



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 • www.riag.ri.gov

Peter F. Neronha
Attorney General

DECISION

**Re: The Public Radio Conversions Act application of Rhode Island PBS and
The Public's Radio**

The Office of the Attorney General has considered the above-referenced application pursuant to the Public Radio Conversions Act, Rhode Island General Laws § 18-4.1. In accordance with the reasons outlined herein, the application is **APPROVED**. The Office of the Attorney General has determined that no fee is required of the transacting parties.

EXECUTIVE SUMMARY

Before this office is an application under The Public Radio Conversions Act, R.I. Gen. Laws § 18-4.1 for a proposed merger of Rhode Island PBS (“RIPBS”) and The Public’s Radio (“TPR”) (together, the “Parties”) into a new, combined entity.

In 2004, Rhode Island enacted The Public Radio Conversions Act, R.I. Gen. Laws § 18-4.1 (hereinafter, “the Act”). The Act seeks to protect Rhode Islanders’ access to high quality public radio programming.

Under the provisions of the Act, the parties’ application was accepted as complete on February 6, 2024. A public meeting was held to gather input about the parties’ application to merge on February 20, 2024. In the decision that follows, the Office of the Attorney General approves the merger and assesses no fee after reviewing the parties’ initial application and supplementary material, holding the public meeting required under R.I. Gen. Laws § 18-4.1-6, and reviewing written and telephonic comments from members of the community.



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Introduction

1. The Public Radio Conversions Act

Enacted in 2004, the Public Radio Conversions Act (the “Act”) aims to preserve public radio in Rhode Island.¹ The Act establishes a process for the Office of the Attorney General (the “OAG”) to evaluate and review whether the transfer of ownership over a public radio station or its assets will retain or expand access to high quality public radio station programming and is consistent with the intentions of that radio station’s donors.² The Act explains that “Rhode Island public radio stations are under particular challenge” as a result of technical limitations of signal strength, and that public radio stations “may easily be sold to for-profit entities.”³ The Act states that “consolidation in commercial radio and other media has reduced the number of Rhode Island owned and operated cultural, educational, and news organizations.”⁴ The Act further states that “in order to protect public welfare and public and charitable assets, and ensure that Rhode Islanders’ gifts to Rhode Island public radio stations are used for their intended purposes, it is necessary to establish standards and procedures that result in a recoupment of public investment through the assessment of a conversion fee to create the financial infrastructure to replicate public radio programming that may be lost in the sale of a public station to a commercial operator.”⁵

The Act names the OAG as the reviewer of the proposed transaction. The OAG is charged to carry out the statute’s purpose to ensure that public radio is protected and promoted in Rhode Island.⁶ The Act also provides criteria that the OAG must consider during its review in light of that statutory purpose – laid out in further detail below.

It is also of note that the Act contemplates the sale of a public radio station to a commercial operation and is designed to prevent potential harm from such a transaction.⁷ Here, however, TPR is merging with another nonprofit rather than a commercial entity. Nevertheless, the Act clearly applies to any public radio conversion and supplies a comprehensive set of 31 criteria by which the OAG must determine whether the conversion provides a “community benefit” as defined by the Act and, if not, assess a conversion fee to finance production of public radio programming lost in the conversion.

¹ R.I. Gen. Laws § 18-4.1 *et seq.*

² *Id.* at §§ 18-4.1-3(1)-(2).

³ *Id.* at § 18-4.1-2(4).

⁴ *Id.* at § 18-4.1-2(3).

⁵ *Id.* at § 18-4.1-2(7).

⁶ *Id.* at § 18-4.1-10.

⁷ *See id.* §§ 18-4.1-2(7).



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2. Proposed Merger of Rhode Island PBS and Rhode Island Public Radio (doing business as The Public's Radio)

Acquirer Rhode Island PBS Foundation (“RIPBS”) is a Rhode Island non-profit corporation in good standing. RIPBS operates WSBE-TV, a PBS member television station located in Providence, Rhode Island serving parts of Rhode Island and Massachusetts.⁸ RIPBS has been operating in the state since 1967, and it presents a range of news and other programming on its television station and associated website.

