STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

IN RE: VERIZON-RHODE ISLAND ALTERNATIVE FORM OF REGULATION PLAN	**)**	**DOCKET NO. 3692**

POST-HEARING BRIEF OF THE DIVISION OF PUBLIC UTILITIES AND CARRIERS

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I. INTRODUCTION

Verizon New England, Inc., d/b/a Verizon-Rhode Island ("Verizon") has filed an Alternative Form of Regulation ("AFOR") Plan with the Public Utilities Commission ("Commission"). In the AFOR Plan Verizon seeks, among other things, to establish prices and rate structures for "all regulated retail services," including primary line, residential basic exchange service, at the company's "discretion." The Division opposes Verizon's effort to obtain discretionary power to set prices in this market for two reasons.

First and foremost, the Division believes the residential basic exchange market in Rhode Island has not transitioned from a "duopoly" as determined by the Commission in Docket No. 3445, Order No. 17417 at 51 to a market where prices are set at a perfectly competitive level. Verizon will be able to use its market power to impose unreasonable price increases on a significant number of Rhode Island consumers (most notably Rhode Island's elderly, and low income ratepayers who are on fixed incomes). In addition, the Division opposes Verizon's effort to obtain complete pricing flexibility in this market because the AFOR Plan, as filed, does not contain critical safeguards that enable the plan to comport with the minimum legal requirements that attach to the Commission's jurisdiction to regulate the "just" and "reasonable" rates of Rhode Island "public utilities."

Based on the foregoing, the AFOR Plan is defective as filed, and must either be denied in its entirety, or, modified by the Commission to correct its deficiencies. However, if the Commission believes that complete pricing flexibility is warranted under the somewhat unique circumstances of this case, the Commission at least should adopt all of the safeguards suggested by the Division in its proposed plan.

II. DISCUSSION

A. THE COMMISSION SHOULD RETAIN INCREMENTAL PRICE CAPS FOR PRIMARY RESIDENTIAL BASIC EXCHANGE SERVICE.

In Docket No. 3445, the Commission held that the residential basic exchange market was "primarily serviced by two full facilities-based carriers, Verizon and Cox," and was a "duopoly." Since a duopoly does "not necessarily result in a competitive market," the Commission wisely observed, "residential ratepayers need additional protection." Id. at 51. Thus, the Commission accepted a settlement between the Division and Verizon that allowed the company to obtain up to a one-dollar per year increase for primary residential basic exchange service over two years, and, seek up to an additional $1.00 increase for the same service in the third year. These incremental price caps protected consumers from unjust or unreasonable price increases while allowing the market to actually determine the prices across Verizon's basic exchange service groups.

Permitting the market to determine prices, while at the same time protecting consumers from abuses of market power accords with the same regulatory methodology that was approved by the Rhode Island Supreme Court in In Re: Island Hi-Speed Ferry, LLC, 746 A.2d 1240, 1246 (R.I. 2000). In that case, a competitive carrier challenged the authority of the Commission to establish a $26 round trip, adult ticket price, along with a revenue cap, when the Commission was faced with the inability to adopt any ridership estimates proposed by the petitioners. Although the Commission's rate-making approach "was admittedly somewhat divergent from previous rate-setting methodologies," the solution to obtain one season's actual operating data while at the same time protecting

ratepayers from excess earnings via the revenue cap mechanism was "not wrong." Id. at 1246-47.

The same concerns that prompted the Commission to impose price caps in Docket No. 3445 and a revenue cap in Island Hi-Speed, *i.e.*, to protect consumers, exists in the instant docket. The critical issue is whether demand for primary residential basic exchange service is inelastic to such a degree so that Verizon will impose unreasonable price increases upon a certain segment of its customer base in this market. Verizon's own expert, Paul B. Vasington, testified that the demand for such service has historically been "very inelastic." 12/6/2005 Tr. at 65, lines 1-12. See also Division Exhibit 6, Massachusetts Department of Telecommunications and Energy ("DTE") 01-31 – Phase II at 74 (in which the DTE, of which Mr. Vasington was the Chairman, held that "demand for basic residential services is very inelastic"). Mr. Vasington reiterated this conclusion towards the end of the hearing in a dialog with Commissioner Holbrook:

