A. No. In fact, Verizon's apparent behavior is not economically rational in a competitive market, but matches the behavior of an entity seeking to gain or preserve a monopoly. Specifically, instead of maximizing profits by continuing to sell premium voice mail and high speed Internet (Line Sharing DSL) service to customers that have chosen to obtain their local telephone service from Verizon's competitors, Verizon appears to be attempting to maximize profits by blocking its customers' ability to switch their local telephone service to another provider. However, Mr. Taylor inappropriately argues that Verizon can somehow justify this curious behavior.

Q. DO YOU AGREE WITH MR. TAYLOR'S STATEMENT THAT, "CONTRARY TO CLOSECALL'S CLAIMS, THE FACT THAT CLOSECALL'S RESIDENTIAL LOCAL EXCHANGE CUSTOMERS CANNOT PURCHASE VERIZON-MD'S VM AND BROADBAND ACCESS SERVICE DOESN'T UNFAIRLY DISADVANTAGE CLOSECALL IN THE MARKET FOR RESIDENTIAL LOCAL EXCHANGE CUSTOMERS BECAUSE CLOSECALL'S CUSTOMERS HAVE A WEALTH OF COMPETITIVE ALTERNATIVES AVAILABLE TO THEM?"

A. No. Mr. Taylor forgets that CloseCall's claim has to do with the Verizon customers that are <u>already</u> subscribing to Verizon's voice mail and high speed Internet (Line Sharing DSL) services. Consequently, these customers have already selected a voice messaging or Line Sharing DSL

provider. The issue here is that Verizon is preventing these customers from benefiting from the wealth of competitive local telephone service alternatives because Verizon will take away their voice messaging and high speed Internet access service (Line Sharing DSL) if they choose a competitive local telephone service provider.

Q. DO YOU AGREE WITH MR. TAYLOR'S SECOND REASON THAT, "ASYMMETRIC REGULATION DISTORTS COMPETITION, AND UNDER CLOSECALL'S PROPOSAL, ONLY ONE OF MANY COMPETITORS IN THE VM AND HIGH SPEED INTERNET ACCESS MARKETS (VERIZON-MD) WOULD BE COMPELLED TO SUPPLY SERVICES TO CUSTOMERS IT WOULD FIND UNPROFITABLE TO SERVE?"

A. No. For two reasons. First, the Commission has set the resale discount in compliance with federal law and regulation, so the Verizon is made whole. Specifically, Verizon's wholesale discount corresponds to the costs it avoids by provide services carriers on a wholesale basis, rather than to customers on a retail basis. In other words, the resale discount corresponds to the money that Verizon actually saves by offering the service on a wholesale basis. (*e.g.,* marketing, billing and customer service costs). Therefore, contrary to Mr. Taylor's contention, Verizon would not be providing these services to CloseCall unprofitably.

Second, CloseCall's complaint would also be resolved if Verizon simply continued to provide "unregulated" voice messaging and high speed Internet (Line Sharing DSL) services on a stand-alone basis and without causing service disruptions when customers switch local telephone service providers. This arrangement could only be unprofitable for Verizon if it is intentionally pricing these services below cost and cross subsidizing voice messaging and high speed Internet access (Line Sharing DSL) from its provision of local telephone service.

Q. DO YOU AGREE WITH MR. TAYLOR'S STATEMENT THAT "EXTENDING THE FORCE OF REGULATION INTO MARKETS WHERE COMPETITION HAS BEEN AN UNDISPUTED SUCCESS WOULD HARM RATHER THAN HELP THE PROCESS OF COMPETITION AND ULTIMATELY MARYLAND TELECOMMUNICATIONS CUSTOMERS?"

A. No. This statement is tantamount to saying that the Commission lacks the ability to act in favor of the public interest. It is entirely appropriate for the Commission to review competitive practices and market conditions, especially as they relate to Verizon's treatment of CLECs, like CloseCall. To the extent Verizon uses its dominant market position to gain unfair advantage over CLECs or to place its own interests ahead of the public interest, the Commission has the authority and responsibility to reign Verizon in before it causes irreparable harm to consumers, competitors and the development of a competitive local market. Verizon's attempt to

establish arbitrary conditions limiting access to "unregulated" services in order to protect its "regulated" services from competition is clearly an occasion that warrants the Commission's corrective action.

