot subject to certain conditions; and

WHEREAS, on January 29, 2003, RCN presented an Offer of Settlement to the Board in an attempt to settle allegations that RCN had failed to comply with certain provisions of the New Jersey State Cable Television Act, N.J.S.A. 48:5A-1 et seq. and the New Jersey Administrative Code, N.J.A.C. 14:18-1.1 et seq. which Offer the Board accepted by Board Order dated February 13, 2003, and

WHEREAS, in the foregoing Offer of Settlement authorized by the Board on February 13, 2003 I/M/O the Alleged Failure of RCN Telecom Services Inc. and Home Link Communications of Princeton, L.P. to Comply with Provisions of the New Jersey State Cable Television Act, N.J.S.A. 48:5A-1 et seq. and the New Jersey Administrative Code, N.J.A.C. 14:18-1.1 et seq., Docket No. CS03010035, RCN, inter alia, agreed to escrow an additional \$1,000,000.00, in part to provide refunds to subscribers and/or municipalities; and

WHEREAS, said \$1,000,000.00 escrow has been established at Mariner's Bank, Edgewater, New Jersey, in account no. 1400009559 ("Escrow Account"), where it remains as of the date of this Settlement Agreement; and

WHEREAS, in a separate matter involving RCN's operation of a cable television system in the Newport Building Complex in Jersey City, New Jersey, the Board directed RCN to seek municipal consent and a COA from the Board for its operation. I/M/O the Alleged Non-Compliance by RCN of N.Y., A Wholly-Owned Subsidiary of RCN Corporation, with the Requirements of N.J.S.A. 48:5A-15, 16, 17 and 22 Requiring Municipal Consent from the City of Jersey City and a Certificate of Approval from the Board for New Port Community in Jersey City, New Jersey, Docket No. 0003010023. RCN claimed that the system operated as a Satellite Master Antenna Television ("SMATV") and was outside the definition of a cable system and thus not subject to Board oversight. The Board issued a final order finding that the SMATV was a cable system under the federal definition and was subject to Board supervision. Following the issuance of that Order, RCN took appeal to the New Jersey Superior Court, Appellate Division, but did not seek a stay of the Board Order from the Appellate Division directing it to seek the necessary approvals. Following a decision by the Appellate Division determining that RCN did operate an SMATV system, the Board sought and was granted a Petition for Certification by the New Jersey Supreme Court, which subsequently affirmed the Board's decision. At no point during this time did RCN receive a stay of the Board's Order directing it to seek municipal authorization and a COA, and thus the Board alleges that RCN's actions constituted and remained an ongoing Board Order violation. RCN has since ceased all operation of the aforementioned cable system at the Newport Building Complex; and

WHEREAS, OCTV has alleged that RCN failed to comply with certain applicable statutes, Regulations and Board Orders by committing certain actions and omissions including, but not limited to, the following:

- Failure to comply with Federal Communications Commission ("FCC") Customer Service Standards requiring hold times to be under 30 seconds in four quarters over 2002 and 2003;
- Underpayment of a municipal authority, the Princeton Cable TV Committee;
- Failure to provide quarterly notice to customers of the availability of outage credits in Q4 2002 and Q1 2003.
- Failure to comply with numerous provisions in the Board's Order Accepting Offer of Settlement, its Order of Approval of the Patriot Sale and its Order Accepting Administrative Consent Agreement, including, but not limited to:
 1. Failure to timely provide proof of \$ 1 million escrow;
 2. Failure to provide verified proof of annual and quarterly customer notices;
 3. Failure to provide verified proof of alterations to deficient billing formats and disconnection notices;
 4. Failure to provide timely notification of closing date;
 5. Failure to timely provide certification of lack of material deviation in the executed closing documents or final terms from those previously represented to the Board;
 6. Failure to timely enter journal entries with the Board reflecting sales transactions;
 7. Failure to timely provide OCTV forms CATV-1 and CATV-2 reflecting gross revenue from 1/1/03 through closing for the CATV system transferred;
 8. Failure to timely provide certification that all CATV systems are in full compliance with Article 820 of the National Electrical Code;
 9. Failure to timely provide certification that all Board ordered requirements arising out of all settlements or certificates of approval are being timely satisfied;
 10. Failure to timely provide certification that sufficient funds will be available to complete construction commitments;
 11. Failure to timely provide certification that billing records are available for all New Jersey customers;
 12. Failure to timely provide verified proof of customer service enhancements;
 13. Failure to timely provide notification that all agreed upon customers refunds were provided; and

WHEREAS, RCN disagrees with the OCTV's allegations with regard to compliance with statutes, Regulations, Board Orders and any alleged penalty or refund liability; and

