

December 20, 2005

Via Hand Delivery and Electronic Mail

Luly Massaro, Commission Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

Re: Docket No.: 3692;
Brief of Cox Rhode Island Telcom, LLC

Dear Luly:

Enclosed please find an original and four copies of the Brief of Cox Rhode Island Telcom, LLC in the above-referenced docket. Thank you for your attention to this filing.

If you have any questions regarding this filing, please give me a call.

Sincerely,



Craig L. Eaton #5515
Attorney for Cox Rhode Island Telcom, LLC

Enclosure

cc: Service List (with enclosure) (via electronic mail and regular U.S. Mail, postage prepaid)

365404_1.doc

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

**IN RE: VERIZON RHODE ISLAND ALTERNATE
FORM OF REGULATION PLAN DOCKET NO.: 3692**

COX RHODE ISLAND TELCOM, L.L.C.

December 20, 2005

**Craig L. Eaton #5515
Adler Pollock & Sheehan, P.C.
One Citizens Plaza, 8th Floor
Providence, Rhode Island 02903-1345
401-274-7200
401-751-0604
ceaton@apslaw.com**

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

Introduction.

Cox Rhode Island Telcom, L.L.C. (“Cox”) has consistently offered five discrete recommended modifications to Verizon Rhode Island’s (“Verizon”) proposed Alternative Form of Regulation (“AFOR”) plan. After the submission of pre- filed testimony and the process of evidentiary hearings, it appears as if there is very little disagreement from Verizon regarding most of these recommendations. Cox urges the Commission to adopt these recommendations to avoid confusion and ensure customers continue to benefit from a competitive marketplace in Rhode Island.

Discussion.

1. **Cox and Verizon agree that the price floor will be applied to the regulated portion of any bundled service.**

Cox has consistently taken the position that the regulated portion of any bundle of Verizon services should be subject to the proposed price floor. Simply, Cox feels it is prudent for the Commission to ensure that Verizon is not able to avoid the price floor test by “packaging” a regulated retail service(s) with certain non-regulated services.

Verizon appears to agree with Cox’s position. For instance, in the Rebuttal Testimony of Theresa L. O’Brien (“O’Brien Rebuttal”), she states the following:

...the underlying regulated service packages contained within those bundles are tariffed, and a cost certification is provided which addresses any concerns raised by Cox.¹

¹ O’Brien Rebuttal, p.8, lines 20-22.

Further, the Rebuttal Testimony of Paul B. Vassington (“Vassington Rebuttal”) is consistent within the O’Brien Rebuttal:

... the current price floor requirement for bundles applies only to regulated services. Verizon Rhode Island is not seeking any change to that requirement in its Plan.²

Under cross examination from Cox, Ms. O’Brien confirmed the applicability of the price floor to **any regulated service**.³

Mr. Eaton: ... So for the record, I just want to make sure, because I think we’re on the same wavelength. If you have any regulated service within a bundle, that’s subject to the price floor, not the unregulated portion, just the regulated part of that bundle and then you provide certification, correct?

Ms. O’Brien: That is correct for regulated services only.

Mr. Eaton: And is there any reason why you can’t memorialize that within the plan?

Ms. O’Brien: Well, I believe it already is. It states that any regulated service that we offer needs to meet a price floor requirement.

Mr. Eaton: And you understand that – well, I hope you understand now because I believe there was some misunderstanding between the parties that we agree with that; we were just looking for some clarification language on that issue.

Ms. O’Brien: And hopefully it was provided here.

The testimony of Ms. O’Brien is very important and telling. She states, correctly, that **“any regulated service”** is subject to the price floor. Cox respectfully asserts that the AFOR plan is much more vague than Ms. O’Brien’s testimony, and can easily be

² Vassington Rebuttal, p.9, line 22 – p.10, line 2.

³ Hearing Transcript, December 6, 2005, p.p. 113-114, lines 6-24; 1-4.

interpreted by Verizon to not include regulated portions of bundles and regulated promotions in the price floor test. Accordingly, the changes to the AFOR plan proposed by Mr. Lafferty are consistent with the Verizon testimony and should be adopted by this Commission as part of the plan to avoid confusion in the future.⁴

2. Promotions apply to “regulated services”, cannot be distinguished from any other pricing applicable to regulated services, and are subject to the price floor.

Verizon has made clear that it feels promotions are not subject to the price floor test. However, this position is misguided. Promotions are clearly rates (and terms and conditions where relevant) of regulated services. Ms. O’Brien admits this under cross examination.⁵

Mr. Eaton: Okay. Now, you have a tariff – promotional tariff that’s in force today, correct?

Ms. O’Brien: Correct ...

Mr. Eaton: Okay. And you generally offer your tariff services because they’re regulated, correct?

Ms. O’Brien: Anything that’s tariffed is regulated.

As stated, with regard to bundled services, Ms. O’Brien has testified that **any regulated service** is subject to the price floor. Promotions obviously are regulated services. Ms. O’Brien had to testify this way because there is no logical way to separate promotions from every other regulated aspect of a service under the Commission’s jurisdiction. Further, Ms. O’Brien admits that this Commission has never affirmatively allowed

⁴ See Direct Testimony of F. Wayne Lafferty, pp. 12-13; lines 20-30, 1-8.

⁵ Hearing Transcript, December 6, 2005, p. 106, lines 4-7; 17-21.

promotions to be treated differently than any other regulated rate, term, or condition of service.⁶

Ms. O'Brien: Their [Commission] order does not require any sort of a price floor limitation.

