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November 14, 2005

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

Re: Docket No. 3692

Dear Ms. Massaro:

Enclosed for filing in the above-referenced matter please find an original and nine (9) copies of the following:

- (1) Rebuttal Testimony of Theresa L. O'Brien;
- (2) Rebuttal Testimony of Robert J. Kenney (Public and Proprietary Versions); and
- (3) Rebuttal Testimony of Paul B. Vasington.

Please be advised that portions of Robert J. Kenney's testimony are proprietary and confidential. Those proprietary portions are being provided only to the Commission and, pursuant to protective agreements, to the Rhode Island Division of Public Utilities and Carriers, the Attorney General, and Cox Communications. Accordingly, Verizon RI respectfully requests that this information not be placed in the public record of this proceeding.

If you have any questions regarding this filing, please do not hesitate to call me.

Sincerely,

/s/ Alexander W. Moore

Alexander W. Moore

Enclosures

cc: Service List

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

)	
Investigation into a Successor Alternative Regulation)	
Plan for Verizon New England Inc. d/b/a Verizon)	Docket No. 3692
Rhode Island.)	
)	

REBUTTAL TESTIMONY OF

THERESA L. O'BRIEN

ON BEHALF OF

VERIZON NEW ENGLAND INC.,

d/b/a VERIZON RHODE ISLAND

November 14, 2005

1 **Q. PLEASE STATE YOUR NAME AND TITLE.**

2 A. My name is Theresa L. O'Brien. I am Vice President – Regulatory Affairs for
3 Verizon Rhode Island.

4 **Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THIS PROCEEDING?**

5 A. Yes, I submitted direct testimony in this proceeding on August 19, 2005.

6 **Q. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?**

7 A. The purpose of my rebuttal testimony is to respond to the testimony of Mr.
8 Thomas Weiss and Mr. F. Wayne Lafferty.

9 **Q. PLEASE ADDRESS MR. WEISS'S RECOMMENDATION THAT**
10 **VERIZON RI'S ABILITY TO INCREASE PRIMARY RESIDENCE BASIC**
11 **EXCHANGE RATES BE CAPPED AT \$1.00 IN ANY 12-MONTH**
12 **PERIOD, AS WELL AS HIS RECOMMENDATION THAT LOCAL**
13 **RESIDENTIAL USAGE ALLOWANCES AND RATES NOT BE**
14 **INCREASED ABOVE THEIR CURRENT LEVELS.**

15 A. While the Division admits that its recommendation to cap
16 increases to primary residence basic exchange rates would "shield" only those
17 customers who take this particular service from Verizon RI, it does not explain
18 why, given the extent of competition that exists in the Rhode Island
19 telecommunications market, this type of constraint is appropriate for Verizon RI,
20 but not for other competitive local exchange providers operating in Rhode Island.
21 Furthermore, customers who wish to purchase basic exchange service currently
22 have many options available to them, as explained in Mr. Kenney's direct
23 testimony. Cable companies, resellers, competitive local exchange companies,

1 wireless providers and VoIP providers all offer customers competitive alternatives
2 to basic exchange service offered by Verizon RI.

3 In approving the current AFOR plan three years ago, the Commission stated that:

4 We hope that in time, the need for price ceilings and price floors
5 will diminish as the competitive local telephone exchange market
6 fully develops. The more competitive this market becomes, the
7 less need there is for regulatory oversight so that at some point,
8 this Commission would only “intervene and interfere” with the
9 natural workings of the competitive market only cautiously and
10 with great circumspection.

11 Order 17417, Docket 3445, at 59-60 (citation omitted). That time has
12 come. As demonstrated in my direct testimony and the direct testimony of Robert
13 Kenney and Paul Vasington, competition for residential customers in the Rhode
14 Island local exchange market today is fierce. Placing artificial constraints on
15 Verizon RI’s prices eliminates the ability of market forces to control prices and
16 hampers Verizon RI’s ability to respond to the natural workings of the market.

17
18 **Q. MR. WEISS ALSO RECOMMENDS THAT THE COMMISSION ADOPT**
19 **A FOUR-YEAR TERM FOR THE PROPOSED AFOR PLAN. DOES**
20 **VERIZON RI AGREE?**

21 A. No. In his testimony, Mr. Weiss states that a four-year term would provide an
22 “adequate period of protection for residential customers” and would give Verizon
23 RI a “fair opening once more to seek full residential market pricing flexibility”.
24 Establishing an arbitrary time frame by which Verizon RI could exercise
25 complete pricing flexibility is both unnecessary and ill-advised, given the
26 competitive nature of the Rhode Island telecommunications market. Furthermore,
27 the proposed AFOR plan contains language that allows the Division to petition

1 the Commission at any time to modify the terms or conditions of the Plan based
2 upon changes in market conditions.¹ In addition, approval of the proposed AFOR
3 Plan does not take away any of the statutory rights granted to the Commission by
4 the General Assembly pursuant to R.I.G.L. Section 39-1-1(c), which vests in the
5 Commission and the Division the “authority to supervise, regulate and make
6 orders governing the conduct” of utilities and “protecting them and the public
7 against improper and unreasonable rates, tolls and charges” As such, should
8 the Commission or Division find that the balance of the competitive market has
9 shifted such that a review of the terms in the proposed AFOR is warranted, it may
10 initiate a proceeding at any time. Therefore, any attempt to impose an artificial
11 term to the proposed AFOR Plan should be rejected as unnecessary.

12 **Q. PLEASE RESPOND TO MR. WEISS’S RECOMMENDATION THAT THE**
13 **COMMISSION DELAY IMPLEMENTATION OF VERIZON RI’S**
14 **PROPOSAL REGARDING ITS CONTRIBUTION TO THE STATE**
15 **LIFELINE SUBSIDY FOR AT LEAST TWELVE MONTHS.**

16 A. In his testimony, Mr. Weiss states that the Division does not object to the concept
17 of systematically reducing the level of Verizon RI’s contribution to the state
18 Lifeline subsidy to levels that would “more equitably distribute the burden of
19 support”. In its proposed AFOR Plan, Verizon RI is asking only to bring its
20 contribution to the monthly state subsidy to a level of \$3.50, which is in line with
21 the level of support currently provided by Cox. The Division does not object to
22 the merits of this proposal, but it proposes to delay its implementation for 12

¹ See Exhibit A, Part E of proposed Alternative Regulation Plan.

1 months in order to allow the General Assembly time to consider enacting
2 legislation that would impose uniform Lifeline support contributions on more
3 carriers in the state. While Verizon RI supports the concept of a state fund to pay
4 for basic telephone service for low-income consumers, it is unfair to hold Verizon
5 RI to a higher standard until and if such legislation is passed. As stated in my
6 initial testimony, Lifeline customers have not seen an increase in their rates in
7 over 11 years, and Verizon RI's proposal will not impact the federal support that
8 Lifeline customers are entitled to. Finally, given Verizon RI's most recently filed
9 earnings report in the state, it should not be forced to incur a higher burden of
10 subsidization than its largest landline competitor in the residential market.

11 **Q. PLEASE COMMENT ON MR. WEISS'S RECOMMENDATION**
12 **REGARDING EXOGENOUS COSTS.**

13 A. In his testimony, Mr. Weiss agrees with Verizon RI's proposal to exclude any
14 provision for exogenous costs in the AFOR Plan. He miscites the Commission's
15 observation in its Order in Docket No. 3445 that the need for exogenous event
16 recognition would likely decline as Verizon RI's markets matured competitively
17 in the state. While Verizon RI agrees that a provision for exogenous costs is not
18 necessary in its AFOR Plan *as proposed*, it does not agree with the exclusion of
19 an exogenous cost provision should the Commission decide to adopt the
20 Division's recommendation of a \$1.00 maximum increase in residential basic
21 exchange rates in any 12-month period. If the Commission chooses to re-impose
22 an annual cap on residential basic exchange rates, similar to the terms of the

1 current AFOR plan, then Verizon RI is entitled to the protection afforded it by the
2 exogenous cost language that exists in the current plan.