Rhode Island Public Radio, called The Public's Radio (“TPR”), is a smaller non-profit based in Providence that pairs local public radio programming with national syndicated programming from NPR and other stations in Rhode Island. TPR is licensed by the Federal Communications Commission (“FCC”) to operate three radio stations: WXNI 89.3 FM in Tiverton, WRNI 102.7 FM in Narragansett, and WRNI 1290 FM in North Providence.

On May 24, 2023, RIPBS and TPR agreed upon a Memorandum of Understanding on a proposed merger. The parties' respective boards of directors approved the proposed merger on November 8, 2023, and the merger agreement was signed on November 9, 2023.⁹ The parties agreed on a merger of their respective entities that does not involve an exchange of cash or assets – the merger is a straight combination.¹⁰ The new board of directors consists of 20 directors, with 11 selected from Rhode Island PBS and 9 from TPR.

The parties filed their merger application under the Act on November 16, 2023 (“application” or “Appl.”, Appendix A). On December 6, 2023, the Office of the Attorney General notified the parties that the application was considered incomplete, and set out seven requests for additional information from the parties.¹¹ On January 12, 2024, the parties submitted a responsive supplement to their application (the “supplement” or “Suppl.”, Appendix C).

On February 6, 2024 the OAG determined that the application was complete. A public hearing took place on February 22, 2024, and the OAG accepted public comment from February 7, 2024 to February 29, 2024.

⁸ Appl. 163.

⁹ Suppl. 169.

¹⁰ Appl. 199.

¹¹ See Appendix B.



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3. Confidentiality Review

R.I. Gen. Laws § 18-4.1-14 holds that

The attorney general has the power to decide whether any information required by this chapter of a filer is confidential and/or proprietary. The decisions by the attorney general shall be made prior to any public notice of information filed pursuant to this chapter or any public reviews of any information and shall be binding on the attorney general and all experts or consultants engaged by the attorney general.

The parties requested redactions to materials included within their January 12, 2024 responsive supplement. OAG reviewed a log of the parties' proposed redactions, spoke with the parties' counsel, and viewed the unredacted material. Thereafter, the OAG granted confidentiality over the confidential and/or proprietary information identified by the parties because it determined that the materials redacted are proprietary and/or confidential to the business operations of the separate and combined entities, and do not meaningfully alter the conclusions reached from the non-redacted material in any significant way.

The parties' application provides a detailed overview of the financial conditions of RIPBS and TPR, documents the process by which the parties approached and consummated the proposed merger, and explains the structure and operations of the proposed resulting entity.

4. Statutory Criteria

The OAG must determine whether the merger constitutes a community benefit.¹² The animating concern of the statute is that public funds or donations to a public institution should not be simply absorbed into a commercial entity without separate funds designated for the preservation of the public institution's purpose.¹³ The wide-ranging criteria reproduced below consist of a survey of the established duties for parties engaging in a merger transaction, with the additional aim of assessing whether the institution of public investment will be preserved by the identity and agreement of the parties to the proposed transaction.¹⁴

Pursuant to Section 6(b) of the Act, the OAG is required to consider the following criteria when determining whether the conversion is a community benefit:

¹² § 18-4.1-3; § 18-4.1-5.