Q. DO YOU AGREE WITH MR. TAYLOR'S THIRD JUSTIFICATION, THAT "CLOSECALL'S PROPOSAL IS IMPRACTICAL; IF ADOPTED, WHERE SHOULD THE LINE BE DRAWN?"

A. No. There is no line to be drawn. This proceeding is not a rulemaking but an adjudication of a specific complaint regarding Verizon's specific anticompetitive practices that the Commission should consider on its own merit. Moreover, Verizon can terminate this proceeding by permanently abandoning its anticompetitive strategy. If any line is to be drawn, it should clearly indicate that the Commission will not accept Verizon's effort to mix and match regulatory decisions and make contradictory economic and legal arguments to justify its anticompetitive behavior.

Q. DO YOU AGREE WITH MR. TAYLOR'S FOURTH JUSTIFICATION, THAT "CLOSECALL'S COMPLAINT DOESN'T MAKE ANY ECONOMIC SENSE?"

A. No. One of the Commission's chief roles is to regulate the telephone market so that the dominant service provider, Verizon, behaves as it would if it were one of many competitors in a "perfectly competitive" market, or as close to this as possible. This system is designed to provide

1 Maryland's consumers with the low prices and the variety of choices one
2 would find in a competitive market, even though the market is dominated
3 by a single large service provider. In this environment CloseCall would
4 had no reason to file its complaint against Verizon, because Verizon would
5 be competing very hard to provide high speed Internet (Line Sharing DSL)
6 and voice messaging services to as many customers as possible.
7 Regardless of whether or not Verizon, CloseCall, or another competitor
8 was providing local telephone service to the same customers. Even under
9 current conditions, the Commission should expect this sort of behavior,
10 since nothing precludes Verizon from providing voice messaging and high
11 speed Internet access (Line Sharing DSL) to as many residential
12 consumers and small businesses as possible.
13
14 Instead, Verizon's business strategy is to maximize its market share by
15 throwing up arbitrary barriers before its competitors. This behavior is
16 symptomatic of a non-competitive market that is subject to a dominant
17 player's effort to protect its monopoly position. In other words, to the
18 extent local telephone service was open to full competition (without
19 Verizon having the power to block customers from switching their local
20 telephone service away from them to CloseCall), Verizon's profit
21 maximizing behavior would be to proactively hold onto the voice mail and
22 high speed Internet (Line Sharing DSL) services when customers
23 switched their local telephone service to CloseCall – not to terminate

them. It is the Commission's obligation to correct this through prudent guidance and regulation.

Q. DO YOU AGREE WITH MR. TAYLOR'S STATEMENT THAT "VERIZON-MD'S BUSINESS PRACTICES DO NOT CONSTITUTE ANTICOMPETITIVE TYING. VERIZON-MD HAS NO MARKET POWER IN THE VM OR BROADBAND ACCESS MARKETS IN MARYLAND AND THUS NO PROSPECT OF PROFITING FROM ATTEMPTING TO FORCE VM OR DSL CUSTOMERS TO TAKE ITS RESIDENTIAL OR SMALL BUSINESS LOCAL EXCHANGE SERVICES AS A CONDITION OF BUYING VERIZON-MD'S VM OR DSL SERVICE. THUS CLOSECALL CANNOT CLAIM COMPETITIVE HARM FROM VERIZON-MD'S BUSINESS PRACTICES BECAUSE CLOSECALL'S BASIC EXCHANGE CUSTOMERS HAVE MANY ALTERNATIVES TO VERIZON-MD'S VOICE MESSAGING AND BROADBAND ACCESS SERVICES?"

A. No. One major flaw in this argument is the fact that CloseCall's complaint is specifically focused on existing Verizon customers that already subscribe to voice mail or high speed Internet (Line Sharing DSL) service. The competitive harm caused by Verizon's behavior is that these existing residential consumers and small businesses cannot purchase CloseCall's local telephone service because Verizon is effectively leveraging access to its widely available voice mail and high speed Internet (Line Sharing

DSL) service. Verizon demonstrates this behavior by (1) using its market power by refusing to process CloseCall's local telephone service provider change orders for customers subscribing to Verizon's high speed Internet access (Line Sharing DSL) service; (2) terminating the customer's existing voice messaging service in response to the customer's decision to subscribe to CloseCall's local telephone service; (3) entering into secret deals under which certain other CLECs may pass orders through Verizon's systems while Verizon blocks CloseCall's orders for similar service; and (4) causing service disruptions for customers migrating from Verizon's local telephone service to CloseCall's.

