STATE OF NEW JERSEY

Board of Public Utilities
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IN THE MATTER OF THE BOARD'S INVESTIGATION AND REVIEW OF LOCAL EXCHANGE CARRIER INTRASTATE EXCHANGE ACCESS RATES	) TELECOMMUNICATIONS)) ORDER))) DOCKET NO. TX08090830

(SERVICE LIST ATTACHED)

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BY THE BOARD:

At its October 3, 2008 Agenda Meeting, the Board of Public Utilities ("Board" or "BPU"), in recognition of requests by certain telecommunications providers in the State, ordered the initiation of an investigation into Local Exchange Carrier ("LEC") Intrastate Exchange Access Rates ("Intrastate Access Rates"). Specifically, in its Order dated October 6, 2008, the Board noted that since Intrastate Access Rates were first established by the Board in 1984, there have been limited changes to the structure and level of these rates. Since the implementation of Intrastate Access Rates and in light of the advent of local competitive alternatives, there are now a significant number of competitive local exchange carriers ("CLECs") with intrastate access tariffs on file with the Board, in addition to the access tariffs of the incumbent local exchange carriers ("ILECs"), many of which have varying Intrastate Access Rates. This Order memorializes the Board's determination with regard to the structure and level of Intrastate Access Rates.

Procedural History

Pursuant to the Board's October 6, 2008 Order, Board Staff and the Division of Law convened a pre-hearing conference to allow interested parties an opportunity to present positions on the issues involved, the nature of the proceeding, and the schedule for discovery, hearings and briefings. The pre-hearing conference was held on October 29, 2008 after notice was sent to the telecommunications companies operating in the State. Interested parties submitted proposed schedules, statements of the case and other relevant information. Entities were also directed to submit *pro hac vice* motions and motions to intervene and/or participate by a certain deadline.

On December 18, 2008, the Board issued a Pre-Hearing Order ("Pre-Hearing Order") that set forth the issues to be resolved and the procedural schedule. The Pre-Hearing Order also granted eight motions to intervene and five motions for participant status. Motions for intervention were granted to: United Telephone of New Jersey, Inc. d/b/a CenturyLink (f/d/b/a Embarq) ("Embarq")[1]; Verizon New Jersey Inc. ("Verizon"); Sprint Communications Company, L.P., Sprint Spectrum, L.P. and Nextel of New York, Inc. (collectively, "Sprint");AT&T Communications of New Jersey, TCG Pittsburgh, Inc and TCG New York, Inc. (collectively, "AT&T"); Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"); and One Communications, PAETEC Communications, Inc. of Pennsylvania, LLC, Level 3 Communications LLC and XO Communications Services, Inc. (collectively, "Joint CLECs"). Motions for participation were granted to Monmouth Telephone and Telegraph, Inc. ("Monmouth"), New Jersey Cable Telecommunications Association ("NJCTA"), Cavalier

[1] On or about October 2009, Embarq changed its designation to d/b/a CenturyLink. However, for purposes of convenience, this Order will use the Embarq designation.

Telephone, RNK Communications and Warwick Valley Telephone Company ("WVTC"). The Order designated Commissioner Elizabeth Randall as the designated presiding officer. Finally, the Pre-Hearing Order provided a schedule for the filing of testimony and discovery. Direct Testimony was scheduled to be submitted on February 13, 2009, Reply Testimony on April 20, 2009, and Rebuttal Testimony on June 22, 2009. In an Order dated January 14, 2009, Commissioner Randall granted Monmouth's request to change its status to an intervener, and granted several *pro hac vice* motions.

On February 19, 2009, the Joint CLECs filed a letter requesting an extension to the discovery schedule previously set by the Board, claiming Verizon, in supplying its initial testimony, produced only six of nine CD-ROMs, citing third-party confidentiality issues. The Joint CLECs asserted the need for additional time to generate discovery requests, and asked for a deadline of two weeks following the submission of CD-ROMs by Verizon. Commissioner Randall ordered that the parties be permitted to propound discovery within 10 days of receipt of the missing CD-ROMs in an Order dated February 23, 2009.

By letter dated March 12, 2009, Rate Counsel filed a Motion to Extend Discovery, which sought to extend the discovery deadline concerning the right to propound additional discovery on the cost model CD-ROMs obtained from Verizon New Jersey on March 2 and 3, 2009, pursuant to the February 23, 2009 Order. By letter dated March 13, 2009, AT&T concurred with Rate Counsel and requested that the Board grant Rate Counsel's motion. On March 23, 2009, Verizon filed a letter opposing Rate Counsel's motion to extend discovery on Verizon's cost model. Rate Counsel filed its reply to Verizon's opposition on March 25, 2009. In an Order dated April 6, 2009**,** Commissioner Randall held that Verizon had sufficiently complied with her February 23rd Order and additional time for discovery was unwarranted. As for the claims concerning the difficulties experienced when attempting to review, manipulate and understand the Verizon cost model, Commissioner Randall held that technical issues be addressed through Verizon's technical support staff. With respect to the request of Rate Counsel that Verizon be directed to provide a "stand-alone" version of the cost model, Commissioner Randall held that the question was not ripe and denied the motion.

On July 7, 2009, Embarq filed a Motion for an extension of time to respond to discovery requests related to rebuttal testimony filed by the parties. The date set for discovery requests related to rebuttal testimony was July 13, 2009, and Embarq sought an extension of time of one week, setting the date at July 20, 2009. Based upon the lack of opposition and the foundation for the request, the motion to modify the schedule was granted by Commissioner Randall.

On August 4, 2009, a second pre-hearing conference was held at the Board's Newark office. Representatives from participating and intervening parties attended the conference, which centered on discussions to streamline the evidentiary process in this case. To that end, the parties agreed on a number of issues dealing with marking and introduction of evidence, but left open the questions of the order of testimony and the ability to submit discovery responses to the discretion of the Commissioner. Based upon those agreements, and the open questions, Commissioner Randall amended the previously issued scheduling Order.

On August 13, 2009, the Joint CLECs filed a Motion to Compel AT&T, to provide further responses to certain Discovery Requests JCLEC-AT&T-1(a), JCLEC-AT&T-1(d) and JCLEC-AT&T-3. According to the Motion, the information the Joint CLECs' sought was directly relevant to the case and the Joint CLECs argued that the information sought has already been compiled by AT&T and that providing the information to the Joint CLECs would be a minimal burden. Furthermore, the Joint CLECs argued that its Motion to Compel was tailored to ensure that the information sought is relevant to AT&T's testimony in this matter, is reasonable in scope, is crucial to the proceedings, and is consistent with the provisions of N.J.A.C. 1:1-10.1(c). By letter dated August 18, 2009, AT&T opposed the Joint CLEC Motion to Compel, claiming that the requests were untimely, overly broad, unduly burdensome, irrelevant and non-probative. AT&T claimed that voluminous information was already provided and there was no credible basis for the motion. Accordingly, AT&T sought that the motion be denied in its entirety. On August 21, 2009, the Joint CLECs filed a reply to AT&T's response to their Motion to Compel. Commissioner Randall denied the Joint CLECs Motion to Compel in its entirety for in an Order dated September 10, 2009.

On September 8, 2009, Embarq filed a Motion *in Limine* requesting that the Board not admit into the record certain discovery responses. Additionally, on September 9, 2009, Monmouth filed a Motion *in Limine* requesting that the Board exclude from the record the response to its discovery request Monmouth 3-1(b). Both motions were filed with the Board pursuant to an Amended Pre-Hearing Order setting forth a schedule providing for the filing of a list of proposed documents to be pre-submitted into evidence and for the filing of Motions *in Limine* and responses challenging the proposed evidentiary lists. Each motion was opposed by other parties in the case. Upon review and consideration of the motions and the responses, Commissioner Randall held that the discovery responses at issue in the Motions *in Limine* filed by Embarq and Monmouth, respectively, were relevant to the proceeding and should be admitted into the record. Accordingly, by Order dated September 11, 2009, Commissioner Randall denied both Monmouth and Embarq's Motion *in Limine* in their entirety.

The Board held evidentiary hearings before Commissioner Randall in Newark on September 15 and 17 and on October 19 and 20, 2009. Initial and Reply Briefs were submitted on November 13 and December 4, 2009 respectively.

Summary of the Positions of the Parties

Verizon

In its initial brief, Verizon proposes that the Board adopt a two-step approach by first leveling the playing field by capping the intrastate switched access rates of all local exchange carriers at the rates currently authorized for Verizon NJ. Verizon argues that its switched access rate is a reasonable benchmark because it has been subject to more scrutiny than any other carrier and is in the mainstream of switched access rates both in New Jersey and across the country. The Company avers that a universal benchmark would immediately increase economic efficiency and benefit New Jersey consumers. VNJ IB at 1-2. As a second step, and only after evaluating the market-disciplining effect of establishing a reasonable benchmark based on Verizon NJ's access rate, the Company believes that the Board could consider reducing the uniform benchmark, but only if the Board were at the same time to eliminate the Company's carrier of last resort obligations and grant more pricing flexibility. Id. at 2.

Furthermore, Verizon argues that no evidence exists to support the idea that an immediate massive reduction in the intrastate access rates is critical for New Jersey's telecommunications consumers, because Verizon's residential basic exchange rates remain among the lowest in the nation and that it continues to invest hundreds of millions of dollars in its network to upgrade it from a traditional copper network to an advanced fiber optic network, even though it has lost a substantial number of access lines to competition. Based upon these circumstances, Verizon concludes that its intrastate switched access rates are not unreasonable, and that all other carriers should have their rates reduced immediately to ensure competitive intrastate toll pricing. Id.at 1. Moreover, according to Verizon, a benchmark at the level of Verizon's rates would be a simple and effective means to quickly move the most excessive switched access rates in New Jersey to more efficient levels by promoting equity and competitive parity as well as to reduce market distortions by prompting carriers with the highest access rates to recover more of their network costs from their own customers, rather than from other carriers and their customers through access rates. Id.at 7.

Verizon further states that when ordering CLECs to mirror the interstate switched access rates of the ILECs with which they compete, the Federal Communications Commission ("FCC") explained that a benchmark approach to switched access regulation is both administratively efficient and good policy. Verizon asserts that the FCC's benchmark rule was prompted by "persistent" concerns that CLEC access rates varied dramatically and were frequently well above the rates charged by ILECs operating in the same area, just as in New Jersey. In further support of its benchmark position, Verizon argues that its intrastate access rate is close to the median rate in New Jersey and is in line with other states. Id. at 9-10.

Verizon assails the Joint CLECs for arguing that they should be exempted from switched access regulation by arguing that intrastate switched access is competitive. Id. at 10-11. Verizon contends that the Joint CLECs theory that competition for CLEC retail customers will discipline CLECs' switched access rates over some indeterminate long run ignores the marketplace reality that carriers compete with each other for customers by offering the best retail price for a service. End-users care only about what they have to pay their chosen supplier, not what that supplier may be charging others for switched access service. In fact, argues Verizon, a CLEC that wishes to avoid losing customers will have the incentive to maintain high switched access rates so it can make up for revenues lost from reducing its retail rates to win or keep customers. Id. at 11.

Verizon further contends that the CLECs in this proceeding also argue that their switched access rates may be justified by higher costs. Verizon states that even if it were true that some CLECs have higher switched access costs than ILECs, (it would be irrelevant because no basis exists for regulators to permit CLECs to subsidize an inefficient cost structure by charging excessive switched access rates. Ibid. According to Verizon, CLECs should compete on the same playing field as the ILECs (i.e., without the artificial competitive advantage of higher switched access rates), and there is no evidence that CLECs have been unable to compete with ILECs in the wake of the FCC's CLEC Rate Cap Order requiring them to mirror ILEC interstate rates. Verizon adds that as witnesses for Verizon, AT&T, and Rate Counsel have explained, the CLECs cost studies in this proceeding have fundamental flaws that exaggerate their switched access costs. Id. at 11-12.

