



STATE OF NEW JERSEY
Board of Public Utilities
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TELECOMMUNICATIONS

IN THE MATTER OF THE BOARD INVESTIGATION)	ORDER ADOPTING
REGARDING THE RECLASSIFICATION OF)	STIPULATION ON
INCUMBENT LOCAL EXCHANGE CARRIER (ILEC))	RECLASSIFICATION OF
SERVICES AS COMPETITIVE – PHASE II)	SERVICES AS
)	COMPETITIVE
)	
)	DOCKET NO. TX11090570

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Colleen A. Foley, Esq., Saul Ewing LLP, on behalf of United Telephone Company of New Jersey, Inc. d/b/a CenturyLink
William D. Smith, Esq., Assistant General Counsel, Verizon New Jersey Inc.

BY THE BOARD¹:

I. INTRODUCTION

In 1991, the New Jersey Legislature enacted the Telecommunications Act of 1992, L. 1991, c. 428, codified as N.J.S.A. 48:2-21.16 to -21.21 ("the Act"), declaring the policy of the State to, among other things, (i) "[p]rovide diversity in the supply of telecommunications services and products in telecommunications markets throughout the State" and (ii) "[p]ermit the board the authority to approve alternative forms of regulation in order to address changes in technology and the structure of the telecommunications industry; to modify the regulation of competitive services; and to promote economic development." N.J.S.A. 48:2-21.16(a)(4) and (5). Also, under the Act, the New Jersey Board of Public Utilities ("Board") is precluded from regulating the rates of competitive telecommunications services, and is authorized to determine, after notice and hearing, whether a telecommunications service is competitive. N.J.S.A. 48:2-21.19(a) and (b).

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

Since the enactment of the Act, the Board has approved alternative forms of regulation for incumbent local exchange carriers ("ILECs") and reclassified certain telecommunications services as competitive. For example, in 2008, based on N.J.S.A. 48:2-21.19, the Board reclassified all of the existing rate regulated ILEC retail services as competitive, except for (i) residential basic exchange service; (ii) single line business basic exchange service; (iii) installation of residential service; and (iv) residential directory assistance. See In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services As Competitive, BPU Docket No. TX07110873; and I/M/O the Application of United Telephone Company of New Jersey Inc. b/b/a Embarq for Approval of a Plan for Alternative Regulation, BPU Docket No. TO08060451 ("2008 ILEC Proceeding" or "ILEC Phase I"), Order dated August 20, 2008 ("2008 Order" or "Phase I Order"), wherein the Board accepted and approved stipulations among Verizon New Jersey Inc. ("Verizon," "VNJ," or "Company"), Board Staff, and the New Jersey Division of Rate Counsel ("Rate Counsel" or "RC") and, separately, among Embarq², Board Staff, and Rate Counsel.

As part of the 2008 agreements, the ILECs were permitted to adjust rates for the four rate regulated services on an annual basis for three years. In addition, the agreements called for a further proceeding to re-evaluate the competitiveness of those four rate regulated retail services as well as Rate Counsel being given the opportunity to seek reclassification of any retail mass market competitive services listed in Exhibit A thereof. 2008 Order at 43. By Order dated October 13, 2011 in the instant docket, the Board initiated a proceeding to re-evaluate the competitiveness of ILEC services, pursuant to N.J.S.A. 48:2-21-19(b), to review the question whether certain ILEC-provided services should be declared competitive after review of the necessary criteria. Subsequently, the Board granted motions for intervention and participant status, the parties engaged in discovery and settlement discussions, and the Board conducted an evidentiary hearing and three public hearings.

By Order dated March 20, 2013, the Board approved a Stipulation and Agreement between CenturyLink and Rate Counsel, after said Stipulation had been circulated for public comments. In summary, the parties agreed that the Board should continue to rate regulate CenturyLink's residential rate, single line business rate, and non-recurring charges for residential service connection, but CenturyLink could file for competitive status for each of these three services. Also, Directory Assistance service was reclassified as competitive, and CenturyLink would continue to provide one free call per month through December 31, 2014. Order at 8. Said Order resolved this matter as it relates to CenturyLink, and the Board stated that, as to Verizon, a final order would be issued setting forth, among other things, the Board's analysis of the issues, the positions of the parties, and the reasoning underlying the Board's determinations, as part of its final consideration of this matter. Id. at 1.

On May 6, 2015, Board Staff and Verizon entered into a Stipulation on Reclassification of Services as Competitive ("2015 Stipulation," "Stipulation," or "Agreement"), whereby they recommend that the Board determine all of Verizon's mass market retail services be deemed competitive. The 2015 Stipulation was circulated to the parties and stakeholders for comments. During its May 19, 2015 agenda meeting, the Board voted to accept Board Staff's recommendation that the 2015 Stipulation be approved. Based on N.J.S.A. 48:2-21.19(b), the Board **HEREBY APPROVES** the 2015 Stipulation for the reasons stated and as indicated below, and **HEREBY CONCLUDES** this proceeding.

² Now known as United Telephone Company of New Jersey, Inc. d/b/a CenturyLink ("CenturyLink").

II. BACKGROUND AND PROCEDURAL HISTORY

By letter dated November 14, 2007, Verizon requested that the Board initiate a review of the current state of competition in the telecommunications market in New Jersey as to mass market retail services provided by incumbent local exchange carriers, which led to the 2008 Order, following extensive discovery, testimony, and hearings. The key provisions of the agreements reached among the parties are as follows:

With the exception of residential basic exchange service including usage, single-line business basic exchange service, non-recurring charges for installation of residential services, and residential DA service, the remainder of CenturyLink's and Verizon NJ's mass market retail services were classified as competitive. The companies were permitted to adjust rates for the four rate regulated services on an annual basis for three years as follows:

- (a) Residential basic exchange service: Verizon NJ's rate of \$8.95 per month could rise to no more than \$16.45 per month in the third year. CenturyLink's rate of \$7.95 could rise to no more than \$15.45 per month in the third year;
- (b) Single-line business basic exchange service: Verizon NJ's rate of \$15.00 could rise to no more than \$25.50 per month in the third year. CenturyLink's rate of \$16.40 could rise to no more than \$25.50 per month in the third year;
- (c) Non-recurring charges for installation of residential services: Verizon NJ's rate of \$42.35 could rise to no more than \$50.00 in the third year. CenturyLink's rate of \$25.00 could rise to no more than \$30.00 in the third year; and
- (d) Residential DA service: Callers receive two (2) free call(s) per month. Once the monthly free call allowance has been exceeded, CenturyLink and Verizon NJ could charge no more than \$1.50 per chargeable DA call for the third year.

See 2008 Order at 28-30, 40-41.

In addition, the parties agreed to a further proceeding to re-evaluate the competitiveness of retail services. Specifically, the parties agreed to the following:

The Board shall initiate a proceeding to re-evaluate the competitiveness of the [four rate regulated] services...within ninety (90) days after the third anniversary of the effective date of the appropriate tariffs reflecting the first year increases. The rate caps shall remain in effect until the conclusion of that proceeding. As part of that proceeding, Rate Counsel may seek reclassification of any retail mass market competitive services...

[2008 Order at 43].

Based upon the above, the Board, by Order dated October 13, 2011, initiated a proceeding to re-evaluate the competitiveness of ILEC services, pursuant to N.J.S.A. 48:2-21-19(b), to review

the question whether certain ILEC-provided services should be declared competitive after review of the necessary criteria. By Order dated November 30, 2011, the Board set forth the issues to be determined in this proceeding as well as a schedule for the conduct of this case ("Prehearing Order"). Specifically, the Board, pursuant to N.J.S.A. 48:21.19(b), sought "to determine if ILEC services satisfy the necessary elements of ease of market entry, presence of other competitors, and availability of like or substitute services in the relevant geographic area." Prehearing Order, at 3. The Prehearing Order also named Commissioner Nicholas Asselta as the presiding Commissioner and authorized him to modify the schedule, decide all motions, and otherwise control the conduct of this case, subject to subsequent Board ratification.

Motions to Intervene were timely filed by CenturyLink and Verizon. In addition, motions to participate were received from Warwick Valley Telephone Company d/b/a WVT Communications; AT&T Communications of NJ, L.P., and its regulated affiliates; Sprint Communications Company, L.P., Sprint Spectrum, L.P., and Nextel of New York Inc. (collectively, "Sprint"); Cablevision Systems Corporation; the New Jersey Cable Telecommunications Association; and Fiber Technologies Networks, LLC.³ On December 13, 2011, Commissioner Asselta issued an order granting the motions to intervene and to participate.

After discovery round 1 had been concluded, initial testimony was filed on February 24, 2012, followed by reply testimony on April 27, 2012, and rebuttal testimony on June 11, 2012. Both Verizon and CenturyLink filed testimony in support of their requests for reclassification of services set forth herein. Also, Rate Counsel filed testimony opposing reclassification and requested that certain services be re-classified as rate regulated services. Specifically, as indicated in the attached Exhibits list in evidence, the parties submitted pre-filed testimony as follows: CenturyLink: Mark D. Harper; Rate Counsel: Susan M. Baldwin and Sarah M. Bosley; and Verizon: Paul B. Vasington.

In addition, evidentiary hearings were held on July 17, 2012, mainly to receive in evidence the pre-filed testimonies of CenturyLink, Rate Counsel, and Verizon by the aforementioned witnesses, and for opportunity to cross-examine them. Three public hearings were held on October 23, 2012 (Clinton); November 15, 2012 (Newark); and November 19, 2012 (Trenton). Fifteen (15) persons attended the Clinton public hearing; twenty-two (22) attended the Newark hearing; and forty-six (46) attended the Trenton hearing. The commenters overall did not support the reclassification of services. Consumers opposed deregulation, rejected the reasoning that it would enable companies to operate competitively since there is no competition, and sought to maintain the flexible regulatory structure that ensures affordable standalone basic residential telephone service. Some argued that reclassification would harm consumers, particularly those with low and moderate fixed incomes, elderly and those in rural areas with the fewest alternatives and the least reliable wireless coverage.

1. Motions

Several motions were filed throughout the course of this proceeding, which were addressed by Commissioner Asselta and are summarized below.

On January 31, 2012 Verizon filed a *motion in limine* requesting that the Board reject Rate Counsel's request to include a review of the competitiveness of Verizon's multi-line business services in this proceeding. Verizon argued that Rate Counsel's request was contrary to the

³ Only CenturyLink, Rate Counsel, Verizon, and Board Staff have actively participated in this proceeding.

terms of the 2008 Stipulation that led to this proceeding and was contrary to past Board precedent (Motion at 2). Verizon argued that the inclusion of Multi-line business services in this case violates notice requirements of N.J.S.A. 48:2-21.19(d). Motion at 3. Rate Counsel opposed the Motion stating that it was improperly filed and lacked merit. On March 29, 2012, Commissioner Asselta granted Verizon's motion and held that the issue of the competitiveness of Verizon's Multi-line business services is beyond the scope of this proceeding. The ruling did not extend to CenturyLink's services. Order at 5.

On March 30, 2012, Verizon and CenturyLink filed a Joint Motion to Strike certain testimony filed by Susan M. Baldwin and Sarah M. Bosley submitted on behalf of Rate Counsel. On April 5, 2012, the parties submitted a revised Joint Motion arguing that the testimony filed addressed service quality, unregulated services, discretionary service costs, irrelevant orders, and Verizon's Multi-line Business Services, which are outside the scope of the proceeding. On May 11, 2012, Rate Counsel responded that the Joint Movants were avoiding the plain meaning of the statute, which provides that consideration of more than the minimum criteria be reviewed by the Board when making a determination. See Commissioner Asselta's June 14, 2012 Order on Motion To Strike, pages 2-10.

Commissioner Asselta denied the Joint Movants' Motion to Strike testimony regarding (i) costs, (ii) profits, (iii) revenues, (iv) multiline business services of CenturyLink, and (v) service quality and accepted the Joint Movants' withdrawal of their motion to strike portions of "what they categorize[d] as irrelevant orders and the testimony respecting unregulated services, with one exception . . ." Commissioner Asselta's June 14, 2012 Order on Motion To Strike, at 10.