3 Mr. Weiss says that the need to recognize the impact of exogenous events
4 on Verizon RI's earnings "has passed because only a small portion of the
5 Company's intrastate earnings are now regulated." But under the Division's
6 recommendation, the Commission would continue to regulate Verizon RI's
7 residential basic exchange rates, usage allowances and usage rates, representing a
8 major component of Verizon RI's intrastate earnings. In addition, and contrary to
9 the assertion by Mr. Weiss, the Commission did not observe in its prior Order that
10 it expected the need for an exogenous event provision to diminish over time "as
11 Verizon RI's markets matured competitively." Rather, the Commission said it
12 expected such a decline "as VZ-RI *obtains greater pricing flexibility*." Order in
13 Docket No. 3445, at 57. As the Division would allow Verizon RI only marginally
14 greater pricing flexibility than it now has, the exogenous event provision should
15 remain in place if the Commission were to accept the Division's modification to
16 Verizon RI's proposed plan.

17 **Q. PLEASE ADDRESS MR. WEISS'S RECOMMENDATION THAT**
18 **EXISTING REPORTING REQUIREMENTS BE CONTINUED UNDER**
19 **THE PROPOSED AFOR PLAN.**

20 A. In his testimony, Mr. Weiss refers to the Commission's "legislative mandate" to
21 continue monitoring the Company's operations and financial condition. Mr.
22 Weiss's observation about the Commission's statutory authority is correct, but
23 that authority does not extend only to Verizon RI. Rather, the Commission's

1 authority extends to all carriers in the state. The Commission has correctly
2 determined that despite this authority it need not require reporting when it serves
3 no public policy purpose. Thus, the Commission does not require Cox or any
4 other competitive telecommunications provider to report on either their operations
5 or financial conditions. Given the vibrant competitive market in RI, there is no
6 policy basis for imposing reporting obligations on only one competitor, Verizon
7 RI. Indeed, such asymmetrical regulation does nothing more than increase
8 Verizon RI's costs, thereby creating an unfair cost advantage for the Company's
9 competitors. Furthermore, should the Commission (or Division, for that matter)
10 wish to examine Verizon RI's service quality or financial performance, it may
11 request information of the Company at any time. Such an approach is no different
12 than how the Commission treats other carriers in the state. In lieu of the
13 Division's recommendation, Verizon RI suggests that the Commission a)
14 eliminate formal retail service quality reporting requirements; and b) require the
15 same financial reporting statistics for all telecom competitors operating in Rhode
16 Island. Furthermore, any financial data that is required to be filed with the
17 Commission should be afforded proprietary treatment and should not become part
18 of the public record.

19 With regard to the Division's statement that the Commission needs a retail
20 service quality report to assess Verizon RI's wholesale quality of service
21 performance, the Company respectfully disagrees. First, the Carrier-to-Carrier
22 ("C2C") reports that are filed monthly with the Commission already contain
23 metrics for which both retail and wholesale service quality performance is

1 measured. It is unnecessary and redundant to require formal, stand-alone retail
2 service quality reporting for Verizon RI in addition to the monthly C2C reports
3 currently filed with the Commission. Second, as demonstrated in the direct
4 testimony of Mr. Kenney, the competitiveness of the Rhode Island business and
5 residence markets makes any service quality reporting by any carrier unnecessary.
6 If consumers are dissatisfied with the service provided by their current carrier,
7 whether it is Verizon RI, Cox, or another CLEC, they have many choices to meet
8 their telecommunications needs.

9 **Q. PLEASE RESPOND TO MR. LAFFERTY'S ASSERTIONS THAT**
10 **VERIZON RI DETERMINES THE DURATION OF ITS PROMOTIONS**
11 **AND THAT PROMOTIONS COULD "THEORETICALLY LAST**
12 **FOREVER".**

13 A. Mr. Lafferty is wrong. Commission Order No. 12605 in Docket No. 1896 limits
14 the duration of any promotional program offered in Rhode Island to six months.
15 In its proposal for a new AFOR Plan, Verizon RI is not seeking any change in the
16 Commission's rules regarding promotional programs.

17 **Q. PLEASE COMMENT ON MR. LAFFERTY'S ASSERTION THAT**
18 **PROMOTIONS OFFERED BY VERIZON RI NEED TO MEET THE**
19 **PRICE FLOOR REQUIREMENTS OUTLINED IN VERIZON'S**
20 **PROPOSED AFOR PLAN.**

21 A. As Cox is well aware, promotional programs serve many purposes. These
22 programs allow a company to make customers fully aware of the range of its
23 services and options, and give companies flexibility to adapt to changing market

1 conditions. Over the past few years, both Cox and Verizon RI have utilized
2 promotions as a means to introduce new products to Rhode Island consumers as
3 well as to change tariffed prices for a specified period in order to attract new
4 customers. Since the promotional tariff was first approved in 1988, there has
5 never been a price floor requirement that Verizon RI is required to meet, nor does
6 Cox have any requirement to adhere to a price floor for promotions that it offers.
7 This practice in no way harms consumers or competitors; in fact, it operates
8 exactly as would be expected in a competitive market; that is, to the *benefit* of
9 consumers.

10 **Q. MR. LAFFERTY PROPOSES THAT THE COMMISSION EXPAND ITS**
11 **REGULATION OF VERIZON'S RETAIL PRICES BY APPLYING THE**
12 **PRICING AND PRICE FLOOR REQUIREMENTS OF THE PLAN TO**
13 **ANY BUNDLE OF SERVICES WHICH INCLUDES REGULATED**
14 **RETAIL SERVICES. PLEASE COMMENT.**

15 A. Today, when Verizon RI files any new service, including bundles or service
16 packages that include only regulated intrastate services, it includes a certification
17 that the service or bundle exceeds the long-run incremental cost. Verizon is not
18 required to, and does not, file tariffs for bundles that include non-regulated
19 services such as Direct TV, DSL, interstate long distance or wireless. As stated
20 earlier, however, the underlying regulated service packages contained within
21 those bundles *are* tariffed, and a cost certification is provided, which addresses
22 any concerns raised by Cox. For example, in June 2004, Verizon RI filed a tariff
23 to introduce a new service package for residential customers called Verizon

1 Regional Package Unlimited. This package provides customers with a
2 combination of a dial-tone access line, unlimited local usage, unlimited
3 intraLATA toll usage, and up to three value-added services (e.g., Caller ID, Call
4 Waiting, etc.) for a flat monthly rate of \$35.00. In its filing, Verizon RI provided
5 a certification that the rate for the service package was not less than the long-run
6 incremental cost of providing the package. Verizon Regional Package Unlimited
7 is also part of a larger bundle offered by Verizon RI known as Verizon Freedom
8 Unlimited. In addition to the regulated service package referred to above, the
9 Freedom Unlimited bundle includes unlimited interstate long distance for \$49.95.
10 In addition, a customer who subscribes to Direct TV or DSL can receive an
11 additional discount of \$5.00 off the bundled price. Because the Freedom
12 Unlimited bundled offering contains an interstate service (i.e., long distance), it is
13 not tariffed with the Public Utilities Commission. Any implication or suggestion
14 by Cox that bundles containing interstate or non-regulated intrastate services
15 should also be filed with the Commission is without merit and outside the scope
16 of this proceeding. Cox's suggestion is particularly puzzling given that Cox itself
17 offers discounts on bundles containing cable, telephony and Internet services² that
18 it does not file with the Commission. Cox's proposal to *extend* the Commission's
19 regulation of Verizon RI's prices to services and products that it has never before
20 regulated, instead of *contracting* the scope of its price regulations, runs directly
21 contrary to both the market's trend toward more competition and the
22 Commission's goal of matching and fostering that trend by applying less

² See <http://www.cox.com/NewEngland/SaveABundle/default.asp>.