WHEREAS, RCN desires to resolve all outstanding issues regarding compliance with BPU Orders, statutes and Regulations without incurring additional delay and expense that would be associated with a formal proceeding before the BPU;

NOW, THEREFORE, in consideration of the mutual covenants given herein, the Board, OCTV Staff and RCN ("parties") hereby agree as follows:

1. RCN means RCN Telecom Services Inc. as well as its principals, directors, officers, parent corporation, subsidiaries, affiliates, employees, agents, representatives, successors, shareholders, independent contractors/third party distributors, any trustee in bankruptcy or other trustee, and/or any receiver appointed pursuant to proceedings in law or in equity.
2. RCN shall cause to be paid \$250,000.00 by check made payable to Treasurer, State of New Jersey, from the Escrow Account, on or before 30 days after the date on which this Stipulation is executed by both parties and approved by the Board.
3. Upon approval of this Stipulation, the Board will authorize by Order the release the escrow monies in the amount of \$250,000.00 to the Treasurer, State of New Jersey pursuant to paragraph 2, above, and authorize that the remaining funds in the Escrow Account including accrued interest, be released to RCN by check or wire transfer.
4. In consideration of the foregoing, the BPU shall forever release, waive and forgo any and all claims, demands, suits, allegations, complaints, penalties, or offsets, known or unknown, asserted or unasserted, actual or potential, that it has jurisdiction over and that relate to the operation of the cable systems by RCN for the time period up to and including the date of this Stipulation, and shall also forever release, waive and forgo any and all claims, demands, suits, allegations, complaints, penalties, or offsets, known or unknown, asserted or unasserted, actual or potential, that it has jurisdiction over and that relate to the Board's Order requiring RCN to file a franchise for its former SMATV system in the Newport Complex in Jersey City in I/M/0 the Alleged Non-Compliance by RCN of N.Y., A Wholly-Owned Subsidiary of RCN Corporation, with the Requirements of N.J.S.A. 48:5A-15, 16, 17 and 22 Requiring Municipal Consent from the City of Jersey City and a Certificate of Approval from the Board for New Port Community in Jersey City, New Jersey, Docket No. 0003010023. The aforementioned release does not pertain to any pending or future investigation, suit or proceeding brought against RCN by the State of New Jersey or any agency thereof other than the Board of Public Utilities.
5. RCN shall have a continuing obligation to reasonably respond to any correspondence, customer complaints or issues that may arise in conjunction with the operation of its system prior to transfer to Patriot on and to make whole any former RCN customer who reasonably demonstrates that said customer is entitled to such relief from RCN pursuant to the Act.

6. The execution of this Stipulation shall not be deemed an admission by RCN of any violation of the Act or any provision of the Regulations that such violation occurred.

7. Any future similar violation of the Act or Regulations by RCN shall be deemed to be a third or subsequent violation, as appropriate, pursuant to the provision of N.J.S.A. 48:5A-51(b) for the purpose of determining the amount of any applicable fine or penalty.

8. The parties represent that a representative of each has signed this Stipulation with the authority to legally bind the respective party, and that each party has full knowledge, understanding and acceptance of the terms of this Stipulation.

9. This agreement may not be amended except by written instrument executed by each party and approved by the Board.

10. This Stipulation constitutes the entire agreement between the parties and shall bind the parties and their respective officers, directors, agents, representatives, employees, parent corporations, subsidiaries, affiliates, successors and assigns.

12. This Stipulation may be signed in counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties.

13. If any provision of this Stipulation shall be invalid or unenforceable, the remainder of the Stipulation shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

14. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of New Jersey.

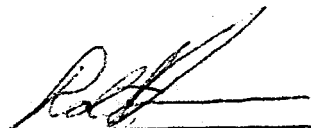
15. Upon written request by the OCTV or the Board, RCN shall provide to the Board available records and documents in the possession of RCN as the Board shall from time to time determine are necessary to ensure compliance with this Stipulation within a reasonable period of time.

16. RCN shall not represent or imply that any business practice or other act or practice hereinafter used or engaged in by it has been required or approved, in whole or in part, by the Attorney General,

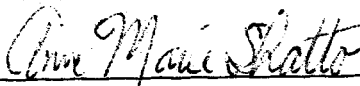
the Board, OCTV, the State of New Jersey or any of the State's agencies, agents or subdivisions.

RCN TELECOM SERVICES, INC.

STUART RABNER
ATTORNEY GENERAL
OF THE STATE OF NEW JERSEY
FOR THE STAFF
OF THE BOARD OF PUBLIC UTILITIES

By:  05/24/2007

Robert Goode, Esq.
Arturi, D'Argenio
Guaglardi & Meliti, LLP

By: 

Anne Marie Shatto
Deputy Attorney General