On June 5, 2012, Rate Counsel filed a Motion to Compel Verizon and CenturyLink to provide complete responses to several specific discovery questions. On July 16, 2012, Commissioner Asselta issued an order that denied RC's request that the work papers and sources relied upon and VNJ surveys related to Directory Assistance be disclosed. He also held that line loss data being sought by Rate Counsel was relevant and ruled in favor of Rate Counsel. The RC request for information regarding revenue from wireless sales by VNJ wireless lifeline resellers in New Jersey was denied. However, Commissioner Asselta granted RC's request that VNJ identify all carriers that purchase DA services from VNJ and the identities of CLECs. RC's request that the customers who moved from one VNJ service to another be disclosed was granted. However, the request regarding those who moved to VNJ affiliates or MCI was denied. The request for the list of affiliates and unredacted information was granted. The request of RC for VNJ and CenturyLink tax returns was granted as they pertain to New Jersey, however, the requests for other returns as well as state and federal tax returns of Verizon and CenturyLink were denied. The request for cost studies was also denied. See Commissioner Asselta's July 16, 2012 Order, pages 8-10.

By letter dated September 18, 2012, CenturyLink requested a further extension of the briefing schedule that was set at the conclusion of the evidentiary hearing on July 17, 2012 to allow for the filing of initial briefs on November 2, 2012, and reply briefs on December 4, 2012. No party objected to CenturyLink's request, and Commissioner Asselta granted the request accordingly. See Commissioner Asselta's September 20, 2012 Order Modifying Briefing Schedule, pages 1-2. On November 29, 2012, CenturyLink requested a further extension of the due date for filing reply briefs until December 20, 2012, which was also unopposed, and Commissioner Asselta granted CenturyLink's request accordingly. See Commissioner Asselta's December 3, 2012 Order, pages 1-2.

On November 21, 2012, Verizon filed a Motion to Strike certain portions of the Initial Brief submitted by Rate Counsel and Attachments A&B, C, and D and references thereto. RC responded on November 30, 2012 seeking an extension of time to December 17, 2012 to respond. Thereafter, on December 3, 2012, Verizon filed its response agreeing to a brief extension until December 10, 2012. Commissioner Asselta granted the request for an extension to respond through an order issued on December 7, 2012.

On November 29, 2012, Rate Counsel filed a Motion requesting that Exhibits 17 and 18 be added to the record. Exhibit 17 contains responses to Transcript Requests to VNJ and CenturyLink, and Exhibit 18 was supplemental discovery responses of VNJ and CenturyLink. On December 20, 2012, an order was issued granting Rate Counsel's request to move into the record Exhibits 17 and 18. See Commissioner Asselta's December 20, 2012 Order, pages 1-2.

In its November 21, 2012 Motion, VNJ sought to strike information in the Brief filed by RC and associated Attachments that reference evidence that it claimed was outside the record. Verizon disputed the inclusion of legal analysis provided by RC witness Ms. Susan Baldwin and sought to strike any references to Earnings Before Interest Taxes Depreciation and Amortization ("EBITA"), management fees, and advance payment to affiliates (Motion at 2). Verizon also sought to strike RC Attachment A and B, "Regulatory Market Power Analysis and Product Elasticity Analysis"; Attachment C, "Regulatory Status of VoIP: FCC"; and Attachment D, consisting of both a Verizon Letter dated September 2012 and a Thomson Reuters Street events-Edited Transcript dated June 21, 2012 (Motion at 4). Rate Counsel argued that the material in Attachment A and B is based on the existing record from discovery responses, rebuttal testimony, and the parties' testimony. Respecting Attachment C and D, RC requested that judicial notice be granted. Verizon ultimately withdrew its Motion to Strike the June 2012 document in Attachment D. See Commissioner Asselta's January 22, 2013 Order on Motion To Strike, pages 2-5.

Commissioner Asselta granted Verizon's Motion to Strike Attachment A and B, Attachment C, and arguments based exclusively on the attachments that are not already in the record. The order denied Verizon's motion regarding EBITA, management fees, advance payments to affiliates, and depreciation, as there was sufficient competent evidence in the record addressing these issues. Regarding Attachment D, Verizon withdrew in part its motion and the ruling issued granted the remainder, respecting the June 2012 document. See Commissioner Asselta's January 22, 2013 Order on Motion to Strike, pages 2-5.

Subsequently, on March 1, 2013, Verizon moved to reopen the record to take judicial notice of recent events in the wireless industry that it contends bear on the issues in this proceeding. Verizon noted that subsequent to the closing of the proceeding, wireless carriers have started to offer and market fixed wireless home connect services to customers. Verizon believes these services compete with landline services.⁴ VNJ Motion to Reopen at 2. In the motion, Verizon contends that there are carriers who provide substitute services, for example, AT&T offers unlimited nationwide calling for \$19.99 a month with a two-year contract, and a \$129.99 rebate to cover the cost of the phone base. Id. at 4. Another example cited by VNJ is the mobile wireless service offered by Republic Wireless at \$19 a month for unlimited data, talk, and text with no contract. Verizon argues that these services are substitutes for basic local service and single line business service. Id. at 5. VNJ states that in addition to these, TracFone recently introduced its own version called Straight Talk Wireless Home Phone which it advertises as a

⁴ On March 4, 2013, CenturyLink filed a letter stating that the motion should not impact the Board's consideration of the CenturyLink and Rate Counsel Stipulation and Agreement.

no contract wireless replacement for consumers' landline telephone. Sprint, Verizon explained, offers Sprint Phone Connect 2, which uses a 3G network for voice. Verizon specifically cites to a Federal Communications Commission ("FCC") Report and Order regarding the use of wireless booster devices which improve wireless signal strength. In sum, Verizon believes that the record should be reopened to take judicial notice of service offerings that it believes substitute wireless for land line services. Id. at 7.

RC filed its reply to the VNJ motion stating that VNJ's pleas to take notice of advertising by companies who have made claims regarding "home" phone services should be rejected because advertisements do not establish whether a service is a substitute for wireline service, one of the criteria in the case before the Board. Also, evidentiary value is not provided through ads. The absence of sufficient information as to how the wireless services qualify as a substitute service exemplifies that Verizon has not met its burden to show that the information supports a finding that the reclassification of services is warranted. RC Reply at 3. According to Rate Counsel, the issue of whether consumers consider wireless to be a substitute for wireline is not supported by Verizon's submission of cumulative, immaterial information. Ibid.

To support its arguments, RC cites a Federal Trade Commission ("FTC") decision that reopening the record is permissible when: the moving party can demonstrate due diligence; the proffered evidence is probative; the proffered evidence is not cumulative; and, the nonmoving party would not be prejudiced.⁵ Id. at 3. Rate Counsel disagrees with VNJ that wireless service is a substitute and contends that Verizon has not met the requisite criteria for judicial notice, which are as follows: the fact is not subject to dispute because it is (1) generally known within the trial court's jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.⁶

Rate Counsel states that ads do not establish that consumers are purchasing a product. The submissions do not show that wireless "home" service is considered a like or substitute service, a requirement of the statute. Further, RC describes some of the differences of the wireless service, including the equipment needed and the cost associated with the equipment, the termination fees and contract requirements, their incompatibility with medical monitoring and alert systems; battery backup issues and wireless coverage problems. More importantly, according to RC, are the limitations the product has respecting E911 services. Several caveats are listed in the ads for wireless products which, according to RC, significantly distinguish them from wireline services. Therefore, RC submits that the ads that Verizon presented do not warrant reopening of the record or notice and therefore the motion should be denied. Id. at 5.

Also, RC contends that VNJ's filing is devoid of evidence of like or substitute services, "particularly within certain demographic groups." Id. at 4. Notwithstanding, should the Board rule in VNJ's favor, RC requests that the record be reopened to include its Regulatory Market Power Analysis and Product Elasticity Analysis as they pertain to Verizon's rate-regulated services. Id. at 7.

Verizon replied to RC's response on March 15, 2013, and assailed RC's use of an FTC case to counter VNJ's position, and requested that the Board rely on its findings in a 2002 New Jersey Natural Gas Company case respecting a motion to reopen the record wherein the Board took

⁵ Rate Counsel Reply, citing In re Brake Guard Products Inc., 125 F.T.C. 138, 248 n. 38 (1998), citing to Chrysler Corp. v. FTC, 561 F.2d 357, 361-63 (D.C. Cir. 1977).

⁶ N.J.R.E. 201 and Fed. Rules Evid. R. 201(b).

judicial notice of a website.⁷ Verizon contends that it satisfies the standard for introduction of this information into the record as it discovered it in February after the hearings had been concluded and characterizes the products advertised (TracFone, Sprint, AT&T and Republic Wireless devices along with the FCC Wireless Booster decision) as constituting an extraordinary event in the wireless industry. Verizon Reply at 3.

Verizon claims that website ads and radio spots are convincing evidence that wireless services should be given great weight in the Board's decision-making as to available like or substitute services. Id. at 6. Verizon suggests that RC's argument that substitute service must be identical is meritless and is not supported in the record. Id. at 7. Verizon argues that the record is void of evidence that Sprint or TracFone is offering in-home services or that Republic Wireless has low cost smart phone services below the cost of Verizon's landline service. The record, according to Verizon, makes no mention of the recent FCC Wireless Boosters decision and therefore this information should be admitted. Further, VNJ argues that RC will not be prejudiced if the record is opened for the purpose of permitting the Board to take notice of the events concerning wireless technology post hearing.

Also, VNJ argues that RC has not posited that the "specific facts and propositions" regarding these services are not of "generalized knowledge." Id. at 9-10. In addition, VNJ urges that the Board deny Rate Counsel's cross motion to include Rate Counsel's Market Power and Elasticity Analysis if the record is reopened, since it was stricken from the record previously and this motion in effect seeks what should have been sought through interlocutory review when the information was stricken. Id.

Rate Counsel, by its response dated March 22, 2013, opposes VNJ's motion on the grounds that it is meritless, irrelevant, and cumulative. According to Rate Counsel, Verizon has not demonstrated that wireless is a substitute, Verizon's market power impacts this issue, and this information is unsupported by actual data establishing consumer purchasing decisions showing a particular product to be a substitute.

Any party may file a motion to reopen the hearing, for the purpose of taking additional evidence, after the hearing has concluded but before the Board issues its final decision or order. The movant must set forth clearly the reasons for reopening of the hearing, including "any material changes of fact or law alleged to have occurred since the last hearing." N.J.A.C. 14:1-8.4 (a) Pursuant to N.J.A.C. 14:1-8.4 (b), if after the hearing in a proceeding, the Board shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such hearing, the Board will issue an order for the reopening.

When considering official notice under N.J.A.C. 1:1-15.1 and N.J.A.C. 1:1-15.2, the Board must determine whether the proffered facts can be generally recognized within the knowledge of the agency, while recognizing that administrative hearings are not strictly bound by statutory or common law rules of evidence or by the New Jersey Rules of Evidence. See Cheryl Hensle v. Public Service Electric and Gas Co., BPU DKT. NO. GC12110992U, OAL DKT. NO. PUC01097-13, Order dated July 24, 2013, 2013 N.J. PUC LEXIS 234, *8 (N.J. PUC 2013) ("Pursuant to N.J.A.C. 1:1-15.2(c), the Board may take official notice of any material involving a

⁷ See, I/M/O The Petition of New Jersey Natural Gas Co. for the Annual Review and Revision of Its Levelized Gas Adjustment Clause Factor Consisting of the Annual Review and Revision of the Gas Cost Recovery Factor, Etc. for the 2001-2002 Winter Period, Dkt. Nos. GR99100778; GR99100779; GR99100780; GR01070446, Order dated October 31, 2002).

matter between the parties where the basis for official notice is disclosed and the parties are afforded an opportunity to respond.”); Matter of Adoption of N.J.A.C. 711, 291 N.J. Super. 183, 190 (App. Div. 1996) (taking official notice, pursuant to N.J.A.C. 1:1-15.2, of the Webster's New World Dictionary of the American Language, 2d. College Ed.'s description of "present perfect"). But a judge “may, in his or her discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either: 1. Necessitate undue consumption of time; or 2. Create substantial danger of undue prejudice or confusion.” New Jersey Dep't. of Env'tl. Prot. V. Circle Carting, Inc., 2005 N.J. Super Unpub. LEXIS 185, **41-42 (App. Div. Dec. 20, 2005).

