



STATE OF NEW JERSEY
Board of Public Utilities
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TELECOMMUNICATIONS

IN THE MATTER OF THE BOARD INVESTIGATION) REGARDING THE RECLASSIFICATION OF INCUMBENT) LOCAL EXCHANGE CARRIER (ILEC) SERVICES AS) COMPETITIVE)	ORDER DOCKET NO. TX07110873
I/M/O THE APPLICATION OF UNITED TELEPHONE) COMPANY OF NEW JERSEY INC. d/b/a EMBARQ FOR) APPROVAL OF A PLAN FOR ALTERNATIVE) REGULATION)	DOCKET NO. TO08060451

(SERVICE LIST ATTACHED)

BY THE BOARD:

By Order dated November 28, 2007, in response to a request from Verizon New Jersey Inc. ("Verizon"), the New Jersey Board of Public Utilities ("Board") commenced this proceeding to investigate the competitiveness of retail mass market services¹ provided by incumbent local exchange carriers in New Jersey ("ILECs"). This Order provides the reasoning for the action taken by the Board by Summary Order of Approval dated July 14, 2008 with respect to Verizon, and sets out the Board's determinations with respect to a stipulation of settlement and a plan for alternative regulation proposed by the United Telephone Company of New Jersey, Inc. d/b/a/Embarq ("Embarq").

Procedural History

Pursuant to N.J.S.A. 48:2-21.19(b), prior to determining whether a service is competitive, the Board must evaluate 1) the ease of market entry, 2) the presence of competitors, and 3) the availability of like or substitute services in the relevant geographic area. To provide a full record and allow for an inclusive and transparent process, the Board invited input from any and all interested parties, including but not limited to all registered telecommunications providers in the State, other parties that may have an interest in the matter, and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"). The Order also set a procedural schedule

¹Retail mass market services include services such as local exchange service, associated calling features such as CallerID and Call Waiting, residential directory assistance, and installation of residential services.

including discovery, prefiled testimony and evidentiary hearings, and designated Commissioner Frederick F. Butler as the presiding commissioner.

By letter dated December 3, 2007, Rate Counsel filed a motion seeking reconsideration of the Board's November 28, 2007 Order contending, among other things, that the schedule set by the Order did not provide sufficient time to develop an adequate record, and did not provide for needed public hearings. By Order dated December 21, 2007, the Board modified the schedule to include three public hearings and moved the last date for discovery responses from February 12, 2008 to February 13, 2008. Rate Counsel's remaining requests were denied.

Various motions for admission *pro hac vice* of counsel were filed. On December 6, 2007, Sprint Communications Co. LP, Sprint Spectrum and Nextel of New York Inc. ("Sprint"), moved for admission *pro hac vice* of Garnet Goines, Esq. and Benjamin J. Aron, Esq. On December 13, 2007, Embarq, filed a motion to permit the appearance *pro hac vice* of Zsuzsanna E. Benedik, Esq. and Jeanne W. Stockman, Esq. These motions were granted by Commissioner Butler by Order dated December 19, 2007. On December 14, 2007, Verizon filed a motion seeking admission *pro hac vice* of Richard A. Chapkis, Esq. By letter dated December 17, 2007, XO New Jersey, Inc. filed a motion with the Board to permit the appearance *pro hac vice* of Brian A. Nixon, Esq., Kevin C. Halm, Esq., and T. Scott Thompson, Esq. On December 19, 2007, Commissioner Butler issued an Order in response to the motion filed by Sprint granting admission *pro hac vice* of Ms. Garnet Goines, Esq. and Mr. Benjamin J. Aron, Esq. By letter dated December 18, 2007, Cablevision Systems Corporation (Cablevision), filed a motion seeking admission *pro hac vice* of Cherie R. Kiser, Esq. Commissioner Butler granted the motions of Cablevision and Verizon in an Order dated January 4, 2008, and granted a motion filed by Embarq seeking admission *pro hac vice* of Jeanne W. Stockman, Esq. on February 4, 2008.

In accordance with the November 28 Order, Commissioner Butler ruled on intervention and participation. By order dated December 18, 2007, the Commissioner granted intervenor status to Verizon, Embarq, Sprint, and Rate Counsel, and granted participant status to Cablevision, the New Jersey Cable Telecommunications Association ("NJCTA"), and to AT&T Communications of New Jersey, L.P. ("AT&T"). While Commissioner Butler originally granted XO Communications Services, Inc. ("XO") intervenor status, he later granted XO's request to modify its status from intervenor to participant.

On December 14, 2007, Messrs. Paul Vasington and William Newman filed initial testimony on behalf of Verizon in support of reclassifying ILEC-provided retail mass market services as competitive. On the same date, Dr. Brian Staihr filed testimony on behalf of Embarq in support of reclassifying these services. The ILEC witnesses testified that, as required by the statutory reclassification criteria set out in N.J.S.A. 48:2-21.19(b), there are a substantial number of competitors providing retail mass market communications services in New Jersey, including cable companies, wireless carriers, over-the-top voice-over-Internet-protocol ("VoIP") providers, and traditional wireline competitive local exchange carriers ("CLECs"). The ILECs' witnesses also testified that these competitors offer like or substitute services that compete with ILEC-provided retail mass market retail services, and that there are no barriers to entering the market for retail mass market services in New Jersey.

By letter dated December 21, 2007, Rate Counsel requested a Hearing Officer's decision and Order adopting a confidentiality /non-disclosure agreement for the parties to sign in this matter. Accordingly, because the parties could not reach agreement on the form of a confidentiality agreement, Commissioner Butler issued an Order dated December 27, 2007,

requiring the parties to utilize and execute the confidentiality agreement that was executed *I/M/O the Board Investigation Regarding the Reclassification of Competitive Local Exchange Carrier Services As Competitive*, Docket No. TX06120841.

By letter dated December 18, 2007, Verizon moved to strike the initial testimony of Susan Baldwin filed on behalf of Rate Counsel, contending that the testimony addressed the competitiveness of multi-line business services which is beyond the scope of the proceeding. On December 27, 2007, Rate Counsel responded to Verizon's motion maintaining that the motion lacked merit. By Order dated January 4, 2008, Commissioner Butler granted Verizon's motion finding that those portions of Ms. Baldwin's testimony relating to reclassification of multi-line business services were outside the scope of this proceeding, but permitted Rate Counsel to incorporate any remaining portions of Ms. Baldwin's testimony in to the reply testimony which was due on January 10, 2008.

On January 8, 2008, Sprint filed a motion to compel Verizon to provide data, information, and documents requested by Sprint in its first and second set of Interrogatories and Requests for Production of Documents to Verizon served on December 13, 2007 and December 21, 2007. On January 9, 2008, Sprint filed a Motion to Compel Embarq to provide data information and documents requested by Sprint in the First and Second Set of Interrogatories and Requests for Production of Documents which were propounded to Embarq on December 14, 2007 and December 21, 2007. Commissioner Butler issued a ruling on both discovery motions on January 29, 2008.

Rate Counsel propounded and Verizon responded to discovery requests, and, on January 10, 2008, Ms. Susan Baldwin filed reply testimony on behalf of Rate Counsel opposing the reclassification of ILEC-provided retail mass market services. Sprint propounded and Verizon responded to discovery requests, and, on January 10, 2008, Mr. James Appleby filed reply testimony on behalf of Sprint opposing the reclassification of ILEC-provided retail mass market services.

By letter dated January 10, 2008, Rate Counsel filed a motion to compel discovery and to require Verizon to identify the sponsoring witness for each response given and provide full and complete data, information and documents requested by Rate Counsel, and where applicable, in EXCEL spread sheet format. Commissioner Butler ruled on the motion on January 30, 2008, denying it in part and granting it in part.

On January 15, 2008, Rate Counsel filed a motion to have the Board open a plenary proceeding and consolidate this case with a pending proceeding filed by AT&T seeking intrastate access rate relief, *I/M/O/ Petition of AT&T Communications of New Jersey, LLP Regarding Access Payments to Verizon N.J. Inc., BPU Docket No. TR03100767*, and a case pending at the Office of Administrative Law, *I/M/O AT&T Communications for Determination of Compliance by Bell Atlantic-N.J. Inc's Selective Calling and Intra Municipal Calling Services with Imputation Requirements (the "SELEX" case)*. Both Verizon and Embarq opposed the motion. In addition, on January 16, 2008, Verizon and Embarq jointly filed a motion to strike the testimony of James A. Appleby submitted on behalf of Sprintl. On February 13, 2008, Commissioner Butler issued an Order denying the motion to consolidate the instant proceeding with the AT&T intrastate access rate petition and the SELEX case, and struck from the record the portions of the testimony of Mr. Appleby addressing the level of intrastate access rates but admitted into the record testimony relating to the questions of whether access charges are a barrier to entry and whether there is an issue of cross subsidization.

On January 17, 2008, Rate Counsel filed a motion to compel discovery from Verizon regarding proprietary material. After receipt of Verizon's opposition dated January 28, 2008, Rate Counsel withdrew the motion on January 31, 2008.

By letter dated January 16, 2008, Verizon and Embarq jointly moved to strike the testimony of James A. Appleby filed on behalf of Sprint as addressing intrastate access rates and cost issues that they maintained were outside the scope of this proceeding, and on January 24, 2008 they moved to strike Ms. Baldwin's reply testimony filed on behalf of Rate Counsel claiming that portions of her testimony address costs, access charges and revenues which are outside the scope of this proceeding. By Order dated February 15, 2008, Commissioner Butler granted the motions in part and denied them in part.

On January 29, 2008, Messrs. Paul Vasington, Patrick Garzillo, and William Newman filed rebuttal testimony on behalf of Verizon, and Dr. Brian Staihr filed rebuttal testimony on behalf of Embarq. The ILECs' witnesses maintained that the record shows that ILEC-provided retail mass market services, which are not currently classified as competitive, meet the statutory criteria for reclassification as competitive, and that neither Rate Counsel nor Sprint has offered any credible evidence to contradict that fact.

By letter dated February 4, 2008, Sprint requested that the Board modify the procedural schedule in this matter. Commissioner Butler issued an Order on February 15, 2008 denying the motion.

Pursuant to the Board's directive, newspaper notice was published for three public hearings, which were conducted at different locations across the State on February 11, 13, and 14, 2008. At the public hearings, members of the public commented on whether the Board should reclassify the services at issue.

On February 20, 2008, Rate Counsel moved to strike portions of the December 14, 2007 and January 29, 2008 testimony of Paul Vasington filed on behalf of Verizon contending that Mr. Vasington was not qualified to testify as an expert, and that he had failed to provide sufficient evidence to support his testimony. Also, Rate Counsel moved to compel Verizon to provide full and complete data, information and documents as requested in discovery. On February 21, 2008, Rate Counsel also moved to strike portions of the December 14, 2007 and January 29, 2008, testimony of Embarq's witness Dr. Brian Staihr as "net opinions," and to compel Embarq to provide full and complete data, information and documents as requested in discovery. Commissioner Butler orally ruled on the motions at the beginning of evidentiary hearings on February 25, 2008, and issued an order memorializing those rulings on March 3, 2008, admitting into the record the testimonies of Mr. Staihr and Mr. Vasington, and denying the motions to compel.

The evidentiary hearings were conducted before Commissioner Butler on February 25 and 26, 2008.² At these hearings, witnesses for the parties appeared under oath and were

²Exhibits

VNJ-1 Direct Testimony of Paul Vasington, Public

VNJ-2 Direct Testimony of Paul Vasington, Confidential

VNJ-3 Joint Testimony of Paul Vasington and Patrick Garzillo, Public version

VNJ-4 Joint Rebuttal Testimony of Paul Vasington and Patrick Garzillo, Confidential

VNJ-5 Direct Testimony of William Newman

VNJ-6 Rebuttal Testimony of William Newman

available for cross-examination on the subjects covered in their pre-filed testimony. On March 14, 2008 Verizon, Rate Counsel, Embarq and Sprint filed Initial Briefs and on March 28, filed Reply Briefs.³

By this Decision and Order, the Board HEREBY AFFIRMS all decisions made by Commissioner Butler during the course of this proceeding for the reasons stated in the Orders.

Summary of Positions of the Parties

Verizon

Verizon contends that the communications industry has evolved, and that now there is a broad selection of communications options available to New Jersey consumers. VNJ-IB at 1. Verizon argues that the convergence of communications technologies has resulted in the ILEC provided services being in direct competition with services offered by competitive local exchange carriers (“CLECs”) and other non-traditional competitors, including but not limited to wireless carriers, cable companies and voice over Internet protocol (“VoIP”) providers. Id. As described by Verizon, the New Jersey Legislature understood that regulated traditional carriers should be permitted “to compete on a level competitive playing field with unregulated, non-traditional competitors, like cable, wireless and VoIP companies.” Id. Accordingly, Verizon contends, the Legislature set up a simple but effective test to determine when to remove unnecessary regulation and classify services as competitive, and Verizon claims it has met its obligations under the statutes in this record. Id. at 2. The record, in Verizon’s opinion, demonstrates that retail mass market services are offered by many competitors and that these alternative providers and the services that they provide satisfy the three criteria set forth in the statute. VNJ RB at 1.

RC- 1 Reply Testimony of Susan Baldwin, Proprietary version
RC-1A Reply Testimony Susan Baldwin, Public version
RC-2 LRIC Study and Meachan Affidavit
RC-3 Response to RC-VNJ -201
RC-4 Cable Facts 2005
RC-5 RC-VNJ-2
RC-6 Verizon FCC Form 477
RC-7 Verizon Tariff filing dated February 14,2008
RC-8 Press Release/ FCC approves VNJ-MCI merger
RC-9 Hand out—Various Tariffs
RC-11 Embarq FCC Form 477
EQ-1 Direct Testimony of Brian Staihr
EQ-2 Direct Testimony of Brian Staihr proprietary version
EQ-3 Rebuttal Testimony of Brian Staihr
Sprint -1 Testimony of James Appleby
Sprint-2 Decision by Massachusetts DTE
³Rate Counsel Initial Brief- RC-IB, Rate Counsel Reply Brief-RC-RB
Verizon Initial Brief-VNJ-IB, Verizon Reply Brief-VNJ-RB
Embarq Initial Brief-EMB-IB, Embarq Reply Brief-EMB-RB
Sprint Initial Brief-Sprint-IB, Sprint Reply Brief-Sprint-RB

Ease of Market Entry

Verizon contends that the component of the competitive classification test, ease of market entry, is met through the existence of intra- and inter-modal mass market competitors who have advanced in the marketplace. VNJ IB at 4. Verizon argues that “there are no legal, regulatory or technical barriers to entry in the mass market, as evidenced by (1) the considerable number of mass-market service providers active in the market; (2) the wide-array of competitive substitutes available for traditional wireline services; and (3) the fact that existing mass market competitors have expanded the scope and scale of their businesses.” VNJ IB at 21 and 51. As examples, Verizon provides that there are “a myriad of CLECs, cable companies, wireless providers, and Broadband and VoIP providers have entered the mass market in past years.” VNJ IB at 51. Further, Verizon’s initial brief claims substantial line losses translate into gains to these competitors, which effectively demonstrates no significant barriers to entry. Id.

Verizon refutes Sprint’s and Rate Counsel’s claim that intrastate access rates constitute a “barrier to entry.” Verizon argues that “the market is replete with mass market competitors.” VNJ IB at 52. Specifically, Verizon contends mass market service competition is not affected by intrastate access rates. Id. Verizon supports this finding by stating, “[I]ntrastate access rates are not paid on these services – *i.e.*, local exchange carriers assess access charges on interexchange carriers for use of local exchange facilities to originate or terminate traffic that is carried to or from a distant exchange; access charges are not imposed on basic local exchange calls and the other mass market services that are the subject of this proceeding.” VNJ IB at 53. Verizon describes interstate access charges as a charge paid by all carriers terminating interexchange calls on another carrier’s network. Id. Accordingly, Verizon does not view access charges as a barrier to entry. VNJ- 4 at 13; VNJ IB at 53. Verizon disagrees with Rate Counsel’s witness’s statements that UNEs also are mispriced and are also a barrier to entry. VNJ IB at 57.

Verizon asks that the Board remain focused on the statutory requirements necessary for a determination regarding competitive status, and that it be consistent in its finding that access rates are not within the scope of this proceeding. Verizon notes that complete regulatory review of switched access and UNE rates has already been undertaken by the Board. Misdirecting the attention of the Board away from the evidence of extensive competition in New Jersey is unwarranted, according to Verizon. Id. Further, Verizon contends that “Ms. Baldwin’s comparison of UNE loop rates to retail rates is incomplete. She compares Verizon’s Density Zone 2 loop rate of \$10.42 to Verizon’s price for a flat-rated residential line of \$8.95, and concludes that the “mis-alignment of wholesale and retail rates is a barrier to entry.”⁴ But she fails to include the federal Subscriber Line Charge (“SLC”) of \$6.27, which is designed to cover a portion of the loop costs that are allocated to the federal jurisdiction, and is imposed on all residential lines. If one includes the SLC along with the retail rate, Verizon’s retail charges do not create a barrier to entry in Ms. Baldwin’s example.” VNJ IB at 57. In sum, Verizon claims Rate Counsel’s arguments are flawed, and that there is no evidence that these wholesale prices create a barrier to entry.⁵

⁴RC-1 at 91.

⁵VNJ-4 at 51-52.

Presence of Competitors

Verizon asserts that the statutory requirement of presence of competitors is met by evidence demonstrating that there exists a wide variety of competitors, including traditional CLECs, cable companies, wireless carriers, and VoIP providers, who serve mass market customers throughout the State. Verizon submits:

- “Cable providers have passed over 3.37 million of the 3.47 million housing units in New Jersey, and cable telephony is available to 96.5% of those housing units.
- Every one of the more than 500 municipalities in the New Jersey has at least four wireless carriers offering service.
- *Every* zip code in New Jersey is served by at least four broadband providers, and thus VoIP over existing broadband connections is available to consumers throughout the State.
- There are now many traditional CLECs offering service to customers in New Jersey.”
VNJ IB at 2.

According to Mr. Vasington and Dr. Staihr, in New Jersey there is available a “full range of voice telecommunications services to mass market customers.” The providers of these services include cable companies, wireless carriers, VoIP companies, CLECs, and ILECs. Vasington Direct Testimony at 9: 19-20 and 10: 1-2. Moreover, Verizon in its brief states, “the competitive threat from cable companies is ubiquitous: cable companies: pass over 3.37 of the 3.47 million housing units in New Jersey; cable modem service is available to 98.3% of those housing units; and cable telephony is available to 96.5 percent of the residential households passed.”⁶

Wireless service is also widely available in New Jersey and penetration rates are high, per Verizon. VNJ IB at 24. Verizon cited that “as of December 2006, there were about 7.2 million wireless subscribers in New Jersey, a State with a population of about 8.7 million.” Id. Verizon also noted that “there are 41 broadband providers in New Jersey, and, as of December 2006, *every* zip code area in New Jersey was served by at least four broadband providers and 97 percent of zip codes in the State had access to five or more broadband providers.” Id. Verizon stated that “by December 2006, there were about *3.4 million* broadband lines in service in New Jersey – more broadband lines per capita than any other state in the country.” Id. at 26.

Verizon cites the widespread presence of broadband as significant because, in addition to displacing voice service through e-mail and instant messaging, broadband can be used to provide VoIP telephony service. VNJ IB at 27. Verizon claims that “companies such as Vonage, AT&T, Lingo, Net2Phone, BroadVox, and Level 3 provide VoIP over broadband services to New Jersey households and businesses. Client-based VoIP services provided by Skype, MSN, Yahoo Messenger, Google Talk and AOL Phoneline are also available throughout New Jersey.” Id. Verizon proffers in its brief, that “by early 2007, New Jersey-based Vonage served approximately 2.45 million lines, and client-based VoIP service providers such as Skype, Yahoo, MSN and Google served approximately 5 million lines.” VNJ IB at 28.

⁶VNJ-2 at 15.

In addition to intermodal mass market service providers, there are a significant number of traditional CLECs in New Jersey, including AT&T, IDT and Cavalier.⁷ These CLECs serve both residential and business customers.⁸ The above, Verizon contends provides ample proof of the presence of competitors throughout New Jersey.

Availability of Like or Substitute Services

With respect to the availability of like or substitute services, Verizon contends that it has established that demand for substitutes, like CLEC, cable, wireless, and VoIP services, has been increasing:

- “Recently (2001 to 2006), the CLEC share of the wireline market has grown from 4 to 17 percent.
- New Jersey wireless subscribership has more than tripled from year end 1999 to December 2006, growing from 2.3 million to 7.2 million subscribers.
- Since year end 2004, wireless subscribers have outnumbered switched access lines in the State.
- A significant percentage of households (12 – 17%) are “cutting the cord” in favor of wireless-only service and this trend is projected to increase (projected at 27% by year-end 2010).” VNJ IB at 3.

Further, Verizon contends customers are moving away from Verizon’s retail mass market services in ways set forth as follows:

- From year end 2000 to year end 2006, Verizon lost about 2.5 million retail voice lines, 1.7 million of which are residential (despite population and economic growth in the State).
- As of September 2007, the volume of telephone numbers ported from Verizon to its facilities-based competitors demonstrates that Verizon line losses are due to competition.
- From December 2003 through September 2007, Verizon’s primary residential line count decreased dramatically and thus it is without question that Verizon has significant retail primary line losses due to competition.
- Analysts estimate that cable, VoIP, and wireless substitution rates are growing and taking around 7 to 8% share annually from the telephone companies. Id.

⁷VNJ-4 at 22.

⁸VNJ-4 at 23.

Verizon points out that from the end of 2003 to the end of 2007, Verizon lost a significant number of non-package residential lines, VNJ IB at 10, VNJ 3 at 24, even though the price for basic service has not changed since 1984. Mr. Vasington testified that “customers who purchase a la carte basic service have decided that the value of the additional components of a package (e.g., unlimited long distance calling and vertical features) is not equal to the additional cost.” VNJ IB at 10.

Verizon disagrees with Rate Counsel’s claims that intermodal alternatives must not only be available to all customers, they must actually displace a large share of customers to be considered valid substitutes for traditional mass market services. Id. at 11. Verizon contends that broadband services are widespread and growing in New Jersey, which leads the nation in broadband lines per capita. Id., VNJ- 4 at 19. Mr. Vasington testified that “[b]y December 2006, there were about 3.4 million broadband lines in service in New Jersey. New Jersey has more broadband lines per capita than any other state in the country.” Vasington Direct Testimony at 25:18-20; VNJ IB at 11.

Verizon disagrees with Rate Counsel’s view that in order for a service to be considered a viable substitute every customer must consider it as an alternative under all circumstances. VNJ IB at 12. Verizon states that there exists substantial and increasing intermodal competition from non-affiliates. Cable modem is the largest single technology providing broadband service in New Jersey. Of the 3.4 million total lines: 1.4 million are served by cable modem, 710,000 by DSL, and the remainder by other technologies. Id. at 13.⁹

Verizon in its brief contends that it has lost a significant number of mass market customers to other providers. Verizon lost residential lines in the State, while, during this same period, the availability of cable telephone services in the State dramatically increased from approximately 1.0 million to 3.3 million households.¹⁰

Data provided by Verizon also claims that in six years, ILEC retail lines in the State declined while CLEC retail lines increased. VNJ IB at 37. Verizon also has identified declines in wireline usage. Id. Verizon ARMIS data shows that approximately 1.7 million residential lines were lost between year-end 2000 and 2006, and that Verizon’s residential and general business lines have declined since year-end 2003.¹¹

Verizon states that significant loss of non-package lines is evidence of available substitutes. Further, the gain in package lines does not offset the declines in stand-alone lines. Verizon contends that residential loss of non-package lines demonstrates customer alternatives. Verizon opines that cable voice services are substitutes for traditional wireline services. The record, Verizon contends, shows that cable companies aggressively promote their voice service as a reliable substitute. VNJ IB at 2. In addition to cable, Verizon argues widespread wireless growth in New Jersey. Verizon claims, “As of December 2006, there were approximately 7.2 million wireless subscribers in New Jersey, as compared to 5.5 wireline access lines in the State.”¹² Verizon cites, “wireless subscribers in the U.S. increased by approximately 40 million

⁹VNJ-4 at 20-21.

¹⁰VNJ-2 at 51-52.

¹¹VNJ-2 at 63.

¹²VNJ-4 at 8.

between June 2005 and January 2007.”¹³ Verizon cited, “minutes of use nearly doubled to one trillion minutes between June 2004 and June 2007.”¹⁴

Verizon disputes Rate Counsel’s argument that services must be virtually identical to be effective substitutes, and that inter-modal services are not substitutes for traditional mass market services because the services are not identical. VNJ IB at 7. Verizon argues that “a service need not be equivalent in all respects to another service to be a substitute for that service; the key is whether two services are similar enough in the eye of the customer that, in the face of a small but significant and non-transitory increase in the price of one good or service, a sufficient number of customers, over time, would switch to the other good or service.” Id.

Verizon also disputes Rate Counsel’s claims that bundled services are different from individual services and are in distinct product markets. Id. at 9. Verizon proffers that CLECs and cable companies offer stand-alone telephony service according to witness Vasington. Vasington Tr. 137:15-23. Verizon concludes that its loss of customers and the increase in wireless subscribership prove that wireless substitution is evidence of a competitive market. VNJ IB at 43-44. Verizon also contends that broadband providers serve as a substitute for ILEC services, including but not limited to, Vonage, AT&T, Lingo and Net2Phone. Id. at 45.

According to Verizon, the record demonstrates that CLEC-provided services are also substitutes for the mass market services offered by ILECs and inter-modal providers. Many CLECs serve *both* residential and business customers in New Jersey.¹⁵

Verizon challenges the assertions of Rate Counsel discounting broadband as a substitute. Verizon argues that “when a customer disconnects a second line and replaces it with broadband, the customer’s actions demonstrates that broadband service is a competitive substitute for basic local service.” VNJ RB at 13. Further, Verizon disputes Rate Counsel’s claim that Verizon’s customer loss is attributable to second lines and not primary lines. Id. at 14. Also, Rate Counsel’s contention that Verizon’s single-line business customers are moving to private line or special access services is not supported by fact, according to Verizon. Id.

- There are 41 companies providing broadband service in New Jersey, and, as of December 2006, every zip code was served by at least four broadband providers, and 97 percent of zip codes were served by five or more broadband providers.¹⁶
- Of customers passed by cable systems, 100% have access to cable modems and 87% of ILEC lines have access to DSL.¹⁷
- By December 2006, there were about 3.4 million broadband lines in service in New Jersey – more broadband lines per capita than any other state in the country.
- Approximately 2.1 million mass market New Jersey customers already subscribe to broadband services, and can thus add VoIP service for a minimal incremental cost.¹⁸

¹³ Id.

¹⁴ Id., citing http://files.ctia.org/pdf/CTIA_Survey_Mid_Year_2007.pdf (accessed November 30, 2007).

¹⁵ VNJ-2 at 60.

¹⁶ VNJ IB at 24, citing VNJ-2 at 22.

¹⁷ VNJ-2 at 21-22.