¹³ §§ 18-4.1-6(a)(4)(b) *et seq.*

¹⁴ *Id.*



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- (1) Whether the proposed conversion will harm the public's interest in property given, devised, or bequeathed to the existing public radio station for charitable, educational or religious purposes located or administered in this state;
- (2) Whether a trustee or trustees of the acquiree will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the proposed conversion;
- (3) Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;
- (4) Whether the board formulated and issued appropriate requests for proposals in pursuing a conversion;
- (5) Whether the board considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;
- (6) Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts or consultants engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, broadcasting experts, or industry analysts;
- (7) Whether individuals described in subdivision (b)(6) were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion;
- (8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;
- (9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion;
- (10) Whether the board exercised due care in assigning a value to the existing public radio station and its charitable assets in proceeding to negotiate the proposed conversion;



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- (11) Whether the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion future or contingent value based upon success of the new radio station;
- (12) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated public radio stations or organizations;
- (13) Whether any members of the board will retain any authority in the new radio station;
- (14) Whether the board accepted fair consideration and value for any management contracts made part of the proposed conversion;
- (15) Whether individual officers, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the proposed conversion;
- (16) Whether the proposed conversion results in an abandonment of the original purposes of the existing public radio station or whether a resulting entity will depart from the traditional purposes and mission of the existing public radio station such that a cy pres or comparable proceeding would be necessary in the absence of this statute;
- (17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;
- (18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third-party report or fairness opinion;
- (19) Whether the conversion is proper under the Rhode Island nonprofit corporation act chapter 6 of title 7;
- (20) Whether the conversion is proper under applicable state tax code provisions;
- (21) Whether the proposed conversion jeopardizes the tax status of the existing public radio station;
- (22) Whether the individuals who represented the existing public radio station in negotiations avoided conflicts of interest;



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- (23) Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the decision to approve the conversion or its terms and conditions;
- (24) Whether the formula used in determining the value of the existing public radio station was appropriate and reasonable which may include, but not be limited to, factors such as: the multiplier factor applied to the “EBITDA” — earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiplies; the projected efficiency differences between the existing public radio station and the new radio station; and the historic value of any tax exemptions granted to the existing public radio station;
- (25) Whether the proposed conversion appropriately provides for the disposition of proceeds of the conversion that may include, but not limited to:
- (i) Whether an existing entity or a new entity will receive the proceeds and whether such recipient serves the public interest of Rhode Islanders;
 - (ii) Whether appropriate tax status implications of the entity receiving the proceeds have been considered;
 - (iii) Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing public radio station;
 - (iv) Whether any conflicts of interest arise in the proposed handling of the conversion’s proceeds;
 - (v) Whether the bylaws and articles of incorporation have been prepared for the new entity;
 - (vi) Whether the board of any new or continuing entity will be independent from the new radio station;
 - (vii) Whether the method for selecting board members, staff, and consultants is appropriate;
 - (viii) Whether the board will be comprised of an appropriate number of individuals with experience in pertinent areas such as foundations, public radio, business, labor, community programs, financial management, legal,



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accounting, grant making and public members representing diverse ethnic populations of the affected communities;

(ix) Whether the size of the board and proposed length of board terms are sufficient;

(26) Whether the transacting parties are in compliance with the Charitable Trust Act, chapter 9 of title 18;

(27) Whether a right of first refusal to repurchase the assets has been retained;

(28) Whether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory;

(29) Whether a control premium is an appropriate component of the proposed conversion;

(30) Whether the value of assets factored in the conversion is based on past performance or future potential performance; and

(31) Whether based on all the facts and circumstances, the attorney general concludes that the acquiree's charitable and educational missions are no longer viable absent the conversion.

Review of Statutory Criteria

Each of the 31 statutory criteria that the OAG is required to consider as part of the review process fall within four general categories: governance and board approval, valuation and due diligence, potential conflicts of interest, and harm to public devises, gifts or bequests. As part of their application to the OAG, the transacting parties provided responses and supporting documentation regarding each of the 31 criteria. The parties' responses to the statutory criteria are summarized below.

Governance and Board Approval (2, 3, 9, 11, 13, 14, 15, 23, 25, 28)

In order to determine whether to approve the transaction within their respective organizations, the boards of directors for each transacting party created working committees to evaluate and negotiate the final agreement. The parties state that they freely shared data during a due diligence process. The parties formed a TPR Integration Team, which included members of both boards of directors. The TPR Integration Team also relied upon a report



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prepared by a financial consultant who was a former director and current board member of TPR, David Kellogg.