Because of the 2015 Stipulation, Verizon's motion to reopen the record has become moot and, therefore, it would be improvident for the Board to rule on Verizon's post-hearing motion when Verizon has entered into a stipulation with Board Staff for the Board's review and approval. See, e.g., UFJ Bank Ltd. v. J & A Intern. Corp., 354 N.J. Super. 542, 546 (Ch. Div. 2002) (“Because the stipulations of dismissal were effective when filed, there is no action in which to intervene and the motions to intervene are moot.”). Thus, although the Board deems it appropriate to discuss Verizon's motion to reopen the record, the Board does not need to rule on it.

2. Factual Disputes on Verizon's Currently Regulated Services

A. Verizon

During the July 17, 2012 evidentiary hearing, Verizon recognized the limited scope of this proceeding and stated:

The Board initiated Phase II for the sole purpose of evaluating whether any of the few remaining noncompetitive services should be declared competitive and free from rate regulation and whether any competitive services that rate counsel challenged should be found to be noncompetitive and subject to rate regulation in this phase. Thus, this proceeding does not alter things such as Verizon's PAR-II obligations, tariffs, or the Board's telecommunications rules. All that happens if the Board finds, as it should, that Verizon legacy landline and residential DA services, as well as its vertical services, are competitive is that such services would not be subject to rate regulation.

[T 16-17 to 17-5]⁹.

⁹ Verizon's and Rate Counsel's pre-filed testimonies and briefs are designated as follows: Verizon Direct Testimony of Paul B. Vasington dated February 24, 2012: VNJ DT; Verizon Reply Testimony of Paul B. Vasington dated April 27, 2012: VNJ RT; Verizon Rebuttal Testimony of Paul B. Vasington dated June 11, 2012: VNJ RBT; Verizon New Jersey Initial Brief: VNJ IB; Verizon New Jersey Reply Brief: VNJ RB; Rate Counsel Testimony of Susan M. Baldwin and Sarah M. Bosley dated February 24, 2012: RC-IT; Rate Counsel Reply Testimony of Susan M. Baldwin and Sarah M. Bosley dated April 27, 2012: RC-RT; Rate Counsel Rebuttal Testimony of Susan M. Baldwin and Sarah M. Bosley dated June 11, 2012: RC-Rebuttal-T; and Rate Counsel Reply Brief: RC-RB. Also, CenturyLink filed testimony as follows: Initial Testimony of Mark D. Harper dated February 24, 2012; Reply Testimony of Mark D. Harper dated April 27, 2012; and Rebuttal Testimony of Mark D. Harper dated June 11, 2012. All the aforementioned testimonies were moved in evidence at the July 17, 2012 evidentiary hearing. And, "T" designates the transcript of the July 17, 2012 evidentiary hearing.

In support of its position, Verizon offered Mr. Paul B. Vasington, who filed direct, reply, and rebuttal testimony. T 28-12 to 30-8. Mr. Vasington's opinion is specifically based on the three criteria in N.J.S.A. 48:2-21.19(b). T 34-20 to 35-3. Nevertheless, he deemed it necessary to rebut Rate Counsel's argument that Verizon would be able to generate monopoly profits from legacy landline residential customers in New Jersey. T 108-12 to 110-12. Also, he emphasized that "Verizon does not have market power over legacy landline or any other retail services in New Jersey." VNJ RBT at 2, lines 3-11. Mr. Vasington testified that he was "pointing out that even when we had the rate increases from the prior settlement, we weren't even able to sustain our revenues, our revenues went down. And because our expenses haven't been going down by the same proportion, our profits -- our losses are increased." T 109-21 to 110-3. Mr. Vasington testified that as of the end of 2011, Verizon served less than half of the wireline sub-segment. T 111-5 to 113-9.

Verizon avers that the four services subject to review in this matter - residential basic exchange service, including usage; single line business basic exchange service; non-recurring charges for installation of residential services; and residential directory assistance ("DA") services - are competitive under the New Jersey statutory reclassification criteria. Verizon asks the Board to find that its landline and residential DA services are competitive and relieve the Company from any further rate regulation. Verizon New Jersey Initial Brief at 4. In support of its position, the Company argues that it has demonstrated that there is more competition today than there was four years ago when the Board found in Phase I that all of Verizon's other mass market services were competitive. Ibid. Verizon contends that it "faces robust competition resulting from convergence that has brought formerly disparate industry sectors into direct competition with one another by allowing each of their different network platforms to provide similar bundles of communication and other services." VNJ DT at 6.

Verizon also asks the Board to reject Rate Counsel's argument that certain competitive discretionary services, such as Caller ID and Call Waiting, be reclassified as noncompetitive and subject to future rate regulation. VNJ IB at 11. Under the 2008 Settlement, Verizon's discretionary services were deemed to be competitive. Ibid. Rate Counsel contended that approximately 25 of the over 50 discretionary services were no longer competitive. (See letter dated December 7, 2011 from Rate Counsel entitled, "Rate Counsel's Proposed List of Services Subject to Review for Reclassification," Exhibit A). The Company believes that Rate Counsel has not provided any specific evidence to demonstrate why any one of the identified discretionary services should be deemed non-competitive pursuant to the requirements of N.J.S.A. 48:2-21.19(d). VNJ IB at 11.

According to Verizon witness Mr. Paul B. Vasington, the market evidence presented in 2007-2008 in Phase I of this proceeding, which was relied upon by the Board in making its determination, has intensified and reveals more entry, growth, substitution and, therefore, conclusively showing competition for landline service today. VNJ DT at 15. Also, these services cannot be separated from the provision of basic exchange service. A customer seeking Caller ID must obtain the service from their basic service provider. Thus, Verizon argues, if the ancillary and vertical services meet the statutory criteria, then the underlying basic service must be found to also meet the criteria, provided market conditions are similar. Ibid. Accordingly, Verizon posits that RC's plea regarding discretionary services should be denied. In addition, the record that the Board relied upon in 2008 has moved in the direction of an even more definitive showing of ease of market entry, presence of competitors, and the availability of like or substitute services. Id. at 16. Therefore, VNJ argues that all services should be found to be competitive. Id. at 66; VNJ IB at 59.

The Company believes that there is overwhelming evidence that conclusively demonstrates that Verizon has satisfied the statutory criteria for its residential DA services as well. In support of its position, it points to its observation that the DA market has evolved from the exclusive domain of wireline carriers to a market in which DA services are accessible from a variety of sources, including wireless carriers, free DA providers, Internet DA providers, cable providers, VoIP providers and CLECs. In addition, smartphones and websites all provide directory listing information. VNJ DT at 49-66.

Based upon the criteria necessary for a finding of competitive status, Verizon, in its initial brief, argues as follows:

A.1. Ease of Market Entry

According to the Company, no barriers to entry exist, as evidenced by the wide availability of Cable, Wireless, VoIP, Broadband, and CLEC services. Factors for consideration include:

- Cable telephony service is available in every Verizon-served wire center;
- New Jersey has at least four wireless carriers offering service;
- Over 80% of the census tracts in New Jersey are served by at least four broadband providers, and, thus, VoIP over existing broadband connections is available to consumers throughout the State;
- There are now numerous traditional CLECs offering service to customers in New Jersey; and
- Alternative services to DA are available everywhere and used heavily in New Jersey.

VNJ IB at 9-10; VNJ DT at 8, 17-19.

A.2. Presence of Other Competitors

The Company contends that competitors are successfully competing in New Jersey as evidenced by the following:

- There are well over a million cable telephony lines in the State;
- New Jersey wireless subscribership has more than tripled from year end 1999 to December 2010, growing from 2.3 million to 8.6 million subscribers (since year end 2004, wireless subscribers have outnumbered switched access lines in the State);
- 46 percent of the wireline portion of the market in New Jersey is now controlled by non-ILEC wireline carriers; and
- Dozens of DA alternatives are available to Verizon's customers who are well aware and utilize these competitive services much more than they use traditional DA service.

VNJ IB at 10; VNJ DT at 19-32.

A.3. The Availability of Like or Substitute Service in the Relevant Geographic Area

According to the Company, substitutes are available throughout its service territory, which is supported by the following:

- Verizon has a regulated primary line in less than half of the households in its service territory;
- Over 3 in 10 households (31.6%) have "cut the cord" in favor of wireless only service, a figure that has been steadily increasing;
- Approximately 80% of the New Jersey Universal Service Fund ("USF") dollars went to wireless Eligible Telecommunications Carriers ("ETCs");
- For the years 2009 through 2011, Verizon lost a significant number of retail voice lines;
- The volume of telephone numbers ported from Verizon to its facilities-based competitors demonstrates that Verizon's line losses are due to competition; and
- The volume of DA calls has drastically dropped.

VNJ IB at 10-11; VNJ DT at 8-9.

In its Reply Brief, Verizon reiterates its position first articulated in its testimony and Initial Brief and urges the Board to reject Rate Counsel's argument that the Board should consider criteria other than those set forth in N.J.S.A. 48:2-21.19(b) in determining whether Verizon's regulated services should be deemed competitive. Verizon notes that the Board has repeatedly held in prior proceedings that reclassification will be evaluated only through the application of the three criteria of N.J.S.A. 48:2-21.19(b). VNJ RB at 4-8. Verizon cites:

[T]he Board has successfully reclassified or classified services as competitive in several previous cases based only on the three statutory criteria. Specifically, the Board has reclassified Message Telecommunications Services, Digital Data Service and Digital Connect Service as competitive; and has classified seven new services as competitive, all under the statutorily prescribed standards set forth in the [the Act]...

[VNJ RB at 12].

According to Verizon, in In the Matter of the Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing, BPU Docket No. TO0102095, Decision and Order, dated August 19, 2003, the Board reclassified business services for customers with five or more lines as competitive. VNJ RB at 12. Also, in 2005, the Board classified business services for customers with 2-4 lines as competitive using only the three criteria of N.J.S.A. 48:2-21.19(b). Similarly, in 2007, the Board reclassified competitive local exchange carrier retail services as competitive, using the three criteria. Ibid., citing In the Matter of the Board Investigation Regarding the Reclassification of Competitive Local Exchange Carrier (CLEC) Services as Competitive, Docket No. TX06120841, Order dated June 29, 2007 ("CLEC Reclassification Order"). The Board also applied the three criteria when it evaluated the

2008 Settlement Agreement, and granted competitive classification to all mass market services except the four services at issue in this proceeding. As described by Verizon, the Board found that each of the three criteria had been adequately satisfied. Id. at 13. Accordingly, Verizon contends Rate Counsel's attempt to include a market power analysis, test for a market share, and elasticity evaluation should be rejected. Ibid.

Thus, Verizon further asks the Board to reject Rate Counsel's contention that the Board should expand the N.J.S.A. 48:2-21.19(b) criteria and rely on an additional test associated with the U.S. Justice Department's and Federal Trade Commission's Horizontal Merger Guidelines, which is employed for market-power analysis. VNJ RB at 5 and 65. According to the Company, such guidelines have no place in this proceeding and the Board has never considered them in the past. The Company further argues that the Board may not consider expanding the statutory criteria without fair notice to the parties and a rule-making proceeding to establish any new or expanded criteria. VNJ RB at 5.

The Company posits that the brief submitted by Rate Counsel attempts to divert attention from the evidentiary record. Verizon believes that it has more than demonstrated that its four legacy landline services that are the subject of this proceeding meet the N.J.S.A. 48:2-21.19(b) criteria.

Verizon asks the Board to consider not only all entities currently authorized to provide service, including those competitors that are capable of providing service to customers, but also those not currently doing so. VNJ DT at 19. As discussed in its Initial Brief, Verizon believes that the evidence shows that a variety of intra-modal and inter-modal competitors, including cable companies, wireless carriers, competitive local exchange carriers, voice-over-Internet-protocol ("VoIP"), and broadband providers, among others, are successfully providing customers with substitute services. The Company believes that it has shown that its customers have multiple competitive alternatives available to them that are offered in increasing numbers. In support of its position, Verizon offers proprietary data that it describes as uncontested facts, including line loss data. VNJ RB at 4-5.