> A. …Where it's not as high is the price elasticity in the sense that when you hear predictions that an increase in the price of basic dial tone service will result in people falling off the network and not subscribing to the service. As I said earlier, we've seen those predictions for the last 21 years and they haven't borne out simply because having access to a communications network is a basic feature that customers desire and that our policy has been driven towards ensuring that we have that happen.
>
> Q. …Why would it not be more elastic?
>
> A. I think because it's generally considered a basic essential service for most people that they would not fall off the – would not give up phone service in response to an increase in price.

12/6/2005 Tr. at 215-16.

As will be seen below in Part II(B), under the AFOR Plan, Verizon may alter its service structure at will in order to raise prices in service territory(ies) where residential customers' demand for telephone service is highly inelastic in spite of the quasi-competitive environment, *i.e.*, in areas largely populated by the elderly, poor, less technically sophisticated, *etc.* living on fixed incomes.[1]

Verizon's response to the Division's argument is twofold: (i) First, the company doesn't know where these types of customers reside, and therefore, cannot impose price hikes to take advantage of their inelastic demand,[2] and (ii) as long as the price elasticity of demand is low for "enough" residential consumers of basic exchange service, competition will "discipline" Verizon's ability to impose these types of rate increases. Testimony of Paul B. Vasington at 10, lines 5-8.

To believe that a company valued at tens of billions of dollars does not know the price elasticity of demand profiles of its customers is extraordinarily naive.[3] Verizon seeks pricing and service structure flexibility[4] in order to raise prices, thereby, maximizing the company's profits. The company virtually admitted as much at hearing:

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[1] In another portion of the transcript, Mr. Vasington was asked by Executive Counsel Frias:

> Q: You would agree that it would be a concern for the Commission if you saw geographic averaging [sic] to the point where you were [singling] out Foster, Glocester if they didn't have Cox cable?
>
> A: I imagine a tariff like that would cause some concern for the Commission.

12/6/2005 Tr. at 171, lines 5-12.

[2] 12/6/2005 Tr. at 167, lines 5-6.

[3] Indeed, decisions regarding future price increases are made by Verizon's "Marketing Department" 12/6/2005 Tr. at 72. It is this Department's job to know the desires of the company's customers through surveys, sophisticated market analysis, *etc.*

[4] See Part II(B)(1) (discussing how the language of the AFOR Plan as filed gives Verizon complete discretion to reconfigure its existing service groups).

MS. O'BRIEN: …I can tell you that nine months ago they were looking to increase basic exchange rates by a dollar. I don't know what will happen pending any determination in this case.

MR. LUEKER: But it would be fair to say that by your asking For a rate increase nine months ago that you're probably going to be looking for a rate increase now?

MS. O'BRIEN: I would guess that's probably fair.

12/16/2005 Tr. at 138-39.

Verizon's second contention also does not abate the Division's concerns regarding the ability of the company to abuse its market power vis-à-vis a segment of the primary residential basic exchange market under the AFOR Plan. As written, the AFOR Plan permits Verizon to adjust its service group structure without any Commission review. Under these circumstances, it simply does not matter whether "enough" customers exist in *other* service groups to serve as sufficient price "discipline" for all customers in those groups. The company can still impose price increases on a restructured service group principally consisting of customers for which the price elasticity of demand for primary residential basic exchange service is "very low."

Just as importantly, Verizon's second contention says nothing about what the company is doing to keep the price elasticity of demand for primary residential basic exchange service "very low." Verizon's witness Robert J. Kenney testified that "Verizon Rhode Island does many things to try to reduce" the level of erosion of its wireline access market share.

> It introduces products with bundles of services, reasonable package plans, Freedom plans and the like. It has a Marketing Department that looks at that sort of function and does every-thing it can to try to keep customers from leaving.

12/6/2005 Tr. at 56, lines 11-18. Clearly, then, the fact that at one point in time there may be "enough" customers in a service group who may be willing to switch telephone companies does not mean there will always be "enough" customers in the group to discipline unreasonable price increases, particularly given Verizon's continuing branding and bundling marketing efforts.

