# State of New Jersey

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February 8, 2013

**Electronically Filed**
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**Re: I/M/O Petitions of Comcast Cable Communications, LLC**
**For a Determination of Effective Competition in Communities in New Jersey**
**MB Docket No. 12-152, CSR-8649-E**
**MB Docket No. 12-159, CSR-8650-E**
**MB Docket No. 12-160, CSR-8651-E**
**MB Docket No. 12-161, CSR-8652-E**
**MB Docket No. 12-164, CSR-8655-E**
**MB Docket No. 12-165, CSR-8656-E**
**MB Docket No. 12-166, CSR-8657-E**
**MB Docket No. 12-180, CSR-8668-E**
**MB Docket No. 12-183, CSR-8671-E**
**MB Docket No. 12-190, CSR-8675-E**

**I/M/O Docket Established for Monitoring Recent Verizon Wireless Transactions,**
**WC Docket No. 12-234**

**Motion toDismiss**

Dear Secretary Dortch:

Enclosed for filing is a Motion to Dismiss on behalf of the New Jersey Division of Rate Counsel in connection with the above referenced matter.

This Motion will be electronically filed through the Commission's Electronic Filing system. Service of the Motion will also be by electronic mail.


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Very truly yours,

Stefanie A. Brand
Director, Division of Rate Counsel

By: _____
Jose Rivera-Benitez, Esq.
Assistant Deputy Rate Counsel

cc: Service List (via electronic mail)

Before the
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| **In the Matter of**<br>**Comcast Cable Communications, LLC**<br>**On behalf of its subsidiaries and affiliates** | ) | |
| **For a Determination of Effective Competition in:** | ) | |
| **Beachwood, NJ–Area Franchise Areas** | ) | **CSR-8650-E**<br>**MB Docket No. 12-159** |
| **East Windsor, NJ–Area Franchise Areas,** | ) | **CSR-8651-E**<br>**MB Docket No. 12-160;** |
| **Hazlet, NJ (NJ0405),** | ) | **CSR-8652-E**<br>**MB Docket No. 12- 161** |
| **Chatham, NJ–Area Franchise Areas,** | ) | **CSR-8657-E**<br>**MB Docket No. 12-166** |
| **Buena, NJ–Area Franchise Areas,** | ) | **CSR-8656-E**<br>**MB Docket No. 12-165** |
| **Delaware, NJ–Area Franchise Areas,** | ) | **CSR-8668-E**<br>**MB Docket No. 12-180** |
| **Berkeley Heights, NJ– Area Franchise Areas,** | ) | **CSR-8671-E**<br>**MB Docket No. 12-183** |
| **Bellmawr, NJ–Area Franchise Areas,** | ) | **CSR-8675-E**<br>**MB Docket No. 12-190** |
| **North Arlington, NJ (NJ0298) &**<br>**Rutherford, NJ (NJ0294),** | ) | **CSR-8649-E**<br>**MB Docket No. 12-152** |
| **Bordentown (City), NJ (NJ0511) &**<br>**Bordentown (Township), NJ (NJ0461),** | ) | **CSR-8655-E**<br>**MB Docket No. 12-164** |
| **In the Matter of Docket Established for Monitoring**<br>**Recent Verizon Wireless Transactions** | ) | **WC Docket 12-234** |

**To: Secretary, FCC**

**Chief, Media Bureau**

**Chief, Wireline Competition Bureau**

**MOTION TO DISMISS**
**ON BEHALF OF**
**NEW JERSEY DIVISION OF RATE COUNSEL**

The New Jersey Division of Rate Counsel ("Rate Counsel")[1] hereby moves to dismiss the above captioned ten Petitions ("Petitions") filed on behalf of Comcast Cable Communications ("Comcast") with the Federal Communications Commission ("FCC") Media Bureau ("Bureau") seeking a declaration of effective competition in the multiple franchises covered by the respective Petitions. By letter dated January 22, 2013, the Media Bureau set February 22, 2013 as the date for Rate Counsel to file opposition in these matters.

Dismissal of the Petitions is warranted because Comcast relies on competitively sensitive data provided by Verizon Communications ("Verizon") that violates restrictions contained in the *Spectrum Decision*.[2] As explained more fully below, the *Spectrum Decision* precludes the sharing and use of competitively sensitive data between Verizon and Comcast. As a result, the subject Petitions must be refiled without Verizon's competitively sensitive data. In addition, as discussed below, Comcast should be directed to refile the Petitions with updated subscriber data and household data that reflects the effects of Hurricane Sandy. Hurricane Sandy resulted in substantial losses of homes which directly impact both subscriber data and the number of household used in the application of the Competitive Provider Test under which the subject Petitions were filed.