1 regulatory oversight. The Commission should reject Cox's proposal as a
2 counterproductive step backward and nothing more than an attempt by one
3 competitor to hamstring another competitor and thereby gain unfair advantage in
4 the marketplace.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 A. Yes.

PUBLIC VERSION

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

Investigation into a Successor Incentive Regulation)
Plan for Verizon New England Inc. d/b/a Verizon)
Rhode Island.)

Docket No. 3692

REBUTTAL TESTIMONY OF

ROBERT J. KENNEY

ON BEHALF OF VERIZON NEW ENGLAND INC.,

d/b/a VERIZON RHODE ISLAND

November 14, 2005

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

2 A. My name is Robert J. Kenney. My office is located at 125 High Street, Boston,
3 Massachusetts. I am an Executive Director in Verizon's Public Affairs, Policy and
4 Communications Department.

5 **Q. ARE YOU THE SAME ROBERT J. KENNEY THAT FILED DIRECT**
6 **TESTIMONY IN THIS DOCKET ON AUGUST 19, 2005?**

7 A. Yes.

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 A. The purpose of my testimony is to explain why it is not necessary to provide Cox
10 and other CLECs with access to Verizon's proprietary cost data demonstrating
11 compliance with price floor rules in Rhode Island and to respond to Mr. Lafferty's
12 concerns regarding rate deaveraging. I will also offer one clarifying statement
13 regarding one of the access line numbers cited by Mr. Weiss.

14 **Q. IN HIS TESTIMONY, MR. LAFFERTY PROPOSES TO REVISE VERIZON**
15 **RI'S PROPOSED AFOR PLAN BY ALLOWING ANY "VALIDLY**
16 **REGISTERED TELECOMMUNICATIONS PROVIDER" TO REQUEST**
17 **THAT VERIZON RI FILE THE NECESSARY SUPPORT**
18 **DOCUMENTATION TO CONFIRM THAT ITS PROPOSED RATES**
19 **CONFORM TO PRICE FLOOR RULES. IS THAT NECESSARY?**

20 A. No. There is no need to change the existing rules in this regard. When Verizon RI
21 files tariffs for new services or lowers its tariffed rates for existing services, it
22 certifies with the Commission that its prices meet the price floor requirements. If the

1 Commission or the Division requires any further information, they need only request
2 it, and Verizon RI will provide it. This process has worked well for many years. If
3 Cox, or any other Rhode Island registered telecommunications provider believes that
4 Verizon RI has priced a new service below the price floor or has reduced the price of
5 an existing service below the price floor, it need only file a request for the
6 Commission to investigate the filing.

7 **Q. WHY NOT JUST PROVIDE COX AND OTHER CLECS WITH THE COST**
8 **INFORMATION THAT SUPPORTS VERIZON RI'S ASSERTION THAT A**
9 **NEW PRICE MEETS THE PRICE FLOOR REQUIREMENTS?**

10 A. As I indicated in my Direct Testimony, according to the FCC's most recent Local
11 Telephone Competition Report, CLECs have achieved a greater market share in
12 Rhode Island than in any other state in the country. Telecommunications in Rhode
13 Island is extremely competitive. As such, company information, such as costs to
14 provide service, is proprietary and competitively sensitive. Verizon RI does not seek
15 such information from Cox or any other CLEC, and there is no need for Cox to get
16 such information from Verizon. If the Commission determines that Cox and other
17 CLECs may receive this information, Verizon RI requests parity treatment and that
18 the Commission require CLECs to provide the same information to Verizon RI upon
19 request.

20 **Q. PLEASE RESPOND TO MR. LAFFERTY'S CONCERN THAT RATE**
21 **DEAVERAGING MIGHT BE USED BY VERIZON RI TO ENGAGE IN**
22 **ANTI-COMPETITIVE PRICING.**

1 Mr. Lafferty's concern regarding the lack of uniformity of competition throughout
2 the state is unfounded. As I demonstrated in my direct testimony, Cox itself offers
3 telephone service in every city and town in the state. In addition, the availability of
4 substitutes, such as VoIP and wireless service, is not limited by geographic location.
5 The Competitive Profile, filed as Attachment 1 to my direct testimony confirms the
6 rapid expansion of competition throughout the state, especially in rural areas.
7 Indeed, CLECs now control a greater share of the access lines in *every* wire center in
8 the state (but one) than they controlled in *any* wire center three years ago. Put
9 another way, **BEGIN PROPRIETARY *** *** END PROPRIETARY** of
10 the residential access lines in the state are served out of wire centers where Verizon
11 RI controls less than **BEGIN PROPRIETARY *** *** END**
12 **PROPRIETARY** of the residential access lines.

13 What is particularly puzzling about Mr. Lafferty's concern with rate de-
14 averaging is that, while Cox's tariff offers a uniform rate for residential service of
15 \$21.95 per month throughout the state,¹ Mr. Lafferty would preclude Verizon RI
16 from charging just such a uniform rate. As the Commission is well aware, Verizon
17 RI's primary residential basic exchange rates are currently de-averaged by local
18 calling area based on the number of access lines a customer can reach in the calling
19 area. *See* Order 17417, at 55-56. Mr. Lafferty, however, would impose a new
20 regulation on Verizon RI alone, apparently to prevent Verizon RI from changing its

¹ *See* Cox Tariff RI PUC No. 1, Page 54. Moreover, Cox's tariff mirrors the local calling areas of Verizon RI, so that Cox charges the same rate to customers regardless of the number of access lines a customer can reach with a local call. Mr. Lafferty fails to explain why Verizon RI should be denied this same pricing flexibility, which is afforded to Cox and all other carriers in the state.

1 rates in one local calling area without extending the change to the other calling areas
2 in the state. Consequently, Verizon RI would not be allowed to equalize its rates and
3 charge a uniform average rate throughout the state, as Cox does today.

4 Cox offers no grounds for this disparate treatment, and there are none. Mr.
5 Lafferty says that his proposal to add a special rate de-averaging provision to
6 Verizon RI's proposed AFOR plan finds support in the Commission's statements in
7 Order 17417 that it will enforce the anti-discrimination provisions of Title 39 of the
8 General Laws. But those statutory provisions apply equally to all carriers in the
9 state, and Mr. Lafferty has offered no reason to re-write those statutes into a special
10 regulatory prohibition binding on Verizon RI alone.

11 Moreover, as the Commission recognized in Order 17417, its means of
12 enforcing the anti-discrimination statutes is in the tariffing process, not in Verizon
13 RI's plan of regulation. If Verizon RI or any other carrier makes any filing in which
14 it proposes to change its rates in a manner that causes the Commission any concern
15 regarding potential price discrimination, the Commission may, at that time, initiate a
16 proceeding to investigate the filing.