Verizon argues that Embarq should be allowed additional pricing flexibility if its intrastate access rates are reduced to the benchmark level of Verizon's rates. Verizon asserts that such pricing flexibility would ensure that Embarq can compete on a level playing field with Verizon NJ and other LECs. Id. at 13. However, Verizon contends that Embarq does not want additional pricing flexibility, but instead seeks the creation of a state universal service fund ("USF") with which to recover its network costs. Accordingly, Verizon asks the Board to reject Embarq's request, because based on sound regulatory principles, Embarq has a right only to a reasonable opportunity to recover its prudently incurred costs. Ibid. Verizon also counters Embarq's position that its loop costs should be included in its costs for switched access. Verizon argues that such costs should not be attributable to switched access service because it is well established that it is improper to include loop costs in the total service long run incremental cost ("TSLRIC") of switched access services because loop costs are not caused by usage-based services, such as intrastate switched access. Id. at 13-14.

Verizon contends that its Intrastate Access Rates allows it to maintain the affordable basic exchange rates set by the Board and provide basic local service at below cost rates. Accordingly, Verizon argues that if the Board were to determine that a reasonable benchmark is lower than Verizon's intrastate access rate, the Board must permit it to collect more of its network costs from its own end-users and removing the legacy regulatory obligations supported by access charges. Verizon further argues that the Board has consciously set Verizon's Intrastate Access Rates to provide a contribution to local retail service. In support of its argument, Verizon cites to the Board's PAR-1 and PAR-2 Orders. Id. at 16.

Moreover, Verizon argues that evidence in the present case shows that revenues from Verizon's basic exchange service are not sufficient to cover the total costs to provide the service. According to Verizon, its rate-regulated services earn revenue substantially lower than its costs for providing the services, therefore, the Board cannot reduce Verizon NJ's intrastate switched access rates without simultaneously providing Verizon NJ the ability to offset such a reduction with greater pricing flexibility for its other rate-regulated services and without simultaneously eliminating the legacy regulatory obligations supported by access charges that still burden Verizon notwithstanding that Verizon now operates in a hyper-competitive communications market. Id. at 17.

According to Verizon, reducing its Intrastate Access Rates without considering the effects on Verizon's other rate regulated services would result in unjust and unreasonable rates. Id.at 19. Verizon argues that under New Jersey law, rates for services classified by the Board as "non-competitive" must be "just and reasonable," and since the introduction of the "competitive" and "non-competitive" service classifications in 1987, the Board has monitored the reasonableness of rates for services classified as non-competitive by evaluating the aggregate revenues and costs for those services. In Verizon's view, the rates of rate-regulated services, as a whole, must allow Verizon an opportunity to earn revenues sufficient to cover total costs associated with providing these services. If the Board considers reducing any of Verizon's rates for rate-regulated services, including intrastate access rates, the Board must evaluate and understand the effect that reduction will have on Verizon's opportunity to earn sufficient revenues to recover its total costs for its rate regulated services. Id. at 19-20. Verizon argues that requiring it to subsidize its regulated services with revenue from competitive services would violate New Jersey law. Id. at 20. Verizon further adds that the arguments from Sprint and Rate Counsel, and to a lesser extent, AT&T, that long distance, broadband, an expansive list of custom calling features, and video services provide revenues that can be used by ILECs to recover their full basic network connection costs are incorrect. Id. at 20.

Verizon adds that in issuing the ILEC Reclassification Order,[2] the Board did not anticipate and accommodate any specific level of future rate reductions in the retail reclassification case. Ibid. Moreover, Verizon argues that even if it were able to immediately take advantage of the full extent of pricing flexibility approved in the ILEC Reclassification Order, which it is prohibited from doing until October 2010, Verizon has shown that the total

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[2] I/M/O the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive; 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, BPU Docket Nos. TX07110873 and TO08060451 (August 20, 2008); ("ILEC Reclassification Order.").

costs for Residential Basic Exchange Service ("RBES") would still exceed RBES revenues. Thus, Verizon concludes that there is no way that the additional revenue that Verizon may derive from last year's ILEC reclassification proceeding can be considered as having "set the stage" for reducing Verizon NJ's intrastate access rates. Id. at 23.

Verizon also requests the Board to ignore AT&T's assertions regarding policies and experiences of other states. According to Verizon, AT&T's witnesses attempt to create the impression that there is a trend among state public utility commission towards ordering the type of reform AT&T advocates. Id. at 27. Verizon points out what it perceives as fundamental flaws with AT&T's assertion. As an initial matter, AT&T misrepresents what many other state commissions have done by suggesting, for example, that Texas is a "mirroring state" while unable to produce a statute, order, or any other authority that requires any company in Texas to mirror its interstate rate. Similarly, Verizon argues that some of the other parties misrepresent its advocacy elsewhere. Verizon contends that it consistently advocates the same benchmark policy it advocates here – that the rate of the ILEC that has undergone the most scrutiny should be used as the benchmark rate for all telephone companies. Id. at 28-29.

In its Reply Brief, Verizon contends that no other party credibly rebutted Verizon's position that its proposal is pro-consumer and fair to all carriers. Verizon also argues that reducing excessive access rates to a reasonable benchmark will also curb the opportunities for fraud and arbitrage that arise from undue rate disparities among carriers. Verizon adds that disproportionately high access charges provide an incentive for carriers to stimulate artificial demand for access services in order to increase their own revenues and profits, which is commonly known as "traffic pumping." In this scenario, according to Verizon, a LEC collaborates with a non-LEC entity that advertises "free" international calling, adult content calling, or other such "free" services to generate access minutes—and terminating access fees—for the LEC. The LEC, according to Verizon, then gives the non-LEC firm kickbacks of a portion of the terminating switched access fees carriers pay to the LEC. The LEC thus exploits its high access rates at the expense of the carriers compelled to send long-distance calls to the LEC's network. VZ RB at 5-6.

Verizon also counters the arguments posed by the Joint CLECs and Embarq that excessive access rates may be justified by their higher costs. Id. at 9. Verizon contends that nothing in the record supports the conclusion that Embarq and the Joint CLECs costs are more than those of Verizon to provide switched access service. Verizon reiterates its previous argument that even if the Board were to determine that Embarq or the Joint CLECs actually had higher costs than Verizon, the Board should not subsidize an inefficient cost structure by allowing Embarq or the Joint CLECs to charge excessive rates for a non-competitive service. Moreover, Verizon states that the purpose of regulation is to mimic the effects of competition, and, in competitive markets, higher cost firms typically are not rewarded for inefficiency with higher prices. Id. at 10.

Furthermore, Verizon argues that the Joint CLECs position that the market for switched access services is competitive is incorrect because regulation prohibits the originating carrier from blocking calls to a CLEC with high access rates, and the originating carrier does not have a choice of terminating carriers the originating carrier must pay the switched access rate set by the terminating carrier. Verizon, AT&T, Sprint, and Rate Counsel all have presented evidence of other regulatory decisions supporting the fact that CLEC access services are not subject to sufficient competitive discipline because regulation prohibits one carrier from refusing to deliver traffic to another carrier with disproportionately high access rates. Moreover, claims Verizon, the FCC and state commissions have rejected the Joint CLECs argument repeatedly, and no state commission that has investigated the issue has declined to constrain CLEC intrastate access rates. Id. at 10.

In its Reply Brief, Verizon also argues that any reduction in its Intrastate Access Rates must accompany a rate rebalancing to the extent that the lost revenues from the Intrastate Access reductions were subsidizing non-competitive services. Id. at 12. Verizon also counters the argument of AT&T, Sprint and Rate Counsel that the pricing flexibility granted in the ILEC Reclassification proceeding was intended to provide ILECs with sufficient revenues to compensate for potential revenue losses due to a reduction in Intrastate Access Rates. Id. at 14. Moreover, Verizon asserts that any separate proceeding to grant additional pricing flexibility to ILECs must occur immediately following a reduction in Verizon's Intrastate Access Rates. Furthermore, Verizon requests that a subsequent pricing flexibility proceeding conclude before a reduction in Intrastate Access Rates are phased in. Otherwise, claims Verizon, such regulatory lag would be confiscatory to Verizon. Id. at 19-20. Additionally, Verizon argues that any argument that the Board should require a company to subsidize rate-regulated services with revenue from non-regulated services is an unsustainable policy that must be rejected. Id. at 27.

EMBARQ

In its Initial Brief, Embarq argues that the Board must reject the proposals presented by the other parties to reduce Embarq's Intrastate Access Rates. Alternatively, Embarq requests that if the Board deems it necessary to adjust Embarq's Intrastate Access Rates, the Board must also implement the following: (1) a statewide universal service fund supported by all competitive providers; (2) the allowance of additional pricing flexibilities to Embarq in recognition that an ILEC serving less dense and higher cost areas that has Carrier of Last Resort ("COLR") obligations; and (3) a reduction of intrastate access rates on a phased-in basis over a period of several years. EQ IB at 69.

First, Embarq contends that the parties seeking to change intrastate access rates must prove the case that intrastate access rates require reduction, something they have failed to do. Id. at 6. Moreover, Embarq argues that this case is a policy matter which requires the Board to take notice of the costs needed to install and maintain a network. Cost studies and testimony submitted by Embarq support the argument that the costs to provide service exceed Embarq's revenues and reducing intrastate access rates and/or eliminating the Carrier Common Line Charge ("CCLC") will only exacerbate the deficit between costs and revenues. Moreover, Embarq contends that access rate reductions, absent a recovery mechanism, provides no benefit to New Jersey's consumers. Id. at 7-8.

Furthermore, Embarq argues that AT&T, in recommending that Intrastate Access Rates be immediately reduced to interstate levels, wrongfully aligns the pricing flexibility granted in the Embarq ILEC Reclassification proceeding with access reduction relief. Embarq also contends that Verizon's proposal is flawed because it uses Verizon's rate as a benchmark for intrastate access rates. Additionally, Embarq asserts that Rate Counsel's approach to eliminate subsidies and use TELRIC to determine the cost for switched access is unreasonable. Id. at 4.

In arguing how its customers benefit from the current Intrastate Access Rates, Embarq describes how it serves less dense high cost areas and holds less than 4% of the access lines in the State. Furthermore, Embarq argues that while its COLR obligations, as provided under N.J.S.A. 48:2-23 and related regulations, are a costly burden, the obligation furthers the state policy of universal service at affordable rates. Id.at 16. Embarq contends that opposing parties fail to show how Embarq can continue to meet its COLR obligations in light of the proposed access charge reductions, and the record does not establish that if such reductions to Embarq's intrastate switched access rates occur it can avoid rate increases for New Jersey's consumers. Id. at 10.

Embarq further argues that toll rates and access charges are set based on regulatory policy promoting affordable residential service, and the subsidies inherent in local rates which derive from switched access is a policy maintained over the years that supports the provision of universal and affordable service. Id. at 18. To provide local exchange service, Embarq must maintain and upgrade its network. This is achieved through the existing public policies of the state which support the use of intrastate access charges to ensure safe, quality, affordable service in Embarq's territory including less dense, high cost service areas. This regulatory balance should be preserved. Id. at 20.