- New forms of broadband using different last mile technologies—such as wireless (fixed and mobile) and satellite are spurring the proliferation of broadband.¹⁹
 - From June 2005 to December 2006, mobile wireless broadband added more lines than DSL and cable modem combined, and grew by over 5,670 percent in that time, while fixed wireless grew by over 132 percent.²⁰
- VNJ RB at 20.

Verizon’s witness Vasington contends that residential and single-line business exchange services should be considered as part of the same product market. Vasington Direct Testimony at 5:9-15. Verizon contends that residential customers demand essentially the same services as small business customers; services can be provided in essentially the same way as small business services; companies that offer residential services typically provide similar services to small business customers; services are sold using essentially the same marketing channels; and these services are provided using the same network platforms. VNJ IB at 5-6. Verizon added that “the FCC recognizes that residence and small business services are part of the same mass market.” Id. at 6. Verizon cites, “State commissions have also found that residence and small business services are in the same mass market.” Id. According to Verizon, in the Verizon-MCI merger proceeding, the Board treated residence and small business customers as a single group of “mass market customers.” Id.

Verizon argues, “[u]sage and vertical features associated with residence and small business services must be included in the same product market as residence and small business exchange services because these features and services are ancillary (or subordinate) to the primary line.” Id. Further, Verizon contends, usage and vertical features on the primary line should not be divided into uneconomic submarkets. Id. Verizon quotes the California Public Utilities Commission (“CPUC”) which concluded that these services should not be included in separate product markets:

We find that the historic practice of ***defining each telecommunications service as constituting a separate “market” is no longer relevant in today’s technologically diverse telecommunications environment.*** Concepts like “Basic Local Exchange Service,” “long distance service,” “call waiting service,” “call forwarding service,” and “pay phone service,” make little sense in an era dominated by telecommunications sold through bundled services. Id. at 7.

¹⁸VNJ-2 at 20 and 26, *citing* Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of December 31, 2006*, Table 13.

¹⁹VNJ-1 at 22. See FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *High Speed Lines for Internet Access: Status as of December 31, 2006*. Table 1, High Speed Lines.

²⁰VNJ-2 at 23-25.

Verizon believes that the record bears out that the demand for ILEC and CLEC mass market services has been declining dramatically, while the demand for intermodal substitutes has increased markedly yet, Rate Counsel erroneously excludes intermodal services and packages from the relevant product market. Id. at 8.

The Relevant Geographic Area

In dealing with the issue of the relevant product market, Verizon concludes that the market includes “intra- and inter-modal competitors’ mass market services and Verizon’s residential basic exchange service, single-line business exchange service, associated local usage, vertical features, and DA services.” VNJ IB at 15. To establish its point, Verizon describes how many telecommunications providers offer statewide, nationwide pricing plans and qualify as competitors. Id.

Verizon quotes the NY PSC Staff findings:

Most service packages are offered by carriers on a territory- or region-wide basis, as opposed to by wire center. . . . To the extent carriers offer packages on a region-wide or territory-wide basis, the competitive threat need not be ubiquitous or uniform to effectively constrain carrier pricing decisions. For these reasons, Staff believes it is appropriate to gauge competition on a carrier's overall territory and to recalibrate regulatory policies in view of, and consistent with that perspective.²¹

Verizon also noted that the Board, in its CLEC Order, stated that “CLECs face competition from the ILEC in any given market in which they serve.”²² Conversely, Verizon states that the same holds true for Verizon, which faces competition from CLECs, wireless, cable, and VoIP in any given area in New Jersey.²³

Verizon pointed out that New Jersey is densely populated and thus competitive conditions in general, are similar throughout the State. Id. at 16. Moreover, Verizon claims, “technological factors, such as the advent of IP-based technology and VoIP, allow competitors with switches located hundreds of miles away to serve a New Jersey customer.” Id. In response to Rate Counsel’s rejection of Verizon’s definition of the relevant geographic market, Mr. Vasington testified that Rate Counsel’s analysis was formulated based upon a data mistake, which Rate Counsel subsequently corrected at the evidentiary hearings. Id. at 17.

In sum, Verizon argues that the relevant geographic area should be at least the entire State. Id. at 18.

²¹VNJ-2 at 39, *citing* Case 05-C-0616, *Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, White Paper Prepared by the State of New York Department of Public Service Staff (“PSC Staff White Paper”), dated September 21, 2005, at 30 – 31.

²²CLEC Order at 10-11.

²³VNJ-2 at 40.

Directory Assistance

Verizon contends that there are a variety of providers who offer residential directory assistance (“DA”) services in New Jersey. Verizon claims that subsequent to the last DA proceeding before the Board, new competitors, such as Microsoft and Google, have entered the market. Id. at 30. Verizon lists free DA service providers such as Jingle Networks Inc. as a competitor offering services since September 2005. In addition Verizon cites wireless carriers, Internet-based DA providers, CLECs, inter-exchange carriers (“IXCs”), alternative directory assistance providers (“ADAPs”), directory publishers, and electronic media companies, as market competitors. Id.

Verizon further indicates that “on October 30, 2007, AT&T began providing *free* local and nationwide residential and business DA services to *any and all* New Jersey wireline and wireless customers throughout New Jersey regardless of their service provider.” VNJ IB at 31. Another example of a DA competitor providing free local and nationwide DA service since October 2007 is Tellme™®, a Microsoft subsidiary, according to Verizon. Id. Lastly, Verizon noted Google™ now provides its free DA service to *any and all* New Jersey wireline and wireless customers regardless of their service providers. Id. Verizon also names wireless carriers, such as AT&T, Sprint/Nextel, T-Mobile, Verizon Wireless, as well as other smaller companies, along with Internet based providers, namely, AT&T’s Anywho.com, Switchboard.com, Reach411.com, Four11.com, InfoSpace.com, Whitepages.com, WhoWhere.com(a/k/a Lycos), 411Locate.com, 411metro.com, and free411.com as those who compete with Verizon’s DA services. Id. at 32. “Further, web search engines such as Google, Yahoo, and Ask.com, among others, all have web links to free directory assistance listings and services web sites,” per Verizon. Id.

Verizon contends that white and yellow page paper telephone directories are provided free of charge to business and residence customers. These alone, Verizon argues “account for almost 9 million directories being distributed free of charge to business and residence customers across the State.” Id.

Traditional CLECs are also active providers of DA service throughout the State. Those who do rely on Verizon’s platform (e.g., Verizon’s wholesale DA customers) are able to access Verizon’s DA database and provide customers with the same DA information that Verizon provides to its retail customers.²⁴

Also, Verizon contends that National IXCs offer directory information. VNJ IB at 33. Further, according to Verizon, ADAPs offer “local and national directory assistance services to mass market customers and wholesale customers in New Jersey.” Id. Specific survey results set forth in Mr. Newman’s testimony claim that “99% of mass market customers are aware of at least one other option for getting telephone numbers in addition to their local telephone company.” Id. at 33, Direct Testimony of Neuman at 7:3-5.

²⁴ See VNJ-2 at 34-35. Verizon also continues to offer customized routing on a non-discriminatory basis as required by the FCC to CLECs who provide their own DA services. Verizon’s customized routing enables a CLEC’s end users to dial “411” and have the CLEC provide DA services through the CLEC’s own operator services or via a third party (e.g., an ADAP). *Id.*

According to Verizon, regarding DA services, the competitive criterion is met for the following reasons: there are a number of available print services, computer-based services, and electronic media services. *Id.* at 45. Verizon asserts that cable companies provide DA service competition in the State through their cable telephone and broadband services. Verizon states that Cablevision offers its customers free local and national DA service, and Comcast offers a variety of DA services, including local, long-distance and international number assistance; local and long-distance connections; “movie listings and show times; and interactive, turn-by-turn directions to any destination provided by a live operator.” VNJ RB at 26.

Unlike its competitors, Verizon DA volumes have been declining – further demonstrating that customers are substituting away from Verizon’s DA service. From 2002 through 2006, DA calling volumes declined significantly.²⁵

Finally, as discussed earlier, the customer awareness survey conducted by Mr. Newman shows that, because a significant number of customers are aware of DA alternatives, and are willing to use those services, any attempt by Verizon to charge above market prices for its own DA services would not be profitable.²⁶ Significantly, Verizon’s consumer awareness survey demonstrates that New Jersey consumers are aware of and regularly use many of these competitive alternatives.²⁷ The survey results show that 99 percent of customers surveyed were aware of at least one other option for obtaining telephone numbers in addition to their local telephone company, and almost 90 percent of the respondents had used alternatives in the past six months.²⁸ VNJ RB at 27.

Since the Board’s earlier decision, Verizon has submitted new evidence showing the presence of new competitors and the availability of additional substitute services.²⁹ Further, Verizon has submitted updated DA calling volumes showing that Verizon DA calls continue to decline steadily. VNJ RB at 29.

Other Issues

Verizon addresses Rate Counsel’s interpretation of the *Telcor* case *Telecor Communications, Inc. et.al. v Southwestern Bell Telephone Company*, 305 F. 3d 1124 (10th Cir. 2002), as restraining the Board from reclassifying a service absent elasticity studies. Verizon argues that the antitrust test is more flexible than as described by Rate Counsel. Verizon RB at 7. Verizon cites the *Telcor* case findings that payphones and wireless phones were deemed interchangeable without a cross elasticity study. Verizon RB at 7. Further, as Verizon describes them, the DOJ Merger Guidelines do not prohibit consideration of evidence that buyers have moved or considered moving to other products based on price or other variables. VNJ RB at 8. Similarly, Verizon contends that “the FCC did not exclude VoIP from the product market.” *Id.*

²⁵VNJ-2 at 78.

²⁶VNJ-2 at 84-85.

²⁷VNJ-2 at 85.

²⁸VNJ-2 at 85; Ninety-seven percent of PAAD-eligible customers are aware of at least one other option for getting telephone numbers in addition to their local telephone company. *Id.*

²⁹VNJ-2 at 80-85; VNJ-4 at 25-27.

Verizon strongly opposes Rate Counsel's efforts to have the Board expand the classification criteria beyond the three statutory criteria, arguing that the Board *may* rely on criteria in addition to the statutory reclassification criteria. VNJ IB at 19. As cited by Verizon, Board precedent as well as the Board's defined scope of review in the instant proceeding adopted the criteria in N.J.S.A. 48:2-21.19, which is appropriately ease of market entry, presence of other competitors, and the availability of like or substitute services in the relevant geographic area. Id.

Verizon asks that the Board discount Rate Counsel's and Sprint's argument that it is necessary for the Board to depart from the well-established reclassification criteria, and to replace them with criteria previously rejected by the Board in other proceedings. VNJ IB at 4. Also, Verizon disputes Rate Counsel's and Sprint's attempt to argue issues beyond this case – e.g., intrastate access charge levels and the Federal Communications Commission's ("FCC's") opinions on Verizon's filings concerning certain *wholesale* regulations. Id.

Verizon argues that Rate Counsel inappropriately gives significant weight to the FCC's December 5, 2007 *Forbearance Order*³⁰ wherein the FCC denied Verizon's petition for reclassification of ILEC-provided mass market services.³¹ Verizon contends that the FCC's *Forbearance Order* addressed different issues and criteria upon which relief was sought. VNJ IB at 54. According to Verizon, the Forebearance Order deals with wholesale services while this petition deals with retail services. Id. Therefore, the FCC's evaluation for purposes of wholesale relief is not relevant here because it employed a different standard and applied that standard to wholesale services. Id.

In response to the charge that there is cross subsidization which should bar reclassification, Verizon characterizes the record as devoid of evidence suggesting that Verizon's stand-alone basic exchange services are subsidized by non-competitive services.³² VNJ RB at 31. Verizon argues that its competitive services "generate sufficient revenues to cover their direct costs." VNJ RB at 36. According to Verizon, Sprint has failed to show that the services at issue in this proceeding are subsidized. Id. According to Verizon's interpretation of the statutes, Verizon is not required to perform a subsidy analysis on each service versus competitive services as a group. According to Verizon, "the New Jersey Act states that "[n]o local exchange telecommunications company may use revenues earned or expenses incurred in conjunction with noncompetitive *services* [plural] to subsidize competitive *services* [plural]."³³ The Board, as Verizon understands the statutes to read, requires "that competitive services as a *group* may not be subsidized." Id. Verizon describes the findings in the PAR-2 order to hold that when assessing whether an improper cross-subsidy exists, the focus of the evaluation is "whether, *in the aggregate*, the *total* revenue for VNJ's competitive services exceed the *total* direct cost of those services."³⁴ VNJ RB at 37.

³⁰*In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, FCC 07-212, Memorandum Opinion and Order (rel. December 5, 2007) ("*Forbearance Order*").

³¹RC-1 at 68-78.

³²VNJ-4 at 53-57.

³³*N.J.S.A. 48:2-21.18* (emphasis added).

³⁴PAR-2 Order at 54 (emphasis supplied).

Verizon goes on to state, “Sprint Nextel relies on snippets from a Baumol and Sidak article for the proposition that, if the analysis includes more than two services, the subsidy analysis should include joint and common costs.”³⁵ Verizon disputes the validity of the article in that it is not supported by a witness nor has it been subject to examination. VNJ RB at 39. Also Verizon states “the article does not support the claim that shared and common costs should be included in Verizon’s competitive services subsidy analysis.” *Id.* Verizon points to Mr. Garzillos’ testimony, which it states includes “all annual revenues for all competitive services and services that are subject to reclassification in this proceeding.”³⁶ Moreover, the analysis includes the total direct costs for competitive services and the services that are the subject of the Board’s reclassification inquiry.³⁷ In response to Rate Counsel’s arguments to the contrary, Verizon says its analysis does include non-recurring cost studies. VNJ RB 39-40.

Verizon refutes Rate Counsel’s challenges to its witness claiming, “Mr. Vasington qualifies as an expert due to his special knowledge, skill, experience and training.”³⁸ Moreover, Verizon avers, New Jersey laws do not require testimony to be sponsored by an economist. Verizon claims the current rules in, *N.J.A.C.* 1:1-15.8 provide that every person is qualified to be a witness, and that witnesses may testify regarding matters within their personal knowledge, or special experience, training or education. VNJ RB at 46.

Rate Counsel also claims that Mr. Vasington is incompetent to testify because, according to Rate Counsel, his testimony should be based on “extensive data and information about the competitive markets,” such as “supply/demand elasticity studies” that must be performed and interpreted by an economist.³⁹ Verizon argues that the 1992 Act does not require such studies, nor has the Board required them in prior reclassification proceedings. VNJ RB at 47.

Verizon remarks that the Board has consistently held that an analysis concerning the competitiveness of a service rests on the presence of competitors, the presence of like or substitute services, and ease of market entry. The Board has not considered market share relevant in past reclassification proceedings. Verizon claims, “[I]t is also meaningless where a firm’s market share is the product of regulation, as opposed to competition.”⁴⁰

Finally, Verizon disputes Rate Counsel’s claim that the schedule in this proceeding was accelerated, and points to the schedule in the CLEC reclassification case as an example of a case with a similar schedule. VNJ RB at 50. Verizon argues that Rate Counsel filed hundreds of requests within the allotted timeframe, and was therefore not prejudiced in any way. Further, the Hearing Examiner’s rulings, which Rate Counsel objects to, have not been appealed by Rate Counsel. *Id.* The allegations by Rate Counsel that the Hearing Examiner should have required Verizon to perform studies in response to discovery requests by Rate Counsel is not supported in fact. *Id.* at 51. With respect to the transcript request that Rate Counsel complains of, Verizon believes the ruling was appropriate in light of the fact that the request was for information which

³⁵Sprint Nextel Brief at 20-22.

³⁶VNJ-5 at 54-56.

³⁷VNJ-5 at 54-57.

³⁸*I/M/O the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier Services as Competitive*, BPU Docket No. TX07110873, Order on Motions to Strike and to Compel at 3 (Mar. 3, 2008).

³⁹RC IB. at 49 (emphasis added).

⁴⁰*Id.*

went to the question of FiOS being part of the subsidy analysis, which was already addressed by Verizon witness Garzillo, who stated it was not. Id. at 52.

Embarq

Embarq argues the record is replete with overwhelming evidence demonstrating ease of market entry, presence of other competitors, and the availability of like or substitute services in the relevant geographic market. EMB IB at 3. Embarq relies upon the following testimony of its witness, Brian Staihr stating:

- “Wireless service is available in 99.8% of the land area of Embarq's New Jersey market and to 100% of Embarq's New Jersey customers. Embarq Staihr testimony at 18.
- 96% of all consumers in Embarq's service territory can choose from three or more wireless providers. Staihr Testimony at 18.
- Measured in square miles, the cable companies' service footprint covers more than 99% of the geographic area that comprises Embarq exchanges. Staihr Testimony at 20
- Comcast now offers digital cable, high speed Internet access and digital telephone service to approximately 57,300 households in Embarq's exchanges. That represents 57% of all the households in Embarq's New Jersey market. Staihr Testimony at 23
- Approximately 97% of all households will be passed by cable companies offering telephone service [when Service Electric begins offering cable telephony to Embarq exchanges]. Staihr Testimony at 24
- CLECs purchase wholesale services for resale in all 26 of Embarq wire centers, and purchase unbundled network elements in 21 wire centers representing 93% of Embarq's access lines. Staihr Testimony at 30
- ...competitors are actively positioning themselves as offering replacements—that is, substitutes—for retail mass market services in Embarq's New Jersey market. Staihr Rebuttal Testimony at 38-39
- A customer in New Jersey can take voice service from Embarq and a bundle of video and data from Comcast, or voice service and video from Comcast and high-speed data from wireless, or voice service and high speed data from Embarq and video from satellite, or voice service and high speed data from wireless and video from satellite.” Staihr Rebuttal at 43.

According to Embarq, competition is thriving in New Jersey, particularly intermodal competition which has resulted in consumers substituting cable, wireless, and wireline services in the ILEC retail mass market. EMB IB at 3. As a result, Embarq believes that the Board should approve the reclassification of mass market retail services and its multi-line business services. Id.

Barriers to Entry

Embarq also, contends that there are no legal, regulatory or technical barriers to market entry in New Jersey. Dr. Staihr testified, “The presence of multiple competitors offering substitutable services in Embarq wire centers is ample evidence of this fact.” Staihr Direct Testimony at 31; EMB IB at 12.

Embarq supports the Board's previous findings that there were no barriers to entry when considering reclassification of CLEC services, and its conclusion that services should be deemed competitive. I/M/O the Board Investigation Regarding The Reclassification Of Competitive Local Exchange Carrier Services As Competitive, Dkt. No TX06120841, June 29, 2007 ("CLEC Order"). Staihr Direct Testimony at 31. Embarq believes the large number of competitors evidenced in this record should lead to the same favorable finding concerning the issue of market entry herein, "given that CLECs and ILECs operate in the same market and compete to provide substitutable services to the same customers." EMB IB at 12.

Dr. Staihr listed the following alternatives for consideration by the Board:

- Wireless service is available in every Embarq exchange;
- Non-facilities VoIP is available in every Embarq exchange;
- CLEC offerings are available in every Embarq exchange; and
- Cable telephony is available in over 57% of Embarq exchanges. Staihr Rebuttal Testimony at 33 : 7-14.

In addressing the issues raised by the opposition, Embarq states that the statute does not require a party seeking reclassification to prove that "no barriers" exist. EMB RB at 2. Further, Embarq argues that if the Board were to accept the arguments put forward by Rate Counsel, it would be limited in that it could only find ease of market entry in an environment where "wholesale rates constrain retail rates and only in the absence of market power as Rate Counsel defines." However, Embarq contends, these are not elements required by statute for consideration by the Board. EMB RB at 22.

Embarq contends that subsidies are not relevant to a competitive classification. EMB RB at 35. Highlighting Sprint's misplaced relevance of access charges, Embarq states, "intrastate access service is not used to provide residential or business exchange service." Id. at 36. Further, Embarq challenges Sprint's allegations, and claims Sprint has not presented evidence that the statute expressly or impliedly requires subsidies be removed if they exist before a service is classified as competitive. Id.

Presence of Competitors

Embarq, in its brief, relies on the Board's CLEC Order wherein the Board held "existence of each authorized CLEC provider clearly provides evidence of competitors in the local exchange market." CLEC Order at 9. Further, Embarq argues, evidence of competitors exists due in part to numerous intermodal providers in New Jersey, specifically in the Embarq service territory. Embarq claims, "the most prevalent competitors in the provision of retail mass market services in Embarq's service area are: (1) Wireless providers, (2) Cable television companies, (3) Non-fixed VoIP providers, and (4) Traditional CLECs." Id.

With respect to wireless providers, Dr. Staihr, on behalf of Embarq testified that FCC data shows "as of June, 2006, there were more than eight million wireless subscribers in New Jersey—a number which represents 93% of the total population of the State." Staihr Rebuttal Testimony at 32 ; EMB IB at 15. According to Embarq, "[i]n the Embarq service territory, Sprint Nextel, T-Mobile, AT&T and Verizon Wireless are the predominant providers, with service available to 100% of Embarq's customers."⁴¹ In the Embarq service territory 96% of all

⁴¹ Id., at p. 31.

consumers in Embarq's market can choose from three or more wireless providers.⁴² EMB IB at 16.

Dr. Staihr testified that the record supports a finding of competitiveness as FCC reports indicate there are "at least three high speed Internet access providers in each of the 26 zip codes that comprise Embarq's market."⁴³ and multiple CLECs are present in each and every exchange. EMB IB at 17-18.

Dr. Staihr's analysis indicates that due to competition, Embarq's customer base has decreased by approximately 100,000 residential access lines. Id. at 19. According to Dr. Staihr, Embarq serves approximately 116,000 residential access lines and absent competition, estimated that number would increase to approximately 223,000 lines. "The impact competition has had on Embarq amounts to a decrease by almost half of its market in New Jersey," according to Dr. Staihr. Id.

Embarq disagrees with Rate Counsel's arguments that the statute should be read to include language which, according to Embarq, does not exist. Embarq suggests that Rate Counsel interprets the statute as follows: "presence of other competitors for residential service on a stand alone basis." Embarq RB at 25. This is wrong, contends Embarq. Id. In addition, Embarq opines that Rate Counsel goes even further interpreting the statutes to include "presence of other competitors for residential service on a stand-alone basis but only if no market power exists and CLECs constrain the ILEC's rates." Id. Instead of interjecting new requirements, Embarq asks that Rate Counsel take notice of the evidence in the record which comports with the existing statute.

Availability of Like or Substitute Services

With respect to the issue of what constitutes a substitute service, Dr. Staihr, on behalf of Embarq, defines substitutability as "functional equivalence or reasonable interchangeability of use." EMB IB at 21. "Two services can be considered substitutes if they are functionally equivalent: that is, if they do the same thing and do it in the same way."⁴⁴ EMB IB at 21. Embarq also contends that :

"two products can also be substitutes if they satisfy a similar customer demand. In these cases, services that act as substitutes will exhibit reasonable interchangeability of use.⁴⁵ An example of services that exhibit reasonable interchangeability of use would be voice service provided by a cable company or a wireless carrier and voice services provided by Embarq—these services satisfy a similar customer demand but do so using completely different technologies." EMB IB at 21.

Dr. Staihr proposes the "reasonable interchangeability of use" concept since it covers all degrees of substitutability while recognizing that quality differences can exist between substitutes, and because it acknowledges that even though the services are not identical or functionally equivalent they can still compete with each other. EMB IB at 22. Dr. Staihr provided a test question when considering substitutability: "Do two services have the ability—actual or

⁴² Id., at p. 31.

⁴³ Id., at p. 34.

⁴⁴ Staihr Direct, at p. 5.

⁴⁵ Id., at p. 6 (referencing the standard used in *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962)).

potential—to take away significant amounts of business from each other. If they do, they are in the same market.”⁴⁶ EMB IB at 22. Embarq opines that bundles are substitutes for stand-alone services since they take business away from each other. Staihr Rebuttal Testimony at 26 L16-19, 28 :1-3. Embarq submitted for the record that the number of households in its service territory has increased consistently and steadily between 1990 (93,130) and 2007 (111,835), while the same cannot be said for Embarq’s residential access lines. EMB IB at 24.

The Relevant Market

On the issue of the correct definition of the product market, Embarq references the CLEC proceeding, where the Board determined the “relevant area” was appropriately defined as the State of New Jersey. EMB IB at 20. In this proceeding, Embarq argues that the service territory of the respective ILECs should define the relevant geographic area. Id. Embarq discounts the notion of wire centers as the relevant geographic area. Id. As Dr. Staihr noted, competitors could enter the Trenton market and not recognize they have entered the Trenton, Mercerville, and Morrisville (PA) wire centers; therefore, the use of wire centers is inappropriate and should be rejected. EMB IB at 20.

Embarq cited the Board’s finding in its CLEC Order that “there is no statutory or other requirement that every means of competing be used in every wire center to provide each of the like or substitute services for which reclassification is sought.”⁴⁷ EMB IB at 21. Also, Embarq noted the Board’s decision “that there is no statutory or other requirement that a party seeking reclassification demonstrate that every method of competing with its services is present in every wire center.” EMB RB at 18 citing, *I/M/O the Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-line Rate Regulated Business Services as Competitive Services, and Compliance Filings*, Docket No. TO01020095, Order, Sept. 22, 2005, at 144.

Further, Rate Counsel’s depiction of protected services as local service, meaning only plain old telephone service, is inconsistent with the 1992 Act according to Embarq since the definition of protected services included in the Act provides for touch tone, toll and access services. EMB RB at 3. Embarq argues that if the legislature wanted to limit the Board’s ability to define product markets, it would have stated so in the statutes. EMB RB at 3.

Other Issues

Embarq believes Rate Counsel has not established the relevancy of the ATT/SBC Merger Order and other FCC orders which it cites to bolster its arguments against reclassification. EMB RB at 4. In addition, the DOJ Merger Guidelines cited by Rate Counsel do not apply to this situation, according to Embarq, as customers change from stand alone to bundled service even absent a change in price. Id. Therefore, Embarq claims, Rate Counsel’s arguments are irrelevant and should not be accepted.

In addition, Embarq claims that “contrary to Rate Counsel’s suggestion, it is not reasonable to believe that the loss of over 30% of Embarq’s residential access lines in a six-year period can be attributed to the death of customers, or job losses by customers—particularly when the number of households has continued to grow steadily.” Staihr Direct Testimony at Attachment BKS – 2; EMB IB at 25.

⁴⁶ Id., at p. 7.

⁴⁷ CLEC Order at 11.

Embarq submitted information that it lost a significant number of access lines to Patriot Cable and Comcast, and that the number of lost customers continues to grow. EMB RB at 12. In addition to wireless, “fifty-three percent of New Jersey’s zip codes have at least five high speed Internet access providers.” EMB RB at 15. Embarq points out that it is their understanding that “at least 13 CLECs, which are not cable companies, wireless mobile or non-facilities based VoIP companies” provide service in Embarq’s area. EMB RB at 16. Also, “the number of CLECs in each Embarq wire center range from two to seven.” EMB RB at 16.