The parties were advised by legal counsel throughout the proposed transaction. The firm of Hinckley Allen represented RIPBS, led by Margaret Farrell and Meaghan Krupa, and the firm of Duffy & Sweeney represented TPR, led by Michael Sweeney and Brian Boland.

The parties employed a merger consultant, Mary Jo Kaplan, and engaged with accounting firms who performed audits on both entities. The parties provided Ms. Kaplan's resume, statement of work, and other work product related to the merger. Ms. Kaplan's role was to communicate with decision-makers from both parties to coordinate the transition into one entity, and establish positive relationships and formal structure following the transition.

The parties state that the new governance structure of the combined entity was reviewed in draft and final form by TPR's board of directors before an agreement was reached. The parties state that the members of TPR's board of directors exercised reasonable care, due diligence, and prudence throughout the merger process.

Valuation and Due Diligence (4, 5, 8, 9, 10, 17, 18, 24, 27, 29, 30)

The parties state that because the merger does not involve a commercial conversion of TPR from a nonprofit entity into a for-profit entity, and no cash was exchanged in the combination, that it was not necessary to perform a valuation or consider alternatives to the transaction. The parties state that the only other option considered by TPR would have been to remain independent.

Harm to Public Devises, Gifts or Bequests (1, 16, 19, 20, 21, 26, 31)

The parties state that the merger is not expected to change how charitable assets or donations to TPR are deployed.¹⁵ The parties state that the merger will preserve the tax status of TPR because the surviving corporation will continue as a Rhode Island non-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.¹⁶ The parties cite an extensive record of similar transactions in other states.¹⁷

¹⁵ Appl. 11.

¹⁶ Appl. Exhibit A.

¹⁷ Appl. 51-114.



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Potential Conflicts of Interest (6, 7, 12, 22, 25)

The parties represent that there are no material conflicts of interest concerning the merger. The parties disclosed that Elizabeth Delude-Dix, who serves as Chair of TPR's board of directors, was a member of the RIPBS board of directors from 2016-2021, and that Meredith Curren, secretary of the corporation, was also a previous member of the RIPBS board of directors. The parties disclosed that certain retention bonuses would be paid to executives in connection with the transaction, and represented that such bonuses will not exceed \$50,000 per organization. The parties stated that Duffy & Sweeney agreed to act as legal counsel to TPR for the merger at a discounted rate.

The parties are currently engaging in an executive search for a CEO that will lead the combined entity.

Findings

1. Consolidation in Public and Private Media Contextualizes the Purpose of the Public Radio Conversions Act.

Over the past two decades, local print and radio corporations across the United States experienced the impact of nationwide consolidation. A study conducted by Harvard professor Thomas Patterson noted that “most local public radio stations serve communities where the quality and quantity of the local news and public affairs information is inadequate to the communities’ information needs.”¹⁸

Patterson’s 2023 study also concluded that the biggest obstacle to a more prominent informational role for most local stations is understaffing.¹⁹ When commercial or nonprofit media companies experience economic instability that may be caused in part by the decline of traditional advertising or other revenue streams, reporters and the staff that make their work possible are often the first to suffer. Importantly, the study also noted that “local public radio stations do not have the ability to acquire on their own substantial new funding required to greatly strengthen their capacity to provide quality news and public affairs coverage...this problem is particularly acute in the communities most affected by the decline of the local newspaper.”²⁰

¹⁸ Thomas E. Patterson, “News Crisis: Can Local Public Radio Help Fill the News Gap Created by the Decline of Local Newspapers?” January 2023, Shorenstein Center on Media, Politics, and Public Policy Discussion Paper, https://shorensteincenter.org/wp-content/uploads/2022/12/News-Crisis_Tom-Patterson.pdf

¹⁹ *Id.* at 3, 28-31.

²⁰ *Id.* at 3.



