SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4769-14T2

IN THE MATTER OF THE BOARD'S INVESTIGATION REGARDING THE RECLASSIFICATION OF INCUMBENT LOCAL EXCHANGE CARRIER SERVICES AS COMPETITIVE

Argued February 28, 2017 - Decided April 3, 2017

Before Judges Yannotti, Fasciale, and Gilson.

On appeal from the Board of Public Utilities, Docket No. TX11090570.

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel, argued the cause for appellant New Jersey Division of Rate Counsel (Ms. Brand and Maria T. Novas-Ruiz, Assistant Deputy Rate Counsel, on the brief).

Alex Moreau, Deputy Attorney General, argued the cause for respondent New Jersey Board of Public Utilities (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, of counsel; Mr. Moreau, on the brief).

Lawrence S. Lustberg argued the cause for respondent Verizon New Jersey, Inc. (Gibbons, P.C., attorneys; Mr. Lustberg and Amanda B. Protess, on the brief).

Janine G. Bauer argued the cause for amicus curiae AARP (Szaferman, Lakind, Blumstein & Blader, P.C., attorneys; Ms. Bauer, on the brief).

Weissman & Mintz, L.L.C., attorneys for amicus curiae AFL-CIO (Justin Schwam, of counsel and on the brief).

PER CURIAM

The New Jersey Division of Rate Counsel (Rate Counsel) appeals from a June 5, 2015 order of the Board of Public Utilities (Board), which reclassified as competitive four telephone services provided by Verizon New Jersey, Inc. (Verizon). The Board entered the order based on a stipulation of settlement between Board staff and Verizon following a contested evidentiary hearing. We affirm because the Board's order complied with the governing statute, was supported by substantial, credible evidence in the record, and was not arbitrary, capricious, or unreasonable.

I.

The Board's 2015 order had its genesis in a request by Verizon in 2007. To put the order in context, it is helpful to trace briefly the past regulation of telecommunication services, the governing statute, and the administrative proceedings conducted by the Board.

Before 1990, local phone services were generally treated as a monopoly. New Jersey, like other states, typically granted an exclusive franchise in service areas to an incumbent local exchange carrier (ILEC), and regulated such ILECs. See N.J.S.A. 48:2-21.16. The Board has regulatory supervision over all New Jersey public utilities, including ILECs. N.J.S.A. 48:2-13, -21, and -23.

In 1992, the New Jersey Legislature enacted the Telecommunications Act of 1992 (the 1992 Act), N.J.S.A. 48:2-21.16 to -21.21. In that statute, the Legislature declared that it was the policy of New Jersey to "[p]rovide diversity in the supply of telecommunication services and products in telecommunication markets throughout the State." N.J.S.A. 48:2-21.16(a)(4). The Legislature also declared, "[i]n a competitive marketplace, traditional utility regulation is not necessary to protect the public interest and that competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation." N.J.S.A. 48:2-21.16(b)(1).

Under the 1992 Act, the Board is authorized to determine, after notice and hearing, whether telecommunication services are competitive. N.J.S.A. 48:2-21.19(b). In making a determination of competitiveness, the 1992 Act directs the Board to "develop standards of competitive service which, at a minimum, should include evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area." N.J.S.A. 48:2-21.19(b). If services are found to be competitive, the Board "shall not" regulate the rates and conditions of services for such competitive services. N.J.S.A. 48:2-21.19(a).

In 2007, Verizon requested the Board to find that the remaining rate-regulated services offered by Verizon and other ILECs were competitive. In response, the Board instituted a proceeding, which it later divided into two phases.

In the first phase, the Board provided notice and conducted an evidentiary hearing. The participants included Rate Counsel, Verizon, United Telephone Company of New Jersey, Inc. d/b/a Embarq, and other ILECs.

In 2008, Board staff, Rate Counsel, Verizon, and Embarq entered into stipulations (the 2008 Stipulations). Thereafter, the Board adopted those stipulations and reclassified as competitive the majority of Verizon and Embarq's mass-market retail services. See In re the Bd.'s Investigation Regarding the Reclassification of Incumbent Local Exchange Carriers Servs. as Competitive, BPU Docket No. TX07110873 (August 13, 2008); In re the Application of United Tel. Co. of N.J., Inc., d/b/a Embarq, for Approval of A Plan for Alt. Regulation, BPU Docket No. TO08060451 (August 20, 2008).