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[1]/ Rate Counsel is authorized to represent the public interest of New Jersey public utility and cable television service consumers before State and Federal regulatory bodies. See N.J.S.A. 52: 27 EE - 48, 55.

[2] / *I/M/O Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC, etc.*, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95, WT Docket No. 12-4, ULS Files Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598, WT Docket N0. 12-175 (Released August 23, 2012). ("*Spectrum Decision*").

Rate Counsel also request that the comment period be stayed pending Media Bureau action on this motion as discussed below.

## LEGAL ARGUMENT

## DISMISSAL OF THE PETITIONS IS NECESSARY DUE TO COMCAST'S RELIANCE ON PROHIBITED DATA

As part of the Competitive Provider Test analysis, Comcast relies upon confidential competitively sensitive data provided by Verizon. The Media Bureau entered a Protective Order regarding the use and disclosure of this proprietary data in this proceeding. The issuance of the Protective Order confirms that Verizon's data included in the filing is proprietary competitively sensitive information. Rate Counsel submits that use of this competitively sensitive data by Comcast violates specific conditions contained in and imposed upon Comcast and Verizon in the FCC's *Spectrum Decision*. Hence, the Petitions should be dismissed and Comcast directed to refile the subject Petitions without the competitively sensitive Verizon information.

Section 543 of the Communications Act of 1934, as amended by Section 623 of the Telecommunications Act of 1996,[3] provides that subscriber rates of cable television systems are subject to either local or federal regulation where effective competition is absent.[4] The Comcast franchises at issue here are currently subject to the regulatory jurisdiction of the Local Franchise Authority ("LFA") for the State of New Jersey, the New Jersey Board of Public Utilities ("Board"), based on the FCC's certification that

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[3]/ Pub. L. No. 104, 100 Stat. 56, approved February 8, 1996, codified at 47 *U.S.C.* § 151 *et se.*

[4]/ 47 *U.S.C.* § 543(a)(2).

effective competition is not present there. Under FCC rules, a cable operator, who claims that effective competition exists in a particular franchise, and seeks to rebut the statutory presumption against the existence of effective competition, must satisfy one of four tests set forth in Section 76.905(b) of the Commission's rules.[5] The statutory burden of proof rests exclusively with the cable operator to rebut the presumption by competent evidence.[6]

In these Petitions, Comcast relies upon the Competing Provider Test for its claim that effective competition exists in each subject franchise. Under this test, Comcast must provide competent evidence demonstrating that each claimed franchise is subject to effective competition because the franchise is:

> (1) served by at least two unaffiliated multichannel video programming distributors ("MVPDs"), each of which offers comparable programming to at least 50 percent of the households in the franchise area; and,
>
> (2) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.[7]

A finding of effective competition exempts a cable operator from rate regulation.[8] Comcast bears the burden of proof and must affirmatively demonstrate that each claimed

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5/ 47 *C.F.R.* § 76.905(b).

6/ Regardless of whether an effective competition is contested or not, the cable operator's failure to sustain the burden of proof must result in denial and dismissal of the Petition. *See Cox Southwest Holdings, LP, ten Unopposed Petitions for Determination of Effective Competitions in 17 Local Franchise Areas*, CSR 6877-E, etc., DZ 07-933 (Released March 2, 2007); *I/M/O Time Warner Entertainment Co. LP*, CSR 5136-E, DA 99-234 (Released January 26, 1999).

7/ 47 *U.S.C.* § 623(l)(1)(B); See also, 47 *C.F.R.* §76.905(b)(2).

8/ 47 *C.F.R.* § 76.905.

franchise is subject to effective competition by satisfaction of the Competing Provider Test.[9]

Comcast asserts that it meets the Competing Provider Test based upon data on direct broadcast satellite ("DBS") service (from providers DirecTV and DISH Network) penetration data and based upon proprietary competitively sensitive data from Verizon service on households served in each the subject franchisees for which effective competition status is sought.

Comcast's use and submission of competitively sensitive Verizon subscriber data is inappropriate and contrary to the conditions imposed upon Comcast and Verizon in its *Spectrum Decision*. The sharing of competitively sensitive data between Verizon and Comcast is prohibited by the *Spectrum Decision*.