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Historically, the most prominent source of local reporting in Rhode Island was the Providence Journal. Since the paper was sold in 2014 to what is now the largest newspaper company in the country, Gannett Co., Inc., and even before, this local institution has been decimated by layoffs, and is no longer positioned to cover local news at anywhere near the volume or quality of prior incarnations. Over the last decade, The Providence Journal's parent company has continuously reduced staffing. On March 20, 2024, Gannett announced that due to costs it was removing Associated Press content from all its newspapers, including the Providence Journal. Although the Boston Globe and WPRI.com are likely to continue running Associated Press stories in Rhode Island, the loss is still significant. Gannett's presence in the local market has been devastating to local news in Rhode Island.

In the context of this industry-wide consolidation, and the continuing threat posed to the institution of public radio, in 2004 the Public Radio Conversions Act was made law to protect the institution of public radio from being converted to a commercial entity under circumstances that could threaten the future of public radio in Rhode Island.²¹ Under the plain terms of the Act, any conversion must therefore be reviewed by the OAG to determine whether the proposed transaction constitutes a community benefit.

At the outset of this review, the OAG recognized that TPR's merger with RIPBS is not a merger between commercial entities. Yet the Act requires that the OAG review each proposed merger involving the institution of public radio to ensure that the community benefits conferred by the target public radio station, and the contributions of donors, will not be diminished or disturbed by the merger.²² On a practical level, the purpose of the Act is to secure public or charitable funds that have been invested in public radio, and provide for set-offs in case of a commercial acquisition.²³ The merger must constitute a community benefit to escape the assessment of a conversion fee that would be used to preserve the presence of public radio in Rhode Island.

²¹ R.I.G.L. § 18-4.2-3 (“Consolidation in commercial radio and other media has reduced the number of Rhode Island owned and operated cultural, education and news organizations”).

²² R.I.G.L. § 18-4.1-6.

²³ R.I.G.L. § 18-4.2-7 (“In order to protect public welfare and public and charitable assets, and ensure that Rhode Islanders’ gifts to Rhode Island public radio stations are used for their intended purposes, it is necessary to establish standards and procedures that result in recoupment of public investment through the assessment of a conversion fee to create the financial infrastructure to replicate public radio programming that may be lost in the sale of a public station to a commercial operator”).



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After reviewing the transaction, the OAG has decided not to assess any fee to the parties. Such a set-off might inhibit public radio in Rhode Island by increasing the likelihood that the combined entity would reduce the size of operations or staff.

2. RIPBS and TPR Upheld Their Fiduciary Duties In Considering and Executing the Merger.

In any merger, the financial condition of the parties is the primary driver. TPR's audited financial statement indicates total liabilities and net assets of \$3.9 million in 2022, down from \$4.6 million in 2021.²⁴ In contrast, RIPBS reported \$101,558,066 in assets in 2023, including more than a million in cash, and \$79,959,451 in investments.²⁵ TPR's financial statements further indicate that cash contributions to TPR experienced a two-year decline, and that total operating expenses of just shy of TPR's total approximate worth stayed at the same level over that period. In FY 2022 TPR could have accessed \$869,340 in assets if the need for short term financing were required, down from \$1,065,998 the year before. In FY 2022, \$801,877 of TPR's net assets had donor restrictions.

The OAG concludes that TPR would remain in a vulnerable position financially without the merger. Therefore, TPR's leadership performed basic due diligence by determining whether the merger could solidify the public's interest in property devised to Rhode Island public radio.

Where there is a dearth of Rhode Island corporate case law, our state courts look to Delaware "for fiduciary legal principles."²⁶ A board's decision to pursue a merger opportunity is normally reviewed within the traditional business judgment framework.²⁷ Referred to as the business judgment rule, this framework grants a strong presumption to the parties' business judgment in determining whether to consummate a transaction.²⁸ Here, the parties provided extensive documentation showing that they undertook a thorough and deliberative process that utilized the following consultants:

- Mary Jo Kaplan's career as a consultant spans decades. She is a Harvard and Brown trained board member of Rhode Island Commerce, who was named a Fulbright

²⁴ Appl. 215.