Four services, however, were not declared competitive in 2008. Those services were for (1) residential basic exchange service; (2) single-line business basic exchange service; (3) nonrecurring charges for residential service connection and installation; and (4) residential directory assistance services. Instead, the 2008 stipulations called for further proceedings to evaluate the competitiveness of those four services.

In October 2011, the Board issued an order to initiate those further phase two proceedings. The Board stated that it would "re-evaluate the competitiveness of ILEC services, pursuant to N.J.S.A. 48:2-21[.]19(b), to review the question whether certain ILEC provided services should be declared competitive after review of the necessary criteria."

In accordance with Board procedures, Verizon, Embarq, which had changed its name to CenturyLink, and other interested entities were granted party status in the phase two proceedings. Rate Counsel also participated in accordance with its statutory party status. N.J.S.A. 52:27EE-48(a).

In November 2008, the Board issued a pre-hearing order establishing a schedule for discovery, submission of testimony, public hearings, and an evidentiary hearing. Following the exchange of discovery and the submission of written testimony, the Board conducted an evidentiary hearing in July 2012. The Board also held three public hearings in October and November 2012. Thereafter, the parties submitted briefs and the Board closed the record in the phase two proceedings in December 2012.

In March 2013, the Board issued an order adopting a stipulation and agreement negotiated by CenturyLink and Rate Counsel. Under that March 2013 order, three of CenturyLink services for residential basic exchange, single-line business, and non-reoccurring residential connection continued to be regulated, but directory assistance service was reclassified as competitive. CenturyLink also reserved the right to seek future reclassification for the three remaining telecommunication services. That March 2013 order resolved the phase two proceedings related to CenturyLink.

On May 6, 2015, Board staff and Verizon signed a stipulation (the 2015 Stipulation). The 2015 Stipulation recommended that the Board determine that Verizon's four remaining regulated services be reclassified as competitive services, subject to a five-year transition period and several conditions. Those conditions included that (1) the services would have rate caps for five years; (2) existing service quality standards would continue to apply to certain services for three years and, thereafter, the Board would determine whether those quality standards would continue for the remaining two years; (3) the rate for Verizon's Life Line services would not increase during the five-year transition period[1]; (4) Verizon would continue to offer social program and services for disabled and low-income customers; (5) Verizon would undertake certain obligations, including reporting on the number of residential basic exchange service lines and single-line business exchange lines; and (6) Verizon would continue to be governed by applicable statutory and administrative requirements. The 2015 Stipulation also provided that the Board could, pursuant to its statutory authority, investigate the classification of telecommunications services should competitive conditions change in the future.

Also on May 6, 2015, the Board issued a notice soliciting comments on the stipulation. All such comments were to be submitted within nine days; that is, by May 15, 2015. A number of interested entities and persons submitted comments, including Rate Counsel, Verizon, AARP, and the Communications Workers of America, AFL-CIO (CWA).

Rate Counsel submitted twenty-three pages of comments and contended that the evidence from the 2012 hearing was stale and

[1] Life Line service is a low-cost basic local (voice) service provided to eligible residential customers pursuant to orders and rules of the Federal Communication Commission and the Board.

that the telecommunications market in New Jersey had become less competitive since the evidential record closed in 2012.

In its comments, Verizon contended that the market for telecommunications services had become more competitive. Verizon provided new data, including information on the number of non-ILECs interconnected Voice Over Internet Protocol (VoIP) lines in New Jersey and that 98.1% of the state had the choice of two or more providers of wired broadband services. Verizon also provided confidential data on Verizon's access line losses from 2011 to 2015.

On May 19, 2015, the Board held a public session to consider the 2015 Stipulation. At that meeting, the Board voted to adopt the 2015 Stipulation. Thereafter, on June 5, 2015, the Board issued a thirty-two-page order. In that order, the Board considered the evidence developed during the evidentiary proceedings, evaluated new data submitted by Verizon, summarized and responded to the comments it had received on the 2015 Stipulation, and explained its reasons for adopting the 2015 Stipulation.

Concerning the competitiveness of the four services, the Board found that there was ease of market entry as demonstrated by the presence of cable telephone competition, numerous wireless providers, the availability of VoIP and a large number of ILECs operating in New Jersey. The Board also found that there was a presence of competitors because it had granted authority to 162 Competitive Local Exchange Carriers (CLEC) to offer services throughout the State and that there was evidence of services that had replaced residential basic exchange, single-line business, and directory assistance services. Finally, the Board found that like or substitute services for Verizon's services were available.