The imposition of incremental price caps as proposed by the Division will protect consumers against the potential abuse of pricing power by Verizon while at the same time permitting the market to determine the prices for primary residential basic exchange service. Under the Division's proposal, monthly rates for primary basic exchange access will be constrained by the "maximum amount of $1.00 in any 12-month period." If Verizon does not increase primary residential exchange access rates in any given 12-month period, "it will be permitted to 'bank' the $1.00 increase for application in a subsequent 12 months."[5] Direct Testimony of Thomas H. Weiss at 10-11.

If, as Verizon contends, the primary residential basic exchange market in Rhode Island is so "perfectly competitive" so as to restrain rising prices, then the incremental prices caps recommended by the Division need not be triggered at all. Prices will be maintained at or below their existing allegedly "perfectly competitive" levels. If, however, Verizon possesses enough market power to implement "unrestrained increases in the prices that Verizon charges for its most basic residence wireline access services," then the incremental price caps will merely have functioned to prevent certain customers from losing all "access to basic telecommunications services." Direct Testimony of

[5] If the banked $1.00 increase in not used in the subsequent 12 months, it expires. Thus, ratepayers cannot incur rate shock in any one-year of the plan, should Verizon choose not to raise residential access rates in two or more prior years of the plan.

Thomas H. Weiss at 9. It follows the Commission should adopt the Division's incremental price caps proposal in its entirety.

B. THE AFOR PLAN DOES NOT CONTAIN VITAL SAFE-GUARDS TO ENABLE THE PLAN TO COMPORT WITH THE MINIMUM LEGAL REQUIRMENTS OF THE COM-MISSION'S JURISDICTION TO DETERMINE "JUST" AND "REASONABLE" RATES.

The Rhode Island Supreme Court has examined the boundaries of the Commission's jurisdiction relating to public utility rate regulation. The Supreme Court has held that while "no particular formula binds the commission in formulating its rate decision," the sole requirement is that the ultimate rate be "fair and reasonable." E.g., Island Hi-Speed Ferry, LLC, 746 A.2d 1240, 1246 (R.I. 2000) "No particular formula," however, does not mean *no formula whatsoever.* Thus, the Court has also held that the "Commission cannot shut its eyes to the company's actual operating results, nor can it rely on prophesy when the company's real experiences are available." New England Tel. & Tel. v. Public Utilities Comm'n, 376 A.2d 1041, 1046 (R.I. 1977).

The federal courts have been just as scrupulous in holding that agencies may not unlawfully delegate their authority. These courts hold that an agency may *not* merely "rubber-stamp" decisions made by others, Assiniboine & Sioux Tribes v. Bd. of Oil and Gas, 792 F.2d 782, 795 (9th Cir. 1986), and vague or inadequate assertions of final reviewing authority will *not* save an unlawful delegation. Nat'l Park and Conservation Ass'n v. Stanton, 54 F. Supp. 2d 7, 20-21 (D.D.C. 1999).

To comport with these elementary legal requirements, in Docket No. 3445, the Commission approved specific safeguards (in addition to incremental price caps) that protected consumers from the abuse or potential abuse of market power. In particular,

the Commission expressly required Verizon to identify all of the company's services that continued to be regulated. See Alternative Regulation Plan ("ARP"), Appendix A together with Paragraphs A, B, C, D and Para. H(4). The Commission further required the services so identified would continue to be tariffed and that the public would receive at least thirty (30) days notice of any rate changes. See ARP, Paragraph H(1). All proposed rate changes under the ARP in Docket No. 3445 had to comply with the pricing rules set forth in Paragraphs A, B and C. See ARP, Paragraphs F & H(2). The Commission further required Verizon "not to alter it Commission-approved local calling areas without prior Commission approval, Paragraph H(5); required Verizon to specify the duration of the plan, Para. P; and imposed certain reporting requirements (the Annual Report - Paragraph N, the Semi-Annual Competitive Profile - Order No. 17417 at 61-62, and the monthly service quality report - Paragraph J and Appendix B).

At hearing, Verizon opined that the "market" *ipso facto* can determine the just and reasonable price for primary residential basic exchange service, and that the market should be allowed to do so *without these vital safeguards.* See 12/6/2005 Tr. at 219. Under Title 39 of the Rhode Island General Laws and federal judicial precedent, the Commission is legally barred from delegating its decision-making authority to determine "just and reasonable" rates to the "market," without also annexing to that delegation the appropriate safeguards so as to render the process lawful. When negotiating and approving the ARP with Verizon, the Division and Commission, respectively, were careful to ensure the plan was compliant with this principle. The Commission should ensure that the AFOR Plan satisfies no less a standard.

1. Verizon Has Omitted The ARP's Appendix A (List of Services) and Paragraph H (Tariffs and Withdrawals) From The AFOR Plan.

The ARP ensures proper continued regulatory oversight of Verizon's retail services via two provisions: Appendix A and Paragraph H. Appendix A specifically designates all of Verizon's tariffed retail services—services to which the incremental price caps apply as well as intrastate access services and other retail services. In general, Paragraph H ensures continued Division and Commission oversight of the plan. More specifically, Paragraph H(1) & (2) authorizes Verizon to continue to make changes to these services (including to the rate elements) by making filings incorporating tariffs. However, the tariffs cannot go into effect for thirty (30) days and the Commission expressly retains the power to suspend the proposed tariffs that are filed. Paragraph H(3) also expressly requires the Division to review these filings for compliance with the ARP and statutory requirements. Paragraph H(4) reinforces the function of Appendix A by requiring Verizon to continue to offer all intrastate services "provided under tariff as of the date of Commission approval of the Plan," unless the Commission allows Verizon to withdraw a service via a duly-filed petition. Finally, Paragraph H(5) mandates that Verizon will not alter its Commission-approved calling areas without prior Commission approval.[6]

By contrast, the AFOR Plan completely eliminates these significant regulatory protections for consumers. Under the AFOR Plan, Verizon is *not required* to tariff any of

[6] If the Commission adopts the Division incremental price cap proposal in this docket, then the Commission should include a provision that ensures that "revenue generated from a restructured service may not exceed the amount applicable to the service under the pricing rules." See ARP, Para. F. The Division is also amenable to the adoption of an exogenous cost provision should the Commission continue to implement some form of price caps. See Surrebuttal of Thomas H. Weiss at 5.

its retail services as Appendix A and Paragraph H(4) have been completely omitted from the plan. Nor under the AFOR Plan are the traditional roles of the Commission and Division preserved. There is no recognition of the Commission's power to suspend and approve tariff modifications and withdrawals. See ARP, Paragraphs H(1)(4) & (5). Nor is there any recognition of the Division's right to review and make recommendations to the Commission regarding these filings. See ARP, Paragraph H(3).

Verizon opined at hearing that Paragraph H and Appendix A were omitted from the AFOR Plan because the company is required to comply with the Rhode Island General Laws and the Commission's rules, which impose the same burdens. According to Verizon, then, the provisions are unnecessary. 12/6/2005 Tr. at 79. The Division believes Verizon's testimony to this effect is legally erroneous.

Title 39 of the Rhode Island General Laws only requires a public utility to file an application for a change in rates along with a proposed tariff for regulated services. Rate changes relating to unregulated services do not trigger Commission rate review whatsoever. While the Division believes the Commission possesses the authority to determine which types of services can be characterized as "essential," and therefore, subject to a tariff requirement, see In Re: Woonsocket Water Division's Request to Detariff Water Truck Sales, Docket No. 3121, Order No. 16744 (the Commission determines which services of a public utility belong in its tariff), Verizon, in the past, has vigorously disputed this authority on the grounds of the doctrine of management prerogative established by the Rhode Island Supreme Court in Providence Water Supply Bd. v. Public Utilities Comm'n, 708 A.2d 537 (R.I. 1998). See Verizon's Brief at 21 in Verizon New England, Inc. v. Rhode Island Public Utilities Comm'n, No. 02-161 M.P.