Mr. Eaton: And is that an actual affirmative order of the Commission that states to the effect promotions are not subject to --

Ms. O'Brien: No, it does not say that in the order. It does not say that they are subject to a [price]-floor.

Mr. Eaton: It's silent?

Ms. O'Brien: It's silent.

Because there is not an affirmative "carve out" by the Commission in any of its orders with regard to the applicability of a price floor to promotions, promotions cannot be treated differently than any other regulated offerings. Otherwise, Verizon is creating its own set of regulations.

Accordingly, Cox's recommendation to add language in the AFOR plan to specifically memorialize the applicability of the price floor to promotions is consistent with Verizon's own testimony and regulatory principles. Failure to affirmatively memorialize this will offer Verizon the unfettered opportunity to interpret the AFOR plan to its advantage and to the possible disadvantage of Rhode Island consumers.

3. **Cox and Verizon agree that the same de-averaging standards that now apply to business customers will also apply to the AFOR plan.**

Cox has proposed to memorialize in the AFOR plan that different rates cannot be charged to similarly situated customers without specific approval from the Commission

⁶ Hearing Transcript, December 6, 2005, p. 109, lines 2-11.

and provided such pricing covers all costs.⁷ This language would merely codify the Commission's rules regarding rate de-averaging as outlined in its March 31, 2003 order.

Under cross-examination, witness Robert J. Kenney admits Verizon agrees with the Cox position on de-averaging.⁸

Mr. Kenney: We do not have an objection to the concept you're talking about. I think what you were saying earlier about misunderstandings happened with this as well. I think we agree that the company would not do such a thing [de-averaging] unless it filed a tariff with the Commission and would seek Commission approval to do it. We don't think it's necessary to memorialize every single possible thing that the company could do in this plan because the Commission maintains its ability to monitor those things when we file tariffs with them.

Clearly this issue has already led to a misunderstanding. Therefore, consistent with all its recommendations, Cox is merely requesting this agreement on the ability to "de-average" be memorialized to bring greater clarity to the AFOR plan and avoid misunderstandings in the future.

4. **Cox and Verizon agree regarding the ability of any validly registered telecommunications provider to request the Commission or Division to perform price floor cost studies.**

Cox has proposed that the AFOR plan make clear that any validly registered telecommunications provider can ask the Commission or Division to request Verizon to file any necessary support documentation to confirm a rate meets the price floor.⁹

⁷ Lafferty Direct, p. 17, lines 14-19.

⁸ Hearing Transcript, December 6, 2005, pp. 115-116; lines 21-24; 1-8.

⁹ Lafferty Direct, p. 20, lines 24-27.

Verizon agrees that a provider would be able to do this pursuant to the AFOR plan, it just does not want it memorialized.¹⁰

Mr. Kenny: Actually, I think it would be inappropriate to put something in Verizon's alternative regulation plan that talks about what other telecommunications carriers can do in the state. They can do it. I don't think it's necessary in the plan.

Consistent with the other recommendations of Cox, it is respectfully requested that Verizon's representation be memorialized within the AFOR plan. There is no disagreement about the ability of registered carriers to request the Commission or the Division to review price floor documentation. Therefore, again, the addition of this language will provide important certainty to the plan.

5. A time limit should be imposed on the AFOR plan.

Verizon has proposed an indefinite term for its AFOR plan. While the Commission can certainly assert its jurisdiction over Verizon at any time, Cox respectfully requests that a limit be imposed.

Pursuant to Section E of the AFOR plan, the Division would be allowed to petition for modification of the plan only upon certain enumerated conditions. It appears as if Verizon desires to foreclose the Division from seeking any further review or modification absent meeting the conditions. However, even Verizon admits that there is a regulatory benefit to placing a term on the plan.¹¹

Mr. Wold: And you can see some regulatory benefit to affording the PUC and the Division with the ability to reassess a plan without any pre-conditions for review, is

¹⁰ Hearing Transcript, December 6, 2005, pp. 117-118, lines 23-24; 1-4.

¹¹ Hearing Transcript, December 6, 2005, p. 98, lines 6-14

that correct, some benefit from a regulator's point of view, is that correct, to doing that?

Ms. O'Brien: At any time they can reassess the plan that the utility is under, yes, I would agree with that.

As Cox has made clear in its testimony¹², the current regulatory environment and recent industry consolidation makes this an uncertain time in the telecommunications arena. Imposing a time limit to the plan affords the Division and other interested parties an unqualified and certain opportunity to assess the effectiveness of the plan after a specific period of time.

Conclusion.

It must be stressed that the proposed AFOR plan is before the Commission because Verizon is the incumbent local exchange carrier and is required to file a plan. This proceeding is not about competitive local exchange carriers, nor is it about unregulated services. The proposal is about removing, for the first time, certain regulatory requirements as they apply to residential customers. All of Cox's recommendations are designed to ensure customers are afforded the maximum opportunity to benefit from competition. As has been shown, Verizon appears to agree with most of the recommendations. Cox respectfully asserts that, because this is the first plan of its kind applicable to residents, it makes most sense to add the recommended language. If the language is not added, Verizon will always be able to interpret the "silent" provisions however they desire. Cox urges the Commission to adopt its recommendations.

¹² See, e.g. Lafferty Direct, p.18.