Rate Counsel now appeals the Board's June 5, 2015 order. We granted the requests of AARP and CWA to participate as amici curiae in this appeal.

II.

On this appeal, Rate Counsel makes two primary arguments. First, it contends that the Board failed to provide adequate notice and a hearing. Thus, Rate Counsel argues that the Board acted contrary to the 1992 Act, the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 to -15, and principles of due process. Second, Rate Counsel asserts that the Board's decision was contrary to the 1992 Act, and was arbitrary and capricious.

Amici curiae, AARP and CWA, echo Rate Counsel's arguments and add two additional, but related, contentions. AARP argues that senior citizens will be disproportionately harmed by the Board's failure to protect access to affordable and reliable phone services. CWA contends that the Board acted contrary to the public interest.

A. Standard of Judicial Review

We begin our analysis of the arguments by noting our standard of review of the Board's order. That standard is set forth in the Public Utilities Act.

> The Superior Court, appellate division is hereby given jurisdiction to review any order of the [B]oard and to set aside such order in whole or in part when it clearly appears that there was no evidence before the [B]oard to support the same reasonably or that the same was without the jurisdiction of the [B]oard.
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> [<u>N.J.S.A.</u> 48:2-46.]

As a final determination of an administrative agency, the Board's June 5, 2015 order is entitled to substantial deference. <u>In re Eastwick College LPN-to RN Bridge Program</u>, 225 <u>N.J.</u> 533, 541 (2016).

> An appellate court will not reverse an agency's final decision unless the decision is "arbitrary, capricious, or unreasonable," the determination "violate[s] express or implied legislative policies," the agency's action offends the United States Constitution or the State Constitution, or "the findings on which [the decision] was based were not supported by substantial, credible evidence in the record."
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> [<u>Ibid.</u> (alterations in original) (quoting <u>Univ. Cottage Club of Princeton N.J. Corp. v. N.J. Dep't of Envtl. Prot.</u>, 191 <u>N.J.</u> 38, 48 (2007)).]

Moreover, deference is warranted when the Board has rendered its judgment on regulatory matters within its purview. _In re N.J. Bell Tel. Co._, 291 _N.J. Super._ 77, 89 (App. Div. 1996) (recognizing that we are "bound to recognize and respect the Board's substantive expertise, especially on questions that are 'primarily of judgmental or predictive nature'" (quoting _FCC v. Nat'l Citizens Comm. for Broad_, 436 _U.S._ 775, 813, 98 _S. Ct._ 2096, 2121, 56 _L. Ed._ 2d 697, 726 (1978))). Accordingly, "courts afford substantial deference to an agency's interpretation of a statute that the agency is charged with enforcing." _Richardson v. Bd. of Trustees_, 192 _N.J._ 189, 196 (2007).

"The Legislature has endowed the [Board] with broad power to regulate public utilities . . . [and] considerable discretion in exercising those powers." _In re Pub. Serv. Elec. & Gas Co.'s Rate Unbundling_, 167 _N.J._ 377, 384-85 (second and third alterations in original) (quoting _In re Elizabeth Water Co._, 107 _N.J._ 440, 449-50 (1987)), _cert. denied_, 534 _U.S._ 813, 122 _S. Ct._ 37, 151 _L. Ed._ 2d 11 (2001)). Notably, the Public Utility Act prohibits this court from reversing Board orders for procedural irregularities or informalities, unless those irregularities or informalities tend to defeat or impair substantive rights. Thus, the Public Utility Act provides: "No order shall be set aside in whole or part for any irregularity or informality in the proceedings of the

[B]oard unless the irregularity or informality tends to defeat or impair the substantial right or interest of the appellant." N.J.S.A. 48:2-46.

Guided by these principles, we turn to an analysis of the arguments raised by Rate Counsel and amici curiae. Those arguments can be addressed in two general categories. First, whether the Board provided adequate notice and a hearing. Second, whether the Board's order was contrary to law or arbitrary and capricious.

B. Notice and Hearing

The 1992 Act authorizes the Board to engage in reclassification of services to determine whether they are competitive, provided the Board gives notice and conducts a hearing. The 1992 Act states: "The board is authorized to determine, after notice and hearing, whether a telecommunications service is a competitive service." N.J.S.A. 48:2-21.19(b).