The AFOR Plan does not designate which, if any, of the company's retail services that are "offered" will be under a future tariff, and allows Verizon to withdraw, restructure or alter services at will. It is simply incorrect to assert that Title 39 or the Commission's rules render Appendix A and Paragraph H, unnecessary. Simply stated, without Appendix A and Paragraph H, Verizon can legally withdraw, restructure or alter services at will, without any Commission review. By its express terms, and despite Verizon's claims to the contrary, the AFOR Plan effectively detariffs primary residential basic exchange service, as well as other services in the ARP which may not be regulated as to rates but which still must be tariffed.

2. Verizon's Inclusion Of The ARP's Paragraph L In The AFOR Plan (*i.e.*, Paragraph E) And Failure To Provide A Term Of Duration Makes No Sense.

Paragraph E of the AFOR Plan allows Verizon or the Division to petition the Commission to modify the terms or conditions of the plan: "(i) to reflect the impact of relevant provisions or decisions, enacted or issued subsequent to the Commission's approval of the Plan, of federal or state legislative, judicial or administrative bodies of competent jurisdiction; or (ii) to seek a less structured form of regulation or deregulation of its operations based on upon a change in market conditions."

In the context of the nature of the AFOR Plan, Paragraph E, as written, makes no sense. In the ARP, Paragraph L (the analog of Paragraph E) was included for the benefit of Verizon, *not the Division.* Namely, if a change in "market conditions" or law caused the incremental price caps to so burden the company as to require their removal, Verizon or the Division could petition the Commission and obtain the appropriate relief. In all

events, the burden of proving the necessity of a less structured form of regulation was on Verizon.

Since the AFOR Plan, as filed, does not contain an incremental price cap provision, the focus of Paragraph E must also change from benefiting solely Verizon to benefiting the Division as well. That is, the Division should also be able to petition the Commission for a more-structure form of regulation should "complete market flexibility" (assuming the Commission approves such a proposal) prove an illusion as a method of determining just and reasonable prices. Further, in all events, the burden of proof or disproof to obtain a less or more structured form of regulation should remain on Verizon in accordance with the similar legal requirement in a rate case. See G.L. § 39-3-12.

Paragraph E of the AFOR Plan turns these logical obligations on their head. By its express terms, Paragraph E does not permit the Division to petition the Commission to obtain a more structured form of regulation. Secondly, even if the language somehow can be construed to permit such a petition, Paragraph E shifts the burden of proof to the Division to show that a more structured form of regulation is necessary. The Division, however, should not possess this burden because it is always the utility that must prove that the prices it charges consumers are just and reasonable. See G.L. § 39-3-12. The justness and reasonableness of the prices that Verizon is charging its customers will be a critical issue in the adjudication of any petition to modify the plan on this basis.[7]

[7] The AFOR Plan's failure to specify a term of duration compounds these defects. As explained above, under Paragraph E, the Division may only petition to modify the AFOR Plan if one of two conditions occurs: there is a change of law, or, market conditions change to justify a "less structured from of regulation or deregulation of [Verizon's] operations." When these limited conditions are combined with a plan of undefined duration, the AFOR Plan essentially provides that the Division can never seek a modification of the plan, in *perpetuity*.

Verizon contends that the Division already possesses the right to petition the Commission for a more structured form of regulation under the Rhode Island General Laws and the Commission's rules. Again, Verizon's legal assessment of the Division's authority is erroneous. Commission Rule of Practice and Procedure 1.28 prohibits a party from seeking an amendment to a Commission Order that closes a docket, absent clerical error, excusable neglect or fraud.[8] The first two grounds further must be formally brought to the attention of the Commission within one year of the date of the Order closing the docket. Compare Rule 1.28(c) (expressly containing a 1 year limitation) with Allstate Ins. Co. v. Lombardi, 773 A.2d 864, 873 (R.I. 2001) (barring a party from attacking an order that is "erroneous" 1 year after the date of the order via an independent action).