²⁵ RIPBS also owns its building at 50 Park Lane in Providence.

²⁶ See *Marsh v. Billington Farms, LLC*, No. 04-3123, 2006 WL 2555911, at *5 (R.I. Super. Aug. 31, 2006); *Bove v. Community Hotel Corp. of Newport, R.I.*, 249 A.2d 89, 93 (R.I. 1969).

²⁷ *TW Servs., Inc. v. SWT Acquisition Corp.*, 1989 WL 20290, at *11 (Del.Ch. March 2, 1989).

²⁸ *Gantler v. Stephens*, 965 A.2d 695, 706 (Del. 2009).



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scholar in 2013. Ms. Kaplan engaged with both parties through a process honed by her background in corporate mediation and problem-solving.

- TPR engaged accounting firm Mullen Scorpio Cerilli to perform its audit, and RIPBS engaged accounting firm PKF O'Connor Davies.
- Legal counsel led by Margaret Farrell and Meaghan Krupa of Hinckley Allen for RIPBS, and Michael Sweeney and Brian Boland of Duffy & Sweeney for TPR, advised the parties.

The parties' application, including the records of internal board discussions, indicate that the TPR board properly considered the consequences of the conversion on public radio in Rhode Island and utilized legal counsel and accountants to advise them of the economic and legal consequences of the merger. Each of the parties provided assurances to each other about the reliability of financial reporting and the preparation of financial statements in accordance with generally acceptable accounting principles ("GAAP").²⁹

Then, TPR's board reviewed the audit performed by its accountants, and considered other possibilities for the future of TPR.³⁰ Records of internal board discussions indicate that TPR's auditors presented their recommendation to the board in executive session, and that TPR was thoughtful about securing the economic future of the station by partnering with an economically viable, larger nonprofit entity with a similar mission. The resolution to approve the merger passed by more than 2/3 of the Board, and minutes show that ultimately the resolution was approved unanimously.³¹

The parties disclosed that Elizabeth Delude-Dix, chair of the TPR board, and Meredith Curren, secretary of the TPR board, were previous members of RIPBS' board of directors. The parties' disclosure was out of an abundance of caution, and it is not unexpected that there would be cross-pollination between two major nonprofit media entities operating in the same market. The OAG is not aware of any serious conflict of interest in the merger, a concern greatly mitigated by the lack of any cash proceeds coming out of the transaction.

²⁹ Appl. 186, Agreement 25.

³⁰

³¹ Suppl. 167-172.



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The minutes of the parties' board meetings indicate the parties conducted appropriate due diligence and have provided each other and this Office with copies of their respective financial positions. The by-laws of the proposed combined nonprofit corporation are structured so that RIPBS will always have exactly two more appointments on the board of directors, which grants TPR considerable board representation. Given the contrast between the solid financial footing of RIPBS and the smaller footprint of TPR, the OAG finds that it is sufficiently clear that the merger will strengthen and continue TPR's existing operations.

3. The Parties Were Not Required to Complete a Valuation or Solicit Other Offers Because of the Context of the Transaction

The parties state that TPR did not perform a valuation beyond a traditional audit, and did not consider merging with other entities or offering TPR and/or its licenses for sale on a wider basis. The conduct of the TPR board was permissible under relevant law in these circumstances. When directors possess reliable evidence to determine a transaction's fairness, they may approve the transaction without surveying the entire market. *See Meyer v. Jewish Home for the Aged of RI*, 1994 WL 930887 at *14 (R.I. Superior Ct. Jan. 9, 1994) (analyzing *Oberly v. Kirby*, 592 A.2d 445, 470 (Del. Sup. Ct. 1991), where "all possible alternatives were seriously flawed" in the combination of a nonprofit to a for-profit entity). As the Supreme Court of Delaware noted in *Kirby*:

A court cannot second-guess the wisdom of facially valid decisions made by charitable fiduciaries, any more than it can question the business judgment of the directors of a for-profit corporation. However, because the Foundation was created for a limited charitable purpose rather than a generalized business purpose, those who control it have a special duty to advance its charitable goals and protect its assets. Any action that poses a palpable and identifiable threat to those goals, or that jeopardizes its assets would be contrary to the Certificate and hence ultra vires.