17 **Q. DO YOU HAVE ANY COMMENTS ON THE TESTIMONY OF THOMAS**
18 **WEISS FILED ON BEHALF OF THE DIVISION?**

19 A. Just one. On pages 5 and 6 of Mr. Weiss' testimony, he indicates that total access
20 lines (the sum of retail and competitive) have declined marginally since 2002 and
21 goes on to suggest that the decrease is attributable directly to the significant decline,
22 by some 40,000 units, in the estimated total number of competitive residential access
23 lines from February 2002 to June 2005. I would like to clarify that the 40,000 line

1 decrease referred to by Mr. Weiss is actually a decrease in “total” residential access
2 lines (retail and competitive), not the “competitive” residential access lines.
3 “Competitive” residential access lines actually increased substantially during that
4 period from **BEGIN PROPRIETARY *** *** END PROPRIETARY** in
5 February 2002 to **BEGIN PROPRIETARY *** *** END**
6 **PROPRIETARY** in June 2005.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. Yes.

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

Investigation into a Successor Incentive Regulation)
Plan for Verizon New England Inc. d/b/a Verizon)
Rhode Island.)

Docket No. 3692

REBUTTAL TESTIMONY OF

PAUL B. VASINGTON

ON BEHALF OF VERIZON NEW ENGLAND INC.,

d/b/a VERIZON RHODE ISLAND

November 14, 2005

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I. WITNESS BACKGROUND AND OVERVIEW

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Paul B. Vasington. I am a Director-State Public Policy for Verizon.

My business address is 185 Franklin Street, Boston, Massachusetts 02110.

Q. DID YOU FILE DIRECT TESTIMONY IN THIS CASE?

A. Yes. I filed direct testimony on August 19, 2005, in support of Verizon Rhode Island's (Verizon RI) proposed alternative form of regulation plan (AFOR Plan).

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.

A. The purpose of my rebuttal testimony is to respond to issues and recommendations contained in the direct testimonies of Thomas H. Weiss, filed on behalf of the Division of Public Utilities and Carriers (Division), and F. Wayne Lafferty, filed on behalf of Cox Rhode Island Telcom, L.L.C. (Cox).

Q. WHAT ARE YOUR GENERAL REACTIONS TO THESE TESTIMONIES?

A. It is notable that both the Division and Cox do not contest Verizon RI's demonstration that its proposed AFOR Plan is consistent with the standards and precedent previously adopted by the Commission for evaluating the competitiveness of the market. Notwithstanding this consistency with the Commission's precedent, the Division and Cox nevertheless recommend several restrictions on Verizon RI's pricing flexibility for residential services. I discuss in this testimony why the Division's concerns are misplaced. I will also discuss how Cox's recommendations are designed to limit Verizon RI's ability to compete in

1 the important areas of promotions and bundles by imposing constraints on
2 Verizon RI that are not also imposed on Cox or any other carrier.

3 **II. TESTIMONY OF F. WAYNE LAFFERTY**

4 **Q. WHAT DOES MR. LAFFERTY RECOMMEND ON BEHALF OF COX?**

5 A. Mr. Lafferty notes that “Cox has not undertaken a detailed analysis of the data
6 concerning competition and market power presented by Verizon,” (Lafferty, page
7 22, lines 22-23) but makes several recommendations for additional restrictions on
8 Verizon RI’s pricing flexibility in the residential market, primarily with respect to
9 promotions and service bundles. In general, the restrictions that Cox recommends
10 would limit Verizon RI’s downward pricing flexibility for promotions, bundles,
11 and geographic deaveraging. Mr. Lafferty contends that these restrictions are
12 necessary in order to prevent Verizon RI from engaging in predatory pricing.
13 (Lafferty, page 4, line 9; page 6, line 26; pages 16-17, lines 23-3).

14 **Q. IS MR. LAFFERTY’S DESCRIPTION OF THE RULES VERIZON RI**
15 **FACES CURRENTLY OR UNDER THE PROPOSED AFOR PLAN FOR**
16 **PROMOTIONS AND BUNDLES CORRECT?**

17 A. No. As Ms. O’Brien describes in her rebuttal testimony, Cox misunderstands
18 current and proposed requirements faced by Verizon RI for promotions and
19 service bundles -- promotions must be limited in time, and Verizon RI in fact has
20 to comply with price floors for service bundles. In addition, Cox’s concerns are
21 misplaced, and its recommendations would limit Verizon RI in ways that Cox is
22 not limited in either the telephone or video markets, thereby harming the
23 competitive process.

1 **Q. WHY DO YOU SAY THAT MR. LAFFERTY’S CONCERNS ARE**
2 **MISPLACED?**

3 A. Mr. Lafferty raises the specter of predatory pricing by Verizon RI as the reason to
4 limit its pricing flexibility for promotions, bundles, and geographic deaveraging.
5 But there are several important reasons why the Commission need not concern
6 itself that Verizon RI could or would engage in predatory pricing.

7 First, we now have three years of experience in Rhode Island with Verizon
8 RI having the level of pricing flexibility in the business market that it is
9 requesting here in the residential market, and there is absolutely no evidence at all
10 that Verizon RI has used this flexibility anti-competitively.

11 Second, predatory pricing is one of those policy concerns that are
12 demonstrable in theory, but almost never observed in practice, even in markets
13 that do not have the type of tariffing requirements that are imposed in the
14 telecommunications market. The reason that predatory pricing is not often
15 observed in practice is that it is exceedingly difficult to pull off. To understand
16 why, it is helpful to work through the steps of predatory pricing: the firm must
17 first price its services below cost in order to drive its competitors out of the
18 market; and then raises its prices above competitive levels and sustain those
19 prices to the extent that the firm recoups more than the losses it previously
20 incurred by pricing below cost. So, in order for predatory pricing to be
21 successful, the firm engaging in such a strategy would have to be confident that
22 even if it could drive all of its competitors out of the market, those or other

1 competitors would not be able to re-enter the market during the time that the firm
2 prices its services above competitive levels.

3 **Q. IS IT POSSIBLE FOR VERIZON RI TO ENGAGE IN PREDATORY**
4 **PRICING?**

5 A. No. The Commission's price floor requirements as well as state and federal laws
6 prevent such a strategy. Moreover, it is *highly* unlikely that such a strategy, even
7 if it were possible or legal, would be successful. Verizon RI demonstrated in its
8 direct case that its primary competitors in the residential market in Rhode Island
9 are facilities-based competitors, including wireless, VoIP, and Cox. In order for a
10 predatory pricing strategy to be successful, Verizon RI would have to drive all of
11 these carriers out of the market in a way that it could be confident that they would
12 not be able to re-enter. It is not likely that Verizon RI could convince Cox,
13 Cingular, Vonage, and others to exit the market. Even if it could convince these
14 carriers to drop their current services, the fixed assets that allowed them to offer
15 competitive services in the first place (i.e., wireless networks, broadband Internet
16 access, and cable networks) would not go away. These firms could easily use
17 these assets to re-enter the market if Verizon RI attempted to recoup its losses by
18 raising prices above competitive levels. And Verizon RI would have to pull off
19 this illegal strategy (without notice from the Commission, the FCC, the
20 Department of Justice, and state Attorney General) in an environment where it has
21 to file all of its rates, terms, and conditions in publicly-available tariffs.

22 It has been generally recognized that predatory pricing is an example of a
23 theoretically-valid policy concern that really is not worth all of the effort

1 expended to prevent it, given the practical difficulties that make it very unlikely in
2 the real world. For example, the authors of a widely-used industrial organization
3 textbook conclude:

4 Given all the theoretical difficulties with successful predatory pricing, it is
5 not surprising that economists and lawyers have found few instances of
6 successful price predation in which rivals are driven out of business and
7 prices then rise. Although predation is frequently alleged in lawsuits,
8 careful examination of these cases indicates that predation in the sense of
9 pricing below cost did not occur.¹

10
11 **Q. WHY DO YOU SAY THAT COX'S RECOMMENDATIONS WOULD**
12 **LIMIT VERIZON RI IN WAYS THAT COX IS NOT LIMITED IN**
13 **EITHER THE TELEPHONE OR VIDEO MARKETS?**

14 A. Cox would have the Commission believe that its interests in this case are
15 completely in line with the Commission's own objectives (Lafferty, page 22, lines
16 17-18), but it is transparent that Cox's self-serving recommendations are designed
17 to hamstring Verizon RI in strategic areas where Cox does not face similar
18 restrictions. In Rhode Island, Cox is not subject to any price floor or other cost
19 support filing requirements for its own tariffed telephone services, and I am not
20 aware of any price floor filing requirements imposed on Cox for video services in
21 Rhode Island or at the FCC.

22 Information available on Cox's web sites demonstrates the strategic
23 importance of both promotions and bundles to that company. In terms of
24 promotions, Cox has a web site specifically to sell promotions for its high-speed
25 Internet service, www.coxspecials.com, which comes up as a "Sponsored Link"
26 on Google. That Cox web site offers "special promos" for cable modem service.

¹ Carlton, Dennis W. and Jeffrey M. Perloff, *Modern Industrial Organization*, Third Edition, Reading, MA: Addison Wesley (2000), p. 342.

1 Also, there is a featured link to “special offers” on the www.cox.com web site.
2 Following that link through to special offers for New England customers brings
3 you to a page (<http://www.cox.com/NewEngland/promotions/>) that describes
4 promotional offerings for Cox High-Speed Internet, Cox Digital Cable, and Cox
5 Digital Telephone. All of these promotions currently include discounts off the
6 standard price for the first three months, as well as “Bonus Savings!” that include
7 other services for “FREE,” including installation, premium cable channels,
8 customer premises equipment, and long distance minutes.²

9 **Q. BUT COX IS NOT RECOMMENDING THAT VERIZON RI BE**
10 **PROHIBITED FROM OFFERING PROMOTIONS, ONLY THAT IT**
11 **ADHERES TO A PRICE FLOOR TEST. WHAT IS WRONG WITH**
12 **THAT?**

13 A. Apart from the fact that Cox is advocating that Verizon RI be subject to a price
14 floor test that it does not face itself, a price floor test for promotions runs counter
15 to the purpose of promotions. A promotional offering almost by definition is a
16 decision by a company to forego short-term revenues in order to convince a
17 customer to take service for the longer term, thereby increasing total revenues to
18 the firm. In some cases, promotional offerings may not even cover costs –
19 witness Cox’s own offering of some services for “FREE,” as outlined above. As
20 described by Ms. O’Brien, Verizon RI is limited to promotions with a six-month
21 duration, which is more than adequate as a regulatory protection. Mr. Lafferty’s
22 notion that Verizon RI would offer below-cost promotions “for an extended
23 (possibly unlimited) period of time” (Lafferty, page 7, line 4) is simply not correct

² <http://www.cox.com/NewEngland/promotions/> (accessed November 2, 2005).

1 given the Commission's existing rules (which Verizon RI is not seeking to
2 change here) and defies common sense.

3 A strategy to lose money on purpose for an extended period of time³
4 would only make sense as part of a theoretic predatory pricing strategy, which I
5 have already demonstrated does not comport with reality. With the 6-month
6 limitation on Verizon RI's promotions and the virtual impossibility that
7 promotions can be used for predatory pricing, there is no need for the
8 Commission to adopt Cox's proposed amendment to the AFOR Plan with respect
9 to promotions. Indeed, Cox's position would harm competition and consumers by
10 placing limitations on Verizon RI that no other competitor faces.

11 **Q. WHAT DOES MR. LAFFERTY RECOMMEND WITH RESPECT TO**
12 **VERIZON RI'S OFFERING OF BUNDLES?**

13 A. Mr. Lafferty discusses the benefits of bundling from the view of service providers
14 (Lafferty, page 9, lines 17-26), but he again raises the prospect that Verizon RI
15 might use bundles to price anti-competitively, so he recommends that any bundled
16 product offered by Verizon RI that includes a regulated service must pass a price
17 floor test. Currently, price floor requirements already apply to the regulated
18 portion of Verizon RI service bundles. Again, this price floor requirement would
19 apply only to Verizon RI, and would not apply to Cox, even though Cox also
20 offers bundles that include regulated common carrier services, as well as video
21 and high-speed Internet services. Cox seems to be advocating a restriction on

³ It should not be necessary to point out why the Commission should not be concerned that Verizon RI will engage in a strategy to price promotions below cost for an "unlimited" period of time.

1 Verizon RI that would benefit its own bundled product offerings and give Cox a
2 competitive advantage.

3 **Q. PLEASE ADDRESS THE STRATEGIC IMPORTANCE OF BUNDLES TO**
4 **COX.**

5 A. The importance of bundling to Cox is evident from materials that it supplies to
6 investors. In a slide presentation in July 2004 that accompanied its second quarter
7 earnings conference call, Cox included a slide titled, “It’s All About the Bundle,”
8 on which the company noted that it had “2.5 million bundled customers – up
9 nearly 30% over prior year,” and that “58% of all phone customers take the 3-
10 product [video, Internet, and phone] bundle ...”⁴ Cox’s 2004 Form 10K also
11 describes how bundling is a fundamental component of its business strategy:

12 Cox’s strategy is to leverage the capacity of its broadband network
13 to deliver multiple services to consumers and businesses while
14 creating multiple revenue streams. Cox believes that aggressive
15 investment in the technological capabilities of its broadband
16 network, the long-term advantages of clustering, the competitive
17 value of bundled services and its commitment to customer and
18 community service will enhance its ability to continue to grow its
19 cable operations and offer new services to existing and new
20 customers...

21 ***Bundling.*** Bundling is a fundamental business strategy for Cox.
22 A bundled customer is one who subscribes to two or more of Cox’s
23 primary services (video, high-speed Internet access and telephone).
24 Cox offers the full bundle of services supported by a single,
25 integrated back-office platform. That means that customers can
26 make one call regarding any and all of their services, receive a
27 single bill for all services and can receive multiple services at a
28 discount. Cox believes that the bundle increases penetration and
29 operating efficiencies, reduces customer churn and provides a
30 competitive advantage. In 2004, the number of bundled customers
31 grew by 23% to 2.8 million, and 44% of Cox’s basic video
32 customers now subscribe to more than one service.⁵
33

1 Clearly, bundling is of strategic importance to Cox, so that restrictions in
2 Rhode Island that apply only to one of its competitors would be beneficial to Cox.
3 Here again, Cox's proposal is not intended to benefit or protect Rhode Island
4 consumers but, like its other recommendations, is aimed at gaining an unfair
5 competitive advantage through more burdensome regulation of Verizon RI.

6 Mr. Lafferty attempts to characterize Cox's recommended restrictions on
7 Verizon RI as a measure intended to protect consumers from "discriminatory
8 pricing behavior," (Lafferty, page 11, lines 7-9), but he does not explain how a
9 price floor requirement meets this purported goal. When a customer pays a
10 different price for a bundle of products than they would pay if they bought the
11 same products a la carte, it is not prohibited "discriminatory pricing behavior." If
12 it were, then Cox and many other carriers are just as guilty as Verizon RI. The
13 Commission should view bundles in the same manner as consumers; namely, as a
14 positive benefit of convergence in the communications market. There is no need
15 to restrict Verizon RI's offering of bundles or to impose onerous requirements
16 associated with these products.

17 **Q. WHY WOULD COX'S PROPOSED PRICE FLOOR REQUIREMENT**
18 **FOR BUNDLES BE HARMFUL TO VERIZON?**

19 A. Again, any restriction that is imposed on Verizon RI but not on its competitors is
20 an advantage to those competitors, a burden to Verizon RI, which distorts the
21 market and harms customers. But there are other problems with Cox's
22 recommendation. As noted, the current price floor requirement for bundles

⁴ Second Quarter 2004, Earnings Conference Call, July 29, 2004, slide 19.

⁵ Cox Communications, Inc., Form 10-K, Filed March 16, 2005, pp. 1-2.

1 applies only to regulated services. Verizon RI is not seeking any change to that
2 requirement in its Plan. Although its proposal is not clear, Cox appears to suggest
3 that the Commission extend its price floor requirement and oversight to services
4 that are not within its jurisdiction (i.e. interstate and unregulated services). If that
5 is Cox's recommendation, it places the Commission in harm's way of committing
6 legal error. Moreover, Cox's proposal would serve no valid purpose. Once again,
7 concerns about predatory pricing would be the only reason to impose Cox's
8 recommended price floor requirement on the bundle, but I have demonstrated why
9 those concerns are misplaced and nonexistent to Verizon RI. Finally, the proposal
10 could have a chilling effect on Verizon's offering of service bundles because it
11 would appear to impose regulatory requirements on unregulated services. Such a
12 result may further Cox's business interests, but it disserves the public's interest
13 and harms the competitive process. In short, both Cox and Verizon are offering
14 bundles that consumers want, and those bundles include the services that these
15 companies provided historically, but also new services that the companies did not
16 provide in the past. There is no reason for the Commission to treat the companies
17 any differently in the offering of bundles.

18 **Q. MR. LAFFERTY ALSO ARGUES FOR A REQUIREMENT THAT RATE-**
19 **DEAVERAGING BY VERIZON SHOULD BE PROHIBITED ABSENT A**
20 **SHOWING BY VERIZON THAT RATES WILL NOT BE**
21 **DISCRIMINATORY AND THAT DEAVERAGING SHOULD REQUIRE**
22 **SPECIFIC COMMISSION APPROVAL (LAFFERTY, PAGE 26, LINES 1-**
23 **4). SHOULD THE COMMISSION ADOPT THESE**
24 **RECOMMENDATIONS?**

25 **A.** No. Mr. Kenney explains in his rebuttal testimony that Verizon RI in fact would
26 have to seek approval from the Commission in order to deaverage rates, but Mr.

1 Lafferty is wrong in suggesting that rate-deaveraging could be anti-competitive.
2 There is a very strong likelihood that Verizon would not seek any further
3 deaveraging in Rhode Island, particularly for bundled products that are advertised
4 and sold at a uniform basis over relatively large geographic areas. Geographic
5 boundaries are becoming less important for company marketing and service
6 offerings with the breakdown of LATA boundaries and the growth of wireless and
7 data services.

8 Regardless, Mr. Lafferty's suggestion that there would be something
9 sinister about Verizon RI deaveraging its retail rates must be addressed. There are
10 a number of reasons that his characterization of deaveraging is wrong. First,
11 some wholesale rates (e.g., UNE loops) already are deaveraged, demonstrating
12 that there are cost differences between density zones. Deaveraging along similar
13 lines for retail purposes would not be unduly discriminatory since it would be
14 based on cost differences.

15 Second, deaveraging in response to competition also is not anticompetitive
16 or unduly discriminatory. In fact, cable companies are not subject to rate
17 regulation in communities that the FCC classifies as competitive, and "In other
18 communities, local franchise authorities may regulate the rates of the basic service
19 tier and cable equipment."⁶ Cable companies have taken advantage of this ability
20 to charge lower rates in competitive communities. Based on its own survey, the
21 FCC has found that "The competitive differential in monthly cable rates (the

1 percentage difference between the noncompetitive group and the competitive
2 group) was 7.3 percent on January 1, 2004.”⁷ This discussion is not intended to
3 suggest that Verizon RI intends to seek pricing flexibility within the state based
4 on varying levels of competition; rather, it is meant to demonstrate that this is yet
5 another example of pricing freedoms that cable companies enjoy that Cox
6 recommends the Commission deny to Verizon RI, and that a practice Cox
7 suggests would be anti-competitive if used by Verizon RI is a practice already
8 employed by cable companies.

9 Last, Mr. Lafferty claims that “The potential to use rate de-averaging to
10 target more competitive areas at the expense of consumers without alternatives
11 still exists,” (Lafferty, page 16, lines 21-26) and he cites Commission concerns in
12 the March 31, 2003 Commission order in support of this contention. He claims
13 that “Verizon has not offered any evidence that the Commission’s conclusion ...
14 is no longer valid,” (Lafferty, page 16, lines 6-7) but he is wrong on that point.
15 The evidence filed with Verizon RI’s direct case establishes beyond any serious
16 question that there is significant competition throughout the state, even when the
17 analysis is limited to wireline CLEC service. In Rhode Island, there are not
18 “more competitive” and “less competitive” areas to any significant extent, as there
19 may be in some other states. Competition is robust throughout the state with a
20 number of the more rural exchanges exhibiting competitive impacts comparable

⁶ See FCC 05-12, In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment, Report on Cable Industry Prices, rel. February 4, 2005, ¶ 2, n.4.

⁷ *Id.*, ¶ 12.

1 to more urban areas. *See* Attachment 1 to Direct Testimony of Robert J. Kenney,
2 and Rebuttal Testimony of Robert J. Kenney at 3.

3 In addition, Verizon also demonstrated that its primary residential service
4 competitors – cable, VoIP, and wireless – are available throughout the state. *See*
5 Direct Testimonies of Mr. Kenney at 5-11 and Mr. Vasington at 11. In fact,
6 Rhode Island is the only state for which Cox itself labels the availability of its
7 telephone services as “statewide.”

8 Cox Digital Telephone service is available to more than 6.5 million
9 homes in Orange County and San Diego, Calif.; Phoenix and
10 Tucson, Ariz.; Omaha, Neb.; Central Connecticut; *Rhode Island*
11 *statewide*; New Orleans, Baton Rouge and Lafayette, La.;
12 Oklahoma City and Tulsa, Okla; Wichita, Kansas; West Texas;
13 and Hampton Roads, Roanoke and Northern Virginia. Cox will
14 launch the service in additional markets in 2005.⁸

15
16 For all of these reasons, the Commission does not need to amend the
17 AFOR Plan in the manner suggested by Cox for geographic deaveraging.

18 **Q. MR. LAFFERTY POINTS TO VERIZON’S “SIGNIFICANT NATIONAL**
19 **SCOPE AND SIZE” AS A CAUSE FOR THE COMMISSION TO BE**
20 **CONCERNED ABOUT VERIZON RI’S MARKET POWER IN THE**
21 **STATE (LAFFERTY, PAGES 22-23). DOES VERIZON RI’S SIZE**
22 **OUTSIDE THE STATE CALL FOR DIFFERENT TREATMENT OF**
23 **VERIZON RI AND ITS COMPETITORS?**

24 A. No. As an initial matter, it is not clear how the Verizon corporation’s national
25 size and scope of services creates market power in Rhode Island, and Mr. Lafferty
26 only asserts these opinions without explanation. And even the conclusions that
27 Mr. Lafferty draws about competition in the communications industry in general
28 are at odds with the facts. Wherever it offers residential services, Verizon faces

⁸ Cox Communications and Nortel, “WHITEPAPER: Circuit Switch to VoIP Evolution Plan,” March 2005, page 1.

1 significant and growing competition from a multitude of alternative providers,
2 including traditional CLECs, cable companies (such as Cox), VoIP providers, and
3 wireless providers. In fact, the FCC's press release on its approval of the SBC-
4 AT&T and Verizon-MCI mergers noted that, "The Commission further found that
5 facilities-based intermodal competition, including cable VoIP and wireless
6 services, is growing rapidly and will play an increasingly important role with
7 respect to future mass market competition."⁹

8 Also, even if one were to limit an evaluation of residential competition in
9 the state to just wireline CLECs (which understates competition because it does
10 not include wireless and VoIP), the competitiveness of the Rhode Island
11 residential telephone market passes the test that the cable industry has set for itself
12 in arguing that the video market is fully competitive. In a recent whitepaper titled
13 "The Video Market is Fully Competitive," the National Cable and
14 Telecommunications Association ("NCTA," of which Cox is a member¹⁰), noted
15 that non-cable video providers have captured 27.29 percent of market share.¹¹ On
16 the basis of that competition, the NCTA concludes that:

17 The video market is now fully competitive. Multiple video providers vie
18 for customer loyalty, each trying to provide unique new products while
19 trying to outdo those provided by their competitors. As a result of this
20 competition, a wide new array of services – both video and non-video – is
21 available to consumers over alternative broadband platforms. This is
22 exactly what Congress intended when it passed the Telecommunications
23 Act of 1996.¹²

⁹ FCC Press Release, "FCC APPROVES SBC/AT&T AND VERIZON/MCI MERGERS," released October 31, 2005, page 2.

¹⁰ <http://www.cox.com/about/NewsRoom/factsheet.asp>.

¹¹ NCTA, "The Video Market is Fully Competitive: Almost 27 million consumers now subscribe to cable's competitors," February 2005, page 1.

¹² *Id.*, page 6.

1
2 More recently (June 2005), the NCTA used stronger language to describe
3 the competitiveness of the video marketplace, saying that “The multichannel
4 video marketplace of 2005 is vigorously competitive.”¹³ Most important to this
5 case, based on this “vigorous” competition, the cable industry argues that, “with
6 competition from DBS and soon telephone companies, video *incumbents* face
7 effective competition, and there is no basis to impose more stringent economic
8 regulation on cable operators than on other providers.”¹⁴ Yet, with even *more*
9 competition in the Rhode Island residential telephone market than currently exists
10 in the video marketplace,¹⁵ Cox is advocating here for more stringent economic
11 regulation on Verizon RI than on other providers.

12 **Q. MR. LAFFERTY URGES “CAUTION” DUE TO FCC RULINGS**
13 **RELATING TO THE AVAILABILITY OF UNBUNDLED NETWORK**
14 **ELEMENTS (“UNEs”). DO CHANGES TO UNE AVAILABILITY**
15 **CREATE QUESTIONS ABOUT THE VIABILITY OF LOCAL**
16 **TELEPHONE COMPETITION IN RHODE ISLAND?**

17 A. No. It is incredible that Mr. Lafferty and Cox would focus on UNE-based
18 competition in Rhode Island, with little discussion of facilities-based competition
19 in the state. Cox itself does not use UNEs to compete, and the evidence presented
20 by Mr. Kenney is clear that UNEs and resale were never very important factors in
21 Rhode Island. So the status of intramodal competition on a going-forward basis

¹³ “Working Toward A Deregulated Video Marketplace: A White Paper By The National Cable & Telecommunications Association (NCTA),” June 2005, page 1.

¹⁴ *Id.*, page 2 (italics in original, underline added).

¹⁵ As Mr. Kenney demonstrated in his Direct Testimony, wireline CLECs in Rhode Island currently have a market share greater than the 27.29 percent that the cable industry considers to be representative of full and vigorous competition.

1 has little importance to an assessment of the level of competition for residential
2 customers in Rhode Island.

3 In trying to build a case for the importance of intramodal competition and
4 thus for the need for caution, Mr. Lafferty contends that the Telecommunications
5 Act of 1996 “did nothing to remove the economic entry barriers created by the
6 high fixed entry costs in the telecommunications industry which Verizon
7 acknowledges.” (Lafferty, pages 24-25). His characterization of the market-
8 opening requirements of the Act is wrong,¹⁶ as the Commission well knows, but
9 the larger point is that he is ignoring that the most significant competitors in
10 Rhode Island today and in the future either do not face “high fixed entry costs”
11 (e.g., VoIP providers) or they have already incurred such costs (e.g., wireless and
12 cable providers). Mr. Lafferty does not provide a citation to support his
13 contention that Verizon acknowledges the high fixed entry costs, but I assume
14 that he is referring to the following statement in my Direct Testimony: “It is true
15 that facilities-based entry by firms that are not currently in the market entails
16 higher costs of entry,” but if that is what he is referring to, then it is necessary for
17 me to point out the concluding part of that sentence, “but in Rhode Island
18 significant facilities-based competitors *already* have entered the market and
19 incurred the costs of entry.”

20 In fact, Cox highlights its ability to expand and migrate its phone service
21 to VoIP using the investments it has already made as a significant benefit of

¹⁶ I would not contend that the Act removed all economic entry barriers, but to say that the Act did “nothing” to remove such barriers is clearly a gross understatement of the effect of the many requirements that the Commission worked to implement here in Rhode Island.

1 VoIP: “VoIP technology enables Cox to introduce phone services to customers
2 the company isn’t currently reaching, without stranding the capital it has invested
3 in its circuit-switched operations. The company will not abandon its circuit-
4 switched business. Cox will completely utilize the capacity of existing
5 switches.”¹⁷ The evidence in this case makes it clear that this Commission need
6 not concern itself with the alleged “high fixed costs” of entry for residential
7 telephone competition.

8 **Q. PLEASE COMMENT ON MR. LAFFERTY’S GENERAL DESCRIPTION**
9 **OF THE STATE OF TELECOMMUNICATIONS COMPETITION.**

10 A. Mr. Lafferty’s generally pessimistic view of the state of competition in
11 telecommunications today and the impact of the Telecommunications Act of 1996
12 is not consistent with the evidence in this case and is in marked contrast to the
13 views of the NCTA, which has recently published the following conclusions:

14 The telecommunications marketplace in 2005 has become highly robust,
15 offering consumers a wide variety of choices, better value and exciting
16 new services. *These developments have arisen, in part, because of a*
17 *regulatory framework that has fostered increasing competition and*
18 *provided incentives for large-scale investments.*¹⁸
19

20 Whether you want to make a phone call (at home or on the go), watch
21 television or surf the Internet, you have a wide variety of options
22 available, *all thanks to the encouraging effects of deregulation.*¹⁹
23

24 Consumers have more choices than ever for basic lifestyle habits including
25 watching TV, making phone calls and surfing the Internet. Throughout
26 [the past decade], competition in telecommunications services has
27 increased dramatically. Yet while cable continues to face vigorous
28 competition in its core video business, it has also fueled competition in
29 high-speed Internet access and now provides real facilities-based

¹⁷ Cox Communications, “WHITEPAPER: Voice over Internet Protocol: Ready for Prime Time,” May 2004, page 15.

¹⁸ NCTA, “2005 Mid-Year Industry Overview,” page 2 (italics added).

¹⁹ *Id.*, (italics added).

1 telephone competition. The net result is a thriving telecommunications
2 marketplace that will continue to evolve rapidly as more providers look
3 for ways to serve a sophisticated audience that demands continued
4 progress.²⁰
5

6 **Q. MR. LAFFERTY AND MR. WEISS BOTH RECOMMEND THAT THE**
7 **AFOR PLAN BE LIMITED IN TERM TO THREE YEARS AND FOUR**
8 **YEARS, RESPECTIVELY. PLEASE COMMENT.**

9 A. First, it is important to distinguish between the “term” recommendations of the
10 Division and Cox. The Division’s recommendation is tied to its proposal for
11 ceilings on the allowed price change for Primary Residence Basic Exchange
12 access. (Weiss, page 12, lines 8-16). The Division is silent as to whether a
13 specific term should be adopted if Verizon’s proposed AFOR Plan is approved.
14 Cox, on the other hand, specifically recommends a three-year term, in order for
15 the Commission “to determine the implications of the recent FCC decisions and
16 industry acquisitions.” (Lafferty, page 19, lines 8-11).

17 I have already discussed the reasons that the status of intramodal
18 competition on a going-forward basis has little importance to an assessment of the
19 level of competition for residential customers in Rhode Island. For the same
20 reasons, the Commission should not limit the AFOR Plan in order to assess these
21 irrelevant considerations. Also, a plan focused on pricing flexibility does not
22 need to be limited in term in the manner of out-dated price cap plans. Out-dated
23 price cap plans included numeric components, such as a productivity offset, that
24 defined the extent of allowed price changes, but pricing flexibility plans recognize
25 that price changes are a function of market forces. Since prices are the function of

²⁰ *Id.*, page 4.

1 the market, not of regulation, it is not necessary to review or modify the
2 regulatory plan on a set schedule. Ms. O'Brien discusses how the proposed
3 AFOR Plan includes components that would allow the Commission to initiate a
4 review or a change, but it is not appropriate to include such a review on a set
5 schedule. There is no good public policy reason to adopt this recommendation by
6 Cox.

7 **III. TESTIMONY OF THOMAS H. WEISS**

8 **Q. PLEASE COMMENT ON MR. WEISS'S TESTIMONY.**

9 A. Mr. Weiss for the most part agrees with Verizon RI's view of the competitiveness
10 of the Rhode Island market for residential services. However, although he agrees
11 that market conditions today for residential services meet the precedential
12 standard created by the Commission to allow the pricing flexibility requested in
13 the AFOR Plan, he recommends that the Commission continue with almost the
14 same pricing restrictions for Verizon RI's basic residential services that the
15 Commission adopted as part of the current AFOR plan. Ms. O'Brien explains
16 why the Division's proposal is inappropriate, but I would like to explain my
17 disagreement with the rationale used by Mr. Weiss to recommend the same
18 restrictions.

19 **Q. WHAT WAS THE RATIONALE?**

20 A. Mr. Weiss generally agrees with Verizon RI that there are intermodal alternatives
21 to Verizon RI's wireline telephone services for residential customers, but he sees
22 these alternatives as a potential harm to consumers (Weiss, page 9, lines 6-9). He
23 testifies that "given complete pricing flexibility in its residence wireline access

1 market, Verizon-RI may have the incentive to raise basic residence wireline
2 access rates to the point that residence customers generally would migrate to
3 wireless access services, including wireless access services provided by Verizon
4 Wireless. But to Verizon-RI residence customers who find that wireless access
5 may seem too complex or too expensive, the Division is concerned that there is no
6 viable alternative and those customers could be left without access to any form of
7 telecommunications network.”²¹

8 **Q. PLEASE COMMENT ON THIS CONCERN.**

9 A. First, competition generally is a source of benefits to consumers, not harm. As
10 this Commission has noted in the past, “the continuing development of local
11 telephone competition in Rhode Island ... will benefit the ratepayers as well.”²²
12 The robust competition that exists already for residential services in Rhode Island
13 will ensure that Verizon RI’s residential prices remain just and reasonable, just as
14 it has for Verizon RI’s business services.

15 Second, the notion that Verizon RI will price its wireline services in such a
16 way as to purposefully try to get residential customers to migrate to Verizon
17 Wireless would actually not make sense for Verizon. Verizon RI has made
18 significant investments in providing wireline services, and it is making additional

²¹ Weiss, pages 9-10, lines 21-6 (footnote omitted). The omitted footnote included Mr. Weiss’s conclusion that it is “highly unlikely” that customers would migrate to VoIP since VoIP requires access to “expensive” broadband services. Not all VoIP providers require broadband Internet access as a prerequisite. The information response cited by Mr. Weiss for his conclusion referenced only Vonage, a VoIP provider that does require broadband Internet access. In fact, cable companies using VoIP generally do not require that customers purchase broadband Internet access. In any event, the cost of the broadband connection is not a significant factor in the competitiveness of VoIP. This is because VoIP services are marketed and purchased largely on the basis of *marginal* costs to consumers who have already made the decision to subscribe to broadband in order to obtain high-speed internet access.

1 investments to its wireline network in order to provide the most advanced
2 broadband services, including high-speed data and video, over fiber optic cable.
3 Verizon RI does not and cannot afford to ignore or manipulate our basic service
4 customers. If our basic wireline customers are treated poorly, it is not likely that
5 they will buy new fiber services from us. Verizon RI is acutely aware of the fact
6 that our success in the future is built on how we treat customers today. Even if we
7 did have an incentive to move customers to Verizon Wireless, which we do not,
8 there is certainly no guarantee that migrating customers would switch to Verizon
9 Wireless when they have the choice of switching their services to a number of
10 other wireless providers, in addition to Cox, other CLECs, and VoIP alternatives.

11 **IV. CONCLUSION**

12 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS.**

13 A. Verizon RI has demonstrated that current market conditions for residential
14 services meet the Commission's standard for granting the requested pricing
15 flexibility in the proposed AFOR Plan. The Division and Cox do not contend
16 otherwise. Nevertheless, the Division recommends keeping in place roughly the
17 same pricing restrictions for basic residential services that are contained in the
18 current AFOR Plan, based on a misguided understanding of Verizon RI's
19 incentives in serving its residential customers. Verizon RI has shown that the
20 Division's concerns are misplaced and do not form a basis for the Commission to
21 depart from its clear standards and precedent.

²² Docket No. 3445, Order No. 17417, issued March 31, 2003, at 52.

1 Cox recommends a number of restrictions on Verizon RI's pricing
2 flexibility in the residential market, particularly in terms of Verizon RI's offering
3 of promotions and bundles. This is not surprising given the strategic importance
4 of promotions and bundles to Cox. Cox benefits from current asymmetric
5 regulatory requirements and seeks to embed that advantage in the new AFOR
6 Plan. In this case, the Commission should heed the words of Jim Robbins, Cox's
7 President and CEO, who recently said in reference to competition with telephone
8 companies, "... in order to keep the competition fair, we all need to take an honest
9 look at our regulatory environment. A level playing field in the fight for
10 customers is a critical component to ensuring a truly competitive marketplace,"²³
11 and then concluded, "So, here's my proposition. Let's go head to head. We'll all
12 benefit, but DON'T TRY TO TILT THE FIELD THROUGH THE
13 REGULATORY PROCESS. Instead, let's compete in our barenakeds – without
14 regulators babysitting us – and let consumers choose the winners."²⁴ Cox's
15 efforts in this case to preserve the tilted playing field for telephone competition
16 should be rejected, and Verizon RI's proposed AFOR Plan, which is fully
17 consistent with prior Commission rulings and moves in the direction of leveling
18 the playing field, should be approved without modification.

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 **A.** Yes.

²³ Jim Robbins, President and CEO of Cox Communications, "U.S. Telecom '05 Keynote," October 25, 2005, as prepared for delivery, page 2.

²⁴ *Id.*, (caps in original).