In the first case, customers are trapped into staying with Verizon's local telephone service because Verizon refuses to release the customer to CloseCall so long as the customer subscribes to Verizon's high speed Internet (Line Sharing DSL) service. In the second case, customers are trapped into staying with Verizon's local telephone service because Verizon will unilaterally terminate their voice messaging service, often in manner that invites service disruptions and other problems, (*e.g.*, the loss of saved messages and other stored data; no opportunity to retrieve or restore their personal information; the likely-hood of losing incoming calls. In the third case, Verizon's use of secret deals with certain CLECs unreasonably discriminates against CloseCall and hurts CloseCall's ability to compete with Verizon as well as with other CLECs. In this instance,

Verizon "orchestrates" the market by deciding which CLECs can compete for which customers. In the fourth case, Verizon is callously causing customer inconvenience in a manner that causes customers to associate negative experience with Verizon's competitors. Contrary to Mr. Taylor's statement, Verizon clearly profits from these anti-competitive maneuvers.

In addition, despite Mr. Taylor's impression that CloseCall's local telephone customers have many alternatives to Verizon's voice mail and high speed Internet (Line Sharing DSL) services, only Verizon, by virtue of its incumbent monopoly position, can leverage a customer's subscription to Verizon's local telephone service to sell additional services including voice mail and high speed Internet access (Line Sharing DSL) services. In fact, Verizon is employing this fairly sophisticated scheme, apparently with the support of Mr. Taylor, to minimize the likelihood that competitors will substantially erode its share of the local market.

Q. DO YOU AGREE WITH MR. TAYLOR THAT, "IN ORDER FOR VERIZON-MD'S BUSINESS PLANS TO IMPAIR CLOSECALL'S ABILITY TO COMPETE FOR RESIDENTIAL EXCHANGE CUSTOMERS, VERIZON-MD WOULD HAVE TO BE ESSENTIALLY A MONOPOLY PROVIDER OF VM AND BROADBAND INTERNET ACCESS SERVICES TO RESIDENTIAL CUSTOMERS WHO ARE ON THE MARGIN

BETWEEN SUBSCRIBING TO CLOSECALL OR VERIZON-MD FOR BASIC EXCHANGE SERVICE?"

A. No. Mr. Taylor's statement turns reality on its head. Verizon remains the *de facto* monopoly provider of basic local telephone services. Verizon's intentional interference with the freedom of its voice messaging and high speed Internet access (Line Sharing DSL) customers to switch to CloseCall's local telephone service is the anti-competitive "tie-in." These customers are no longer deciding between CloseCall and Verizon's local telephone service offerings, but have already decided to obtain local service from CloseCall and would do so but for Verizon's purposeful interference with the customer's service provider preferences

Q. DO YOU AGREE WITH MR. TAYLOR'S ASSERTION THAT "THE MECHANICS OF TYING ARE SIMPLE: A MONOPOLY SUPPLIER OF SERVICE A REFUSES TO SUPPLY THAT SERVICE BY ITSELF AND REQUIRES CUSTOMERS TO ALSO PURCHASE SERVICE B, FOR WHICH IF FACES COMPETITION?"

A. Yes. That is exactly what Verizon is doing. In this formula, Verizon's voice messaging or high speed Internet access (Line Sharing DSL) service is Service A, and Verizon's local telephone service corresponds to Service B. Consequently, according to Mr. Taylor's testimony, Verizon's refusal to allow Maryland consumers to choose CloseCall's local telephone service if Verizon is providing their voice messaging or high

speed Internet service (Line Sharing DSL) is clearly anticompetitive "tying," for the purposes of antitrust economics and law.

Q. DO YOU AGREE WITH MR. TAYLOR THAT "VERIZON-MD IS ACCUSED OF PROVIDING VM OR DSL (THE COMPETITIVE SERVICES) EXCLUSIVELY TO ITS LOCAL EXCHANGE CUSTOMERS (THE LESS-COMPETITIVE SERVICES). VERIZON-MD'S ACTIONS ARE THUS THE EXACT *OPPOSITE* OF THE LEVERAGING: ONLY CUSTOMERS OF VERIZON'S LESS-COMPETITIVE (LOCAL EXCHANGE) SERVICE ARE PERMITTED TO BUY ITS MORE-COMPETITIVE (VOICE MESSAGING AND DSL) SERVICES, NOT THE OTHER WAY AROUND?"

A. No. Mr. Taylor logic is flawed, his facts are incorrect, and his reasoning is circular. As explained above, Verizon is clearly tying its provision of voice messaging and high speed Internet access services (the more competitive service) to its provision of local telephone service (the less competitive service). Consequently, Verizon can leverage more sales and retain a greater share of the voice mail and high speed Internet access (Line Sharing DSL) market (the competitive services). Moreover, Verizon's voice messaging and high speed Internet access services are not substantially more competitive, and may well be less competitive, than local telephone service, because Verizon is the only viable provider of

these services in much of the rural areas of Maryland in which CloseCall provides competitive local telephone service.

Q. DO YOU AGREE WITH MR. TAYLOR THAT "WHILE VERIZON IS REQUIRED TO PROVIDE LOCAL EXCHANGE SERVICE TO ANY REQUESTING CUSTOMER, VERIZON IS NOT REQUIRED BY LAW TO SUPPLY VOICE MESSAGING AND DSL SERVICE TO ITS OWN CUSTOMERS?"

A. Verizon cannot unilaterally deny or terminate the provision of its services to certain customers in order to prevent those customers from doing business with its competitors. This practice clearly constitutes unreasonable discrimination, profiling and anti-competitive tying. Once Verizon holds itself out as a seller of a particular product or service Verizon is barred from withholding access to that product or service in an unreasonably discriminatory manner. Moreover, as a certified public utilities company, Verizon has a heightened obligation to refrain from such unreasonable discrimination.

Q. DO YOU AGREE WITH MR. TAYLOR'S ASSERTION THAT "CLOSECALL DOES NOT, AND CANNOT, ARGUE THAT THE 1996 ACT IMPOSES THE DUTIES IT SEEKS TO IMPOSE HERE. IN FACT THE FCC HAS EXPRESSLY REJECTED SUCH ARGUMENTS"?

A. No. The Telecommunications Act of 1996 clearly establishes that Verizon cannot establish unreasonably discriminatory restrictions on the resale of its services. However, CloseCall has no need to justify its complaint in terms of the Telecommunications Act of 1996 Act, and has not done so. CloseCall has brought its complaint to the Commission, and has requested only that the Commission direct Verizon to cease the illegal tying of its voice messaging and Line Sharing DSL services to its provision of local telephone services, which are entirely within the Commission's jurisdiction. CloseCall has not brought this complaint before the FCC. Consequently, the presence or absence of a federal basis for CloseCall's complaint is irrelevant. Neither the Telecommunications Act of 1996 nor the FCC's rules address the specifics of CloseCall's "tying" complaint. Verizon's decision to tie "regulated" local telephone service to "unregulated" services in order to preserve its competitive advantage in Maryland is a matter that is squarely within the Commission's authority. In the alternative, as Mr. Taylor acknowledges, Verizon's service tying strategy raises certain antitrust issues which can also be addressed in a judicial forum.

Q. DO YOU AGREE WITH MR. TAYLOR'S STATEMENT THAT MR. MAZERSKI AND CLOSECALL ARE SEEKING TO "AVOID COMPETITION" BY THIS REQUEST?

A. No. CloseCall seeks only to compete, and CloseCall's complaint that Verizon is employing practices that frustrate CloseCall's competitive efforts is clear proof that CloseCall has no desire to "avoid competition" although, apparently Verizon would like nothing more than to avoid competition. As I've indicated throughout this testimony, Verizon has unilaterally erected substantial barriers to competition in Maryland's local telephone market, and all that CloseCall requests is that those barriers be removed. For Mr. Taylor to imply that CloseCall, a new company that depends on competition to survive, is somehow opposed to competition, is utterly absurd.

Q. DO YOU AGREE WITH MR. TAYLOR'S CLAIM THAT, "COMPETITION WOULD BE HARMED BY CLOSECALL'S REQUEST?"

A. No. Under CloseCall's recommendations, there would instantly be more customer choice with no negative impact to Verizon or other local competitors. Maryland's consumers would immediately benefit from additional competitive choice. In addition, the more than 1,300 customers that have ordering CloseCall's local telephone but have had to cancel those orders because Verizon's anticompetitive practices would finally able to obtain their local telephone service from the competitive provider of their choice.

Q. DO YOU AGREE WITH MR. TAYLOR'S STATEMENT, THAT, "THE COST OF ENGAGING IN REGULATORY MANAGED COMPETITION – PARTICULARLY IN MARKETS SUBJECT TO VIGOROUS COMPETITION AND RAPID TECHNICAL CHANGE – ARE IMMENSE...?"

A. No. Mr. Taylor identifies no such costs, nor has CloseCall requested anything that could be honestly described as "regulatory managed competition." CloseCall is merely requesting that Verizon cease tying its interstate and information services to its local telephone service. This resolution requires the no new regulations, reporting requirements or other indicia of additional regulation. The only possible "detriment" to Verizon is that it would be able to sell voice messaging and Line Sharing DSL to the customers of competitive local telephone service providers. This increased marketing opportunity can not honestly be described as a detriment to Verizon at all. Verizon would still receive all the retail revenues and profit margins associated with these services. This result, in fact, is the correct economic behavior that the Commission is striving for. Rather than creating new regulations, CloseCall's suggestions would simply require that Verizon make voice messaging and Line Sharing DSL available in the same manner as other competitive services (*e.g.*, long distance, wireless, paging and regional toll services).

Q. DO YOU AGREE WITH MR. TAYLOR'S STATEMENT THAT, "IN THE LONG RUN, CONSUMERS WOULD BE INJURED BY ACTIONS THAT HAVE THE EFFECT OF STIFLING COMPETITION IN THE VOICE MESSAGING AND BROADBAND ACCESS MARKETS?"

A. No. If the Commission were to adopt CloseCall's recommendations, the effect would be to improve customer choice, not stifle it. Certainly, however, the Commission remains free to implement additional regulatory changes to ensure that Maryland consumers are offered a full choice for their telecommunications services could an be adopted.

Q. IS MR. TAYLOR ASSERTION THAT "CLOSECALL ITSELF OFFERS SOME FORM OF VOICE MESSAGING TO SOME CUSTOMERS" FACTUALLY CORRECT?

A. No. CloseCall does not have the capability to offer voice mail to its residential consumers and small business customers in Maryland. CloseCall does offer voice mail to Delaware consumers, but only through resale of Verizon's voice messaging service. CloseCall also offers voice mail to its wireless customers, but such services are always provided through resale of Verizon's voice messaging services.

Q. DOES VERIZON DELAWARE OR VERIZON WIRELESS TERMINATE VOICE MAIL SERVICES WHEN CUSTOMERS SWITCH THEIR LOCAL TELEPHONE SERVICE TO CLOSECALL?

A. No. Verizon Delaware and Verizon Wireless offer voice mail service to CloseCall as part of the resale agreements.

Q. WHY WOULD VERIZON DELAWARE AND VERIZON WIRELESS OFFER VOICE MAIL FOR WIRELESS RESALE AND VERIZON MARYLAND NOT OFFER VOICE MAIL AS PART OF LOCAL SERVICE RESALE?

A. First, Verizon Delaware is required by law to offer this service to CloseCall. Second Verizon Wireless, although not required by law, is proactively offering wireless services for resale and supporting its wholesale customers like CloseCall by leaving the voice mail service in place. Because wireless is a competitive market, Verizon cannot benefit from blocking access to its voice mail services. Rather, if Verizon Wireless decided to terminate the voice mail service of customers that switched their cell phones to CloseCall, CloseCall could only sell wireless services to the few wireless customers that do not want voice messaging functionality, ultimately generating less revenue and profits for Verizon Wireless.

On the other hand, Verizon Maryland is required by legal and regulatory edict to offer resale on local telephone service. Verizon Maryland does not want competitors such as CloseCall to be successful in selling local telephone service and therefore has established a trying strategy to