Furthermore, Embarq argues that, as shown by its cost study, its current Intrastate Access Rates are just and reasonable. Embarq details the testimony from its witnesses that its cost study submitted provides TSLRIC. Furthermore, Embarq argues that its CCLC is necessary and generally is gauged by minutes of use billed to an IXC by the ILEC to recover costs of the local loop plant. Id. at 30. Embarq argues that "the evidentiary record demonstrates that loop cost support is critical and necessary. Embarq claims the cost adjustments proposed by various parties are not supported in the record and that previously granted pricing flexibility was not intended to justify access reductions. Id. at 38.

Embarq goes on to argue that its Plan of Alternative Regulation established in the 2008 ILEC Reclassification proceeding is necessary to keep its rates just and reasonable and to accomplish the Board's goals. Additionally, Embarq contends that using the revenues from the pricing flexibility granted in the ILEC Reclassification Order to fund access reductions is improper. Id. at 39. Embarq opposes AT&T and Sprint's position that any reduction in revenues from Intrastate Access Rates can be offset through the pricing flexibility, arguing, in part, that intrastate access rates were not an issue in the ILEC Reclassification proceeding. Moreover, Embarq contends that the language in its Stipulation and Agreement from that proceeding does not create a linkage between price flexibility and access reductions. Id. at 40-41. Finally, Embarq argues that its New Jersey customers will be harmed if revenues from the ILEC Reclassification proceeding are used to fund access reductions. Embarq claims that the Board granted it additional pricing flexibility to counter low rates, level the competitive playing field between Embarq and unregulated competitors, and to enhance incentives for Embarq to invest in infrastructure improvements, and any diversion of funding to support access reductions will be done at the consumers' expense. Id. at 43-45.

Additionally, Embarq argues that any reduction to its Intrastate Access Rate would result in *de minimis* financial benefits to consumers and that the current Intrastate Access Rate levels are not a barrier to competition in New Jersey. Id. at 49-53. Embarq also attacks Verizon's benchmarking proposal, arguing that using Verizon specific intrastate switched access rates as a benchmark for all carriers does not ensure rates that are just and reasonable. Embarq further contends that contrary to Verizon's suggestion, no state commission has adopted Verizon's proposal that the Regional Bell Operating Company's ("RBOC") intrastate access rate be used as the benchmark rate for other ILECs operating in the state. Id. at 65-67.

Embarq's Reply Brief argues that reduction of the Intrastate Access Rates by the Board would be premature in light of ongoing FCC investigations into intercarrier compensation and universal service. EQ RB at 4. Embarq also claims that AT&T's studies showing a benefit to customers if Intrastate Access Rates are reduced are misleading. Moreover, Embarq states that while AT&T has offered to eliminate its in-state access fee and reduce a decrement rate on intrastate prepaid calling cards if the Intrastate Access Rate is reduced to interstate levels, Sprint has failed to make a similar commitment. Id.at 23.

Embarq further asserts that AT&T, Sprint and Rate Counsel's reliance on the Board's *IntraLATA Presubscription Order*[3] to argue that total company revenues should be considered when reviewing financial harm, is misplaced. Embarq contends that the *IntraLATA Presubscription Order* is narrow and limited to a specific context inapplicable to the instant proceeding. In that 1995 proceeding, Verizon claimed that it would suffer financial harm in the form of competitive losses as a result of intraLATA toll presubscription being introduced in New Jersey. Embarq argues that unlike the factual circumstances in the *IntraLATA Presubscription Order*, Embarq in this proceeding provided hard evidence of the direct harm to consumers, to New Jersey, and to Embarq's regulatory obligations if the proponents of intrastate switched access rate reductions prevail and unravel one component of Board pricing policies. Id. at 35-36.

Embarq reiterates its argument that the implementation of a state USF is an essential component of access reform. Id.at 40. Embarq also assails Rate Counsel for arguing that rate increases for competitive services and other consumer demanded services, such as bundles, should be used to fund access reductions. Embarq argues that Rate Counsel advocates breaking the historic linkage between the elimination of subsidies in switched access charges and wrongly recommends that the ILECs use revenues from competitive services to offset reductions in carrier access charges. According to Embarq, a recommendation that the ILECs subsidize basic rates with revenues from their own retail services is contrary to New Jersey law and the intentions of the Telecommunications Act of 1996, which states that there "should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." Id. At 36-37.

JOINT CLECS

In its Initial Brief, the Joint CLECs contend that the main point of this proceeding is to determine whether Verizon, the dominant carrier in New Jersey, should be required to reduce its Intrastate Access Rates and whether it should be allowed to recoup lost revenues from another source. They further add that where the Joint CLECs have shown their costs to be far higher than the level urged by the IXCs, the Board must reject the IXCs' requests for lower rates. Specifically, there can be no reduction in the Joint CLECs access charges by any amount that would result in the Joint CLECs not being able to recover the costs of providing a service (to IXCs) that the Joint CLECs have no choice but to provide. They add that if the Board finds it appropriate to adjust all carriers' Intrastate Access Rates, then, at least with respect to the Joint CLECs, a reduction of its Intrastate Access Rates can only be done in a manner consistent with its cost studies. JC IB at 2-3. Moreover, the Joint CLECs submit that Rate Counsel has acknowledged that the Joint CLECs switched access rates should also be set on the basis of company specific cost studies. Id. at 3.

Though the Joint CLECs believe no reduction in their access charges is necessary or appropriate, and that any change must heed cost floors shown by cost studies, the CLECs agree that transition periods are good policy. Alternatively, the Board may avoid all concerns

[3] Investigation of IntraLATA toll Competition for Telecommunications Services, BPU Dkt. No. TX94090388 (Dec. 14, 1995) ("IntraLATA Presubscription Order").

with confiscation by eschewing the regulation by price caps (involving slashing of Joint CLECs access charges) by allowing the market to control the prices. Id. at 4.

The Joint CLECs argue that in determining whether to adjust Intrastate Access rates, the Board should consider the carrier's cost, and that this position is in line with the ILECs' testimony on the argument that rates should be compensatory and that they too have submitted cost studies to support their demands for adequate compensation. Id. at 5-6. Accordingly, the Joint CLECs state that the costing/pricing considerations for the CLECs are relatively straightforward. The costs of providing switched access services are shown by the cost studies. If the Board determines to regulate the prices for such services, those prices must cover costs, and as the Joint CLECs' witness, Dr. Ankum, testified, CLECs cannot easily shift switched access costs, a wholesale service, to retail customers. This is shown by the relatively low margin on CLEC retail services. Id. at 7. In contrast, ILECs have several regulated services and historically regulators intentionally subsidized basic service. Therefore, the Joint CLECs contend that the issue is more complex in the case of the two incumbents than it is for the competitive carriers. The Joint CLECs argue that these issues mandate that the Board take a different approach to ILECs and CLECs rates, though ultimately, all carriers must be allowed to set rates that cover costs. Id. at 7-8. The Joint CLECs also allege that AT&T has not shown that there has been inefficient operation or investment by the CLECs, and that a uniform price vision for Intrastate Access Rates in improper. Id. at 8-9.

The Joint CLECs also contend that long-standing precedent at the Board, and through the New Jersey courts and the U.S. Supreme Court bars regulators from setting rates that do not allow a company to recover its costs of providing service. Such precedent bars the "free-riding" sought by AT&T and Sprint. Id. at 12.

Regardless of the existence of a cost study, or of the Board's acceptance of any cost study, the Joint CLECs contend that there are fundamental differences between ILECs and CLECs resulting in different costs to provide service. Id. at 13. Dr. Ankum showed that five significant factors can lead to demonstrably higher CLEC access costs:

1. CLECs do not have the same economies of scale as large ILECs.
2. CLECs have different network architectures than large ILECs with proportionately more traffic-sensitive costs.
3. CLECs have lower facility utilization than large ILECs.
4. CLECs have a sparser customer base than large ILECs.
5. CLECs have higher input prices than large ILECs.

Id. at 14.

For these reasons, the Joint CLECs argue that the Board should summarily reject the suggestions that CLECs' Intrastate Access Rates may in any way be set with reference to ILEC switched access rates. Ibid. The Joint CLECs maintain that the study results demonstrate that the difference between rates and costs comprises a much narrower gap for One Comm. and PAETEC than for Verizon (*i.e.* CLECs operate on a much thinner margin). The Joint CLECs submit that it is clear that even modest rate reductions would force PAETEC and One Comm. rates "underwater." Id. at 15. The Joint CLECs also allege that its cost studies analyze all the companies' facilities and equipment and financial records, as well as consider their network and business planning, and the cost studies and the panel of experts that performed those studies were barely questioned on the stand and the only criticisms raised, were thoroughly rebutted. Id. at 16.

Furthermore, the Joint CLECs argue that IXCs must bear their share of joint and common costs associated with the provision of switched access service. Id. at 18. Furthermore, the Joint CLECs argue that loop costs must be considered, because the local loop is needed to both provide local service to an end user and to carry toll calls to and from an end user. Moreover, the Joint CLECs contend that customers simply do not sign up for a telecommunications service that allows them to connect to a relatively limited number of people and businesses in a very limited geographic proximity. Indeed, there is considerable evidence on the record to the effect that end-users purchase telecommunications services on a bundled basis. Thus, the Joint CLECs argue, it is clear that customers focus on being able to make whatever calls they want to –local or toll– and that the clear conclusion is that both carriers and customers view local and toll services as intertwined, such that the total cost of providing both services should be allocated to customers of both services. Id. at 19-20.

The Joint CLECs also contend that because the cost studies model a forward-looking network using the most current, most efficient equipment, even if the companies are currently using older, more expensive equipment, those studies will understate costs actually incurred by the CLECs. Moreover, the Joint CLECs state that the cost studies have used a reasonable (if not conservative) cost of capital, based upon actual costs of existing debt, expectations of each company's chief financial officer for future debt issuances and the commonly used and accepted CAPM equity cost model, using inputs determined as reasonable by the person responsible for raising capital for the companies. Id. at 22-23.

Additionally, the Joint CLECs argue that the Board should permit the market to control Intrastate Access Rates. The Joint CLECs oppose the position of the other parties that CLECs have a monopoly on switched access services because the CLEC providing switched access is chosen by the CLEC end-user and so the IXC has no choice but to connect to the CLEC, regardless of the level of access charges. Id. at 29. The Joint CLECs also recommend that just as AT&T currently charges an in-state customer connectivity charge, that is built upon the allegedly excessive access charges, and just as many IXCs impose a variety of other usage based surcharges, IXCs could impose a fee reflecting the cost of any access charge differential. Id. at 35.

The Joint CLECs further allege that AT&T has mischaracterized action on Intrastate Access Rates by other state commissions. While the Joint CLECs do not deny that a number of states have taken some action over the past eight years that affect CLEC access charges, the Joint CLECs contend that those actions are more nuanced than AT&T and others would have the Board believe. Id. at 36.

Finally, the Joint CLECs' Initial Brief argues that the Board, with regard to One Comm. and PAETEC, cannot reduce access charges below the indicated level of costs, As to Level 3 and XO, they recommend that the Board should follow the Massachusetts approach and allow Level 3 and XO a reasonable time to prepare and file their own cost studies should they so choose. Also, at any time in the future, the Joint CLECs argue that any CLEC should be able to propose access rates higher than any cap if those rates are supported by a cost study. Id. at 37. The Joint CLECs assert that their economic arguments have merit, and the Board must not succumb to AT&T's superficial claims. The record reflects that the IXCs have plenty of options to bypass the CLECs intrastate switched access services and/or to force CLEC pricing on such services lower. According to the CLECs, IXCs dwarf the CLECs in both the local and long distance markets and are fully capable of reaching an end-user customer on their own. The

Board need not take the extraordinary step of regulating (even in part) heretofore unregulated competitive carrier services. Ibid.