Thus, such Verizon data cannot be used in this matter to substantiate the claim of effective competition. As a result, the Petitions should be dismissed and Comcast should be directed to refile the Petitions without Verizon's competitively sensitive data. In addition, upon refiling, Comcast should be directed to update both subscriber data and household data to reflect the effects of Hurricane Sandy as discussed below.

## I. THE VERIZON SUBSCRIBER DATA CANNOT BE USED TO SUPPORT THE FILED PETITONS.

Comcast relies on Verizon FiOS subscriber data in conjunction with satellite subscriber data in an attempt to show that competitive subscribership satisfies the

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9/ *See In re C-Tec Cable Systems of Michigan, Inc.*, 10 F.C.C.R. 1735, 1736 (1995); *See also, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd. 5631, 5669-70 (1993) ("*Report and Order*").

Competing Provider Test. However, the use of the Verizon data violates the FCC's restrictions on use of competitively sensitive data contained in its *Spectrum Decision.*

Verizon's subscriber information is competitively sensitive data and its use by Comcast and Verizon where both companies are competing for cable customers is foreclosed by the conditions imposed by the FCC in its *Spectrum Decision.* There is no question that the Verizon data is not public data and that Verizon considers such data to be proprietary competitively sensitive data.[10]

As a result, use of this data by Comcast violates the conditions imposed by the FCC precluding sharing of competitively sensitive data by and between Verizon and Comcast. Therefore, the Media Bureau should dismiss the Petition and direct refiling without the use and reliance upon the Verizon competitively sensitive information.

In the *Spectrum Decision*, the FCC noted that Verizon and Comcast (as part of SpectrumCo LLC) had negotiated a Consent Decree with the United States Department of Justice ("DOJ") addressing the public interest concerns posed by the sale of spectrum held by SpectrumCo to Verizon. The FCC specially found that the Consent Decree coupled with the DOJ restrictions were sufficient to protect the public interest for the time being, and hence, would not impose further restrictions to guard against anti-competitive or anti-consumer conduct by any of the parties.[11] The Consent Decree clearly established the prohibition on disclosure of competitively sensitive information by either

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[10]/ See, *In the Matter of Comcast Cable Communications, LLC Petitions for Determination of Effective Competition in Communities in New Jersey* , Order, DA 12-2069 (Released December 20, 2012).

[11]/ Spectrum Decision, ¶¶ 144, 145.

Verizon or Comcast, one of the cable carriers involved.[12] Section V, subpart K of the Final Judgment provides, in pertinent part, that:

> No Verizon Defendant shall disclose competitively sensitive VZT information to any Cable Defendant, nor shall any Cable Defendant disclose any competitively sensitive Cable information to VZT.[13]

Comcast's disclosure and use of Verizon's subscriber data in support of the Petition for which Comcast seeks a finding of effective competition is conduct that is foreclosed and precluded by the Consent Decree and inconsistent with the FCC's approval based upon compliance with the terms and conditions of the Consent Decree. Comcast and Verizon are improperly sharing Verizon's competitively sensitive data in franchise areas where they both are competing in direct contravention of the restrictions contained the Consent Decree which the FCC relied upon to approve the spectrum sale transaction in the first instance. Absent the FCC modifying its *Spectrum Decision* and its reliance on the Consent Decree, Comcast cannot use Verizon's data in support of its Petitions. Therefore, dismissal of these Petitions is justified, subject to refiling based on removal of the competitively sensitive Verizon data.

Concerning any refiled Petition, competitive subscriber data submitted by Comcast must account for any cancellations in the months that lapsed between the time of the usual SBCA satellite subscriber counts and the filing of the Petition, and account for any service cancellations due to the effects of Hurricane Sandy, since November 1,

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[12]/ *United States of America and State of New York v. Verizon Communications, INC., Cellco Partnership d/b/a Verizon Wireless, Comcast Corp., et. als.*, Stipulation and Order and Proposed Final Judgment, No. 1:12-cv-01354 (D.C., filed August 16, 2012) ("Consent Decree").

[13]/ *Id*, at Section V, Subpart K.

2012. New Jersey Governor Christie cited the following Hurricane Sandy impact on New Jersey in his recent State of the State address:

> Sandy was the worst storm to strike New Jersey in 100 years. 346,000 homes were damaged or destroyed. Nearly 7 million people and 1,000 schools had their power knocked out. 116,000 New Jerseyans were evacuated or displaced from their homes. 41,000 families are still displaced from their homes.

The satellite subscriber and household data time lag and the absence of accounting for such a horrific weather event undermine the reliability of both the household and the satellite penetration data.[14]

Rate Counsel respectfully request that the comment period be stayed pending Media Bureau action on this motion.[15] A copy of this Motion is also being filed in Docket No. 12-234, established by the FCC for the purpose of monitoring issues that arise from its recent approval of the sale of spectrum in the Spectrum Decision.