Because available alternatives to this merger would have likely involved a for-profit acquirer, in the absence of any information showing the price was unfair, TPR was not required to seek other options.

4. The Parties Sufficiently Complied with Statutory Obligations Under the Act and Other Relevant Statutes

R.I.G.L. § 18-4.1-6(b)(19) establishes the criteria of the merger's permissibility "under the Rhode Island nonprofit corporation act chapter 6 of title 7." R.I.G.L. § 18-4.1-6(b)(20) examines "whether the conversion is proper under applicable state tax code provisions."



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The OAG has determined that the proposed merger satisfies the requirements of the Rhode Island Nonprofit Corporation Act, § 7-6, which defines the powers of Rhode Island nonprofit corporations. The combined entity is a charitable organization under § 7-6-4(1) of the Rhode Island Nonprofit Corporation Act.

The OAG has determined that the proposed merger is permissible under applicable state tax code provisions. Although the Act does not reference specific provisions within the tax code, both RIPBS and TPR are nonprofit corporations in good standing with the Rhode Island Secretary of State.

5. Public Comments Were Supportive of the Merger, With a Concern Area Identified as RIPBS' Bargaining with Local 1228 of the International Brotherhood of Electrical Workers in Light of the Adverse NLRB Decision Against RIPBS in 2017

The OAG received 9 public comments.³² All 9 comments were supportive of the possibilities of the combined entity. However, two commenters raised concerns with the proposed transaction.

In one written submission, the business manager/financial secretary of International Brotherhood of Electrical Workers Local 1228, Fletcher Fischer, raised concerns surrounding a 2017 National Labor Relations Board decision regarding RIPBS. This comment focused on the conduct that gave rise to the 2017 decision and current negotiations between RIPBS and his Union.³³ When the OAG raised these concerns with RIPBS, the transacting parties provided information regarding the policy procedures and safeguards they had implemented since 2017 to ensure compliance with the NLRB decision and to avoid similar issues in the future. RIPBS' full reply is reproduced in Appendix E.

At the public meeting on February 20, 2024, Latino Public Radio manager Reynoldo Almonte stated that he supported the merger because it was good for the community and public radio in general, but raised concerns about the lack of funding for Spanish-language radio in the state. The OAG shares Mr. Almonte's concerns with equity in funding for Spanish-language public radio. With the increased resources available from the merger, the OAG encourages the parties to consider additional Spanish-language programming across their platforms.

³² Six written comments were submitted, and three oral comments were made at the public meeting on February 20, 2024 at the office of the OAG. The public meeting can viewed at <https://www.youtube.com/watch?v=0czUiX4ojzI>.

³³ Appendix D.



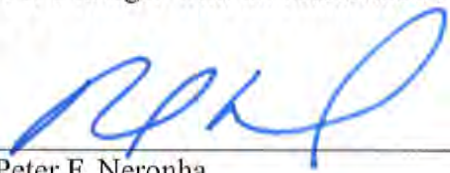
STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 • www.riag.ri.gov

Peter F. Neronha
Attorney General

Conclusion

Because the acquisition of TPR by a commercial entity would threaten the charitable and educational mission of public radio in Rhode Island more severely than a merger with a nonprofit with a closely related purpose, mission, and structure, and because TPR's financial position led it to determine a merger with RIPBS was the best option to preserve public radio in Rhode Island, the OAG determines that TPR's merger with an established nonprofit is likely to constitute a community benefit.



Peter F. Neronha
Attorney General