The Commission, however, has suggested that the agency, at any time,"*may modify a plan in order to promote the public interest or to maintain just and reasonable rates.*" In Re: Verizon-Rhode Island's Request for Partial Relief from the Alternative Regulation Plan, Docket 3445A, Order 18198 at 15. The Division, therefore, recommends that the Commission amend Paragraph E to include this language in the AFOR Plan so that the Division is authorized to petition the Commission to modify the plan to "promote the public interest" or "to maintain just and reasonable rates." For obvious reasons, such a provision will protect consumers, should the Commission allow Verizon complete market flexibility and such flexibility ultimately produces unreasonable primary residential basic exchange prices.

Verizon also brushes off the Division's concern regarding Paragraph E with the response that the Commission, in any event, may always modify the AFOR Plan if

[8] The Rhode Island General Laws do not address these issues at all.

market conditions or a change of law necessitates an alteration of the plan. 12/7/2005 Tr. at 56. Verizon's argument completely ignores the reality of how tariffs receive review, as well as the appropriate roles of the Commission and Division.

Assuming Verizon does not completely detariff its services (as it is permitted to do under the AFOR Plan), it is the Division that typically first reviews Verizon's and CLECs' tariffs for reasonableness, *etc.*, not the Commission. It is also the Division that the Rhode Island Supreme Court has held possesses the function, among others, "to bring to it [the Commission] all relevant evidence, facts, and arguments that will lead the commission in its quasi-judicial capacity to reach a just result."[9] Providence Gas Co. v. Burke, 419 A.2d 263, 270 (R.I. 1980). Thus, merely because the Commission may review the AFOR Plan at any time doesn't mean that the agency will, or be able, to do so. Without the Commission's possessing the appropriate resources constantly dedicated to the task, Paragraph E effectively nullifies the agency's plenary power of review.

3. The AFOR Plan Completely Lacks A Quality Of Service Plan ("QSP"), And Expressly Eliminates The Annual Report And Semi-Annual Competitive Profile Filing Requirements.

a. Service Quality

When Verizon and the Division negotiated the ARP, they agreed to include in the plan a retail QSP. See Paragraph J and Appendix B. The QSP consists of three principal components: Service Quality Standards, a Service Quality Index ("SQI") and a Customer

[9] The Division has on staff a full-time rate analyst (Brian Kent) with an expertise in the field of telecommunications and rate analysis for just this purpose, among others. The Division also has under contract a telecommunications expert consultant who can serve as an additional resource for the purposes of tariff review. In the course of a year, the Division reviews hundreds of telecommunication tariffs.

Survey. In the ARP, Verizon and the Division even agreed to tighten the standards by an "across-the-board" 10% reduction in the Surveillance and Action Levels in order to provide an incentive for continued quality of service.

Despite agreeing to tighten service quality standards and despite the fact that the market is not dramatically different than it was three years ago,[10] Verizon now seeks the wholesale elimination of the QSP. According to Verizon, competition mandates that the company maintain a high quality of service since consumers can always go elsewhere if they are unhappy with Verizon's service. Direct Testimony of Theresa L. O'Brien at 10.

Verizon's argument, however, utterly ignores the legal obligations that are imposed upon the company as a "public utility" and upon the Commission as the company's principal regulator under the Rhode Island General Laws. See G.L. § 39-3-7 and § 39-1-3. For the Commission to wholly rely on competition to produce a "high" quality of telephone service for Verizon's customers without some form of continued monitoring, again, amounts to an unlawful delegation of the Commission's responsibility to ensure that the public utility is furnishing "safe, reasonable and adequate services and facilities." See G.L. § 39-2-1. On examination by Chairman Germani, Verizon virtually conceded the point:

> THE CHAIRMAN: You don't think that Mary Doe, the consumer wouldn't be interested in knowing which company does a better job in responding to service requests and answering phones within a certain period of time?
>
> MS. O'BRIEN: They may.

12/6/2005 Tr. at 207, lines 5-10.

[10] Three years ago, Cox offered Rhode Island basic exchange service to Rhode Islanders, and wireless plans were also available in abundance throughout the state, just as they are today.