In its Reply Brief, the Joint CLECs reiterate their position that the Intrastate Access Rate proposals put forth by Sprint and AT&T would force the Joint CLECs to provide services at rates below their costs. JC RB at 5. The Joint CLECs also argue that the IXCs and Rate Counsel are recommending a pricing scheme under which the CLECs end users would subsidize IXC access services. According to the Joint CLECs, the whole thrust of regulation over the last decades has been to eliminate implicit subsidies and to have cost causers pay and the IXCs and Rate Counsel's suggestions would be a giant step back in this process. The Joint CLECs assert that they and other CLECs would be forced to attempt to have their end users subsidize IXCs, some of whom are the largest and most profitable telecommunications companies in the United States. Id. at 14.

The Joint CLECs also argue that a number of decisions cited by the IXCs and Rate Counsel in support of their positions also support the Joint CLECs because these decisions recognize a need to consider CLEC costs and base access charges on the cost studies, as well as allow a transition period to any reduction in access charges. According to the Joint CLECs, the 2008 decision of the Massachusetts Department of Telecommunications and Cable ("MDTC") imposed a one year transition period in recognition of the possible adverse effects on CLECs. More importantly, argues the Joint CLECs, the MDTC agreed with the CLECs confiscation arguments and allowed all CLECs an opportunity to file a cost study to justify a level of charges other than that of the ILEC (Verizon). Thus, the Joint CLECs argue, this precedent endorses the rejection of the "flash cut" arguments of AT&T and Rate Counsel, as well as the need to base any regulated charges on the costs of providing the service by the carrier in question (as PAETEC and One Comm. have done here). Id. at 33. The Reply Brief concludes by stating that the West Virginia Commission issued on November 23, 2009 a final order that allowed for up to a 30 month, three step phase in of rate reductions and allowed CLECs the opportunity to file cost studies that could be the basis for an exemption from any requirement to reduce their access charges to Verizon's interstate charges. Id. at 34.

MONMOUTH TELEPHONE & TELEGRAPH COMPANY

In its Initial Brief, Monmouth contends that it is well settled that utility rates must provide sufficient revenue to avoid use of private property for public without just and adequate compensation. To that end, Monmouth asserts that the record shows that its Intrastate Access Rates are below costs, are not unjust and unreasonable, and, accordingly, should not be reduced. Monmouth IB at 2-3.

Monmouth claims that it has presented in this docket a forward-looking study of its specific costs to provide intrastate switched access services, and that study, including the update for cost of capital, supports a cost that is well in excess of Monmouth's current intrastate switched access rate of 3.3 cents per MOU. Moreover, Monmouth contends, after refuting Verizon and AT&T's criticisms as unsupported and without merit, that it has shown that adjusting its study to accommodate the criticisms results in a cost, which remains above Monmouth's current intrastate switched access rate. Id. at 4.

Monmouth argues that criticism levied at its cost study by other parties is without merit and does not justify an adjustment to Monmouth's Intrastate Access Rates. Monmouth contends that Rate Counsel offered into evidence a late-filed revised discovery response by AT&T, to Monmouth-AT&T 3-1(b). Monmouth notes that it filed a Motion *in Limine*, requesting that the AT&T revised response be excluded from record of evidence in this docket, but the motion was denied by Commissioner Randall. In its Initial Brief, Monmouth requests that the full Board reverse that Order and order that the subject, revised discovery response by AT&T, introduced by Rate Counsel, be excluded from the record of evidence in this docket. Monmouth claims that the revised response does not address the basis of AT&T's pre-filed rebuttal testimony, for which the discovery asked. Instead, claims Monmouth, the response provides a revised calculation of costs, which provided new calculations using Monmouth's cost study by an unidentified person or persons. Id. at 14-15.

Monmouth notes that this docket contains proposals by AT&T, Verizon, Sprint, and Rate Counsel to set intrastate switched access rates for CLECs based on the rates of other carriers, set by other tribunals, or otherwise not based on the CLECs costs to provide switched access service. According to Monmouth, discovery responses placed in the record confirm that these parties developed and filed their access rate proposals without any review of Monmouth's or any other New Jersey CLECs' costs. Monmouth asserts that findings on Monmouth's currently tariffed intrastate switched access rates, or setting new rates, without regard to Monmouth's costs would violate the legal standards governing the setting of utility rates under N.J.S.A. 48:2-21(b)1. Id. at 19.

Monmouth concludes that with regard to Monmouth, the Board should focus on the evidence of Monmouth's cost for providing switched access service. Based on the evidence in the record, the Board should find that there is no basis to find Monmouth's rates unjust or unreasonable. Thus, Monmouth argues, this matter should conclude with no change in Monmouth's rates and no further inquiry into them. Id. at 21.

In its Reply Brief, Monmouth argues that any non-voluntary reduction in Monmouth's intrastate switch access rate that may be ordered by the Board cannot result in rates so low as to be confiscatory by constitutional standards. Additionally, Monmouth continues to request that the Board either strike or give no weight to AT&T's response to discovery responses Monmouth-AT&T 3-1(b), which is part of Exhibit RC-4. Monmouth RB at 5.

Finally, Monmouth asserts that if the Board reduces Intrastate Access Rates, that a transition period, such as the one proposed by the Joint CLECs, be provided so that carriers can adjust or exit the New Jersey telecommunications industry. Monmouth also requests that a Board order addressing CLEC Intrastate Access Rates on a generic basis allow carriers to submit cost studies to support rates and rate filings that are consistent with their costs. Monmouth also notes that the FCC order that set CLEC rates based on ILEC costs provided for a three year transition period to the new rates based on a finding that a "flash cut" to such rates would be "unduly detrimental to the competitive carriers." Id. at 6.

WARWICK VALLEY TELEPHONE COMPANY

In a letter brief filed in lieu of a brief, Warwick, a participant in this proceeding, contends that the Board's Prehearing Order dated December 18, 2008 provides that this investigation is designed to set rates for which all entities will be required to charge "including default rates where entities have failed to participate in this proceeding." Accordingly, Warwick argues that because it participated in this proceeding by responding to Staff's discovery response, based on the record in this proceeding, there is no basis to adjust Warwick's intrastate access rates. WVT IB at 1.

According to Warwick, on January 23, 2009, Warwick provided answers to Board Staff's discovery requests, including a response to request Staff-5, to which Warwick provided a copy of a cost study and related work papers quantifying Warwick's cost to provide intrastate switched access service. These materials, according to the Warwick, show that Warwick's switched access rates are not unreasonable. Warwick argues that no other party has submitted materials that address Warwick's specific costs. Id. at 2.

Warwick asserts that there is no record basis to change its current intrastate switched access rate in this docket, and submits that policy and constitutional considerations dictate that Warwick be afforded the opportunity to have its specific costs and services addressed by the Board before any change to Warwick's intrastate switched access rates are ordered by the Board. Ibid.

In its Reply Brief, WVT claims that because it is the only rural ILEC, as defined under 47 U.S.C. §153 (37), and because the Board annually certifies WVT's eligibility to receive federal high-cost universal service funds, no party's proposal relate to the costs and operations of WVT. Accordingly, WVT asks that the Board make no changes to its Intrastate Access Rates in this docket. WVT RB at 1.

AT&T

In its Initial Brief, AT&T argues that the Board should reject the claims made by the ILECs and CLECs and pursue Intrastate Access Rate reform. First, AT&T notes that only the LEC serving the calling or called customer can provide switched access service on calls to or from that customer absent a dedicated service arrangement through special access, and an IXC has no choice of which LEC to use because there can be only one supplier of switched access on each LEC line. ATT IB at 8. AT&T contends that this bottleneck gives all LECs market power in the provision of switched access. The originating carrier has no other choice but to terminate the call through the called party's carrier. Moreover, AT&T argues that the record shows there is no difference between the origination and termination functions of both intrastate and interstate switched access, and that the other LECs in the proceeding acknowledged these similarities.

Secondly, AT&T states that AT&T, Verizon, and Rate Counsel concur that intrastate access rate reductions will benefit New Jersey consumers. According to AT&T, Verizon intimated that competitive forces in the interexchange market will ensure that retail rates include the effects of cost savings reflected in reduced rates, and Rate Counsel's witness expected market discipline would prevent an IXC from only temporarily decreasing its retail rates and then raising them again. Id. at 11. AT&T also found that prices in non-mirroring states were approximately 15% higher than in mirroring states, an indication of a strong correlation between access reductions and lowering of retail rates. Id.at 12. AT&T further argues that a Verizon witness in another proceeding testified that "asymmetric regulation" harms competition and consumers because they prevent a competitor from charging cost-based prices that would prevail in an unregulated market, harm customers who are served with higher costs and diminish the ability to innovate. Id. at 14-15.

AT&T also claims that by allowing Embarq and Verizon pricing flexibility in the ILEC Reclassification proceeding, the Board has paved the way for reduced access rates. In arguing that a reduction in intrastate access charge revenues for Embarq and Verizon would be less than the increase both ILECs generated as a result of the ILEC Reclassification proceeding, AT&T urges the Board to immediately reduce Intrastate Access Rates Id. at 16-17.

Furthermore, AT&T contends that nearly two dozen states, including Massachusetts, Ohio and Illinois, have reduced intrastate access rates. Id. at 17. States with a similar level of industrialization to New Jersey such as Massachusetts, Ohio and Illinois are among the pack of states that have mirrored intrastate rates with interstate rates. Id. at 9. According to AT&T, Verizon agrees that consumers will benefit from access reductions because competitive market forces will cause carriers to flow those reductions through to customers.

In addressing Verizon's charges, AT&T claims that while Verizon has argued against a reduction of Intrastate Access Rates in this proceeding, it has advocated for it before other state commissions. Id. at 25. AT&T also states that Verizon's Intrastate Access Rates are excessive and Verizon's costs to provide switched access service are below its Intrastate Access Rates. Moreover, AT&T contends that Verizon's Intrastate Access Rate is three and a half times Verizon's average interstate access rate for the same functionality. Id. at 31. With modest corrections to eliminate excessive cost of capital, non-traffic sensitive costs, use of Board approved depreciation lives, removal of the common overhead factor not needed in forward looking costs and others, AT&T claims that Verizon's cost would be reduced to a figure that leaves an 80% margin of profit over its interstate rates. Id. at 32-34. AT&T dismisses the LECs' argument that reducing intrastate access rates to interstate parity would somehow result in below-cost access rates. There is no record evidence that any carrier participating in this case has ever challenged its interstate rates as being below cost.

Furthermore, AT&T contends that Verizon's argument that the Board must consider that Verizon's rate-regulated revenues do not cover the costs for providing these services is wrong. AT&T argues that not only would the net effect of Intrastate Access Rate reductions and the ILEC Reclassification Order be a financial benefit to Verizon, but Verizon's cost study includes excessive costs. Id. at 35. AT&T also states that the Board's Prehearing Order was clear that issues related to revenue recovery are outside the scope of this proceeding. Id. at 36. Moreover, provisions in the Stipulations of Settlement approved in the ILEC Reclassification Orders provided that Embarq and Verizon may not petition the Board to modify their rate caps until the Board initiates a proceeding to reevaluate the competitiveness of certain services unless the Board issues an Order reducing Intrastate Access Rates. Then, according to AT&T, Verizon and Embarq may request the Board to adjust the rate caps upon petition to the Board, upon notice and hearing. Accordingly, AT&T contends that any request for an adjustment to rate regulated rates in this docket is premature. Id. at 37. According to AT&T, Verizon eventually admitted that the net impact of the Board's pricing flexibility order and access reductions for LECs will still generate very substantial positive revenue over a three year period. AT&T further states that issues such as additional pricing regulations, COLR and Fiber Optic Service ("FiOS") investments are clearly outside the scope of this proceeding. Id. at 44-45.

