

1 flexibility along with differentiating its  
2 services through increased quality and  
3 innovation. This is precisely how a robust  
4 competitive marketplace is supposed to work.  
5 Consumers' interests are not simply protected  
6 under the Plan; they are enhanced.

7 Finally, the Commission has  
8 recognized that pricing flexibility is a  
9 necessary and appropriate component of a  
10 competitive marketplace. As staff has noted in  
11 its written testimony, the Commission has in the  
12 past responded to markets that have been opened  
13 to competition by providing for pricing  
14 flexibility, because the result is rational  
15 prices and proper economic incentives. That  
16 same response is appropriate here, where the  
17 market has been opened and where the recent UNE  
18 rate order promises to increase competition  
19 substantially. Accordingly, pricing flexibility  
20 is in the public interest.

21 The service quality provisions of  
22 the Joint Proposal further ensure that pricing  
23 flexibility will be in the public interest.  
24 They encapsulate Verizon's commitment to high  
25 quality service even while it seeks to meet the

1 substantial price competition that its  
2 competitors offer. The Joint Proposal's  
3 approach to service quality is timely and  
4 entirely appropriate.

5 As staff and Verizon witnesses  
6 have testified, under the PRP that has been in  
7 place, Verizon's service quality has met or  
8 exceeded the Commission's requirements and  
9 standards. As the testimony consistently  
10 demonstrated, Verizon's commitment to improving  
11 and maintaining high service quality in this  
12 state has been proven out; it is a success story  
13 that should be rewarded.

14 The Commission must adjust its  
15 regulatory framework to address the realities  
16 before it. In this instance, Verizon has  
17 achieved the appropriate, desired level of  
18 service quality, and thus a new regulatory  
19 approach is in order. The Joint Proposal  
20 establishes a service quality floor. Verizon  
21 commits that its service will not dip below that  
22 level statewide and there are protections for  
23 individual areas of the state. Should Verizon  
24 fail to meet its commitment, it faces severe  
25 penalties, including suspension of its

1 prospective pricing flexibility. But the Joint  
2 Proposal also recognizes that if Verizon  
3 continues to meet this level of service quality,  
4 no additional regulatory incentives or  
5 constraints are necessary. Thus, as you have  
6 heard from both Staff and Verizon testimony, the  
7 Joint Proposal's service quality plan will back-  
8 stop Verizon's commitment to maintaining service  
9 quality while recognizing the gains that the  
10 company has made. Finally, as Staff and Verizon  
11 witnesses have also explained, once the  
12 regulatory floor is in place under the Plan, the  
13 constraints of the competitive marketplace and  
14 the demands of New York's sophisticated  
15 consumers will compel not only adequate service,  
16 but superior service.

17 The Joint Proposal similarly  
18 recognizes that the increasingly competitive  
19 telecommunications market calls for a new  
20 regulatory story approach to Verizon's  
21 accounting requirements. The Joint Proposal thus  
22 provides for a transition from the regulatory  
23 accounting approach that was appropriate in a  
24 highly regulated, less competitive environment  
25 to an approach based on Generally Accepted

1 Accounting Principles, or GAAP. This new  
2 approach recognizes that Verizon faces and will  
3 face growing competition and provides Verizon  
4 with a more realistic opportunity to recover its  
5 plant investment. Particularly with respect to  
6 depreciation schedules, Verizon will ultimately  
7 have to make its own determinations as to how  
8 quickly and in what way it will recover plant  
9 costs without reliance on a regulatory safety  
10 net. The GAAP accounting reflects this  
11 fundamental change in the risks that Verizon  
12 faces in a competitive environment.

13                   Seen as a whole, the Joint  
14 Proposal will play a vital role in ensuring the  
15 proper operation of the local telecommunications  
16 marketplace and continued investment in  
17 infrastructure and technology by Verizon and  
18 Verizon's competitors. As noted, the Plan -- as  
19 noted, the Plan includes provisions designed to  
20 ensure that Verizon works with its competitors  
21 to enhance competition, and provides Verizon's  
22 competitors with UNE rates and services even  
23 more attractive than required in the  
24 Commission's UNE rate order. These provisions  
25 should help stimulate even more competitive

1 entry into the New York market. But the Plan  
2 plays an even more important role in continuing  
3 investment by Verizon itself. The Plan's  
4 service quality provisions ensure that Verizon  
5 will continue investing in facilities  
6 improvement to assure continued good service  
7 quality throughout the state, and the Plan's  
8 pricing flexibility and accounting provisions of  
9 the Joint Proposal create positive economic  
10 incentives for Verizon. The winners in this  
11 scenario are not just the CLECs, or Verizon, but  
12 also consumers.