Instead of the complete elimination of the QSP, "the Division believes . . . that the frequency of the retail service quality reports can be relaxed to a calendar quarterly (as opposed to monthly) basis." The Division "also recommends that the Commission abandon the penalty aspect of the retail service quality program." Direct Testimony of Thomas H. Weiss at 15-16. The Division's recommendation strikes the proper balance between fulfilling Commission's continuing statutory duty to monitor Verizon's quality of service and the necessity of continued reporting in a quasi-competitive marketplace.

b. Verizon's Annual Report And Semi-Annual Competitive Profile

In the AFOR Plan, Verizon also proposes the complete elimination of the requirement that the company file its Annual Report and Semi-Annual Competitive Profile with the Commission. Testimony elicited at hearing revealed that Verizon had been filing Annual Reports with the Commission for the past five to seven years, and filed monthly reports before that time-period. 12/6/2005 Tr. at 86. The Commission mandated that Verizon file the Semi-Annual Competitive Profile in Docket No. 3445, three years ago.

Verizon contends that both reports are no longer necessary because they do not provide relevant information in a competitive market, 12/6/2005 Tr. at 89; the Commission possesses the information that the reports contain or can always obtain the information from Verizon in any event, 12/6/2005 Tr. at 194; and Verizon's competitors do not have to file the reports. Rebuttal Testimony of Theresa L. O'Brien at 6. All three contentions are without merit.

The Annual Report and Semi-Annual Competitive Profile are more necessary than ever in the current duopoly market environment. The Competitive Profile, for example, provides information regarding Verizon's residential and business market share in the categories of resale, UNE-P and E911 for each of the company's wire centers. The Profile also provides CLECs' residential and business market share information. No information could be more critical in order for the Commission to assess whether the existing duopoly in the primary residential basic exchange market has fully transitioned to a perfectly competitive market.

Verizon's second contention that the Commission already possesses this information, or can request it from Verizon at any time, is equally as frivolous. Neither the Commission nor the Division possesses the information contained in Verizon's Annual Report. The Annual Report includes a "detailed breakdown of total operating revenues both on a combined and intrastate basis." It also includes a calculation of debt and equity, a calculation of return on equity, as well as detailing the number of Verizon's access lines in Rhode Island. 12/6/2005 Tr. at 87. Such information enables the Commission to assess the company's financial performance. By implication, Verizon's intrastate revenues, return on equity, number of access lines, *etc.* can be good indicators of the company's ability to sustain price increases, which in turn, can be indicative of whether or not the market is, in fact, perfectly competitive.

Moreover, while the Division receives CLEC revenue and access line figures, the level of analysis of the material is nowhere near as comprehensive as that contained in the Semi-Annual Competitive Profile. Were the Commission ever to need to scrutinize Verizon pricing practices, the agency should have ready access to relevant and material

information for the appropriate time-period. As merely the subject of a pending data request, the information may not be produced in a timely fashion or may not be even be available for production because it was not maintained to begin with.

In Docket No. 3445, Order No. 17417 at 62, the Commission decided to open a rulemaking proceeding "to require the filing of annual reports by competitive local exchange carriers."[11] The Division concurs with the Commission's holding. Accordingly, Verizon's third objection—that its competitors do not have to file an Annual Report and Semi-Annual Competitive Profile—is, or will be, rendered moot.

III. CONCLUSION

For the foregoing reasons, the Division requests the Commission to reject the AFOR Plan as filed. Since the ARP is due to expire at the end of December, 2005, the Commission should exercise its plenary authority to modify the AFOR Plan to accord with the Division's recommendations. If the Commission believes that incremental price caps are no longer warranted, the Commission should still adopt the safeguards for consumers in the AFOR Plan that the Division was so careful to include, and that the Commission approved, in the ARP.

[11] The Division makes a somewhat analogous recommendation with respect Verizon's Lifeline subsidy. The Division proposes that the Commission delay implementation of Verizon's proposal regarding this aspect of the AFOR Plan for a period of at least twelve months. Such a delay will enable Verizon and the General Assembly to develop legislation that would impose a uniform application of Lifeline support on more carriers in the state. Direct Testimony of Thomas H. Weiss at 13.

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CERTIFICATE OF SERVICE

I certify that a copy of the within Post-hearing Brief was forwarded by regular mail, postage prepaid, and by electronic mail to the individuals designated on the Commission's Service List in Docket No. 3692 on the 20th day of December, 2005.

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