In further support of its argument, the Company avers that Rate Counsel's position is not supported by the law or facts and that the Company's legacy landline customers have migrated to other and more diverse service offerings for each of Verizon's services under review in this proceeding. Furthermore, Verizon asks the Board to dismiss Rate Counsel's contention that the relevant geographic market should also be defined as the wire center. Verizon argues that Rate Counsel's request is without merit and contrary to the realities of the current market and prior Board rulings. VNJ RB at 27. Verizon further argues that the relevant geographic market is at least the entire state as previously affirmed by the Board. Id. Moreover, the presence of competitive facilities ensure that companies have the ability to serve any part of the State. VNJ DT at 31. Verizon notes that "the Board correctly found in Phase I that the relevant geographic market consists of at least the entire State, and in the CLEC Reclassification Order the Board specifically denied Rate Counsel's request to define the relevant geographic market as the wire center." VNJ RB at 27, citing CLEC Reclassification Order at 10-11.

In addition, the Company again argues that the Board should reject Rate Counsel's contention that competition for Verizon's residential basic exchange standalone service, single-line business service, and DA services can only come from identical standalone services offered by competitors. VNJ RB at 5.

The Company also discusses how there has been a recent emergence of even more competitive alternatives from wireless providers since the conclusion of Phase I. VNJ RB at 6.

Verizon points to wireless carriers, such as TracFone, who Verizon claims receive approximately 80% of the Universal Services Funding for Lifeline customers in New Jersey, "indicating that the most financially challenged families are selecting wireless over wireline services." Ibid.

According to the Company, these low-cost wireless providers also offer an array of pricing options for customers who are interested in voice-only service. Moreover, within the last two years, Verizon points out, both AT&T and Verizon Wireless have rolled out in-home wireless network services that are marketed as low-cost competitive options to Verizon's legacy landlines in New Jersey. VNJ RB at 6-7.

Verizon claims that its position is further buttressed by CenturyLink in its Initial Brief where it argues that its legacy landline customers are selecting Verizon Wireless services, including Home Phone Connect Service, in increasing numbers. According to Verizon, this supports the conclusion that new wireless service is a substitute service for legacy landline services. VNJ RB at 41; VNJ DT at 8.

Verizon further asserts that Rate Counsel fails to show that there has been deterioration in the number and types of competitors that the Board found to exist in the market during the Phase I proceeding where the Board found that numerous mass market retail services provided by Verizon were competitive. Verizon cites the Board's findings that Verizon and Embarq (now CenturyLink):

face competition from a combination of wireless, cable and VoIP competitors in all areas in which they provide service [which] ... provides a sufficient basis for the Board to find that there is a presence of competitors to both Verizon and Embarq in the local exchange market in New Jersey.

[VNJ RB at 29], citing Phase I Order at 49-50.

In furtherance of this point, Verizon notes that the Board previously found that both intra-and-inter-modal competitors are seeking to compete for customers of Verizon's legacy landline services. VNJ RB at 29.

Verizon rebuts Rate Counsel's claim regarding econometrics substitutes. The Company asserts that:

- (1) antitrust standards, including econometric analyses, are not a relevant requirement for a Board reclassification proceeding;
- (2) the relevant product market is not limited to the legacy landline services under review in this proceeding, but includes all reasonable substitutes for those services; and
- (3) Verizon has demonstrated unquestionably that consumers are continuing to use numerous substitute or like services instead of Verizon's legacy landline services.

[VNJ RB at 31].

Regarding Rate Counsel's claim that a duopoly exists, Verizon counters that the FCC did not find that a duopoly existed when it approved the Spectrum Transfers and Cross-Marketing Agreements among the cable companies and Verizon. Id. at 36. In this case, Verizon argues, the extensive evidence regarding the presence of both cable and wireless providers in the state

of New Jersey is ample demonstration that a telecommunications duopoly does not exist here. Id.

Verizon contends that providers are actively engaged in the small business market and cites as an example MagicJack, a service that is advertised as having multiple benefits for small business owners at low cost. Id. at 47.

Regarding the CLEC survey that Rate Counsel put forward, Verizon claims that the data actually demonstrates dozens of CLECs thriving in the market with hundreds of thousands of lines that Rate Counsel classified as business wholesale lines. Id. at 48. As to DA, Verizon states that this service sufficiently meets the statutory criteria for reclassification. Verizon refutes Rate Counsel's claim that it failed to provide accurate information on DA calls. Data provided by Verizon in response to Rate Counsel's discovery conclusively establishes consumers over the last ten years have reduced their use of DA services. Verizon indicates the vast majority of Verizon customers do not make any DA calls regardless of the fact that they are allowed two free calls a month. Id. at 52. Verizon also refutes Rate Counsel's statement that the DA study establishes that the elderly use DA services more than others. The study, Verizon contends, does not find that the elderly usage is more prevalent but merely provides data on the number of years that designated age groups use DA services. Id. at 53. Verizon claims that Rate Counsel's assertion that there are no substitutes for DA and that there are differences between the substitutes lacks credibility. According to Verizon, the number of alternative providers and the overwhelming decline in demand for Verizon's DA service conclusively demonstrate that there are no barriers to entry and that there is nothing preventing consumers from substituting non-Verizon DA services for their information. Id. at 55.

Finally, the Company asks the Board to reject Rate Counsel's argument that certain competitive discretionary services, such as Call Waiting, should be reclassified as noncompetitive and subject to future rate regulation. The Company believes that Rate Counsel has failed to demonstrate why any one of the identified discretionary services should be deemed non-competitive pursuant to the requirements of N.J.S.A. 48:2-21.19(d). It avers that Rate Counsel's arguments are without merit because they are incorrect and, in many cases, irrelevant. Verizon contends that there are numerous inter-modal and intra-modal carriers providing the same discretionary services who compete with Verizon. VNJ RB at 30.

Based upon the foregoing, Verizon asks the Board to reject Rate Counsel's claims and find that the three existing statutory criteria have been met and that the record provides no basis to reclassify any of the identified discretionary services. Id. at 95.

B. Rate Counsel

Rate Counsel opposes the reclassification of the four remaining rate regulated services and posits that the incumbent does not face competition in the provisioning of basic local exchange and associated services based upon its analysis of the statutes. Accordingly, the burden of proof that the four remaining rate-regulated services should be reclassified as competitive has not been satisfied by Verizon, as there is no effective competition. RC-IT at 7.

Rate Counsel states if basic service is deregulated, ratepayers will lose the ability to purchase only standalone service and could be forced to purchase bundles at higher rates. Verizon's request for relief, based upon its claim that competition is robust and that competition is leading to financial losses for these services, is contradicted by the record, according to Rate Counsel. RC RB at 2.

Rate Counsel contends that Verizon has simply failed to sustain the burden of proof to show that any of the four services proposed to be reclassified satisfy the statutory criteria for reclassification or otherwise warrant removal of rate regulation. Rate Counsel also asserts that a duopoly fails to protect consumers from rates increasing and service degradation. RC-IT at 7. In addition, Rate Counsel argues that the record supports its request that the Board reclassify vertical services such as call waiting, caller ID, three-way calling, and other optional services and reclassify multiline business services as noncompetitive. RC RB at 3.

Moreover, Rate Counsel states that it has presented evidence that shows that Verizon performed well financially as measured by Earnings Before Interest Taxes Depreciation Amortization ("EBITDA") and cash flows as reported in filings with the Securities and Exchange Commission ("SEC"). In addition, Verizon's state tax returns for calendar years 2008 to 2011 and Verizon's New Jersey Federal returns for calendar years 2008 to 2011 show substantial EBITDA consistent with EBITDA reported to the SEC. According to RC, this strong financial performance established in VNJ's own filings counters its position that it suffered significant losses due to competition. RC RB at 3-4. Based upon evidence in the record, Rate Counsel contends that the revenue losses and market share losses claimed by Verizon as evidence of competition is not persuasive. In fact, Verizon's revenues have been stable. Id. at 5.

Verizon has market power and the so-called substitutes have been shown not to be substitutes. Rate Counsel's CLEC Survey shows that so-called competitors provide little if any competition for standalone residential and single-line business services. RC RB at 19. In addition, the vast majority of competitors provide bundled services. Id. at 19-21.

Rate Counsel argues that Verizon continues to ignore that the FCC has determined that wireless is not in the same product market as wireline service and hence wireless telephone service is not a valid substitute, nor has Verizon provided any econometric analytical study to show that either wireless constrains the price of standalone basic exchange service or that wireless is even in the same product market. RC RB at 15-16.

The alleged losses, Rate Counsel maintains, are based upon manipulation of expenses such as management fees, and advanced payments to affiliates. The record shows that Verizon has substantial cash flows and positive EBITDA. Rate regulated services are providing a profit and the claimed losses are due to competitive services. RC RB at 12-13.

Rate Counsel asserts that the FCC has consistently reaffirmed its position that wireless service does not effectively constrain wireline services and as such is not a viable service substitute. Verizon has offered no evidence that the FCC findings about wireless are not an accurate assessment of consumers' options and the extent of competition. Rate Counsel puts forth several propositions, including the concept that the newer technologies utilized some of the time do not equate to an all-out substitute for the public switched telephone network. RC-RT at 11-12, 15-18; RC-Rebuttal-T at 8.

Rate Counsel also argues that ample evidence exists that shows that cable telephony is characterized as a cable-telephony duopoly, and only offers exceptionally higher priced, double, triple, or quadruple plays. Cable telephony provides no price constraining effect on wireline service, and is in a distinctly separate product market, not comparable to standalone non-bundled basic local exchange wireline service. Therefore, RC states that the Board should reject Verizon's argument that cable telephony providers are viable, comparable, alternative substitute for standalone non-bundled wireline service. RC RB at 19.

Because CLECs must negotiate with ILECs to obtain access to ILEC-controlled network elements and bottleneck elements, which are necessary inputs to provide service, RC contends ILECs such as Verizon continue to possess the "negotiating" upper hand with CLECs regarding rates, terms, and conditions. As a result, CLECs present in the market, work at a competitive disadvantage, and have little if any price constraining effect in marketing those services. For the multitude of reasons set forth in Rate Counsel's Initial Brief, CLECs do not counter the market power that Verizon has. RC RB at 19-20. Specifically, Rate Counsel points out that minimal weight be afforded to CLECs that depend on Verizon facilities because they are not providing the same level of competition. RC-IT at 61.

According to RC, Verizon alleges that the existence of numerous wireline broadband providers and service providers in its service territory demonstrates the existence of varied providers of like or substitute retail telephone services sufficient to grant competitive reclassification of these services. Rate Counsel states that the vast majority of the non-ILEC interconnected non-cable VoIP subscriptions are provided as a part of a bundle with broadband service. RC RB at 20.

Rate Counsel argues that the record lacks adequate evidence to show that CLECs suppress Verizon's market power. As noted by Rate Counsel in testimony, even if services were offered on a voice-only basis by these providers, unlike ILECs' standalone basic local exchange services, the VoIP offerings generally include intrastate and interstate long distance (toll) calling, and are designed to appeal to a discrete market comprised of customers that have the additional necessary equipment, such as a computer in some cases, as would be required with Magic Jack, and are willing and able to pay more for a bundle that consists of not only both local and long distance services, but also the underlying broadband connection/service cost. RC RB at 20-21.

Rate Counsel submits that Verizon has failed to sustain its burden that DA service should be classified as a competitive service and, as a result, DA should remain rate regulated at this time. Verizon has resisted submitting cost data on its DA services. *Id.* at 21. However, Verizon's ability to raise rates and history of so doing is evidence of continued market power and lack of effective competition. *Id.* at 6. See also RC RB, footnote 5 (where Rate Counsel argues that "Verizon has raised rates for DA so that the current rates are more than 7.5 times the rates that existed in 2004.").

Rate Counsel believes that Verizon has not been able to provide current, complete, and accurate information on the actual number of DA calls made by each residential customer. The record shows, according to RC, that residential customers use DA service on an intermittent basis during the year with most not making DA calls monthly. RC RB at 7.

Rate Counsel states that the lists of substitutes are flawed because they are not reasonably comparable substitutes, as they are unlike the ILEC's DA service because of key differences, which vary depending on the proposed alternative and include:

- They require Internet access, which is still far from ubiquitous;
- They are not as accurate, because they are being maintained on a national basis and being updated sporadically, from sources that may not be as reliable as Verizon's directory databases;

- Some alternative DA services accessed by telephone are available only to the providers' own subscribers and not the general public; and
- Only Verizon DA service is accessible using the familiar "411" numbering sequence.

RC RB at 10-11.

Rate Counsel argues that reclassification of DA is an exogenous event under the alternative form of regulation plans justifying rate reductions in basic local exchange service. RC RB at 12.

Rate Counsel further claims that if consumers lose two free calls, the rate caps should be lowered to reflect the loss of the free calls. If no adjustment is made, ratepayers are losing the financial benefit of two free calls and essentially getting a price increase for basic local exchange service. Thus, the Board should preserve the classification of residential DA service as a non-competitive service. RC RB at 12.

Rate Counsel argues that the testimony of Mr. Vasington should be rejected or afforded no weight. Rate Counsel summarizes that the record establishes that:

- a) the relevant product market is limited to basic exchange services via landline, to the exclusion of bundles, and other telecommunications services such as wireless, and Internet messaging;
- b) the relevant geographic market — the wire center — is more centric and relevant than the entire State;
- c) there are no carriers that provide basic exchange service via landline as a standalone service, and hence no competition currently exists;
- d) vertical services cannot be purchased separately from basic exchange service and hence by definition cannot be considered competitive elements; and
- e) single-line business service is also not competitive.

[RC RB at 14-15.]

As a result, Rate Counsel concludes that, Verizon has not met the statutory requirement through its filing of ample proofs that would lead the Board to alter its conclusion that the four remaining rate regulated services should remain as such. Id. at 14-15. At the same time, Rate Counsel believes it has demonstrated that vertical services tied to residential basic exchange service are not competitive. Id. at 15.

3. The 2015 Stipulation

The key provisions of the 2015 Stipulation between Board Staff and Verizon are as follows:

12. The Signatory Parties agree that certain exhibits moved into evidence during the evidentiary hearing and the transcript request responses support this Stipulation. These exhibits and transcript request responses are VNJ-01C, VNJ-01P, VNJ-02C, VNJ-02P, VNJ-03C, VNJ-03P, CL-1 to CL-6, RC-1, RC-1A, RC-2, RC-2A,

RC-3, RC-3A, RC-4, RC-5, RC-6, RC-7, RC-8A, RC-8B, RC-8C, RC-10, RC-11, RC-12, RC-13, RC-14, RC-15, RC-16, TR-1, TR-2, TR-3, and TR-4.

14. The Signatory Parties agree and propose the Board find that the subject four rate regulated Verizon NJ services, including: (1) Residential basic exchange service; (2) Single line business basic exchange service; (3) Non-recurring charges for residence service connection and installation, and (4) Directory Assistance ("DA") services, are reclassified as competitive services at this time under N.J.S.A. 48:2-21.19(b).

15. Verizon NJ agrees to rate caps for a five-year transition period, where annual rate increases will not exceed the amounts listed below:

Service	Year 1	Year 2	Year 3	Year 4	Year 5
Basic Residential (\$16.45)	\$1.00	\$1.00	\$1.00	\$1.00	\$2.00
Residential Installation (\$50)	\$0	\$0	\$0	\$5.00	\$5.00
Single Line Business (\$25.50)	\$1.00	\$1.00	\$1.00	\$1.00	\$2.00
Directory Assistance (\$1.50 per call; 2 free calls per month)	1 Free DA call and full pricing flexibility	No free DA calls and full pricing flexibility	No free DA calls and full pricing flexibility	No Free DA calls and full pricing flexibility	No Free DA calls and full pricing flexibility

(a) For residential basic exchange service and single line business basic exchange service, annual rate increases shall not exceed \$1 in years one (1) through four (4) or \$2 in year five (5);

(b) Non-recurring charges for residential service connection and installation shall not exceed the current cap of \$50 for a period of three (3) years from an effective date of any Board Order approving this Stipulation and annual increases to those charges shall not exceed \$5 in years four (4) and five (5); and

(c) Verizon agrees to provide residential customers with one free Directory Assistance call per month for a period of one (1) year from the effective date of any Board Order approving this Stipulation.

16. The Signatory Parties recognize that any increases to Verizon NJ's residential basic local exchange service over the five-year period do not apply to Verizon NJ's Lifeline services, which are provided pursuant to FCC requirements and prior NJ Board Orders (Board approval is required prior to any rate change to the Lifeline program).

17. Verizon NJ agrees to continue providing social programs and services for disabled and low-income customers, unless otherwise directed by the Board:

- (a) Free DA calls for consumers with proven visual or physical impairment;
- (b) A 25% discount on local message units and intrastate intraLATA message charges for hearing-impaired persons; and
- (c) Repair priority given to consumers with serious illness or physical disability.

18. Verizon NJ agrees to continue abiding by all applicable provisions pursuant to state statutory requirements, administrative regulations, and Board orders.

19. Nothing in this Stipulation modifies any prior Board Orders classifying Verizon NJ's other retail mass market services as competitive services pursuant to N.J.S.A. 48:2-21.19(b). Accordingly, upon Board adoption of this Stipulation, all of Verizon NJ's mass market retail services will have been deemed to be competitive.

20. The Signatory Parties agree that the service quality standards set forth by prior decisions of the Board will continue to apply to residential basic local exchange service and single line business basic exchange service for three years. At the close of year three, the Board will then determine whether these service quality standards should apply for the remaining two years.

21. Verizon NJ agrees to submit a baseline report within 90 days of any Board Order and annually thereafter for a period of five years providing the total number of residential basic exchange service lines and single-line business exchange lines in service.

22. This Stipulation of Settlement only addresses the classification of the four stated services as competitive, and implicates no other issues beyond that classification.

23. The Parties stipulate and agree that Verizon NJ agrees to notify affected customers of any and all changes to rates, terms or conditions of service by bill insert or other lawful means.

24. Verizon NJ acknowledges that this Stipulation of Settlement does not preclude an investigation into the classification of telecommunications services that are the subject of this settlement in the event competitive conditions change under the process set forth in N.J.S.A. 48:2-21.19(d).

4. Summary of Comments on the 2015 Stipulation

Although the comments that the Board received regarding the 2015 Stipulation are not legally deemed evidentiary, in the interest of completeness, the Board summarizes the comments of the parties and provides sample comments of non-parties as follows.

4.1. Rate Counsel

On May 15, 2015, Rate Counsel submitted its objection to the Stipulation entered into by Board Staff and Verizon. As an initial matter, Rate Counsel believes that the Settlement (1) is not consistent with the language or the intent of N.J.S.A. 48:2-21.19(b); (2) improperly removes BPU oversight over service quality; (3) imposes rate increases that are not just and reasonable; and (4) includes vague and ambiguous terms. RC contends the Agreement was negotiated in private, omitting Rate Counsel and other parties from the negotiations. Rate Counsel believes that there is no support in the record for adoption of the Stipulation and that the record needs to be refreshed.

Rate Counsel is also concerned about the future of Verizon's PAR, Opportunity New Jersey, reporting requirements, access rates, and Carrier of Last Resort ("COLR") obligations. According to Rate Counsel, the Stipulation goes beyond the scope of the record, namely regarding the provision regarding service quality, the record evidence, and due process. The Public Notice of Hearing, Rate Counsel argues, does not discuss service quality, and fails to provide specific references to the record justifying reclassification. Further, RC states the record does not include cost data or cost analysis or models to support increases. Moreover, Rate Counsel is concerned that seniors, the disabled, families on fixed incomes, and low-income residents, in addition to any residential and small business customer who seeks to purchase local telephone service from Verizon at affordable rates, will be affected. Furthermore, Rate Counsel seeks additional public hearings providing adequate notice and an opportunity to comment on the terms of the Stipulation and seeks to augment the record to update the data. In addition, Rate Counsel states that history shows that where there is deregulation, rates go up and this is evidence that competition does not exist. In sum, RC urges the Board to reject the Stipulation.

4.2. CenturyLink's ILEC's Reclassification Comments

CenturyLink submitted its comments on May 15, 2015, stating that since the record was developed in 2012, competition by and among cable, wireless, and other intermodal providers has continued to thrive throughout the State. The State of New Jersey and its telecommunications consumers have benefited and will continue to benefit from the competitive classification of ILEC services. CenturyLink believes that ILECs such as CenturyLink and Verizon need regulatory parity to compete in the competitive landscape. Unlike other states with USF, regulatory parity at present remains a key component of the policy ensuring against unfunded mandates. Thus, CenturyLink supports the proposed Stipulation.

4.3. Verizon

On May 15, 2015 Verizon filed comments which state that the proposed Stipulation is fair and adds additional consumer protections. Verizon states this proceeding has developed a significant record that shows that strong evidence of competition for the services at issue in 2011 and that competition is more prevalent today. The statutory standards set forth in N.J.S.A. 48:2-21.19(b) are satisfied. Competition has been so strong that fewer than 10% of the households in Verizon's NJ wireline area subscribe to services that would be affected by the proposed Stipulation. The Stipulation, Verizon states, adds additional protections on top of the reality of the competitive marketplace and that the result will not be deregulation.

Verizon believes that the proposed Stipulation is in the public interest and is in accordance with law. Verizon noted that the Legislature had determined that "[i]n a competitive marketplace, traditional utility regulation is not necessary and that competition will promote efficiency, reduce regulatory delay, foster productivity and innovation." Verizon Comments at 6, citing N.J.S.A. 48:2-21.16. Verizon states that competition is so strong in New Jersey that fewer than 10% of households in Verizon's service area continue to purchase basic residential services. Verizon detailed evidence presented:

- Intermodal competitors such as cable, wireless, VoIP, and Broadband in New Jersey;
- Cable telephony served a voluminous number of lines in New Jersey in 2011;
- Verizon ported numerous numbers off of its network;
- Over 80% of census tracts in New Jersey were served by at least four broadband providers, each of which allows for the provision of VoIP voice services;
- Wireless carriers were thriving in New Jersey with 8.6 million subscribers by December 2010. Wireless has outnumbered switched access lines in New Jersey since 2004;
- In 2011, competitive carriers served more than 50% of New Jersey's 3 million plus households in Verizon's landline territory, only 15% of which purchased Verizon's basic residential service;
- Single line business basic exchange lines declined by 17% between year-end 2007 and 2011;
- The volume of DA calls dropped 94% between 2003 and 2011;
- FCC reports that as of the end of 2013, there were 1.9 million non-ILEC interconnected VoIP interconnected VoIP lines in the state;
- 98.1% of the New Jersey population has the choice of two or more providers of wired broadband, and thus has multiple available options for VoIP services; and
- The volume of DA calls fell another 75% between 2011 and 2014.

Verizon states that it continued to lose a significant number of lines since it filed its initial testimony. In the last three and one-half years, the basic number of basic residential lines has declined by 54% and single line business lines have declined by 19%. Lifeline lines have declined 73% over the same period. Verizon attributes this to Lifeline customers preferring to use wireless phones for their lifeline service.

Verizon further comments that in March, the Pennsylvania Public Utility Commission ruled on a Verizon request for competitive reclassification and found that: "The incontrovertible evidence in this proceeding . . . indicates that the numerous competitive choices offered by cable telephony, wireless, and other service providers are like or substitute services for Verizon's copper network-based, basic local exchange service..." Verizon Comments at 9. Also, commissions

in Washington and Colorado recently classified basic residential and small business lines as competitive and other states such as Virginia, Delaware, and Florida have gone much further to reform regulation of the services.

Non-Party Commenters

4.4. New Jersey League of Municipalities ("the League")

On May 11, and May 15, 2015 the NJ State League of Municipalities (League) filed letters requesting an extension of the comment period and expressed concerns regarding the service quality provisioning contained in the Stipulation.

The League requests that the Board reject the Stipulation because municipalities and residents lack adequate alternatives to Verizon's Basic Local Exchange Service and Single Line Business Service. The Board must consider a number of factors in deregulating telecommunication services, among them "the availability of like or substitute service." The League argues, based on the comments from its member municipalities, that many areas of the State clearly lack "substitute" service. The League also requests that the Board reject the Stipulation because they believe that paragraph 20 would sunset service quality standards after either three or five years, and therefore should be removed from the Agreement. Verizon's landline service quality in many areas of the State is poor according to the League. Specifically, the municipalities listed below commented regarding service quality: Township of Willingboro, Upper Pittsgrove Township, Borough of Bay Head, Hopewell Township, Upper Deerfield Township, City of Beverly, County of Cumberland, Lower Allaway Creek Township, and Cumberland Development Corporation. These municipalities described concern over the existing quality of service and cited issues with deteriorating infrastructure.

4.5. AARP

On May 13, 2015, AARP filed a letter seeking an extension of the public comment period and seeking public hearings in this proceeding, specifically requesting three hearings in different locations. AARP is concerned with ongoing access to basic reliable, affordable phone service.

AARP highlights reports of Verizon's repeated refusal to repair the landlines damaged in Super Storm Sandy. AARP believes that considerations of deregulation and network transitions warrant and should include broad public input. On May 15, 2015, AARP filed additional comments, noting that while AARP did not participate in the evidentiary hearings, it did testify at the public hearings. AARP now seeks additional proceedings.

AARP believes that despite changes in the industry, and telecommunications industry assertions, there continues to be no effective competition for basic, stand-alone residential exchange service, while a significant percentage of New Jersey's residential customers continue to rely on stand-alone basic service and do not have economic alternatives to the incumbent local exchange carriers' basic local service.

According to AARP, Verizon's agreement to "cap" rate increases for five years shows that these services are not fully competitive and do require ongoing regulatory oversight. If the services were fully competitive, there would be no need to put a cap in the stipulation.

4.6. International Brotherhood of Electrical Workers ("IBEW")

On May 13, 2015 the IBEW sent a letter and petition, with attachments containing more than 1,200 names, opposing the Stipulation citing that the agreement would eliminate the few remaining consumer protections for local phone service in NJ. The IBEW contends that the statutory criteria for reclassification has not been met. The IBEW seeks the record be refreshed and that public comment be provided and the Stipulation be withdrawn and a public notice and public hearings be conducted.

4.7. Communications Workers of America AFL-CIO

The Communications Workers of America AFL-CIO ("CWA") filed comments on May 15, 2015, requesting the Board reject the Agreement, because it fails to provide a factual basis to satisfy the legal standards for reclassification, or to demonstrate that deregulation of all of Verizon's remaining regulated services in New Jersey is in the public interest. CWA adds that it joins in the request made by AARP to extend the public comment period and hold a public hearing on the proposed Agreement.

4.8. The Honorable Anthony R. Bucco, Senator, District 25

The Senator voiced concern about this proposal and its comment period. He requested that the comment period be increased by thirty days so that those affected by the Stipulation can adequately voice their concerns.

4.9. The Honorable Daniel R. Benson, Assemblyman, 14th District

The residents of the 14th Legislative District oppose the Agreement. Many senior citizens, including those on limited income, depend on phones that are hardwired into their homes for operation of medical devices and security alarms. Allowing Verizon to raise basic residential service rates 36 percent in order for these seniors to keep their landline is simply unconscionable. Additionally, the proposed deregulation would also cause a loss of service quality oversight. The residents therefore implore the Board to extend the deadline for public comment on these proposed changes and conduct hearings so that those affected have an opportunity to voice their concerns.

4.10. The City of Bridgeton

The City of Bridgeton opposes the Agreement. This City is comprised of many residents who rely on quality telephone service from Verizon. Quality landline service is very important for their local communication capabilities. If the Board approves the proposed Stipulation, it may have long lasting and permanent effects on the residents and business that are currently served by Verizon's landline telephone service.

4.11. Other Concerns

In addition to written comments, approximately 600 consumers contacted the Board to voice opposition. On May 13, 2015, comments were filed by Tim Van Meter requesting an extension in the comment period and additional broadband options such as FIOS. On May 15, 2015, Robert Rashkes filed comments with the Board opposing the Stipulation and seeking public hearing. In addition, he would like to maintain his existing landline and believes that the

Stipulation will induce consumers to opt for lower quality products such as Voicelink. On May 20, 2015, a letter was received from Frank DiDomenico on behalf of the Mayor of Maurice River Township seeking an extension of time to comment and express concerns regarding service quality. It is feared that Verizon will seek to raise rates to force consumers to switch to an inferior product.

III. DISCUSSION AND FINDINGS

The governing statute in reclassification cases is N.J.S.A. 48:2-21.19(b) which states:

The board is authorized to determine, after notice and hearing, whether a telecommunications service is a competitive service. In making such a determination, the board shall develop standards of competitive service, which, at a minimum, shall include evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area.

Also, under N.J.S.A. 48:2-21.17, and more specifically under N.J.A.C. 14:10-1.2, a competitive telecommunication service is defined as "any telecommunications service that the Board has determined to be competitive pursuant to N.J.S.A. 48:2-21.19." In addition, under N.J.S.A. 48:2-23, the Board must still ensure that an ILEC, like any other public utility, continues to "furnish safe, adequate and proper service." See, e.g., Petition of MCI Telecommunications Corp., 263 N.J. Super. 313, 323-324 (App. Div. 1993). And, under N.J.A.C. 14:10-5.6(c), the Board may reclassify a service that had previously been found to be competitive, if, after notice and hearing, the Board finds that one or more of the following conditions are met:

1. That the market concentration for an individual carrier results in a service no longer being sufficiently competitive;
2. That significant barriers to market entry exist;
3. That there is a lack of significant presence of competitors;
4. That there is a lack of like or substitute services in the relevant geographic area;
5. That a carrier is not providing safe, adequate or proper service; or
6. That the public interest is no longer served by the existing regulatory flexibility afforded to carriers.

Thus, the Board is required to address at a minimum, the three prongs of the test prescribed in N.J.S.A. 48:2-21.19(b). Also, the Board must determine whether the ILEC services at issue in this matter are sufficiently competitive to permit reclassification, which would remove the Board's ability to regulate the rates for the relevant services, N.J.S.A. 48:2-21.19(a), while ensuring that the public interest will be served.

Because the 2015 Stipulation is non-unanimous, the Board has the power to rely upon it as a fact-finding tool, but must also independently examine the record after providing an opportunity for any non-consenting party to be heard. In the Matter of the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates, 304 N.J. Super. 247 (App. Div.), certif. denied, 152 N.J. 12 (1997). The evidentiary process provided all parties and participants in the proceeding an opportunity to be heard. As stated previously, before the Board can adopt the 2015 Stipulation, it must examine the record to determine whether the Agreement is a reasonable resolution of the issues in controversy, is in the public interest, and is in accordance with law. In addition, the Board must independently examine the record after providing an opportunity for non-consenting parties to be heard. The Board must weigh the

record evidence to determine if the criteria for reclassification have been met. In this instance, the balance of evidence has been carefully considered and is discussed in detail.

The Board certainly acknowledges and understands the concerns of the non-party commenters in this matter. Almost all of the non-party commenters raised concerns over the impact on customer service and consumer protections by this Stipulation. To be clear, the existing statutes and regulations require that Verizon continue to provide safe, adequate, and proper service, as required for all utilities under N.J.S.A. 48:2-23. In addition, Verizon's service quality obligations remain unchanged and are in full effect until such time as the Board engages in a review of the standards.

Further, the Stipulation affirms that all statutory, administrative and Board ordered requirements will be adhered to and does not disturb any previous determinations. Thus, as indicated by the Stipulation, the settlement only addresses the classification of the four services as competitive and implicates no other issues beyond the reclassification. Stipulation at paragraph 22. The competitive determination does not change Verizon's PAR II obligations, and does not alter Verizon's COLR obligations. Moreover, service quality and consumer protections remain intact as is the case for all other regulatory obligations, which are beyond the scope of reclassification.

AARP's concerns presented in its letters suggest that a formal proceeding accompanied by public hearings should take place. This in fact has already occurred by the evidentiary phase of the case and the public hearings in 2012, and the Board has considered both the evidentiary record and the public comments when reviewing the Stipulation. The terms contained in the Stipulation serve to maintain not only the availability of standalone basic residential service and single line business service, the Stipulation does so with reasonable rate caps to ensure a controlled transition. The concerns of the AARP regarding seniors and others are addressed by the agreement. For example, Verizon will maintain its Lifeline rate of \$1.95 and any future increase in Verizon's basic rates will not impact Lifeline customers.

Also, the Stipulation continues ongoing access to standalone basic service as requested by AARP. The terms of the agreement provide for the availability of residential basic service and single line business service at reasonable rates that remain explicitly capped for a period of five years in addition to the limitations imposed by the market. The proposed annual caps set out in the terms of the Stipulation are not automatic indicators that rates will increase. Depending upon competitive conditions, the rates may reach the caps or the increases may be less than the caps, or the rates may remain unchanged. Therefore, this agreement achieves what AARP seeks in its comments of May 2015.

Respecting the comments of the IBEW, the requests for public hearings and public comment have been complied with during the course of this case, which was initiated in 2011. As previously stated, the Board held an evidentiary hearing and three public hearings; and, the Board afforded two written comment periods, one regarding the CenturyLink Stipulation and one regarding the Verizon Stipulation.

This matter has been fully litigated, and all parties have been afforded an opportunity to develop the record, and all participants and the public were invited to provide comments. The three public hearings held in 2012 provided valuable information and insight into the concerns of the constituency and were considered in the Board's decision resulting in the inclusion of numerous explicit consumer protections.

RC in its comments incorrectly claims that the Stipulation immediately relinquishes service quality authority over mass market retail services previously reclassified by the Board. Moreover, RC claims that the Stipulation leaves in limbo the PAR, i.e., Opportunity New Jersey, reporting requirements, access, and COLR obligations. These assumptions are unfounded as the actual language in the Stipulation does not relieve Verizon of any of the stated obligations. In fact, the Agreement specifically states that the terms are limited and do not apply to obligations of the Company not specifically articulated therein. Stipulation at paragraphs 18, 19, and 22.

RC seeks further proceedings, arguing that the Notice in this matter is deficient because it did not state a potential rate increase or specify service quality or the PAR. The Stipulation provides a five-year transition period during which rates may increase at an agreed upon level to minimize any potential impact on customers.

The Notice in this matter clearly indicates that the services under review are being considered for reclassification from non-competitive rate regulated to competitive. The Notice explicitly indicates that when the Board determines retail services to be competitive, it no longer regulates, fixes, or prescribes the rates of those services, in accordance with N.J.S.A. 48:2-21.19. The clarity of the Notice therefore is not at issue.

The Stipulation provides what is sought in the comments, availability of standalone basic service and single-line business service at reasonable rates. This determination is based on the record, which demonstrates more competition today than four years ago when the Board in Phase I found that all of Verizon's other mass market services were competitive. The record in this proceeding contains additional data and statistics that demonstrate that the communications industry in New Jersey continues to be subject to increasing competitive pressures from entities such as cable television providers, wireless providers, VoIP providers, and CLECs. These competitors include AT&T Wireless, Sprint, Comcast, Cablevision, AT&T, Vonage, Magic Jack, Skype, and others.

In addition, the recent emergence of wireless Lifeline providers further demonstrates an additional competitive alternative that was not available four years ago. Notwithstanding, the Stipulation requires that Verizon continue to provide standalone basic service for both residence and business customers at rates that the Board deems just and reasonable, which are capped for a period of five years through 2020. The Board believes that the Stipulation has ensured the availability of these services at reasonable rates by imposing rate caps.

In the 2008 ILEC Phase I settlement which was also non-unanimous, the Board found that "[t]he evidence overwhelmingly shows that competitors offer substitutes to the ILECs' voice services. CLEC, cable, VOIP, and wireless providers all offer either standalone and/or packages of services that consumers may, and do, purchase to replace ILEC services." 2008 Order at 50. The Board found sufficient evidence of the ease of market entry and the existence of competitors and that substitutes existed in the market. As a result of the Board's investigation, all of Verizon's Mass Market Retail services were reclassified as competitive, except the four services subject to review in this case. The record has been further developed in Phase II and is summarized below.

1. Ease of Market Entry

Evidence of ease of market entry exists as proven by cable telephony competition, the numerous wireless providers, the availability of VoIP, the countless number of CLECs operating in the state along with the various DA services offered. Evolving technology has eased market entry significantly thus resulting in competitors being able to freely enter the market. The Federal Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*, (Act) provided regulatory guidelines to usher in competitors providing options for telecommunications providers to use ILEC facilities to interconnect and provide services to consumers. VNJ RBT at 22. Recognized methods of entry are embodied in the Act which sets forth regulatory policy for resale, interconnection and number portability. *Ibid.* Telecommunications providers have availed themselves of these means of entry since implementation of the Act.

Cable telephony, wireless, traditional CLECs, and other competitors have entered the market unencumbered. VNJ IB at 9-10; VNJ LT at 8, 17-19. Verizon contends that in addition to the competitors listed above, line losses coupled with the corresponding increased entry by competitors supports a finding of ease of market entry. VNJ DT at 17.

The Board disagrees with RC that CLECs are not viable competitors in the telecommunication market. The fact that they negotiate with ILECs for the use of their facilities to deliver service does not qualify as a barrier to entry as RC contends. This is supported by the data that entrance in the marketplace has not been thwarted as reflected by the number of CLEC providers active today. The Board approves on average one new CLEC petition for authority per month. The continuous volume of petitions for authority to provide telecommunications service throughout the State amplifies the ease with which a carrier can enter the market.

In addition, regarding DA, the record provides numerous DA alternatives and shows a significant decline in Verizon's DA calling volumes. RC-VNJ-46 (a-b). Customers can access DA services via web pages and smartphones VNJ DT at 9. Further support can be gleaned from the DA call data that Verizon submitted, pursuant to Board Order issued in 2010 and quarterly for 2011, which shows DA call volumes continued to decline despite the elimination of residential listings from directories. VNJ RT at 49, citing I/M/O Verizon New Jersey's Petition for Waiver of N.J.A.C. Regulations 14:10-1.A.5 Subsections (a) and (b) Pertaining to the Publishing and Distribution of Telephone Directories, Docket No. TO10040255, Order at 3.

Based upon our review of the record in this proceeding, the Board finds that there are no barriers to entry that would preclude the reclassification of Verizon's residential basic service, single-line business, non-recurring charges for installation of residential service, and residential DA service. The Board's analysis of this record indicates that market entry is no longer a barrier. CLECs are free to enter and exit the market and Verizon's wholesale requirements remain intact.

The Board **HEREBY FINDS** that there are no barriers to entry that preclude reclassification of the services articulated in the Stipulation.

2. Presence of Competitors

The Board has granted 162 CLECs authority to offer service throughout the State. Also, the record indicates numerous examples of services that replace residential basic exchange, single-line business, and DA service as indicated. The Board agrees with Verizon that: "There is an array of both traditional and non-traditional competitors vigorously competing for Verizon's

legacy landline and residential DA services." VNJ IB at 6. Also, Verizon specifically points out that the RC witness acknowledged wireless carriers, cable companies, VoIP providers, and CLECs are present in New Jersey. *Id.* at 6. Verizon posits that carriers now serve over 50% of the lines. *Id.* The record lists numerous competitors, including wireless, cable, Magic Jack, Skype, and others. VNJ IB at 10; VNJ DT at 19-32.

In fact, according to the Company, network upgrades have enabled cable companies to provide voice telephony and broadband services that compete directly with services provided by ILECs, which provide a ubiquitous broadband platform in New Jersey for VoIP suppliers to offer their voice services. VNJ IB at 17.

Comcast and Cablevision, the two largest cable providers in New Jersey, have made substantial investments in two-way digital services and serve over 2.1 million of New Jersey's 2.675 million cable subscribers. By the third quarter of 2011, Cablevision was serving about 2.9 million Optimum Voice customers. This represents a 12-month increase of 280,000 lines, or 10.4%. Comcast, the largest cable provider in New Jersey, reports that it had 9.2 million digital voice subscribers at the end of the third quarter of 2011, an increase of nearly 600,000 since the end of 2010. VNJ IB at 17-18.

According to Verizon's E-911 database, there are cable residential telephony lines throughout Verizon's service territory clearly demonstrating the presence of competitors served by Verizon New Jersey. Moreover, the vast majority of New Jersey is served by at least four wireless carriers including AT&T, Sprint/Nextel, T-Mobile, and Verizon Wireless, among others. Additional wireless ETCs provide service to Lifeline customers providing an option to those that qualify at little or no cost. In addition, wireless carriers are experiencing tremendous growth in lines and usage. *Id.* at 19. Subscribership has grown from 2.3 million to 8.6 million since 2010, in fact wireless subscribers out number switched access lines in the State. *Id.* at 10.

Moreover, Broadband technologies have resulted in fundamental changes in the communications industry. *Id.* at 20. Equally as compelling is the fact that forty-six percent (46%) of the wireline market in New Jersey is served by non-ILEC wireline carriers. *Ibid.* Collectively, intermodal technologies are evidence of the presence of competitors. While the products may be delivered using a means that differs from Verizon, they all provide comparable voice service. In addition, intermodal competition comprises most of the competition for business services. VNJ RT at 41.

Therefore, evidence presented in this proceeding as to the presence of competitors in the market provides sufficient information to satisfy the criterion for reclassification.

Accordingly, the Board **HEREBY FINDS** the requisite statutory criteria have been met regarding the presence of competitors.

3. Availability of Like or Substitute Services in the Relevant Geographic Area

In recognition of its duty under the statutes, the Board must determine if like or substitute services are offered by the articulated competitors. The record so indicates. VNJ IB at 10-11; VNJ DT at 8-9. Verizon witness Vasington in his initial testimony states that cable companies aggressively promote their voice service as a reliable substitute for traditional phone company services. VNJ RB at 19. Verizon contends that if there were no substitutes in the market for Verizon's basic residential services, the demand should have remained level. If the only substitute for basic standalone customers is a product that is alike in terms of features and

price, then Verizon contends, "either the number of Verizon legacy landline customers would remain relatively stable or there would be a lot more cable VoIP customers subscribing only to stand-alone service. Neither is true." VNJ RT at 21.

Also, Verizon pointed out the importance of wireless as a substitute in the FCC Lifeline Service Order cited by Verizon in its Reply Brief. VNJ RB at 25. In the FCC Order it states the:

[t]elecommunications marketplace has changed significantly over the last fifteen years with a wide array of wireline and wireless service that compete with traditional incumbent telephone companies to provide voice service.

[VNJ RB at 36].

VOIP service, as VNJ contends, is widely available throughout Verizon's service area and each provider offers a variety of voice services that compete directly with Verizon's residence and small business services. Id. at 38.

CLECs ably enter the market and provide service substitutes for legacy landline service. Traditional CLECs serve residential and business customers. VNJ RB at 39. From 2008 to year end 2011 Verizon has experienced a decline in wireline subscription despite population growth in the State. VNJ RB at 40. CLEC retail lines have increased based on FCC data provided along with the number of residential cable lines. Number portability data proffered by Verizon establishes the volume of numbers switched to facilities based competitors of Verizon. Id. at 42. Verizon further contends that purchasing decisions of consumers show that they substitute cable as well as other provider bundles for legacy landline services. VNJ RT at 20. In addition, VNJ states that RC is incorrect and that intermodal bundles are substitutes. Id. at 48.

Regarding wireless service, consumers have increasingly opted to cut the cord in favor of a wireless line. The data indicates that 3 in 10 households have cut the cord in favor of wireless only service. Consumers are not just cutting the cord. The porting of telephone numbers to other facilities-based carriers demonstrates that substitution is real and taking place. Id. at 10. This is further confirmed by the significant retail line losses experienced by Verizon from 2009-2011 in proprietary exhibits entered into the record. The data is even more compelling today than it was in 2008 when the Board classified as competitive all but the four remaining services we address herein. The Board therefore **FINDS** that, based on the record, substitute services are available in the relevant geographic area.

The DA market as described by Verizon has experienced an increase in free DA providers in the residence and business market. VNJ RB at 47. VOIP, Cable, Wireless, CLECs and Alternative Directory Assistance Providers all operate in the market.

The Board, in the past review undertaken in 2008, declared many retail mass market services as competitive. 2008 Order at 50. With the passage of time since the 2008 Order, the market has completed the transition where the Board is confident that the record in this case supports reclassification consistent with the statutory criteria for the remaining retail services. And the Board notes that Rate Counsel signed a Stipulation with CenturyLink in January 2013 which was adopted at the Board's March 2013 Agenda meeting granting competitive status for Directory Assistance.

Based on a careful review of this record, the Board is convinced that the four retail rate regulated services that are the subject of this review meet the minimum standards, *i.e.*, evidence of ease of market entry, presence of competitors, and the availability of like or substitute services in the relevant geographic area, in accordance with N.J.S.A. 48:2-21.19(b).

Further, while the Board acknowledges Rate Counsel's arguments regarding discretionary services and their classification based upon a settlement agreement, Rate Counsel has failed to establish a foundation of proof to reclassify these services. Therefore, we decline to consider reregulating them at this time.

The Stipulation provides certainty to those consumers who subscribe to basic residential and single-line business by guaranteeing that those services will be maintained at a level that will not exceed the caps articulated in the Stipulation. Further, the Agreement memorializes that service quality standards will be sustained. It is also important to note that the caps allowed pursuant to the Stipulation are not a directive that the rates will be increased to the capped rates during the five-year period. The caps serve to ensure that the rates do not exceed those limits and enable consumers to be secure that these services will continue to be available at those rates, thereby empowering consumers to make an informed decision regarding their choice of telephone service over a five-year horizon.

Accordingly, the Board **HEREBY FINDS** that the 2015 Stipulation is just and reasonable and consistent with law, particularly N.J.S.A. 48:2-21.19(b), and therefore **HEREBY ADOPTS** the 2015 Stipulation. And, the Board **HEREBY FINDS** that VNJ's residential basic exchange service, including usage, single-line business basic exchange service, non-recurring charges for installation of residential services, and residential directory assistance services have met the minimum statutory requirements and therefore shall be declared competitive. While approving the 2015 Stipulation, the Board, as provided by statute and the applicable regulations, will continue to monitor the status of these services along with the quality of service provided by the Company. Furthermore, we **FIND** that Verizon's arguments and evidentiary submissions were persuasive and not effectively refuted by the positions and submissions of any other party.

This Order shall not be construed to limit in any manner any statutory or regulatory authority granted to the Board as to the regulation of competitive telecommunications services in New Jersey pursuant to State or Federal laws, regulations, or rulings of a court of law. Also, Verizon is still obligated to comply with all relevant Board Orders, including, but not limited to, PAR obligations. In addition, the 2015 Stipulation does not alter Verizon's COLR obligations. In keeping with the statutes the Board can reclassify any telecommunications service that it has previously found to be competitive, if, after notice and hearing, it determines that sufficient competition is no longer present upon application of the criteria set forth in N.J.S.A. 48:2-21.19.

This Order shall not serve to release Verizon from any obligations that currently exist under any and all applicable Board orders and rules currently in effect and shall not be construed to relieve the company of any obligations that exist today to respond in a timely manner to any customer service complaints received. Nor shall this Order be interpreted to deregulate Verizon.

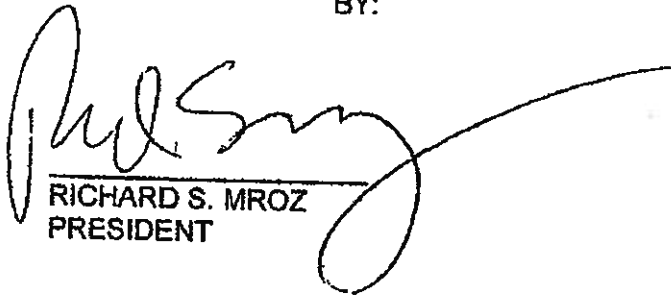
The Board **HEREBY RATIFIES** the provisional Orders issued by Commissioner Asselta during the course of this proceeding for the reasons cited in those Orders.

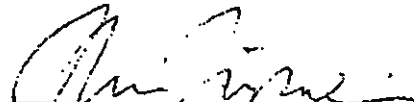
The Board **HEREBY ORDERS** Verizon to file tariffs in accordance with the Board's rules and consistent with the 2015 Stipulation.

This Order shall become effective on June 5, 2015.

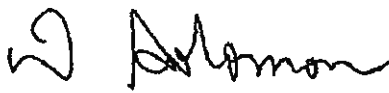
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BOARD OF PUBLIC UTILITIES
BY:

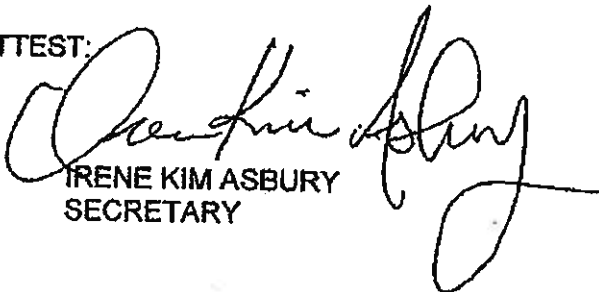

RICHARD S. MROZ
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JOSEPH L. FIORDALISO
COMMISSIONER

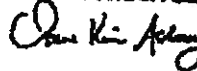

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:


IRENE KIM ASBURY
SECRETARY

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



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

DOCKET NO. TX11090570

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IN THE MATTER OF THE BOARD'S
INVESTIGATION REGARDING THE
RECLASSIFICATION OF INCUMBENT
LOCAL EXCHANGE CARRIER (ILEC)
SERVICES AS COMPETITIVE -- PHASE
II PROCEEDING

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

STIPULATION ON
RECLASSIFICATION OF
SERVICES AS COMPETITIVE

BPU DOCKET NO.
TX11090570

This Stipulation of Settlement (the "Stipulation"), consistent with N.J.A.C. 1:1-19.1(a), is hereby made and executed this 6th day of May, 2015 by and among Petitioner, Verizon New Jersey, Inc. ("Verizon NJ") and Staff of the Board of Public Utilities ("Staff") (collectively, the "Signatory Parties") disclosing the full terms of settlement on all factual and legal issues pertaining to Verizon NJ in the Phase II Proceeding in the above-captioned matter, which the Board of Public Utilities (the "Board") initiated on October 13, 2011.¹ The New Jersey Division of Rate Counsel ("Rate Counsel") and United Telephone Company of New Jersey, Inc. d/b/a Centurylink ("Centurylink") are parties to this proceeding, but are not Signatory Parties to this Stipulation. The Signatory Parties do hereby STIPULATE and AGREE:

FACTS

1. By Order dated August 20, 2008, the Board initiated a proceeding to consider whether certain services should be classified as competitive (the "ILEC

¹ In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services As Competitive -- Phase II ("Reclass II Order"), Oct. 13, 2011, BPU Dkt No. TX11090570.

Phase I Order").² At the conclusion of the proceeding, the Board authorized the reclassification of certain retail mass market services offered by Verizon NJ and CenturyLink as competitive pursuant to N.J.S.A. 48:2-21.19.

2. The Board determined, however, that four Verizon NJ services would remain "rate regulated": (1) Residential basic exchange service; (2) Single line business basic exchange service; (3) Non-recurring charges for residence service connection and installation; and (4) Residential Directory Assistance ("DA") services.³

3. On October 13, 2011, the Board initiated the subject second proceeding to review whether the four rate regulated services met the statutory elements to be reclassified as competitive services (the "ILEC Phase II Proceeding").⁴

4. On November 30, 2011, the Board released a Prehearing Order setting forth a procedural schedule.

5. On December 7, 2011, Rate Counsel submitted a list of Verizon NJ services proposed to be reclassified as non-competitive services.

6. Pursuant to the procedural schedule, CenturyLink, Rate Counsel, and Verizon NJ each filed Initial Testimony on February 24, 2012, Reply Testimony on April 27, 2012, and Rebuttal Testimony on June 11, 2012.

7. Discovery was propounded and responded to by all parties.

² I/M/O the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Service as Competitive, BPU Docket No. TX07110873; and I/M/O the Application of United Telephone Company of New Jersey, Inc. d/b/a Embargo for Approval of a Plan for Alternative Regulation, Aug. 19, 2008, BPU Docket No. TO08060451.

³ Id. at 50.

⁴ Reclass II Order.

8. On July 17, 2012, the Board conducted an evidentiary hearing in Trenton, New Jersey before the Honorable Commissioner Asselta. At the hearing, witnesses for the parties appeared under oath and were available for cross-examination on the subjects covered in their pre-filed testimony, exhibits and discovery.

9. On November 15, 2012 and November 19, 2012, public hearings were held in Verizon NJ's service territory in Newark and Trenton, New Jersey, respectively. Twenty two (22) persons attended the Newark hearing and forty six (46) persons attended the Trenton hearing and expressed their views about Verizon NJ's request to reclassify the four rate regulated services as competitive.

10. On September 20, 2012 and December 3, 2012, the procedural schedule was modified. Initial Briefs were filed on November 9, 2012 and Reply Briefs were filed on December 20, 2012.

11. On March 1, 2013, Verizon NJ filed a motion to reopen and supplement the record, with further evidence regarding wireless competitive services. On March 6, Rate Counsel filed its objection to the motion and cross-moved in the alternative for the admission of certain information in the event that the Board granted Verizon NJ's motion. On March 15, 2013, Verizon NJ replied and responded to Rate Counsel's cross-motion. On March 22, 2013, Rate Counsel replied to Verizon NJ's opposition to its cross-motion.

12. The Signatory Parties agree that certain exhibits moved into evidence during the evidentiary hearing and the transcript request responses support this Stipulation. These exhibits and transcript request responses are VNJ-01C, VNJ-01P,

VNJ-02C, VNJ-02P, VNJ-03C, VNJ-03P, CL-1 to CL-6, RC-1, RC-1A, RC-2, RC-2A, RC-3, RC-3A, RC-4, RC-5, RC-6, RC-7, RC-8A, RC-8B, RC-8C, RC-10, RC-11, RC-12, RC-13, RC-14, RC-15, RC-16, TR-1, TR-2, TR-3, and TR-4.

STIPULATION OF SETTLEMENT

13. The Signatory Parties request that this Stipulation be considered by the Board at its first available agenda meeting. It is specifically understood and agreed that this Stipulation represents a negotiated agreement that has been made exclusively by the Signatory Parties to resolve all issues in the Phase II proceeding absent further expense, inconvenience, and uncertainty of further litigation. The Signatory Parties acknowledge the terms and conditions of their negotiated Settlement, as they STIPULATE and AGREE:

14. The Signatory Parties agree and propose the Board find that the subject four rate regulated Verizon NJ services, including: (1) Residential basic exchange service; (2) Single line business basic exchange service; (3) Non-recurring charges for residence service connection and installation, and (4) Directory Assistance ("DA") services, are reclassified as competitive services at this time under N.J.S.A. 48:2-21.19(b).

15. Verizon NJ agrees to rate caps for a five-year transition period, where annual rate increases will not exceed the amounts listed below:

Service	Year 1	Year 2	Year 3	Year 4	Year 5
Basic Residential (\$16.45)	\$1.00	\$1.00	\$1.00	\$1.00	\$2.00
Residential Installation (\$50)	\$0	\$0	\$0	\$5.00	\$5.00
Single Line Business (\$25.50)	\$1.00	\$1.00	\$1.00	\$1.00	\$2.00
Directory Assistance (\$1.50 per call; 2 free calls per month)	1 Free DA call and full pricing flexibility	No free DA calls and full pricing flexibility	No free DA calls and full pricing flexibility	No Free DA calls and full pricing flexibility	No Free DA calls and full pricing flexibility

(a) For residential basic exchange service and single line business basic exchange service, annual rate increases shall not exceed \$1 in years one (1) through four (4) or \$2 in year five (5);

(b) Non-recurring charges for residential service connection and installation shall not exceed the current cap of \$50 for a period of three (3) years from an effective date of any Board Order approving this Stipulation and annual increases to those charges shall not exceed \$5 in years four (4) and five (5); and

(c) Verizon agrees to provide residential customers with one free Directory Assistance call per month for a period of one (1) year from the effective date of any Board Order approving this Stipulation.

16. The Signatory Parties recognize that any increases to Verizon NJ's residential basic local exchange service over the five-year period do not apply to Verizon NJ's Lifeline services, which are provided pursuant to FCC requirements and prior NJ Board Orders.⁵

17. Verizon NJ agrees to continue providing social programs and services for disabled and low-income customers, unless otherwise directed by the Board:

⁵ Board approval is required prior to any rate change to the Lifeline program.

- (a) Free DA calls for consumers with proven visual or physical impairment;
- (b) A 25% discount on local message units and intrastate intraLATA message charges for hearing-impaired persons; and
- (c) Repair priority given to consumers with serious illness or physical disability.

18. Verizon NJ agrees to continue abiding by all applicable provisions pursuant to state statutory requirements, administrative regulations, and Board orders.

19. Nothing in this Stipulation modifies any prior Board Orders classifying Verizon NJ's other retail mass market services as competitive services pursuant to N.J.S.A. 48:2-21.19(b). Accordingly, upon Board adoption of this Stipulation, all of Verizon NJ's mass market retail services will have been deemed to be competitive.

20. The Signatory Parties agree that the service quality standards set forth by prior decisions of the Board will continue to apply to residential basic local exchange service and single line business basic exchange service for three years. At the close of year three, the Board will then determine whether these service quality standards should apply for the remaining two years.

21. Verizon NJ agrees to submit a baseline report within 90 days of any Board Order and annually thereafter for a period of five years providing the total number of residential basic exchange service lines and single-line business exchange lines in service.

22. This Stipulation of Settlement only addresses the classification of the four stated services as competitive, and implicates no other issues beyond that classification.

23. The Parties stipulate and agree that Verizon NJ agrees to notify affected customers of any and all changes to rates, terms or conditions of service by bill insert or other lawful means.

24. Verizon NJ acknowledges that this Stipulation of Settlement does not preclude an investigation into the classification of telecommunications services that are the subject of this settlement in the event competitive conditions change under the process set forth in N.J.S.A. 48:2-21.19(d).

CONCLUSION

25. The Signatory Parties agree that this Stipulation of Settlement resolves all outstanding issues in this proceeding, including, but not limited to, Verizon NJ's request to reclassify the subject four rate regulated Verizon NJ services and Rate Counsel's request to reclassify certain competitive services as noncompetitive services. The Signatory Parties further agree that this Stipulation of Settlement contains mutual balancing and interdependent clauses and is intended to be accepted and approved in its entirety. In the event any particular provision of this Stipulation is not accepted and approved in its entirety by the Board or is modified by a court of competent jurisdiction, then any Party aggrieved thereby shall not be bound to proceed with this Stipulation of Settlement and shall have the right, upon written notice, to be provided to all other Parties within ten (10) days after receipt of any such adverse decision, to litigate all issues addressed herein to a conclusion.

26. If this Stipulation of Settlement is not adopted in its entirety by the Board in an appropriate Order, or is modified by a court of competent jurisdiction, then any Party hereto is free, upon the timely provision of such written notice, to pursue its then

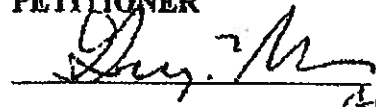
available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation had not been signed.

27. This Stipulation may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one agreement.

WHEREFORE, the Signatory Parties hereto have duly executed and do respectfully submit this Stipulation to the Board and recommend that the Board issue an Order adopting and approving this Stipulation in its entirety in accordance with the terms hereof.

VERIZON NEW JERSEY INC.
PETITIONER

By:



Attorney for Petitioner
Verizon New Jersey Inc.

GREGORY M. ROMANO, ESQ.
VICE PRESIDENT AND
GENERAL COUNSEL

STAFF OF THE NEW JERSEY
BOARD OF PUBLIC UTILITIES
JOHN JAY HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:



VERONICA BEKE
Deputy Attorney General

Date: May 6, 2015