AT&T similarly argues Embarq has already been granted more retail pricing flexibility than it will require to recover access revenue reductions if the Board reduces its Intrastate Access Rates. Id. at 48. Moreover, AT&T argues that consumers will benefit from access reductions, contrary to Embarq's position, because a reduction in Intrastate Access Rates to the interstate level would result in some reduction in long distance rates. Id. at 51-53. Additionally, AT&T contends that Embarq's direct costs of access are below its interstate rate, and Embarq's inclusion of the CCLC is improper. Id. at 54-55. According to AT&T, Verizon, AT&T, the FCC and Embarq's Dr. Stahir agree that "there is no causative relationship between the provision of customer loops and the provision of switched access." Embarq also wrongfully included a common cost loading factor to the direct cost of switched access. AT&T also claims that Embarq incorrectly attributed other traffic non-sensitive costs into its model as Verizon did and overstated its average trunk investment. AT&T argues that when these four issues are corrected, the incremental cost of Embarq's switched access is below the interstate rate, and by reducing the intrastate rates to the interstate level, Embarq will still be making a 200% profit over its costs. Id. at 59-61.

AT&T also dismisses Embarq's position that the Board should create a statewide Universal Service Fund, and its arguments regarding the Board's ILEC Reclassification Order, COLR, rate regulated services and that any reductions in Intrastate Access Rates be phased in. Id. at 63. AT&T contends that Embarq's witnesses did not identify any specific costs related to its COLR obligations and affirmed that Embarq conducted no studies to determine such costs. Id. at 62. Additionally, AT&T argues that Embarq's request for a statewide USF should be rejected because universal service support is intended to provide assistance to local exchange companies that have higher than average cost and or serve low income communities. Embarq is a net payer into the Federal Universal Service fund and receives no high cost loop support from the Federal Universal Service Fund. Ibid.

AT&T contends that the Intrastate Access Rates charged by CLECs in New Jersey are excessive. Id. at 64. Moreover, AT&T attacks the Joint CLECs position that they have no market power, arguing that switched access rates are not subject to competitive pressures. Id. at 69-70. Additionally, AT&T asserts that the CLECs are not entitled to offsetting revenue streams if their Intrastate Access Rates are lowered because all CLEC retail services are competitive and have no pricing restraints. Id. at 70.

AT&T also argues that witnesses at the hearings all confirmed that switched access is a monopoly product because CLECs have 100% market share on all calls made to and from their customers. Id. at 67. Claims by CLECs that the access market is competitive because others could win away CLEC customers if the access rates are too high is implausible to quote Rate Counsel because competition will cause CLECs to lower their retail rates and not the switched access rates. According to AT&T, the record in this case is consistent with the findings of the FCC and numerous state regulators who have ordered that CLEC switched access rates above the level of the principal incumbent in its serving area can not be considered just and equitable. Id. at 68. Moreover, AT&T states that CLECs may not (and do not) charge interstate switched access rates in excess of the relevant ILECs rates today for interstate calls that either originate or terminate in New Jersey, and they have provided no evidence that this limit has caused them to exit any market or diminished their ability to compete. AT&T also asserts that CLECs have no universal service obligations, and none of the CLECs participating in this docket serve any residential customers. Id. at 16.

AT&T argues that the CLECs cost studies are irrelevant because access costs should be based on ILEC and not CLEC costs. Id. at 72. AT&T further argues that if a CLEC has no market power, its prices for switched access service would not be expected to exceed the ILECs rate in its geographic area even if it has higher costs, and the FCC found persuasive the IXC arguments that it is highly unusual for a competitor to enter a market at a price dramatically above the price charged by the incumbent absent a differentiated service offering. Id. at 73-74. Notwithstanding these arguments, AT&T also asserts that the CLEC cost studies contain many errors that do not support CLEC claims. PAETEC and One Communications, for instance, both include excessive overhead costs and local loop costs in their cost studies, as did Embarq. Id. at 74-75. AT&T also argues that Monmouth's cost study also contains many flaws which it was unable to refute, and Monmouth admitted to one flaw and even agreed to reduce the cost of capital during the hearings. According to AT&T, eight other errors include a modification in depreciation lives from five years to a conservative 12 years for network assets, elimination of double counting of engineering costs from switched investments, assignment of transport costs in proportion to switched access minutes consistent with cost causation principles. Id. at 75-76. Collectively, AT&T argues, these modifications reduce Monmouth costs to an amount which is well below Monmouth's interstate access rate. Id. at 77.

Furthermore, AT&T recommends that the Board reject all of the CLEC arguments; including using company-specific costs to establish rates for competitive carriers and that the reduction in access charges results in a subsidy for IXCs. AT&T contends that the standing rule for CLECs is the one that the FCC has used for all CLECs with regard to interstate access. Moreover, new entrants are generally not bound by legacy rules that affect incumbents and the burden is on them to reduce their costs, accept lower overall margins or provide a higher value retail service that will attract end users. Id. at 78-79.

AT&T concludes its Initial Brief by asserting that the evidence shows that LEC intrastate switched access prices are much too high, are harmful to competition and New Jersey consumers, and Intrastate Access Rates should be immediately reduced to interstate level no later than January 1, 2010 for all carriers. Id. at 79.

AT&T argues in its Reply Brief that Verizon will not suffer financial harm because of this proceeding, and that Verizon's Initial Brief does not mention that the Board has already created a process to address revenue recovery issues "in a separate matter, as appropriate, following the conclusion of this matter." AT&T RB at 16. AT&T also argues that if Verizon persists in its argument that its rate regulated services are below cost, it would be perfectly proper for the Board to require Verizon to provide a full review of all the costs and revenues associated with all of its telecommunications services, including both rate-regulated and competitive services, pursuant to N.J.S.A. § 48:2-21.18(d). Ibid.

Also, according to AT&T, if Verizon wishes to seek additional opportunities to recover reduced access revenues related to access rate reductions, the Board has already announced its willingness to entertain such a request. This is only a matter of timing, not one of substantive right, and, according to AT&T, it moots Verizon's claim that no party offers any policy argument for why Verizon should not be permitted greater retail pricing flexibility to offset potential switched access reductions. AT&T also notes that the Board may in fact grant Verizon additional pricing flexibility – just not in this docket. Id. at 17.

AT&T's Reply Brief also states that Embarq tries to confuse matters with the suggestion that reducing intrastate switched access rates to match the corresponding interstate rates would impose administrative costs, asserting that the interstate rate structure is complex. AT&T contends that Embarq's arguments defy common sense because achieving parity with interstate rates is easy, as the interstate rates and structure have been in place for years, and Embarq has already established the administrative processes needed to implement them. Id. at 37.

According to AT&T, the Joint CLECs' Brief rests upon the false premise that CLECs lack market power over switched access and ask the Board to "take no action" to address the fact that CLEC access rates are often much higher than even the ILECs' excessive rates AT&T maintains that CLECs cannot make this argument without ignoring (i) that they have total pricing flexibility for all of their retail services and (ii) that they serve only business (and not residential) customers and have historically had no role in the social policies that underlie the use of cross subsidies to support universal service objectives. Thus, argues AT&T, CLECs stand on a completely different footing from ILECs with regard to access policies, and they have no entitlement to recover their costs of service through subsidies that come from excessive access charges, which harm consumers and distort competition. Id. at 45-46.

AT&T adds that it is asking nothing more than for CLECs to be required to cap their intrastate rates at the same level the FCC already required them to charge years ago for the same services in the interstate jurisdiction. Id. at 12-16.

AT&T also argues that there is no basis for the Joint CLECs' claim that requiring IXCs to pay intrastate access rates that match interstate rates could result in a subsidy to the IXCs or would result in the IXC receiving some kind of free ride. In an efficient competitive market, no IXC would voluntarily pay more for access than the market rate as defined by the price (and ultimately the costs) of the predominant supplier, the ILEC. All AT&T seeks here is for the Board to create the same market-emulating environment for intrastate rates that the FCC set for interstate rates. By doing so, CLECs that are willing and able to compete on the basis of such fair and reasonable rates are permitted the same chance to succeed as the incumbents. CLECs that do not (or cannot) compete on those terms should not be allowed to force IXCs and their customers to subsidize the CLECs inefficiencies. Such inefficiencies should be supported by CLEC customers who have market choices (i.e., end users) or by the CLECs owners. Id. at 52.

AT&T further argues that both PAETEC's and One Communications' studies improperly included costs of the local loop, which is not a cost of access service. In addition, both apply extremely high common overhead costs. AT&T argues that when just these two incorrect inputs are removed, the results shows that their direct costs of access are well below their interstate rates. For its part, Monmouth's cost study is riddled with a plethora of errors that, when corrected, also show its costs of access are below its interstate rates. Thus, none of the CLECs that submitted cost studies have demonstrated that their properly calculated costs of access exceed the rates the Board should establish. Id. at 53.

AT&T disagrees with the Joint CLECs argument that Level 3 and XO, two of their members that elected not to submit cost studies, should be allowed to rely upon the PAETEC and/or One Communications cost study as a "proxy" or should be permitted a reasonable time to prepare and file cost studies should they so choose. AT&T argues that the Board's Prehearing Order gave all LECs notice in December 2008 that they should file whatever evidence they chose in support of their positions in this docket. Having failed to do so for the past year, neither Level3 nor XO nor any other CLEC should be allowed to avoid the Board's direction and make untimely filings, especially since AT&T and Verizon have demonstrated that CLECs' costs are neither relevant nor material to the Board's decision regarding the proper intrastate access rate. Id. at 54.

SPRINT

In its Initial Brief, Sprint argues that the Board should 1) order the ILECs to set their intrastate switched access rates and rate structures to the equivalent interstate access rate and rate structure; and 2) order the CLECs to cap their aggregate switched access rate at the aggregate rate of the ILEC the CLEC is competing against. Sprint IB at 1.

In support of its position, Sprint argues that excessive access rates are anti-competitive and that these rates are harmful to consumers because its forces carriers to subsidize competitors. Id. at 9. All carriers, including wireless carriers that compete against a LEC in a retail market, must use that LEC's switched access service to terminate non-local calls to the

ILECs customers. Ibid. According to Sprint, this monopoly-controlled bottleneck facility is priced far above the actual cost of providing the functions, and access prices are traditionally inflated as a mechanism to subsidize the price of basic local service in a regulated environment. The subsidies distort the true cost of providing service, the true value of such service, and the development of the telephone market. Id. at 11. Sprint further argues that consumers are not receiving the best offers because high Intrastate Access Rates inflate the rates for alternative services. Id. at 12.

Sprint also notes that the FCC and other states have taken action to lower Intrastate Access Rates. According to Sprint, the FCC has long relied on cooperation from state commissions to accomplish its access charge reform initiative, encourage reform efforts by states in advance of final FCC action, and provided clear guidance on the need for access reforms. Id. at 18. Moreover, 22 states require LECs' intrastate access rates to mirror their interstate access rates. For instance, Sprint notes that in Virginia the commission ordered a reduction of Embarq's access line revenues by $2.79 per access line, and a recovery of the revenue could only be done through existing pricing flexibility. Id. at 22-23. Sprint emphasizes that the reduction of input costs will pass through to the customers as shown by AT&T's witness's predictive study. In her study, according to Sprint, Dr. Aron predicted that 83% of costs would be passed through to customers, and markets that dropped prices gained market share at the detriment of companies that did not pass through costs savings. Id .at 13.

Sprint argues that the record establishes that ILECs costs are inflated when compared with several relevant points of cost comparison, including the reciprocal compensation rates, the interstate access rates and the ILECs cost studies. Sprint contends that the Board established cost-based, forward looking economic rates (or TELRIC) for ILECs to compensate another carrier for the use of switches and transport facilities that complete local calls and to stimulate efficiency and competition. Because no significant differences exist between calls subject to reciprocal compensation and calls subject to switched access charges in terms of the network elements used, and because competition regulates prices and ensures the availability of service at affordable prices, Sprint argues that different call termination rates are improper. Id. at 29-31. Furthermore, Sprint argues that Verizon's and Embarq's costs studies do not support their Intrastate Access Rates. Sprint asserts that Verizon's study clearly demonstrated that its intrastate cost was lower than its interstate rates, and Embarq's cost study concealed the cost results by inappropriately including a loop cost in the switched access cost analysis. Id. at 34.

Sprint also asserts that a reduction in the Intrastate Access Rates will not result in unaffordable retail rates or hardship for the LECs. Sprint argues that the Board's Pre-Hearing Order and the stipulations in the ILEC Reclassification proceeding address provisions for additional rate relief for Embarq and Verizon, but that such requests may only be made after the Board issues an order reducing the access rates. Claims by ILECs that pricing flexibility gained cannot be sufficient without further retail rate flexibility must be rejected because the ILECs omitted critical information regarding their present ability to recover their network costs from their own customers. Id. at 36-37. Verizon and Embarq are fully capable of recovering their full basic network connections from their own end user customers and the record shows that Verizon and Embarq have increased the average revenue per customer as a result of bundled services. Id. at 38. Furthermore, Sprint recommends that the Board needs to consider other sources of revenue before entertaining any ILEC claims of additional retail relief. Id at 45. Sprint also argues that COLR obligations need not be reduced because COLR does not constitute any impediment to the ILECs and ILECs have not provided cost evidence on any negative influence of COLR obligations on their performance. Id. at 46.

Sprint asserts that CLEC Intrastate Access Rates must mirror competing ILEC rates. According to Sprint, because the FCC determined that a CLEC monopoly over end users was inconsistent with pro-competitive policy, the FCC detariffed all CLEC interstate access rates that exceeded a rate benchmark by ordering CLECs to mirror competing ILEC rates. Id. at 47. Sprint argues that there is no need for the Board to reach a decision contrary to the FCC and the Board should order the CLECs to mirror the rates of the ILEC in whose territory they operate. Id. at 48. Sprint concludes by recommending that the Board should quickly institute reform by ordering each LEC to mirror the rate levels and structure of their interstate switched access charges.

Sprint argues in its Reply Brief that Embarq never quantified its COLR obligations in the record, and it has failed to present any evidence whatsoever regarding its cost of COLR and service quality compliance. As it stands, there is no record on which the Board can withhold access reductions for Embarq on COLR grounds. There is, however, evidence that no state commission that has reduced a ILECs access charges has concomitantly relieved it of its COLR obligations. Sprint RB at 22.

Sprint further states that in 1983, the FCC indicated that its long-range goal was for common-line costs to be removed from the calculation of the cost of switched access. In support of this conclusion, the FCC found that a customer which does not use his or her local-loop to place or receive even a single call generates the same local-loop expense as a customer who places calls over the local-loop; accordingly, every LEC customer causes the same local-loop expense, and does so regardless of whether the local-loop is ever used. Thus, according to Sprint, as the LEC customer causes 100% of the local-loop expense without any traffic-sensitivity, the FCC concluded that those costs should ultimately be borne exclusively by the LEC customer and/or the LEC, and should not be shifted to competing carriers. Id. at 23. Sprint argues that in other proceedings, Embarq has testified regarding the impropriety of including local-loop costs in switched access rates. Brian Stahir, a regulatory economist for Embarq, testified before the Kansas Commission that loop costs should be recovered on a flat rate basis from customers as a part of basic local service rates.

Sprint goes on to argue in its Reply Brief that Embarq's testimony indicates that only a minimal percent of Embarq's wire centers are located in areas that can be classified as rural. Id. at 29-30. The record also indicates that the average income in Embarq's service area is approximately $110,000 per household, so while Embarq characterizes part of its service area as rural, the area Embarq serves lacks certain characteristics of typical rural areas. Finally, Sprint contends that the record also establishes that despite its characterization of itself as a rural carrier in New Jersey, Embarq receives no High Cost Universal Service Support in New Jersey.

RATE COUNSEL

Based upon the record created in this proceeding, Rate Counsel urges the Board to order an immediate reduction in Intrastate Access Rates to the level of Verizon's interstate access rate, and a subsequent reduction to a lower interim rate pending a determination by the Board of the appropriate forward looking access rate based upon a TELRIC analysis. Rate Counsel also urges the Board to reject all of the cost studies offered by parties in this proceeding because none of these parties have shown that their cost study is forward looking, and because the rates resulting from such cost studies are well above any just and reasonable rate for intrastate access. RC IB at 1-2. Providers of intrastate switched access possess monopoly power and the wide disparities in rates charged demonstrate that the marketplace does not discipline rates. The rates are well in excess of the interstate rates that ILECs and CLECs are permitted to charge by the FCC. Ibid.

Rate Counsel contends that TELRIC analysis should guide the Board's determination of the forward-looking cost of intrastate switched access and thereby establish the appropriate rate. According to Rate Counsel, the economic benefits of applying TELRIC methodology to set prices for unbundled network elements supports adoption of TELRIC methodology to set an intrastate access rate, because:

1) TELRIC-based prices simulate the prices for network elements that would result in a competitive market; *i.e*., in a competitive market competition would drive prices to forward looking costs;

2) Rates based on forward looking costs minimize the opportunity for ILECs to exploit their market power over bottleneck network elements;

3) TELRIC-based rates provide accurate pricing signals to CLECs that are deciding whether to invest;

4) TELRIC-based rates minimize the opportunity for anticompetitive cross subsidization (and price squeezes); and

5) TELRIC-based rates could lead to lower prices for consumers in "downstream" markets.

Id. at 16-17.

According to Rate Counsel, the TELRIC methodology is favored over TSLRIC because it provides a better cost measure of the various elements that comprise a service without excessive allocation of joint and common costs, and the two costing methods seek to compute the cost that would prevail in a competitive market and reflect forward-looking efficient cost. The core difference between the two relates to their allocation of joint and common costs. The results of Verizon's TSLRIC analysis produces costs and rates well outside of any reasonable range of forward looking rates due to numerous deficiencies. Notwithstanding those deficiencies, the analysis shows that Verizon's cost for intrastate switched access is well below its interstate rate. Id. at 20. Moreover, Rate Counsel contends that TSLRIC tends to over-allocate common costs, which causes intrastate switched access rates to be inflated and inconsistent with rates that would exist in a competitive market, thus making TELRIC superior to TSLRIC. Id. at 19.

Rate Counsel argues that Verizon's benchmarking proposal should not be adopted by the Board, because Verizon's current Intrastate Access Rates are not market-based and provides no benefit to consumers. Id. at 21. Likewise, Rate Counsel contends that Embarq's cost study is flawed because the calculations and assumptions regarding the cost of debt are unsupported by detailed market data and common costs and overhead are dramatically excessive. Moreover, Rate Counsel contends that the major flaw in Embarq's study is the inclusion of the CCL non-traffic sensitive costs that are based on the allocation of the local loop cost. Id. at 22-23. Additionally, Rate Counsel argues that Monmouth's cost study fails to justify its Intrastate Access Rates because it fails to represent TELRIC compliant costs. Id. at 23. Moreover, Rate Counsel argues that the CLECs' cost studies results are inflated and are flawed because of inclusion of loop costs, because of flawed inputs such as shared/common costs factor, and cost of capital. Id. at 24-25. AT&T's critique of Monmouth's cost analysis reveals that Monmouth's cost model shows unreasonably high cost factors due to misallocations and miscalculations that yield erroneously excessive minute of use rates. The CLECs cost model suffers from the same infirmities as Verizon's and Embarq's Cost Model. The inputs and the assumptions made in their cost models are flawed and the results derived there from are overstated and unreliable. An analysis conducted by Rate Counsel demonstrates that the CLECs' loop costs, shared/common costs factor, and cost of capital, in some cases, are inflated.

Rate Counsel also argues that Verizon's and Embarq's requests that they be relieved from their COLR obligations if their respective Intrastate Access Rates are reduced should be rejected. According to Rate Counsel, Verizon failed to identify particular exchanges, classes, or subsets of customers that it would choose not to serve if it was relieved of its COLR obligations. In addition, it failed to quantify the one-time and recurring cost of providing basic local service to new customers. Moreover, Embarq's request for COLR relief is unsupported by any competent evidence in this record, in part because its witness admitted that costs for COLR were not quantified. Id. at 28-29.

Rate Counsel assails Verizon's cost study on several grounds. Rate Counsel contends that the study is flawed because it is not forward looking; it fails to include rate regulated revenues; it fails to look at all services to determine if a reasonable return exists; and it fails to show that its revenues are insufficient to cover its intrastate access costs. Id. at 32. Rate Counsel also argues that Embarq has failed to provide any evidence to demonstrate that its revenue is insufficient to cover the costs associated with providing basic, local service at affordable rates. Id. at 50. Similarly, Rate Counsel notes that the CLECs have failed to show that any reductions in Intrastate Access revenues cannot be recovered from its retail services. Moreover, Rate Counsel asserts that the CLECs have not demonstrated how they will be harmed by a flash cut reduction of Intrastate Access Rates to the interstate level. Id. at 57-58.

Finally, Rate Counsel contends that its recommendations will have a positive effect on consumers because it will lead to more accurate pricing signals. Id at 62. According to Rate Counsel, witnesses for AT&T, Sprint and Verizon have testified that upon a reduction of the Intrastate Access Rates, competitive forces should cause carriers to flow through the reductions to consumers. Id. at 64.

Rate Counsel urges the Board to adopt its recommendations that 1) on a flash cut basis, the Board should direct all carriers to set Intrastate Access Rates at levels that are no higher than Verizon's interstate rates; and 2) on a phased-in basis, the Board should direct all carriers to set intrastate switched access rates at cost-based rates, using cost studies and models that incorporate forward-looking assumptions, and in the absence of TELRIC-compliant rates, the Board should set local switching rates between the levels of the interstate ISP reciprocal compensation rate of $.0007 and the reciprocal compensation rate of $.001493 in the recent Verizon interconnection agreement filed with the Board. Additionally, CLECs should have the opportunity to file cost studies to show their costs, but such studies must be subject to the same examination and forward-looking cost standards as are the ILECs costs studies. Rate Counsel also requests that the Board seek commitments from carriers to pass through access charge reductions to consumers. Id. at 69.