13 In light of the many benefits of  
14 the Joint Proposal and the protections that are  
15 in place, as well as the authority that the  
16 Commission retains under the Plan to ensure just  
17 and reasonable rates and safe and adequate  
18 service, no party has been able to show any  
19 reason that the Joint Proposal should be  
20 rejected. To the contrary, there is every  
21 reason, as the record before the Commission  
22 shows, that the Joint Proposal should be  
23 approved without modification.

24 In the end, it is important to  
25 recognize and understand that this Joint

1 Proposal represents the product of careful and  
2 often difficult negotiations among Verizon, the  
3 Staff, the CLEC industry and many other  
4 interested parties many of who have signed the  
5 proposal and actively support it. The Joint  
6 Proposal achieves a careful and delicate balance  
7 of the proponents' individual and collective  
8 interests and, as we have shown, comports with  
9 the Commission's own interests in stimulating  
10 competition and maintaining good service. By  
11 signing and supporting the Joint Proposal, the  
12 signatories and supporters are effectively  
13 representing to the Commission that the Joint  
14 Proposal, like any settlement agreement,  
15 adequately addresses those needs that are most  
16 important to them, even where other needs may  
17 not be addressed entirely to their liking.

18 Accordingly, the Commission  
19 should approve the Joint Proposal as submitted.  
20 The Plan is balanced and serves the public  
21 interest, the interests of Verizon, of Staff and  
22 the numerous other supporters of the Plan.  
23 Changes now would certainly disturb the  
24 delicately balanced proposal, and no change is  
25 warranted on the record here.

1                   We urge the Commission to approve  
2                   the Joint Proposal as submitted.

3                   Thank you for your time.

4                   MS. HELMER: I have a couple  
5                   questions to follow up on, some of the remarks  
6                   made in their closing statements and also their  
7                   testimony.

8                   According to Dr. Renwick's  
9                   testimony, the state is losing approximately \$22  
10                  million per year in federal Lifeline support as  
11                  a result of the erosion of Lifeline customers.  
12                  Those figures are purportedly based upon  
13                  interrogatories answered by your company. First  
14                  of all, I would like to know if you agree with  
15                  that number or the range of that number and,  
16                  secondly, do you agree with the assertion that  
17                  increased Lifeline subscription would have no  
18                  financial impact on Verizon itself?

19                  MS. THORN: I'll try to answer  
20                  them to the best of my ability. If I need to  
21                  supplement the record, I'd be more than happy to  
22                  do so after I talk to my witnesses. However, we  
23                  don't characterize it as the actual loss of  
24                  federal money. These are not taxpayer dollars.  
25                  These are surcharges that are placed on end

1 users' bills at the moment they, quote,  
2 represent the amount that is paid for Lifeline  
3 and other Universal Service requirements. We  
4 submit that surcharge covers the monies that are  
5 being taken out of that plan, before those  
6 monies that this or any other state has would be  
7 raised. This is not taxpayer money it's  
8 telephone subscriber money. I'm not sure you  
9 can characterize it as not getting their fair  
10 share, because our subscribers on Lifeline are  
11 being charged.

12 MS. HELMER: But just to clarify,  
13 there was an increase because the subscription  
14 rate was increased, back to previous levels.  
15 Would that increase be seen just on Verizon New  
16 York customers or on all Verizon customers or  
17 national customers?

18 MS. THORN: I believe it's on all  
19 customers nationwide.

20 MS. HELMER: And the subset of  
21 that is the testimony is not really clear about  
22 what percent average of this is covered by  
23 Universal Service, federal Universal Service  
24 funds and state cap funds. Do you have any  
25 sense of what that breakdown is or can you get

1           that to me?

2                           MS. THORN: I can get it for you  
3           certainly. I don't have it right now. As you  
4           know, when we implemented the cap to New York,  
5           prior to that point Verizon had been paying  
6           primarily a hundred percent of it. In the cap  
7           fund, this is a small percentage of other  
8           carriers that contribute, but still the  
9           overwhelming percentage of the state funds come  
10          from Verizon and we take that out of the money  
11          we earn from the customers in the state of New  
12          York.

13                           So would I say it has an impact  
14          on Verizon? Certainly it does. I would have to  
15          raise more money in the marketplace to make up  
16          for that shortfall.

17                           MS. HELMER: So that you do agree  
18          that it is all paid for by either the federal  
19          Universal Fund or the tap fund, and I understand  
20          the argument that you make also.

21                           MS. THORN: I believe the answer  
22          to that is yes. Again I just want to check the  
23          numbers because I don't have them in front of  
24          me.

25                           MS. HELMER: O.K. If you could

1 just get a breakdown, if you could follow up  
2 with a breakdown of how much is shared by each  
3 of those funds, I would appreciate it.

4 MS. THORN: Thank you.

5 MS. LEE: All right, Peter.

6 MR. MCGOWAN: Good morning,  
7 chairman Helmer, Chief Judge Lee. On behalf of  
8 that dedicated and hard working staff that has  
9 been referred to frequently in the past hour, I  
10 am proud to argue in support of the Joint  
11 Proposal that arrived at through the hard work  
12 of not just Staff but all of the parties in this  
13 case.

14 Assuring that New York's  
15 telecommunications infrastructure continues to  
16 evolve dynamically is critical to the New York  
17 economy and its citizens. The Commission has  
18 taken many steps to open the telecommunications  
19 market to competition. Those steps have served  
20 the interests of New Yorkers well by bringing  
21 them the benefits associated with competition:  
22 Lower prices, increased choice and improved  
23 service.

24 There is no disagreement in this  
25 case that this is the right policy and that New

1 York remains in the vanguard.

2 (A recess was taken to change  
3 reporters.)

4 MS. LEE: Back on the record with staff  
5 continuing with his closing statement.

6 Mr. McGowan.

7 MR. MCGOWAN: The Joint Proposal builds on  
8 New York's strong foundation of opening the  
9 local market-to-market forces. This foundation,  
10 together with the recent UNE decision and the  
11 Joint Proposal, will lead the state's  
12 telecommunications policy to the inevitable  
13 competitive world.

14 In short, the Joint Proposal is the logical  
15 next step in the market opening process, and it  
16 strikes the right balance between opening  
17 markets to competition and providing appropriate  
18 and modest regulatory flexibility to Verizon.

19 I would like to highlight in my argument  
20 how the Joint Proposal serves the public  
21 interest by strengthening market force, why  
22 staff believes the resulting rates are just and  
23 reasonable, and why the plan will keep Verizon  
24 focused on maintaining good service quality.

25 First, the Joint Proposal promotes the

1 public interest by stimulating competition. 3.3  
2 million Verizon customers, or roughly 27  
3 percent, have already chosen an alternative  
4 telecommunications provider.  
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1           The Commission's January 28th UNE decision  
2           has resulted in significantly lower UNE prices.  
3           These prices are assured as an explicit  
4           provision of the Joint Proposal. Key UNE  
5           prices, including the \$35 non-recurring charge  
6           for loop hotcuts, are specifically set forth in  
7           the Joint Proposal. Moreover, Verizon has agreed  
8           not to challenge the UNE rates.

9           These aspects of the Joint Proposal, along  
10          with other competitive enhancements in the Joint  
11          Proposal, provide certainty and stability that  
12          will, as the Attorney General recognizes,  
13          stimulate competitive carriers to expand the  
14          marketing and service offerings in New York.

15          The staff panel testimony indicates that  
16          nine competitive carriers currently serve the  
17          residential market in Verizon's service  
18          territory. The most active have indicated to  
19          staff that they expect to market to residential  
20          customers throughout Verizon's New York  
21          territory, and one advises that it expects to  
22          revise the prices of its residential offering in  
23          a favorable manner.

24          The business market is even more  
25          competitive than the residential market, with 12

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1 competitive carriers in Albany, Binghamton,  
2 Buffalo and Syracuse.

3 With the new lower UNE rates, and the  
4 commitment in the Joint Proposal to make UNEP  
5 available to the small business market on a more  
6 aggressive basis, competition will strengthen in  
7 these markets.

8 All of these factors, together with New  
9 York's ongoing strong commitment to competition,  
10 and the wide support for the Joint Proposal as  
11 indicated today by competitive carriers and the  
12 Attorney General, leads staff to the conclusion  
13 that competition will discipline Verizon's  
14 prices, and that New York consumers will be able  
15 to exercise choice to avoid undue rate increases  
16 by Verizon.

17 The rate flexibility that the Joint  
18 Proposal provides for is reasonable, and the  
19 resulting rates are just and reasonable. In  
20 view of the stimulated competitive environment,  
21 the modest pricing flexibility provided for in  
22 the Joint Proposal is reasonable.

23 In competitive markets, prices are  
24 determined by market participants, not  
25 regulators. This is the thrust of the Joint

1           Proposal, whose major premise is that active  
2           competition will exist

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1 across all market segments. Under the Joint  
2 Proposal overall revenue can increase three  
3 percent per year, but there are, of course, the  
4 exceptions to protect bottleneck and other  
5 services.

6 While there is no specific cap on  
7 individual services, the Joint Proposal does  
8 limit basic increases to \$1.85 per line for the  
9 first line basic service, and an additional 65  
10 cents in the second year.

11 Rates are also capped for the smallest rate  
12 groups, rate groups 1, 3 and 5, because the cost  
13 of competitive entry in those areas are  
14 relatively high. The flexibility provided for  
15 in the Joint Proposal is also consistent with  
16 prior Commission actions.

17 Pricing of terminal equipment and inside  
18 wiring was deregulated in the late 1970s and the  
19 early '80s. Private line has been flexibly  
20 priced, 1980 to '90. Long distance and local  
21 usage have been flexibly priced since 1990.  
22 Basic local business has also been flexibly  
23 priced since 1992.

24 Although Verizon begins the plan as the  
25 dominant carrier, we fully expect its dominance

1           to be reduced. And recognizing that Verizon may  
2           well be unable to exercise the full flexibility  
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1 authorized by the Joint Proposal, staff  
2 estimates Verizon's return on equity--assuming  
3 that it was able to exercise all of this  
4 flexibility.

5 Staff's unchallenged financial testimony  
6 concludes that given the risks that Verizon  
7 faces, and the benefits to consumers of the  
8 plan, the Joint Proposal produces a reasonable  
9 return and just and reasonable rates.

10 To summarize, the pricing flexibility  
11 provided by the Joint Proposal is in the public  
12 interest because consumers have choice, and it  
13 allows competition, not regulators, to set  
14 retail prices, and it permits certain rates to  
15 move gradually to cost, creating more accurate  
16 pricing signals.

17 The next point is that service quality will  
18 be maintained. The quality of the state's  
19 telephone service is critical to the public  
20 interest generally, and in the context of  
21 incentive regulation, during the transition to  
22 full competition, it is vital that Verizon's  
23 management remains focused on maintaining the  
24 substantial gains that have been achieved during  
25 the past six years.

1                   During the plan, the Performance Assurance  
2                   Plan, which monitors Verizon's wholesale service  
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1 quality, it will remain an important regulatory  
2 tool to guard against disparate service between  
3 retail and wholesale. And the Joint Proposal  
4 will insure that Verizon continues to invest in  
5 its infrastructure and labor force to maintain  
6 adequate service quality.

7 Verizon has made substantial progress over  
8 the past six years under the Performance  
9 Regulation Plan in improving service quality.  
10 This is acknowledged in both staff's testimony  
11 and by the Attorney General. For this reason,  
12 the regulatory tools that were used six years  
13 ago are no longer needed.

14 The Joint Proposal contains statewide  
15 service quality targets and significant  
16 consequences that are designed to prevent  
17 significant backsliding.

18 The new Service Quality Plan is focused  
19 more on preserving past service quality gains,  
20 and less on providing remedies to improve  
21 service, as in the Performance Regulation Plan.

22 Also, unlike the Performance Regulation  
23 Plan, this plan does not anticipate the need to  
24 adjust results to reflect unique events like  
25 storms. That these targets are statewide will

1 not permit the company to mask a good  
2 performance with bad,  
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1           because on critical measures the company is  
2           already performing only slightly higher than the  
3           targets.

4           The Service Quality Plan contains five  
5           statewide annual targets based upon the recently  
6           adopted revisions to the Commission's service  
7           quality standards. Four of these measures  
8           insure an average performance level for the  
9           whole state, while the outlier measures limits  
10          areas of poor performance.

11          The outlier measure will focus the  
12          company's attention on those areas of  
13          performance that are most in need of  
14          improvement. Should performance decline,  
15          customers would receive compensating credits.  
16          If the company were to fail all of the five  
17          penalties, it could pay rebates totaling 170  
18          million dollars a year.

19          This exposure is greater than the exposure  
20          that the company faced on the existing  
21          Performance Regulation Plan, which was roughly  
22          150 million per year.

23          The plant also provides for \$100,000  
24          payment to the state's general fund in the event  
25          a major service interruption occurs as a result

1 of a company failure to maintain certain  
2 components of its network at predetermined  
3 levels.

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1           The Service Quality Plan also promotes  
2           economic development. In the plan, Verizon has  
3           agreed to implement a program that is designed  
4           to improve the special services. Special  
5           services are generally non-switch services that  
6           require engineering design before being  
7           installed.

8           Because business increasingly relies on  
9           these services to interconnect geographically  
10          dispersed offices, to manage data and voice  
11          traffic, and to interconnect with suppliers and  
12          to access the internet, demand has been high and  
13          service improvements are needed.

14          For the first time, this plan establishes  
15          specific improvement milestones, and if  
16          performance falls below the targets, customers  
17          will receive a rebate of 25 percent of the  
18          monthly rate for the effective service.

19          Now, while the Plan accomplishes these  
20          important objectives, as others have already  
21          indicated, there remains important work to be  
22          done. And that is going to be taking place in  
23          the task force.

24          All of the task forces are important, but  
25          one is particularly important, and that concerns

1           the development of resolving the issues  
2           concerning  
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1 access to hotcuts and bottlenecks.

2 These task forces will improve operational  
3 relationships, and their success will be  
4 critical to accomplishing successfully staff's,  
5 and I think the Commission's, vision for  
6 facilities' based competition.

7 And it will also be an important factor for  
8 purposes of applying the prefiling statement  
9 commitments that at the end of the term will  
10 allow it to increase its prices.

11 Before it is able to do that, it must  
12 demonstrate to the Commission that it can  
13 successfully perform hotcuts on a mass market  
14 basis. So, we look forward to working with all  
15 the CLECs and Verizon on these task forces.

16 In conclusion, the New York Commission has  
17 long fostered competitive markets in  
18 telecommunications. These policies have served  
19 the interest of New Yorkers well by bringing  
20 them the benefits associated with open markets.

21 The Joint Proposal is the next important  
22 step in the process of bringing New Yorkers a  
23 telecommunications market that will produce the  
24 highest quality telephone service at the lowest  
25 possible price.

1           The Joint Proposal was negotiated by an  
2           able staff team, and is supported by a staff  
3           panel that has an incredible number of years of  
4           regulatory experience. I am supposed to have  
5           that number but I wasn't able to add it up--I  
6           thought we were going to do this at 3:00--but  
7           it's a lot. As you know, it's a lot of years of  
8           experience that the staff panel team and others  
9           on the team have.

10           The proposal also enjoys wide support from  
11           competitive carriers, and in an important  
12           respect is supported by the Attorney General.

13           Staff recommends that the Division adopt  
14           the Joint Proposal. Thank you.

15           MS. HELMER: I don't have a question, but I  
16           would just like to make a comment at this point.

17           Without in any way prejudicing what the  
18           Commission may or may not do with this Joint  
19           Proposal next week, I don't often get the  
20           opportunity to thank directly parties who were  
21           involved in the proceeding, and who have worked  
22           so hard in the proceeding, except now over the  
23           internet.

24           But since so many of you are in the room  
25           today, I just do want to thank you all for your

1 cooperation and your participation in this case,  
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1           whether you supported the settlement or you  
2           didn't support the settlement--the Joint  
3           Proposal, excuse me, as my attorney keeps  
4           reminding me. There was a lot of work put into  
5           this over--contrary to some statements--many,  
6           many months.

7                     And I just want to thank you for your joint  
8           patience and your joint cooperation and  
9           creativity in working on this.

10                    Again, the Commission has a lot to think  
11           about between now and next week. And certainly  
12           the information that has been presented today  
13           will feed into that process. And all the  
14           paperwork--which I have my reading cut out for  
15           me this weekend--will be fit into that process.

16                    I just wanted to thank you all.

17                    Judge Lee.

18                    MS. LEE: Is there anything further that we  
19           need to address at this time?

20                    Ms. Thorn.

21                    MS. THORN: Yes. I would like to move  
22           Exhibits 1 to 15 into evidence, Your Honor.

23                    MS. LEE: All the exhibits that have been  
24           marked for identification will be so moved into  
25           evidence.

1                    Is there anything further?  
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1           I would like to remind the parties that  
2           reply briefs, if you would like to file them,  
3           will be due on Thursday, February 21st. That's  
4           an in hand date for which e-mail may be used;  
5           however, please follow those submissions by hard  
6           copy in accordance with the Commission's rules.

7           As Chairman Helmer mentioned, this matter  
8           is expected to be reported to the public session  
9           to the Commission on February 27th, next  
10          Wednesday.

11          I would like to echo the thanks that we  
12          have heard many times around these tables and in  
13          this room. I believe the hard work and  
14          dedication of the parties in this proceeding is  
15          really unsurpassed in any proceeding that I have  
16          seen. I thank you for that.

17          If there is nothing else that needs to be  
18          covered at this time, we will adjourn. Thank  
19          you very much.

20                   (Hearing concluded.)

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