Accordingly, Embarq believes it has presented sufficient credible evidence that intermodal competitors offer stand alone service and that bundles and stand alone services share the same market and compete for customers. EMB RB at 7; Tr at 49. Moreover, Dr. Staihr testified that: when a customer chooses wireless over the purchase of a second line; or uses yellowpages.com to find a number instead of calling Directory Assistance; when dial up access to the internet is replaced with cable modem; and when customers choose voice over cable or wireless only, that meets the statutory criteria for a like substitute service. EMB RB at 9; EQ-1 at 8. Rate Counsel’s contention that Embarq’s position as a rate of return regulation company must be taken into account is wrong as that is irrelevant to the determination of whether Embarq’s retail mass market services are competitive. EMB IB at 7. Embarq’s argument is founded in the principles set forth in the statutes particularly, the New Jersey’s Telecommunications Act of 1992 which it claims “does not support any sequential regime of regulation as a condition of the Board’s classifying Embarq’s retail mass market services as competitive. N.J.S.A. 48:2-21.19 is a separate statutory provision from the remaining provisions of the Act.” EMB IB at 3. Further, Embarq also notes that N.J.S.A. 48:2-21.19 does not address the issue of subsidies. EMB IB at 9.

In sum, Embarq describes Rate Counsel’s arguments as an attempt to “supplement the statutory requirements by imposing unnecessary and self-proclaimed requirements to the criteria.” EMB RB at 5. “Rate Counsel would erroneously require a quantitative measurement of the price and cross-price elasticity of two products/services as proof of the product/service market,” yet this is not required, relevant or reasonable. Id.

On procedural issues, Embarq disputes Rate Counsel’s allegations that Dr. Staihr’s testimony is “net Opinion” with no support. Dr. Staihr, according to Embarq, is qualified with a Doctorate in Economics and has testified in matters before Congress in addition to other states. EMB RB at 30. The skills Dr. Staihr possesses enable him to speak to the issues in this case. Id. at 31. Further, an expert economist does not have to rely on surveys and studies, under NJSA 48:2-21.19(b). Id. Embarq states the residuum rule relied upon by Rate Counsel is misapplied since Dr. Staihr has special knowledge and skill along with experience in the areas he testified about, and as such it is not hearsay. EMB RB at 32. More importantly, Embarq notes that the Board is not bound by the rules of evidence. N.J.S.A. 52:14B-10(a).

Embarq argues that the Hearing Officer did not err in his decisions not to mandate special studies in this case. EMB RB at 33. Also, Embarq contends there was no due process violation in the ruling to exclude the requested exhibit containing many CLEC tariffs, when the record included some but not all of the tariffs sought in proving the matter asserted. EMB RB at 34. Embarq supports the rulings and stated that Rate Counsel was provided ample time to cross examine witnesses in this case. Id.

Rate Counsel

Rate Counsel argues that ILECs' mass market retail services should not be deemed competitive. Thus, Rate Counsel in its Initial Brief pleads with the Board to continue to regulate protected local telephone services and other basic services. RC IB at 6. Rate Counsel believes that insufficient competition exists to ensure affordable rates. Id. In fact, Rate Counsel submits expert testimony that, if deregulated, rates could increase up to a total of one half billion dollars. RC IB at 5. Rate Counsel argues that "[r]esidential customers could see increases up to \$360 million per year if companies raise rates close to the charge for bundled services." Id. Also, Rate Counsel points out that the (4) four free calls for Directory Assistance that customers are accustomed to, will be eliminated, resulting in an increase of \$187 million dollars. Id.

Overwhelming evidence exists, according to Rate Counsel, that if granted the regulatory relief sought through this filing, Verizon and Embarq would be in a position to exercise significant market power and thus be able to raise rates. RC IB at 6. Rate Counsel argues that it is important to examine market power, consistent with Board rules, in monitoring competition. RC IB at 9, citing N.J.A.C. 14:10-5.7(b)(2). "Market power is the ability to raise price by restricting output, ... [t]he ability of one or more firms profitably to maintain prices above a competitive level for a significant period of time" RC IB at 10, citing United States Department of Justice Merger Guidelines (1984), reprinted in 4 Trade Reg. Rep. (CCH) Section 13,103 at 20,556.

Barriers to Entry

Rate Counsel does not believe the record supports reclassification. Rate Counsel claims that "ILECs' essential elements are mis-priced" and that this creates barriers to entry.⁴⁸ Rate Counsel believes barriers do exist which include: "above cost intrastate access rates, misalignment between wholesale retail rates, flawed interstate access regimes, failure to resolve intercarrier compensation, and separation reform issues." RC IB at 20. Specifically, Rate Counsel argues that Verizon has not met its burden to establish that non-competitive services do not serve as a subsidy for competitive services. Id. Rate Counsel also claims that Verizon has tremendous market power which negatively impacts competition. Id. at 21.

Rate Counsel asserts, because intrastate access rates are above costs, Verizon has created a barrier to entry and has market power. Rate Counsel concludes that high intrastate access rates create a barrier and a subsidy for local service, and that, in turn, subsidies create a barrier to entry for competitors. Id. at 26.

Presence of Competitors

Rate Counsel asserts that the record is devoid of the necessary proofs to establish the presence of competitors for local only service. RC IB at 27. There has been no evidence submitted, per Rate Counsel, showing competitors can provide service at or below Verizon's rates. Id. Rate Counsel opposes Dr. Stair's representations that competitors serve mass market customers, and believes they serve enterprise customers instead. Id. The proffer of bundled service providers as competitors, in Rate Counsel's opinion, does not meet the statutory criteria.

⁴⁸RC-2 at 90.

Rate Counsel objects to Verizon's failure to submit studies explaining line losses which Verizon attributes to the presence of competitors in the market. Id. at 30. Rate Counsel proposes that Verizon does not address the fact that customers may remain Verizon customers via affiliate services. Id. Contrary to Verizon's claims, Rate Counsel argues that a line loss in one column does not always equate to a lost account. Id. The same can be said of Embarq, according to Rate Counsel, regarding the relevance of line loss without any analysis or data supporting the proposition that the loss is due to competition. Rate Counsel submits that a recent ARMIS Report found Embarq's lines almost doubled from 2002-2006. Id. at 31.

Rate Counsel notes that Verizon witness Vasington, testified that "competitors" generally do not provide local only service. RC IB at 22, citing Vasington testimony, T. 136:12-18. Accordingly, Rate Counsel argues that there are no like substitutes available for local only service, and no analysis has been submitted in support of a finding of a like substitute. RC IB at 32. Rate Counsel reiterates that bundles are not substitutes, as they include additional services not wanted by customers. Id. at 33-34. Further, VoIP is not a valid substitute, according to Rate Counsel, since rates are significantly higher than local phone service rates. Id. at 34. Cable voice services are offered as part of a package per Rate Counsel, at a higher cost. Id. at 35. Stand alone service is not offered by cable companies, and Rate Counsel therefore finds little competition exists. Id. at 36.

Availability of Like or Substitute Services

In addition, rates of inter-modal services which are offered as evidence of substitutes by Embarq witness Staihr are not considered viable to Rate Counsel due to their price and lack of interchangeability. Id. at 36. Specifically, VoIP does not qualify as a substitute per Rate Counsel because of the required connections. Id. at 39. Also, it is Rate Counsel's understanding that Dr. Staihr's testimony does not support wireless as a substitute for stand alone local service. Id. at 40. Rate Counsel further argues that Verizon did not provide the essential economic analysis necessary to show that bundles are substitutes. Id. at 42. T.114:21-25;115:3;120:3-14.

Rate Counsel asserts that cable, wireless and resale are not viable competitors in the retail mass market. Id. at 45. Moreover, Rate Counsel notes that Verizon did not provide quantitative economic analysis to support its assertions regarding viable substitutes. RC RB at 18. Rate Counsel dismisses the parties' evidence as opinion, not backed by actual evidence, studies or proofs. RC IB at 20. When local exchange service is placed in its own product market, Rate Counsel avers, there are few competitors and no like or substitute services. Id. As an example, Rate Counsel describes voice, data and video packages as having high transaction costs associated with migration and one year contracts with early termination fees, long term commitment requirements and email addresses that are not portable. RC IB at 39. As far as wireless is concerned, Rate Counsel argues, coverage is questionable, and it requires effort on the part of the consumer to charge the battery and it does not connect to Tivo. RC IB at 41. Put succinctly, Rate Counsel says intermodal services are not affordable, are not interchangeable, and therefore do not serve as substitutes. Id. at 36.

Rate Counsel cites Telecor, supra, wherein the Court held relevant market depends upon the available substitutes. RC IB at p 11. Further, Rate Counsel cites the Court's findings that "reasonable interchangeability" is synonymous with cross elasticity. RC IB at p 11 citing to Brown Shoe Co. v United States, 370 U.S. 294, 325 (1962). Rate Counsel contends a market is cross-elastic if when prices rise, consumers switch to a different product. Id., citing Telecor.

The Relevant Market

Contrary to the position held by Verizon and Embarq, Rate Counsel argues relevant product market, as interpreted by the FCC in I/M/O SBC Communications and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, FCC 05-183, (SBC Merger Order) at Para 95, does not include VoIP, and bundled local and long distance services are separate product markets from local service. RC IB at 12.

Rate Counsel refutes Verizon's claim that there is one relevant product market which includes bundles comprised of local, long distance and toll. RC IB at p 14. Rate Counsel disagrees with Verizon's premise that reclassification is appropriate because cable carriers, wireless and VoIP providers, as well as CLECs, offer bundled services which include local. Id. at 14.

By misdefining the relevant product market, Rate Counsel asserts that Verizon's statement that the statutory criteria for competitiveness have been met becomes fatally flawed. For instance, according to the FCC, over the top VoIP services are not part of the local market. Thus, Verizon's reliance upon VoIP as a substitute for local service fails. RC IB at 17. The evidence submitted by Verizon, according to Rate Counsel excludes 54 of the services for which Verizon is seeking reclassification. Id.

Embarq too, has not proposed an accurate definition of the relevant market per Rate Counsel. Id. at 18. Embarq offers no studies or economic data, notes Rate Counsel, to support its arguments concerning relevant product market. Also, Rate Counsel contends both companies erroneously define relevant geographic market as the entire state. Id.

Rate Counsel asserts that the arguments proposed by Verizon and Embarq are simply false. Rate Counsel claims that contending that the entire state is the relevant market and that conditions throughout the state are similar, is wrong. Rate Counsel says competition does not exist throughout the state, and argues the more critical wire center analysis of the market is appropriate. In support of its argument, Rate Counsel states that both the National Regulatory Research Institute and the FCC determined that the wire center is the relevant geographic market. RC RB at 7, Baldwin Reply testimony at 35-36. See also, I/M/O Petition of ACS of Anchorage, Inc., etc., FCC WC Docket No. 05-281 Memorandum Opinion and Order, Released January 30, 2007, at Para 14.

Other Issues

Rate Counsel contends that N.J.S.A. 48:2-21.19(b) sets forth minimum criteria, and urges the Board to look beyond the three statutory elements and consider the N.J.A.C. 14:10-5.7 rules when making its determination. RC IB at 9. Also, Rate Counsel notes that the 1992 Act addresses the issue of market forces and monitoring the competitiveness of a service, and that the Board should address this issue in its analysis regarding mass market retail service. Rate Counsel argues that Verizon and Embarq must satisfy the three criteria and also prove that they are precluded from the exercise of market power. RC. IB at 19. Rate Counsel contends that when local service is considered as a stand alone market, Verizon and Embarq have not provided evidence that there are no barriers to entry or that there are more than a few competitors and that there are like or substitute services. Id. at 20. Specifically, Rate Counsel avers that Verizon and Embarq misread the statute to exclude the word "minimum" and include the word "only" for their own benefit. RC RB at 9.

Rate Counsel argues that Verizon and Embarq failed to present sufficient evidence of competition in the DA market. Embarq, Rate Counsel states, did not offer any evidence regarding whether or not DAS meets the statutory criteria to deem the service competitive. RC Id. at 64. The alternatives proposed by Verizon, Rate Counsel alleges, cost more, require additional equipment are unknown, and are not comparable to traditional DAS. RC IB at 65. The main handicap of alternatives is that they don't enjoy the 411 dialing convention that Verizon has, according to Rate Counsel. Id. at 66. Rate Counsel states no new evidence was submitted to persuade the Board to alter its recent decision concerning DA, or to show that the Board erred in its previous findings. RC RB at 20. Therefore, Rate Counsel contends that the Board should not find DAS competitive.

Rate Counsel argues that the Federal Communications Commission denied Verizon's petition for deregulation of wholesale services in six Metropolitan Statistical Areas (MSA) and that this proves that competition does not exist. RC IB at 5. Based on Rate Counsel's analysis, the FCC held that it would continue to consider Verizon's dominant carrier status in the MSAs including New Jersey. Id. at 45.

Rate Counsel states that the statutes prohibit subsidization of rate regulated service by competitive services. N.J.S.A. 48:2-21.16(a)(3). RC IB at 68. Rate Counsel contends that a fully distributed cost analysis is appropriate under the circumstances, and that a direct cost analysis does not suffice as provided in the joint rebuttal testimony of Vasington and Garzillo on behalf of Verizon. Id. Rate Counsel challenges Verizon's grouping of services together for purposes of analyzing costs. Id. at 70. Additionally, Rate Counsel points out that when cross examined, Garzillo stated he did not consider all costs in his review. Id. Lastly, Rate Counsel avers that Verizon failed to present data for all services, along with the costs and revenues relevant to each service. Id. at 73.

Rate Counsel argues that if Verizon and Embarq's reclassification request is granted while intrastate access charges go unchanged, the statutory bar concerning cross subsidization will have been violated. RC RB at 14. Rate Counsel states, "...the subsidy analysis sponsored by Mr. Garzillo is not reliable, fails to include all costs, and is not fully distributed cost analysis and otherwise lacks support...." Id.

On procedural issues, Rate Counsel argues that Verizon's witness, Mr. Vasington does not qualify as an expert and therefore his testimony should be excluded or given very little weight. RC IB at 51. Also, Rate Counsel believes the Dr. Staihr's testimony is a net opinion. Id. at 52. In support of its argument, Rate Counsel contends, "Dr. Staihr offered no economic or quantitative analysis to support his opinion that local service and bundled service are the appropriate relevant product market. No studies, analyses or surveys are provided to support Dr. Staihr's conclusions that wireless, VoIP and cable are viewed as substitutes by consumers." Id. at 53. Thus, Dr. Staihr's testimony as described by Rate Counsel is a "net opinion" based on generalizations, and is therefore inadmissible. Id.

Rate Counsel contends that the denial of its various motions to compel discovery violated its rights to information necessary to support its theory of the case. The information sought was in the control of Verizon and Embarq, and by not being granted access to that information, Rate Counsel was prevented from fully establishing its arguments. RC IB at 77. Rate Counsel believes access to cost data of the incumbents is essential to its case, and discovery of these documents was not permitted. Id. Rate Counsel also sought work papers and models which Verizon did not provide. Id. Generally, Rate Counsel argues that its fundamental right to discovery and due process was violated. Id. at 78. In addition, Rate Counsel claims "it

was not afforded an opportunity to rebut assertions made for the first time in rebuttal.” Id. Also, evidentiary rulings prevented it from “exercising its right to cross examine and develop a response to ILECs’ positions.” Id. Exclusion of tariffs from the record, Rate Counsel argues, was “legal error causing prejudice to Rate Counsel.” Id. at 79. Rate Counsel disputes the ruling on the transcript request regarding households with FiOS, and believes “the denial of this information was error and prejudicial.” Id. at 79.

In sum, Rate Counsel argues that erroneous evidential rulings, the accelerated schedule, the failure of Verizon and Embarq to provide full and timely responses to discovery, in effect result in a denial of due process. Id. at 80.

Sprint

Sprint contends that it has submitted evidence of the existence of barriers to entry into the retail mass market, and therefore, the statutory criteria supporting reclassification have not been met. Sprint IB at 1. ILEC access charges, Sprint argues, impose a high cost on competitors and provide a subsidy to the ILECs. Id. at 3. The cross subsidy that access charges provide to the ILECs is prohibited by statute and as such, Sprint argues, reclassification must be denied.

Barriers to Entry

Sprint asserts that both Verizon and Embarq witnesses Vasington and Staihr “equate ease of market entry with the lack of barriers to entry.” VNJ 1 at 9:7-11:16 Vasington; EQ 1 at 3:1-23 Staihr; Sprint IB at 4. Sprint argues that a market barrier in fact exists due to the high cost access charges place on competitors which provide an unfair competitive advantage to ILECs. Id. at 5. Sprint states that Verizon itself has claimed harm from high access charges. Id. at 6. Sprint cited Verizon comments in Minnesota that “the anti consumer results of inefficient rate structures and high access charges include suppression of demand for services of other carriers that must bear the cost and reduced incentives for local entry by firms that might be able to provide service more efficiently than the LEC.” Sprint 1 at 13:3-9, quoting Comments of the Verizon Companies, dated March 16, 2007 at 4 in *In the Matter of the Request for Comments of the Minnesota Public Utilities Commission Relating to a Rule to Modify Telephone Access Charges*, Docket No. P-000/R-06-51 (Minn. Public Utilities Commission). Sprint IB at 6.

Sprint believes access charges serve as a subsidy to the ILECs, and provide them with an unfair advantage in the marketplace. Sprint 1 at 5:22-6:2, Sprint IB at 7. Sprint, refutes Verizon’s claim that affiliates bear the same access costs. Sprint IB at 8. As Sprint describes, when “Verizon’s wireless and long distance affiliates pay Verizon New Jersey Inc. tariffed access rates for switched access traffic, Verizon Corporation realizes a corresponding revenue stream (to the Verizon ILEC) and expense entry (from the long distance and wireless affiliates) of equal amounts.” Id.

Sprint, in support of its positions, claims that Embarq did not offer evidence to refute its showing that a barrier to entry exists. Id. at 9. Further, Sprint contends that Mr. Vasington, on behalf of Verizon, testified that bundles serve to compete with basic exchange service and restrain prices. Id. at 10. Similarly, Mr. Staihr testified that bundles are substitutes for basic exchange service. EQ-1 at 10:20-21. Thus, Sprint concludes, competitors pay intrastate switched access charges to enable them to provide the same services that ILECs do. It is reasonable to find, therefore, that a barrier to entry exists, per Sprint. Id. As has been the case

in other jurisdictions, Sprint seeks access relief prior to reclassification. Sprint RB at 8.⁴⁹ Sprint IB at 12, footnote 8.

Cross Subsidization

Sprint submits that the Board must consider that markets thrive when “cost barriers like inflated access charges that provide a subsidy to ILECs” are removed. Sprint RB at 7. Sprint contends that Verizon conceded its basic services received a cross subsidy. Sprint RB at 10. Thus, Sprint argues, reclassification is barred until such time as access relief is granted by the Board. Id. Sprint goes on to state that Verizon admits that subsidies must stop. Sprint RB at 12, citing Vasington and Garzillo Rebuttal testimony.

Sprint cites the statutes, specifically, N.J.S.A. 48:2-21.18(c) and 2-21.16(a)(3), which it states provide that “[n]o local exchange telecommunications company may use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services.” Sprint IB at 14. Sprint asserts that the ILECs have not met the burden of proof required to disclaim a subsidy exists, and therefore, the Board must deny the relief requested for reclassification. Id. at 13.

Additionally, Sprint argues it is customary that in order to disprove a cross-subsidy, “each service by itself must at least cover its corresponding long-run average incremental cost (i.e. its direct costs).” Sprint IB at 16 footnote 10. Sprint believes that Verizon and Embarq have not presented the requisite proofs to discount its subsidy argument. Further, Mr. Appleby testified that both Verizon and Embarq receive substantial revenues from intrastate switched access charges. Id. at 17. In sum, Sprint states the record shows ILECs receive a subsidy through access charge revenues. Id.

Sprint concludes, that Verizon based upon the testimony presented by Mr. Garzillo, admits its basic revenues do not cover costs. Sprint IB at 18; 1T95:19-96:7, 114A:17-2 Garzillo. In addition, Sprint quotes Dr. Stair’s testimony that “Embarq’s current \$8.55 retail local rate, fixed in 1991: is ‘extraordinarily low’, below the national average” thus proving it is a subsidized service. Id.

In sum, Sprint argues that Verizon failed to show that its basic service is not subsidized, admitted its basic service is priced below direct cost, and therefore will violate the statutory cross subsidy prohibition upon reclassification. (1T95:19-96.7, 97A:17-2, Garzillo; Sprint RB at 15.) Furthermore, Verizon failed to provide an analysis of all services it seeks to have reclassified, including shared and common costs, according to Sprint. Sprint RB at 16.

⁴⁹Specifically, Sprint cites, “Kansas, Wisconsin and Georgia all required LECs to reduce access rates at the same time as granting authority for price flexibility.” See, e.g., K.S.A. 66-2005 (requiring local exchange carriers to reduce intrastate access charges over three year period and at the same time giving the Kansas Commission authority to grant further price flexibility). See also, Wisconsin Statute 196.196 (requiring utilities with more than 150,000 access lines to reduce intrastate switched access rates at the same time giving LECs further price flexibility); Georgia Code O.C.G.A. section 46-5166(f) (permitting local exchange companies to become subject to alternative regulation provided they reduce their intrastate access rates).

The Settlements

Upon the close of the hearings, the parties entered into settlement negotiations in an attempt to amicably resolve the issues addressed in this matter. After extensive and intensive discussions, stipulations were signed by Board Staff and Rate Counsel with each of the ILECs to address the issues raised in the reclassification proceeding (the "Stipulations"). As previously stated, the Verizon settlement, described below, was approved by the Board in a Summary Order dated July 14, 2008. This Order sets out in more detail the Board's reasoning underlying its determinations with regard to that settlement. The proposed Embarq settlement, also described below, and its companion request for approval of an alternative plan of regulation ("PAR"), remain subject to Board review in this Order.

The Verizon Settlement

On May 30, 2008, Verizon, on behalf of itself, Board Staff and Rate Counsel (the "Parties"), submitted a proposed stipulated settlement to the Board for approval. While relevant portions of the agreement are summarized below, the Stipulation of Settlement is attached hereto and is incorporated in this Order as if it were fully set forth herein.

A public hearing was held on June 24, 2008, at the Board's Newark Office to receive public comment on the proposed agreement. In total 11 parties participated in the public hearing included AT&T and Sprint; the Newark Regional Business Partnership, the Metropolitan Trenton African American Chamber of Commerce, the Greater Elizabeth and Middlesex County Chambers of Commerce, the Association of Independent Colleges and Universities, New Jersey Citizen Action, Catholic Charities of the Archdiocese of Newark, and the New Jersey Alliance for Action (the "Organizations"); and Hilda Harris on her own behalf. In addition, the Board received written comments from three parties. At the hearing, AT&T stated that it did not oppose the settlement, but requested that the Board next address intrastate access rates. Sprint echoed the request that the Board commence a proceeding to review intrastate access charges. The Organizations all supported the Stipulation, especially, the provisions which would continue the availability of Lifeline services. Teletruth, submitted written comments opposing the Stipulation, asserting that Verizon continues to provide misleading data, and that the Stipulation, if approved, will harm residential and small business wireline customers.

Stipulated Findings for Verizon

Based on the record, Rate Counsel, Staff and Verizon have agreed to the following facts:

- (1) The Verizon NJ mass market retail services at issue in this proceeding are listed in Exhibit A attached to the stipulation. These services include, but are not limited to, residential basic exchange service; single-line business basic exchange service; residential directory assistance service; and residential installation service.
 - (a) Verizon NJ has not raised the price of its residential basic exchange service (including touch tone) since 1985, when the price of this service for the highest rate group was \$9.18 per month. The current statewide price of this service is \$8.95 per month. If the price of this service were

adjusted for inflation under the Consumer Price Index Inflation Adjuster, from 1985 to 2008, the price of the service would be \$18.22 per month.

- (b) In 1985, the price of Verizon NJ's single-line business basic exchange service (including touch tone) for the highest rate group was \$14.83 per month. The current statewide price of this service is \$15.00 per month. If the price of this service were adjusted for inflation under the Consumer Price Index Inflation Adjuster, from 1985 to 2008, the price of the service would be \$38.43 per month.
 - (c) In 1985, Verizon NJ's non-recurring charges for installation of residential services were \$42.00. These charges are currently \$42.35. If these charges were adjusted for inflation under the Consumer Price Index Inflation Adjuster, from 1985 to 2008, they would be \$83.35.
 - (d) Verizon currently offers (4) four free DA calls per month, and charges \$.50 cents per chargeable DA call after the monthly call allowance has been exceeded. In the majority of states, the average rate is \$1.25 per chargeable residential DA call. In New Jersey, telephonic DA providers price their services from "free" to \$2.49 per call without a free call allowance.
- (2) With the exception of Verizon's residential basic exchange service including usage, single-line business basic exchange service, non-recurring charges for installation of residential services, and residential DA service, the Parties agree that the remainder of Verizon's mass market retail services will be classified as competitive.
 - (3) Verizon's residential basic exchange service, single-line business basic exchange service, element charges for installation of residential services, and residential DA service shall remain rate regulated. The parties agree, however, that Verizon NJ should be permitted to adjust the rates for these services in accordance with the rate caps agreed to, and that the resulting rate caps will produce rates that are affordable and just and reasonable under the standards in PAR-2 and N.J.S.A. 48:2-21.17.

Settlement terms and conditions for Verizon

- (1) Verizon's residential basic exchange service, single-line business basic exchange service, non-recurring charges for installation of residential services, and residential DA service shall remain rate regulated. Upon Board approval of this Stipulation and Agreement and upon effective date of the appropriate tariffs, Verizon shall be authorized to charge no more for these services than the authorized rate caps set forth below:
 - (a) Residential basic exchange service: Verizon shall charge no more than \$11.95 per month for the first year after the effective date of the appropriate tariffs; no more than \$14.45 per month for the second year; and no more than \$16.45 per month for the third year.