The record here establishes that the Board's June 5, 2015 order was the culmination of administrative proceedings begun in 2007, and which ultimately were resolved in two phases. It is the resolution of the second phase that Rate Counsel challenges on this appeal. That second phase was initiated when the Board issued an order in October 2011. The 2011 order gave notice that the Board would be determining the competitiveness of the remaining four rate-regulated retail ILEC services. The order stated that the Board would seek "to determine if ILEC services satisfy the necessary elements of ease of market entry, presence of other competitors, and availability of like or substitute services in the relevant geographic area."

Accordingly, notice as called for under the 1992 Act was provided. N.J.S.A. 48:2-21.19(b). Moreover, that notice satisfied any notice requirements under the APA and principles of due process. N.J.S.A. 52:14B-9.

After giving notice, the Board conducted a contested hearing. As noted, the Board permitted Verizon to intervene and Rate Counsel participated, as was its statutory right. The parties participated in several rounds of discovery, submitted testimony, and appeared at a hearing in July 2012. During that process, Rate Counsel submitted testimony from two witnesses and cross-examined the witness from Verizon.

The Board, thereafter, held three public hearings in October and November of 2012. Rate Counsel and Verizon filed briefs and the record in the evidentiary hearing closed in December 2012.

The Board's hearing complied with the 1992 Act. We have previously recognized that the 1992 Act makes no provision as to the type of hearing the Board must conduct. In re Application of Bell Atlantic N.J., Inc., 342 N.J. Super. 439, 443 (App. Div. 2001). Here, the hearing was full, vigorous, and Rate Counsel had the appropriate opportunity to test the factual premises, and the proofs offered. The hearing also satisfied the requirements of a contested hearing under the APA. N.J.S.A. 52:14B-9(c) (calling for an opportunity for "all parties to respond, appear and present evidence and arguments on all issues involved."). See In re Application of Modern Indus. Waste Servs., Inc., 153 N.J. Super. 232, 237 (App. Div. 1977) (explaining that the APA "does not create a substantive right to administrative hearing," but rather "prescribes the procedures to be followed in the event an administrative hearing is otherwise required by statutory law or constitutional mandate").

Rate Counsel's real argument is not that there was not initial notice and a hearing, but rather that the hearing was insufficient because it took place too long before the Board acted. In particular, Rate Counsel contends that the evidence collected in 2012 was "stale" by the time the Board acted in June 2015.

Rate Counsel's argument fails for two reasons. First, the 1992 Act places no restriction on the time within which the Board must make a decision following the close of an evidentiary hearing. Instead, the 1992 Act merely directs that the Board is to make its determination after a hearing. The Legislature knows how and sometimes does restrict when an administrative agency must act. See In re Failure by Dep't of Banking and Ins., 336 N.J. Super.

253, 264-65 (App. Div.) ("When the Legislature has concluded that an agency should be required to take action within a fixed time period, it has incorporated a specific provision in the applicable legislation establishing a deadline for agency action." (quoting Hosp. Ctr. at Orange v. Guhl, 331 N.J. Super. 322, 335 (App. Div. 2000))), certif. denied, 168 N.J. 292 (2001).

Second, Rate Counsel presented no proof that the evidence garnered in 2012 was stale. This argument by Rate Counsel requires us to determine what is the appropriate standard to evaluate when an administrative agency has waited too long to act. In situations like this, when the Legislature has not set a time limit, our well-established standard of review provides the answer.

Thus, the standard is a reasonableness standard. More specifically, when evaluating whether evidence gathered by an administrative agency is stale, we hold that there must be some showing of a change of circumstances or new evidence calling into question the reliability of the evidence in the administrative record. Such a standard is similar to the standard used by federal courts. See McDonald Partners, Inc. v. Nat'l Labor Relations Bd., 331 F.3d 1002, 1008 (D.C. Cir. 2003) (holding that there must be a showing of "changed circumstances or new evidence calling the reliability of the old evidence into doubt.").

Here, Rate Counsel made no showing that there was a change in the telecommunication market in New Jersey or that new evidence was available. Instead, Rate Counsel made conclusory assertions, but it presented no proof. Notably, Rate Counsel has the statutory right to present evidence in the future if there is a change in the telecommunications market in New Jersey. N.J.S.A. 52:27EE-48(a).