In its Reply Brief, Rate Counsel asserts that Verizon's argument that if the Board were to lower its intrastate access rates without permitting a rate rebalancing mechanism, the result would have constitutional implications is without merit. Verizon has the opportunity to seek further relief in a subsequent proceeding for any revenue losses arising from intrastate access reform. Rate Counsel further argues that while the constitution protects utilities from confiscatory regulation, as held in *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989), the Court has further held that in determining whether a rate is confiscatory depends on whether the rate is just and reasonable and not on what methodology is used. *Federal Power Comm'n v. Hope Natural Gas Co*., 320 U.S. 591, 602-603 (1944). Verizon's subsequent opportunity to recover claimed revenue losses that result from intrastate switched access rate reductions dispels any notion that access reform would be confiscatory.

Rate Counsel's Reply Brief goes on to state that when Monmouth's cost study is revised, the adjusted cost for access is well below the flash cut rate proposed by Rate Counsel. In addition, when the Joint CLECs cost studies are revised to be forward-looking, the adjusted cost for access is below PAETEC's and One Communications' respective interstate access prices. The Joint CLECs and Monmouth mount no serious or articulated basis for the Board to deviate from its well established policy that a carrier's return is measured by looking at all services and not just one service or subset of services. The Joint CLECs and Monmouth fail to acknowledge the Board's 1995 *IntraLATA Prescription Order* that clearly set forth the standard of looking at all services including regulated, competitive and other services. RC RB at 12.

Rate Counsel submits that the Board should give no weight to WVT's cost studies because they are not part of the record. Neither Board Staff nor any other party put into the record responses to Staff discovery. As a result, there is no factual basis to conclude that Warwick intrastate access rates are in fact reasonable or are reflective of forward-looking rates. In fact, Warwick acknowledges that its rates were set in September 2, 1983 and at that time such rates were set under rate of return regulation. Under rate of return regulation, rates are based upon embedded costs and therefore, such rates by definition are not forward looking. Rate Counsel also notes that reporting of costs under Part 36 and Part 69 are based upon embedded costs and not forward-looking costs. Rate Counsel also notes that Warwick's request is inconsistent with the Board's stated intention to set one intrastate rate for all carriers. Rate Counsel asks that the Board reject Warwick's request to change the scope of the proceeding at this time. Id. at 14.

NEW JERSEY CABLE AND TELECOMMUNICATIONS ASSOCIATION

In its Initial Brief, NJCTA, an organization whose members currently provide a broad range of communications services in competition with ILECs and CLECs, argues that the Board should take two measures in this proceeding to further the competitive provision of telecommunications services in New Jersey and to reduce distortions in the state's current intrastate access charge regime.

First, NJCTA contends that the Board should cap CLECs Intrastate Access Rates at the competing incumbent's intrastate rate, unless a CLEC can prove to the Board that a higher intrastate access rate is necessary to recover its costs. According to NJCTA, the need to constrain CLEC access charges is driven by a relatively small number of CLECs that assess charges well in excess of their competing incumbent carrier, and the unchecked ability of CLECs to impose inflated access charges creates incentives to structure business arrangements designed primarily to generate access revenue. NJCTA member companies (and their customers) have no alternative but to pay supracompetitive intrastate access rates to certain CLECs to provide customers with the ability to make calls to those CLECs' customers, according to the brief. These rates are not subject to market discipline, may have no reasonable relation to cost, and thus are antithetical to the competitive market fostered by this

Board's policies. Moreover, if, as some CLECs claim, their costs justify higher rates, NJCTA suggests that the Board can provide a procedure to allow a CLEC to make an affirmative showing that the ILEC intrastate rate would be insufficient to recoup costs. Id. at 2.

Second, NJCTA supports the Board's review and reduction of all LEC access charges. With respect to ILEC access charges, NJCTA asserts that the Board should immediately eliminate Verizon's Market Share Line Charge ("MSLC"), because it is nothing more than a compelled subsidy paid by Verizon's competitors to prop up Verizon's profits. NJCTA argues that the MSLC is an outdated subsidy that does not serve any reasonable, useful purpose. The Board granted Verizon substantial retail rate relief and Verizon today reaps revenues from a host of other services, including video and broadband. New Jersey is one of only two states that permit recovery of this type of charge. The MSLC should therefore be eliminated, NJCTA argues. Id. at 2-3.

NJCTA goes on to state in its Reply Brief that subsidy-ridden access charges (like the MSLC) are not only outdated and anti-competitive, they are wholly unnecessary in light of the greatly increased revenue opportunities available to Verizon through a host of services that are free from rate regulation. These include long distance service, vertical features, such as call waiting, and DSL. Verizon has received substantial price flexibility for its local voice service, which it has used to its full advantage. NJCTA argues that Verizon is a company with over $100 billion in revenues, a thriving wireline and wireless business, and easy access to the capital markets. Verizon does not need (and the Board should not permit) legacy subsidies in the form of the MSLC originally intended to keep local phone rates low in order to fund its investment in advanced and competitive services. The Board should end this antiquated practice and instead allow CLECs to put these resources to innovation and investment in their own networks and products, rather than contributing to Verizon's bottom line. NJCTA RB at 6.

NJCTA further argues that Verizon's claim that its revenues are insufficient to cover its costs without access charge subsidies such as the MSLC is predicated on the disproportionate and unreasonable assignment of all network costs to basic voice service when the same network is used to provide other advanced and competitive services that contribute substantially to network costs. There is simply no support in the record for the MSLC, according to NJCTA. Id. at 7.

DISCUSSION

Prior to the divestiture of AT&T in 1984, AT&T was a monopoly that provided both local and long distance or toll calling. Generally, toll calls were priced in excess of cost so that local service rates could be kept artificially low. With the divestiture of AT&T, local telephone service was provided by local exchange companies, like New Jersey Bell, and long distance service was provided by interexchange carriers, like AT&T. In an effort to continue the subsidy flow from toll calls to local service, access charges were developed separately for interstate calls by the FCC and for intrastate calls by the Board. Access charges were purposely set well above the cost to provide the service, to maintain the existing subsidy. IXCs such as AT&T pay LECs, such as Verizon (formerly New Jersey Bell) for the use of the local telephone network to complete toll calls.

Since the divestiture, the FCC and numerous other states have, over time, reduced and/or eliminated the subsidy paid through access charges as telecommunications markets have become competitive. The Board opened this investigation to determine the appropriate level of access charges in New Jersey, which have changed little since 1984.

The parties' positions in this proceeding have been described in detail above. On one side of the argument, AT&T, Sprint, the NJCTA and Rate Counsel, those that seek to have access charges reduced, argue that the current Intrastate Access Rates contain subsidies that distort the competitive market by assessing IXCs with access rates significantly higher than the rates paid by their competitors. These parties ask that the Board no longer require their customers to subsidize the services and customers of their local exchange carrier competitors.

On the other side -- the primary recipients of access charges – Verizon, Embarq and the CLECs argue that their access charges should not be reduced and that the existing subsidy should continue. Verizon and Embarq ask that the Board maintain the flow of subsidy to offset their carrier of last resort obligations and to keep their basic residential rates low.

Over the past 22 years, this Board has recognized the changing nature of the telecommunications industry by reducing and/or eliminating regulation and granting pricing flexibility, where appropriate, in the face of competition in the marketplace. *See*, e.g., ILEC Reclassification Proceeding. While the pace of this relaxation of regulatory oversight may not have satisfied everyone, the Board has been deliberate and consistent in its approach in permitting the marketplace to determine prices where a showing has been made that sufficient competition exists.

In fact, in 1987, five years prior to the enactment of state legislation that determined that it was state policy to open markets to competition, and nine years before federal legislation opened local telephone markets to competition, this Board granted regulatory relief to New Jersey Bell for a group of services that the Board described as subject to "obvious market competition".[4] Since that time, this Board has granted partial or complete regulatory and pricing freedom to virtually all of Verizon and Embarq retail services,[5] and the CLECs have complete pricing freedom for all retail services.[6] In these decisions, the Board has made a concerted effort to balance the need for the appropriate level of continued consumer protections in the marketplace, with the desire to eliminate unnecessary regulation of carriers under the Board's jurisdiction. Each decision was a measured step toward allowing competing carriers more pricing flexibility in order to more effectively compete in the market. Each decision was consistent with the Board's statutory obligation to balance the needs and the rights of both the utility and the consumers of those utility services.

Following these progressive, pro-competitive policy determinations, the Board now has completed its review of access charges. These rates were established in 1984 and have not been materially changed since that time. As described above, much has happened in the industry since 1984. It is this Board's view, based upon the record in this proceeding, that it is time to reduce these long standing subsidies that are neither necessary nor appropriate in the increasingly competitive marketplace. As noted in the record, many states and the FCC have reduced access charge rates over the years, some as many as 15 years ago. The policy decisions by the Board in the past to include significant subsidies in these rates were

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[4] I/M/O the Petition of New Jersey Bell Telephone Company for Approval of a Proposal for a Rate Stability Plan and Relaxed Earnings Surveillance for Certain Competitive Services, BPU Docket No. TO87050398 (June 22, 1987).

[5] *See*, ILEC Reclassification Proceeding.

[6] *See*, I/M/0 the Board Investigation Regarding the Reclassification of Competitive Local Exchange Carrier (CLEC) Services as Competitive, BPU Docket No. TX06120841 (June 29, 2007) ("CLEC Reclassification Proceeding").

appropriate at a time when there was little or no competition. The Board is convinced that the current level of subsidies is no longer necessary today.

After a careful review of the record in this matter, the Board HEREBY FINDS that switched access service is a monopoly because there is no ability for an IXC or its customers to avoid excessive access charges. The Board concurs with Sprint's argument, that LECs have a monopoly over access to their end users, which has permitted a situation where CLECs have charged access rates well above the rates that ILECs charge for similar services. Sprint IB at 47. Verizon, in countering the Joint CLECs position that switched access service is competitive, argues that regulation prohibits an originating carrier from blocking calls to a CLEC with a high access rate. VZ RB at 10. Furthermore, switched access is a monopoly because an originating carrier does not have a choice of terminating carriers. VZ RB at 10; and VZ IB at 11 FN 21. Accordingly, the Board does not find persuasive the Joint CLECs' claim that they do not have a monopoly on intrastate access services and that the Board should permit the market to control Intrastate Access Rates.

AT&T argues that the functionality used to provide interstate and intrastate switched access do not materially differ. *See also*, Sprint IB at 29-31. AT&T IB at 9. The Board agrees. Accordingly, the Board HEREBY FINDS that there is no material difference in the functionalities used to provide interstate and intrastate switched access and, as a result, any disparities in the Intrastate and Interstate Access Rates should be eliminated. Additionally, the CLECs and ILECs in New Jersey have been charging interstate rates and using interstate rate structures for all interstate calls in New Jersey since the FCC issued its CLEC Rate Cap Order. Sprint argues, and the Board agrees that the FCC's approach has been successful and the FCC has not since changed its approach to the pricing of Interstate Access Rates. Sprint IB at 48. The record also indicates that there is no evidence that interstate access rates capped by the FCC eight years ago have caused any CLEC to exit the market. See, Reply Testimony of Verizon witness Vasington at 17; Rebuttal Testimony of AT&T witness Aron at 56.

Throughout the proceeding emphasis was placed on the benefits of reducing and maintaining the Intrastate Access Rates. After a review of the record and the arguments put forth by the parties, the Board HEREBY FINDS that a reduction of Intrastate Access Rates will benefit customers because there is a relationship between reduced access charges and toll reductions. The record also shows that not only will market discipline drive IXC rates lower, but AT&T has committed to eliminate an in-state connectivity fee and reduce the decrement rate on prepaid calling cards. AT&T IB. at 11-12.

Many of the parties in this proceeding offered into evidence their cost studies to support their positions. The record shows that each and every cost model presented in this proceeding overstates, and in some cases, grossly overstates intrastate switched access costs. The record shows that flaws in the access cost models include, but are not limited to, cost of capital, common overheads and depreciation rates that were inappropriately inflated. Furthermore, loop costs, which should not be included, are in some cases the largest cost elements in the cost model. These costs are inappropriate for inclusion in the access cost models in this proceeding. Moreover, there is evidence that the cost models offered by the parties are not forward looking as required by the Board's December 2008 Order. Accordingly, the Board HEREBY FINDS that the cost models offered by the parties to this proceeding included inappropriate costs, are flawed and overstate costs for providing intrastate switched access service, such that they do not form a foundation for higher access rates.

The ILECs in this proceeding have argued that if the Board reduces Intrastate Access Rates, the Board should provide the LECs with more pricing flexibility to offset the reduction in Intrastate Access revenues. VZ IB. at 2. Despite the arguments from Verizon and Embarq, the question of revenue recovery is not part of this proceeding. Verizon and Embarq agreed in their respective Stipulations in the ILEC Reclassification Proceeding that they would have the ability to seek additional rate relief if the Board issues an order reducing access rates. See, ILEC Reclassification Proceeding Order at 31, 43. Moreover, the Board's December 2008 Pre-Hearing Order in this docket provided that revenue recovery would not be determined in this proceeding and that determination was not challenged by any party to this proceeding.

Nevertheless, the record shows that Embarq and Verizon would still have a positive revenue impact after both the rate flexibility granted to them in the ILEC Reclassification Proceeding and the potential access reductions are calculated. Furthermore, CLECs have complete retail pricing flexibility because all of their retail services have been deemed competitive. Accordingly, the Board HEREBY FINDS that the issue of revenue recovery was not intended to be a part of the proceeding, and the issue should be reserved for a separate proceeding, as appropriate for each ILEC.

Verizon and Embarq also argued that if the Board reduces Intrastate Access Rates, the Board should also eliminate their COLR obligations. However, the record shows that COLR obligations of ILECs have not been reduced or eliminated in any state that has also reduced Intrastate Access Rates. Sprint RB at 22. Furthermore, the ILECs have failed to quantify the cost of their COLR obligations in New Jersey. Id. at 15, 22. Accordingly, the Board HEREBY FINDS that the requests of Embarq and Verizon are without merit and therefore, the ILECs current COLR obligations as codified in N.J.S.A. 48:2-23 and in the Board's rules and Board Orders, should not be eliminated.

The Board HEREBY FINDS that the proposal for a Universal Service Fund would merely shift the subsidy from toll customers to all customers and would protect Embarq from competitive losses. Moreover, because Embarq is not a federally-funded high cost carrier in New Jersey, there is no need to establish a fund for Embarq. Accordingly, the Board HEREBY REJECTS Embarq's proposal to establish a state Universal Service Fund.

The Board also HEREBY FINDS that the Board need not to wait for federal action from the FCC or from Congress on Intrastate Access Rate issues. As the Board stated in its December 2008 Order, the Board regulates Intrastate Access Rates and it is within the Board's authority to review the complete record in this proceeding and render its decision.

Finally, the LECs request that if the Board reduces the Intrastate Access Rates, that it do so over a transition period. EQ IB at 69; JC IB at 4; Monmouth RB at 5-6. AT&T, Rate Counsel and Sprint request that the Board reduce Intrastate Access Rates through a flash cut. AT&T IB at 46.The Board HEREBY FINDS that the record supports a reduction of Intrastate Access Rates over a transition period as more fully described below. Therefore, based upon the extensive record in this docket, the Board HEREBY ORDERS that 1) the ILECs Intrastate Access Rates be modified to mirror their respective interstate access rates and rate structures; and 2) that all CLECs Intrastate Access Rates shall be reduced to, and capped at, the corresponding ILEC Intrastate Access Rates.

The Board also HEREBY REJECTS the arguments of WVT that there is no basis in this record to change its current Intrastate Access Rates. As the Board notes in its December 2008 Order, the Board intended to investigate the Intrastate Access Rates of the entire New Jersey telecommunications industry with the expectation that the results of the investigation would apply, unless otherwise appropriate, to all entities in the state that charge Intrastate Access Rates. In that Order, the Board denied WVT's request that it be excluded from the investigation, and the Board similarly rejects its request here. Therefore, the Board FURTHER ORDERS that all local exchange carriers in New Jersey, regardless of their involvement in this docket, reduce their Intrastate Access Rates to their interstate access rates and rate structures.

While the Board finds that it is appropriate to reduce Intrastate Access Rates to the lower interstate levels, the Board recognizes the concerns put forth by the LECs about the timing of these reductions. In light of the current economic conditions throughout the State, and in recognition of actions taken by other state commissions, the Board HEREBY ORDERS that a phase-in period be established. This will allow the Board to remove subsidies that the Board finds are no longer appropriate without subjecting LECs to sudden revenue changes or other negative rate continuity issues. While the Board agrees that it is necessary and appropriate to bring access rates to a more reasonable level quickly, a balanced, phase-in approach is good public policy. Therefore, the Board FURTHER ORDERS that the reduction to the respective ILEC interstate rates and the mirroring of the interstate rate structure shall be accomplished in four phases over a 36-month period. In addition to recognizing the economic environment and the need for allowing all parties a transition phase on the rate change, a 36-month period represents a reasonable compromise between the "flash cut" called for by certain parties and the five-year phase-in that represents the outer time frame used by two other states. Thirty-six months is also consistent with the FCC's phase-in for the reduction of CLEC access charges as well as suggestions by the CLECs in this proceeding.

For the reasons stated above, the Board HEREBY FINDS that the legacy subsidies contained in intrastate switched access rates are no longer appropriate and should therefore be removed. In an effort to remove legacy subsidies as quickly as possible under the Board's four-step, 36-month phase-in, thereby sending the appropriate pricing signals to toll providers, the Board HEREBY ORDERS that the subsidy elements, specifically the ILECs' Carrier Common Line Charge ("CCLC") and Verizon's Market Share Line Charge ("MSLC") shall be eliminated and/or reduced first, followed by other access rate elements. In light of the fact that the individual ILEC intrastate tariff and rate structures are currently not the same, each step of the four-step phase-in will necessarily differ by carrier. However, the phase-in detailed below, while not the same for each carrier, is consistent with the Board's desire to remove non-cost based subsidies first, without causing rate continuity issues with each carrier.

Therefore, the Board HEREBY ORDERS the following reductions in intrastate switched access rates:

Phase I. Effective 20 days from the date of this Order

(1) Verizon and Embarq shall eliminate the Carrier Common Line Charge.

(2) Verizon shall also reduce its Market share Line Charge (MSLC) by 25% from 98 cents to 73.5 cents per line.

(3) Warwick Valley Telephone Company shall reduce its CCLC by one-third.

(4) CLEC rates shall not exceed the composite, per minute intrastate rate charged by the ILEC in whose territory switched access calls are originated or terminated.

Phase II.   Effective 12 months from the date of this Order

(1) Embarq shall reduce its intrastate switched access rates by one-third of the difference between its Intrastate Access Rates and its Interstate Access Rates.

(2) Verizon shall further reduce its MSLC rate (of 73.5 cents) by an amount equivalent to one-third of the then existing remaining difference between total intrastate switched access revenues and the amount that would be generated if Verizon's intrastate switched access rates were set at its interstate rates.

(3) Warwick Valley Telephone shall reduce its CCLC by an additional one-half.

(4) CLEC rates shall not exceed the composite, per minute intrastate rate charged by the ILEC in whose territory switched access calls are originated or terminated.

Phase III. Effective 24 months from the date of this Order

(1) Embarq shall reduce its intrastate switched access rates by one-half of the difference between its intrastate rates and its interstate rates.

(2) Verizon shall eliminate the remaining MSLC rate. In addition, Verizon shall reduce other access rate elements that, when combined with the elimination of the MSLC, are equivalent to one-half of the then existing difference between total intrastate switched access revenues and the amount that would be generated if Verizon's intrastate switched access rates were set at its interstate rates.

(3) Warwick Valley Telephone shall eliminate the remainder of its CCLC.

(4) CLEC rates shall not exceed the composite, per minute intrastate rate charged by the ILEC in whose territory switched access calls are originated or terminated.

Phase IV. Effective 36 months from the date of this Order

(1) Embarq, Verizon and Warwick Valley Telephone shall reduce their intrastate switched access rates to be equal to their interstate rates and mirror their interstate access rate structure.

(2) CLEC rates shall not exceed the composite, per minute intrastate rate charged by the ILEC in whose territory switched access calls are originated or terminated.

The Board FURTHER ORDERS that, within 7 calendar days of the date of this Order, Embarq, Verizon and Warwick Valley Telephone shall provide to Board Staff their proposed composite per minute Intrastate Access Rates that are to become effective 20 days from the date of this Order as Phase 1. Board Staff shall electronically circulate to the CLECs, the per minute Intrastate Access Rates as proposed by the ILECs. In addition, Embarq, Verizon and Warwick Valley Telephone shall provide to Board Staff and all CLECs their proposed composite rates 45 days prior to each effective date for Phase II, Phase III and Phase IV.

Any disputes that arise regarding the Intrastate Access Rates charged or the implementation of this Order shall proceed in accordance with the Board's rules and regulations. However, in no event shall the filing of any billing dispute serve to stay the effective date of the implementation of the Intrastate Access Rates as discussed above. Moreover, rate and billing adjustments will be implemented in a true-up process, as appropriate.

The actions by the Board in this Order reflect a policy recognition that, in a mostly competitive field, legacy subsidies are no longer necessary or appropriate. As described above and as reflected in the record, the Board HEREBY FINDS that the ILEC interstate access rate that the Board is setting herein as the appropriate rate for Intrastate Access charges at the conclusion of the phase-in period, is in excess of cost for providing Intrastate Switched Access service. Therefore, the revenues from the reduced Intrastate Access Rates will continue to provide a contribution to LECs. While it is not within the Board's authority to order a reduction in toll rates in light of access reductions, the Board does fully expect carriers that benefit from these reductions to fulfill the commitments made in this proceeding and pass through the effects of these savings to New Jersey consumers. The Board looks forward to continuing the process of examination and review of telecommunication regulation and policy toward a fair and equitable environment for both customers and telecommunications providers.

All local exchange carriers (ILECs and CLECs) who provide intrastate switched access services in New Jersey are HEREBY ORDERED to file amended tariff pages to effectuate the determinations in this decision, not later than 15 days from the date of this Order, with an effective date of 20 days from the date of this Order. In addition, all local exchange carriers are FURTHER ORDERED to file updated tariff pages at least 10 days prior to the effective date of each subsequent phase as described above.

Finally, the Board HEREBY AFFIRMS all provisional determinations made by Commissioner Randall as presiding Commissioner. This affirmation includes the Motion *in Limine* filed by Monmouth on September 9, 2009 and subsequently denied by Commissioner Randall. Monmouth renewed its Motion by requesting in its Initial Brief that the full Board reverse the Presiding Commissioner's decision. Not only does this request contain no new arguments, facts or evidence, Monmouth neglects to acknowledge that it was given an opportunity to provide surrebuttal testimony for the specific purpose to address the discovery response in dispute, i.e., Monmouth – AT&T 3-1(b). The Board HEREBY FINDS that Monmouth's request was without merit. Therefore, Monmouth's request is HEREBY DENIED.

DATED: 2/1/10

BOARD OF PUBLIC UTILITIES
BY:

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ACTING PRESIDENT

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ATTEST:

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

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