- (b) Single-line business basic exchange service: Verizon shall charge no more than \$18.50 per month for the first year after the effective date of the appropriate tariffs; no more than \$22.00 per month for the second year; and no more than \$25.50 per month for the third year. Notwithstanding the above, the parties agree that the actual rates for single-line business exchange service shall not exceed these caps or the multiline business rates in effect until the conclusion of the proceeding referenced in paragraph five (5) below, whichever is lower.
 - (c) Non-recurring charges for installation of residential services: Verizon shall charge no more than \$45.00 for the first year after the effective date of the appropriate tariffs; no more than \$47.50 for the second year; and no more than \$50.00 for the third year.
 - (d) Residential DA service: Callers shall receive two (2) free call(s) per month. Once the monthly free call allowance has been exceeded, Verizon shall charge no more than \$1.25 per chargeable DA call for the first year after the effective date of the appropriate tariffs; no more than \$1.50 per chargeable DA call for the second year; and no more than \$1.50 per chargeable DA call for the third year.
- (2) Any increases to Verizon's residential basic local exchange service are not applicable to Verizon's Lifeline services which remain regulated and may not be increased absent Board approval. Verizon will continue its outreach efforts to enroll eligible New Jersey residents in the Lifeline program.
 - (3) Verizon shall also continue the following social services programs – in their current form, and, to the extent applicable at current rates – pending the proceeding identified in paragraph five (5) below:
 - (a) A 25% discount on local message units and intrastate intra-LATA message charges for hearing-impaired persons.
 - (b) The Link-Up America program, which provides discounts on service connection charges for qualified low-income customers.
 - (c) Free DA calls for consumers with a visual or physical impairment who submit proper certifications to Verizon NJ.
 - (d) Repair priority given to consumers with serious illness or physical disability.
 - (e) Call block features offered at no charge to all customers.
 - (4) With the exception of the services discussed in paragraphs one (1) through three (3), the remainder of Verizon's mass market retail services, listed in Exhibit A, shall be classified as competitive within the meaning of N.J.S.A. 48:2-21.19. Although competitive and not otherwise rate regulated, Verizon has voluntarily agreed that in order to reach an amicable resolution of this matter and to avoid rate shock and to otherwise ensure reliable service, the services listed

immediately below shall be subject to rate caps until the conclusion of the proceeding referenced in paragraph five (5):

- (a) Caller Identification with Name: Verizon NJ shall charge no more than \$9.25 per month for the first year after the effective date of the appropriate tariff filings; no more than \$11.00 per month for the second year; and no more than \$12.75 per month for the third year.
 - (b) Non-Published Listings: Verizon NJ shall charge no more than \$2.20 per month for the first year after the effective date of the appropriate tariff filings; no more than \$2.95 per month for the second year; and no more than \$3.70 per month for the third year. Customers who have obtained a court order of protection shall receive non-published listings at no charge.
 - (c) Call Trace: Verizon NJ shall charge no more than \$1.25 per attempt for the first year after the effective date of the appropriate tariff filings; no more than \$1.50 per attempt for the second year; and no more than \$1.75 per attempt for the third year.
- (5) The Board shall initiate a proceeding to re-evaluate the competitiveness of the services identified in paragraphs 1, 2 and 3, within ninety days after the third anniversary of the issuance of the effective date of the appropriate tariffs reflecting the first year increases. The rate caps shall remain in effect until the conclusion of that proceeding.
 - (6) Verizon shall continue to abide by all provisions and obligations contained in PAR-2, N.J.S.A. and N.J.A.C. Verizon shall continue to file and maintain tariffs for competitive services unless the Board determines that tariffs are not required for particular services.
 - (7) Until the proceeding identified in paragraph five (5) is commenced, no party to this Stipulation and Agreement shall petition the Board to modify the rate caps in paragraphs one (1) through four (4) above. However, if the Board issues an order reducing intrastate access charges that Verizon is permitted to charge, Verizon may request that the Board adjust the rate caps established in the Stipulation and Agreement upon written request to the Board, after hearing, upon notice, wherein Verizon shall have the burden of proof to show that the increase, change, or alteration is just and reasonable given the reduction in access charges. Prior to any such rate adjustment, Verizon shall also demonstrate that the requested rates for residential basic exchange service will be affordable within the meaning of PAR-2. Rate Counsel reserves its right to oppose any such petition filed by Verizon. Moreover, any party may seek to modify the provisions of the Stipulation and Agreement, including the rate caps identified in paragraphs one (1) and four (4), in the proceeding identified in paragraph five (5).
 - (8) Verizon shall provide Rate Counsel with several competitive reports currently filed with the Board.

- (9) Within 30 days of the Board's approval of the Stipulation and Agreement, and the effective date of the appropriate tariffs, Verizon shall withdraw its appeal with prejudice of the CLEC Reclassification Order Dkt. No. TX06120841 and the DA Reclassification Order Dkt. Nos. TX06010057 and TT97120889.

The Proposed Embarq PAR

On June 27, 2008, Embarq filed a request with the Board for approval of a proposed PAR as authorized by N.J.S.A. 48:2-21.8, and a companion proposed stipulation of settlement of the reclassification proceeding on behalf of itself, Board Staff and Rate Counsel.

Under Embarq's proposed PAR, Embarq would no longer be subject to traditional utility rate base, rate of return regulation. In evaluating Embarq's request, the Board must consider whether the proposed PAR: (1) will ensure the affordability of protected telephone services; (2) will produce just and reasonable rates for telecommunications services; (3) will not unduly or unreasonably prejudice or disadvantage a customer class or providers of competitive services; (4) will reduce regulatory delay and costs; (5) is in the public interest; (6) will enhance economic development in the State while maintaining affordable rates; (7) contains a comprehensive program of service quality standards, with procedures for board monitoring and review; and (8) specifically identifies the benefits to be derived from the alternative form of regulation. N.J.S.A. 48:2-21.18(a). The plan, if approved, would replace rate base/rate of return regulation for Embarq.

According to Embarq, there is significant overlap between the legal and factual matters in the reclassification proceeding and the legal and factual matters underlying the PAR petition. Given these common legal and factual issues, Embarq requested that the Board incorporate the record from the reclassification proceeding into the record of the PAR proceeding. To facilitate the Board's review, Embarq prepared Exhibit B (attached to the petition) which enumerates the statutory findings the Board must make pursuant to N.J.S.A. 48:2-21.18(a) and which contains specific citations that Embarq maintains support approval of its proposed PAR.

Embarq contends that its request for a PAR is clearly in the public interest. Embarq argues that the competitive landscape in the telecommunications industry has changed radically in recent years, particularly as a result of new market entrants (e.g., wireless carriers, VoIP) that are not regulated by the Board. Most recently, the Board acknowledged this fact when it deemed retail services provided by competitive local exchange carriers ("CLECs") in New Jersey⁵⁰ to be competitive. Indeed, when the Board initiated the ILEC Reclassification Proceeding, it "noted that the competitive environment in the telecommunications industry appears to be undergoing considerable change and modification."⁵¹ Embarq argues that it faces the same competitive pressures identified in the CLEC proceeding and in the Reclassification Proceeding; thus, it is important that the Board's regulation of Embarq provide the Company with sufficient flexibility to respond to market changes. Embarq believes its proposed PAR represents a balancing of the Company's need for market flexibility with a

⁵⁰See I/M/O the Board Investigation Regarding the Reclassification of Competitive Local Exchange Carrier (CLEC) Services as Competitive, BPU Docket No. TX06120841, Final Order (dated June 29, 2007).

⁵¹See I/M/O the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive, BPU Docket No. TX07110873, Order (dated November 28, 2007), at 1.

continuing commitment to provide customers with high quality, reliable telecommunications services.

Embarq further requested that the Board review its PAR petition on an expedited basis, along with its Stipulation and Agreement in the ILEC Reclassification Proceeding.

Embarq contends that its rates will remain affordable even in the face of an increase, if granted, due in part to the fact that Embarq's rates have remained at current levels since 1991. EMB PAR filing at 3. Embarq further argues that no customer is unduly or unreasonably prejudiced or disadvantaged by adoption of the PAR, and such adoption serves to level the playing field of competitors. According to Embarq, approval of the PAR reduces regulatory delay and costs in that it balances the need for regulatory flexibility with continued quality service for customers. Embarq cites the CLEC case as a basis for approval of its alternative plan to enable it to face competitive pressures imposed by CLECs in the market. EMB PAR filing at 5. Specifically, Embarq argues that each of the eight criteria for adoption of a PAR under N.J.S.A. 48:2-21.18(a) is satisfied as follows:

1. Adoption of the PAR Will Ensure the Affordability of Protected Telephone Services

Embarq states that it addressed the affordability of its services in the Rebuttal Testimony of Brian K. Stahr in BPU Docket No. TX07110873 at pp. 8-13 ("EQ 3").⁵²

Although the concept of "affordability" can be difficult to define, the FCC has provided some guidance in this area. In its very first Report and Order on universal service following the passage of the Telecommunications Act of 1996, the FCC stated that the definition of affordability included both an *absolute* component and a *relative* component. [Footnote omitted] The *absolute* component reflects the purely factual aspect of having (or not having) sufficient funds to purchase something. The *relative* component reflects a somewhat more subjective aspect of a potential "burden," in the sense of whether or not the cost can be borne without serious detriment. If the cost can be borne without serious detriment, the item is "affordable." This relative component can be examined in the context of spending on other goods and services—i.e. are consumers spending a disproportionate share of their income on a particular good or service.

First, household income in Embarq's New Jersey market is *extraordinarily* high. As Embarq noted in testimony submitted to the New Jersey Board in 2005, the average household income in Embarq's New Jersey market is over **twice** the median household income for the country as a whole. The median annual household income in Embarq's New Jersey market is over \$100,000, while the median annual household income for the U.S. as a whole is approximately \$48,000. [Footnote omitted.]

Second, retail rates for basic service in Embarq's New Jersey market are *extraordinarily* low. The basic rate for service in Embarq's New Jersey market is \$7.80 plus \$0.75 for U-touch, or \$8.55[minus \$.60 for 1986 tax credit, or \$7.95]. According to the FCC, the national average monthly rate for flat rate service (including touchtone) is \$15.03 [in October 2006]. [Footnote omitted.]

⁵²See also, VNJ Vasington Direct at 48, 56, and 59; Sprint Appleby Reply Testimony at 27, Exhibits JAA-5 and JAA-6.

When we put these two facts together, and return to our test of affordability, we find that residents of Embarq's New Jersey market are actually spending a disproportionately **small** share of their income on telephone service. ...

Next, we acknowledge that the rates for Embarq's customers have been frozen at their current levels since 1991, when United Telephone of New Jersey had its last rate case. This means that rates for basic service have not even kept pace with inflation for 17 years. If Embarq's rates *had* simply kept pace with inflation, with no other adjustments, then according to the U.S. Bureau of Labor Statistics the rate for basic service including U-touch today would be approximately \$13.00. [Footnote omitted.] As the table below shows, even if such an inflation adjustment were made, Embarq's New Jersey customers would *still* be spending a **disproportionately small** share of their income on telephone service. ...

Using the FCC's criteria, clearly there is no way that a case could be made—even in the face of an inflation adjustment [...]—that Embarq's New Jersey customers would find telephone service unaffordable. Even in the face of an inflation adjustment, [...] Embarq's New Jersey customers would be paying a **disproportionately small portion** of their income of telephone service, and telephone service would remain more affordable than in almost any state in the country.

Further, Embarq maintains that the proposed PAR preserves and enhances Embarq's Lifeline program as set forth in the PAR itself, and in the Stipulation. Embarq's commitment to Lifeline is reiterated in Dr. Staihr's Rebuttal Testimony:

Q. On the subject of affordability, if Embarq's request for competitive classification is granted would this have any impact on the existing Lifeline and Link-Up support that goes to extremely low-income customers in New Jersey?

A. None at all. At year end 2007, approximately 950 Embarq customers subscribed to Lifeline service. Embarq remains fully dedicated to those specific programs which provide targeted support to households in need.

(EQ 3 at pp. 11-12.) Significantly, the PAR expands upon Embarq's Lifeline commitment by providing for automatic enrollment in the Program for new and existing Lifeline-eligible Embarq customers. (PAR at Section II.C.) In addition, Embarq's proposed PAR states that Embarq's Lifeline Program will provide for the self-certification of low income senior customers (ages 65 and over) at or below 150% of the Poverty Level (PAR at Section II.C). Thus, the needs of low income and elderly households are addressed through Embarq's continuation and enhancement of the Lifeline and LinkUp programs assuring affordable service to all customers in need throughout the State.

With existing competitive forces at work, the Board can oversee the telephone market, and make adjustments if needed (See Item 7, *infra*). Consumers will obtain service elsewhere if Embarq sets its prices too high or does not introduce the new products and services they demand, or if the quality of service slips in any way. As Dr. Staihr observed, "One vendor's gain is the other vendor's loss." Initial Testimony of Dr. Brian K. Staihr in BPU Docket No. TX07110873 at 11 (EQ 2).

Affordability of rates for protected services can also be found based upon the fact that Embarq's local exchange rates have remained flat since 1991, while other price indicators such as Social Security income, the Consumer Price Index, the cost of food, and postal rates have risen significantly since 1991. Affordability of rates for protected services can also be found based upon the fact that the Stipulation and Agreement contains rate caps for numerous services, including basic residential service.

Furthermore, only retail mass market rates are affected by the proposed rate caps. Non-retail rates are not impacted by the proposed PAR or the Stipulation. The affordability of rates for protected service is satisfied as the only changes made to protected rates are those subject to caps that the Board is reviewing in this Order.

2. Adoption of the PAR Will Produce Just and Reasonable Rates for Telecommunications Services

According to Embarq, evidence supporting a finding that Embarq's rates for rate regulated services under the proposed PAR and the Stipulation and Agreement are affordable also supports that a finding that such rates are just and reasonable. As noted above, Embarq has not raised rates since its last rate case in 1991. See, EQ 3 at 10. In addition, at the hearing, Dr. Staihr testified and demonstrated that rates should at least keep pace with inflation to be considered "just and reasonable." Dr. Staihr testified:

- Q. Are you saying that Embarq rates aren't fair, just, and reasonable at their current levels?
- A. They are certainly not just and reasonable with regard to Embarq because normally what is a just and reasonable price does keep pace with inflation. EQ's rates are not just and reasonable because they haven't kept pace with inflation.

Trans. Feb. 26, at 106.

Moreover, the Stipulation and Agreement demonstrates how the rates for Embarq's rate regulated services will remain just and reasonable. Under an alternative form of regulation, rates may be based on, among other things, "the use of an index, formula, price caps or zone of rate freedom." N.J.S.A. 48:2-21.17. Embarq's rates for rate regulated services throughout the term of the PAR will remain below national averages for those services published by the Federal Communications Commission, as adjusted for inflation as measured by the United States Department of Labor's Consumer Price Index. As discussed above, Lifeline rates will remain at current levels, which the Board has already been found to be just and reasonable.

In addition, any adjustments to the rates set forth in the Stipulation and Agreement must be approved by the Board. Thus, the Board retains complete authority to ensure that Embarq's rates for its rate-regulated services remain just and reasonable.

Given the evidentiary record of like or substitute services in the geographic market as provided in the testimony of Dr. Staihr, incorporated herein, along with the Stipulation and Agreement, adoption of the proposed PAR will produce just and reasonable rates for the rate regulated services under the Stipulation and Agreement.

3. Adoption of the PAR Will Not Unduly or Unreasonably Prejudice or Disadvantage a Customer Class or Providers of Competitive Services

Embarq asserts that the proposed PAR does not unduly or unreasonably prejudice or disadvantage any customer class because the rates set forth in the Stipulation are affordable and just and reasonable. The PAR does not unduly or unreasonably prejudice or disadvantage providers of competitive services; to the contrary, it will help level the competitive playing field between Embarq and its alternatively regulated and unregulated competitors.

Alternative regulation and competitive classification will provide increased ability for Embarq to respond to free market forces in the face of existing competition from unregulated entities.⁵³ As Dr. Staihr testified: “CLECs purchase wholesale services for resale in all 26 of Embarq wire centers and purchase unbundled network elements in 21 wire centers representing 93% of Embarq’s access lines.” EQ Initial Testimony at 30. The record adduced in this docket supports a finding that alternative regulation will make the competitive playing field more level as between Embarq and its unregulated and non-traditional competitors.

According to Embarq, the record demonstrates that neither competitive classification nor this PAR will prejudice or disadvantage a customer class or providers of competitive services. Indeed, the Board has already concluded that retail local exchange services provided by CLECs should be deemed competitive.⁵⁴ For competitive services, the Board shall not regulate, fix or prescribe the rates, tolls, charges, rate structures, terms and conditions of service, rate base, rate of return, and cost of service, of competitive services. N.J.S.A. 48:2-21.19(a). Thus, no prejudice or disadvantage to a customer class or providers of competitive services arises when all competitors in the market are on a level playing field. Through this PAR, Embarq can adjust rates for the services that remain rate regulated within the ranges and otherwise as set forth in the Stipulation and Agreement. Thus, no prejudice or disadvantage to a customer class arises as Embarq can only adjust rates up to the Stipulation and Agreement’s specified rate caps. Furthermore, as discussed above, this PAR maintains Embarq’s Lifeline rates at current levels and enhances Embarq’s commitments to the Lifeline program, which will ensure that those least able to pay for telephone service can get it at reduced rates. Providers of competitive services are not prejudiced under the terms of the PAR. Rather, the PAR helps to level the competitive playing field vis-à-vis Embarq and its CLEC and non-regulated competitors.

4. Adoption of the PAR Will Reduce Regulatory Delay and Costs

According to Embarq, the proposed PAR will reduce regulatory delay and costs. As set forth in PAR Section III.A, the PAR enables Embarq to introduce new services on a streamlined basis, which will lessen regulatory delay. As Dr. Staihr noted in his Initial Testimony, “[c]ustomers are best served when competition takes place on a level playing field, where all providers—including Embarq—have the freedom to act nimbly in the market place, responding to ever-changing demands and preferences.” EQ Initial Testimony at 32. The flexibility afforded by the PAR, in addition to competitive classification, will greatly reduce regulatory delay and costs associated with Embarq’s ability to act nimbly in the market place. Implementing the PAR will also obviate the need for time-consuming and burdensome rate case proceedings that place

⁵³“Customers are best served when competition takes place in a level playing field where all providers including Embarq have the freedom to act nimbly in the marketplace and responding to ever changing demands and preferences.” EQ Initial Testimony at 32.

⁵⁴*I/M/O with Board Investigation Regarding the Reclassification of Competitive Local Exchange Carrier (CLEC) Services as Competitive*, BPU Docket No. TX06120841, Order (dated June 29, 2007), at 11.

a strain on limited administrative resources. As a result, this PAR reduces regulatory delay and lessens regulatory costs.

Further, as the Board noted in Verizon's PAR-2, this element is also satisfied by statutory recognition that traditional rate of return regulation can be costly and inefficient, imposing significant administrative burdens that are substantially lessened by alternative regulation. Streamlined introduction of new services while the Board retains authority to investigate and suspend is pro-competitive, reduces current barriers to bring new products to market, and assures that customers are afforded the opportunity to benefit from new services without unnecessary delay.

This PAR is consistent with the alternative regulation plan approved by the Board for Verizon. Verizon has been subject to alternative rate regulation for several years. With this PAR, Embarq and Verizon both will be subject to alternative rate regulation. Administrative economies and regulatory consistency are thereby achieved from the Board's oversight and review of incumbent local exchange carriers. Meanwhile, Embarq's ability to adjust rates within the transitional rate caps will reduce costs and regulatory delay associated with unnecessary regulatory oversight for rate adjustments within capped levels. Additionally, Embarq has agreed to specific comprehensive reporting requirements. See PAR Section V and Stipulation and Agreement Exhibit C. These reports will provide the Board and Rate Counsel with relevant, timely information with which to monitor Embarq and the competitive marketplace.

5. Adoption of the PAR Is in the Public Interest

According to Embarq, the PAR is in the public interest. The PAR preserves affordable rates that are just and reasonable. The PAR does not unreasonably prejudice any class of customers or competitors. The PAR reduces regulatory costs and delays. As Dr. Staihr observed in his Initial Testimony:

[T]he role of regulation in the state must be 1) to ensure that the telecommunications market remains open to entry, and 2) to ensure that one provider does not receive state-sponsored advantages over another provider. By requesting competitive classification Embarq seeks the same freedom its competitors have to price and package services in ways that meet customer desires and expectations. Customers are best served when competition takes place on a level playing field, where all providers—including Embarq—have the freedom to act nimbly in the market place, responding to ever-changing demands and preferences. EQ Initial Testimony at p. 32.

Further, as set forth in subsection 6 below, the PAR includes important extensions of Embarq's Bona Fide Retail Request ("BFRR") program and Embarq's discount program for schools and libraries, while enhancing Embarq's commitment to its Lifeline program.

6. Adoption of the PAR Enhances Economic Development in the State While Maintaining Affordable Rates

Embarq maintains that the PAR will enhance economic development in New Jersey while maintaining affordable rates by facilitating increased competition among the variety of telecommunications services providers in the state on a more level playing field. The record demonstrates the availability of like or substitute services. Dr. Staihr's initial and rebuttal

testimonies are replete with the descriptions of the variety of competitors (i.e., substitute services) present in the telecommunications marketplace. See e.g., EQ Initial Testimony at 15-30. Through PAR, Embarq will be afforded the flexibility to adjust rates for rate regulated services consistent with the Stipulation and Agreement. As Dr. Stair testified:

Citigroup estimated that by 2010 the market share of incumbent carriers such as Embarq will decrease to 45%. There is simply no way to suggest that Embarq's New Jersey market is not fully and effectively competitive when Embarq is expected to serve less than half of the market in approximately two years. ...

And *because* competition is an economic fact, the role of regulation in the state must be 1) to ensure that the telecommunications market remains open to entry, and 2) to ensure that one provider does not receive state-sponsored advantages over another provider. By requesting competitive classification Embarq seeks the same freedom its competitors have to price and package services in ways that meet customer desires and expectations. EQ Initial Testimony at 32.

Under the PAR, Embarq, as a competitor no longer subject to rate of return regulation, will be able to efficiently offer like or substitute services currently available in the competitive marketplace.⁵⁵ Competitive classification and alternative rate regulation for Embarq enhances economic development within Embarq's service territory. The PAR will enable Embarq to compete more effectively and efficiently in the marketplace, which, in turn, will promote competition and enhance economic development in the State.⁵⁶

The PAR contains several elements that will enhance economic development in the State while maintaining affordable rates. As previously addressed, the record demonstrates that the PAR will maintain affordable rates in New Jersey. In addition, this PAR contains commitments whereby Embarq will extend its Bona Fide Retail Request ("BFRR") Program for broadband deployment through the duration of this PAR. Similarly, the record demonstrates PAR extends Embarq's Schools and Libraries Discount Program. Embarq will continue its discount program for schools and libraries for services (including ATM; Frame Relay, and PRI data services) provided by Embarq through the duration of this PAR. By promoting deployment of advanced telecommunications equipment and services in schools and libraries, Embarq is helping to bring the benefits of technology to the public which, in turn, will enhance economic development in the State.

7. The PAR Contains a Comprehensive Program of Service Quality Standards, with Procedures for Board Monitoring and Review

According to Embarq, the PAR contains numerous reporting requirements to enable the Board to monitor Embarq's service quality and regulatory compliance. PAR Section V.B requires Embarq to make annual filings to ensure that rate regulated services are not

⁵⁵ "The Telecommunications Act of 1996 ensures ease of entry by making Embarq's network available to competitors through discounts off retail prices, the availability of unbundled network elements, and collocation." EQ Initial Testimony at 31. See also, VNJ Vasington Direct at 10 LL 6-17, 11 LL 3-5, 22 LL 1-4

⁵⁶ "There are a total of eight CLECs to which Embarq provides these services in New Jersey. One CLEC is collocated in three Embarq switching offices. CLECs purchase wholesale services for resale in all 26 of Embarq wires centers, and purchase unbundled network elements in 21 wire centers representing 93% of Embarq's access lines." EQ Initial Testimony at 30.

subsidizing competitive services. Further, PAR Section V.A requires Embarq to file tariffs for competitive services and to make unpublished rates available under certain conditions. Embarq is currently subject to numerous service quality measures and reporting requirements as set forth in the Board's rules and regulations that will continue under PAR. There is no evidence in the record that the retail mass market services under review in the ILEC reclassification proceeding are in any way inadequate from a service quality standpoint, but the reporting requirements in the PAR and in the Stipulation and Agreement will enable the Board to monitor Embarq's services to ensure they remain of high quality.

The PAR sets forth reporting requirements which will enable the Board to monitor and review the quality of service Embarq is providing to its subscribers. The record demonstrates that competition, along with Embarq's compliance with the Board's service quality regulations for rate regulated services, will yield a comprehensive program of service quality standards and procedures for Board monitoring and review under the PAR. Finally, the Stipulation and Agreement establishes a review proceeding in approximately three (3) years in which the Board will re-evaluate the competitiveness of Embarq's rate regulated services.

8. The PAR Specifically Identifies the Benefits to be Derived from the Alternative Form of Regulation

According to Embarq, the benefits of PAR are set forth above and in Embarq's proposed PAR. The availability, affordability and reasonableness of Embarq's rate regulated services have been demonstrated in the record. As Dr. Staihr in part explained, "Embarq seeks the same freedom its competitors have to price and package services in ways that meet customer desires and expectations. Customers are best served when competition takes place on a level playing field, where all providers—including Embarq—have the freedom to act nimbly in the market place, responding to ever-changing demands and preferences." EQ Initial Testimony at 32. The PAR accomplishes this, while preserving affordable rates that are just and reasonable (see subsections 1 and 2 *supra*), while reducing regulatory delay and cost (see subsection 4 *supra*), while enhancing economic development in the State, (see subsection 6), and while enabling Board monitoring and review of service quality (see subsection 7). This PAR levels the competitive playing field vis-à-vis Embarq and its CLEC and non-regulated competitors. In addition, the PAR strengthens Embarq's existing Lifeline program by instituting a new automatic enrollment program and establishing self-certification for low-income seniors. PAR Section II.C. Thus, the PAR and the record in the ILEC proceeding support the Board's finding that the PAR will meet the eight (8) statutory criteria and should be expeditiously approved.

The Proposed Embarq Settlement

In addition, by letter dated June 27, 2008, Embarq also submitted a proposed settlement of all Embarq issues in Docket No. TX07110873 for Board approval. Under the terms of the proposed settlement, some of Embarq's retail mass market services would be declared competitive and no longer subject to rate regulation by the Board, while others would remain regulated. Rate increases are requested for the services that would remain subject to regulation under Embarq's proposed PAR. The services that would remain rate regulated are residential basic exchange service; basic business service; residence directory assistance service; and non-recurring charges for installation of residence service.

Stipulated findings for Embarq

Based on the record, Rate Counsel, Staff and Embarq have agreed to the following facts:

- (1) The Embarq mass market retail services at issue in this proceeding are listed in Exhibit A attached to the stipulation. These services include, but are not limited to, residential basic exchange service; single-line business basic exchange service; residential directory assistance service; and residential installation service
 - (a) Embarq has not raised the price of its residential basic exchange telephone service since March of 1991. See, Decision and Order, BPU Docket No. TR90070726J. Embarq's current rate for residential basic exchange service (including touch tone and the 1986 tax credit) is \$7.95. The Federal Communications Commission reports that the national average monthly rate for basic exchange service (including touch tone) is \$15.03 (as of October 2006).⁵⁷ If the national average price were adjusted for inflation under the Consumer Price Index Inflation Adjuster from 2006 to 2008, the national average price of the service would be \$16.02.
 - (b) Embarq has not raised the price of its single-line business exchange service since March of 1991. See, Decision and Order, BPU Docket No. TR90070726J. Embarq's current rate for single-line business exchange service (including touch tone and the 1986 tax credit) is \$16.40. The Federal Communications Commission reports that the national average monthly rate for business exchange service (including touch tone) is \$33.54 (as of October 2006). If the national average price were adjusted for inflation under the Consumer Price Index Inflation Adjuster from 2006 to 2008, the national average price of the service would be \$36.04.
 - (c) Embarq has not raised the price of its non-recurring charge for installation of residential service since March of 1991. See, Decision and Order, BPU Docket No. TR90070726J. Embarq's current non-recurring charge for installation of residential service is \$25.00. The Federal Communications Commission reports that the national average monthly non-recurring charge for installation of residential service is \$39.44 (as of October 2006). If this charge were adjusted for inflation under the Consumer Price Index Inflation Adjuster from 2006 to 2008, the charge would be \$42.38.
- (2) With the exception of Embarq's residential basic exchange service, business basic exchange service, non-recurring charges for installation of residential services, and residential DA service, the Parties agree that the remainder of Embarq's mass market services shall be classified as competitive.
- (3) Embarq's residential basic exchange service, business basic exchange service, non-recurring charges for installation of residential services, and residential DA service shall remain rate regulated. The parties agree, however, that Embarq

⁵⁷Rebuttal Testimony of Dr. Brian K. Staihr at p. 9 (citations omitted).

should be permitted to adjust the rates for these services in accordance with the rate caps set forth below, and that the resulting rate caps will produce rates that are affordable and just and reasonable under the standards set forth in *N.J.S.A. 48:2-21.17*.

I. The Proposed Settlement terms and conditions for Embarq

- (1) Upon Board approval of this Stipulation and Agreement, Embarq is authorized upon the effective date of the appropriate tariff to combine rate elements applicable to residential basic local exchange service and single-line business local exchange service as follows:
 - (a) Residential basic local exchange service rate: to \$7.95 per month (\$7.80/month plus the U-Touch rate of \$.75/month minus \$.60 monthly tax credit); and
 - (b) Single-line business local exchange rate: to \$16.40 (\$15.50/month plus the U-Touch rate of \$1.50/month minus \$.60 monthly tax credit).

- (2) Embarq's residential basic exchange service, business basic exchange service, non-recurring charges for installation of residential services, and residential DA service shall remain rate regulated. Upon Board approval of this Stipulation and Agreement, approval of the PAR, and upon the effective date of the appropriate tariffs, Embarq shall be authorized to charge no more for these services than the authorized rate caps set forth below:
 - (a) Residential basic local exchange service: Embarq shall charge no more than \$10.95 per month for the first year after the effective date of the appropriate tariffs, no more than \$13.45 per month for the second year, and no more than \$15.45 per month for the third year.
 - (b) Business exchange service: Embarq shall charge no more than \$19.20 per month for the first year after the effective date of the appropriate tariffs, no more than \$22.00 per month for the second year, and no more than \$25.50 per month for the third year.
 - (c) Non-Recurring charges (Embarq's Residence Primary Charge for Service Connection and Installation): Embarq shall be permitted no more than a 20 percent, or \$5.00, increase over a period of three (3) years after the effective date of the appropriate tariff (*e.g.*, the 20 percent increase can be effected immediately, or it can be taken in steps at Embarq's discretion, as long as the total increase is no more than 20 percent).
 - (d) Residence Directory Assistance: Callers shall receive two (2) free call(s) per month. Once the monthly free call allowance has been exceeded, Embarq shall charge no more than \$1.25 per chargeable DA call for the first year after the effective date of the appropriate tariffs; no more than \$1.50 per chargeable DA call for the second year; and no more than \$1.50 per chargeable DA call for the third year.

- (3) Any increases to Embarq's residential basic local exchange service are not applicable to Embarq's Lifeline services which remain regulated and may not be increased absent Board approval. Embarq will continue its outreach efforts to enroll eligible New Jersey residents in the Lifeline program.
- (4) Embarq shall also continue the following social services programs – in their current form, and, to the extent applicable at current rates – pending the conclusion of the proceeding identified in paragraph (6) below:
- LinkUp (non-recurring charges);
 - Directory Assistance and Directory Assistance Call Completion to residential customers with a visual or physical inability to use a directory or directory source;
 - Non-list Service to those residential customers who provide a Protective Order;
 - Non-Pub Service to those residential customers who provide a Protective Order;
 - Residential Call Trace, per call;
 - Residential Per Call Blocking;
 - Residential Per Line Blocking;
 - Residential 700/900 Blocking;
 - Residential Toll Block/Operator Screening;
 - Residential Billed Number Screening;
 - IntraLATA MTS Service to hearing impaired residence customers;
 - Intra-Municipal Calling
- (5) With the exception of Embarq's services discussed in paragraphs (2) through (4), the remainder of Embarq's mass market retail services, listed in Exhibit A, shall be classified as competitive within the meaning of *N.J.S.A. 48:2-21.19*. Although competitive and not otherwise rate regulated, Embarq has voluntarily agreed that in order to reach an amicable resolution of this matter and to avoid rate shock and to otherwise ensure reliable service, the services listed immediately below shall be subject to the following rate caps until the conclusion of the proceeding referenced in paragraph (6):
- a) Caller ID: Embarq shall charge no more than \$8.60 per month for the first year after the effective date of the appropriate tariff; no more than \$10.20 per month for the second year; and no more than \$11.80 per month for the third year.
 - b) Non-Published Residential Telephone Service (Directory Listing): Embarq shall charge no more than \$0.85 per month for the first year after the effective date of the appropriate tariff; no more than \$1.15 per month for the second year; and no more than \$1.45 per month for the third year. Customers who have obtained a court order of protection shall receive non-published listings at no charge.

- (6) The Board shall initiate a proceeding to re-evaluate the competitiveness of the services identified in paragraphs (2) through (4) within ninety (90) days after the third anniversary of the effective date of the appropriate tariffs reflecting the first year increases. The rate caps shall remain in effect until the conclusion of that proceeding. As part of that proceeding, Rate Counsel may seek reclassification of any retail mass market competitive services listed in Exhibit A.
- (7) Embarq shall abide by all provisions and obligations contained in its PAR, and applicable statutory and regulatory obligations set forth in Title 14 of the New Jersey Administrative Code. This Stipulation and Agreement shall not change Embarq's service quality obligations under its PAR and shall continue to file and maintain tariffs for competitive services unless the Board determines that tariffs are not required for particular services. Either party may seek to modify these obligations in the proceeding identified in paragraph (6).
- (8) Until the proceeding identified in paragraph (6) is commenced, except as set forth in this paragraph, no party to this Stipulation and Agreement shall petition the Board to modify the rate caps. However, if the Board issues an order reducing intrastate access charges that Embarq is permitted to charge, Embarq may request that the Board adjust the rate caps established in this Stipulation and Agreement upon written request to the Board, after hearing, upon notice, wherein Embarq shall have the burden of proof to show that the increase, change, or alteration is just and reasonable given the reduction in access charges. Prior to any such rate adjustment, Embarq shall also demonstrate that the requested rates for residential basic exchange service will be affordable as required by law. Rate Counsel reserves its right to oppose any such petition filed by Embarq. Moreover, any party may seek to modify the provisions of this Stipulation and Agreement, including the rate caps in the proceeding identified in paragraph (6).
- (9) This Stipulation and Agreement shall supersede the limitations on rate increases applicable to Embarq set forth in Paragraph 1 of Attachment A to the Stipulation of Settlement in BPU Docket No. TM05080739.

Approval of a new proposed plan for alternative regulation and of rate adjustments for regulated services are only permitted after notice, hearing and Board review, and determination that the rates for regulated services remain just and reasonable. Accordingly, to aid the Board in its review of the proposed settlement and of Embarq's proposed PAR, a public hearing was held on August 7, 2008, to receive input from the public on both the proposed alternate form of regulation and the proposed Stipulation and Agreement.

In total 9 parties participated in the public hearing which included Atif Malik on behalf of Citizen Action, Bonnie Duncan on behalf of United Way, Mary Emilius on behalf of Sussex County Economic Partnership, Robert Goltz on behalf of Warren County Regional Chamber of Commerce, Marjorie Nathanson on behalf of Hunterdon Art Museum, Kelly Ospina on behalf of Hunterdon Hispanos, Karen Widico on behalf of Hunterdon Prevention Resources, Chamber of Commerce, Donna Gapas on behalf of Hunterdon County Department of Social Services, Warren Buckleitner on behalf of Media Technology. The organizations all supported the Stipulation and PAR, specifically those provisions which continue the availability of Lifeline services.

AT&T submitted written comments on July 30, 2008, in support of the settlement but requesting intrastate access rate reductions. Sprint submitted written comments on August 5, 2008, also in support of the settlement and PAR currently before the Board upon condition that the Board initiate a proceeding to address alleged subsidies provided in Embarq and Verizon's intrastate switched access rates.

DISCUSSION AND ANALYSIS

I. Embarq's Proposed Plan For Alternative Regulation

Before the Board can approve a PAR, it must address the tests prescribed by N.J.S.A.48:2-21.18(a) requiring that the Board find that the proposed plan provides all of the following: 1) that it will ensure the affordability of protected telephone services; 2) that it will produce just and reasonable rates; 3) that it will not unduly or unreasonable prejudice or disadvantage a customer class or providers of competitive services; 4) that it will reduce regulatory delay and costs; 5) that it is in the public interest; 6) that it will enhance economic development in the State while maintaining affordable rate; 7) that it contains a comprehensive program of service quality standards with procedures for Board monitoring and review; and that it specifically identifies the benefits to be derived from the PAR. Each of these will be discussed below.

A. Will the PAR Ensure the Affordability of Protected Telephone Services?

After careful review of the record, the Board **FINDS** that Embarq's PAR will ensure the affordability of rates for protected telephone services as required by N.J.S.A. 48:2-21.18(a)(1). The Board considers the fact that the rates charged for protected services have not been changed since 1991, and the Board found those rates to be affordable at that time. Embarq's rates for basic residential service in New Jersey have not increased since 1991, and they are among the lowest rates in Embarq's territories throughout the nation. The Board notes that residential basic exchange service will continue to be fully regulated by the Board under this PAR and the proposed Stipulation, and that any potential future changes in the rates for rate regulated services will continue to be subject to Board review and approval as well as the caps contained in the Stipulation, if approved. Moreover, because of the enhanced Lifeline program, the needs of low-income and elderly households are clearly being addressed, thereby assuring affordable service to all customers in need throughout the State. In addition Embarq's schools and libraries program, extended in the PAR, will continue to provide affordable access to telecommunications technology to the State's schools and libraries.

Further, the Board is persuaded by Embarq's assessment that the average household income in its territory is twice the national average and its rates are low. Therefore, its New Jersey customers are, and under the terms of the Stipulation if approved, will continue to spend a disproportionately small share of their income on telephone service.

In addition, the Board believes that, in assessing satisfaction of the "affordability" requirement, it is relevant to inquire into the behavior of other price indicators. Accordingly, we find persuasive the fact that residential basic rates have remained unchanged since 1991, while other price indicators such as Social Security income, the Consumer Price Index, the cost of food, and postal rates have risen steadily. As stated above, we also find persuasive Embarq's contention that, after considering New Jersey's per capita income, rates for protected services have become more affordable over time. Therefore, the Board **FINDS** that the rates for protected services under the proposed PAR are affordable. Finally, after reviewing the record

relating to assistance programs, we **FIND** that the Company's expanded and enhanced Lifeline program will provide additional assurances of continued affordability for elderly and low-income customers.

B. Will the PAR Produce Just and Reasonable Rates for Telecommunications Services?

Having reviewed the record, the Board **FINDS** that Embarq's PAR satisfies the requirements of N.J.S.A. 48:2-21.18(a)(2) that a plan of alternative regulation produce just and reasonable rates for telecommunications services. As explained above, the rates for residential basic exchange service have not increased since 1991, and these rates were found by the Board to be just and reasonable at that time. Under this PAR, rate adjustments for regulated services will be subject to caps and will be permitted only upon notice and Board review and determination that such rates are just and reasonable. The Board therefore **FINDS** that rates under this PAR are and will remain just and reasonable.

The Board is also persuaded that Embarq's rates for rate regulated services throughout the term of the PAR will remain below national averages for those services as published by the Federal Communications Commission, and as adjusted for inflation as measured by the United States Department of Labor's Consumer Price Index. In addition, Lifeline rates will remain at current levels, which the Board has already been found to be just and reasonable.

In addition, any adjustments to the affected rates must be approved by the Board. Thus, the Board retains complete authority to ensure that Embarq's rates for its rate-regulated services remain just and reasonable.

The Board therefore **FINDS** that Embarq has demonstrated that relevant rates under this PAR are just and reasonable, and that the Board's continuing jurisdiction over any potential future efforts by Embarq to raise the rates of regulated telecommunications services will ensure the continuation of rates that are just and reasonable.

C. Will the PAR Unduly or Unreasonably Prejudice or Disadvantage a Customer Class or Providers of Competitive Services?

Based on the record, the Board **FINDS** that Embarq's PAR satisfies the statutory criterion of N.J.S.A. 48:2-21.18(a)(3), which requires that it demonstrate that the PAR does not unduly or unreasonably prejudice or disadvantage a class of customers or providers of competitive services.

The Board concurs with Embarq that the record supports a finding that adoption of the proposed alternative regulation will make the competitive playing field more level between Embarq and its unregulated and non-traditional competitors. We agree that no prejudice or disadvantage to a customer class or providers of competitive services arises when all competitors in the market are on a level playing field. Through this PAR, Embarq can adjust rates for the services that remain rate regulated within the ranges set forth in the Stipulation and Agreement, if adopted. Thus, no prejudice or disadvantage to a customer class arises as Embarq can only adjust rates up to the Stipulation and Agreement's specified rate caps.

Finally, we find further support for our conclusion that the PAR meets the requirements of this criterion in its express requirement that, in order to be approved, the Board must find that a proposed revenue neutral rate restructure does not unduly disadvantage one class of customers over another.

D. Will the PAR Reduce Regulatory Delay and Costs?

The Board **FINDS** that Embarq's PAR satisfies the N.J.S.A. 48:2-21.8(a)(4) requirement that adoption of the PAR will result in reduced regulatory delay and costs. The 1992 New Jersey Act expresses, and our implementation of the Act since 1992 recognizes, underlying policy that traditional rate of return regulation can be costly and inefficient, imposing significant administrative burdens that are substantially lessened by alternative regulation plans. We **FIND** that Embarq's PAR will further reduce regulatory delay and costs by (1) streamlining the introduction of new services or the re-pricing of existing services, and (2) retaining only necessary reporting requirements.

The provisions of PAR streamline the introduction of new services, while retaining the Board's authority to investigate and suspend, if necessary, all non-conforming aspects of any new service. We concur with Embarq's contention that the provision is clearly pro-competitive, in that it reduces barriers currently undermining its ability to bring new products to market, and ensures that customers are afforded the opportunity to benefit from new services without unnecessary delay.

E. Will the PAR Enhance Economic Development in New Jersey While Maintaining Affordable Rates?

The Board **FINDS** Embarq's PAR will enhance economic development in the State while maintaining just and reasonable rates. We **FIND** that Embarq's PAR extends its Schools and Libraries program, which will enable schools, libraries and other institutions to have access to telecommunications equipment and services at substantially reduced rates, which will be a catalyst to economic development in New Jersey. We **FIND** that this program will enhance economic development in many of the same ways and for many of the same reasons as set forth in both Verizon PAR Orders.

Finally, because the PAR does not impose any earnings sharing constraint and permits rapid introduction of new services, Embarq should realize increased incentives to invest in the infrastructure needed to implement and market new products and services. The Board is hopeful that these investments will further encourage competition and enhance economic development in the State.

F. Does the PAR Contain a Comprehensive Program of Service Quality Standards?

The Board **FINDS** that the current service quality standards applicable to Embarq meet the 1992 New Jersey Act's requirement that its plan of alternative regulation contain a comprehensive program of service quality standards, with procedures for Board monitoring and review.

The Board agrees with the company that Embarq is currently subject to numerous service quality measures and reporting requirements as set forth in the Board's rules and regulations which will continue under the proposed PAR. We agree that there is no evidence in the record that Embarq's retail mass market services under review in the ILEC reclassification proceeding are inadequate from a service quality standpoint. However, the reporting requirements in the PAR and in the Stipulation and Agreement, to be discussed below, will enable the Board to monitor and review Embarq's services to ensure they remain of high quality. We agree that the record demonstrates that competition, along with Embarq's

compliance with the Board's service quality regulations for rate regulated services, will yield a comprehensive program of service quality standards and procedures for Board monitoring and review under the PAR.

G. Does the PAR Specifically Identify the Benefits to be Derived?

The Board **FINDS** that Embarq's PAR satisfies the requirement that it specifically identify the benefits to be derived from its implementation. We **FIND** that the following benefits constitute specifically identifiable benefits, which separately and collectively meet the Acts' mandate:

1. Continuation of affordable rates, in particular rates for residential basic exchange service;
2. Continuation of Embarq's commitment to universal service with enhancements to Lifeline service, including expanded eligibility criteria, easier enrollment procedures, and a customer outreach program;
3. Continuation of economic development fostered by continued advanced infrastructure deployment under the BFRR;
4. Continuation of benefits to schools and libraries;
5. Continuation of a comprehensive program of service quality standards;
6. Assurance that competitors are not disadvantaged or unduly prejudiced; and
7. Promotion of efficiency by reducing regulatory delay and increasing incentives to innovate and invest in the network.

H. Is the PAR in the Public Interest?

The Board **FINDS** that Embarq's PAR is in the public interest. In satisfying the requirements of the Act, the proposed plan provides specific benefits to the State and its citizens. The PAR ensures affordable and reasonable rates going forward, particularly in light of the Board's continuing oversight over any future rate changes for rate regulated services. The PAR strengthens Embarq's commitments to universal service by expanding substantially the current Lifeline program. The PAR extends infrastructure commitments, and provides substantial benefits to the State's educational system. These benefits are real and reasonably support a finding that the PAR is in the public interest. In conclusion, the Board **FINDS** that Embarq's PAR is clearly in the public interest, based on its many benefits to the State and its citizens, as discussed above and in the petition.

Therefore, the Board **CONCLUDES** that Embarq's plan satisfies the criteria set forth in N.J.S.A. 48:2-21.18 and otherwise complies with the Telecommunications Act of 1992. Accordingly, the Board **HEREBY APPROVES** the attached plan for an alternative form of regulation applicable to Embarq. The Board emphasizes that, except as expressly set forth herein or in the Telecommunications Act of 1992, all other provisions of Title 48 and Board regulations, Orders and policies will remain applicable to Embarq, unless the law hereinafter provides otherwise or the Board hereinafter orders or directs otherwise.

II Reclassification of ILEC Mass Market Retail Services and Adoption of the Stipulations and Agreements

Before the Board can adopt a proposed stipulation and agreement, it must examine the record to determine whether the proposal is a reasonable resolution of the issues in controversy, is in the public interest and is in accordance with law. Where, as here, the

proposed settlements are non-unanimous, the Board has the power to rely upon the stipulations as fact finding tools, but must also independently examine the record after providing an opportunity for any nonconsenting party to be heard. I/M/O the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates, 304 N.J. Super 247 (App. Div. 1997) (“PSE&G”). That opportunity to be heard was provided by the public hearings held on June 24, 2008 and on August 7, 2008, and through the opportunity to provide written comments.

The proposed Stipulations were described earlier. As adoption of those stipulations would result in reclassification of a majority of both Embarq’s and Verizon’s retail mass market services, the Board must review the record to determine whether such reclassification is warranted. The New Jersey Telecommunications Act of 1992, N.J.S.A. 48:2-21.16 et seq., authorizes the Board to determine, after notice and hearing, whether a telecommunications service is competitive based on, at a minimum, three criteria: (1) ease of market entry; (2) presence of competitors; and (3) the availability of like or substitute services in the relevant geographic area. N.J.S.A. 48:2-21.19(b). Based on the evidence presented in the record, for the reasons outlined below, the Board **FINDS** that Verizon and Embarq’s mass market retail services as enumerated in the Stipulations, meet the statutory reclassification criteria under N.J.S.A. 48:2-21.19 (*i.e.*, ease of market entry, presence of competitors, and availability of like or substitute services in the relevant geographic area), and therefore are appropriately reclassified as competitive.

Ease of Market Entry

Evidence of ease of entry is shown by many factors, including the number of carriers which have received certification from the Board to operate as CLECs in New Jersey. According to the evidence presented, there are currently over 100 traditional CLECs offering service to customers in New Jersey. The number of competitors that have already entered the market highlight the lack of difficulty as exhibited by CLECs using the Board’s “well-established, clearly defined” certification process. Those competitors include not only CLECs, but wireless, cable and VoIP providers, none of which need Board authority to enter the New Jersey market.

Testimony submitted by the witnesses on behalf of Verizon and Embarq demonstrated the success of competitors in gaining entry into the market in New Jersey, noting the expanding service offerings which residential and business customers in New Jersey may avail themselves of. In addition, parties noted the reduction of barriers to entry since the passage of the Telecommunications Act of 1996 (the “1996 Act”), as well as evolving technological advances contributing to declining costs of entry, which serve as yet another testament to the lack of any significant barriers to entry for competitors. Thus, the evidence provided sufficiently proves the ability of competitors to avail themselves of the opportunities provided by the 1996 Act and its implementing regulations for providers to compete in New Jersey, including CLECs, in addition to cable, wireless and VoIP providers.

The record reflects the ability of competitors to utilize the methods of entry embodied in the 1996 Act, under which the ILECs such as Verizon and Embarq are required to resell their services, interconnect with competitors’ facilities, offer UNEs and collocation, and provide intraLATA dialing parity and number portability. Pursuant to these requirements, this Board has certified numerous competitive providers to compete in the local exchange market, and put great effort into developing policies to effectuate the various unbundling and interconnection requirements, which have evolved since the initial passage of the 1996 Act.

Sprint has argued that the reclassification of basic retail telephone services should be reviewed in conjunction with a review of intrastate access charges arguing that high access charges create a barrier to entry. According to Sprint, basic retail services have always been provided as a regulated monopoly while access charges were established at high levels decades ago to subsidize low rates for basic services as part of an overall regulatory scheme. Sprint cites the Telco Act of 1992 as authority for prohibiting the Board from reclassifying basic rates without reviewing switched intrastate access rates. Using this as a pivot for its discussion, Sprint argues that intrastate access charges are a barrier to entry and that access charges cross subsidize basic services.

The Board disagrees with both arguments put forth by Sprint. As a preliminary matter, the Board's Order issued on December 21, 2007, identified the scope of this proceeding. Specifically, the Board stated that the investigation was initiated to determine whether ILEC provided mass market retail telecommunications services satisfy the statutory elements of ease of market entry, presence of other competitors, and the availability of like or substitute services in the relevant geographic area. Therefore, the issue of access charges was not identified as an issue in the proceeding. In fact, there were several rulings by Commissioner Butler that affirmed that determination. His rulings went on to state that access charges will, if necessary, be addressed in a separate proceeding on the Board's own motion or in response to a legitimate request. In any event, the Board **FINDS** that the record is devoid of any evidence that the level of access charges has or does create a barrier to entry. Sprint's presence in New Jersey, in addition to the 100 plus other competitors that have entered the market, supports a finding that no entry barriers exist. Second, Sprint has failed to show any evidence that cross subsidies from rate regulated services (access charges) to competitive services exist. To the contrary, the ILECs have included evidence in this record that no cross subsidy exists. The Board is satisfied, and **HEREBY FINDS** that, in the aggregate, competitive service revenues exceed competitive service costs and therefore no cross subsidies exist.

Based upon our review of the record developed in this proceeding, as referenced above, the Board **FINDS** that there are no barriers to entry that would preclude the reclassification of Verizon's and Embarq's mass market services as articulated in the Stipulations.

Presence of Competitors

Sufficient evidence was presented in this proceeding reflecting the existence of many competitors in the local exchange market. As noted previously in the discussion above on the ease of market entry, the Board has granted authorization to over 100 CLECs to offer service. Evidence presented in the proceeding on the ease of market entry is also supportive in the analysis of whether there are competitors. The existence of each authorized CLEC provider clearly provides evidence of competitors in the local exchange market. Various parties also pointed to FCC reports that a significant number of CLECs have reported that they are actively providing service in New Jersey. Additionally, as of December 31, 2007, 111 CLECs filed a "Statement of Gross Intrastate Revenue from Operation" Form AR3-1 with the Board evidencing earnings from operations within the State during the preceding year.

In addition to data provided on CLEC authorizations and CLEC service providers in New Jersey, parties also highlighted the pivotal fact that Verizon and Embarq are subject to competition from various intermodal competitors as well. As noted by the companies, they face competition from a combination of wireless, cable and VOIP competitors in all areas in which they provide service. Evidence in the record as to number and growth of participants in the competitive local exchange market, combined with the presence of CLECs, wireless, cable and

VOIP competitors in every market they operate in, provides a sufficient basis for the Board to find that there is a presence of competitors to both Verizon and Embarq in the local exchange market in New Jersey.

Thus, the Board may conclude that Verizon and Embarq's mass market services, as articulated in the Stipulations, are competitive under the statutory criteria based on the presence of competition faced by ILECs from CLECs, wireless, cable and VOIP providers.

No party directly refuted the evidence presented in the proceeding as to the presence of competitors to mass market services in the local exchange market. The Board, therefore, **FINDS** that there is sufficient evidence of the presence of competitors, such that the underlying evidence satisfies this criterion for reclassification.

Availability of Like and Substitute Services in the Relevant Geographic Area

The ILECs also argue that they satisfied the third criterion, availability of like or substitute services in the relevant geographic area, by evidence showing that the demand for substitutes, like CLEC, cable, wireless, and VoIP services, has been growing throughout the State. In making their arguments, the ILECs provided statistics which revealed not only the availability of substitutes, but increases in lines offered by its competitors. Although competitive conditions may vary throughout the State, the Board is satisfied that there is sufficient competition throughout the State to merit the findings that Verizon and Embarq's mass market retail services, as articulated in the Stipulation, are competitive. The evidence overwhelmingly shows that competitors offer substitutes to the ILECs' voice services. CLEC, cable, VOIP, and wireless providers all offer either stand alone and/or packages of services that consumers may, and do, purchase to replace ILEC services. The Board therefore **FINDS**, based on the evidence in the record, that like or substitute services are available in the relevant geographic area.

CONCLUSION

In reviewing the data submitted by the parties in the case, it is evident that sufficient competition exists to relieve both Verizon and Embarq from the Board's existing regulations for the mass market retail services articulated in the Stipulations. Therefore, based upon a thorough review of the record and the facts in this case, the Board **FINDS**, that there is sufficient evidence of the ease of entry into the market, of the existence of competitors in this market, and of the availability of like or substitute services to declare the retail mass market services, as described in the Stipulations, as competitive. Accordingly, for the reasons discussed above, the Board **FINDS** that sufficient evidence has been provided such that the Board **HEREBY FINDS** that those services are deemed competitive pursuant to N.J.S.A. 48:2-21.19, subject to the terms and conditions of the Stipulations as agreed to by the signatories. The Board notes that its finding for the reclassification of the services described above is limited to those retail services only, and does not affect any wholesale services, including access services.

As the Board has previously stated, in complex and technical cases, the adversary parties are often in the best position to work out the framework of a reasonable resolution of the issues. PSE&G, supra at 259. After review of the record, the Board also **FINDS** that the other provisions of the Stipulations are reasonable, are in the public interest and are in compliance with the law. As previously described, the Stipulations provide that residential basic exchange service, single-line basic business exchange service, non-recurring charges for installation of residential services, and residential DA service shall remain rate regulated, and subject to defined limits on any rate increases for the next three years. Additionally, both Stipulations

continue protections for Lifeline services, and continue certain social service programs at current rates including, among others, DA services for residential consumers with visual or physical impairments, Link-Up America services, and certain call blocking features. Accordingly, the Board **HEREBY ADOPTS** the Stipulations and incorporates them in their entirety by reference herein.

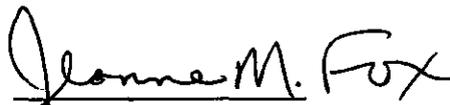
This Order shall not be construed to limit in any manner any regulatory authority granted to the Board as to the regulation of competitive telecommunications services in New Jersey pursuant to any local, state or federal laws, regulations, or rulings of a court of law. The Board notes that it will continue to monitor the manner in which the companies conduct their operations subsequent to the issuance of this Order. The Board notes that it still retains the authority, pursuant to N.J.S.A. 48:2-21.19 (d) to "reclassify any telecommunications service that it has previously found to be competitive if, after notice and hearing, it determines that sufficient competition is no longer present upon application of the criteria set forth in subsection b. of [N.J.S.A. 48:2-21.19]."

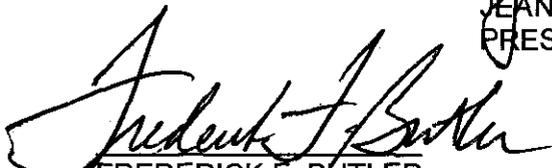
This Order shall not be construed to in any way release Verizon or Embarq from any obligations that currently exist under any and all applicable Board orders and rules currently in effect under the New Jersey Administrative Code on the effective date of this Order, or as amended going forward, including, but not limited to, the Board's current proceeding reviewing its telecommunications rules in Title 10 of N.J.A.C. Chapter 14 in Docket No. TX07060385.

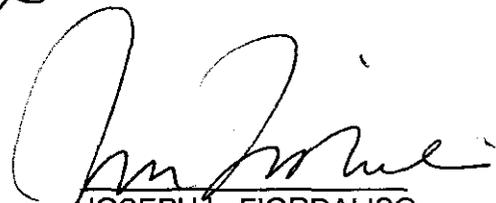
Moreover, this Order shall not be construed to relieve the companies of any obligations that exist today to respond in a timely manner to any customer complaints which are received by the Board and forwarded to them.

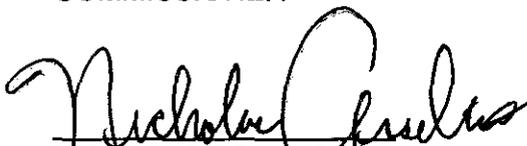
DATED: 8/20/08

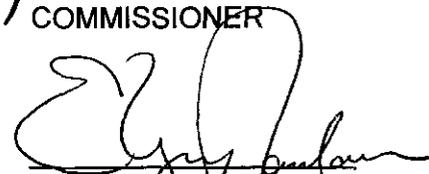
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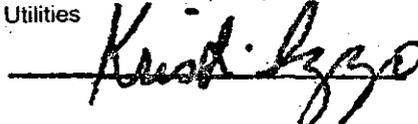

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
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 BOARD INVESTIGATION REGARDING THE
RECLASSIFICATION OF INCUMBENT LOCAL EXCHANGE CARRIER
(ILEC) SERVICES AS COMPETITIVE**

DOCKET NO. TX07110873

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Services (ILEC) as Competitive	Docket No. TX07110873
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STIPULATION AND AGREEMENT

Pursuant to *N.J.A.C.* 14:1-8.1 and 1:1-19.1(a), the Parties (defined below in paragraph one (1)) hereby agree as follows:

I. BACKGROUND

- (1) The parties to this Stipulation and Agreement are Verizon New Jersey Inc. ("Verizon NJ"); the Staff of the New Jersey Board of Public Utilities ("Staff"); and the New Jersey Division of Rate Counsel ("Rate Counsel") (collectively, the "Parties").
- (2) Verizon NJ is an incumbent local exchange carrier ("ILEC") that operates under an "alternative form of regulation" ("PAR-2") within the meaning of the Telecommunications Act of 1992, *N.J.S.A.* 48:2-21.16 *et seq.* (the "1992 Act").
- (3) Pursuant to *N.J.S.A.* 48:2-21.19(a), the Board cannot "regulate, fix or prescribe" the rates of competitive services. *N.J.S.A.* 48:2-21.19(a). Verizon NJ may adjust the rates of any service deemed competitive under *N.J.S.A.* 48:2-21.19(b) without seeking prior Board approval.
- (4) Under PAR-2, rate adjustments for regulated services are permitted after notice and hearing if the resulting rates are affordable and "just and reasonable." *In the Matter of the Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation, and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing*, BPU Docket No. TO01020095, Decision and Order (June 19, 2002) at page 39.
- (5) Under PAR-2, rates may be based on, among other things, "the use of an index, formula, price caps or zone of rate freedom." *N.J.S.A.* 48:2-21.17.

- (6) On November 28, 2007, in response to a request from Verizon NJ, the Board commenced this proceeding to investigate the regulatory treatment of retail mass market services provided by ILECs in New Jersey. The Board invited input from any and all interested parties, including but not limited to all registered telecommunications providers in the state, other parties that may have an interest in the matter, and Rate Counsel.
- (7) By order dated December 18, 2007, the Board granted intervenor status to Verizon NJ, United Telephone Company of New Jersey, Inc. d/b/a Embarq ("Embarq"), Sprint Communications Company, L.P., Sprint Spectrum, L.P. and Nextel of New York, Inc. (collectively "Sprint Nextel"), and Rate Counsel. The Board originally granted XO Communications Services, Inc. ("XO") intervenor status, but later granted XO's request to modify its status from intervenor to participant. By order dated December 18, 2007, the Board granted participant status to AT&T Communications of NJ, L.P. ("AT&T"), Cablevision Lightpath - NJ, Inc. ("Lightpath") and The New Jersey Cable Telecommunications Association ("NJCTA").
- (8) On December 14, 2007, Verizon NJ and Embarq filed initial testimony in support of reclassifying ILEC-provided retail mass market services as competitive.
- (9) The Verizon NJ mass market retail services at issue in this proceeding are attached hereto as Exhibit A. These services include, but are not limited to, residential basic exchange service; single-line business basic exchange service; residential directory assistance ("DA") service; and residential installation service.
- (10) The U.S. Department of Labor, Bureau of Labor Statistics ("Labor Department"), Consumer Price Indexes ("CPI") program produces monthly data on changes in the prices paid by urban consumers for a representative basket of goods and services. The Labor Department's website (www.bls.gov) contains a "CPI inflation calculator" that uses the average CPI for a given calendar year (representing changes in prices of all goods and services purchased for consumption by urban households), and allows users to determine what the price of a good or service would be today if its price increased by the average CPI for a given period. The CPI is a publicly available index, published by the federal government, and is the type of index contemplated for use in *N.J.S.A. 48:2-21.17*. The results of applying the CPI inflation calculator to Verizon's residential basic exchange service; single-line business basic exchange service; and residential installation service are set forth immediately below:
 - (a) Verizon NJ has not raised the price of its residential basic exchange service (including touch tone) since 1985, when the price of this service for the highest rate group was \$9.18 per month. The

current statewide price of this service is \$8.95 per month, which is lower than comparable rates in the nearby states of New York, Pennsylvania, Delaware, Maryland and Virginia. If the price of this service were adjusted for inflation under the Consumer Price Index Inflation Adjuster, from 1985 to 2008, the price of the service would be \$18.22 per month.

- (b) In 1985, the price of Verizon NJ's single-line business basic exchange service (including touch tone) for the highest rate group was \$14.83 per month. The current statewide price of this service is \$15.00 per month. If the price of this service were adjusted for inflation under the Consumer Price Index Inflation Adjuster, from 1985 to 2008, the price of the service would be \$38.43 per month.
 - (c) In 1985, Verizon NJ's non-recurring charges for installation of residential service was \$42.00. These charges are currently \$42.35. If this charge were adjusted for inflation under the Consumer Price Index Inflation Adjuster, from 1985 to 2008, it would be \$83.35.
- (11) Verizon currently offers four (4) free residential DA calls per month, and charges \$.50 cents per chargeable residential DA call after the monthly call allowance has been exceeded. In the majority of states, the average rate is \$1.25 per chargeable residential DA call. In New Jersey, telephonic DA providers price their services from "free" to \$2.49 per call without a free call allowance.
 - (12) On January 10, 2008, Rate Counsel and Sprint Nextel filed testimony opposing the reclassification of ILEC-provided retail mass market services.
 - (13) On January 29, 2008, Verizon NJ and Embarq filed rebuttal testimony.
 - (14) The Board conducted public hearings at different locations across the state on February 11, 13 and 14, 2008. At these hearings, members of the public commented on whether the Board should reclassify the services at issue, and thus allow ILECs to adjust the rates of their mass market services without seeking prior Board approval.
 - (15) The Board conducted evidentiary hearings on February 25 and 26, 2008. At these hearings, witnesses for the parties appeared under oath and were available for cross-examination on the subjects covered in their pre-filed testimony.

II. STIPULATED FINDINGS

- (16) The resolution of this contested matter through the adoption of the stipulated positions set forth herein best serves the interests of judicial

economy and preservation of valuable corporate, judicial and administrative resources and is, therefore, in the public interest.

- (17) The terms and conditions covered by this Stipulation and Agreement reflect negotiated terms and conditions that include concessions made by the Parties in the spirit of compromise to bring the matter to an appropriate resolution.
- (18) It is a condition of this Stipulation and Agreement that the Board adopt a final Order approving this Stipulation and Agreement without change or further conditions. Should the Board fail to adopt a final Order approving this Stipulation and Agreement, then this Stipulation and Agreement shall be deemed null and void and of no force and effect. The Parties agree that this Stipulation and Agreement is a negotiated agreement and represents a reasonable balance of the competing interests involved in this proceeding. The contents of this Stipulation and Agreement shall not in any way be considered, cited or used by any of the Parties as an indication of any Party's position on any related or other issue litigated in any other proceeding or forum, except to enforce the terms of this Stipulation and Agreement.
- (19) This Stipulation and Agreement is voluntary, consistent with the law, and fully dispositive of all issues regarding Verizon NJ's services in controversy in this proceeding.
- (20) This Stipulation and Agreement contains the entire understanding of the Parties, and there are no other terms, conditions, representations or warranties that form a part hereof.
- (21) The Parties could not agree on whether Verizon NJ mass market retail services at issue in this proceeding meet the statutory reclassification criteria under *N.J.S.A. 48:2-21.19*.
 - (a) With the exception of Verizon NJ's residential basic exchange service including usage, single-line business basic exchange service including usage, non-recurring charges for installation of residential services, and residential DA service, the Parties agree that the remainder of Verizon NJ's mass market services shall be classified as competitive.
 - (b) Verizon NJ's residential basic exchange service, single-line business basic exchange service, non-recurring charges for installation of residential services, and residential DA service shall remain rate regulated. The parties agree, however, that Verizon NJ should be permitted to adjust the rates for these services in accordance with the rate caps set forth in Section III below, and that the resulting rate caps will produce rates that are affordable

and just and reasonable under the standards in PAR-2 and *N.J.S.A.* 48:2-21.17.

III. SETTLEMENT TERMS AND CONDITIONS

To resolve the dispute without the expense, inconvenience, and uncertainty of further litigation and with specific acknowledgement by all Parties that the terms and conditions of the specific services covered by this Stipulation and Agreement represent terms and conditions negotiated among and between the Parties, with all Parties making concessions in the interests of amicable resolution, the Parties stipulate to the following:

- (22) Verizon NJ's residential basic exchange service, single-line business basic exchange service, non-recurring charges for installation of residential services, and residential DA service shall remain rate regulated. Upon Board approval of this Stipulation and Agreement, and upon effective date of the appropriate tariffs, Verizon NJ shall be authorized to charge no more for these services than the authorized rate caps set forth below:
- (a) Residential basic exchange service: Verizon NJ shall charge no more than \$11.95 per month for the first year after the effective date of the appropriate tariffs; no more than \$14.45 per month for the second year; and no more than \$16.45 per month for the third year.
 - (b) Single-line business basic exchange service: Verizon NJ shall charge no more than \$18.50 per month for the first year after the effective date of the appropriate tariffs; no more than \$22.00 per month for the second year; and no more than \$25.50 per month for the third year. Notwithstanding the above, the parties agree that the actual rates for single-line business exchange service shall not exceed these caps or the multiline business rates in effect until the conclusion of the proceeding referenced in paragraph twenty-six (26), whichever is lower.
 - (c) Non-recurring charges for installation of residential services: Verizon NJ shall charge no more than \$45.00 for the first year after the effective date of the appropriate tariffs; no more than \$47.50 for the second year; and no more than \$50.00 for the third year.
 - (d) Residential DA service: Callers shall receive two (2) free call(s) per month. Once the monthly free call allowance has been exceeded, Verizon NJ shall charge no more than \$1.25 per chargeable DA call for the first year after the effective date of the

appropriate tariffs; no more than \$1.50 per chargeable DA call for the second year; and no more than \$1.50 per chargeable DA call for the third year.

- (23) Any increases to Verizon NJ's residential basic local exchange service are not applicable to Verizon NJ's lifeline services which remain regulated and may not be increased absent Board approval. Verizon NJ will continue its outreach efforts to enroll eligible New Jersey residents in the Lifeline program.
- (24) Verizon NJ shall also continue the following social services programs – in their current form, and, to the extent applicable at current rates – pending the proceeding identified in paragraph twenty-six (26) below:
- (a) A 25 % discount on local message units and intrastate intra-LATA message charges for hearing-impaired persons.
 - (b) The Link-Up America program, which provides discounts on service connection charges for qualified low-income customers.
 - (c) Free DA calls for consumers with a visual or physical impairment who submit proper certifications to Verizon NJ.
 - (d) Repair priority given to consumers with serious illness or physical disability.
 - (e) Call block features offered at no charge to all customers.
- (25) With the exception of Verizon NJ's services discussed in paragraphs twenty-two (22) through twenty-four (24), the remainder of Verizon NJ's mass market retail services, listed in Exhibit A, shall be classified as competitive within the meaning of *N.J.S.A. 48:2-21.19*. Although competitive and not otherwise rate regulated, Verizon has voluntarily agreed that in order to reach an amicable resolution of this matter and to avoid rate shock and to otherwise ensure reliable service, the services listed immediately below shall be subject to the following rate caps until the conclusion of the proceeding referenced in paragraph 26:
- (a) Caller Identification with Name: Verizon NJ shall charge no more than \$9.25 per month for the first year after the effective date of the appropriate tariff filings; no more than \$11.00 per month for the second year; and no more than \$12.75 per month for the third year.
 - (b) Non-Published Listings: Verizon NJ shall charge no more than \$2.20 per month for the first year after the effective date of the

appropriate tariff filings; no more than \$2.95 per month for the second year; and no more than \$3.70 per month for the third year. Customers who have obtained a court order of protection shall receive non-published listings at no charge.

- (c) Call Trace: Verizon NJ shall charge no more than \$1.25 per attempt for the first year after the effective date of the appropriate tariff filings; no more than \$1.50 per attempt for the second year; and no more than \$1.75 per attempt for the third year.
- (26) The Board shall initiate a proceeding to re-evaluate the competitiveness of the services identified in paragraphs (22)(a) through 22(d), twenty-three (23) and twenty-four (24) within ninety (90) days after the third anniversary of the effective date of the appropriate tariffs reflecting the first year increases. The rate caps for the services identified in paragraphs twenty-two (22) through twenty-five (25) shall remain in effect until the conclusion of that proceeding. As part of that proceeding, Rate Counsel may seek reclassification of any retail mass market competitive services listed in Exhibit A.
- (27) Verizon shall continue to abide by all provisions and obligations contained in PAR-2, and applicable statutory and regulatory obligations set forth in Title 48 of New Jersey Statutes Annotated and Title 14 of the New Jersey Administrative Code. This Stipulation and Agreement shall not change Verizon NJ's service quality obligations under PAR-2, and Verizon NJ shall continue to file and maintain tariffs for competitive services unless the Board determines that tariffs are not required for particular services. Either party may seek to modify these obligations in the proceeding identified in paragraph twenty-six (26).
- (28) Until the proceeding identified in paragraph twenty-six (26) is commenced, no party to this Stipulation and Agreement shall petition the Board to modify the rate caps in paragraphs twenty-two (22) and twenty-five (25) above. However, if the Board issues an order reducing intrastate access charges that Verizon is permitted to charge, Verizon may request that the Board adjust the rate caps established in this Stipulation and Agreement upon written request to the Board, after hearing, upon notice, wherein Verizon shall have the burden of proof to show that the increase, change, or alteration is just and reasonable given the reduction in access charges. Prior to any such rate adjustment, Verizon shall also demonstrate that the requested rates for residential basic exchange service will be affordable within the meaning of PAR-2. Rate Counsel reserves its right to oppose any such petition filed by Verizon. Moreover, either party may seek to modify the provisions of this Stipulation and Agreement, including the rate caps identified in paragraphs twenty-two (22) and twenty-five (25), in the proceeding identified in paragraph twenty-six (26).

- (29) In the event of a catastrophic event, such as an act of God, Verizon NJ may petition the Board for relief arising from such catastrophic event.
- (30) Verizon NJ shall provide Rate Counsel and the Board with the reports listed on Exhibit B hereto.
- (31) Within 30 days of the Board's approval of this Stipulation and Agreement, and the effective date of the appropriate tariffs, Verizon NJ shall withdraw its appeal with prejudice of the CLEC Reclassification Order¹ and the DA Reclassification Order.²
- (32) This Stipulation and Agreement shall be governed by the substantive law of New Jersey without regard to choice of law rules.
- (33) If any provisions of this Stipulation and Agreement are held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Stipulation and Agreement shall remain in full force and effect.
- (34) The entire Stipulation and Agreement has been reviewed by and is acceptable to the Parties and their counsel as to form, content and meaning. The Stipulation and Agreement was drafted jointly by the Parties; it was not drafted by any one Party and shall not be construed against any Party based on its preparation.
- (35) In the event of default or breach of any term and/or condition of this Stipulation and Agreement, the injured Party shall be entitled to file or use this Stipulation and Agreement to enforce the terms and conditions thereof.
- (36) This Stipulation and Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one agreement.
- (37) Any notice to be given pursuant to this Stipulation and Agreement shall be in writing and shall be given or made by confirmed facsimile or by certified, registered or overnight mail addressed as follows or to any other address upon thirty (30) days' advance written notice to the other Parties:

¹ *I/M/O Board Investigation regarding the Reclassification of Competitive Local Exchange Carrier ("CLEC") Services as Competitive*, N.J. B.P.U. Docket No. TX06120841, Telecommunications Order (June 29, 2007) (the "CLEC Reclassification Order").

² *I/M/O Board's Review of the Classification of Verizon New Jersey Inc.'s Director Assistance Services as Competitive and Associated Service Quality*, N.J. B.P.U. Docket Nos. TX06010057 and TT97120889, Decision and Order (June 28, 2007) (the "DA Reclassification Order").

To: Verizon New Jersey Inc.
540 Broad Street
Newark, NJ 07102
Attn: Richard A. Chapkis

To: Rate Counsel
31 Clinton Street, 11th Floor
Newark, NJ 07101
Attn: Christopher White

To: Board Staff
2 Gateway Center, 8th Floor
Newark, New Jersey 07101
Attn: Anthony Centrella

Division of Law
124 Halsey Street, 5th Floor
Newark, New Jersey 07101
Attn: Caroline Vachier

- (38) This Stipulation and Agreement may not be amended or any part of its provisions waived, except by a writing executed by all of the Parties. This Stipulation and Agreement is the valid, legal and binding obligation of the Parties, enforceable against them in accordance with their terms.
- (39) The parties hereby agree to be bound to this Stipulation and Agreement, and they acknowledge that they are authorized on behalf of their respective clients to execute this Stipulation and Agreement and to bind their respective clients by their signatures below.
- (40) The Parties collectively request that the Board approve the Stipulation and Agreement and adopt it as a final decision and order therefore bringing all issues regarding the Verizon NJ services at issue in this proceeding to closure.

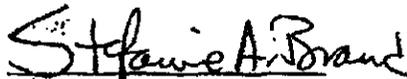
In witness whereof, and with the advice of counsel and intending to be legally bound, the Parties have executed this Stipulation and Agreement of Settlement.

Respectfully submitted,



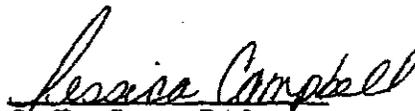
Richard A. Chapkis
Vice President
& General Counsel
Verizon New Jersey Inc.

Dated: July 1, 2008



Stefanie Brand
Director
New Jersey Division
of Rate Counsel

Dated: July 1, 2008



Geoffrey Gersten, DAG
Jessica Campbell, DAG

ANNE MILGRAM
Attorney General of New Jersey
Attorney for the Staff of the
Board of Public Utilities

Dated: July 1, 2008

EXHIBIT A

SERVICE	DESCRIPTION	TARIFF REFERENCE
700/900 Call Blocking Option	Prevents local exchange residence and business lines, as well as PBX trunks and Centrex lines not equipped with Automatic Route Selection (ARS), from completing calls to 700/900 information service numbers.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A10.4.3
Additional Listings	Optional additional residence and business listings which appear in the telephone directory.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.7.1
Alternate Local Message Unit Rate Treatment (Econopak)	Local message unit rate treatment in the following exchange areas: South Orange, Orange, Union City, Jersey City, and Newark.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A105.2.5
Announcement Services - Audiotext	Dial-It Network permits a large group of callers to simultaneously utilize the public switched network to directly dial a designated "976" telephone number from all exchange and public service type Company network services within the same LATA.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A9.5.1 and A9.5.2
-Automatic Answering and Announcement Service	This service furnished, where suitable facilities are available, for such purposes as weather forecasts, time-of-day, news reports or advertising.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A9.5.2
Break Hunt Arrangement	When exchange access lines or PBX trunk groups are arranged in an incoming hunting sequence, the sequence may be broken to meet the customer's night service or reduced operating needs.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A10.3.2
Business Answering Line	An offering whereby an individual central office (exchange access) line arranged for one-way (incoming) service terminates in the answering bureau's intercept facilities either directly or by means of a concentrator-identifier service.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A9.3.1
Call Block	Provides customers with a way to block incoming calls from up to a maximum of 6 telephone numbers. Route to a standard announcement.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A105.4.1
Call Forward Busy Line / Don't Answer	Combination of two features on one exchange access line. Call Forwarding Busy Line allows all calls that are made to a line showing a busy condition to be automatically forwarded to another line; Call Forwarding Don't Answer allows all calls that are made to a line that does not answer to be automatically forwarded to another line.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.6

EXHIBIT A

Call Forwarding	Capability to forward calls to another number	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.3
Call Trace	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.3. Provides for call detail information regarding the origination of a call on a single activation basis.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.1
Call Waiting	Audible tone signal over an existing connection to indicate incoming call.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.3
Caller ID	Enables display of incoming calling number of a CPE device attached to customer line. Includes ACR Anonymous Call Rejection - allows customer to reject calls from parties that have used blocking to prevent the display of their telephone number on the Caller ID device.	B.P.U.-N.J. No.2, Exchange and Network Services, Section AI05.4.1
Caller ID Manager with Name	Allows a customer who is on a call to receive the name and telephone number of a second caller and then determine how to manage that call - either put one on hold and answer the other; connect the second call to a hold or busy announcement or a voice messaging service; or conference the two calls together.	B.P.U.-N.J. No.2, Exchange and Network Services, Section AI 05.4.3.5
Caller ID with Name	Same as Caller ID, but name of incoming caller is displayed, as well as number.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.1
Central Office Concentrator Service	An arrangement provided at the option of the telephone answering bureau.	B.P.U.-N.J. No.2, Exchange and Network Services, Section AI 09..3.5
Concentrator-Identifier Service	Concentrator Identifier service equipment, has a maximum capacity of 100 answering lines and six channels between equipments provided in connection with Secretarial Answering Service.	B.P.U.-N.J. No.2, Exchange and Network Services, Section AI 09..3.1
Conference Service	Connections among three or more exchange services within the same LATA on one connection at the same time.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A6.2.3
Convention Hall Service	For furnishing of switched telephone communications services for a number of customer-provided station sets at one or more locations of the same interconnected system, including Joint User locations. For use in the managing and operating of a public auditorium or exhibition hall, the service provides Touch-Tone dialing, exchange and toll connections, and inter-communications between station sets of the same system.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A9.1.7

EXHIBIT A

<p>Directory Assistance Service- Residential 411, List Service, Connect Request Service</p>	<p>Residential Directory Assistance- Customers may obtain assistance in determining telephone numbers by dialing Directory Assistance (DA); List Service - the furnishing of telephone numbers in written form by the Directory Assistance offices to match the names and addresses submitted by the Company by a customer according to a prescribed format; and Connect Request Service - provides DA customers with the ability of having their requested telephone numbers automatically dialed for an additional charge.</p>	<p>B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.7.2</p>
<p>Do Not Disturb</p>	<p>Provides residential customers the ability to block or allow incoming calls to their line during customer specified blocks of time. Calls blocked by the customer will not ring at the customer's premises or provide Caller ID information.</p>	<p>B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.18</p>
<p>Distinctive Ring</p>	<p>Distinctive Ring enables customers to have one or two additional telephone numbers assigned to a single local exchange line. Each number will ring distinctively so that it may be identified on an incoming call.</p>	<p>B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.7</p>
<p>Econopak</p>	<p>Local message unit rate treatment in the following exchange areas: South Orange, Orange, Union City, Jersey City, and Newark.</p>	<p>B.P.U.-N.J. No.2, Exchange and Network Services, Section AI 05.2.5</p>
<p>Exchange Access Lines -Basic</p>	<p>Basic exchange service is telecommunications service furnished to a residential and single line business line within a specified geographical area for the purpose of local calling and to gain access to and from the telecommunications network for message telecommunication service. Basic exchange service includes Touch Tone service. Basic exchange service as defined herein does not include O.K., Trunks, Centrex Network Exchange Access Facilities, and ESSX-1 Network Access Registers.</p>	<p>B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.2.1 Section AI05.2.1.A (Business Flat Rate)</p>
<p>Foreign Central Office District</p>	<p>Provides the customer with basic exchange access service from a central office serving a district (other than the district in which the customer is located) in that same exchange area.</p>	<p>B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.1.5</p>
<p>Foreign Exchange</p>	<p>Provides for the connection of a customer's location to a central office other than the central office in which the customer resides.</p>	<p>B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.1.4</p>

EXHIBIT A

Foreign Listings	Any of the types of additional listings covered in the tariff that may be provided either in a different directory or in the same directory under a different geographical heading from that under which the customer is normally listed.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.7.1
IntelliLinQ BRI (Residential)	Simultaneous access, transmission and switching of voice, data and imaging services on a business line. ~ IntelliLinQ Basic Rate Interface (BRI) Service is an optional, network service arrangement which uses the Basic Rate Interface (BRI) Arrangement of the Integrated Services Digital Network (ISDN) architecture. ISDN describes the end-to-end digital telecommunications network architecture which provides for the simultaneous access, transmission and switching of voice, data and imaging services. (Normally 2B+D channels.)	B.P.U.-N.J. No.2, Exchange and Network Services, Section A105.4.14
Joint User Service	A shared arrangement which allows the business exchange telephone service of a customer (i.e., customer of record) to be used by other individuals, firms or corporations when designated by the customer.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A2.2.12
Low Use Message Rate Service	A local message is a communication from a telephone or other Customer Provided Equipment (CPE) to another telephone or CPE bearing the designation of a central office within the local service area established from time to time by the Company as the local service area for the exchange serving the calling telephone.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.2.2 Section A105.2.5A (Econopak Service)
Make Busy Arrangements	Service whereby the customer's incoming hunting sequence may be broken to meet the customer's night service or reduced operating needs.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A10.3.2
Message Service Interface	Enables the customer to use the call related data to provide clients with services such as centralized call coverage and voice messaging functions.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A9.6.3
Network Interface Jacks	A standard registered jack or interface device.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A10.1
Non-Published Listings	Customer requested, primary listings omitted from the directory, subject to additional monthly and nonrecurring charges.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.7.1

EXHIBIT A

Non-recurring Charges	Charges applied for work done in connection with the same service at the same time at one or more locations of that service.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A3.
Number-to-Number Referral Service	Provides a recorded announcement that states the line number status and a referral number for calls placed to a disconnected or changed residence or business line number.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A10.3.3
Priority Call	Distinguishes up to a maximum of six calling telephone numbers from all others by using a distinctive alerting signal.	B.P.U.-NJ. No.2, Exchange and Network Services, Section A105.4.1
PBX Trunks (Residential)	A transmission path which serves as an exchange access line connecting P.B.X. switching equipment or similar equipment with a central office.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A105.2.1.B
Remote Call Forwarding	Automatic reverse charge service customer can arrange for others to call him without paying the toll charge from a specific exchange to the customer's location.	B.P.U.-NJ. No.2, Exchange and Network Services, Section A5.4.4
Repeat Dialing	Automatically redials last outgoing telephone number dialed by the customer.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.1
Residence Service Variety Package (RSVP)	A custom calling type of service comprised of standard and optional features.	B.P.U.-NJ. No.2, Exchange and Network Services, Section A105.4.5
Return Call (*69)	*69 automatically provides a voice statement of the telephone number of the most recent incoming call and when activated then dials that telephone number.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.1
Ring Count Change Interface	Allows customer's clients to request, via customer service, a change in the number of rings before calls are forwarded via Call Forwarding-Busy Line Don't Answer or Call Forwarding-Don't Answer, rather than requiring clients to make this change via a separate call to the company.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A9.6.6
Select Class of Call Screening	A service by means of which the administrative handling of toll calls, made by the customer's telephone users, is performed by Company employees.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A10.4.1
Select Forward	Provides a way to forward incoming calls from up to a maximum of 6 calling numbers to another numbers.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A105.4.1
Selective Calling Service	Alternate rate treatment for dial-type communication to exchange areas within a customer's LATA that would otherwise be 1 - 10 or 11-15 mile toll routes and to adjacent exchange areas within a residence customer's LATA that would otherwise be a 16-20 mile toll route.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A6.3.2

EXHIBIT A

Service Observing Arrangements	Enables a customer to monitor the quality of service rendered on telephone calls in the conduct of business without an audible indication to the parties conversing that a call is being observed.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A2.5.4
Special Assistance Charges - Local	Operator assisted local calls, including local Customer Requested Interrupt and Busy Line Verification	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.2.2D
Speed Dialing	Provides for calling a seven or ten digit number by dialing only a few digits. Comes in 8 number and 30 number version	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.3
Switched Redirect	When activated by the customer, will redirect all or part of the customer's incoming switched voice and data calls to another location(s) or other site. Customer locations mean premises other than the company premises owned or leased by the customer or a subsidiary of the customer.	B.P.U.-N.J. No.2, Exchange and Network Services, Section AI09.6.5
Telephone Answering Service	Arrangement whereby the patron arranges to have calls answered when his/her telephone service is unattended.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A11
The WorkSmart Package	A discount billing arrangement for business customers under a fixed term.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.17
Three Way Call Transfer	This feature allows exchange service customers to transfer incoming calls to another party, thus freeing their line to initiate or receive other calls. This feature also enables the customer to add a third party to a call in progress and, after establishing the three-way conference, to drop off the call without disconnecting the remaining end users. Usage continues to be recorded and will be charged to the originator of the three-way conference.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.1.4
Three Way Calling	Allows an existing call to be held and a third telephone number to be dialed and added to the connection.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5A.11
Toll Diversion	Limits directly dialed calls to the central office designations in the customers local calling area; also denies access to zero (operator) dialing.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A1 0.4.2
Tone Block	Provides Call Waiting subscribers with the ability to deactivate Call Waiting and prior to initiating a call.	B.P.U.-N.J. No.2, Exchange and Network Services, Section A5.4.3

EXHIBIT A

V-H Measurements	Method of measurement for determining mileage distances based on vertical and horizontal grid lines to determine rate to be charged to customers for mileage in connection with Foreign Exchange, Secretarial, and other private line type services provided to single line business and residence customers. B.P.U.-N.J. No.2, Exchange and Network Services, Section A11
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EXHIBIT B

REPORTING REQUIREMENTS

Provide to Board and Rate Counsel:

- a. Copies of FCC Form 477 filings when filed at the FCC (filed every six months for New Jersey).
- b. If the Board does not grant Verizon NJ's pending waiver petition, copies of semi-annual monitoring reports that Verizon NJ files with the Board.
- c. Copies of annual reports filed with the Board, including revenues and associated ARMIS reports showing number of NJ residential and single-line business customers.
- d. Copies of the quarterly report showing the number of Lifeline and Link-up connections.
- e. Copies of tariff filings showing rate changes to competitive services.
- f. Data related to the demand for discretionary features and NJ numbers ported to all entities upon request in the proceeding referenced in paragraph 26 of the attached Stipulation and Agreement. [Data related to discretionary features is subject to two (2) year retention timeframes].

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Services (ILEC) as Competitive	Docket No. TX07110873
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STIPULATION AND AGREEMENT

Pursuant to *N.J.A.C.* 14:1-8.1 and 1:1-19.1(a), the Parties (defined below in paragraph one (1)) hereby agree as follows:

I. BACKGROUND

- (1) The parties to the Stipulation and Agreement (“Stipulation”) are United Telephone Company of New Jersey, Inc. d/b/a Embarq (“Embarq”); the Staff of the New Jersey Board of Public Utilities (“Staff”); and the New Jersey Division of Rate Counsel (“Rate Counsel”) (collectively, the “Parties”).
- (2) Embarq is an Incumbent Local Exchange Carrier (“ILEC”) in the State of New Jersey that operates pursuant to rate-of-return regulation.
- (3) Pursuant to *N.J.S.A.* 48:2-21.19(a), the Board cannot “regulate, fix or prescribe” the rates of competitive services. *N.J.S.A.* 48:2-21.19(a). Embarq may adjust the rates of any service deemed competitive under *N.J.S.A.* 48:2-21.19(b) without seeking prior Board approval.
- (4) Under an alternative form of regulation (“PAR”), rates may be based on, among other things, “the use of an index, formula, price caps or zone of rate freedom.” *N.J.S.A.* 48:2-21.17.
- (5) On November 28, 2007, in response to a request from Verizon New Jersey Inc. (“Verizon NJ”), the Board commenced this proceeding to investigate the regulatory treatment of retail mass market services provided by ILECs in New Jersey. The Board invited input from any and all interested parties, including but not limited to all registered telecommunications providers in the state, other parties that may have an interest in the matter, and Rate Counsel.

- (6) By order dated December 18, 2007, the Board granted intervenor status to Verizon NJ, Embarq, Sprint Communications Company, L.P., Sprint Spectrum, L.P. and Nextel of New York, Inc. (collectively "Sprint Nextel"), and Rate Counsel. The Board originally granted XO Communications Services, Inc. ("XO") intervenor status, but later granted XO's request to modify its status from intervenor to participant. By order dated December 18, 2007, the Board granted participant status to AT&T Communications of NJ, L.P. ("AT&T"), Cablevision Lightpath - NJ, Inc. ("Lightpath") and The New Jersey Cable Telecommunications Association ("NJCTA").
- (7) On December 14, 2007, Dr. Brian Staihr filed testimony on behalf of Embarq in support of reclassifying Embarq's services as competitive. On December 14, 2007, Verizon NJ also filed testimony in support of reclassifying its retail mass market services as competitive.
- (8) The Embarq mass market retail services at issue in this proceeding are attached hereto as Exhibit A. These services include, but are not limited to, residential basic exchange service; single-line business basic exchange service; residential directory assistance ("DA") service; and residential installation service.
- (9) The U.S. Department of Labor, Bureau of Labor Statistics ("Labor Department"), Consumer Price Indexes ("CPI") program produces monthly data on changes in the prices paid by urban consumers for a representative basket of goods and services. The Labor Department's website (www.bls.gov) contains a "CPI inflation calculator" that uses the average CPI for a given calendar year (representing changes in prices of all goods and services purchased for consumption by urban households), and allows users to determine what the price of a good or service would be today if its price increased by the average CPI for a given period. The CPI is a publicly available index, published by the federal government, and is the type of index contemplated for use in *N.J.S.A. 48:2-21.17*. The results of applying the CPI inflation calculator to certain Embarq and national average rates for residential basic exchange service; single-line business basic exchange service; and residential installation service are set forth immediately below:
 - (a) Embarq has not raised the price of its residential basic exchange telephone service since March of 1991. See, Decision and Order, BPU Docket No. TR90070726J. Embarq's current rate for residential basic exchange service (including touch tone and the 1986 tax credit) is \$7.95. The Federal Communications Commission reports that the national average monthly rate for basic exchange service (including touch tone) is \$15.03 (as of

October 2006).¹ If the national average price were adjusted for inflation under the Consumer Price Index Inflation Adjuster from 2006 to 2008, the national average price of the service would be \$16.02.

- (b) Embarq has not raised the price of its single-line business exchange service since March of 1991. See, Decision and Order, BPU Docket No. TR90070726J. Embarq's current rate for single-line business exchange service (including touch tone and the 1986 tax credit) is \$16.40. The Federal Communications Commission reports that the national average monthly rate for business exchange service (including touch tone) is \$33.54 (as of October 2006). If the national average price were adjusted for inflation under the Consumer Price Index Inflation Adjuster from 2006 to 2008, the national average price of the service would be \$36.04.
 - (c) Embarq has not raised the price of its non-recurring charge for installation of residential service since March of 1991. See, Decision and Order, BPU Docket No. TR90070726J. Embarq's current non-recurring charge for installation of residential service is \$25.00. The Federal Communications Commission reports that the national average monthly non-recurring charge for installation of residential service is \$39.44 (as of October 2006). If this charge were adjusted for inflation under the Consumer Price Index Inflation Adjuster from 2006 to 2008, the charge would be \$42.38.
- (10) Embarq currently offers ten (10) free residential DA calls per month, and charges \$0.20 per chargeable residential DA call after the monthly call allowance has been exceeded. In the majority of states, the average rate is \$1.25 per chargeable residential DA call. In New Jersey, telephonic DA providers price their services from "free" to \$2.49 per call without a free call allowance.
 - (11) On January 10, 2008, Rate Counsel and Sprint Nextel filed testimony opposing the reclassification of ILEC-provided retail mass market services.
 - (12) On January 29, 2008, Verizon NJ and Embarq filed rebuttal testimony.
 - (13) The Board conducted public hearings at different locations across the state on February 11, 13 and 14, 2008. At these hearings, members of the public commented on whether the Board should reclassify the services at issue, and thus allow ILECs to adjust the rates of their mass market services without seeking prior Board approval.

¹ Rebuttal Testimony of Dr. Brian K. Staihr at p. 9 (citations omitted).

- (14) The Board conducted evidentiary hearings on February 25 and 26, 2008. At these hearings, witnesses for the parties appeared under oath and were available for cross-examination on the subjects covered in their pre-filed testimony.
- (15) Embarq has filed a petition and a proposed Plan for Alternative Regulation (“PAR”) with the Board pursuant to *N.J.S.A. 48:2-21.18*, consistent with the terms of this Stipulation and Agreement. *N.J.S.A. 48:2-21.18(a)* provides that “[a] local exchange telecommunications company may petition the board to be regulated under an alternative form of regulation.” The board shall “review the plan and may approve the plan, or approve with modifications, if it finds, after notice and hearing, that the plan: (1) will ensure the affordability of protected telephone services; (2) will produce just and reasonable rates for telecommunications services; (3) will not unduly or unreasonably prejudice or disadvantage a customer class or providers of competitive services; (4) will reduce regulatory delay and costs; (5) is in the public interest; (6) will enhance economic development in the State while maintaining affordable rates; (7) contains a comprehensive program of service quality standards, with procedures for board monitoring and review; and (8) specifically identifies the benefits to be derived from the alternative form of regulation.” A copy of Embarq’s proposed PAR pursuant to *N.J.S.A. 48:2-21.18(a)*, as filed with the Board, is attached to this Stipulation and Agreement as Exhibit B.

II. STIPULATED FINDINGS

- (16) The resolution of this contested matter through the adoption of the stipulated positions set forth herein best serves the interests of judicial economy and preservation of valuable corporate, judicial and administrative resources and is, therefore, in the public interest.
- (17) The terms and conditions covered by this Stipulation and Agreement reflect negotiated terms and conditions that include concessions made by the Parties in the spirit of compromise to bring the matter to an appropriate resolution.
- (18) It is a condition of this Stipulation and Agreement that the Board adopt final Orders approving Embarq's PAR and this Stipulation and Agreement without change or further conditions. Should the Board fail to adopt final Orders approving either Embarq's PAR or this Stipulation and Agreement, then this Stipulation and Agreement and Embarq's PAR shall be deemed null and void and of no force and effect. The Parties agree that this Stipulation and Agreement is a negotiated agreement and represents a reasonable balance of the competing interests involved in this proceeding. The contents of this Stipulation and Agreement shall not in any way be considered, cited or used by any of the Parties as an indication of any Party's position on any related or other issue litigated in any other proceeding or forum, except to enforce the terms of this Stipulation and Agreement.
- (19) This Stipulation and Agreement is voluntary, consistent with the law, and fully dispositive of all issues regarding Embarq's services in controversy in this proceeding.
- (20) This Stipulation and Agreement contains the entire understanding of the Parties, and there are no other terms, conditions, representations or warranties that form a part hereof.
- (21) The Parties could not agree on whether Embarq's NJ mass market retail services at issue in this proceeding meet the statutory reclassification criteria under *N.J.S.A. 48:2-21.19*.
 - (a) With the exception of Embarq's residential basic exchange service, business basic exchange service, non-recurring charges for installation of residential services, and residential DA service, the Parties agree that the remainder of Embarq's mass market services shall be classified as competitive.
 - (b) Embarq's residential basic exchange service, business basic exchange service, non-recurring charges for installation of residential services, and residential DA service shall remain rate

regulated. The parties agree, however, that Embarq should be permitted to adjust the rates for these services in accordance with the rate caps set forth in Section III below, and that the resulting rate caps will produce rates that are affordable and just and reasonable under the standards set forth in *N.J.S.A. 48:2-21.17*.

III. SETTLEMENT TERMS AND CONDITIONS

To resolve the dispute without the expense, inconvenience, and uncertainty of further litigation and with specific acknowledgement by all Parties that the terms and conditions of the specific services covered by this Stipulation and Agreement represent terms and conditions negotiated among and between the Parties, with all Parties making concessions in the interests of amicable resolution, the Parties agree to stipulate to the following:

- (22) Upon Board approval of this Stipulation and Agreement, Embarq is authorized upon the effective date of the appropriate tariff to combine rate elements applicable to residential basic local exchange service and single-line business local exchange service as follows:
 - a. Residential basic local exchange service rate: to \$7.95 per month (\$7.80/month plus the U-Touch rate of \$.75/month minus \$.60 monthly tax credit); and
 - b. Single-line business local exchange rate: to \$16.40 (\$15.50/month plus the U-Touch rate of \$1.50/month minus \$.60 monthly tax credit).

- (23) Embarq's residential basic exchange service, business basic exchange service, non-recurring charges for installation of residential services, and residential DA service shall remain rate regulated. Upon Board approval of this Stipulation and Agreement, approval of the PAR, and upon the effective date of the appropriate tariffs, Embarq shall be authorized to charge no more for these services than the authorized rate caps set forth below:
 - (a) Residential basic local exchange service: Embarq shall charge no more than \$10.95 per month for the first year after the effective date of the appropriate tariffs, no more than \$13.45 per month for the second year, and no more than \$15.45 per month for the third year.

- (b) Business exchange service: Embarq shall charge no more than \$19.20 per month for the first year after the effective date of the appropriate tariffs, no more than \$22.00 per month for the second year, and no more than \$25.50 per month for the third year.
- (c) Non-Recurring charges (Embarq's Residence Primary Charge for Service Connection and Installation): Embarq shall be permitted no more than a 20 percent, or \$5.00, increase over a period of three (3) years after the effective date of the appropriate tariff (*e.g.*, the 20 percent increase can be effected immediately, or it can be taken in steps at Embarq's discretion, as long as the total increase is no more than 20 percent).
- (d) Residence Directory Assistance: Callers shall receive two (2) free call(s) per month. Once the monthly free call allowance has been exceeded, Embarq shall charge no more than \$1.25 per chargeable DA call for the first year after the effective date of the appropriate tariffs; no more than \$1.50 per chargeable DA call for the second year; and no more than \$1.50 per chargeable DA call for the third year.
- (24) Any increases to Embarq's residential basic local exchange service are not applicable to Embarq's lifeline services which remain regulated and may not be increased absent Board approval. Embarq will continue its outreach efforts to enroll eligible New Jersey residents in the Lifeline program.
- (25) Embarq shall also continue the following social services programs – in their current form, and, to the extent applicable at current rates – pending the conclusion of the proceeding identified in paragraph twenty-seven (27) below:
- LinkUp (non-recurring charges);
 - Directory Assistance and Directory Assistance Call Completion to residential customers with a visual or physical inability to use a directory or directory source;
 - Non-list Service to those residential customers who provide a Protective Order;
 - Non-Pub Service to those residential customers who provide a Protective Order;
 - Residential Call Trace, per call;
 - Residential Per Call Blocking;
 - Residential Per Line Blocking;
 - Residential 700/900 Blocking;
 - Residential Toll Block/Operator Screening;
 - Residential Billed Number Screening;

- IntraLATA MTS Service to hearing impaired residence customers;
- Intra-Municipal Calling

(26) With the exception of Embarq's services discussed in paragraph twenty-three (23) through twenty-five (25), the remainder of Embarq's mass market retail services, listed in Exhibit A, shall be classified as competitive within the meaning of *N.J.S.A. 48:2-21.19*. Although competitive and not otherwise rate regulated, Embarq has voluntarily agreed that in order to reach an amicable resolution of this matter and to avoid rate shock and to otherwise ensure reliable service, the services listed immediately below shall be subject to the following rate caps until the conclusion of the proceeding referenced in paragraph 27:

- a) Caller ID: Embarq shall charge no more than \$8.60 per month for the first year after the effective date of the appropriate tariff; no more than \$10.20 per month for the second year; and no more than \$11.80 per month for the third year.
- b) Non-Published Residential Telephone Service (Directory Listing): Embarq shall charge no more than \$0.85 per month for the first year after the effective date of the appropriate tariff; no more than \$1.15 per month for the second year; and no more than \$1.45 per month for the third year. Customers who have obtained a court order of protection shall receive non-published listings at no charge.

(27) The Board shall initiate a proceeding to re-evaluate the competitiveness of the services identified in paragraphs 23(a) through 23(d), twenty-four (24) and twenty-five (25) within ninety (90) days after the third anniversary of the effective date of the appropriate tariffs reflecting the first year increases. The rate caps for the services identified in paragraph 23(a) through 26 shall remain in effect until the conclusion of that proceeding. As part of that proceeding, Rate Counsel may seek reclassification of any retail mass market competitive services listed in Exhibit A.

(28) Embarq shall abide by all provisions and obligations contained in its PAR, and applicable statutory and regulatory obligations set forth in Title 14 of the New Jersey Administrative Code. This Stipulation and Agreement shall not change Embarq's service quality obligations under its PAR and shall continue to file and maintain tariffs for competitive services unless the Board determines that tariffs are not required for particular services. Either party may seek to modify these obligations in the proceeding identified in paragraph twenty-seven (27).

- (29) Until the proceeding identified in paragraph twenty-seven (27) is commenced, except as set forth in this paragraph and in paragraph thirty-one (31), no party to this Stipulation and Agreement shall petition the Board to modify the rate caps in paragraphs twenty-three (23) and twenty-six (26) above. However, if the Board issues an order reducing intrastate access charges that Embarq is permitted to charge, Embarq may request that the Board adjust the rate caps established in this Stipulation and Agreement upon written request to the Board, after hearing, upon notice, wherein Embarq shall have the burden of proof to show that the increase, change, or alteration is just and reasonable given the reduction in access charges. Prior to any such rate adjustment, Embarq shall also demonstrate that the requested rates for residential basic exchange service will be affordable as required by law. Rate Counsel reserves its right to oppose any such petition filed by Embarq. Moreover, either party may seek to modify the provisions of this Stipulation and Agreement, including the rate caps identified in paragraphs twenty-three (23) through twenty-six (26), in the proceeding identified in paragraph twenty-seven (27).
- (30) This Stipulation and Agreement shall supersede the limitations on rate increases applicable to Embarq set forth in Paragraph 1 of Attachment A to the Stipulation of Settlement in BPU Docket No. TM05080739.
- (31) In the event of a catastrophic event, such as an act of God, Embarq may petition the Board for relief arising from such catastrophic event.
- (32) Embarq shall provide Rate Counsel and the Board with the reports listed on Exhibit C hereto.
- (33) This Stipulation and Agreement shall be governed by the substantive law of New Jersey without regard to choice of law rules.
- (34) If any provisions of this Stipulation and Agreement are held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Stipulation and Agreement shall remain in full force and effect.
- (35) The entire Stipulation and Agreement has been reviewed by and is acceptable to the Parties and their counsel as to form, content and meaning. The Stipulation and Agreement was drafted jointly by the Parties; it was not drafted by any one Party and shall not be construed against any Party based on its preparation.
- (36) In the event of default or breach of any term and/or condition of this Stipulation and Agreement, the injured Party shall be entitled to file or

use this Stipulation and Agreement for any purposes whatsoever, including, but not limited to, enforcing the terms and conditions thereof.

- (37) This Stipulation and Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one agreement.
- (38) Any notice to be given pursuant to this Stipulation and Agreement shall be in writing and shall be given or made by confirmed facsimile or by certified, registered or overnight mail addressed as follows or to any other address upon thirty (30) days' advance written notice to the other Parties:

To: United Telephone Company of New Jersey, Inc. d/b/a Embarq
240 N. 3rd Street, Suite 201
Harrisburg, PA 17101
Attn: Richard A. Hrip
Jeanne W. Stockman

To: Rate Counsel
31 Clinton Street, 11th Floor
Newark, NJ 07101
Attn: Christopher J. White

To: Board Staff
Two Gateway Center, 8th Floor
Newark, New Jersey 07102
Attn: Anthony Centrella

Division of Law
124 Halsey Street, 5th Floor
Newark, New Jersey 07101
Attn: Caroline Vachier

- (39) This Stipulation and Agreement may not be amended or any part of its provisions waived, except by a writing executed by all of the Parties. This Stipulation and Agreement is the valid, legal and binding obligation of the Parties, enforceable against them in accordance with their terms.
- (40) The Parties hereby agree to be bound to this Stipulation and Agreement, and they acknowledge that they are authorized on behalf of their respective clients to execute this Stipulation and Agreement and to bind their respective clients by their signatures below.

- (41) The Parties collectively request the Board approve the Stipulation and Agreement and adopt it as a final decision and order therefore bringing all issues regarding the Embarq services at issue in this proceeding to closure.

In witness whereof, and with the advice of counsel and intending to be legally bound, the Parties have executed this Stipulation and Agreement.

Respectfully submitted,

UNITED TELEPHONE COMPANY
OF NEW JERSEY, INC. d/b/a EMBARQ

August 13, 2008
Date

By: Colleen A. Foley
Saul Ewing LLP
Colleen A. Foley, Esq.
Attorney for Petitioner

ANNE MILGRAM, ESQ.
ATTORNEY GENERAL OF NEW JERSEY

Date

By: _____
Geoffrey R. Gersten, Esq.
Deputy Attorney General

RONALD K. CHEN
PUBLIC ADVOCATE OF NEW JERSEY
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL

Date

By: _____
Stefanie A. Brand, Esq.
Director, Division of Rate Counsel

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August 13, 2008
Date

By: Colleen A. Foley
Saul Ewing LLP
Colleen A. Foley, Esq.
Attorney for Petitioner

ANNE MILGRAM, ESQ.
ATTORNEY GENERAL OF NEW JERSEY

8/17/08
Date

By: Geoffrey R. Gersten
Geoffrey R. Gersten, Esq.
Deputy Attorney General

RONALD K. CHEN
PUBLIC ADVOCATE OF NEW JERSEY
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL

Date

By: _____
Stefanie A. Brand, Esq.
Director, Division of Rate Counsel

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By: Colleen A. Foley
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Attorney for Petitioner

ANNE MILGRAM, ESQ.
ATTORNEY GENERAL OF NEW JERSEY

Date

By: _____
Geoffrey R. Gersten, Esq.
Deputy Attorney General

RONALD K. CHEN
PUBLIC ADVOCATE OF NEW JERSEY
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL

August 13, 2008
Date

By: Stefanie A. Brand
Stefanie A. Brand, Esq.
Director, Division of Rate Counsel

United Telephone Company of New Jersey, Inc. d/b/a/ Embarq

Section 3		
General Regulations	2	See Tariff NJ BPU – No. 3, Section 2
Service Charges	3	See Tariff NJ BPU – No. 3, Section 3
Service Connection Charges	3.1.1 3.1.2	Charges which apply to the establishment of service for a customer. Primary Charge (business), Secondary Charge, Record Charge, and Trip Charge.
Restoral of Service Charges	3.2.1	For the restoral of exchange service after suspended for non-payment.
Returned Check Charge	3.2.2	Charge assess to customer for failure to maintain sufficient funds in checking account.
Miscellaneous Service Connection Charges	3.2.3	List of services excluded from non-recurring charges.
Construction Charges and Other Special Charges	4	See Tariff NJ BPU – No. 3, Section 4
Construction Charges – Public Highways	4.1.2	EQ determines the type of construction of its plant on public highways.
Construction Charges – Private Property	4.1.3	EQ determines normal method of construction according to conditions.
Construction Charges – Underground Service Connections	4.1.4	Underground service is provided by EQ when it is considered more economical than aerial connection.
Service Entrance Facilities	4.2	EQ is not required to construct, own, operate, or maintain an extension on any property unless legally authorized to do so.
Exchange Services	5	See Tariff NJ BPU – No. 3, Section 5
Intramunicipal Calling Service	5.1.1.B	Non-optional service arrangement provided in municipalities served by more than one exchange where ILEC toll charges would normally apply between the two exchanges.
Foreign Exchange Service	5.1.4	Exchange service furnished from central office of an exchange other than that normally serving the area in which customer is located. Intracompany (nonadjacent) (adjacent) Intercompany (Monthly Supplemental Charge)
Direct Inward Dialing	5.1.6	Establish DID Trunk Group Permits calls to customer-provided equipment, requiring outpulsing of digits from the network, to reach a specific line without the assistance of an attendant.

Bold font indicates Tariff N.J. B.P.U. - No. 3

		Service Description
		Remove or add numbers to DID number block (per number)
Rotary Access Service	5.1.7	An arrangement of lines such that all incoming calls to the grouping are directed automatically to an idle line in the group. Also referred to as line hunting.
Premium Exchange Services	5.4	See also Tariff NJ BPU – No. 3, Section 13.2 (Obsolete Premium Exchange Services)
Extension Access Line Service	5.4.1	Telephone service connected with main service either directly or through some switching device.
Custom Calling Services	5.4.3	<p>Includes Speed Calling, (8) (30) Three-Way Calling (monthly) or Per use basis Call Forward Features (programmable) (fixed) (busy – fixed) (busy – programmable) (no answer – fixed) (no answer – programmable) (additional paths, per path) (group) (group busy) (group no answer) (group fixed)</p> <p>Enhanced Call Waiting, Call Waiting with Options, Call Waiting ID (comes with caller ID or Enhanced Call Waiting Hot Line, SignalRing® Plus First number Second number Third number Return Call (per line monthly) or Per use basis Repeat Dial (per line monthly) or Per use basis Caller ID (per line) Caller ID with Name, Anonymous Call Rejection (ACR), Call Trace (per successful attempt) Selective Call Acceptance, Selective Call Forward, Selective Call Rejection, Selective Call Ring, Per-Call Blocking,</p>

Bold font indicates Tariff N.J. B.P.U. - No. 3

United Telephone Company of New Jersey, Inc. d/b/a/ Embarq

		Per-Line Blocking, Three-Way Calling with Transfer.
Remote Call Forwarding (RCF)	5.4.4	Allows all calls dialed to a telephone number equipped for RCF service to be automatically forwarded to another dialable telephone number. Offered as local or toll. If Local – Local Measured Rates apply* Initial period (4 minutes) Each additional minute *50% discount 9:00 PM to 9:00 AM daily
Public Communication Service	5.5	Payphone Line Service is one-party exchange service for use by pay telephone providers, location owners, and interexchange carriers. The service is furnished for connection with coin, coinless, or combination pay telephone equipment to the Embarq network. Local Measured Rates apply* Initial period (4 minutes) Each additional minute *50% discount 9:00 PM to 9:00 AM daily Optional call detail (per call) Features Incoming/Outgoing Screening Incoming Blocking Coin Control Additive (Each Line) Answer Supervision (Each Line)
Directory Services	5.6	Non-Published Telephone Service Non-Listed Telephone Service, Dual-Name Listings, Foreign Exchange Service (home exchange listing) Foreign Listings Alternate Call Numbers Listings Furnished without Extra Charge Additional Listings/Additional Directory Lines Duplicate Listings Reference Listings Indented and Caption Listings Temporary Listings WATS Service Listings Business Directory Assistance Service Directory Assistance Call Completion, National Directory Assistance Service, Vanity Listings – Local Foreign Exchange All Other Listings
Local Operator Services	5.7	Operator assistance charge for: Time of Day, Calling Card Customer Dialed, Operator Station-to-Station, Person-to-Person calls Billed Number Screening
Blocking - "700/500/900" Information Service	5.8	Provides customers ability to block origination of direct-dialed calls to 700/500/900 information service numbers.

Bold font indicates Tariff N.J. B.P.U. - No. 3

United Telephone Company of New Jersey, Inc. d/b/a/ Embarq

Privacy ID	5.9	Provides Caller ID subscribers with the ability to identify unavailable, unknown, blocked, and private numbers.
Talking Call Waiting	5.10	Allows the customer to hear the name associated with the directory listing of the calling number after hearing the call waiting tone while the customer is on the line.
Message Telecommunications Service	6	<i>Already competitive service</i> See Tariff NJ BPU – No. 3, Section 6
Wide Area Telecommunication Service	7	<i>Already competitive service</i> See Tariff NJ BPU – No. 3, Section 7
Connections of Premises Equipment to Exchange Services	8	<i>CPE unregulated by FCC</i> See Tariff NJ BPU – No. 3, Section 8
Central Office Services	9	See Tariff NJ BPU – No. 3, Section 9
Dial Switching Systems	9.1	
Advanced Business Connection	9.1.1	A central office communications system arrangement provided in connection with individual lines from digital central office equipment located on EQ premises. Access line (1B rate) Basic ABC additive (varies by number of lines and term commitment) Rotary Access Service Lines (per line) Executive Private Line (per line) Multiple Appearance Directory Numbers per Customer group Multi-Exchange Differential (per line) Optional Features
Emergency Reporting Services	9.2	911 and 911E Services
9 1 1 Enhanced Service (9-1-1 E)	9.2.1	Includes ALI information, trunks, backup and facilities provided to public safety answering points (PSAPs). Automatic Location Identification (ALI) (per 1,000 Access Lines) Automatic Location Identification (ALI) (Data Base Partitioning) Primary Trunk (each) Alternative Trunk (each) Operator Trunk (each)

Bold font indicates Tariff N.J. B.P.U. - No. 3

United Telephone Company of New Jersey, Inc. d/b/a/ Embarq

Wireless E911 Phase 2		Instant Network Backup (each) Interexchange Facilities Customer Premise Equipment Enhanced MF Signaling per PSAP Extended ALI Display Format per PSAP ALI Database Upgrade for Wireless Phase 2 per PSAP
Reverse Notification Telephone Database Service	9.2.3	Supports the ability of PSAPs to make broadcast notification calls to areas under their jurisdiction in the event of emergencies. One-time update (CD-RCM) Monthly update (CD-RCM) 12 month term
Telephone Answering Service	9.3	
Secretarial Answering Service	9.3.1	A type of telephone service operated by a customer of EQ who in turn provides answering service to other EQ customers.
Secretarial Direct Line Service	9.3.2	Exchange service terminating directly on customer-provided secretarial switchboard for use of customers who do not have other exchange service.
Miscellaneous Service Offerings	10	See Tariff NJ BPU – No. 3, Section 10
United TransLink sm	10.1	A digital private line service available within the LATA providing for simultaneous two-way transmission of isochronous digital signals at speeds of 1.544 Mbps.
United DigiLink sm	10.2	A digital transmission service designed to transmit signals end-to-end over digital facilities routed through EQ central offices.
Network Services Packaging	10.7	Offerings that combine certain Custom Calling Service options into packages at rates that provide a monthly savings over rates that would apply if the services were purchased individually. Includes IN TOUCH with Call Waiting IN TOUCH with Return Call CALL MANAGER, Priority Package, ESSENTIALs, CLASSICS CALLING PACKAGE, ELITE.
Frame Relay Service	10.8	A fast packet network that permits the transmission of data at speeds up to DS3 using permanent virtual circuits (PVCs). Allows customer to allocate circuit bandwidth as needed.

Bold font indicates Tariff N.J. B.P.U. - No. 3

Lightlink® Service	10.10	Furnished for private line intraLATA intraexchange and interexchange communications using only digital transmission facilities providing for the simultaneous transmission of isochronous digital signals at DS3 speeds (44.736 Mbps).
Blocking - Toll Service and Operator Screening	10.11	Provide customers with the capability to block origination of customer direct-dialed calls with the exception of toll-free calls. Also provides for manual intervention of call attempts (0-) with an explanation to the party attempting to dial a call that only collect and calling cards are permitted from that line.
Toll and Casual Dialing Restriction	10.12	Prevents the completion of 1+, 0+, 0-, 00-, 01/011+, 900, 976, 500, 700, DA, etc.
Call Line Identifier	10.13	Used to attempt to trace and identify, at the request of the subscriber, the source of obscene, harassing, and/or other nuisance type of telephone calls. 30 – Day Period (per line) 12 – Month Period (per line) Renewal Request for 30 days or 12 months - same number(s) per line
Satisfaction Guarantee Program	10.14	Provided for business customers who subscribe to any business service provided by EQ. Customer may cancel service within 90 days of installation without incurring termination liability when customer is not satisfied with service provided by EQ.
Voice Business Continuity	10.15	Allows business customer to establish predetermined alternate routing plans for incoming voice traffic.
V – H Measurements	11	See Tariff NJ BPU – No. 3, Section 11
Channel Services	12	Includes intracompany and intercompany services, not limited to Private Line Services (for voice, data, alarm, control), Tie Lines, Off-Premises Extensions or PBX Stations, and Foreign Exchange Service. Rewire Charge and additional at same time 1000 Series Channels 2000/3000 Series Channels Channel Conditioning Same exchange (Subsequent installed) C-1 C-2 C-4 Inter exchange (Subsequent Installed) C-1 C-2 C-4 D-1 (Installed with channel or subsequent) Signaling Arrangement Type A Type B

Bold font indicates Tariff N.J. B.P.U. - No. 3

United Telephone Company of New Jersey, Inc. d/b/a/ Embarq

		Type C E&M Automatic Ringing Same Exchange Service Different Exchange Service Terminate on Key System Same Exchange Service Different Exchange Service See Tariff NJ BPU – No. 3, Section 12
Obsolete Exchange Service	13	Call Screening Packages Res Block of Time Bus Discount Plan Special Packages (Res) Special Packages (Bus) Basic Rate Interface (BRI) See Tariff NJ BPU – No. 3, Section 13
Obsolete Service Offerings	14	<i>CPE unregulated by FCC</i> See Tariff NJ BPU – No. 3, Section 14
Trial Offerings	15	See Tariff NJ BPU – No. 3, Section 15
Integrated Services Digital Network (ISDN)	16	A local exchange telecommunications service that provides integrated voice and data communications capability. Include ISDN-BRI and ISDN PRI. ISDN-BRI Rates ISDN-PRI Rates See Tariff NJ BPU – No. 3, Section 16 and Section 13.6 (Obsolete Basic Rate Interface)
Special Packaged Offerings	17	See Tariff NJ BPU – No. 3, Section 17 and Section 13.5 (Obsolete Special Packaged Offerings)
Solutions - Residence	17.1	A series of bundles permitting Residential customers to receive line, features, and services for a flat monthly rate. Includes Personal II Solution, Home II Solution, Safe and Sound II Solution, Core Solution Plus, Special Plan Bundle,

Bold font indicates Tariff N.J. B.P.U. - No. 3

United Telephone Company of New Jersey, Inc. d/b/a/ Embarq

		Simple Solution, Standard Home Phone Service II, Progressive Plan Follow Me Plan.
Solutions - Business	17.2	A series of bundles permitting Business customers to receive line, features, and services for a flat monthly rate. Includes Sure Solution II, Priority Solutions, Economy Solution, Rotary Classic Solution, Economy Bundle II A, Complete Business Bundle, Additional Complete Business Bundles and Term Discount Plans on Business Solutions bundles.
Custom Access Solutions	17.3	An intraexchange digital service designed to provide for the integration of multiple voice channels. Without ISDN-PRI functions (per voice channel) With ISDN-PRI functions (per voice channel)
Centrex II	17.4	A central office communications system provided on individual access lines from EQ central office equipment. The service provides local exchange access, interexchange access, intrasystem communication, and Centrex II feature packages.
Connection Central Bundle	17.5	An optional Business service enrollment plan that permits a customer to receive features and services for a flat monthly rate for each bundle provided.
PRI Bundle - Business	17.6	An optional business service enrollment plan that permits a customer to receive ISDN PRI Bundle features and services for a flat monthly rate for each bundle provided.
Multiline Bundle	17.7	AN optional business service enrollment plan that permits customers to receive local exchange service and additional features and services for a flat monthly rate for each Multiline Bundle provided. Two year commitment period per bundle Three year commitment period per bundle
ATM Service	18	A connection-oriented fast packet local, intraLATA, and intrastate InterLATA network service that permits the transmission of high-speed data, voice, and video traffic using cell switching technology. See Tariff NJ BPU – No. 3, Section 18

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EXHIBIT A
ALTERNATIVE REGULATION PLAN

United Telephone Company of New Jersey, Inc. d/b/a Embarq

INTRODUCTION

This Plan for Alternative Regulation ("PAR") replaces rate base/rate of return regulation for United Telephone Company of New Jersey, Inc. d/b/a Embarq ("Embarq"). This PAR is submitted by Embarq pursuant to the New Jersey Telecommunications Act of 1992, *N.J.S.A.* 48:2-21.18(a). Unless otherwise addressed herein, this PAR governs certain services that remain rate regulated¹ under the Telecommunications Act of 1992, *N.J.S.A.* 48:2-21.16 et seq.

I. TERM AND EFFECT

This PAR will commence upon Board approval. The terms of the PAR will remain in effect until approval of a modified Plan or a new Plan by the Board. During the term of this PAR, any changes in rates that remain rate regulated shall require Board approval.

Embarq will be submitting for Board approval a proposed Stipulation and Agreement with regard to I/M/O the Board Investigation Regarding The Reclassification of Incumbent Local Exchange Services (ILEC) as Competitive, Docket No. TX07110873 ("Stipulation and Agreement"), which establishes terms applicable until further Order of the Board. This PAR will be interpreted and applied in a manner consistent with the terms of the proposed Stipulation and Agreement. In the event the Board does not approve the proposed Stipulation and Agreement, then this PAR will not go into effect.

II. COMMITMENTS TO INFRASTRUCTURE DEPLOYMENT, DISCOUNTED PROGRAMS, AND LIFELINE SERVICE

A. Infrastructure Deployment – Embarq will continue its broadband deployment to its customers based upon a Bona Fide Retail Request ("BFRR") Program focused on carrier serving areas ("CSAs"), as set forth in paragraph 4 of Attachment A (dated January 13, 2006) to

¹ For purposes of this PAR, "rate regulated" services (described as "noncompetitive services" in Title 48) shall mean Embarq services other than those (1) designated by the Board as competitive, including services designated as competitive at In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Services (ILEC) as Competitive, Docket No. TX07110873; or (2) not regulated by the Board. Jurisdiction over wholesale services is governed by the Federal Act subject to FCC and state commission oversight, and these services are not subject to, or governed by this PAR.

the Stipulation of Settlement approved by the Board at Docket No. TM05080739.² Specifically, when bona fide requests totaling at least 50 retail access lines are received by Embarq for broadband service from a single CSA, Embarq will provide DSL service, or a comparable service, in that CSA within twelve months of receipt of such requests totaling at least 50 retail lines or more, Embarq will provide a bill message to customers twice annually, in the July and January bills, advising them of the availability of its BFRR program. Embarq will continue to advise the BPU and Rate Counsel of the manner in which it administers the program.

B. Schools and Libraries Discount Program – Embarq will continue its discount program for schools and libraries for services (including ATM; Frame Relay, and PRI data services) provided by Embarq, as set forth in paragraph 3 of Attachment A (dated January 13, 2006) to the Stipulation of Settlement approved by the Board at Docket No. TM05080739. Embarq, at its discretion, may add services subject to the discount program based upon customer and business needs. This discount program is included in Embarq New Jersey's tariffs. These discounts are in addition to any discounts from qualified E-rate program that any eligible participant may avail themselves of.

C. Lifeline Service – Embarq will continue its Lifeline program as set forth in paragraph 2 of Attachment A (dated January 13, 2006) to the Stipulation of Settlement approved by the Board at Docket No. TM05080739, which includes the following components: (a) an effective end user rate of \$0.95 per month; (b) educational promotion of Embarq's Lifeline program twice yearly via bill message included in all Embarq customers' bills; and (c) concurrent with the bill message in (b) above, notification to county social services providers in each county served by Embarq of program availability. Lifeline participants may choose to purchase and pay for optional vertical features at applicable tariff rates. Program eligible customers shall not be disqualified due to past due amounts; however, they can be limited to basic exchange rate service.

² *In the Matter of United Telephone Company of New Jersey, Inc. d/b/a Sprint and LTD Holding Company for Approval Pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 of a Change of Ownership and Control, Docket No. TM05080739, Order dated March 9, 2006.*

Embarq's Lifeline Program shall include automatic enrollment of its existing and new Embarq customers who participate in and provide a valid telephone number associated with their Embarq basic local exchange telephone service to any of the social program agencies identified in Embarq's New Jersey tariff (Tariff N.J. B.P.U. – No. 3, Fifth Revised Page 56). Embarq shall implement an automatic enrollment program within three (3) months: (a) of Board entry of a final order relative to Embarq at BPU Docket No. TX07110873; and (b) receipt of accurate and current information from the agencies/programs identified in Embarq's New Jersey tariff (Tariff N.J. B.P.U. – No. 3, Fifth Revised Page 56). Embarq's Lifeline Program will also provide for self-certification of low income senior customers (ages 65 and over) at or below 150% of the Poverty Level (as published in the Federal Register) who provide a valid telephone number associated with their Embarq basic local exchange telephone service. Embarq shall define, administer and implement the automatic enrollment program and the low income senior program, with the cooperation of Board Staff and Rate Counsel.

III. STREAMLINED PROCESS FOR NEW SERVICES, CHANGE PRICES OF EXISTING SERVICES, REVENUE NEUTRAL FILINGS, AND WITHDRAWAL OF SERVICES

A. Introduce New Services: A streamlined process to introduce new services will enable customers to benefit immediately from the capabilities of an advanced telecommunications infrastructure and competition. Board approval is required to classify any new service offering as competitive.

1. Unless the Board takes affirmative action through a deficiency letter transmitted from the Secretary of the Board, all new service offerings shall become effective on thirty (30) days' notice, after filing with the Board, without the requirement for prior Board approval.
2. The filing shall include a brief description of the service and a copy of the relevant tariff pages with all terms and conditions.
3. For new services proposed as competitive offerings, the filing to classify a service as a competitive service offering will include sufficient information to show compliance with *N.J.S.A. 48:2-21.19(b)*.

4. Optional services or packages may be withdrawn on thirty (30) days' notice, provided that they were available for a minimum of sixty (60) days.
5. New services may be introduced by Embarq and optional services or packages may be withdrawn by Embarq on less than thirty (30) days' notice if the Board transmits a Secretarial Letter acknowledging the introduction or withdrawal of such services. As a prerequisite to the issuance of such a letter, Embarq will provide information to the Board and Rate Counsel at the time of filing showing either:
 - a) there will be no material harm to customers, or
 - b) there are clear benefits to customers, or
 - c) a comparable service is already being provided by competitors.

This provision cannot be used to deaverage rates and does not apply to existing protected services, to the extent that services must continue to be available on a stand-alone basis.

The Board shall retain its authority to investigate and suspend, if necessary, all aspects of the service filing. The streamlined filing procedures herein do not affect Embarq's existing authority, under certain circumstances, to file certain service offerings on one-day notice.

B. Rate Stability:

1. Increases in rates for rate regulated services (described as "noncompetitive services" in Title 48) will require Board approval.³
2. This PAR shall supersede the limitations on rate increases applicable to Embarq set forth in Paragraph 1 of Attachment A to the Stipulation of Settlement in BPU Docket No. TM05080739.⁴

³ See, e.g., *In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Services (ILEC) as Competitive*, Docket No. TX07110873.

⁴ *In the Matter of United Telephone Company of New Jersey, Inc. d/b/a Sprint and LTD Holding Company for Approval Pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 of a Change of Ownership and Control*, Docket No. TM05080739, Order dated March 9, 2006.

C. Revenue Neutral Rate Restructures:

Embarq is not permitted to implement revenue neutral rate adjustments until authorized by further Order of the Board. Except as permitted in either Paragraph 29 or Paragraph 31 of the Stipulation and Agreement, Embarq shall not otherwise seek revenue neutral rate adjustments until commencement of the proceeding referenced in Paragraph 27 of the Stipulation and Agreement. Nothing in this PAR shall preclude Embarq from seeking revenue neutral rate restructures at any time in accordance with Paragraph 29 or Paragraph 31 of the Stipulation and Agreement. As permitted either by this PAR or by the Stipulation and Agreement, as appropriate, Embarq may propose for the Board's review and approval, revenue neutral rate restructures for Embarq's rate regulated services. Such filings may be supported by currently available and prospective data as described below. Revenue neutral rate restructures will not be limited to rate restructures within service categories and shall generally not be used to geographically deaverage rates.

Embarq will make a revenue neutral rate restructuring filing sixty (60) days before the proposed effective date, and serve both the Board and Rate Counsel. The Board review shall conclude with the decision of the Board, in writing, as soon after the filing as possible. No proposed rate adjustment under this section shall take effect without Board approval. Modification or rejection of an Embarq-proposed revenue neutral rate restructure is not grounds for terminating this PAR or limiting Embarq's obligations under this PAR. As part of its filing, Embarq must submit the following:

1. A description of the service(s) affected and an explanation as to why the restructure is proposed;
2. Calculations demonstrating the revenue neutral effect of the proposed restructure;
3. A description of the impact of the proposed restructure on all affected classes of customers, demonstrating that no class is unduly advantaged over another; and
4. Notice with copies of the filing, at the time of filing, shall be provided to Rate Counsel.

D. Exogenous Events: Consistent with the Board's orders approving alternative regulation plans, in addition to its authority under Title 48 of the New Jersey Statutes

and in addition to the revenue neutral rate restructuring provisions at III.C., above, Embarq will be permitted to increase (or required to decrease) rates for its rate regulated services if there occurs a major, unexpected extraordinary or exogenous event, beyond its control, that has a material, substantial and demonstrable impact on its financial condition.⁵ Proposed rate adjustments will be filed for the Board's approval pursuant to the requirements specified below.⁶ The allocation of the effects of an exogenous event shall be on a total company basis between interstate and intrastate jurisdictions, and rate regulated and competitive services, subject to Board approval.

Embarq will make its proposed rate adjustment filing, and will copy Rate Counsel on such filing, resulting from a significant exogenous event within 60 days of the date on which the effects of that event are known and calculated (but not more than 12 months since the occurrence of the exogenous event). Review by Rate Counsel and the Board shall conclude with the decision of the Board, in writing, as soon thereafter as possible. No proposed rate adjustment under this section shall take effect until Board approval and the Board shall retain the right to determine the appropriate rate design. Modification or rejection of an Embarq proposed exogenous event rate adjustment is not grounds for terminating the Plan, or limiting Embarq's obligations thereunder. As a part of its filing, Embarq will submit the following:

1. A description of the exogenous event and an explanation as to why the event has a material, substantial, and demonstrable impact on its financial condition;
2. Data which describe and quantify the estimated financial impact to Embarq; and
3. A proposed rate design to reflect the changes.⁷

⁵ An unexpected event is defined as an event beyond the company's control and includes, but is not limited to: changes in tax laws, accounting rules, and separations; regulatory, judicial, and legislative changes; and acts of God, nature or terrorism affecting Embarq.

⁶ This provision is not intended as a mechanism to permit routine requests for rate relief (or rate decreases).

⁷ Embarq may, at its discretion, forgo rate increases for certain services, where appropriate to protect low-income subscribers, for market reasons or for other reasons.

IV. RECLASSIFICATION OF SERVICES AS COMPETITIVE

Unless otherwise ordered at BPU Docket No. TX07110873, Embarq may petition the Board to reclassify an existing rate regulated service as competitive, in which case it will support its petition with affidavits or other proofs evidencing the competitive nature of the service as required by *N.J.S.A* 48:2-21.19(b). Embarq also will follow the safeguard and notice provisions set forth in this PAR, Section V below.

V. CONSUMER AND COMPETITIVE SAFEGUARDS

In order to provide assurances both to the Board and to Embarq's customers and competitors, Embarq will observe a series of specific safeguards required by law and described in this Section. Embarq is subject to all Federal and State statutory requirements related to local exchange competition and nothing in this PAR shall supersede those requirements. The safeguards shall apply to all Embarq competitive services and those that Embarq seeks to classify or reclassify as competitive.

A. Tariffs for Competitive Services - For services that the Board classifies as competitive, Embarq will file and maintain tariffs in conformance with the requirements of the Board's existing regulations governing competitive services, unless the Board does not require tariffs for particular services. The rates for competitive services may be either in the public filed tariffs or, if the Board determines that the rates are proprietary, on file with the Board and Rate Counsel. If rates for competitive services are not in Embarq's public tariffs, Embarq will permit interested parties to review the unpublished rates under the terms of an appropriate protective agreement, such as those currently used in cases before the Board. Changes or additions to tariffs for competitive services shall be made in accordance with the existing regulations governing competitive services.

B. Direct Cost Allocation Data In order to demonstrate that rate regulated services will not subsidize competitive services, Embarq will provide annual reports to the Board's staff and Rate Counsel showing that, in the aggregate, the total revenues for Embarq's competitive services exceed the total direct cost of the services. To the extent Embarq's reports include information Embarq deems proprietary, Embarq may make a request for a confidentiality determination under the Board's OPRA rules set forth at N.J.A.C. 14:1-12. Embarq will work

with the BPU Staff and Rate Counsel to determine the format for annual rate regulated financial reports in a form consistent with similar reporting in other Embarq jurisdictions. Nothing in this paragraph precludes any party from seeking additional cost information in the proceeding identified in Paragraph 27 of the Stipulation and Agreement.

C. Standards for Determining and Monitoring Competitiveness of Services –

This PAR incorporates the standards for determining and monitoring the competitiveness of services set forth in the Board’s regulations governing competitive services.

VI. REPORTING REQUIREMENTS

A. Service Quality – Embarq will file consistent with Board regulations service quality reports to demonstrate compliance with the service quality rules established in N.J.A.C. 14:10-1A.9, 1A.10 and 1A.11, with a copy to Rate Counsel.

B. BFRR Reports – Embarq will continue to file, with a copy sent to Rate Counsel, semi-annual reports of customers by exchange participating in Embarq’s Bona Fide Retail Request (“BFRR”) program. The reports shall be filed January 15th (for prior year end data) and July 15th (for January to June data).

EXHIBIT C

REPORTING REQUIREMENTS

Provide to Board and Rate Counsel:

- a. Copies of FCC Form 477 filings when filed at the FCC (filed every six months for New Jersey).
- b. Copies of semi-annual monitoring reports that Embarq files with the Board.
- c. Copies of annual reports filed with the Board, including revenues and associated ARMIS reports showing the number of NJ residential and business customers.
- d. Copies of the quarterly report showing the number of Lifeline and Link-up connections.
- e. Copies of tariff filings showing rate changes to competitive services.
- f. Data related to the take rate for discretionary features and NJ numbers ported to all entities upon request in the proceeding referenced in paragraph 27 of the attached Stipulation and Agreement.
- g. Depreciation cost studies