Furthermore, the Board has ongoing authority to revisit any declassification determination and reclassify a service as non-competitive. In that regard, the 1992 Act provides:

> The [B]oard shall have the authority to reclassify any telecommunications service that it has previously found to be competitive if, after notice and hearing, it determines that sufficient competition is no longer present, upon application of the criteria set forth in subsection b. of this section. Upon such a reclassification, the provisions of subsection a. of this section shall no longer apply and the [B]oard may determine such rates for that telecommunications service which it finds to be just and reasonable.
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> [N.J.S.A. 48:2-21.19(d).]

Rate Counsel also argues that it was not given notice or an adequate hearing regarding two provisions of the 2015 Stipulation. The first provision requires Verizon to maintain rate caps for its services for five years. The second provision states that Verizon will continue to be subject to existing quality standards for three years, and the Board will have the right to consider extending those standards for another two years. We reject Rate Counsel's arguments because the Board gave adequate notice and its hearing sufficiently covered or anticipated covering these issues.

The argument regarding the rate cap fails because the Board's 2011 order stated that it was going to consider declassifying the four services. Thus, that notice contemplated that all regulation, including rate caps, could be eliminated. Since the Board had the right to eliminate all rate regulation, there was sufficient notice that rate caps could be considered as part of a transition period.

In assessing the procedural adequacy of administrative proceedings, "we start with the proposition that '[a]dministrative agencies enjoy a great deal of flexibility in selecting the proceedings most suitable to achieving their regulatory aims.'" <u>In re Pub. Serv. Elec. & Gas Co.'s Rate Unbundling</u>, 330 <u>N.J. Super.</u> 65, 106 (App. Div. 2000) (alteration in original) (quoting <u>Bailey Mfg. Corp. v. N.J. Casino Control Comm'n</u>, 85 <u>N.J.</u> 325, 338 (1981)), <u>aff'd</u>, 167 <u>N.J.</u> 377 (2001), <u>cert. denied</u>, 534 <u>U.S.</u> 813, 122 <u>S. Ct.</u> 37, 151 <u>L. Ed.</u> 2d 11 (2001). "'Normally courts defer to the procedure chosen by the agency in discharging its statutory duty,' subject, of course, to the requirements of due process and the APA." <u>Ibid.</u> Accordingly, we find no procedural defect in the Board's decision to adopt and accept transitional rate caps.

We also find no procedural defect in the Board's decision to allow a phase-out of the oversight of service quality. The 1992 Act mandates that if services are found to be competitive, then the Board "shall not regulate . . . conditions of service . . . of competitive services." N.J.S.A. 48:2-21.19(a)(1). Thus, notice of a declassification proceeding also gives notice that the scope of the Board's oversight of quality of service was subject to consideration. Similarly, a hearing addressing declassification logically involves the end of the Board's regulation or a phase-out of such oversight.

Notably, the Board's order in this case provides:

> To be clear, the existing statutes and regulations require that Verizon continue to provide safe, adequate, and proper service, as required for all utilities under N.J.S.A. 48:2-23. In addition, Verizon service quality obligations remain unchanged and are in full effect until such time as the Board engages in a review of the standards.

Finally, Rate Counsel and amici argued that the Board considered new information and did not give them adequate time to comment on the 2015 Stipulation. As already noted, however, the Board has discretion to select appropriate procedures. Indeed, we have recognized that "[t]he [Board] has the discretion to determine what kind of procedure was most appropriate to further legislative policy." In re Pub. Serv. Elec. & Gas, supra, 330 N.J. Super. at 111 (citation omitted).

Here, the Board began proceedings in 2008. In particular, the phase two proceedings were initiated in 2011. All parties were on notice that Verizon's four remaining regulated services were subject to declassification as competitive services. A contested proceeding was conducted, which included discovery, testimony, and cross-examination. After the close of the evidentiary hearing, certain parties engaged in settlement discussions. That such discussions were taking place was not a surprise to anyone.

When Board staff and Verizon entered into the 2015 Stipulation, the other parties were immediately notified, provided with a copy of the stipulation, and given nine days to comment. Rate Counsel submitted twenty-three pages of comments demonstrating that it had the time and ability to present such extensive comments. The Board thereafter reviewed the comments it received from Rate Counsel and others, including amici AARP and CWA. Finally, the Board summarized those comments and its responses in its June 5, 2015 order.