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[14]/ As recent as February 5, 2013, the FCC held open forums for discussion on the impact of Hurricane Sandy in New Jersey and New York. Additionally, the attached State of the State Speech by New Jersey Governor Chris Christie provides gross impact details on households due to lost homes and displaced families.

[15]/ Under the current schedule, Rate Counsel's opposition is due on February 22, 2013. This filing is being made on February 8, 2013. Rate Counsel submits once all matters regarding this motion are resolved, Rate Counsel should have 14 days to file any supplemental comments.

## CONCLUSION

For the foregoing reasons, dismissal of the subject Petitions is warranted. Any refiled Petition must not include Verizon competitively sensitive data and the refiling should reflect updated household and subscriber data based upon the effects of Hurricane Sandy.

Respectfully submitted,

STEFANIE A. BRAND
Director,
New Jersey Division of Rate Counsel

By: _____
Jose Rivera-Benitez
Assistant Deputy Rate Counsel
New Jersey Division of Rate Counsel

Dated: February 8, 2013

Trenton, New Jersey
January 8, 2013

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Lt. Governor Guadagno, Madam Speaker, Mr. President, members of the Legislature, fellow New Jerseyans.

Since George Washington delivered the first State of the Union in New York on this day in 1790, it has been the tradition of executive leaders to report on the condition of the nation and state at the beginning of the legislative year. So it is my honor and pleasure to give you this report on the state of our state.

One year ago, we were scheduled to gather on this second Tuesday in January when our friend and colleague Alex DeCroce passed suddenly the night before, causing us to delay this report. I miss the hard work and kind spirit of Alex. I think of him often, but I am so pleased to see his wife Betty Lou here in this chamber as a duly elected member of the Assembly today. She continues his work and does honor to his memory.

Just three months ago, we were proceeding normally with our lives, getting ready for a national election and the holidays to follow. Then Sandy hit.

Sandy was the worst storm to strike New Jersey in 100 years. 346,000 homes were damaged or destroyed. Nearly 7 million people and 1,000 schools had their power knocked out. 116,000 New Jerseyans were evacuated or displaced from their homes. 41,000 families are still displaced from their homes.

Sandy may have damaged our homes and our infrastructure, but it did not destroy our spirit.
The people of New Jersey have come together as never before. Across party lines. Across ideological lines. Across ages, races and backgrounds. From all parts of our state. Even from out of state. Everyone has come together.

So today, let me start this address with a set of "thank yous" from me on behalf of the great people of this state.
First, I want to thank the brave first responders, National Guard, and emergency management experts who prepared us for this storm and kept us safe in its aftermath.

I want to thank the members of this Legislature for their cooperation in answering Sandy's challenges and for being by my side as I toured so many of the devastated areas of our state.

I want to thank the Community Food Bank of New Jersey, the Southern Baptists, the Salvation Army and the American Red Cross – who helped us deliver over one million pounds of food and over five million meals and snacks to families who needed them.
They are part of a network of organizations, a family really, who make life better in New Jersey every day – and who really came through when the times were toughest.

I want to thank the New Jersey Business and Industry Association, the state Chamber of Commerce, the Commerce and Industry Association of New Jersey and the National Federation of Independent Businesses -- for keeping us in touch with the needs of small businesses in the wake of the storm, so New Jersey can help get these businesses back on their feet.

I want to thank the 17,000 out-of-state utility workers who came to New Jersey from all over America and joined with 10,000 of our own to get power restored as quickly as possible – so that within nine days of this horrific storm, electric power had been restored to 90% of customers.

I want to thank the members of my cabinet and senior staff, who for days before the storm and weeks after it, put their own personal losses aside, worked 18 hours a day and slept very little. They led their departments and their dedicated colleagues in putting the safety and well-being of others ahead of their own.

To everyone who opened their homes, assisted senior citizens, fed their neighbors, counseled the grief-stricken, or pitched in to clear debris, remove sand, or get a school back opened, I say "thank you." You have helped define New Jersey as a community, one which – when faced with adversity – rolls up its sleeves, gets back to work, and in word and deed shows that it will never, ever give up.
And make no mistake. We will be back, stronger than ever.

The spirit of our New Jersey community was shown in the days immediately after

the storm. In Sea Bright, Mary Pat was by the side of one small businessman at the moment when he was allowed to return to his business and see what Sandy had done to his restaurant, a pizzeria. As the plywood was removed, allowing him to see for the very first time the destruction of his means of earning a living, he turned and said without hesitation: "Don't worry. We will build this back better than it was."
His words were forceful. They were optimistic. And they were emblematic – capturing the indomitable spirit of this state.

And he was just one example of how New Jersey and its citizens were showing our whole country how to bravely and resolutely deal with a crisis.

Citizens like Frank Smith, Jr., the Volunteer Chief of the Moonachie First Aid Squad. His home was destroyed during the storm. His headquarters were destroyed during the storm. After securing the safety of his three young children, he did not take himself to higher ground. No, he led his team through fires and flood waters, through buildings and trailer parks, and saved over 2,000 lives. Moonachie's citizens were saved because he put them first. Frank thanks for your bravery.

In Toms River, Marsha Hedgepeth, an emergency room technician, had the day off when Sandy hit her hometown. She could have gotten herself to safety and forgotten about her colleagues at the community medical center and most importantly her patients. Instead, facing several feet of water on her flooded street, she swam to higher ground, then hitchhiked with a utility worker from Michigan and got to the hospital for a 12-hour shift treating her fellow citizens. Swimming through flood waters to save lives—thank you Marsha for setting such a great example.

In Brick, Tracey Keelen and Jay Gehweiler watched as the flood waters consumed their town. Concerned about Jay's father, they tried to reach him and could not. Not content to wait, they put on their wet suits, got in their row boat and rescued Jay's dad. In the process, they saw dozens of others stranded in their homes. They turned back around and, one by one, saved over 50 of Jay's father's neighbors along with their pets. Then, for those they rescued who had no place to go, they housed them as well. They admitted they did not know these neighbors that well before the storm, but they didn't care—they put extending a helping hand in a crisis ahead of social comfort. Thank you to

Tracey and Jay for saving lives and making a difference.

New Jerseyans are among the toughest, grittiest and most generous people in America. These citizens are a small example of that simple truth. Our pride in our state in our moment of loss and challenge is reflected in the eyes of these extraordinary people.

You see, some things are above politics. Sandy was and is one of those things. These folks stand for the truth of that statement.

We now look forward to what we hope will be quick Congressional action on a full, clean Sandy aid bill – now, next week -- and to enactment by the President. We have waited 72 days, seven times longer than victims of Hurricane Katrina waited. One thing I hope everyone now clearly understands—New Jersey, both Republicans and Democrats, will never stand silent when our citizens are being short changed.

The people of New Jersey are in need, not from their own actions but from an act of God that delivered a natural, human, and financial disaster --- and we are thankful to the people of America for honoring the tradition of providing relief. We have stood with the citizens of Florida, Alabama, Mississippi, Louisiana, Iowa, Vermont, California and Missouri in their times of need—now I trust that they will stand with us.

So make no mistake. New Jersey's spirit has never been stronger. Our resolve never more firm. Our unity never more obvious.
Let there also be no mistake: much work still lies ahead. Damage that comes only once in a century will take in some cases years to repair.

Here is some of what we have done already:

We have created a cabinet-level position to coordinate the State's efforts across every agency – and Marc Ferzan is here today – ready to work with you on this restoration effort.

We've requested the federal government to pay 100% of the costs of the significant debris removal that we require – and have already received $18 million for that task.

We have secured $20 million from the Federal Highway Administration for emergency repair of our roads, bridges and tunnels – a down payment on a major infrastructure task ahead.

We have directed our Department of Environmental Protection to streamline approvals for restoring critical infrastructure.

We have overseen the removal of over 2.5 million cubic yards of debris to date and counting. 17 towns have already completed debris removal. Over 1,000 trucks are working daily to continue dry land debris removal with 26 more towns moving towards completion. We are now removing debris from our waterways. New Jerseyans need to know—nearly 1,400 vessels were either sunken or abandoned in our waterways during Sandy. In Mantoloking alone, 58 buildings and 8 cars were washed into Barnegat Bay. We will remove this debris and dredge the bay to reduce the risk of flooding and to improve the health of the bay—beginning the very same week that this Administration furthers its commitment to the health of the bay by implementing the toughest fertilizer law in America.

We have helped get temporary rental assistance for 41,000 New Jersey families, and where necessary, secured transitional shelters in hotels or motels or even in Fort Monmouth.

We have worked with the Small Business Administration to secure nearly $189 million in loans for thousands of home and small businesses, and through our New Jersey EDA, we have provided lines of credit for businesses awaiting insurance reimbursement, grants for job training, and benefits for displaced workers.

Our New Jersey DOT has been one of the busiest agencies – removing over 4,400 truckloads of debris from state and local roads, and cleaning another 4,300 truckloads of sand to restore and replenish our beaches.

Our Department of Education has worked night and day to get schools re-opened right away, and where that wasn't possible, to get them restored by the next school year – all while maintaining our commitment to a full 180-day school year of education for our kids.

Executive Order 107 makes sure that when insurance payments do come, they are not compromised by excessive deductibles and ensures that our citizens maximize their reimbursement.

While there are dozens of other examples of the never quit attitude of this Administration and our citizens, there is none better than the miracle of Rt. 35 in Mantoloking. At the Mantoloking Bridge, Rt. 35 had been completely washed

away by Sandy—I stood at the spot where the Atlantic Ocean flowed into the bay where Rt. 35 once carried thousands of cars a day to vacations down the shore. Within days, Commissioner Jim Simpson, the Department of Transportation and our private sector partners had a temporary road built to allow emergency vehicles onto the island. Now, merely 10 weeks after our state's worst storm, you see a permanent Rt. 35 already being rebuilt. That's what an effective government can do. That's what a determined people can do. That is how and where we will lead New Jersey in the months and years ahead.

There is no question that Sandy hit us hard – but there is also no question that we're fighting back with everything we've got.

Sandy took a toll on New Jersey's economy.
Just when we were coming back from the national recession, Sandy disrupted our economic life: cars weren't bought, homes weren't sold, and factories couldn't produce. From those things we can catch up, and we are catching up. But make no mistake, as common sense would tell you, Sandy hurt New Jersey's economy.

Some losses we will never get back – electric power that wasn't produced, visitors who didn't come to our casinos or our downtown centers.

In all, Sandy cost us over 8,000 jobs in November – mostly in our leisure and hospitality industries. But we were relatively fortunate. Louisiana lost 127,000 jobs after Hurricane Katrina.

Sandy may have stalled New Jersey's economy, but there is plenty of evidence that New Jerseyans have not let it stop our turnaround.

The direction is now clear.

Here is the latest economic report:

Unemployment is coming down.

2011 was our best private sector job growth year in eleven years and 2012 is also positive.

Personal income set a record high in New Jersey for the seventh quarter in a row.

Gross income tax receipts are exceeding the Administration's projections for this fiscal year prior to Sandy.

Sales of new homes are up.

Consumer spending is up.

Industrial production is up.

Since I took this office, participation in New Jersey's labor force is higher than the nation as a whole and the number of people employed has grown. That means that more people have the confidence to be out looking for jobs, and more people actually have jobs.

In total, we have added nearly 75,000 private sector jobs in New Jersey since we took office in January 2010.

I mention the words 'private sector' advisedly, because we have not grown government. Quite the contrary. We have gotten our house in order by keeping our promise to reduce the size of government.

In the last three years, we have cut more than 20,000 government jobs. In 2012, we had fewer state government employees than at any time since Governor Whitman left office in January 2001. We promised to reduce the size of government and we have delivered.

We have also held the line on taxes. We have held the line on spending. We have made New Jersey a more attractive place in which to grow a business, to grow jobs, to raise a family.

This Legislature knows the history.

In fiscal year 2010, we faced a $2 billion budget deficit with only 5 ½ months left in the fiscal year when we took office. We cut over 200 programs and balanced the budget with no new taxes.

In fiscal year 2011, the picture was even worse: a projected $11 billion deficit – on a budget of $29 billion – in percentage terms, the worst in the nation. In total, we cut 832 programs. Each department of government was reduced. An 8% cut in spending – in real dollars spent -- not against some phony baseline. But with this Legislature's help, again we balanced the budget without raising taxes.

Because we had made the tough choices, last year's budget was a bit easier -- we were able not only to balance the budget, but to actually begin to reduce taxes by enacting the first year of tax relief for job-creating small businesses in New Jersey. Meanwhile, we devoted a record amount in aid to schools in New Jersey.

And in the budget which governs the current year, even with growth in the national economy slowing again, we have been able to achieve balance with not only no new taxes, but with a second year of small business tax relief.

And let me make this point clearly and unequivocally. Despite the challenges that Sandy presents for our economy, I will not let New Jersey go back to our old ways of wasteful spending and rising taxes. We will deal with our problems but we will continue to do so by protecting the hard earned money of all New Jerseyans first and foremost. We will not turn back.

Our handling of the budget is but one example of the change that I told New Jersey had arrived with our inauguration. I've come to this chamber in the years since that day urging us to do the big things to transform our state; to make the tough decisions we had avoided for far too long.

We asked this in the context of a state where only 27% of our citizens felt that government was moving our state in the right direction in January 2010. We asked this while the citizens of our country watched a dysfunctional, dispirited and distrustful government in Washington bicker and battle not against our problems but against each other. Against that backdrop, few would have bet on us; few would have bet on New Jersey leading the way to restore people's belief that government could accomplish things for them. But here we are, three years later, and look at all of those things some called impossible in this town that we have made a reality.

A real 2% property tax cap. Interest arbitration reform. Pension and health benefit reform. Teacher tenure reform. Higher education restructuring resulting in Rutgers now being in the top 25 in research dollars and the newest member of the Big 10. $1.3 billion in new capital investment in all our universities for the first time in 25 years. A ground breaking teacher contract in Newark that finally acknowledges merit pay. Three years ago, a national reputation for corruption

and division and waste. Today, a national model for reform and bipartisanship and leadership. Let's review this new reality specifically, to remind our constituents and ourselves how far we have come and to resolve to never return to the old, dark days of our past in Trenton.

Four years. Four balanced budgets. No new taxes. New tax relief to create 75,000 new private sector jobs.

A far different picture from the prior eight years, which saw 115 increases in taxes and fees. It hasn't been easy, but we have done it together. And the people of New Jersey are better off for it.

The story is the same on property taxes, maybe even better. They had increased 70% in the prior 10 years --- the most in the nation.

Together, we enacted a 2% per year cap on growth and the interest arbitration reform that was needed to make that cap work.

Many said it wouldn't work, but the record tells a different story.

Last year, property taxes in New Jersey grew by only 1.7% -- the lowest rise in two decades.

And our pension system, which was on a path to insolvency, is now on much more sound footing. With your help, we tackled the problem head on – modestly raising the retirement age, reducing incentives for early retirement, suspending COLAs until the plan is 80% funded, and yes, asking for something slightly closer to market in terms of employee contributions.

In total, the pension and health benefits reform package that you passed will save taxpayers over $120 billion over the next 30 years. Just as importantly, it will help make sure the pension is actually there when our public employees and school teachers retire. Other states have noticed: this reform is becoming a model for America.

When we combine this needed discipline on spending and taxes, with responsibility in addressing our long-term liabilities, with pro-growth actions on the regulatory side, we have made New Jersey a better place to do business.

The combination of policies that are not hostile to business, and an environment which actually welcomes new businesses and new jobs, is working.

It is clear. In a competitive world, policies matter. Companies have choices. Job-creators have choices. That is why our work is far from done.

That is why a top priority must be to continue New Jersey's record of excellence in education, and to fix problems where we are failing.

In higher education, the task force led with skill by former Governor Tom Kean has helped us develop strategies for making New Jersey's institutions more competitive. We need to turn New Jersey's universities – including Rutgers – from good to great, because that will help us keep more talented New Jersey students in New Jersey, and will strengthen the link between higher education and high quality jobs.

At the heart of these reforms we need, of course, is the plan to make sure that New Jersey's critically important medical and health sciences institutions remain world class. By merging Rutgers and UMDNJ in the north and Rowan and UMDNJ's Stratford campus in the south, we will enhance three established hubs of educational excellence in north, south, and central New Jersey. And we will bring Rutgers, and New Jersey medical education, into the 21st century. I thank you for passing this plan, and I was proud to sign it into law this summer.

In K-12 education, we have made great strides, but there is much more to be done.

Who would have thought, just three years ago, in the face of entrenched resistance, that I could stand here and congratulate us today for the following:

Ensuring accountability by passing the first major reform of tenure in 100 years;

Establishing performance-based pay in Newark through hard-nosed collective bargaining so that we can reward and retain the very best teachers where we need them most;

Implementing inter-district school choice, which has tripled its enrollment in the last 3 years and will grow to 6,000 students next year;

Growing the number of charter schools to a record 86 in New Jersey;

Signing the Urban Hope Act to turn failing schools into Renaissance Schools in Newark, Trenton, and Camden;

And finally, investing the largest amount of state aid to education in New Jersey history-- $8.9 billion in this year's budget, over $1 billion higher than in Fiscal Year 2011.

In New Jersey, we have combined more funding with needed reform. Both money and reform of our schools are essential, but neither alone is sufficient. In New Jersey, we are leading the way for the nation by providing both.

As we assess the state of our state this afternoon, we should be proud of our record. The state is stronger today than it has been in years. We are recovering and growing, not declining and descending.

We are working together, not just as a people in digging out from Sandy and rebuilding our economy. Here in Trenton, in this chamber, we have had our fights. We have stuck to our principles. But we have established a governing model for the nation that shows that, even with heartfelt beliefs, bipartisan compromise is possible. Achievement is the result. And progress is the payoff.

So I want to thank President Sweeney and Speaker Oliver, Leaders Kean and Bramnick-- for your hard work, for your frankness when we disagree, and for your willingness to come together on the truly important issues – on the big things.

Maybe the folks in Washington, in both parties, could learn something from our record here. Our citizens certainly have—now 61% of them believe our state is moving in the right direction—more than double the amount that believed it on that cold day in January three years ago.

Make no mistake; our work is far from finished.

Rebuilding the homes and infrastructure damaged and destroyed by Sandy is the next big challenge and it will take years. We will need to spend our funds wisely and efficiently. We will need to cooperate. We will need to learn the lessons from past disasters and listen to each other.

The good news is that strong leadership and bipartisan cooperation makes all

these things possible. Our work over the last three years proves that beyond argument. Having worked hard to tackle our most urgent legacy problems – having faced up to and corrected some poor decisions from the past – we now have more freedom to chart a course of excellence in the future.
As we begin this new legislative year, we can now look ahead from Sandy, ahead from the national recession, to a brighter day for New Jersey.

The author Bern Williams once said, "Man never made any material as resilient as the human spirit."

For all I have seen and experienced as your governor in this extraordinary year, one experience will be indelibly etched in my memory. Her name is Ginjer.

As I walked around the parking lot of the fire department in Port Monmouth in one of the days soon after Sandy had laid waste to so much of our state, I saw so many of the scenes that I had come to expect in the aftermath of the storm. Neighbors helping neighbors. Food being prepared for the hungry. First responders helping the homeless. Then I met nine-year-old Ginjer. Having a nine-year-old girl myself, her height and manner of speaking was immediately familiar and evocative. Having confronted so many crying adults at that point I felt ready to deal with anything. Then Ginjer looked at me, began to cry and told me she was scared. She told me she had lost everything; she had lost her home and her belongings. She asked me to help her.

As my eyes filled with tears, I took a deep breath and thought about what I would say to my Bridget if she said the same thing to me. If she had the same look on her face. If she had the same tears in her eyes. I asked her where her mom was and she pointed right behind her. I asked her if her dad was ok. She told me he was. So I told Ginjer, you haven't lost your home; you've just lost a house. A house we can replace, your home is with your mom and dad. I hugged her and told her not to cry—that the adults are in charge now and there was nothing to be afraid of anymore. Ginjer is here today—we've kept in touch—and I want to thank her for giving voice to New Jersey's children during Sandy and helping to create a memory of humanity in a sea of despair.

In this year ahead, let us prove the truth of the words I spoke to Ginjer that day. Let's put aside destructive politics in an election year. Let's put aside accusations and false charges for purely political advantage. Let's work together

to honor the memories of those lost in Sandy. Let's put the needs of our most victimized citizens ahead of the partisan politics of the day. Let's demonstrate once again the resilience of New Jersey's spirit. And let us continue what we have started:

Rebuilding from Sandy with pride and determination;

Restoring our economy to growth and prosperity after a decade of decline and high taxes; and

Reclaiming the promise of New Jersey for future generations – presenting to our children renewed excellence in our schools, a sound and balanced budget, and a vibrant economy with jobs for those willing to work hard.

That is our mission – to hurdle barriers no matter how high, to fight the elements of doubt or disaster, and to leave this place better than we found it.

Let us prove, once and for all, that what I said to Ginjer is undeniably true: the adults are in charge. Let's accomplish the mission of rebuilding our battered state and restoring the hope and the faith and the trust of our people that government can work in a bipartisan way to restore our great way of life to all New Jerseyans.

In the year ahead, I look forward to working with all of you on that most important mission of all.

Thank you, God bless you, and God bless the great State of New Jersey.

## CERTIFICATE OF SERVICE

I, Jose Rivera-Benitez, of full age, being duly sworn according to law, upon my oath depose and state:

I am an attorney at law in the State of New Jersey, in good standing, and an Assistant Deputy Rate Counsel, with the New Jersey Division of Rate Counsel in the Division's Telecommunications and Cable Section. I have on this 8th day of February 2013, sent a true and correct copy of the foregoing "Motion to Dismiss" via electronic mail to the following:

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