Given that extensive administrative proceeding, and the Board's consideration of all of the comments on the 2015 Stipulation, we defer to the Board's discretion on how it chose to proceed. We discern no procedural violation of the 1992 Act, the APA, or principles of due process.

C. The Board's Substantive Decision

Next, Rate Counsel and amici challenge the Board's substantive decision to reclassify the services as competitive. In particular, they argue that the decision is inconsistent with the 1992 Act and is arbitrary and capricious. Applying our standard of review, we disagree.

The 1992 Act authorizes the Board to determine "whether a telecommunications service is a competitive service." N.J.S.A. 48:2-21.19(b). The 1992 Act goes on to direct, "[i]n making such a determination, the Board shall develop standards of competitive service which, at a minimum, shall include evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area."

Here, the Board based its substantive decision on the evidence developed during its extensive administrative proceedings. The Board then made findings on the three statutory criteria outlined in N.J.S.A. 48:2-21.19(b). Specifically, the Board summarized the evidence developed in the phase two proceedings and found evidence of ease of market entry, the presence of other competitors, and the availability of like or substitute services in the relevant geographic areas.

Beginning with ease of market entry, the Board found that criteria was established by the presence of cable telephone competitors, numerous wireless providers, the availability of VoIP, and CLECs operating in New Jersey. Thus, the Board found:

> Evidence of ease of market entry exists as proven by cable telephony competition, the numerous wireless providers, the availability of VoIP, the countless numbers of CLECs operating in the state along with various [directory assistance] services offered. Evolving technology has eased market entry significantly thus resulting in competitors being able to freely enter the market.

Turning to the presence of other competitors, the Board found that there were numerous examples of competitors throughout New Jersey. In that regard, the Board stated

> [It] has granted 162 CLECs authority to offer service throughout the State. Also, the record indicates numerous examples of services that replace residential basic exchange, single-line business, and [directory assistance] service as indicated. The Board agrees with Verizon that: "There is an array of both traditional and non-traditional competitors vigorously competing for Verizon's legacy landline and residential [directory assistance] services."
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> . . . .
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> Comcast and Cablevision, the two largest cable providers in New Jersey, have made substantial investments in two-way digital services and serve over 2.1 million of New Jersey's 2.675 million cable subscribers.
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> . . . .

> In addition, wireless carriers are experiencing tremendous growth in lines and usage. . . . Subscribership has grown from 2.3 million to 8.6 million since 2010, in fact wireless subscribers out number switched access lines in the State.

Finally, with regard to the availability of like services, the Board found that there were wide varieties of such services throughout Verizon's service area. Accordingly, in its order, the Board summarized its findings.

> VoIP service, as [Verizon] contends, is widely available throughout Verizon's service area and each provider offers a variety of voice services that compete directly with Verizon's residence and small business services.
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> . . . .
>
> CLECs ably enter the market and provide service substitutes for legacy landline service. Traditional CLECs service residential and business customers. . . . From 2008 to year end 2011 Verizon has experienced a decline in wireline subscription despite population growth in the State.
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> . . . .
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> Regarding wireless service, consumers have increasingly opted to cut the cord in favor of a wireless line. The data indicates that [three] in [ten] households have cut the cord in favor of wireless only service. Consumers are not just cutting the cord. The porting of telephone numbers to other facilities-based carrier demonstrates that substitution is real and taking place.

In short, the Board found all the criteria required under the 1992 Act. All of those findings are supported by substantial, credible evidence in the record.

We also reject AARP's argument that the Board's decision had an adverse effect on senior citizens. The Board considered that contention, but found no evidence to support it.

Similarly, we reject CWA's argument that the Board acted against the public's interest. In the 1992 Act, the Legislature declared that it was in the public interest of New Jersey to "[p]rovide diversity in the supply of telecommunications services and products and telecommunications markets throughout the State." N.J.S.A. 48:2-21.16(a)(4). The Legislature also went on to recognize: "In a competitive marketplace, traditional utility regulation is not necessary to protect the public interest and that competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation." N.J.S.A. 48:2-21.16(b)(1). Thus, we find that the Board's decision was consistent with its authority under the 1992 Act.

In sum, the Board conducted proceedings within its discretion and its decision was not arbitrary, capricious, or unreasonable.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION