BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060767-TP

In the Matter of:

PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES LLC D/B/A VERIZON ACCESS TRANSMISSION SERVICES FOR ARBITRATION OF DISPUTES ARISING FROM NEGOTIATION OF INTERCONNECTION AGREEMENT WITH EMBARQ FLORIDA, INC.
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PROCEEDINGS:	HEARING
BEFORE:	CHAIRMAN LISA POLAK EDGAR COMMISSIONER MATTHEW M. CARTER, II COMMISSIONER KATRINA J. MCMURRIAN
DATE:	Thursday, May 3, 2007
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P R O C E E D I N G S

CHAIRMAN EDGAR: Call this hearing to order. Good morning.

MR. TEITZMAN: Good morning.

CHAIRMAN EDGAR: And we'll begin by asking our staff to read the notice.

MR. TEITZMAN: Pursuant to notice issued April 23rd, 2007, this time and place has been set for a hearing in Docket Number 060767-TP.

CHAIRMAN EDGAR: Thank you. And I understand that this will be a short proceeding this morning. Let's go ahead and go through the procedural steps and we'll take appearances.

MR. MAY: Good morning. I'm Bruce May with the law firm of Holland & Knight appearing this morning on behalf of Verizon Access Transmission Services.

CHAIRMAN EDGAR: Thank you.

MS. MASTERTON: Susan Masterton appearing on behalf of Embarq Florida, Inc.

CHAIRMAN EDGAR: Thank you. And staff.

MR. TEITZMAN: Adam Teitzman on behalf of Commission staff.

CHAIRMAN EDGAR: And I understand, Mr. Teitzman, that we have pretty much a streamlined stipulated proceeding here today. If you'll go ahead and walk us through the steps.

MR. TEITZMAN: Certainly, Chairman. The parties have

agreed to the following: All hearing exhibits identified in staff's hearing exhibit list shall be moved into the record without objection and all prefiled testimony and testimony exhibits shall be moved into the record without objection.

CHAIRMAN EDGAR: Okay. I think we can do that. Where would you like to begin?

MR. TEITZMAN: Okay. Madam Chairman, staff has compiled a list of discovery and testimony exhibits that we believe can be entered into the record by stipulation. In an effort to facilitate the entry of those exhibits we have compiled a chart that we have provided to the parties, the Commissioners and the court reporter. In lieu of reading off and marking each exhibit for the record, I suggest that this list itself be marked as the first hearing exhibit and that the discovery exhibits be marked thereafter in sequential order as set forth in the chart.

CHAIRMAN EDGAR: Okay. Thank you very much. And so seeing no objection --

MS. MASTERTON: No objection.

CHAIRMAN EDGAR: Okay. Seeing no objection, we will so mark the Comprehensive Exhibit List as Exhibit 1, and the remaining exhibits as marked on the composite list, and the list and the Exhibits 1 through 14 will be entered into the record.

(Exhibits 1 through 14 marked for identification and

admitted into the record.)

MR. TEITZMAN: Madam Chairman, staff has also prepared a second chart that has been provided once again to the parties, the court reporter and the Commissioners. The chart sets forth the testimony that has been prefiled in this matter. Staff offers to move the prefiled testimony into the record as though read in accordance with and in the order set forth on that chart.

CHAIRMAN EDGAR: Okay. My understanding is we have -- we had two witnesses, had and have two witnesses, Witness Price and Witness Fox. And seeing no objection, the prefiled testimony of the witnesses will be entered into the record as though read.

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Don Price, and my business address is 701 Brazos, Suite 600, Austin, Texas, 78701.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am a Director – State Regulatory Policy in the Verizon Business Regulatory and Litigation Department. Verizon Business targets its services primarily to large business and government customers. MCImetro Access Transmission Services LLC, which is part of Verizon Business, is doing business in Florida as Verizon Access Transmission Services ("Verizon Access"). I am testifying here on behalf of Verizon Access.

Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND?

A. I have more than 27 years experience in telecommunications, the vast majority of which is in the public policy area. I worked for the former GTE Southwest in the early 1980s, then moved to the Texas Public Utilities Commission in 1984. There, I acted as a Commission witness on rate-setting and policy issues. In 1986, I became Manager of Rates and Tariffs, and was responsible for Staff analyses of rate design and tariff policy issues in all telecommunications proceedings before the Commission. I was hired by MCI in 1986, where I spent 19 years in jobs focused on public policy issues relating to competition in

telecommunications markets, including coordination of positions in interconnection agreement negotiations.

With the close of the Verizon/MCI merger in January 2006, I assumed my current position as Director – State Regulatory Policy for Verizon Business. I work with various corporate departments, including those involved with product development and network engineering, to develop and coordinate policies permitting Verizon Business to offer enterprise and wholesale products to meet customer demands.

During my career, I have testified before state regulators in at least 22 states on a wide range of issues in many types of proceedings, including interconnection agreement arbitrations with local exchange carriers. I earned Master's and Bachelor's degrees in sociology from the University of Texas at Arlington in 1978 and 1977, respectively.

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. I will explain Verizon Access's positions on the issues still in dispute between Verizon Access and Embarq Florida Inc. ("Embarq") with respect to their negotiation of a new interconnection agreement ("ICA"). The parties have worked hard to settle most of their disputes, so only three issues remain for Commission resolution.

II. VERIZON'S ACCESS'S POSITIONS ON THE ISSUES

ISSUE 1: WHAT COMPENSATION SHOULD APPLY TO VIRTUAL

NXX TRAFFIC UNDER THE INTERCONNECTION AGREEMENT? (ICA § 55.4)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE ABOUT COMPENSATION FOR VIRTUAL NXX ("VNXX") TRAFFIC?

A. The parties' differences revolve around two questions: which entity is entitled to compensation for handling vNXX traffic and what rate should apply?

Q. WHAT IS VNXX TRAFFIC AND WHY IS IT DIFFERENT FROM OTHER TYPES OF TRAFFIC THAT THE PARTIES EXCHANGE?

A. To understand this issue, it is helpful to first compare the legacy incumbent local exchange carrier ("ILEC") networks and Verizon Access's competitive local exchange carrier ("CLEC") network.

Because of their long histories in operating telephone networks, the ILECs' network design remains essentially the same as it was in the first half of the 20th century. That basic design consists of a hub-and-spoke architecture with a switch located centrally in each exchange. The switch in each exchange provides dial-tone service to customers within that relatively small geographic area, and customers in the area share the same NPA/NXX – *e.g.*, 305-372 – as the first part of each unique 10-digit telephone number. In short, the phone numbers in that area are typically assigned from the same NPA/NXX. An ILEC such as Embarq that serves large geographic areas would in this manner have many

exchanges (also sometimes known as rate centers), with a switch in each exchange, and with each switch containing only those few NPA/NXXs required for number assignments within that exchange.

CLEC networks do not share this historical heritage, nor do they share the same network design. Most CLEC networks, including Verizon Access's, were designed in the late 1990s, based on then-current design principles and technologies, to efficiently meet the needs of their new (not legacy) customer base. Therefore, in contrast to ILEC networks, CLEC networks typically utilize many fewer switches to serve an area comparable to numerous ILEC exchange areas. Unlike the traditional ILEC network design, there is not a one-for-one correspondence between CLEC switches and a particular exchange, and it is not unusual for a single CLEC switch to contain many more NPA/NXXs than reside in one ILEC switch. A single Verizon Access switch in Orlando, for example, utilizes 40 NXXs in three different NPAs to serve Verizon Access's customers within the LATA.

Telecommunications traffic arrives at the correct destination on the basis of industry-standard, regularly published routing rules -- the Local Exchange Routing Guide ("LERG") -- that must be honored by all carriers: local exchange, wireless, and interexchange. For any carrier to receive traffic from another carrier, at least one NPA/NXX code must be "activated" in the LERG for a specific geographic area. For purposes of the LERG, the relevant geographic areas are "rate centers," as

defined by the ILECs' state-approved tariffs and by reference to the ILECs' service territories.

With this in mind, a CLEC activating an NPA/NXX in the LERG assigns that NPA/NXX to a specific rate center based on internal business decisions as to the area within which it offers service. The CLEC's assignment of that NPA/NXX to a rate center means that other customers within that rate center can reach the CLEC's customers using a local dialing plan—that is, without having to dial "1+."

Q. CAN YOU PROVIDE A FLORIDA EXAMPLE?

A. Yes. The LERG contains information for Embarq's Tallahassee, Florida service territory that designates the appropriate switch(es) in the Embarq network to which a call should be sent so it can be delivered in Tallahassee. For incoming calls from interexchange carriers, that designation likely would be an access tandem (also known as a toll tandem) somewhere in the LATA. For calls from another local exchange carrier (including a CLEC), the designation would perhaps be a local tandem in the vicinity. In either case, the call would be handed from the Embarq tandem to Embarq's local central office serving the called party in Tallahassee.[1]

Similarly, in the case of calls destined for Verizon Access's network, the

[1] This description is somewhat generic, as other interconnection and routing architectures exist. For example, interexchange carriers or CLECs would not utilize a tandem where they have implemented direct trunking arrangements to an Embarq end office, and in those situations would hand off traffic at the Embarq end office.

LERG also identifies the appropriate Verizon Access switch for delivery of a call in the same Tallahassee, Florida rate center. As noted above, the LERG identification is based on assignments by the respective carriers, rather than where the switches are located, especially for non-legacy CLEC networks, like Verizon Access's. As a result, the Verizon Access switch serving Tallahassee may well be located elsewhere (for example, Jacksonville). The location of the CLEC switch in another LATA (or even another state) has no direct bearing on where traffic is delivered to the CLEC. In the example, that point will always be in Tallahassee.

Q. WITH THIS BACKGROUND INFORMATION, COULD YOU PROVIDE AN ILLUSTRATION TO HELP EXPLAIN THE OPPOSING VIEWS ON COMPENSATION?

A. Yes. Attached as Exhibits DP-1 and DP-2 are two diagrams representing two call situations. The comparison and contrast between the two scenarios highlights the traditional views of ILECs and CLECs on compensation for VNXX calls. For the sake of simplicity, the diagrams do not attempt to replicate the full scope of the services areas over which the ILEC and CLEC, given the differences in their networks, must haul traffic from their respective customers to reach the point at which the carriers' networks are interconnected.

Q. HOW ARE THE TWO SCENARIOS SIMILAR?

A. In both scenarios, the calls from the Embarq customer to the Verizon

Access customer are handled by both carriers in the same manner. In both cases, Embarq's switch routes its customer's call to interconnection trunks with Verizon Access, and Embarq hands the call off to Verizon Access at the point of interconnection point ("POI"). And in both scenarios, when Verizon Access recognizes the incoming call from Embarq's customer, it switches that call to the appropriate facility for termination to its customer. Note that the LERG assignment of the 234 NXX by Verizon Access is for Embarq's Exchange "A" rate center.

Q. HOW ARE THE TWO SCENARIOS DIFFERENT?

A. The location of the Verizon Access customer is the only difference. In the "Local Call Example" scenario (Exhibit DP-1), both the Embarq and the Verizon Access customers are in Exchange "A." In the "VNXX Call Example" scenario (Exhibit DP-2), however, the Verizon Access customer is no longer in the same exchange as the Embarq customer. In both scenarios, the Point of Interconnection to which each carrier must bring its traffic is the same. The term "virtual NXX" or "VNXX" applies to this second situation in which the Verizon Access customer in Exchange B (as defined by Embarq) has been assigned a telephone number (NXX) associated with a rate center in Exchange A. This difference between the two scenarios is at the root of the industry's policy dispute about VNXX compensation.

Q. USING YOUR ILLUSTRATIONS, PLEASE SUMMARIZE THE TRADITIONAL OPPOSING VIEWS OF CLECS AND ILECS ON VNXX

COMPENSATION.

A. The traditional CLEC perspective is that VNXX calls are local, so the CLEC should receive reciprocal compensation for terminating them. This view derives from two basic points. First, the CLEC's LERG assignment for the NXX – 234 in the illustrations – was made for the Exchange "A" rate center, and calls to numbers assigned to the same rate center are typically rated as "local" for retail billing to the calling party. Second, because these calls are rated as local by virtue of the number the CLEC has assigned to its customer, CLECs typically take the position that they should receive the compensation applicable to local calls – that is, reciprocal compensation – for the functions they provide in terminating traffic from the ILEC's customer.

The traditional ILEC perspective arises from its historical position as a provider of exchange access services to interexchange carriers. In the exchange access arena, ILECs recover their costs through access charges for the functions they provide to originate jurisdictionally interexchange "toll" calls, so they contend that that access charges should also apply to interexchange VNXX calls. ILECs have also expressed concern that VNXX traffic may increase the amount of traffic for which the ILEC is providing a substantial amount of transport, especially if the CLEC has only a single point of interconnection in the LATA. Embarq's position statement reflects this customary ILEC view that compensation should be determined by reference to the physical endpoints of a call. (Embarq's Response to Verizon Access's Petition

for Arbitration, Att. A, at 1.)

The customary ILEC and CLEC positions are, therefore, diametrically opposed. The ILEC position is that it is providing an originating exchange access function, so it should be compensated according to its switched access tariffs. The CLEC perspective is that it is terminating "local" traffic originated by another LEC, so it should receive reciprocal compensation. The dispute is further complicated by fact that the overwhelming majority of VNXX traffic is not voice, but dial-up Internet traffic (that is, Internet service providers have been assigned most of the VNXX telephone numbers). The ILECs' customers are dialing these virtual NXX numbers with their computer modems for purposes of accessing Internet service providers such as America Online, Microsoft Networks, Earthlink and others.

Q. HAS THE FCC ATTEMPTED TO ADDRESS INTERCARRIER COMPENSATION FOR VNXX TRAFFIC?

A. Yes. The FCC has attempted to clarify applicable law regarding intercarrier compensation, but disputes nonetheless frequently have been brought before the states – often, as here, in the form of a request for arbitration. Recognizing this reality, the FCC has expressed its intention to decide the issue of VNXX compensation in its ongoing Intercarrier Compensation Rulemaking. (*See Developing a United Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92 (April 27, 2001) and Further Notice of Proposed

Rulemaking (March 3, 2005).) Therefore, any solution reached in this arbitration should be interim pending nationwide action by the FCC; the interconnection agreement should require rapid implementation of any new national intercarrier compensation program following its adoption by the FCC.

Q. HOW SHOULD THE VNXX COMPENSATION ISSUE BE ADDRESSED IN THE MEANTIME?

A. VNXX compensation should be addressed through market-based solutions, rather than by resort to the usual, polarized win-lose paradigm of regulatory decision-making. This is the industry trend and, in fact, the Commission recently approved the same VNXX compensation arrangement for Verizon Access and BellSouth that Verizon Access is proposing here.

Under this arrangement, if the parties have at least one point of interconnection ("POI") for the exchange of traffic in each ILEC tandem serving area where the CLEC assigns telephone numbers to its customers, the rate for VNXX traffic delivered to Internet service providers is $.0007 per minute of use (which is the FCC's default rate for ISP-bound traffic that an originating carrier hands off to another carrier for delivery to an ISP in that same local calling area.) (Verizon's proposed § 55.4.2.) In LATAs where the parties do not have a POI in each of the ILEC's tandem serving areas, VNXX traffic (including voice, as well as ISP-bound, although Verizon Access does not expect to have

any voice VNXX traffic) is exchanged on a bill-and-keep basis. (Verizon's proposed § 55.4.3.)

This compromise solution is similar to the approaches to which a number of large ILECs and CLECs (including Sprint) have agreed in the absence of regulatory intervention. For instance, Verizon Access (and other CLECs) negotiated and implemented such region-wide agreements with SBC (prior to the January 2005 announcement of SBC's merger with AT&T) and with the Verizon ILECs (before the February 2005 announcement of the Verizon/MCI merger). The Verizon ILECs, likewise, negotiated intercarrier compensation agreements with AT&T (before its merger with SBC) and Level 3, and a number of carriers, including Sprint, have adopted these negotiated agreements. Although these agreements differ in their specifics, each includes a fundamental trade-off under which the CLEC receives compensation for handling VNXX calls originated by the ILEC, in exchange for the CLEC's commitment to accept greater responsibility for transporting the traffic from the ILEC's originating end office. These multi-state agreements avoid the uncertainty of disparate, state-specific outcomes that may result from litigation; they eliminate billing and invoicing problems for multi-state carriers; and they allow parties to appropriately weigh their own business interests.

Although Embarq has not agreed to this approach thus far, Verizon Access remains willing to accept it if the Commission wishes to adopt it

as an interim resolution of the VNXX compensation issue until it is settled by the FCC. Verizon Access's compromise position--a significant departure from the typical CLEC litigation position--appropriately balances the parties' respective interests, in keeping with the trend toward market-based resolution of an otherwise thorny regulatory problem by sophisticated adversaries.

ISSUE 4: WHEN THE PARTIES EXCHANGE TRAFFIC VIA INDIRECT CONNECTION, IF VERIZON ACCESS HAS NOT ESTABLISHED DIRECT END OFFICE TRUNKING SIXTY DAYS AFTER REACHING A DS1 LEVEL, SHOULD VERIZON BE REQUIRED TO REIMBURSE EMBARQ FOR ANY TRANSIT CHARGES BILLED BY AN INTERMEDIARY CARRIER FOR LOCAL TRAFFIC OR ISP-BOUND TRAFFIC ORIGINATED BY EMBARQ?

Q. WOULD YOU EXPLAIN THE DIFFERENCE BETWEEN INDIRECT CONNECTION AND DIRECT CONNECTION?

A. Yes. Two carriers may agree to directly interconnect their networks, so that traffic from one carrier's network is passed directly to the other carrier's network for termination to its customer, and vice versa. Such direct interconnections are efficient from a traffic engineering perspective when a large volume of traffic is exchanged between the two networks. When the traffic volumes are low, however, direct interconnections may not be efficient. In such instances, the carriers typically exchange traffic via a third party network with which both

carriers are directly connected. For example, some Embarq exchanges in Florida may be connected with a BellSouth (now AT&T) tandem that also connects various BellSouth exchanges. In that example, because both Verizon Access and Embarq are already connected to that BellSouth tandem, they can exchange traffic over the "indirect connection" between their networks via the Bellsouth tandem. The BellSouth tandem in this example is providing what is called a "transit" function, because no BellSouth customer is involved on either the originating or terminating end of the call.

In contrast to indirect interconnection through a transiting carrier (BellSouth in the example), direct connection would occur if Verizon Access established a trunk group connecting directly with Embarq's exchange(s), so that traffic would no longer be exchanged via the transiting carrier's tandem.

Q. WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 4?

A. Under the industry-standard arrangement, the transiting carrier typically bills the originating carrier (*e.g.*, Verizon Access) for transiting the originating carrier's traffic to another carrier (*e.g.*, Embarq). The agreed-upon language for section 61.2.4 of the ICA explicitly recognizes this arrangement ("each originating Party is responsible for the payment of transit charges assessed on the originating Party by the transiting party.") Embarq, however, would change this customary arrangement if a direct connection is not established within sixty days after indirect

traffic reaches a DS-1 level. In that case, Embarq would require Verizon Access to pay all transiting charges, even those the transiting carrier charges Embarq for **handling *Embarq's own originating traffic***. If Embarq's proposal is accepted, Verizon Access will, therefore, end up paying transit in ***both*** directions (to the third party for Verizon Access's originating traffic and to Embarq for Verizon Access's terminating traffic). The Commission should reject this extreme and patently unfair proposal.

Q. WHAT IS WRONG WITH EMBARQ'S PROPOSAL?

A. There are a number of problems with Embarq's proposed addition to section 61.2.4.

First, while I am not a lawyer, I understand that Embarq's proposal to require Verizon Access to pay third-party transit charges on Embarq's traffic may be contrary to FCC restrictions on the extent to which a LEC may charge other carriers for traffic originating on the LEC's network. *See* 47 C.F.R. § 51.703(b).

Second, Embarq's proposal is unnecessary because Verizon Access has already agreed (in section 61.1.5) to establish a direct connection with Embarq once transit traffic exceeds a DS1 level.

Third, Embarq's language incorrectly assumes that Verizon Access alone controls the timeframe for establishment of a direct end office trunk ("DEOT") group. As Embarq should know, engineering and

installation of a DEOT between carriers is necessarily a joint undertaking, so one Party alone cannot control the process. For instance, if Embarq's network has no spare transmission capacity over which direct trunks can be configured, Embarq's facilities will require augmentation before direct trunking can occur. The length of time required for Embarq to complete that augment is solely within Embarq's control. If the augment takes more than 60 days, it would be patently unreasonable to require Verizon Access to pay Embarq's transit bills, as Embarq proposes.

Fourth, Embarq's language ignores the possibility that the DS1 threshold could be triggered in a given month, only to be followed by subsequent months where traffic does not reach the threshold. In the case of a temporary spike in traffic that does not represent a trend, it would likely be to both parties' advantage to continue with indirect trunking. Embarq's overly categorical language would not take account of such events.

Q. IS THERE ANY PUBLIC POLICY RATIONALE FOR EMBARQ'S POSITION?

A. No. The effect and likely intent of Embarq's language is to shift its expenses to its competitor, which is obviously an anticompetitive result. If Embarq believes Verizon Access has violated the contract by taking too long to do its part to establish direct interconnection, it can seek recourse under the usual dispute resolution provisions of the

Agreement. There is no reason to carve out an exception for establishment of direct trunking in these circumstances, and the Commission should reject Embarq's proposed language that would do so.

ISSUE 5: WHAT RATE SHOULD APPLY TO TRANSIT TRAFFIC UNDER THE PARTIES' INTERCONNECTION AGREEMENT?

Q. WHAT IS TRANSIT TRAFFIC?

A. Transit traffic is traffic that originates on one party's network, passes through the other party's network, and terminates to a third-party carrier (or that originates on a third-party carrier's network, transits through a party's network, and terminates to the other party's network). ICA, § 1.112. Transit service is the delivery of such transit traffic. *Id.* § 1.111.

Transit service allows smaller carriers, most of which are already connected to the carrier serving most of the customers in the area (here, Embarq), to connect indirectly through that predominant carrier's network to exchange calls with each other, rather than having to establish direct connections to handle relatively small volumes of traffic between their networks.

Q. HAVE THE PARTIES NEGOTIATED LANGUAGE REQUIRING EMBARQ TO PROVIDE TRANSIT SERVICE TO VERIZON ACCESS UNDER THE ICA?

A. Yes. The agreed-upon language in section 68.2 specifies that Embarq will provide transit service allowing Verizon Access's end users to connect to local end users of other carriers. The parties disagree, however, about the rate that Embarq should charge Verizon Access for transit service under the ICA.

Q. WHAT ARE THE PARTIES' RESPECTIVE RATE PROPOSALS?

A. In the absence of an acceptable proposal from Embarq, Verizon Access has proposed a rate of $0.002867 (that is, the sum of the common transport and tandem switching rate elements the Commission approved for Embarq for reciprocal compensation purposes). Embarq proposes a new transit rate of $0.005, almost double the existing transit rate.

Q. WHY SHOULD THE COMMISSION REJECT EMBARQ'S PROPOSED TRANSIT RATE?

A. Having agreed to negotiate and arbitrate the transit rate, Embarq cannot claim that the Commission must approve any rate Embarq proposes. The available reference points demonstrate that Embarq's proposed rate of $0.005 is unreasonably high. Aside from the existing rate of $0.002867 noted above, the Commission might look to (1) the analogous Embarq interstate rate of $0.002052; (2) the transit rates Verizon Access recently negotiated with BellSouth here in Florida and elsewhere—that is, $0.0015 in 2007, $0.0020 in 2008, and $0.0025 thereafter; and (3) the $0.002071 transit rate in the existing Verizon

Florida Inc./Sprint ICA. These reference points are in line with Verizon Access's proposal and should guide the Commission in establishing a reasonable transit rate in this case.

Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Don Price, and my business address is 701 Brazos, Suite 600, Austin, Texas, 78701.

Q. ARE YOU THE SAME DON PRICE WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My testimony responds to the Direct Testimony of Embarq witness Fox on Issue 1, vNXX compensation; Issue 4, Embarq's transit reimbursement proposal; and Issue 5, transit rate.

ISSUE 1: WHAT COMPENSATION SHOULD APPLY TO VIRTUAL NXX TRAFFIC UNDER THE INTERCONNECTION AGREEMENT? (ICA § 55.4)

Q. WHAT ARE YOUR GENERAL OBSERVATIONS ABOUT MR. FOX'S TESTIMONY ON THIS ISSUE?

A. Much of Mr. Fox's Direct Testimony on Issue 1 does not, in fact, relate to that Issue, which concerns only the compensation method the parties will apply to virtual NXX ("vNXX") traffic under the interconnection agreement ("ICA"). For example, Mr. Fox alleges that some CLECs' vNXX arrangements might be violating the FCC's number porting rules (Fox DT, at 6-7), but that discussion is not specific

to Verizon Access and, in any event, there is no dispute about whether Verizon Access may provide vNXX arrangements.

Mr. Fox also discusses at length the question of FCC preemption of states' authority to set compensation for non-local (that is, interexchange) Internet Service Provider ("ISP")-bound calls (Fox DT, at 8-9). As I explained in my Direct Testimony, the FCC intends to decide the vNXX compensation issue in its ongoing Intercarrier Compensation Rulemaking,[1] so any resolution reached here will be interim, pending nationwide action by the FCC. But Verizon Access has not challenged the Commission's authority to resolve the vNXX compensation issue in this arbitration. The only question is *how* the Commission should resolve it.

Q. DOES MR. FOX CORRECTLY UNDERSTAND VERIZON ACCESS'S PROPOSAL FOR VNXX COMPENSATION?

A. I don't think so. His testimony ascribes to Verizon Access the traditional CLEC position on vNXX compensation—that is, that vNXX traffic is "subject to Section 251(b)(5) of the Act," so Verizon Access "seeks to charge Embarq reciprocal compensation" for this traffic. (Fox DT, at 3-4, 5, 6.) But Verizon Access has *not* argued that vNXX traffic is subject section 251(b)(5), nor has it asked Embarq to pay reciprocal

[1] *See Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC Release No. 01-132, 16 FCC Rcd 9610 (2001) ("NPRM") and Further Notice of Proposed Rulemaking, FCC Release No. 05-33, 20 FCC Rcd 4685 (2005) ("FNPRM").

compensation on this traffic.

Indeed, one of the advantages of Verizon Access's proposal is that it is not linked to specific legal definitions, so it avoids the usual debates about the nature of vNXX traffic. It simply applies a specified level of compensation to vNXX traffic if the parties have at least one point of interconnection ("POI") for exchange of traffic in each ILEC tandem serving area where Verizon Access assigns telephone numbers to its customers. In that case, the compensation rate for dial-Internet vNXX traffic would be $0.0007 per minute of use (the same as the FCC's default rate for ISP-bound traffic that an originating carrier hands off to another carrier for delivery to an ISP in that same local calling area). This measure of compensation is several times lower than the reciprocal compensation rates the parties agreed to for the new ICA. *See* Verizon Access's Petition for Arbitration, Pricing Attachment ("Reciprocal Compensation Rates") (pricing local end office switching at $0.002221 per minute of use ("MOU"); local tandem switching at $0.002053 per MOU; and local shared transport at $0.000814 per MOU).

In LATAs where the parties do not have a POI in each of Embarq's tandem serving areas, vNXX traffic (voice, as well as ISP-bound) would be exchanged on a bill-and-keep basis under Verizon Access's proposal.

Q. MR. FOX TAKES ISSUE WITH VERIZON ACCESS'S CONCLUSION THAT ITS COMPROMISE PROPOSAL APPROPRIATELY

BALANCES ILEC AND CLEC INTERESTS. (FOX DT AT 6.) HOW DO YOU RESPOND?

A. The fact that numerous sophisticated CLECs and ILECs have, on their own, worked out the same kind of market-based solution to the problem of vNXX compensation is compelling evidence that it appropriately balances CLEC and ILEC interests. The compensation arrangement Verizon Access recommends here is the same one it recently negotiated with BellSouth and that this Commission approved in the new Verizon Access/BellSouth ICA. Verizon Access and other CLECs have negotiated and implemented such region-wide agreements with a number of other carriers, including SBC (prior to the January 2005 announcement of SBC's merger with AT&T) and with the Verizon ILECs (before the February 2005 announcement of the Verizon/MCI merger). The Verizon ILEC in Florida has, likewise, implemented similar intercarrier compensation agreements with carriers including AT&T Communications of the Southern States Inc. (before its merger with SBC), KMC Data LLC, Level 3 Communications, TelCove Investment, LLC, CommPartners, LLC, Vycera Communications, Inc., AmeriMex Communications Corp., Ganoco, Inc., Bright House Networks Information Services, LLC, Volo Communications of Florida, Inc., Neutral Tandem-Florida, LCC, SBC Long Distance, and Sprint Communications Company Limited Partnership.

As I explained in my Direct Testimony, these multi-state agreements avoid the uncertainty of litigation and disparate state outcomes,

eliminate billing and invoicing problems for multi-state carriers, and allow parties to weigh their own business interests. In particular, Verizon Access's approach addresses Embarq's concern about having to provide a substantial amount of transport (*see* Fox DT at 6), because Verizon Access will receive no compensation for handling vNXX traffic where it does not establish a POI in the Embarq access tandem serving area. Indeed, in an arbitration between FDN Communications and Sprint, "Embarq's predecessor company" (Fox DT at 9), Sprint itself argued that "establishing a POI at each tandem is the best approach to establish efficient interconnection arrangements and ensure a reasonable sharing of costs incurred to transport traffic between the parties."[2] This "reasonable sharing of costs" is exactly what Verizon Access's vNXX compensation proposal would achieve.

Despite Embarq's refusal to consider moving off the traditional ILEC position that access should apply to vNXX calls, negotiated intercarrier compensation agreements are clearly the industry trend. They are certainly a better alternative to the protracted, expensive litigation that has long been associated with vNXX compensation issues.

Q. DOES MR. FOX CLAIM THAT PAST COMMISSION DECISIONS PREVENT THE COMMISSION FROM APPROVING VERIZON ACCESS'S PROPOSAL?

[2] *Petition for Arbitration of Certain Unresolved Issues Associated With Negotiations for Interconnection, Collocation and Resale Agreement with Florida Digital Network, Inc. by Sprint-Florida Incorporated*, Order No. PSC-06-0027-FOF-TP, 06 FPSC 1:50, at 81 (Jan. 10, 2006) ("*Sprint/FDN Arbitration Order*").

A. No. In fact, the two cases he cites—the Commission's *Reciprocal Compensation Order* and the *Sprint/FDN Arbitration Order*—emphasize that the Commission has explicitly declined to mandate a particular intercarrier compensation mechanism for vNXX traffic.[3] Commission policy is, instead, that it is "appropriate and best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements." *Reciprocal Compensation Order* at 33. If parties are unable to agree on a compensation mechanism, the Commission's "default" view is that non-ISP calls are not subject to reciprocal compensation. *Id.* But most vNXX calls are ISP-bound, and Verizon Access is not proposing reciprocal compensation for non-local vNXX calls, in any event.

The Commission's policy favoring negotiation is, of course, consistent with Verizon Access's position—and the industry trend—that intercarrier compensation arrangements are best negotiated by the parties themselves. Unfortunately, Embarq remains wedded to the traditional ILEC view of compensation, as it has refused to consider – or even acknowledge -- Verizon Access's compromise between the traditional ILEC and CLEC positions. The Commission should, therefore, adopt this market-tested solution that numerous carriers—including Sprint—are already using (some for over two years now) in Florida.

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[3] *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecomm. Act of 1996, Order on Reciprocal Compensation*, Order No. PSC-02-1248-FOF-TP ("*Reciprocal Compensation Order*"), at 33 (Sept. 10, 2002); *Sprint/FDN Arbitration Order*, at 89.

ISSUE 4: WHEN THE PARTIES EXCHANGE TRAFFIC VIA INDIRECT CONNECTION, IF VERIZON ACCESS HAS NOT ESTABLISHED DIRECT END OFFICE TRUNKING SIXTY DAYS AFTER REACHING A DS1 LEVEL, SHOULD VERIZON BE REQUIRED TO REIMBURSE EMBARQ FOR ANY TRANSIT CHARGES BILLED BY AN INTERMEDIARY CARRIER FOR LOCAL TRAFFIC OR ISP-BOUND TRAFFIC ORIGINATED BY EMBARQ? (ICA § 61.2.4.)

Q. HAS MR. FOX DEMONSTRATED ANY NEED FOR EMBARQ'S SPECIAL PENALTY PROVISION?

A. No. This issue concerns the parties' exchange of traffic originated by one party and terminated to the other, but where a third-party carrier provides the transiting service. ICA, § 1.63. Embarq proposes a special penalty provision to enforce the parties' agreement (in section 61.1.5) that Verizon Access will establish direct trunks with the third-party carrier once transit traffic exceeds a DS1 level. This provision would require Verizon Access to pay *all* transiting charges--*on Embarq's originating traffic*, as well as on Verizon Access's own originating traffic--if Verizon Access does not establish a direct connection with Embarq within 90 days after traffic exchanged by indirect interconnection exceeds a DS1 level. (Embarq proposed § 6.1.2.4.)

This deviation from the industry-standard practice of each carrier paying its own transit bills is, to Verizon Access's knowledge, unprecedented.

Indeed, in the Ohio hearing to establish a new Embarq/Verizon ICA, Mr. Fox admitted that its proposed language does not appear in any existing Embarq contracts.[4]

Mr. Fox offers no facts to support Embarq's extraordinary penalty proposal, but only vague, ambiguous allegations. He claims that "carriers (particularly CLECs who terminate large volumes of ISP-bound traffic) are extremely slow to establish the direct connection with Embarq's network once the volume trigger is met." (Fox DT 10.) But Mr. Fox provided no evidence of any problem in this regard. He did not and could not raise any problems with Verizon Access's behavior because there is no provision in the parties' existing contract that requires direct trunks to be established when indirect traffic reaches any particular level. Moreover, I understand that Embarq is often not billed for transit by the transiting carrier—indeed, Mr. Fox's testimony is carefully worded in terms of "potential," rather than actual, transit charges. (Fox DT at 10.) To the extent transiting carriers are not billing Embarq, then delayed establishment of direct trunks is not costing Embarq anything. In short, there is nothing to support Embarq's claim that carriers' failure to establish direct trunks imposes so great a financial burden on Embarq that it justifies a special self-enforcing penalty provision.

Q. HAS MR. FOX SHOWN THAT THE ICA'S DISPUTE RESOLUTION PROVISIONS ARE INADEQUATE TO ADDRESS A CLAIMED

[4] Petition of Verizon Access for Arbitration of an Interconnection Agreement with Embarq, Ohio PUC Case No. 06-1485-TP-ARB, Hearing Transcript, at 84 (Feb. 21, 2007).

BREACH OF THE CONTRACTUAL OBLIGATION TO ESTABLISH DIRECT TRUNKS?

A. No. Embarq cannot expect the Commission to approve its unprecedented self-enforcing penalty provision in the absence of compelling proof that existing enforcement mechanisms for breach of the ICA are inadequate. But Mr. Fox's testimony is silent in this regard.

In the unlikely event that Verizon Access fails to comply with its contractual obligation to establish direct trunks after indirect traffic reaches the specified threshold, Embarq can use the ICA's dispute resolution provisions to address that claimed breach, just as it would for other claimed breaches. Mr. Fox offers no reason why one obligation out of a 150-page contract should be singled out for special enforcement treatment. Because Embarq has not shown that existing dispute resolution mechanisms cannot address claimed violations of the direct trunking obligation, it has not proved the need for the extraordinary new one it proposes. The effect and possible intent of Embarq's proposal is to shift its expenses to its competitor, which is not a legitimate reason to adopt it.

Q. DID EMBARQ'S CHANGES TO ITS PROPOSAL FULLY ADDRESS VERIZON ACCESS'S CONCERNS ABOUT ITS PROPOSED PENALTY PROVISION?

A. No. The language for section 61.2.4 that Mr. Fox presents in his Direct Testimony differs from the language Embarq filed in its response to

Verizon Access's arbitration petition. The new language changes the time for establishing direct trunks from 60 days to 90 days and excuses Verizon Access from reimbursing Embarq for transit charges if the delay in establishing direct trunks is Embarq's fault. (Fox DT at 12.) While these changes are an improvement, they do not fully address Verizon Access's stated concerns about Embarq's language. That language would still hold Verizon Access liable for delays by others that must cooperate with Verizon Access to establish direct trunks. Mr. Fox acknowledges that Verizon Access alone cannot always control the timeframe for installation of direct trunks (*see* Fox DT at 11), which is a joint undertaking with another carrier. That other carrier is not always Embarq, but may be a third party that sells transport in the area where Verizon Access needs it. While Embarq's language may excuse Verizon Access from paying Embarq's transit charges when Embarq has to build new facilities or perform extra engineering (Fox DT at 12), it will not excuse Verizon Access from those charges when a third party needs to perform the new construction or engineering, or for any other delays caused by another carrier filling Verizon Access's transport order. It is unfair to hold Verizon Access responsible for delays that are not its fault.

Embarq's language also fails to address Verizon Access's legal concern, raised in negotiations, that Embarq's language for section 61.2.4 may be contrary to FCC rule 51.703(b), which states that "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." 47

CFR § 51.703(b). This legal issue is best left to the parties' briefs, but Mr. Fox has not denied that Embarq's proposal would allow it to charge Verizon Access for Embarq's originating traffic.

ISSUE 5: WHAT RATE SHOULD APPLY TO TRANSIT TRAFFIC UNDER THE PARTIES' INTERCONNECTION AGREEMENT? (ICA PRICE LIST)

Q. HAS MR. FOX PROVED THAT EMBARQ'S PROPOSED TRANSIT RATE IS REASONABLE?

A. No. Mr. Fox is correct that neither the FCC nor this Commission has established any pricing standard for transit service and that transit service is not required under the federal Telecommunications Act. In the absence of any controlling standard, the Commission must look to the available reference points to derive a reasonable transit rate. As I explained in my Direct Testimony, the available reference points demonstrate that Embarq's proposed rate of $0.005 is unreasonably high. It is *more than double* the $0.002045 transit rate paid under the parties' existing contract. Aside from this existing rate, the Commission might look to (1) the analogous Embarq interstate rate of $0.002052; (2) the sum of the common transport and tandem switching rate elements the Commission approved for Embarq for reciprocal compensation purposes, which is $0.002867; (3) the transit rates Verizon Access recently negotiated with BellSouth here in Florida and elsewhere—that is, $0.0015 in 2007, $0.0020 in 2008, and $0.0025 thereafter; and (4)

the $0.002071 transit rate in the existing Verizon Florida Inc./Sprint ICA. These reference points are in line with Verizon Access's proposed $0.002867 rate.

In contrast to Verizon Access's reference points, Mr. Fox alleges only that BellSouth has a tariffed transit rate of $.006 in South Carolina; another company, Neutral Tandem, has Georgia and Florida tariffs setting its transit rate at $.0046425, "assuming 10 miles of T1 transport"; and 15 carriers in Florida (including an Embarq affiliate) have agreed to Embarq's $.005 transit rate. (Fox DT at 14-15.) I don't know where Mr. Fox got his Florida Neutral Tandem rate; my review of Neutral Tandem's Florida price schedule shows a transit rate of $0.003102 and no per-minute rates for transport. But even assuming that Mr. Fox has accurately presented other companies' rates, they are not as compelling as Verizon Access's reference points that are specific to Florida and the parties before the Commission—unlike Mr. Fox's South Carolina/BellSouth and Neutral Tandem references. With respect to the Embarq Florida contracts Mr. Fox mentions, I do not know how many of the carriers that allegedly agreed to Embarq's $.005 rate actually negotiated that rate, or, most importantly, what the puts and takes of any negotiations may have been. But I can say that the transit rate Verizon Access agreed to with BellSouth here in Florida (starting at $0.0015 and eventually rising to $0.0025) was heavily negotiated. Because Verizon Access has offered a wider variety of more relevant references, the Commission should look to these references to set an appropriate

transit rate.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

SECTION I – INTRODUCTION

Q. Please state your name, title, and business address.

A. My name is Edward (Ed) Fox. I am employed as Regulatory Manager for Embarq Management Company, which provides management services to Embarq Florida, Inc. ("Embarq"). My business address is 5454 W. 110th Street, Overland Park, KS 66211.

Q. Please summarize your education and professional background.

A. I received a Masters of Business Administration from Ashland University in 1989 and a Bachelor of Science degree in History from Taylor University. In my current position, I am responsible for developing state and federal regulatory policy and legislative policy for Embarq Corporation for collocation and network interconnection issues. I am responsible for coordinating this policy across the multiple business units of Embarq, i.e. business, consumer, wholesale, and Embarq's Competitive Local Exchange Carrier ("CLEC") operations. I have been in this position since January 2001. For the four years prior, I served as the Network Policy Manager for Sprint's ILEC operations. Between 1977 and 1996, I held positions in sales, marketing, competitive analysis, and product management within Sprint's local telecommunications division.

Q. Have you testified before regulatory commissions before?

A. Yes. I have testified before the state regulatory commissions in Maryland, Pennsylvania, Massachusetts, Florida, Nevada, and Texas on interconnection issues. I have also participated in mediation sessions before the Pennsylvania Public Utility Commission,

North Carolina Public Utilities Commission and the Nevada Public Utilities Commission, and at the United States Court of Appeals for the Ninth Circuit involving interconnection matters. I have filed written testimony in Missouri, and the District of Columbia.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to support Embarq's position on Issues 1, 4 and 5. Issue 1 (Interconnection Agreement Section 55.4) deals with the jurisdiction and intercarrier compensation for vNXX traffic. Issue 4 (Interconnection Agreement Section 61.2.4) deals with establishing an appropriate consequence for Verizon Access when it does not comply with its agreement to establish a direct connection with Embarq's network after a certain volume of indirect traffic has been exchanged. Issue 5 deals with the compensation rate for transit traffic.

SECTION II – UNRESOLVED ISSUE DISCUSSION

Q. Please describe Issue 1.

A. Issue 1 addresses how the parties will compensate each other for exchanging vNXX traffic. Verizon Access deems this traffic subject to Section 251(b)(5) of the Act and seeks to charge Embarq reciprocal compensation for any vNXX traffic it terminates when it has established a point of interconnection ("POI") within Embarq's tandem serving area. To the extent it has not established a physical presence (POI) within Embarq's tandem serving area, Verizon Access proposes bill and keep ("B&K") as an acceptable form of intercarrier compensation. Embarq, on the other hand, disagrees and argues that

any traffic subject to reciprocal compensation, that is 251(b)(5) traffic, must physically originate and physically terminate with the same ILEC mandatory local calling area. Intercarrier compensation obligations should *not* be determined based on the NPA/NXXs of the calling and called parties. Rather, reciprocal compensation should be based on the physical location of the calling and called parties (physical end-points). Therefore, any traffic, including vNXX traffic, that physically originates and terminates outside of Embarq's mandatory local calling area is interexchange traffic that is subject to access charges.

Q. Please describe the vNXX concept.

A. A vNXX, or virtual number, is "homed" in a central office switch that is outside of the local calling area in which the customer physically resides. In other words, a carrier may provide a vNXX service to allow its customer to obtain a telephone number in a local calling area in which it is not physically located. By assigning a telephone number that is "local", the customer establishes a "virtual" presence in the originating local calling area so that end users in that area may place calls to the vNXX number on a local basis instead of incurring toll charges.

Q. Why would a CLEC assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer physically resides?

A. One of the primary uses of the vNXX concept arises when CLEC customers are providing access to the internet. Using vNXXs, a CLEC can assign telephone numbers to

internet service providers ("ISPs") so that regardless of the location of the caller (end user), the numbers are perceived and billed as local calls. Many ISPs will not have a physical presence in each ILEC local calling area. Therefore, in an effort to make these actual interexchange calls appear "local" in nature, CLECs utilize these vNXX numbering schemes. By doing so, both the CLEC and its customers benefit. As mentioned above, the CLEC's customer (typically an ISP) is able to offer all its subscribers a locally rated number without establishing a geographic presence. The CLEC itself benefits in that the traffic, based on the originating and terminating NPA/NXXs, appears to be "local" in nature, causing the originating carrier (in this case Embarq) to incur the cost to transport the traffic to a potentially distant POI outside the local calling area to incur reciprocal compensation costs.

Q. Why is Embarq's position reasonable?

A. Simply put, no carrier should be allowed to simply assign a number to a customer physically located outside the local calling area and expect to receive reciprocal compensation. The historic end-to-end analysis confirms that calls traveling to points beyond the local calling area are not local for intercarrier compensation purposes. Calls that originate and terminate within the mandatory local calling area of the ILEC, as set forth in Embarq's local tariffs, are local calls for purposes of intercarrier compensation. If it were not for this vNXX numbering scheme, the originating end user would incur a toll charge and the originating carrier would collect originating access. To the extent the CLEC wants to provide a vNXX service to its customers, it should not be at the

originating ILEC's expense. Embarq's position is that it is owed originating access for vNXX traffic just like any interexchange call.

Q. Verizon Access claims its "compromise" position "appropriately balances the parties' respective interests" because the CLEC is committed to accepting greater responsibility for transporting traffic from the ILEC's originating end office. Is this true?

A. No. Under Verizon Access' proposal, Verizon Access receives reciprocal compensation for all vNXX traffic it terminates for a given tandem serving area, when it has a POI at that tandem. For vNXX calls in LATAs where Verizon Access does not have a POI at each tandem serving area, it proposes bill and keep. In both instances, Embarq incurs the cost of switching and transport of each vNXX call to Verizon Access's POI, whether the POI is on Embarq's network or at a distant location. Verizon Access avoids the cost of switching and transport. And by demanding reciprocal compensation for each minute of use, the inequity is exacerbated.

Q. How does a CLEC assign a vNXX number to a location outside of the local calling area to which it has been assigned?

A. The CLEC can request a block of numbers from the Numbering Plan Administrator and can establish the local calling area for the block. Alternatively, the CLEC can do this by (mis)using the local number portability ("LNP") feature of the ILEC's network by porting the vNXX number to an intraLATA (long distance) location. The LNP database only "edits" ported calls to the LATA level but not between the local calling areas within

a LATA. This allows CLECs to present their long distance call to the ILEC network as a ported "local" call within the same LATA, when in fact it is a long distance call.

Q. Is porting the number outside of the geographically assigned rate center permitted?

A: No. FCC rules restrict a number from being ported outside of its geographically assigned rate center but CLECs know they can violate the rule since the database only edits to the LATA level and not to the actual rate center level. See, 47 CFR §52.26(a). FCC geographic number porting infractions notwithstanding, the ILEC incurs a real network utilization cost when it switches and transports these vNXX calls to long distance locations. If the seven-digit call is routed this way the CLEC is receiving free transport while demanding payment for terminating the call. This attempted cost-shifting is inequitable and Embarq is entitled to intrastate originating access revenue on these inter-exchange calls.

Q. Does it matter if these vNXX calls are ISP-bound?

A. No. Again, the jurisdictional nature of a call is determined on an end to end basis, not the artificial rating points of a call (to/from numbers). In the case of ISP-bound traffic, this requires that the ISP provider be physically located in the same local calling area as the end user originating the call. Therefore, whether a call is a non-local, vNXX *voice* call or a non-local, vNXX *ISP-bound* call, the physical end points of the call determine the appropriate intercarrier compensation. When a CLEC utilizes a vNXX numbering scheme to provision either voice or ISP-bound traffic, the originating ILEC incurs the same network costs to deliver this non-local interexchange traffic to the CLEC.

Q. Does the Commission have jurisdiction over these non-local ISP-bound calls?

A. Yes. While I'm not a lawyer and understand that the lawyers will provide the legal arguments in their briefs, I have read the Global NAPS decision out of the First Circuit Court of Appeals that recently addressed this issue. *Global NAPS, Inc. v. Verizon New England, Inc. et al.*, 444 F. 3d 59 (1st Cir. 2006) That decision provides several relevant quotes from the FCC's brief. According to the FCC, its ISP Remand Order does **not** provide a clear answer to the question of whether the ISP Remand order was intended to preempt states from establishing intercarrier compensation for non-local ISP bound vNXX calls. Discussing the FCC's brief, the Court stated:

> in establishing the new compensation scheme for ISP-bound calls, the Commission was considering only calls placed to ISPs located in the same local calling area as the caller.' According to the FCC, '[t]he Commission itself has not addressed application of the *ISP Remand Order* to ISP-bound calls outside a local calling area' or 'decided the implications of using VNXX numbers for intercarrier compensation more generally. (at page 74)

Given the lack of clarity about whether the ISP Remand Order preempts state regulation of access charges for non-local ISP-bound vNXX calls, the Court found that there was no broad preemption and the Massachusetts Department of Telecommunications and Energy ("DTE") was free to impose access charges for non-local calls to ISPs. Notably, in that case Verizon New England, Inc. supported the DTE's authority to act, arguing that the

FCC's ISP Remand Order preempted state commission regulation of only local traffic sent to an ISP and that the FCC did not hold that vNXX traffic is local traffic.

Q. Has this Commission previously addressed the issue of compensation for vNXX traffic?

A. Yes. In its decision in the Generic Reciprocal Compensation proceeding, the Commission has held that the location of the calling and called parties determines the compensation for non-ISP calls. See, Order No. PSC-02-1248-FOF-TP in Docket No. 000075-TP And, in a subsequent arbitration involving Embarq's predecessor company, Sprint-Florida, Incorporated and FDN Communications, the Commission held that "VNXX traffic should be subject to long distance access charges based upon the end points of the calls..." See, Order No. PSC-06-0027-FOF-TP in Docket No. 041464-TP

Q. What is the correct resolution for Issue 1?

A. Embarq should be compensated at originating access for all non-local, vNXX traffic originated by Embarq and terminated to Verizon Access. Embarq believes its contract language should be adopted:

> 55.4 Calls terminated to end users physically located outside the local calling area in which their NPA/NXXs are homed (Virtual NXXs), are not local calls for purposes of intercarrier compensation and access charges shall apply. For Embarq-originated traffic terminated to CLEC's Virtual NXXs, Embarq shall not be obligated to pay reciprocal compensation, including any shared interconnection facility costs, for such traffic.

Q. Please explain Issue 4.

A. Issue 4 relates to the exchange of indirect traffic between Embarq and Verizon Access. Indirect traffic is traffic that is exchanged between Embarq and other parties via another ILEC's tandem. While many ILECs refuse to interconnect on an indirect basis (and have sound legal arguments for doing so), Embarq has established a compromise arrangement to exchange a small amount of traffic indirectly with Verizon Access where Embarq's end office subtends another ILEC's tandem. Once the cumulative traffic volumes between the Embarq end office and Verizon Access reach a DS1 level, Verizon Access has agreed to establish a direct connection with Embarq's end office. See, Section 61.1.5 of the agreement. However, where Embarq has contractually agreed to exchange small volumes of indirect traffic with carriers, Embarq is finding that carriers (particularly CLECs who terminate large volumes of ISP-bound traffic) are extremely slow to establish the direct connection with Embarq's network once the volume trigger is met. As a result, Embarq, as the originating carrier, is liable for potential transit charges from the tandem owner. In an effort to provide the appropriate incentive for Verizon Access to establish the direct interconnection in a timely manner, Embarq has proposed the disputed language.

Q. Why should Verizon Access compensate Embarq if Verizon Access does not implement a direct connection in a timely manner as required by the agreement?

A. When traffic is exchanged on an indirect basis, Embarq is potentially liable for transit charges from the tandem owner. Consequently, Embarq may pay twice for each minute of use it sends to Verizon Access. For qualifying traffic, Embarq will pay reciprocal

compensation to Verizon Access, in addition to making payments to the transit provider. Embarq's experience is that carriers need an incentive to establish the direct connection in a timely manner. Requiring Verizon Access to pay the applicable transit charges if it fails to do this is a legitimate financial incentive for Verizon Access to comply with the contract.

Q. What objections has Verizon Access raised to Embarq's proposed language?

A. Verizon Access has expressed its concern that 60 days is too short and that establishing the direct connection may take longer than 60 days due to circumstances beyond its control. Embarq believes this is a valid concern and has proposed language that is much more lenient, extending the time to 90 days, stating that Embarq *may* require Verizon Access to pay transit expense, and allowing for circumstances beyond either party's control. The proposed language is:

> 61.2.4. Until indirect traffic exceeds a DS1, each originating Party is responsible for the payment of transit charges assessed on the originating Party by the transiting Party. After Indirect traffic exceeds a DS1, if CLEC has not established direct end office trunking **ninety** ~~sixty~~ days after reaching a DS1 level as described in section 61.1.5, **Embarq may require** CLEC **to** ~~will~~ reimburse Embarq for any transit charges billed by an intermediary carrier for Local Traffic or ISP-bound Traffic originated by Embarq. **If the time to establish direct interconnection exceeds 90 days due to the**

fault of Embarq, e.g., lack of facilities, certain equipment requirements, problems with an order, etc., the Parties will extend the 90-day deadline for an appropriate period and Embarq will not require reimbursement for any related transit charges during this time.

This language ensures that Verizon Access is making a legitimate effort to establish the agreed upon direct connection while allowing for circumstances that neither party could control.

Q. How long does it usually take to have direct connections in place when facilities are available?

A. Embarq can typically establish a direct connection in two weeks from the time Embarq receives an order from a CLEC. Where facilities do not exist and construction is required, or equipment ordered or extra engineering required, etc., the parties will negotiate a time frame for direct connections. Embarq's revised language allows for these situations. Verizon Access would not incur the transit costs **when delays are not its fault.**

Q. How should the Commission resolve Issue 4?

A. The Commission should adopt the reasonable alternative language that Embarq has proposed. This will also protect Embarq to the extent any other carriers may adopt this agreement.

Q. What is Issue number 5?

A. Issue number 5 concerns the compensation that should apply to transit traffic.

Q. Please describe the issue in greater detail.

A. At issue is the proper rate to be applied for transit traffic. The parties have agreed on the definition of the service and that Embarq will provide the service. The dispute between the parties is the specific rate. Embarq is proposing a commercial, market-based rate of $.005 per minute of use ("MOU"), but Verizon Access has argued that this rate is too high.

Q. Has the FCC established a rate for transit traffic?

A. No. In an arbitration proceeding involving Verizon (the ILEC) and WorldCom (the CLEC) in Virginia in which the FCC acted as the arbitrator, it declined to require the ILEC to provide transit service at TELRIC rates. See, Order No. DA 02-1731 in CC Docket No. 00-251. In that order, the FCC declined, "on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC." The FCC clearly said that they would not require Verizon (the ILEC) to provide transit at TELRIC even if transit were a required 251(a)(1) service. However, the FCC has not ruled that ILECs have a duty to provide the transiting function, and the FCC has not determined that a specific pricing standard should be set for that function. This

transit issue is one of the topics that the FCC is addressing in its pending intercarrier compensation docket (CC Docket No. 01-092).

Q. Has the Florida Commission ruled in this matter?

A. Yes. In its recent order relating to BellSouth's transit traffic obligations (Order No. PSC-06-0776-FOF-TP in Docket Nos. 050119-TP and 050125-TP) the FPSC determined that transit traffic was not a §251 requirement, stating that

> We agree that §251 contains no explicit obligation to provide transit service, but as the FCC has stated, the question is whether there is an implied obligation. Indeed, the FCC has acknowledged that this issue needs to be decided and has teed it up in the ICF FNPRM. (ICF FNPRM ¶128) This Commission need only acknowledge in this proceeding that §251(a) requires all telecommunications carriers to interconnect directly or indirectly, and that transit service has been expressly recognized by the FCC as a means to establish indirect interconnection. (ICF FNPRM ¶125). (at page 44)

Q. In the BellSouth docket did the Florida Commission establish a rate for transit service?

A. No. The Commission did not mandate a rate and determined that the rate should be negotiated between the parties.

Q. Have other Florida carriers agreed to Embarq's commercial rate of $.005?

A. Yes. There is substantial support for $.005 as a market-based rate. In Florida alone, 15 carriers have agreed to this rate. None of these carriers has felt the need to arbitrate or formally dispute this rate. These carriers include AT&T, Budget Phone, Fonix, LecStar, Level 3, SBC Long Distance, TCG, Volo, Brighthouse Networks, City of Gainesville, Comcast, Embarq Communications, Hotwire Communications, Navigator Telecommunications, and Televations.

Q. Are there other regional carriers with a transit traffic rate of $.005 or higher?

A. Yes. BellSouth has an approved transit traffic rate of $.006 in its South Carolina tariff. (*General Subscriber Service Tariff*, First Revised page 1 and original Page 2, Sec. A.16.1 to A.16.1.3.) This supports Embarq's claim that its $.005 transit rate is not an anomaly, but that it is a reasonable commercial, market-based rate. In addition, Neutral Tandem (an independent tandem company whose purpose is to market its services to up-and-coming carriers to reduce their network costs and eliminate the need to rely on the ILEC) has filed tariffs in both Florida and Georgia that contain a transit rate of $.0046425 (assuming ten miles of T1 transport). This is very close to Embarq's proposed rate of $.005 and supports Embarq's position that this rate is not unreasonable, that there are other parties offering this same service at or very near this rate, and that it is, therefore, a commercial, market-based rate.

Q. Has Verizon Access stated that a market-based transit rate should not apply?

A. No. Verizon Access's position is that Embarq's transit rate should be "reasonable". Embarq has demonstrated that the proposed $.005 market rate is reasonable and fair by

showing that numerous Florida carriers have agreed to this rate; by showing that this rate is within the range charged by other regional carriers; by showing that the FCC has not determined that transit is a required service under the federal Telecommunications Act; by showing that the FCC, by not established a pricing model for this service, is allowing parties to negotiate market-based rates for transit service; and by showing that the Florida Commission has determined that the transit rate may be a commercial rate.

Q. Does this conclude your testimony?

A. Yes.

INTRODUCTION

Q. Please state your name, title and business address.

A. My name is Edward (Ed) Fox. I am employed as a Regulatory Manager for Embarq Management Company, which provides management services to Embarq Florida, Inc. My business address is 5454 W. 110th Street, Overland Park, KS 66211.

Q. Are you the same Ed Fox who filed direct testimony in this proceeding on February 20, 2007?

A. Yes, I am.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide rebuttal to various points of Verizon Access's witness, Don Price, related to Issue #1 VNXX Compensation, Issue #4 Indirect Interconnection and Issue #5 Reasonable Transit Traffic Rates.

Issue #1 –VNXX COMPENSATION

Q. On page 8, lines 4-14, of Mr. Price's testimony, Verizon Access states that VNXX calls are considered local by CLECs. Does Embarq agree that VNXX calls are local?

A. No. That position is inconsistent with a recent Commission decision that affirmed that the end points of a call determine compensation. In the Embarq/FDN Arbitration decision, the Commission stated in pertinent part "Upon review and consideration of the parties' arguments and the record, VNXX traffic shall be subject to long distance access charges based on the end points of the calls..." ORDER NO. PSC-06-0027-FOF-TP at page 38.

Q. On page 10, Lines 13-16, Mr. Price refers to an industry trend in settling VNXX issues and on page 11, lines 6-24 he makes reference to numerous carriers that entered into agreements resolving this issue without regulatory intervention. Does Mr. Price provide meaningful facts or terms and conditions of these agreements that Embarq can use for guidelines to resolve this issue with Verizon Access?

A. No. Mr. Price provides no meaningful information other than that the parties achieved agreement. Anyone familiar with the contract negotiating process knows that there are many points of negotiations and frequent trade-offs on specific issues, such as getting terms and conditions you may like in one area and compromising in others. The overarching goal in negotiating is to reach an agreement that is amenable to each party's business objectives. Verizon Access has provided nothing substantive regarding the negotiating points between these other carriers that allow Embarq to judge the merits of accepting Verizon Access's compromise solution on this issue.

Q. Is Verizon's willingness to provide transport (page 10, Lines 18-25 and page 11, lines 1-4) in order to receive compensation for VNXX traffic a reasonable exchange for Embarq's agreement to treat this traffic as local?

A. No. Verizon must interconnect with Embarq anyway if it wants to receive Embarq's traffic. In Section 54.2.1 of the interconnection agreement Verizon already has agreed to "establish a minimum of 1 (one) POI within each LATA, at any technically feasible point, on Embarq's network for telecommunications traffic." In Section 54.2.1.1 of the ICA Verizon Access has agreed to "establish a direct end office trunk at an Embarq end office when total traffic volumes exchanged between that particular Embarq end office and CLEC exceeds a DS 1 equivalent;" Verizon Access admits that the vast majority of its VNXX traffic is ISP-bound traffic originated by Embarq and terminated to Verizon Access (Price Direct Testimony at page 9, lines 10-16). The nature of the traffic means that under Verizon Access's proposal, assuming a POI at each tandem area where it assigns telephone numbers, Embarq will be required to pay Verizon Access for all of the VNXX traffic exchanged between the parties. Verizon Access's offer to pay the costs of providing transport is entirely self-serving and in no way fairly compensates Embarq for the lost access revenues it is due for this traffic under long-established regulatory principles. Embarq's proposed language is consistent with FCC and Florida Commission precedent regarding the jurisdiction of VNXX calls and should be adopted.

Issue #4 INDIRECT INTERCONNECTION

Q. On page 21, lines 13-17, Verizon Access has expressed concern over the legality of Embarq's proposal to assess another carrier a charge for traffic that has originated on Embarq's network for failing to establish a direct interconnection in light of the FCC rule 47CFR 51.703(b). Does Embarq believe this is a legitimate concern?

A. While I am not an attorney, I do not believe Verizon Access's concerns have merit. Any expense that Verizon would incur under the terms and conditions of Embarq's proposed language would be due solely to Verizon's failure to comply with the terms of the ICA.

Q. On pages 21-22, Verizon Access expresses concerns that factors beyond its control will prevent it from establishing a direct connection in a timely manner, so that the transit costs proposed by Embarq will be applied unfairly. Does Embarq think Verizon Access's concerns are legitimate?

A. It is not Embarq's intent that Verizon Access be responsible for transit costs due to circumstances beyond its control. In that vein, Embarq has offered alternate language to Verizon Access to address these concerns. I describe this proposed language on pages 11 – 12 of my direct testimony.

Q. **On Page 21, lines 11-17 of Mr. Price's testimony, Verizon Access voices concern over the possibility that one high month of traffic could be an anomaly. Does Embarq agree?**

A. Embarq is amenable to address Verizon Access's concerns by establishing a longer period of time, such as an agreed upon number of consecutive months or so many months within a six month period, for determining whether the levels of Verizon Access's traffic justify a direct interconnection. It is Embarq's intent to give Verizon Access realistic benchmarks before it must establish a direct connection, while at the same time giving Verizon a financial incentive to act in accordance with the terms of the ICA.

Q. What is the harm to Embarq if Verizon Access fails to establish a direct connection as required by the interconnection agreement?

A. There is no dispute that Embarq suffers financial damage when Verizon Access fails to establish a direct connection. In Florida, the majority of traffic exchanged indirectly between the parties is originated by Embarq for termination to Verizon Access. When the parties have an indirect interconnection and Embarq is the originating carrier, Embarq is liable to pay transit charges to the owner of the tandem switch through which the parties indirectly connect. This charge is in addition to the intercarrier compensation payments Embarq must make to Verizon Access for terminating Embarq's originating traffic. When a direct connection is established, Embarq no longer incurs the transiting costs.

Q. Why does Verizon need a financial incentive to comply with the interconnection agreement?

A. Without Embarq's proposed language, Verizon Access has very little incentive to timely establish the direct interconnection required by the ICA when traffic originates from Embarq. When traffic flows from Embarq to Verizon Access, Embarq incurs the transit charges. Because in these circumstances Embarq, not Verizon Access, suffers when Verizon Access fails to establish a direct connection, it is appropriate that the ICA contain a specific financial incentive to encourage Verizon to meet its contractual obligation.

Q. Does Embarq agree with Mr. Price's suggestion that disputes regarding Verizon Access's compliance with the direct connection requirements can be handled through the dispute resolution provisions of the agreement?

A. Embarq's proposed language providing a financial incentive for Verizon Access to establish direct interconnection in accordance with the interconnection agreement is supplemental to, rather than in lieu of, the dispute resolution provisions. Embarq may still need to rely on the dispute resolution provisions to enforce the financial incentive, should Verizon Access dispute that it has violated the interconnection agreement such that it is required to pay Embarq's originating transit charges. Embarq's proposed language simply provides a specific enforcement mechanism for Verizon Access's noncompliance. Embarq's proposed language is reasonable and appropriate and should be adopted.

Issue #5 REASONABLE TRANSIT TRAFFIC RATES

Q. On page 24 Lines 7-9, Mr. Price suggests that Embarq use its Commission approved rate of $.002867 (the sum of Embarq's common transport and tandem switching rate elements for reciprocal compensation) for transit traffic. Is this proposal consistent with prior Commission and Commission Staff direction on the appropriate rate for transit service?

A. No. As I stated in my direct testimony, the Florida Commission in its recent order relating to BellSouth's transit traffic obligations (Order No. PSC-06-0776-FOF-TP in Docket Nos. 050119-TP and 050125-TP) determined that transit traffic is not a Section 251 requirement. Therefore, it is not appropriate that the rates for transit service provided by Embarq be tied to its section 251 reciprocal compensation rates. Embarq believes that the rate for transit traffic should be market based and has proposed a reasonable rate of $.005 per minute. Embarq's proposal is consistent with the principles reflected in the Commission Staff's August 17, 2006 recommendation in the *Transit Traffic* proceeding (Docket Nos. 050119-TP, 050125-TP) where staff's recommended upper bound of a "just and reasonable" rate equated to a multiple of 2.6 times BellSouth's Commission-approved rate elements (at page 66). The staff's recommendation in the *Transit Traffic* proceeding was founded on the Commission's order in an arbitration between BellSouth and several CLECs, in which the Commission approved in concept BellSouth's proposal to apply a TIC charge. (See, *In re: Joint petition by NewSouth Communications Corp. et.al. for arbitration of certain issues arising in*

negotiation of an interconnection agreement with BellSouth Telecommunications, Inc. Order No. PSC-05-0975-FOF-TP at page 53) Embarq's proposed rate of $.005 reflects a considerably smaller multiple (approximately 1.75) of its Commission-approved rate than the rate suggested by staff and recognized by the Commission as an upper limit of a just and reasonable market-based rate for BellSouth. Accordingly, Embarq proposed rate of $.005 is a reasonable rate for transit traffic and should be approved by the Commission.

Q. Does this conclude your testimony?

A. Yes.

MR. TEITZMAN: And finally, Madam Chairman, we'd just like to go over some of the significant dates.

The transcript will be due on May 10th. Briefs are due on June 1st. The staff recommendation is currently scheduled for July 19th, and that will be for the July 31st agenda.

CHAIRMAN EDGAR: Thank you. Are there any questions, comments for the good of the order or the record?

MR. MAY: No, ma'am.

MS. MASTERTON: No.

CHAIRMAN EDGAR: No. Commissioners? Staff?

MR. TEITZMAN: None.

CHAIRMAN EDGAR: None. All right. Well, then once again, thank you to our staff and thank you to the parties for working together to get us to this point. And with that, we are adjourned.

(Proceeding adjourned at 9:45 a.m.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 4th day of May, 2007.

Linda Boles

LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734

DOCKET NO.: 060767-TP

EXHIBIT NO. 1

WITNESS: STIP-1
PARTY: Staff

DESCRIPTION: Comprehensive Exhibit List (Page 1 of 2)

EXHIBIT #	WITNESS	ID	DESCRIPTION	IN? (Due Date if EXH is Late Filed)
			Exhibits	
1	n/a	STIP-1	Comprehensive Exhibit List	
Staff				
2	n/a	STIP-2	Composite of Responses to Staff's Interrogatories from Verizon a. Item Nos. 1-9 of Verizon's Responses to Staff First Set of Interrogatories. b. Item Nos. 11-14, 20-21, and 26 of Verizon's Responses to Staff Second Set of Interrogatories (10-26). Nos. 10, 15-19, and 22-25 are not being included into the record – issues resolved.	
3	n/a	STIP-3	Composite of Responses to Staff's Interrogatories from Embarq a. Item Nos. 8-12 of Embarq's Responses to Staff First Set of Interrogatories, (1-12). Nos. 1-7 are not being included into the record – issues resolved. b. Item Nos. 14, 15, 27-31, 33-37, Redacted version of 38, and 39-40 of Embarq's Responses to Staff Second Set of Interrogatories (13-41). Nos. 13, 16-26, 32, and 41 are not being included into the record – issues resolved.	
4	n/a	STIP-4	**PROPRIETARY EXHIBIT** - Embarq's Response to Interrogatory No. 38.	
5	n/a	STIP-5	Composite of Responses to Staff's Request for Production of Documents from Verizon a. Item Nos. 1-6 of Verizon's Responses to Staff First Request for Production of Documents. b. Item Nos. 7-8 of Verizon's Responses to Staff Second Request for Production of Documents.	

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 1
Company/ PSC Staff
Witness: Stip-1, Comprehensive Ex. List
Date: 05/03/07

EXHIBIT #	WITNESS	PREVIOUS ID	DESCRIPTION	IN? (Due Date if EXH is Late Filed)
6	n/a	STIP-6	Composite of Responses to Staff's Request for Production of Documents from Embarq a. Item Nos. 8-11 of Embarq's Responses to Staff First Request for Production of Documents (1-11). Nos. 1-7 are not being included into the record – issues resolved. b. Item Nos. 12-14 of Embarq's Responses to Staff Second Request for Production of Documents.	
7	n/a	STIP-7	Don Price Deposition Transcript and 3 Late Filed Exhibits a. Reference to Generic Reciprocal Compensation Order b. Existing Transit Rate in the Parties Contract c. Transcript of Hearing in Ohio Case No. 06-1485-TP-ARB	
8	n/a	STIP-8	Edward Fox Deposition Transcript and 2 Late Filed Exhibits a. Embarq 2006 Transit Traffic of Carriers with $.005 Rate b. FPSC Staff Recommendation dated August 17, 2006, from Docket Nos. 050119-TP/050125-TP.	
Verizon Access				
9	n/a	STIP-9	Item Nos. 1-2 of Embarq's Responses to the First Set of Interrogatories (1-3) from Verizon Access. No. 3 is not being included into the record – issues resolved.	
10	n/a	STIP-10	Item Nos. 1-4 of Embarq's Responses to First Requests for Production of Documents from Verizon Access.	
11	Don Price	DP-1	Local Call Example: ILEC to CLEC	
12	Don Price	DP-2	VNXX Call Example: ILEC to CLEC	
Embarq				
13	n/a	STIP-13	Item Nos. 11-17 of Verizon Access' Responses to the First Set of Interrogatories (1-17) from Embarq. Nos. 1-10 are not being included into the record – issues resolved.	
Other Exhibits				
14	n/a	STIP-14	Stipulated Testimony List a. Amended Direct and Amended Rebuttal Testimony of Don Price on behalf of Verizon Access b. Direct and Rebuttal Testimony of Edward B. Fox on behalf of Embarq	

EXHIBIT NO. 2

DOCKET NO.: 060767-TP

WITNESS: STIP-2

PARTY: Staff

DESCRIPTION: Composite of Verizon's Responses to Staff's Interrogatories:

1. Item Nos. 1-9 of Verizon's Responses to Staff 1st Set of Interrogatories.

2. Item Nos. 11-14, 20-21, and 26 of Verizon's Responses to Staff Second Set of Interrogatories (10-26). Nos. 10, 15-19, and 22-25 are not being included into the record – issues resolved.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 2
Company/ FPSC Staff
Witness: Stip-2
Date: 05/03/07

PROFFERING PARTY: Staff

I.D. # STIP-2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	Docket No. 060767-TP

VERIZON ACCESS TRANSMISSION SERVICES' OBJECTIONS AND RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-9)

Verizon Access Transmission Services ("Verizon Access") provides its objections and responses to the First Set of Interrogatories (Nos. 1-9) served by the Florida Public Service Commission Staff ("Staff").

Interrogatory No.	Responses provided by:
1, 2, 3, 4, 5, 7, 8, 9	Don Price – Director, State Regulatory Policy
6	Kathy Jespersen – Manager, Project/Program Mgt

GENERAL OBJECTIONS

1. Verizon Access objects to Staff's discovery requests and all instructions and definitions associated with those discovery requests to the extent they purport to impose obligations that are different from, or go beyond, the obligations imposed under Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and the Rules of the Florida Public Service Commission ("Commission").

2. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek information outside the scope of the issues raised in this proceeding, and to the extent their principal purpose appears to be to harass Verizon Access and unnecessarily impose costs on Verizon Access.

3. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, attorney work-product doctrine, or other applicable privileges or doctrines.

4. Verizon Access objects to each discovery request to the extent that it is vague and ambiguous, particularly to the extent that it uses terms that are undefined or vaguely defined in the discovery requests.

5. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Verizon Access further objects to the discovery requests to the extent they seek documents or information protected by the privacy protections of the Florida or United States Constitutions, or any other law, statute, or doctrine.

6. Verizon Access objects to the discovery requests to the extent they seek documents or information equally available to Staff as to Verizon Access through public sources or which is already in the possession, custody or control of the Commission, because such requests subject Verizon Access to unreasonable and undue burden and expense.

7. To the extent Verizon Access responds to Staff's discovery requests, Verizon Access reserves the right to amend, replace, supersede, and/or supplement its

responses as may become appropriate in the future. However, it undertakes no continuing or ongoing obligation to update its responses.

8. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent that they seek to impose an obligation on Verizon Access to respond on behalf of subsidiaries, affiliates, or other persons that are not subject to the jurisdiction of this Commission.

9. Verizon Access has interpreted the discovery requests to apply to its regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any discovery requests or any instructions and definitions associated with those discovery requests are intended to apply to matters outside Florida and which are not related to Florida intrastate operations subject to this Commission's jurisdiction, Verizon Access objects to such discovery requests as irrelevant, overly broad, unduly burdensome, and oppressive.

10. Verizon Access objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding.

11. Verizon Access objects to the discovery requests to the extent they are duplicative and overlapping, cumulative of one another, overly broad, and/or seek responses in a manner that is unduly burdensome, expensive, oppressive, or excessively time-consuming for Verizon Access.

12. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to obtain "all," "each," or "every" document, item, customer, or such other piece of information

because such discovery is overly broad and unduly burdensome. Any answers that Verizon Access provides in response to the discovery requests will be provided subject to, and without waiver of, this objection.

13. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to require Verizon Access to create documents not in existence at the time of the discovery requests because such discovery is overly broad and unduly burdensome.

14. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they are not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of this proceeding, as such discovery is overly broad and unduly burdensome.

15. Verizon Access objects to the disclosure of confidential or proprietary information or trade secrets prior to entry of a protective order restricting disclosure of such information in a manner to be agreed upon by the parties. Verizon Access further objects to the disclosure of confidential or proprietary information of third-parties which Verizon Access is required to maintain as confidential pursuant to agreements with such parties and/or pursuant to statute, administrative decree, or court order.

16. Verizon Access objects to the definition of "document" to the extent it seeks to impose an obligation that is greater than that imposed by Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and to the extent that it would pose an unreasonable and undue annoyance, burden, and expense on Verizon Access. Verizon Access' objection includes, but is not limited to, the definition of "document" to the extent it includes network transmissions, switch data, or other electronic routing

information which was not generated in the form of a written or printed record, on the grounds that it would be unduly burdensome and expensive to require Verizon Access to search through computer records or other means of electronic or magnetic data storage or compilation.

INTERROGATORIES

The following responses relate to Verizon Access witness Don Price's direct testimony.

1. Referring to page 8, lines 4-5 and page 8, line 25 through page 9, line 2, and the call illustrated in Exhibit DP-1, would Embarq pay reciprocal compensation to Verizon Access for terminating this call? Please explain your answer.

   RESPONSE:

   Yes. For the call illustrated on Exhibit DP-1 (where the Verizon Access and Embarq customers are in the same exchange), both the traditional ILEC and CLEC perspectives on compensation would require Embarq to pay reciprocal compensation to Verizon Access for terminating the call to the Verizon Access customer. There is no dispute between the parties about the intercarrier compensation that applies to such calls that originate and terminate within the same exchange.

2. Referring to page 8, lines 4-5 and page 8, line 25 through page 9, line 2, and the call illustrated in Exhibit DP-2, does Verizon Access believe that Embarq should pay reciprocal compensation to Verizon Access for terminating this call? Please explain your answer.

   RESPONSE:

   No. For the call illustrated on Exhibit DP-2 (that is, where the Verizon Access and Embarq customers are in different exchanges) Verizon Access proposes intercarrier compensation that is much lower than the agreed-upon reciprocal compensation rates, and such compensation would be conditioned upon Verizon Access's build-out of its network to each Embarq access tandem area.

   As witness Price explained in his Direct Testimony, Verizon Access's compromise approach rests on a trade-off under which the CLEC receives some compensation for handling vNXX calls originated by the ILEC, in exchange for the CLEC's commitment to accept greater responsibility for transporting the

traffic from the ILEC's originating end office. Specifically, if the parties have at least one point of interconnection ("POI") for exchange of traffic in each Embarq tandem serving area where Verizon Access assigns telephone numbers to its customers, the compensation rate for dial-Internet vNXX traffic would be $0.0007 per minute of use (the same as the FCC's default rate for Internet service provider ("ISP")-bound traffic that an originating carrier hands off to another carrier for delivery to an ISP in that same local calling area). This measure of compensation is several times lower than the reciprocal compensation rates the parties agreed to in the new ICA. *See* Verizon Access's Petition for Arbitration, Pricing Attachment ("Reciprocal Compensation Rates") (pricing local end office switching at $0.002221 per minute of use ("MOU"); local tandem switching at $0.002053 per MOU; and local shared transport at $0.000814 per MOU).

In LATAs where the parties do not have a POI in each of Embarq's tandem serving areas, vNXX traffic (voice, as well as ISP-bound) would be exchanged on a bill-and-keep basis under Verizon Access's proposal.

Please see section 55.4 of Verizon Access's proposed ICA (filed with its Arbitration Petition) and the decision point list ("DPL") (also filed with the Petition for Arbitration) for the contract language embodying Verizon Access's vNXX compensation proposal.

Verizon Access is proposing in this arbitration the same vNXX compensation arrangement that it and BellSouth recently negotiated, and the Commission approved, for the Verizon Access/BellSouth ICA here, and that same arrangement applies in all other BellSouth states. Verizon Access (and other CLECs) have negotiated and implemented such region-wide agreements with a number of other carriers, including SBC (prior to the January 2005 announcement of SBC's merger with AT&T) and with the Verizon ILECs (before the February 2005 announcement of the Verizon/MCI merger). In Florida, the Verizon ILEC has, likewise, implemented similar intercarrier compensation agreements with numerous carriers, including AT&T Communications of the Southern States Inc. (before its merger with SBC), KMC Data LLC, Level 3 Communications, TelCove Investment, LLC, CommPartners, LLC, Vycera Communications, Inc., AmeriMex Communications Corp., Ganoco, Inc., Bright House Networks Information Services, LLC, Volo Communications of Florida, Inc., Neutral Tandem-Florida, LCC, SBC Long Distance, and Sprint Communications Company Limited Partnership. As Mr. Price explained in his Direct Testimony, these multi-state agreements avoid the uncertainty of disparate, state-specific outcomes that may result from litigation; they eliminate billing and invoicing problems for multi-state carriers; and they allow parties to appropriately weigh their own business interests.

3. Referring to page 9, lines 10-13, what percentage of the VNNX traffic originated by Embarq and terminated by Verizon Access is dial-up Internet traffic? Please identify the source of your response.

RESPONSE:

Verizon Access objects to this question, because it is ambiguous in that it does not specify a timeframe. Without waiving this objection, however, Verizon Access responds that, based on Mr. Price's knowledge of Verizon Access's products and networks, and his ongoing communications with various company personnel, the percentage of VNXX traffic that Embarq originates and Verizon Access terminates likely approaches 100% in any given month.

4. Referring to page 9, line 23 through page 10, line 3, please provide citations to where the FCC "has expressed its intention" to decide compensation for VNXX calls in its April 27, 2001 NPRM and March 3, 2005 FNPRM.

RESPONSE:

The FCC intends to address all regulated forms of intercarrier compensation in its ongoing Unified Intercarrier Compensation Docket, CC Docket No. 01-92. *See generally Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC Release No. 01-132, 16 FCC Rcd 9610 (2001) ("NPRM") and Further Notice of Proposed Rulemaking, FCC Release No. 05-33, 20 FCC Rcd 4685 (2005) ("FNPRM").

With specific regard to VNXX compensation, the NPRM, for example, stated (at ¶ 115):

> "We seek comment on the use of virtual central office codes (NXXs) and their effect on the reciprocal compensation and transport obligations of interconnected LECs....we seek comment on the following issues: (1) Under what circumstances should a LEC be entitled to use virtual NXX codes? (2) If LECs are permitted to use virtual NXX codes, what is the transport obligation of the originating LEC? (3) Should the LEC employing the virtual NXX code be required to provide transport from the central offices associated with those NXX codes?

In addition, the FCC intends to address "the compensation regime for all types of traffic, including ISP-bound traffic" in the Unified Intercarrier Compensation rulemaking *(see, e.g.*, FNPRM, ¶ 15 n. 48), and most VNXX traffic is ISP-bound.

The links to the FCC's NPRM and FNPRM, respectively, are:

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-132A1.pdf and
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-33A1.pdf

5. Please refer to page 10, lines 11-13 for the following questions:

   a. Please define "market-based solution" in the context of VNXX compensation.

RESPONSE:

A market-based solution in the context of VNXX compensation is a compensation arrangement negotiated by carriers, rather than formulated by a regulator.

   b. Does Verizon Access believe its proposal with regard to VNXX compensation is "market-based?" Please explain your answer.

RESPONSE:

Yes. As Mr. Price explained in his Direct Testimony, Verizon Access's VNXX compensation proposal adopts neither the traditional CLEC nor ILEC position with respect to this issue. It is, instead, the type of compromise that carriers, including BellSouth and others (see response to Interrogatory 2, above) have negotiated. The fact that sophisticated carriers with adverse interests have been able to implement the same kind of solution to the problem of VNXX compensation is compelling evidence that it appropriately balances CLEC and ILEC interests. Although Embarq, unlike other major carriers, has not yet agreed to this approach, Verizon Access recommends that the Commission adopt it as an interim resolution of the VNXX compensation issue until it is definitively settled by the FCC.

One of the advantages of Verizon Access's proposal is that it is not linked to specific legal definitions, so it avoids the usual debates about the nature of VNXX traffic. It simply applies a specified level of compensation (not reciprocal compensation) to VNXX traffic if certain conditions are met. Such a market-based solution moves away from the polarized win-lose paradigm of regulatory decision making and obviates the need to resolve the thorny regulatory issues that have caused so much litigation in recent years.

6. Referring to page 11, lines 6-20, does Verizon Access have any agreements with Embarq in other states where "the CLEC receives compensation for handling VNXX calls originated by the ILEC, in exchange for the CLEC's commitment to accept greater responsibility for transporting the traffic from the ILEC's originating end office?" If so, in which states and what is the specific agreement language?

RESPONSE:

No, it has no such agreements with Embarq, but, as noted in response to Interrogatory 2 above, Verizon Access has a number of agreements of this type with other carriers.

7. What is the difference between calling party number (CPN) and automatic number identification (ANI)? Include in the explanation a description of how CPN and ANI are used for customer billing and for terminating traffic compensation at issue in this proceeding. Please identify sources used in response.

RESPONSE:

The term "ANI" (Automatic Number Identification) is a relatively old term that predates the widespread use of out-of-band signaling (*i.e.*, "Signaling System 7" or "SS7") networks by telephone companies. The older, in-band signaling is rarely used in the major carriers' networks. In such cases, the term ANI is specific to the telephone number to which a call is to be charged, which in the case of PBX or Centrex systems, is typically the master billing number associated with a customer's account rather than the number of the station placing the call. Because of its historic origins, the term ANI is sometimes used generically to refer to the originating telephone number of the calling party that is signaled to the other carrier(s) involved in completing the call.

The term "CPN" (Calling Party Number) refers to one of several defined parameters or fields in the SS7 (out-of-band) call setup message. The term CPN refers to the actual telephone number placing the call, whereas a separate SS7 field, ChargeNumber, is the telephone number to which a call is to be charged. Thus, ChargeNumber is the SS7 equivalent of ANI. In the case of a single-line customer, the two values should be the same. In the case of an enterprise (large business) customer, CPN typically would be the 'station' placing the call, while the ChargeNumber would be the master billing number for the customer's account.

Verizon Access's network utilizes only SS7 out-of-band signaling, and its billing processes rely on its terminating switch recordings. Those processes first look to the CPN field for jurisdictional information, and if that field does not provide usable information, Verizon Access then looks at the value in the ChargeNumber field.

8. Please refer to page 17, lines 18-21 for the following questions:

a. Define "technically feasible." Please identify sources used in response.

RESPONSE:

By "technically feasible," Mr. Price intended to indicate those circumstances where the generation and passing of CPN is consistent with the capabilities of the customer's or carrier's equipment. Because CPN is a component of SS7 signaling, as noted in response to Interrogatory 7 above, there are circumstances where those capabilities do not exist, and in such circumstances it would not be

"technically feasible" for CPN to be generated or passed to downstream carriers. For example, if an end user customer's premises equipment is an older PBX, it may not have the capability to generate CPN. Also, if a special access circuit is used to connect the customer's PBX to its interexchange carrier, the circuit may not support SS7 signaling parameters and the CPN could not be passed to downstream carriers. In addition, it may not be "technically feasible" to pass CPN on certain Internet-protocol ("IP")-enabled services, as some of those may involve calls originating from non-traditional equipment without an associated telephone number. To summarize, it is not technically feasible for a carrier to transmit information it does not have. So, if a carrier does not receive CPN upstream, it is not technically feasible for the carrier to transmit CPN downstream. To be clear, by use of the term "technically feasible," Mr. Price expressly was *not* referring to instances where a carrier intentionally suppresses, removes, or alters CPN to disguise the actual jurisdiction of traffic passed to other carriers.

b. Please provide an exhaustive list of the reasons why CPN might not be transmitted even though it is technically feasible.

RESPONSE:

To the best of Verizon Access's knowledge, all of its switches are able to transmit SS7 call set-up messages containing CPN. In other words, in cases where the call originates on Verizon Access's network, and in those cases where Verizon Access receives CPN with a call originated on another carrier's network, it should always be technically feasible to transmit that CPN to another carrier. Consistent with the agreed-upon language in § 55.7.1 of the interconnection agreement, a party would not transmit CPN only where it was not technically feasible to do so (*i.e.*, where a party had not received CPN).

c. How does Verizon Access determine whether or not transmission of CPN was technically feasible? Please identify sources used in response.

RESPONSE:

Verizon Access has a strict policy forbidding the suppression, removal, or alteration of CPN for any traffic originating on or passing through its network. In other words, Verizon Access has no discretionary process to determine whether or not CPN will be transmitted; rather, if Verizon Access receives CPN, it is technically feasible to pass it to another carrier, and it will be transmitted.

9. Does Verizon Access expect the percentage of calls without CPN to change 1) regardless of the Commission's decision on this issue or 2) as a result of the Commission's decision on this issue? Please explain your answer and identify sources used in response.

RESPONSE:

The percentage is likely to change, regardless of the Commission's decision on this issue, because of continuing technological and market changes – in particular, the increase in the number of IP-enabled devices and related service improvements that enable such devices to interface with the public switched telephone network ("PSTN"). The proportion of "non-traditional" devices – that is, devices that are not "telephones" and may not be assigned telephone numbers, but that will nonetheless be capable of placing calls to or receiving calls from the PSTN – will almost certainly increase.

The inexorable move toward greater use of IP-based devices and arrangements underscores the reasonableness of Verizon Access's position on this issue. If Verizon Access does not receive CPN on a call, it is not technically feasible for Verizon Access to pass CPN to Embarq, and Verizon Access should not be penalized in such instances.

VERIFICATION

STATE OF FLORIDA)
) ss.
COUNTY OF HILLSBOROUGH)

BEFORE ME, the undersigned authority, personally appeared Frank App, who deposed and stated that the answers to the First Set of Interrogatories (Nos. 1-9) served on Verizon Access Transmission Services by Florida Public Service Commission Staff in Docket No. 060767-TP were prepared at his request and he is informed that the responses contained therein are true and correct to the best of his information and belief.

DATED at Tampa, Florida, this 15th day of March, 2007.

Frank App

Frank App

Sworn to and subscribed before me this 15th day of March, 2007.

Teresa Ann Scobie

Notary Public
State of Florida

My Commission Expires:

TERESA ANN SCOBIE
MY COMMISSION # DD 566618
EXPIRES: October 21, 2010
Bonded Thru Notary Public Underwriters

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

013

In re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	Docket No. 060767-TP

VERIZON ACCESS TRANSMISSION SERVICES' OBJECTIONS AND RESPONSES TO STAFF'S SECOND SET OF INTERROGATORIES (NOS. 10-26)

Verizon Access Transmission Services ("Verizon Access") provides its objections and responses to the Second Set of Interrogatories (Nos. 10-26) served by the Florida Public Service Commission Staff ("Staff"). All responses were provided by Don Price, Director-State Regulatory.

GENERAL OBJECTIONS

1. Verizon Access objects to Staff's discovery requests and all instructions and definitions associated with those discovery requests to the extent they purport to impose obligations that are different from, or go beyond, the obligations imposed under Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and the Rules of the Florida Public Service Commission ("Commission").

2. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek information outside the scope of the issues raised in this proceeding, and to the extent their principal purpose appears to be to harass Verizon Access and unnecessarily impose costs on Verizon Access.

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COMPETITIVE SERVICES

3. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, attorney work-product doctrine, or other applicable privileges or doctrines.

4. Verizon Access objects to each discovery request to the extent that it is vague and ambiguous, particularly to the extent that it uses terms that are undefined or vaguely defined in the discovery requests.

5. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Verizon Access further objects to the discovery requests to the extent they seek documents or information protected by the privacy protections of the Florida or United States Constitutions, or any other law, statute, or doctrine.

6. Verizon Access objects to the discovery requests to the extent they seek documents or information equally available to Staff as to Verizon Access through public sources or which is already in the possession, custody or control of the Commission, because such requests subject Verizon Access to unreasonable and undue burden and expense.

7. To the extent Verizon Access responds to Staff's discovery requests, Verizon Access reserves the right to amend, replace, supersede, and/or supplement its

responses as may become appropriate in the future. However, it undertakes no continuing or ongoing obligation to update its responses.

8. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent that they seek to impose an obligation on Verizon Access to respond on behalf of subsidiaries, affiliates, or other persons that are not subject to the jurisdiction of this Commission.

9. Verizon Access has interpreted the discovery requests to apply to its regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any discovery requests or any instructions and definitions associated with those discovery requests are intended to apply to matters outside Florida and which are not related to Florida intrastate operations subject to this Commission's jurisdiction, Verizon Access objects to such discovery requests as irrelevant, overly broad, unduly burdensome, and oppressive.

10. Verizon Access objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding.

11. Verizon Access objects to the discovery requests to the extent they are duplicative and overlapping, cumulative of one another, overly broad, and/or seek responses in a manner that is unduly burdensome, expensive, oppressive, or excessively time-consuming for Verizon Access.

12. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to obtain "all," "each," or "every" document, item, customer, or such other piece of information

because such discovery is overly broad and unduly burdensome. Any answers that 016
Verizon Access provides in response to the discovery requests will be provided subject to, and without waiver of, this objection.

13. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to require Verizon Access to create documents not in existence at the time of the discovery requests because such discovery is overly broad and unduly burdensome.

14. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they are not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of this proceeding, as such discovery is overly broad and unduly burdensome.

15. Verizon Access objects to the disclosure of confidential or proprietary information or trade secrets prior to entry of a protective order restricting disclosure of such information in a manner to be agreed upon by the parties. Verizon Access further objects to the disclosure of confidential or proprietary information of third-parties which Verizon Access is required to maintain as confidential pursuant to agreements with such parties and/or pursuant to statute, administrative decree, or court order.

16. Verizon Access objects to the definition of "document" to the extent it seeks to impose an obligation that is greater than that imposed by Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and to the extent that it would pose an unreasonable and undue annoyance, burden, and expense on Verizon Access. Verizon Access' objection includes, but is not limited to, the definition of "document" to the extent it includes network transmissions, switch data, or other electronic routing

information which was not generated in the form of a written or printed record, on the grounds that it would be unduly burdensome and expensive to require Verizon Access to search through computer records or other means of electronic or magnetic data storage or compilation.

INTERROGATORIES

11. Referring to witness Price's direct testimony, beginning on page 10, line 18, continuing through page 11, line 4, does Verizon Access have at least one point of interconnection (POI) for the exchange of traffic in each of Embarq's tandem serving areas in each of Embarq's Florida LATAs? If not, please list by LATA, the Embarq tandem serving areas where Verizon Access does not have a POI with Embarq.

RESPONSE:

Yes. Verizon Access is connected at Crestview, Fort Walton Beach, Ocala, Winter Park, Fort Myers, and Tallahassee. Orders have been placed for a direct connection in Avon Park.

CITY	LATA
Crestview	Pensacola
Fort Walton Beach	Pensacola
Ocala	Gainesville
Winter Park	Orlando
Fort Myers	Fort Myers
Tallahassee	Tallahassee
Avon Park	Fort Myers

12. In the rebuttal testimony of Embarq witness Fox at page 5, line 18, the witness asserts, in part, that "Embarq has offered alternate language to Verizon Access to address" its concerns.

a. Have all of Verizon Access' concerns been addressed with Embarq's most recent language proposal? If not, please identify the outstanding concern(s).

RESPONSE:

No. Mr. Price answered this question at pages 28-29 of his Rebuttal Testimony. Embarq's revised language would extend the period for establishment of direct trunks from 60 days to 90 days and would excuse Verizon from paying Embarq's transit charges if the delay in establishing direct trunks was Embarq's fault. However, Embarq's revisions do not address the situation where Verizon must order facilities from a third party, rather than Embarq. In those instances, the third party could be the cause of the delay, but Embarq's language would still require Verizon to pay Embarq's transit changes.

In addition, Embarq's most recent proposal does not address Verizon's concern that requiring Verizon to pay Embarq's transit charges could violate FCC rule 51.703(b), which states that "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." Embarq's proposal would allow Embarq to assess charges on Verizon for telecommunications traffic originating on Embarq's own network.

b. Of the outstanding concern(s) identified in response to subpart (a) above, please specify language that would resolve the indirect interconnection issue.

RESPONSE:

The very nature of Embarq's proposal—requiring Verizon to pay for traffic originating on Embarq's network—is potentially at odds with FCC Rule 51.703(b), so the indirect interconnection issue can only be resolved by deleting Embarq's proposed addition to section 61.2.4 that would require Verizon to reimburse Embarq's transit charges. Any legitimate concern that Embarq has with respect to timely establishment of direct trunks is already addressed in section 61.1.5, in which Verizon has agreed to establish direct trunks once indirect traffic reaches a DS1 level.

13. In the rebuttal testimony of Embarq witness Fox at page 6, lines 7-9, the witness asserts, in part, that "It is Embarq's intent to give Verizon Access realistic

benchmarks before it must establish a direct connection." Please identify what Verizon Access believes are "realistic benchmarks" for this purpose.

RESPONSE:

Verizon interprets "realistic benchmarks" in Mr. Fox's testimony to mean the trigger at which Verizon would be expected to establish direct trunks. The parties already have agreed to establish direct connections when a DS1 level trigger is met. *See* ICA § 61.1.5.

14. In the rebuttal testimony of Verizon Access witness Price from page 28, line 4 through page 29, line 2, the witness expresses concern about construction or engineering delays "caused by another carrier filling Verizon Access's transport order."

a. When "another carrier" fills a Verizon Access transport order, would Verizon Access and that carrier sign a contract or another formal document to codify the performance requirements of each party?

RESPONSE:

The documents that control provisioning of transport would vary from carrier to carrier. In some cases, Verizon Access may enter into a contract for the transaction. In other cases, it would be governed by a tariff or product guide. In any event, it is unlikely that Verizon Access would enter into a "one-off" contract for the particular transport order. Instead, the typical scenario is that the transaction would be controlled by generic contract language or a "master services agreement" between Verizon Access and that carrier. It is unlikely that there would be no formal documents.

b. If the response to subpart (a) above is positive, would terms of such a document:

i. Define or describe the scope of the work to be performed;
ii. Define or describe the acceptance criteria for the work to be performed;
iii. Define or describe the due date (timeline) for the work to be performed;
iv. Define or describe the consequences of nonperformance for either party?

RESPONSE:

As Verizon answered above, the relevant documents would vary from case to case, so the answer to subparts i. through iv. is that any such document might, but not necessarily would, cover one or more of the listed items. In the case of a tariff or product guide, Verizon Access would not have any control over the terms. In the case of a contract, the circumstances of the negotiation of the contract would influence what terms were included.

c. If the response to subpart (a) above is negative, please describe how Verizon Access initiates work with other entities to fill "transport orders."

RESPONSE:

No response is necessary, in light of Verizon's response to subpart (a).

20. Embarq witness Fox asserts in his direct testimony, page 15, lines 1-6, that 15 carriers in Florida have agreed to Embarq's $0.005 per MOU transit rate. Please explain specifically why this is not adequate support that Embarq's transit rate is reasonable and market-based.

RESPONSE:

Verizon does not know whether the transit rate Mr. Fox cites actually appears in the interconnection contracts of the carriers he names (one of which is an Embarq affiliate and a few of which are AT&T companies). Assuming the $0.005 transit rate does appear in the contracts, Verizon expects that not all of those contracts were negotiated, but that some or most were adoptions of other contracts. Frequently, a smaller carrier will adopt another carrier's contract—for example, AT&T's—instead of negotiating its own contract. Moreover, a carrier may accept a rate for a given service in an interconnection agreement, even if the carrier views the rate as excessive, if the carrier has no intention of buying that particular service. In any case, as Mr. Price pointed out in his rebuttal testimony, it is impossible for Verizon to know what compromises may have factored into any negotiation of the $0.005 rate, so it cannot be assumed that that rate, in isolation of other terms, is an appropriate market rate for Verizon's contract with Embarq. *See* price Rebuttal Testimony at 29-31. Verizon does, however, know that the rate it agreed to with BellSouth for Florida and elsewhere ($0.0015 in 2007, $0.0020 in 2008, and $0.0025 thereafter) was heavily negotiated, so it is compelling evidence of a true market rate. In addition, as discussed in Mr. Price's testimony and below, Verizon has offered more relevant reference points for reasonable transit rates than Embarq has offered. *See id.*

21. Please explain why witness Fox's statement that 15 carriers in Florida have agreed to Embarq's $0.005 transit rate should be considered not as compelling as Verizon Access's reference points detailed in witness Price's direct testimony, page 24, lines 16-25.

RESPONSE:

As Verizon pointed out in the previous response, Verizon does not know whether "15 carriers" "agreed to" the rate Mr. Fox cites. Even if the carriers he lists negotiated or adopted the $0.005 rate, that evidence is not as compelling as Verizon's, because Verizon has offered a more comprehensive and more relevant range of reference points for a reasonable transit rate between Embarq and Verizon than Mr. Fox has offered. Those reference points, discussed in Mr. Price's testimony, include the $0.002045 transit rate under the parties' existing contract; the analogous Embarq interstate rate of $0.002052; the sum of the common transport and tandem switching rate elements the Commission approved for Embarq (that is, $0.002876); the $0.002071 transit rate in the existing Verizon Florida Inc./Sprint interconnection agreement; and the above-

mentioned transit rates in Embarq's recently negotiated agreement with BellSouth in its states. Mr. Fox, in contrast, cites rates from other states, and it appears that at least one may be incorrect. *See* Price Rebuttal Testimony at 30.

26. In determining a market-based rate for transit service in this arbitration, what should the Commission consider?

RESPONSE:

Mr. Price has testified to the factors the Commission should consider (see Price Direct Testimony at 23-25; Price Rebuttal Testimony at 29-31). The Commission should set the transit rate by reference to the data points Verizon has offered, which are more comprehensive and more relevant than the reference points Embarq has offered. Please see Verizon's responses to questions 20 and 21, above.

VERIFICATION

STATE OF FLORIDA)
) ss.
COUNTY OF HILLSBOROUGH)

BEFORE ME, the undersigned authority, personally appeared Frank App, who deposed and stated that the answers to the Second Set of Interrogatories (Nos. 10-26) served on Verizon Access Transmission Services by Florida Public Service Commission Staff in Docket No. 060767-TP were prepared at his request and he is informed that the responses contained therein are true and correct to the best of his information and belief.

DATED at Tampa, Florida, this 20th day of April, 2007.

Frank App

Sworn to and subscribed before me this 20th day of April, 2007.

Teresa Ann Scobie
Notary Public
State of Florida

My Commission Expires:

TERESA ANN SCOBIE
MY COMMISSION # DD 566618
EXPIRES: October 21, 2010
Bonded Thru Notary Public Underwriters

EXHIBIT NO. 3

DOCKET NO.: 060767-TP

WITNESS: STIP-3

PARTY: Staff

DESCRIPTION: Composite of Responses to Staff's Interrogatories

1. Item Nos. 8-12 of Embarq's Responses to Staff First Set of Interrogatories, (1-12). Nos. 1-7 are not being included into the record – issues resolved.

2. Item Nos. 14, 15, 27-31, 33-37, redacted 38, and 39-40 of Embarq's Responses to Staff Second Set of Interrogatories (13-41). Nos. 13, 16-26, 32, and 41 are not being included into the record – issues resolved.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 3
Company/ FPSC Staff
Witness: Stip-3
Date: 05-03-07

PROFFERING PARTY: Staff

I.D. # STIP-3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	DOCKET NO. 060767-TP DATED: MARCH 20, 2007

EMBARQ'S OBJECTIONS AND RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-12) AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-11)

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340, 1.350, and 1.280(b), Florida Rules of Civil Procedure, by and through undersigned counsel, Embarq Florida, Incorporated (hereinafter "Embarq") hereby submits the following Objections and Responses to Staff's First Set of Interrogatories and First Request for Production of Documents, which were served on Embarq on February 28, 2007.

Interrogatory	Prepared by	Title
1-7	Edward "Ted" C. Hart	Sr. Mgr. Business Strategy & Policy Wholesale Markets
8-12	Edward B. Fox	Regulatory Manager

For the following questions, please refer to Embarq witness Edward B. Fox's direct testimony.

8. **Referring to page 4, lines 22-23, what percentage of the VNNX traffic originated by Embarq and terminated by Verizon Access is dial-up Internet traffic? Please identify the source of your response.**

Response: Embarq believes that 100% of VNXX traffic (or nearly 100%) originated by Embarq end users is dial-up ISP-bound traffic.

9. **Referring to page 5, lines 16-17, provide an exhaustive list of sources and citations, specifically including those from the FCC, the Florida Public Service Commission, and court cases that substantiate the assertion that the "historic end-to-end analysis confirms that calls traveling to points beyond the local calling area are not local for intercarrier compensation purposes."**

Response:

FCC:

- WC Docket No. 03-133; WC Docket No. 05-68. FCC 05-41 Released February 23, 2005. 20FCC Rcd4826 (2005).
- WC Docket No. 03-45; FCC 04-27, Released February 19, 2004. 19 FCC Rcd3307.
- DA 95-2288; Released November 3, 1995; 11FCC Rcd 1189. MO&O.
- DA 88-480; CC Docket No. 88-180; Released April 22, 1988; 3FCC Rcd 2339.
- FCC 95-28; Released February 14, 1995; 10 FCC Rcd 1626; MO&O.

Florida:

- DOCKET NO. 041464-TP; ORDER NO. PSC-06-0027-FOF-TP ISSUED: January 10, 2006
- DOCKET NO. 000075-TP (Phases II and IIA); ORDER NO. PSC-02-1248-FOF-TP, ISSUED: September 10, 2002

10. **Referring to page 5, lines 17-19, please provide the relevant tariff references.**

Response: Embarq's exchange rate group classifications and calling areas are detailed in Section A3, sheets 3 through 16. In addition, Embarq exchange maps are provided in the Supplement to Section 3.

11. **Referring to page 6, lines 10-11, for what percentage of the traffic between Embarq and Verizon Access is Verizon Access proposing that bill and keep be used? How many minutes does the percentage equate to? Please identify sources used in response.**

Response: Embarq has not determined the level of VNXX traffic that is subject to Bill and Keep according to Verizon's proposal. Typically the CLEC will provide Embarq a % of its traffic by wire center that is VNXX.

12. **Referring to page 7, lines 5-7, is it Embarq's position suggesting that Verizon Access is violating the number portability rule in the manner described in this section? Please explain your response and identify all sources used.**

Response: Embarq has no knowledge at this time that Verizon Access is or is not following the FCC's LNP rules. Even if Verizon is not violating the FCC rule, our position is valid because the end-points of the calls determine its jurisdiction for compensation purposes.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

005

In re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	DOCKET NO. 060767-TP DATED: APRIL 23, 2007

EMBARQ'S RESPONSES TO STAFF'S SECOND SET OF INTERROGATORIES (NOS. 13-41) AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 12-14)

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340, 1.350, and 1.280(b), Florida Rules of Civil Procedure, by and through undersigned counsel, Embarq Florida, Incorporated (hereinafter "Embarq") hereby submits the following Responses to Staff's Second Set of Interrogatories and Second Request for Production of Documents, which were served on Embarq on April 2, 2007.

Interrogatory	Prepared by	Title
14-15	Edward B. Fox	Regulatory Manager
27-31	Edward B. Fox	Regulatory Manager
33-40	Edward B. Fox	Regulatory Manager

14. For the following questions please refer to Embarq witness Fox's direct testimony, page 5, lines 14-21 and Verizon Access witness Price's direct testimony, Exhibits DP-1 and DP-2.

a. Is it Embarq's position that for the call described in Exhibit DP-1, Verizon Access would charge Embarq reciprocal compensation to terminate this call? Please explain your answer.

Response: Yes. The end points of the call determine the call's jurisdiction for compensation purposes. The call in DP-1 originates and terminates in the same exchange.

b. Is it Embarq's position that for the call described in Exhibit DP-2, Embarq would charge Verizon Access originating access? Please explain your answer.

Response: Yes, if the Verizon Access customer is physically located outside of the local calling area of the Embarq end user originating the call. The physical end points of the call determine the call's jurisdiction for compensation purposes.

c. Is it Embarq's position that for the call described in Exhibit DP-2, Verizon Access would charge Embarq terminating access? Please explain your answer.

Response: No. Embarq's position is that terminating access compensation is not applicable for VNXX-enabled traffic. Normally, an IXC is responsible for access payments to the originating and terminating carriers for traditional 1+ traffic. The use of a VNXX numbering scheme, however, allows Embarq's originating end user to make long distance call (based on physical end points) by dialing a local number. Therefore, this VNXX service creates a long distance, IXC-bypass arrangement where no traditional IXC is involved. Rather, the carrier utilizing the

VNXX numbering arrangement (Verizon Business) is acting as the IXC and is responsible for compensating the originating carrier (Embarq) for this non-local traffic. Given that Verizon Business is acting as both the IXC in this VNXX arrangement and is also the carrier terminating the call, no terminating access payments are applicable from Embarq. Verizon Business, acting as the IXC, would only be paying itself for terminating this non-local traffic.

15. In the rebuttal testimony of Embarq witness Fox at page 6, line 14, the witness asserts that Embarq "suffers financial damage" when Verizon Access fails to establish a direct connection for transit traffic.

a. Please identify the approximate dollar value of the "financial damage" Embarq suffered in the last fiscal year as a result of CLECs failing to establish direct connections for transit traffic.

Response: Embarq was able to track individual trunk usage data on specific carriers from March 2006 to present. For that time period to March 2007 Embarq has paid approximately $14,500 in Florida for transit charges due to carriers failing to establish a direct connection as agreed to in their Interconnection Agreements. While Embarq provides much of its own tandeming in the state of Florida and has, therefore, suffered less financial damages relative to other states, interLATA EAS situations in Florida create significant opportunities for future indirect traffic. Furthermore, Embarq has suffered significant financial damages (i.e. transit charges) in other states where Embarq end offices subtend a foreign ILEC tandem for local routing purposes. Simply put, CLECs who largely terminate one-way traffic, have zero incentive to establish the direct trunks because these carriers will never incur the transit charges from the tandem owner. Consequently, Embarq must have certainty in the interconnection agreement that direct trunks will be established with Embarq's network in a timely manner to avoid this unnecessary transit expense.

b. Of the value identified in response to subpart (a), please specify the proportion of the total attributable to Verizon Access.

Response: In the one month of traffic usage studied (January 2007), none of the Embarq end offices routed Verizon Access's level more than T1 level of indirect traffic. Specifically, 230,000 indirect MOUs were sent to Verizon Access through BellSouth and Embarq incurred transit costs of approximately $3,500 annually for Verizon Access's traffic.

27. What should the Commission consider in determining the appropriateness of Embarq's proposed transit rate?

Response: The primary consideration should be the comments that the staff and Commission made in the recent Florida order relating to BellSouth's transit traffic obligations (Order No. PSC-06-0776-FOF-TP in Docket Nos. 050119-TP and 050125-TP) where the FPSC determined that transit traffic was not a §251 requirement.

28. Please identify each alternative transit provider that is operating in Embarq's Florida service territory.

Response: In Mr. Fox's direct testimony on page 15, lines 12-16, he identifies Neutral Tandem as an alternative transit provider. In addition, any carrier (CLEC, ILEC or AAV) with a switch that has trunk-to-trunk switching capability has the ability to provide transit services.

29. For the following questions please explain why Embarq's proposed transit rate of $.005 transit rate should be considered a true market rate.

a. When transit rates negotiated between Verizon Access and BellSouth Florida are $0.0015 in 2007, $0.0020 in 2008, and $0.0025 thereafter?

Response: These BellSouth transit rates strongly support Embarq's proposed rate of $.005. In the recent Florida order relating to BellSouth's transit rates (Order No. PSC-06-0776-FOF-TP in Docket Nos. 050119-TP and 050125-TP) the FPSC did not establish or approve a specific transit rate to be charged by BellSouth and instead, required carriers to negotiate a rate. However, the Staff Recommendation in that case provides some relevant guidance for this issue. As detailed on page 66 of the Staff Recommendation, the Staff acknowledged that $.0023 creates a

reasonable upper bound which includes a intermediary charge (or TIC) of $.0015, reflecting the added value of BellSouth's transit service not reflected in its TELRIC-based tandem switching and common transport rates Specifically, Staff's recommended maximum rate of $.0023 is 2.43 times above the Commission-approved TELRIC-based rates while Embarq's proposed rate $.005 is approximately a multiple of 1.75 above Embarq's Commission-approved TELRIC rates for tandem switching and common transport. Finally, the above rates referenced in Verizon Access's agreement with BellSouth Florida are **all** above TELRIC and therefore, market-based.

b. When it is more than double the transit rate in the existing ICA with Verizon Wireless and in the existing Verizon Florida Inc/Sprint ICA.

Response: Please see the response to 29. a. above.

Simply put, Embarq's policy position, like most other ILECs, is that ILECs are not required to provide transit services at TELRIC-based rates, particularly when the largest ILEC in the state are not required to do so. While it may be true that Embarq's proposed transit rate is higher than a rate currently reflected in various interconnection agreements, Embarq firmly believes that $.005 is appropriate given that it provides transit services in less urban areas than the RBOCs in Florida.

30. Please explain why the sum of the common transport and tandem switching rate elements approved for Embarq for reciprocal compensation is not appropriate to use for transit service.

Response: In the recent Florida order relating to BellSouth's transit traffic obligations (Order No. PSC-06-0776-FOF-TP in Docket Nos. 050119-TP and 050125-TP) the FPSC determined that transit traffic was not a §251 requirement. Therefore, it is not appropriate that the rates for transit service provided by Embarq be tied to its section 251 reciprocal compensation rates.

31. Please identify the elemental costs that Embarq's transit rate is designed to recover.

Response: Embarq's transit rate is designed to recover costs of providing billing records, handling billing disputes, use of network resources, and product management. The .005 rate includes the total value added transit service that Embarq provides to other carriers including the technical functions, billing, and product management. The Florida Commission has determined that transit service is not a mandatory 251/cost based service.

33. As clarification, does transit service consist primarily of tandem switching and common transport? If negative, please explain.

Response: From a network perspective, it is true that transit service consists primarily of tandem switching and common transport. However, there are other costs associated with providing this tandem intermediary function as reflected in Embarq's response to question 31. Transit service is a value added service provided to other Florida carriers. The tandem switching and transport function affords carriers a means to interconnect with numerous other carriers.

34. Please explain specifically what Embarq's transit rate of $.005 per MOU is designed to recover.

Response: The $.005 transit rate is designed to recover network costs and administrative costs which include costs of providing billing records, handling billing disputes, use of network resources, and product management. Embarq's transit service gives other carriers the option to manage their networks. This service not only includes the network switching and connectivity, the service includes traffic analysis, billing, and product management oversight.

35. **For each transit rate Embarq is charging Florida CLECs, please identify the individual rate being assessed. Please identify which rates are TELRIC-based versus market-based.**

Response: Please see the attached spreadsheet "Transit rates.xls".

36. **Please identify the transit rate included in ICAs between Embarq and each CLEC in Florida.**

Response: Please see the attached spreadsheet "Transit rates.xls".

37. a. **Please identify each CLEC with which Embarq has a currently effective ICA in Florida that provides transit charges.**

Response: Please see the attached spreadsheet "Transit rates.xls".

b. **For each such CLEC identified in (a), please indicate the transit rate being charged and the effective date of the ICA.**

Response: Please see the attached spreadsheet "Transit rates.xls".

c. **Please identify which rates are TELRIC-based versus market-based.**

Response: Please see the attached spreadsheet "Transit rates.xls".

38. **For each CLEC with which Embarq transits traffic, please state the number of minutes of transit traffic delivered by such CLEC to Embarq in Florida during December 2006.**

Response:

	MOU
COMCAST PHONE	
BELLSOUTH TELECOMM	
BUSINESS TELECOM INC	
COX COMMUNICATIONS	
ITC DELTACOM	
T3 COMMUNICATIONS	
FLORIDA MULTIMEDIA	
FLORIDA DIGITAL NETWORK	
ADELPHIA BUSINESS SOLUTIONS (TELCOVE)	
INTERMEDIA COMMUNICATIONS INC	
AT&T COMMUNICATIONS	
LEVEL 3 COMMUNICATIONS	
MFS INTELENET (MCI WORLDCOM)	
NEWSOUTH COMMUNICATIONS (NUVOX)	
ORLANDO TELEPHONE	

PAETEC COMMUNICATIONS	[redacted]
AT&T LONG DISTANCE	[redacted]
TALLAHASSEE TELEPHONE EXCHANGE	[redacted]
TIME WARNER TELECOM	[redacted]
AT&T LOCAL SERVICES	[redacted]
XO COMMUNICATIONS	[redacted]
US LEC CORP	[redacted]
DAYSTAR COMMUNICATIONS (THE ULTIMATE CONNECTION)	[redacted]
VOLO COMMUNICATIONS	[redacted]
MCI METRO	[redacted]

39. In determining a market-based rate for transit service in this arbitration, what should the Commission consider?

Response: The Commission should consider its precedent from the recent Florida order relating to BellSouth's transit traffic obligations (Order No. PSC-06-0776-FOF-TP in Docket Nos. 050119-TP and 050125-TP) in which the FPSC determined that transit traffic was not a §251 requirement. The Commission should also consider the staff's recommendation that BellSouth's market-based rate, which reflects the value-added services associated with providing an intermediary function, should be considered a "just and reasonable" rate.

40. Referring to witness Fox's rebuttal testimony, page 9, lines 2-6, the witness states that "Embarq's proposed rate of $.005 reflects a considerably smaller multiple (approximately 1.75) of its Commission-approved rate than the rate suggested by staff and recognized by the Commission as an upper limit of a just and reasonable market-based rate for BellSouth."

a. Does "its Commission-approved rate" refer to the rate approved for Embarq or for BellSouth?

Response: It refers to Embarq's Commission approved rate of .002867 which is a sum of Embarq's common transport and tandem switching rate elements.

b. What is the Commission-approved rate for Embarq?

Response: $.002867

CONFIDENTIAL

PROPRIETARY EXHIBIT - Embarq's Response to Interrogatory No. 38.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 4
Company/ FPSC Staff
Witness: Stip-4
Date: 05/03/07

EXHIBIT NO. 4

DOCKET NO.: 060767-TP

WITNESS: STIP-4

PARTY: Staff

DESCRIPTION: Proprietary Portions of Embarq's Response to Interrogatory No. 38.

PROFFERING PARTY: Staff

I.D. # STIP-4

EXHIBIT NO. 5

DOCKET NO.: 060767-TP

WITNESS: STIP-5

PARTY: Staff

DESCRIPTION: Composite of Responses for Production of Documents

1. Item Nos. 1-6 of Verizon's Responses to Staff First Request for Production of Documents.

2. Item Nos. 7-8 of Verizon's Responses to Staff Second Request for Production of Documents.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 5
Company/ FPSC Staff
Witness: Stip-5
Date: 05/03/07

PROFFERING PARTY: Staff

I.D. # STIP-5

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	Docket No. 060767-TP

VERIZON ACCESS TRANSMISSION SERVICES' OBJECTIONS AND RESPONSES TO STAFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-6)

Verizon Access Transmission Services ("Verizon Access") hereby provides its objections and responses to the First Request for Production of Documents (Nos. 1-6) served by Florida Public Service Commission Staff.

GENERAL OBJECTIONS

1. Verizon Access objects to Staff's discovery requests and all instructions and definitions associated with those discovery requests to the extent they purport to impose obligations that are different from, or go beyond, the obligations imposed under Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and the Rules of the Florida Public Service Commission ("Commission").

2. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek information outside the scope of the issues raised in this proceeding, and to the extent their principal purpose appears to be to harass Verizon Access and unnecessarily impose costs on Verizon Access.

3. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek documents

or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, attorney work-product doctrine, or other applicable privileges or doctrines.

4. Verizon Access objects to each discovery request to the extent that it is vague and ambiguous, particularly to the extent that it uses terms that are undefined or vaguely defined in the discovery requests.

5. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Verizon Access further objects to the discovery requests to the extent they seek documents or information protected by the privacy protections of the Florida or United States Constitutions, or any other law, statute, or doctrine.

6. Verizon Access objects to the discovery requests to the extent they seek documents or information equally available to Staff as to Verizon Access through public sources or which is already in the possession, custody or control of the Commission, because such requests subject Verizon Access to unreasonable and undue burden and expense.

7. To the extent Verizon Access responds to Staff's discovery requests, Verizon Access reserves the right to amend, replace, supersede, and/or supplement its responses as may become appropriate in the future. However, it undertakes no continuing or ongoing obligation to update its responses.

8. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent that they seek to impose an obligation on Verizon Access to respond on behalf of subsidiaries, affiliates, or other persons that are not subject to the jurisdiction of this Commission.

9. Verizon Access has interpreted the discovery requests to apply to its regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any discovery requests or any instructions and definitions associated with those discovery requests are intended to apply to matters outside Florida and which are not related to Florida intrastate operations subject to this Commission's jurisdiction, Verizon Access objects to such discovery requests as irrelevant, overly broad, unduly burdensome, and oppressive.

10. Verizon Access objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding.

11. Verizon Access objects to the discovery requests to the extent they are duplicative and overlapping, cumulative of one another, overly broad, and/or seek responses in a manner that is unduly burdensome, expensive, oppressive, or excessively time-consuming for Verizon Access.

12. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to obtain "all," "each," or "every" document, item, customer, or such other piece of information because such discovery is overly broad and unduly burdensome. Any answers that

Verizon Access provides in response to the discovery requests will be provided subject to, and without waiver of, this objection.

13. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to require Verizon Access to create documents not in existence at the time of the discovery requests because such discovery is overly broad and unduly burdensome.

14. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they are not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of this proceeding, as such discovery is overly broad and unduly burdensome.

15. Verizon Access objects to the disclosure of confidential or proprietary information or trade secrets prior to entry of a protective order restricting disclosure of such information in a manner to be agreed upon by the parties. Verizon Access further objects to the disclosure of confidential or proprietary information of third-parties which Verizon Access is required to maintain as confidential pursuant to agreements with such parties and/or pursuant to statute, administrative decree, or court order.

16. Verizon Access objects to the definition of "document" to the extent it seeks to impose an obligation that is greater than that imposed by Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and to the extent that it would pose an unreasonable and undue annoyance, burden, and expense on Verizon Access. Verizon Access's objection includes, but is not limited to, the definition of "document" to the extent it includes network transmissions, switch data, or other electronic routing information which was not generated in the form of a written or printed record, on the

grounds that it would be unduly burdensome and expensive to require Verizon Access to search through computer records or other means of electronic or magnetic data storage or compilation.

DOCUMENT REQUESTS

1. Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 3.

   RESPONSE:

   Verizon Access does not have any documents responsive to this request.

2. Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 5.

   RESPONSE:

   Verizon Access does not have any documents responsive to this request.

3. Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 6.

   RESPONSE:

   Verizon Access does not have any documents responsive to this request.

4. Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 7.

   RESPONSE:

   Verizon Access does not have any documents responsive to this request.

5. Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 8.

   RESPONSE:

   Verizon Access does not have any documents responsive to this request.

6. Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 9.

RESPONSE:

Verizon Access does not have any documents responsive to this request.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail and U.S. mail on March 19, 2007 to:

Lee Eng Tan, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Susan S. Masterton
Embarq Florida, Inc.
1313 Blair Stone Road
Tallahassee, FL 32301

F. B. (Ben) Poag
Embarq Florida, Inc.
MC FLTLHO0107
P. O. Box 2214
Tallahassee, FL 32316-2214

Frank Trueblood
Division of Competitive Markets & Enforcement
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

s/ Dulaney L. O'Roark III

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	Docket No. 060767-TP

VERIZON ACCESS TRANSMISSION SERVICES' OBJECTIONS AND RESPONSES TO STAFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 7-8)

Verizon Access Transmission Services ("Verizon Access") hereby provides its objections and responses to the Second Request for Production of Documents (Nos. 7-8) served by Florida Public Service Commission Staff.

GENERAL OBJECTIONS

1. Verizon Access objects to Staff's discovery requests and all instructions and definitions associated with those discovery requests to the extent they purport to impose obligations that are different from, or go beyond, the obligations imposed under Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and the Rules of the Florida Public Service Commission ("Commission").

2. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek information outside the scope of the issues raised in this proceeding, and to the extent their principal purpose appears to be to harass Verizon Access and unnecessarily impose costs on Verizon Access.

3. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek documents

or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, attorney work-product doctrine, or other applicable privileges or doctrines.

4. Verizon Access objects to each discovery request to the extent that it is vague and ambiguous, particularly to the extent that it uses terms that are undefined or vaguely defined in the discovery requests.

5. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Verizon Access further objects to the discovery requests to the extent they seek documents or information protected by the privacy protections of the Florida or United States Constitutions, or any other law, statute, or doctrine.

6. Verizon Access objects to the discovery requests to the extent they seek documents or information equally available to Staff as to Verizon Access through public sources or which is already in the possession, custody or control of the Commission, because such requests subject Verizon Access to unreasonable and undue burden and expense.

7. To the extent Verizon Access responds to Staff's discovery requests, Verizon Access reserves the right to amend, replace, supersede, and/or supplement its responses as may become appropriate in the future. However, it undertakes no continuing or ongoing obligation to update its responses.

8. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent that they seek to impose an obligation on Verizon Access to respond on behalf of subsidiaries, affiliates, or other persons that are not subject to the jurisdiction of this Commission.

9. Verizon Access has interpreted the discovery requests to apply to its regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any discovery requests or any instructions and definitions associated with those discovery requests are intended to apply to matters outside Florida and which are not related to Florida intrastate operations subject to this Commission's jurisdiction, Verizon Access objects to such discovery requests as irrelevant, overly broad, unduly burdensome, and oppressive.

10. Verizon Access objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding.

11. Verizon Access objects to the discovery requests to the extent they are duplicative and overlapping, cumulative of one another, overly broad, and/or seek responses in a manner that is unduly burdensome, expensive, oppressive, or excessively time-consuming for Verizon Access.

12. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to obtain "all," "each," or "every" document, item, customer, or such other piece of information because such discovery is overly broad and unduly burdensome. Any answers that

Verizon Access provides in response to the discovery requests will be provided subject to, and without waiver of, this objection.

13. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to require Verizon Access to create documents not in existence at the time of the discovery requests because such discovery is overly broad and unduly burdensome.

14. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they are not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of this proceeding, as such discovery is overly broad and unduly burdensome.

15. Verizon Access objects to the disclosure of confidential or proprietary information or trade secrets prior to entry of a protective order restricting disclosure of such information in a manner to be agreed upon by the parties. Verizon Access further objects to the disclosure of confidential or proprietary information of third-parties which Verizon Access is required to maintain as confidential pursuant to agreements with such parties and/or pursuant to statute, administrative decree, or court order.

16. Verizon Access objects to the definition of "document" to the extent it seeks to impose an obligation that is greater than that imposed by Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and to the extent that it would pose an unreasonable and undue annoyance, burden, and expense on Verizon Access. Verizon Access's objection includes, but is not limited to, the definition of "document" to the extent it includes network transmissions, switch data, or other electronic routing information which was not generated in the form of a written or printed record, on the

grounds that it would be unduly burdensome and expensive to require Verizon Access to search through computer records or other means of electronic or magnetic data storage or compilation.

DOCUMENT REQUESTS

7. For each transit rate Verizon Access witness Price identifies on page 24 of his direct testimony, line 18-25, please provide the relevant sections of each ICA referenced.

RESPONSE:

Copies of the relevant pages from the source documents are included as part of Verizon's response:

- The transit rate of $0.002867 is on line 246 of Attachment C, Table One of the Verizon Business/Embarq Florida interconnection price sheets. See Bates stamped document nos. VZ 1 – VZ 5.
- The transit rates of $0.0015 in 2007, $0.0020 in 2008 and $0.0025 thereafter are on lines 16-18 of the Interconnection Worksheet in the Verizon Business/BST interconnection agreement. See Bates stamped document no. VZ 6.
- The transit rate of $0.002071 is in Appendix A of the Verizon Florida Inc./Sprint Communications Company interconnection agreement. See Bates stamped document no. VZ 7.

8. Please provide the derivation of the analogous Embarq interstate rate of $0.002052 indicated on page 24 of witness Price's direct testimony, line 21.

RESPONSE:

The analogous interstate switched access rate was determined by adding the Tandem Transport Termination Rate (LTT) to 14 assumed miles times the Tandem Transport Facility Rate (LTF*14) and adding that sum to the tandem switching rate (TS). All Rates are Zone 1, the zone in which most of the interconnections between the companies occurs.

Formula: LTT+(LTF*14)+TS=$.002052

Embarq Local Operating Companies FCC # 1		Zone 1
Original p. 6-365	LTT	0.000365
Original p. 6-365	LTF	0.000035
	LTF*14	0.000490
Original p. 6-369	TS	0.001197
	Total	**0.002052**

014

	A	B	C	D	E
1	KEY CODES		SPRINT RATE ELEMENT COST SUMMARY: FLORIDA		
2	MRC	NRC			
3			RESALE DISCOUNTS	MRC	NRC
4			Other than Operator / DA	19.40%	
5			Op Assist / DA	12.10%	
6					
7			USAGE FILE CHARGES	MRC	NRC
8	UF01		Message Provisioning, per message	$0.003070	
9	UF02		Data Transmission, per message	$0.000000	
10		DB008	Media Charge - per CD (Price reflects shipping via regular U.S. Mail)		$18.00
11					
12			OTHER CHARGES	MRC	NRC
13		UP026	Temporary Suspension of Service for Resale - SUSPEND		$0.00
14		UP027	Temporary Suspension of Service for Resale - RESTORE		$21.00
15		UP028	PIC Change Charge, per change		See Tariff for Rate
16		DA030	Operator Assistance / Directory Assistance Branding		ICB
17					
18			UNE LOOP TAG & LABEL / RESALE TAG & LABEL	MRC	NRC
19		OC015	Tag and Label on a new install loop or resale		$4.72
20		OC013	Tag and Label on a reinstall loop or an existing loop or resale		$9.44
21		OC014	Tag and Label on an addt'l loop or resale on the same order at the same location		$3.78
22					
23			TRIP CHARGE	MRC	NRC
24		OC003	Trip Charge		$18.88
25					
26			RATE ELEMENT		
27			SERVICE ORDER / INSTALLATION / REPAIR	MRC	NRC
28		SO001	Manual Service Order NRC		$28.10
29		SO002	Manual Service Order - Listing Only		$14.81
30		SO003	Manual Service Order - Change Only		$13.76
31					
32		SO004	Electronic Service Order (IRES)		$3.82
33		SO005	Electronic Service Order - Listing Only		$0.42
34		SO006	Electronic Service Order - Change Only		$1.66
35					
36		OC008	2-Wire Loop Cooperative Testing		$46.71
37		OC009	4-Wire Loop Cooperative Testing		$66.99
38					
39		OC010	Trouble Isolation Charge		$48.47
40					
41		OC016	Change Telephone Number, per change		$14.66
42					
43		OC017	LNP Coordinated Conversion - Lines 1 -10		$47.33
44		OC018	LNP Coordinated Conversion - Each additional line		$4.24
45		OC023	LNP Conversion - 10 Digit Trigger		$0.00
46					
47					
48					
49					
50					
51					
52					
53					
54			UNBUNDLED NETWORK ELEMENTS (UNE)		
55					
56			PRE-ORDER LOOP QUALIFICATION	MRC	NRC
57		PQ001	Loop Make-Up Information		$5.90
58					
59			LOOPS (RATES INCLUDE NID CHARGE)	MRC	NRC
60			UNE Loop MRC includes NID charges (2-Wire $0.82 and 4-Wire $1.64). NID rates were originally approved in 01/2003 Commission Order		
61			2-Wire Analog		
62	AA013		Band 1	$11.64	
63	AA014		Band 2	$18.45	
64	AA015		Band 3	$25.51	
65	AA016		Band 4	$46.22	
66			First Line with NID		$119.74
67		AA002	First Line without NID		$111.24
68		AA003	Second Line and Each Additional Line (same time)		$52.73
69		AA004	Re-install (Cut Thru and Dedicated/Vacant)		$65.81
70		AA005	Disconnect		$31.75

015

	A	B	C	D	E
1	KEY CODES		SPRINT RATE ELEMENT COST SUMMARY: FLORIDA		
2	MRC	NRC			
71					
72			4-Wire Analog		
73	AA017		Band 1	$22.50	
74	AA018		Band 2	$35.64	
75	AA019		Band 3	$49.24	
76	AA020		Band 4	$89.18	
77			First Line with NID		$152.83
78		AA008	First Line without NID		$144.33
79		AA009	Second Line and Each Additional Line (same time)		$85.82
80		AA010	Re-install (Cut Thru and Dedicated/Vacant)		$81.70
81		AA011	Disconnect		$36.47
82					
83			2-Wire xDSL - Capable Loop		
84	AA013		Band 1	$11.64	
85	AA014		Band 2	$18.45	
86	AA015		Band 3	$25.51	
87	AA016		Band 4	$46.22	
88			First Line with NID		$115.31
89		DX009	First Line without NID		$106.81
90		DX002	Second Line and Each Additional Line (same time)		$48.30
91		DX003	Re-install (Cut Thru and Dedicated/Vacant)		$63.55
92		DD004	Disconnect		$31.75
93					
94			4-Wire xDSL - Capable Loop		
95	DX010		Band 1	$22.43	
96	DX011		Band 2	$35.53	
97	DX012		Band 3	$49.08	
98	DX013		Band 4	$88.89	
99			First Line with NID		$146.73
100		DX014	First Line without NID		$138.23
101		DX015	Second Line and Each Additional Line (same time)		$79.72
102		DX016	Re-install (Cut Thru and Dedicated/Vacant)		$78.59
103		DX017	Disconnect		$36.47
104					
105			2-Wire Digital Loop		
106	AA013		Band 1	$11.64	
107	AA014		Band 2	$18.45	
108	AA015		Band 3	$25.51	
109	AA016		Band 4	$46.22	
110			First Line with NID		$177.64
111		DD002	First Line without NID		$169.14
112		DD003	Second Line and Each Additional Line (same time)		$108.10
113		DD004	Disconnect		$31.75
114					
115			2-Wire ISDN-BRI Digital Loop		
116	DD013		Band 1	$19.92	
117	DD014		Band 2	$31.95	
118	DD015		Band 3	$44.41	
119	DD016		Band 4	$80.98	
120			First Line with NID		$177.64
121		DD002	First Line without NID		$169.14
122		DD003	Second Line and Each Additional Line (same time)		$108.10
123		DD004	Disconnect		$31.75
124					
125			4-Wire Digital Loop (no electronics)		
126	DD017		Band 1	$22.50	
127	DD018		Band 2	$35.64	
128	DD019		Band 3	$49.24	
129	DD020		Band 4	$89.18	
130			First Line with NID		$249.39
131		DD006	First Line without NID		$240.90
132		DD007	Second Line and Each Additional Line (same time)		$179.85
133		DD008	Disconnect		$36.47
134					
135			Digital 56k/64k Loop		
136	DD021		Band 1	$19.82	
137	DD022		Band 2	$31.79	
138	DD023		Band 3	$44.18	

016

	A	B	C	D	E
1	KEY CODES		SPRINT RATE ELEMENT COST SUMMARY: FLORIDA		
2	MRC	NRC			
139	DD024		Band 4	$80.57	
140			First Line with NID		$177.64
141		DD002	First Line without NID		$169.14
142		DD003	Second Line and Each Additional Line (same time)		$108.10
143		DD004	Disconnect		$31.75
144					
145			DS1 Service and ISDN PRI Loop		
146	DD025		Band 1	$88.54	
147	DD026		Band 2	$143.28	
148	DD027		Band 3	$199.93	
149	DD028		Band 4	$366.34	
150			First Line with NID		$334.38
151		DD010	First Line without NID		$325.88
152		DD011	Second Line and Each Additional Line (same time)		$177.61
153		DD008	Disconnect		$36.47
154					
155			DS3 Service		
156	HC002	HC001	Add DS3 to existing fiber system	$1,286.78	$109.19
157		HC003	Disconnect		$30.99
158					
159			LOOP CONDITIONING	MRC	NRC
160		LC001	Load Coil Removal for all Digital UNE and xDSL-Capable loops that are less than 18,000 feet in length - per line conditioned (No Engineering or Trip charges - price reflects 25 pair economies)		$0.00
161					
162		LC002	Conditioning Engineering Charge - per loop		$39.11
163		LC003	Conditioning Trip Charge - per loop		$16.41
164					
165			**The following charges apply to all loops of any length that require Bridged Tap or Repeater removal.**		
166					
167			Load Coil Removal: Loops 18kft or longer		
168		LC004	Unload cable pair, per Underground location		$445.21
169		LC005	Unload Addt'l cable pair, UG same time, same location and cable		$3.43
170		LC006	Unload cable pair, per Aerial or Buried Location		$7.80
171		LC007	Unload Addt'l cable pair, AE or BU, same time, location and cable		$1.80
172					
173			Bridged Tap or Repeater Removal - Any Loop Length		
174		LC012	Remove Bridged Tap or Repeater, per Underground Location		$442.28
175		LC013	Remove each Addt'l Bridged Tap or Repeater, UG same time, location and cable		$0.50
176		LC014	Remove Bridged Tap or Repeater, per Aerial or Buried Location		$6.43
177		LC015	Remove each Addt'l Bridged Tap or Repeater, AE or BU same time, location and cable		$0.44
178					
179			SUB LOOPS: (RATES INCLUDE NID CHARGE)	MRC	NRC
180			**Sub Loop MRC includes NID charges (2-Wire $0.62 and 4-Wire $1.64). NID rates were originally approved in 01/2003 Commission Order**		
181			Sub-Loops Interconnection (Stub Cable)		ICB
182					
183			2 Wire Voice Grade and Digital Data Distribution		
184	SB002		Band 1	$4.97	
185	SB003		Band 2	$7.58	
186	SB004		Band 3	$10.28	
187	SB005		Band 4	$18.22	
188		SB010	First Line with NID		$127.65
189			First Line without NID		$119.15
190		SB011	Second Line and Each Additional Line (same time)		$40.65
191		SB012	Disconnect		$51.98
192					
193			4 Wire Voice Grade and Digital Data Distribution		
194	SB006		Band 1	$9.58	
195	SB007		Band 2	$14.59	
196	SB008		Band 3	$19.77	
197	SB009		Band 4	$34.98	
198			First Line with NID		$173.06
199		SB013	First Line without NID		$164.56
200		SB014	Second Line and Each Additional Line (same time)		$65.20
201		SB015	Disconnect		$63.31
202					

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	A	B	C	D	E
1	KEY CODES		SPRINT RATE ELEMENT COST SUMMARY: FLORIDA		
2	MRC	NRC			
203			DEDICATED INTEROFFICE TRANSPORT	MRC	NRC
204	DT2	DT004	DS1	Refer to Dedicated Transport Tab	$182.15
205		DT005	DS1 Disconnect		$20.36
206	DT3	DT007	DS3	Refer to Dedicated Transport Tab	$192.85
207		DT008	DS3 Disconnect		$32.76
208					
209			MULTIPLEXING	MRC	NRC
210			Multiplexing elements are only relevant in conjunction with UNE transport.		
211	DT023	DT019	Multiplexing - DS1-DS0 (per DS1) - (Shelf only, rate does not include cards)	$162.48	$93.62
212		DT020	DS1-DS0 Disconnect		$12.95
213					
214	DT024	DT021	Multiplexing - DS3-DS1 (per DS3)	$195.77	$119.88
215		DT022	DS3-DS1 Disconnect		$43.38
216					
217			UNBUNDLED DARK FIBER	MRC	NRC
218		DF007	Dark Fiber Application & Quote Preparation Charge		$270.47
219			Note: These elements are calculated and billed manually using one price per USOC and COS. Detail is provided by the DFA form returned to the customer.		
220			Transport		
221	DF009		Interoffice, per foot per fiber - Statewide Average	$0.0039	
222					
223			Additional Charges Applicable to Transport		
224	DF011		Fiber Patch Cord, per fiber	$0.82	
225	DF012		Fiber Patch Panel, per fiber	$0.79	
226					
227		DF001	Initial Patch Cord Installation / Disconnect, Field Location		$22.92
228		DF002	Addt'l Patch Cord Installation / Disconnect, Field Loc., Same Time/Location		$7.64
229		DF003	Central Office Interconnection,1-4 Patch Cords per CO - Install or Disconnect		$193.55
230		OC011	Dark Fiber End-to-End Testing, Initial Strand		$53.48
231		OC012	Dark Fiber End-to-End Testing, Subsequent Strand		$15.28
232					
233			EEL COMBINATIONS	MRC	NRC
234			Enhanced Extended Link (EEL) is a combination of Loop, Transport and Multiplexing (when applicable) and is the sum of those individaul elements. Refer to the specific UNE section (transport, loop, multiplexing) in this document to obtain pricing for each specific element.		
235			See Rate Element / Service Order / Installation/Repair Center section of this price sheet for EEL Conversion Charges.		
236					
237			RECIPROCAL COMPENSATION	MRC	NRC
238			Local End Office - per MOU	$0.002221	N/A
239			Local Tandem Switching - per MOU	$0.002053	N/A
240			Local Shared Transport - per MOU	$0.000814	N/A
241					
242			ISP-bound Traffic Termination Rates (per MOU)	$0.0007	N/A
243					
244			TRANSIT SERVICE	MRC	NRC
245			Transit Service Charge - per MOU		$0.005000
246			*Transit Service Charge - per MOU*		*$0.002867*
247					
248			DATABASE, available via tariff	MRC	NRC
249	DB004		Line Information Database query (LIDB) - Per Interstsate Tariff	See Tariff for Rate	
250	DB005		Line Information Database query transport (LIDB) - Per Interstsate Tariff	See Tariff for Rate	
251					
252			OPERATOR SERVICES / DIRECTORY ASSISTANCE SERVICES	MRC	NRC
253		DA002	Operator Services		See Tariff for Rate
254		DA002	Directory Assistance Services		See Tariff for Rate
255					
256			DIRECTORY SERVICES	MRC	NRC
257		DA002	Directory - Premium & Privacy Listings		See Tariff for Rate
258					

Attachment C
Table One

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	A	B	C	D	E
1	KEY CODES		SPRINT RATE ELEMENT COST SUMMARY: FLORIDA		
2	MRC	NRC			
259			911 AND E911 TRANSPORT AND TERMINATION	MRC	NRC
260	DT2	DT004	911 and E911 Transport - DS1	Refer to Dedicated Transport Tab	$182.15
261	DT023	DT019	Multiplexing - DS1-DS0 (per DS1) - (Shelf only, rate does not include cards)	$162.48	$93.62
262	DB011	DB007	DS0 911 Per Port (minimum of 2 DS0's required)	$15.81	$151.80
263					
264			STREET INDEX GUIDE	MRC	NRC
265		DB008	SIG Database Extract Report, per CDROM (price reflects shipping regular U.S. Mail)		$18.00
266					
267			ROUTINE MODIFICATION OF FACILITIES	MRC	NRC
268					
269			**Rearrangement of Cable**		
270			Rearrangement of Up to 3 Pairs per UNE Loop Ordered	N/A	Included in Loop NRC
271			Rearrangements Requiring More Than 3 Pairs per UNE Loop Ordered	N/A	ICB
272					
273			**Repeater/Doubler Installation Cost (incl. 4 slot housing and 1 card), per location**		
274			1. Repeater Equipment Case w/ Repeater Card (for T-1 applications):		
275			Where Special Construction Does Not Apply (Card Installation Only)	Included in Loop MRC	Included in Loop NRC
276			Where Special Construction Applies, Non Recurring Charge		$2,581.33
277					
278			2. Doubler Equipment Case w/ Doubler Card (for HDSL applications)		
279			Where Special Construction Does Not Apply (Card Installation Only)	Included in Loop MRC	Included in Loop NRC
280			Where Special Construction Applies, Non Recurring Charge		$2,831.50
281					
282			Smart Jack	Included in Loop MRC	Included in Loop NRC
283					
284			Line Card Installation	Included in Loop MRC	Included in Loop NRC
285					
286			Multiplexing	Included in Loop MRC	Included in Loop NRC
287			Note: Multiplexer pricing available through Enhanced Extented Loop (EELs) facility leases		
288					
289					
290					
291					
292					

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
1	LOCAL INTERCONNECTION - Florida														Attachment: 3		Exhibit: A	
2	CATEGORY		RATE ELEMENTS	Interim	Zone	BCS	USOC	RATES ($)					Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Incremental Charge - Manual Svc Order vs. Electronic- 1st	Incremental Charge - Manual Svc Order vs. Electronic- Add'l	Incremental Charge - Manual Svc Order vs. Electronic- Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic- Disc Add'l
3								Rec	Nonrecurring		Nonrecurring Disconnect		OSS Rates($)					
4									First	Add'l	First	Add'l	SOMEC	SOMAN	SOMAN	SOMAN	SOMAN	SOMAN
5																		
6	LOCAL INTERCONNECTION (CALL TRANSPORT AND TERMINATION)																	
7		NOTE: "bk" beside a rate indicates that the Parties have agreed to bill and keep for that element pursuant to the terms and conditions in Attachment 3.																
8		INTERCARRIER COMPENSATION FOR ISP-BOUND TRAFFIC																
9			Rate for ISP-Bound Traffic, per MOU					0.0007										
10		INTERCARRIER COMPENSATION FOR LOCAL TRAFFIC, LOCAL TRANSIT TRAFFIC, AND MTA TRAFFIC																
11		END OFFICE SWITCHING																
12			End Office Switching Function and Trunk Port, Per MOU					0.0009302										
13		TANDEM SWITCHING																
14			Tandem Switching Function Per MOU					0.0006019										
15			Multiple Tandem Switching, per MOU (applies to intial tandem only)					0.0006019										
16			Local Intermediary Charge, per MOU (effective date - 12/31/2007)					0.0015										
17			Local Intermediary Charge, per MOU (1/1/2008 - 12/31/2008)					0.0020										
18			Local Intermediary Charge, per MOU (1/1/2009 - expiration)					0.0025										
19		TRUNK CHARGE																
20			Installation Trunk Side Service - per DS0			OHD	TPP6X		21.73bk	8.19bk								
21			Installation Trunk Side Service - per DS0			OHD	TPP9X		21.73bk	8.19bk								
22			Dedicated End Office Trunk Port Service-per DS0**			OHD	TDEOP	0.00										
23			Dedicated End Office Trunk Port Service-per DS1**			OH1 OH1MS	TDE1P	0.00										
24			Dedicated Tandem Trunk Port Service-per DS0**			OHD	TDWOP	0.00										
25			Dedicated Tandem Trunk Port Service-per DS1**			OH1 OH1MS	TDW1P	0.00										
26		** This rate element is recovered on a per MOU basis and is included in the End Office Switching and Tandem Switching, per MOU rate elements																
27		COMMON TRANSPORT (Shared)																
28			Common Transport - Per Mile, Per MOU					0.0000035										
29			Common Transport - Facilities Termination Per MOU					0.0004372										
30	LOCAL INTERCONNECTION (DEDICATED TRANSPORT)																	
31		INTEROFFICE CHANNEL - DEDICATED TRANSPORT																
32			Interoffice Channel - Dedicated Transport - 2-Wire Voice Grade - Per Mile per month			OHM	1L5NF	0.0091bk										
33			Interoffice Channel - Dedicated Transport- 2- Wire Voice Grade - Facility Termination per month			OHM	1L5NF	25.32bk	47.35bk	31.78bk	18.31bk	7.03bk						
34			Interoffice Channel - Dedicated Transport - 56 kbps - per mile per month			OHM	1L5NK	0.0091bk										
35			Interoffice Channel - Dedicated Transport - 56 kbps - Facility Termination per month			OHM	1L5NK	18.44bk	47.35bk	31.78bk	18.31bk	7.03bk						
36			Interoffice Channel - Dedicated Transport - 64 kbps - per mile per month			OHM	1L5NK	0.0091bk										
37			Interoffice Channel - Dedicated Transport - 64 kbps - Facility Termination per month			OHM	1L5NK	18.44bk	47.35bk	31.78bk	18.31bk	7.03bk						
38			Interoffice Channel - Dedicated Channel - DS1 - Per Mile per month			OH1, OH1MS	1L5NL	0.1856bk										
39			Interoffice Channel - Dedicated Tranport - DS1 - Facility Termination per month			OH1, OH1MS	1L5NL	88.44bk	105.54bk	98.47bk	21.47bk	19.05bk						
40			Interoffice Channel - Dedicated Transport - DS3 - Per Mile per month			OH3, OH3MS	1L5NM	3.87bk										
41			Interoffice Channel - Dedicated Transport - DS3 - Facility Termination per month			OH3, OH3MS	1L5NM	1071.00bk	335.46bk	219.28bk	72.03bk	70.56bk						
42		LOCAL CHANNEL - DEDICATED TRANSPORT																
43			Local Channel - Dedicated - 2-Wire Voice Grade per month			OHM	TEFV2	19.66bk	265.84bk	46.97bk	37.63bk	4.00bk						
44			Local Channel - Dedicated - 4-Wire Voice Grade per month			OHM	TEFV4	20.45bk	266.54bk	47.67bk	44.22bk	5.33bk						
45			Local Channel - Dedicated - DS1 per month			OH1	TEFHG	36.49bk	216.65bk	183.54bk	24.30bk	16.95bk						
46			Local Channel - Dedicated - DS3 Facility Termination per month			OH3	TEFHJ	531.91bk	556.37bk	343.01bk	139.13bk	96.84bk						
47		LOCAL INTERCONNECTION MID-SPAN MEET																
48			Local Channel - Dedicated - DS1 per month			OH1MS	TEFHG	0.00	0.00									
49			Local Channel - Dedicated - DS3 per month			OH3MS	TEFHJ	0.00	0.00									
50		MULTIPLEXERS																
51			Channelization - DS1 to DS0 Channel System			OH1, OH1MS	SATN1	146.77bk	101.42bk	71.62bk	11.09bk	10.49bk						
52			DS3 to DS1 Channel System per month			OH3, OH3MS	SATNS	211.19bk	199.28bk	118.64bk	40.34bk	39.07bk						
53			DS3 Interface Unit (DS1 COCI) per month			OH1, OH1MS	SATCO	13.76bk	10.07bk	7.08bk								
54	SIGNALING (CCS7)																	
55		NOTE:"bk" beside a rate indicates that the parties have agreed to bill and keep for that element pursuant to the terms and conditions in Attachment 3.																
56			CCS7 Signaling Usage, Per TCAP Message					0.00bk										
57			CCS7 Signaling Usage, Per ISUP Message					0.00bk										

VZ 6

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APPENDIX A TO THE INTERCONNECTION ATTACHMENT
RATES AND CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC

General. The rates contained in this Appendix A are the rates as defined in the Interconnection Attachment and are subject to change resulting from future Commission or other proceedings, including but not limited to any generic proceeding to determine Verizon's unrecovered costs (e.g., historic costs, contribution, undepreciated reserve deficiency, or similar unrecovered Verizon costs (including Verizon's interim Universal Service Support Surcharge)), the establishment of a competitively neutral universal service system, or any appeal or other litigation.

Each Party will bill the other Party as appropriate:

A. The Local Interconnection rate element that applies to Local Traffic on a minute of use basis that each Party switches for termination purposes at its wire centers. The local interconnection rate is **$0.0029030** per minute of use.

B. The Local Call Termination rate element that applies to Local Traffic on a minute of use basis for traffic that is delivered to Tandem Switch is **$0.0050131** per minute of use.

C. The Tandem Transiting Charge is **$0.0020071** per minute of use.

D. Initial Factors:

1.	PLU	**95%**
2.	Initial Proportionate Share Factor	**50%**
3.	Exempt Factor	**5%**

EXHIBIT NO. 6

DOCKET NO.: 060767-TP

WITNESS: n/a

PARTY: Staff

DESCRIPTION: Composite of Responses to Staff's Request for Production of Documents

1. Item Nos. 8-11 of Embarq's Responses to Staff First Request for Production of Documents (1-11). Nos. 1-7 are not being included into the record – issues resolved.

2. Item Nos. 12-14 of Embarq's Responses to Staff Second Request for Production of Documents.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 060767-TP Exhibit No. 6
Company/ FPSC Staff
Witness: Stip-6
Date: 05/03/07

PROFFERING PARTY: Staff

STIP# 6

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	DOCKET NO. 060767-TP DATED: MARCH 20, 2007

EMBARQ'S OBJECTIONS AND RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-12) AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-11)

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340, 1.350, and 1.280(b), Florida Rules of Civil Procedure, by and through undersigned counsel, Embarq Florida, Incorporated (hereinafter "Embarq") hereby submits the following Objections and Responses to Staff's First Set of Interrogatories and First Request for Production of Documents, which were served on Embarq on February 28, 2007.

Interrogatory	Prepared by	Title
1-7	Edward "Ted" C. Hart	Sr. Mgr. Business Strategy & Policy Wholesale Markets
8-12	Edward B. Fox	Regulatory Manager

8. Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 8.

Response: The source of this belief is found in Verizon Access's statement in Attachment A, p. 6 of its petition for arbitration. The section reads: "Although Verizon Access does not expect to have any voice vNXX traffic, it has proposed exchanging such traffic on a bill-and-keep basis to the extent there is any."

9. **Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 9.**

Response: See attached documents.

10. **Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 11.**

Response: There are no documents responsive to this request.

11. **Please provide the supporting documentation used in the response to Staff's First Request for Interrogatories, Interrogatory No. 12.**

Response: There are no documents responsive to this request.

DATED this 20th day of March 2007.

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ATTORNEY FOR EMBARQ FLORIDA, INC.

REQUEST FOR PRODUCTION OF DOCUMENTS

12. **In the rebuttal testimony of Embarq witness Fox at page 5, lines 18-20, the witness asserts, in part, that "Embarq has offered alternate language to Verizon Access . . . [as described] on pages 11-12 of my direct testimony." Please submit the language described in this testimony or alternatively, the most recent language that addresses the indirect interconnection issue in this proceeding.**

Response: Below is the language Embarq is proposing to conform to the arbitrator's decision in the Embarq arbitration with Verizon Access in Ohio (copy attached):

> 61.2.4 Until indirect traffic exceeds a DS1, each originating Party is responsible for the payment of transit charges assessed on the originating Party by the transiting Party. After Indirect traffic exceeds a DS1, if CLEC has not established direct end office trunking ninety days after reaching a DS1 level as described in section 61.1.5, Embarq may require CLEC to reimburse Embarq for any transit charges billed by an intermediary carrier for Local Traffic or ISP-bound Traffic originated by Embarq. If the time to establish direct interconnection exceeds 90 days due to the fault of Embarq or a third party, e.g., lack of facilities, certain equipment requirements, problems with an order, etc., the Parties will extend the 90-day deadline for an appropriate period and Embarq will not require reimbursement for any related transit charges during this time.

13. **For each carrier Embarq witness Fox identifies on page 15 of his direct testimony, lines 3-6, has agreed to a $.005 transit rate, please provide relevant sections of each ICA.**

Response: Within each ICA Table One is a price sheet with the following listing:

TRANSIT SERVICE	MRC	NRC
Transit Service Charge - per MOU	$0.005	N/A

The interconnection agreements are on file with and publicly available at the Commission.

14. **Please provide supporting documentation for each alternative transit provider listed in response to Interrogatory No. 28.**

Response: See Embarq's response to Interrogatory No. 28. See Embarq's response to Verizon's 006 Interrogatory No. 2 for a copy of Neutral Tandem's transit traffic price list. Additional specific alternative providers were not listed.

DATED this 23rd day of April 2007.

s/Susan S. Masterton
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ATTORNEY FOR EMBARQ FLORIDA, INC.

Attachment
Response to Interrog Nos.
35, 36, 37, 38 and 39

007

Florida Transit Rates

	Effective	End Date	Rate		
1-800-RECONEX	02/09/2007	02/08/2009	.005	Market	
AT&T Communications of the Southern States LLC dba AT&T	03/03/2006	03/03/2008	.005	Market	
Bright House Networks Information Services (Florida)	06/01/2006	01/20/2007	.005	Market	MFN
Budget Phone, Inc.	12/21/2005	12/21/2007	.005	Market	
City of Gainesville, a municipal corporation d/b/a GRUCom	01/01/07	12/31/09	.005	Market	
Comcast Phone of Florida, LLC	01/19/2007	01/18/2009	.005	Market	
Eagle Telecommunications, Inc.	10/23/2006	12/21/2007	.005	Market	
Embarq Communications, Inc.	03/10/2006	02/09/2008	.005	Market	
Fonix Telecom, Inc.	02/01/2006	01/31/2008	.005	Market	
Hotwire Communications, Ltd.	08/01/2006	07/31/2008	.005	Market	
LecStar Telecom, Inc.	02/09/2006	02/08/2008	.005	Market	
Level 3 Communications	08/01/2005	12/31/2007	.005	Market	
Navigator Telecommunications	02/15/2006	02/14/2008	.005	Market	
New Edge Networks	04/28/06	03/02/08	.005	Market	MFN
Neutral Tandem	03/01/07	02/28/09	.005	Market	
SBC Long Distance, LLC	07/05/2006	03/03/2008	.005	Market	MFN
T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone	03/08/07	03/08/09	.005	Market	
TCG South Florida	03/13/2006	03/03/2008	.005	Market	
Telovations, Inc.	12/18/2006	12/17/2008	.005	Market	
Trinsic Communications, Inc.	07/14/2006	07/13/2008	.005	Market	
Volo Communications of Florida, Inc.	04/26/2006	03/02/2008	.005	Market	MFN
Access Point, Inc.	04/30/2006	04/24/2007	.002867		MFN
ACN Communications Services	03/01/2006	04/24/2007	.002867		MFN
Advantage Group of Florida Communication, LLC	02/10/2006	07/31/2007	.002867		MFN
Atlantic.net Broadband	12/15/2006	03/10/2008	.002867		MFN
BellSouth Long Distance, Inc.	12/19/2005	12/18/2007	.002867		
Broadband Communities of Florida, Inc.	04/01/2004	03/31/2006	.002867		
BullsEye Telecom, Inc.	02/04/2005	02/03/2007	.002867		
City of Quincy dba Netquincy dba Netquincy.com dba www.netquincy.com	09/01/2005	08/30/2007	.002867		
Cox Florida Telecom dba Cox Communications	04/11/2005	04/10/2007	.002867		
DSLnet Communications	03/01/2006	02/28/2008	.002867		
Excel Telecommunications, Inc.	03/15/2004	03/14/2006	.002867		
Florida Digital Network, Inc.	03/11/2006	03/10/2008	.002867		
Granite Telecommunications, LLC	04/25/2005	04/24/2007	.002867		
Harbor Communications, LLC	01/16/2007	03/10/2008	.002867		MFN
Hayes E-Government Resources	10/15/2005	10/14/2007	.002867		
KMC Data LLC	04/01/2005	03/31/2007	.002867		
KMC Telecom III, Inc.	04/01/2005	03/31/2007	.002867		
KMC Telecom V, Inc.	04/01/2005	03/31/2007	.002867		

Knology of Florida, Inc.	12/01/2005	04/24/2007	.002867		MFN
Lightyear Network Solutions, LLC	02/21/2006	04/24/2007	.002867		MFN
Metropolitan Telecommunications of Florida, Inc.	09/01/2005	08/31/2007	.002867		
Nationwide Computer Systems, Inc. dba Desoto.net and dba Greenwood.net	08/15/2005	08/14/2007	.002867		
Nexus Communications, Inc. dba Nexus Communications TSI, Inc.	02/24/2006	04/24/2007	.002867		MFN
Novus Communications, Inc.	05/01/2005	04/30/2007	.002867		
NuVox Communications, Inc.	03/20/2007	03/19/2010	.002867		
Optical Telecommunications, Inc.	08/01/2005	07/31/2007	.002867		
Orlando Telephone Company	11/21/05	08/25/07	.002867		MFN
Pac-West Telecomm	02/01/2006	03/31/2007	.002867		MFN
PaeTec Communications, Inc.	06/12/2006	03/10/2008	.002867		MFN
Smart City Solutions, LLC	08/26/2005	08/25/2007	.002867		
Southern Telecom Network, Inc.	01/15/2004	01/14/2006	.002867		
Spirited Technologies, Inc.	03/01/2006	02/28/2008	.002867		
Sprint Communications Company LP	02/01/2005	01/31/2007	.002867		
Supra Telecommunications and Information Systems, Inc.	10/14/2006	03/10/2008	.002867		MFN
U.S. Metropolitan Telecom, LLC	01/08/2007	02/29/2008	.002867		MFN
Unitycomm, LLC d/b/a U4Com	01/26/2005	01/25/2007	.002867		
US LEC of Florida, Inc.	11/15/2005	11/14/2007	.002867		
VarTec Telecom, Inc.	03/15/2004	03/14/2006	.002867		
YMax Communications Corp.	10/25/2006	04/27/2007	.002867		
ALEC, Inc.	06/01/2001	05/31/2002	.002796		
e.spire Communications	09/25/2001	10/10/2002	.002796		MFN
ElectroNet Intermedia Consulting	04/01/1998	04/01/2000	.002796		
Florida Telephone Services, LLC	08/19/2002	08/18/2004	.002796		
LightSource Telecom I, LLC	03/05/2001	03/15/2002	.002796		
MGC Communications, Inc	05/01/2000	04/30/2002	.002796		
Ocius Communications, Inc.	12/20/2001	12/20/2003	.002796		
Preferred Carrier Services	06/15/2001	06/15/2003	.002796		
Premiere Network Services, Inc.	03/15/2001	10/10/2002	.002796		MFN
QuantumShift, Inc.	01/01/2002	12/31/2003	.002796		
Suntel Metro, Inc.	08/13/2001	08/13/2003	.002796		
Talk Unlimited Now, Inc.	08/15/2002	08/14/2004	.002796		
Telepak Networks, Inc.	01/15/2002	01/14/2004	.002796		
The Ultimate Connection, L.C.	11/11/2005	08/31/2007	.002796		
XO Florida, Inc	10/17/2003	07/07/2004	.002796		MFN
Airface Communications Inc.	08/26/2002	04/30/2005	.002045		MFN
Alternative Phone, Inc.	07/15/2002	07/14/2004	.002045		
BellSouth Telecommunications, Inc.	04/01/2003	02/28/2005	.002045		MFN
Burno Inc. dba Citywide Tel	07/01/2003	02/28/2005	.002045		MFN
Business Telecom, Inc.	06/09/2003	02/28/2005	.002045		MFN
Camarato Distributing, Inc. dba Nex-Phon	09/15/2003	09/14/2005	.002045		
Cat Communications International, Inc. d/b/a CCI	10/15/2002	10/14/2004	.002045		
dPi-Teleconnect	10/15/2003	10/14/2005	.002045		
Ernest Communications, Inc.	08/20/2003	08/19/2005	.002045		
Florida Multi-Media Services, Inc.	11/21/2002	10/24/2003	.002045		MFN
FPL Fibernet	11/15/2003	02/28/2005	.002045		MFN

Intermedia Communications, Inc.	03/01/2002	02/28/2005	.002045		
ITC DeltaCom Communications, Inc.	11/19/2002	02/28/2005	.002045		MFN
MCI WorldCom Communications, Inc.	03/01/2002	02/28/2005	.002045		
MCImetro	03/01/2002	02/28/2005	.002045		
Metro Teleconnect Companies, Inc.	07/15/2003	07/14/2005	.002045		
Network Telephone Corporation	03/15/2002	03/14/2004	.002045		
NOW Communications, Inc.	12/16/2002	12/15/2004	.002045		
Progress Telecom LLC	08/23/2004	07/31/2005	.002045		MFN
Quality Telephone, Inc.	09/15/2003	09/14/2005	.002045		
Ring Connection, Inc.	06/01/2004	05/31/2006	.002045		
Saluda Networks Incorporated	03/01/2004	02/28/2005	.002045		MFN
Symtelco, LLC	02/07/2003	02/06/2005	.002045		
Tallahassee Telephone Exchange	03/06/2003	04/30/2005	.002045		
TelCove Investment, LLC and TelCove of Jacksonville, Inc. fka Adelphia, Hyperion	06/04/2004	08/15/2005	.002045		MFN
Time Warner Telecom of Florida, L.P.	08/01/2003	07/31/2005	.002045		
Winstar Communications, L.L.C	04/01/2002	03/31/2004	.002045		

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Verizon Access Transmission Services, Inc. for Arbitration of an Interconnection Agreement with United Telephone Company of Ohio dba Embarq Under Section 252(b) of the Telecommunications Act of 1996.	)))))))	Case No. 06-1485-TP-ARB

ARBITRATION AWARD

The Commission, considering the petition, the evidence of record, posthearing briefs, and otherwise being fully advised, hereby issues its arbitration award.

APPEARANCES:

Thompson Hine, LLP, by Mr. Thomas E. Lodge, 10 West Broad Street, Suite 700, Columbus, Ohio 43215-3435, and Ms. Kimberly Caswell, One Tampa City Center, P.O. Box 110, FLTC 0007, Tampa, Florida, 33601, on behalf of Verizon Access Transmission Services.

Mr. Joseph R. Stewart, 50 West Broad Street, Suite 3600, Columbus, Ohio 43215, on behalf of United Telephone Company of Ohio dba Embarq.

I. BACKGROUND

Under Section 252(b)(1) of the Telecommunications Act of 1996 (the Act)[1], if parties are unable to reach an agreement on the terms and conditions for interconnection, a requesting carrier may petition a state commission to arbitrate any issues which remain unresolved despite voluntary negotiation under Section 252(a) of the Act.

On July 18, 1996, the Commission issued Mediation and Arbitration Guidelines (Guidelines) in order to carry out its duties under Section 252 of the Act.[2] Under the Commission's Guidelines, an internal arbitration panel is assigned to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement.

1 The Act is codified at 47 U.S.C. Sec. 151 et. seq.

2 See *In the Matter of the Implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996*, Case No. 96-463-TP-UNC (Entry issued July 18, 1996).

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Technician _____ Date Processed 4/19/06

II. HISTORY OF THE PROCEEDING

In the Commission's Guidelines, Guideline VII.A specifies that any party to the negotiation of an interconnection agreement may petition for arbitration of open issues between 135 and 160 days after the date on which a local exchange carrier (LEC) receives a request for negotiation. According to the Petition for Arbitration filed by Verizon Access Transmission Services, Inc. (Verizon), by letter submitted on January 13, 2006, Verizon formally requested United Telephone Company of Ohio dba Embarq (Embarq) to commence negotiations for an interconnection agreement. The parties subsequently agreed to a stipulated start date for negotiations of July 12, 2006, and determined that the period for filing a petition for arbitration would close on December 19, 2006. On December 19, 2006, Verizon timely filed a petition to arbitrate the terms and conditions of interconnection with Embarq pursuant to Section 252 of the Act. In its petition, Verizon presented Issues 1 through 6 for arbitration. Embarq filed its response to the petition for arbitration on January 16, 2007, and sought resolution of Issues 2 through 6, while informing the Commission that Issue 1 had been resolved. Embarq did not seek resolution of any additional issues.

To address scheduling and procedural matters, the attorney examiner arranged a prehearing conference for January 16, 2007. The conference was held as scheduled. On January 23, 2007, the attorney examiner issued an entry summarizing the schedule agreed to by the parties. The parties agreed to schedule the hearing on February 21 and 22, 2007. Further, the parties agreed to file initial briefs by March 9, 2007, and reply briefs by March 26, 2007.

On February 6, 2007, Verizon filed a motion pro hac vice to allow Kimberly Caswell to practice before the Commission. The attorney examiner granted the motion by entry issued on February 12, 2007.

On February 15, 2007, the parties filed arbitration packages containing exhibits and the written testimony of their witnesses. On the same date, the parties filed a matrix setting forth the issues to be arbitrated and the parties' respective positions.

By letter filed February 19, 2007, the parties confirmed their agreement to extend the time for issuing an award to April 30, 2007.

Prior to the hearing, the parties informed the attorney examiner that Issues 3, 4, and 6 had also been settled and that only Issues 2 and 5 were unresolved. A hearing was held as scheduled on February 21, 2007, regarding Issues 2 and 5.

III. ISSUES FOR ARBITRATION

Issue 2: What compensation should apply to virtual NXX (vNXX) traffic under the interconnection agreement (ICA)?

Verizon explains that a vNXX call is a call delivered to an end user located outside the local calling area to which the call's NXX is homed (Price Direct at 7). Verizon avers that the traditional competitive local exchange carrier (CLEC) position on this matter is that vNXX calls should be treated as local, and that CLECs should receive reciprocal compensation for terminating them. This traditional CLEC view, Verizon claims, derives from two basic points. First, the CLEC's local exchange routing guide assignment of the NXX was made for a single exchange rate center and calls to the number assigned to the same rate center are typically rated as local for retail billing to the calling party. Second, Verizon argues, because these calls are rated as local by virtue of the number the CLEC has assigned to its customer, CLECs typically take the position that they should receive reciprocal compensation for the functions they provide in terminating traffic from the incumbent local exchange carrier's (ILEC's) customer (Price Direct at 8).

Verizon further explains that it is not seeking reciprocal compensation for vNXX traffic in this arbitration. Verizon contends that vNXX traffic should be addressed through market-based solutions, rather than resorting to the usual, polarizing win-lose paradigm of regulatory decision-making. Verizon is proposing that if the parties have at least one point of interconnection (POI) for the exchange of traffic in each ILEC tandem serving area where the CLEC assigns telephone numbers to its customers, the compensation rate for dial-Internet vNXX traffic should be $.0007 per minute of use, which is the Federal Communications Commission's (FCC's) default rate for internet service provider (ISP)-bound traffic when an originating carrier hands off to another carrier for delivery to an ISP in that same local calling area. In local access transport areas where the parties do not have a POI in each of the ILEC's tandem serving areas, Verizon proposes vNXX traffic be exchanged on a bill-and-keep basis (Price Direct at 11).

Verizon claims that this compromise solution includes a fundamental trade-off under which the CLEC receives compensation for handling vNXX calls originated by the ILEC's customer, in exchange for the CLEC's commitment to accept greater responsibility for transporting the traffic from the ILEC's originating end office (Price Direct at 12). Verizon argues that its proposal addresses Embarq's concern about transport costs, because Verizon will be compensated for terminating vNXX calls only if it agrees to place a POI in each access tandem serving areas. Therefore, Verizon claims, Embarq will avoid the cost of transporting calls to distant local calling areas (Verizon Initial Brief at 5).

Embarq contends that the Commission long ago decided that the "localness" of a call is determined by the physical locations of the called and calling parties. Embarq points to Case No. 95-845-TP-COI, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Entry on Rehearing (February 20, 1997) (Local Service Guidelines), and specifically to Local Service Guideline IV. C, which provides in part that:

> Any end user call originating and terminating within the boundary of such local calling area regardless of the LEC at the originating or terminating end shall be treated as a local call.

This, Embarq claims, means that the physical location of the calling and called parties is determinative, not the number that is dialed. Embarq avers that this is the rule that has been applied to voice vNXX calls by the Commission in previous arbitrations (Embarq Initial Brief at 3). Specifically, Embarq points to language in a prior arbitration involving Embarq where the Commission stated:

> To the extent that the call to a customer utilizing virtual NXX service originates or terminates outside of ... [the ILEC's] local calling area, ... the call is considered toll or interexchange. Compensation is based upon the originating or terminating party's access charges.[3]

Embarq argues that there will be no difference in the functions it performs when it connects a "garden variety" toll call from an Embarq customer to a customer residing outside the local calling area and when connecting a vNXX call to a customer within the local calling area. Embarq asserts that, because it does precisely the same thing in both instances, it is entirely appropriate that Embarq receive originating access charges when its customer makes a call to an ISP located outside the local calling area of the Embarq customer (Embarq Initial Brief at 4).

Embarq states that the Commission has not applied the analysis used in *Global NAPs* to ISP-bound calls because the Commission believed that the FCC had preempted this issue.[4] Still, Embarq argues, later court rulings demonstrate that the FCC has not preempted a state commission's ability to apply access charges to non-local, ISP-bound

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3 Embarq refers to Case Nos. 01-2811-TP-ARB, *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint* (01-2811) and 01-3096-TP-ARB, *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio* (01-3096), Arbitration Award (May 6, 2002) at 8 *(Global NAPs)*.

4 As proof of this, Embarq cites Case No. 01-724-TP-ARB, *In the Matter of Allegiance Telecom of Ohio Inc.'s Petition for Arbitration of Interconnection, Rates, Terms and Conditions, and Related Arrangements with Ameritech Ohio* (01-724), Arbitration Award, (Oct. 4, 2001) at 8.

calls (Embarq Initial Brief at 4). More specifically, Embarq avers that the United States Court of Appeals for the First Circuit addressed this precise issue about a year ago in *Global NAPs, Inc. v. Verizon New England, Inc.*, 444 F.3d 59 (1st Cir. 2006) (*GNAPs*), where the First Circuit accepted the argument of Verizon and the Massachusetts Department of Telecommunications and Energy stating:

> Regardless which approach is used, the ISP Remand Order does not clearly preempt state authority to impose access charges for interexchange vNXX ISP-bound traffic; it is, at best, ambiguous on the question, and ambiguity is not enough to preempt state regulation here.

Embarq emphasizes that the *GNAPs* opinion is particularly salient here, because the Verizon ILEC in *GNAPs* asserted that ISP-bound vNXX calls should be subject to access charges (Embarq Initial Brief at 5). Embarq further avers that because the First Circuit's decision in *GNAPs* shows that the Commission is not preempted with respect to non-local, ISP-bound, vNXX calls and because the Commission has said in its proposed carrier-to-carrier rules that this issue will be decided in arbitrations, it appears the Commission no longer believes it is preempted. In Embarq's opinion, the Commission should, therefore, reject Verizon's attempt at regulatory arbitrage and determine that these calls are subject to access charges (Embarq Initial Brief at 5-6, Direct Testimony of Fox at 9).

Verizon contends that its position is consistent with the *GNAPs* opinion. Contrary to Embarq's suggestion, states Verizon, it has never argued that this Commission is preempted from applying access charges to non-local, ISP-bound calls in the absence of any definitive FCC ruling on this issue. In other words, adds Verizon, it is arguing that the Commission should adopt Verizon's proposal, not that the Commission can not adopt Embarq's proposal (Verizon Reply Brief at 3). Verizon further contends that it is not seeking, as claimed by Embarq, to impose reciprocal compensation on vNXX traffic, as *GNAPs* did in Massachusetts. Instead, claims Verizon, it is proposing a rate that is several times lower than reciprocal compensation, coupled with a requirement for Verizon to extend its network farther toward Embarq (Verizon Reply Brief at 4).

Embarq argues that the Commission should not impose Verizon's desired solution for vNXX traffic simply because some other companies have agreed to the arrangement. Embarq contends that each interconnection agreement involves negotiation on numerous issues, with each party involved in various gives and takes, and it is wholly unfair to extract one area of agreement from an interconnection agreement that did not involve Embarq and impose that arrangement on Embarq (Embarq Reply Brief at 3). Furthermore, Embarq contends, Verizon's proposed rate of $.0007 is arbitrary in that Verizon witness Don Price (Mr. Price) has testified that not all the agreements he was familiar with used this rate and in fact some used a lower rate (Embarq Reply Brief at 4).

Embarq reiterates that because Embarq performs the same functions for a non-local, ISP-bound, vNXX call as it does for a "garden variety" toll call, it is appropriate that Embarq receive the same originating access charges as when its customer places a toll call to the Verizon customer located outside the Embarq customer's local calling area (Embarq Reply Brief at 5).

ISSUE 2 ARBITRATION AWARD

Contrary to our conclusion in 01-724, the Commission believes that the First Circuit Court of Appeals *GNAPs* Opinion now makes it clear that the FCC's ISP Remand Order has not preempted a state commission's ability to apply access charges to non-local, ISP-bound calls. Verizon itself states that it is not arguing that this Commission is preempted from applying access charges to non-local, ISP-bound calls in the absence of any definitive FCC ruling on this issue (Verizon Reply Brief at 3). The fact that Verizon is seeking this Commission's approval to establish their own proposed intercarrier compensation arrangement for vNXX, ISP-bound calls makes it clear that all parties believe that this Commission is not preempted from establishing intercarrier compensation arrangements for non-local ISP bound calls.

The Commission's Local Service Guideline IV.C states, in part, that:

> ... the perimeter of ILEC local calling area, as revised to reflect EAS, shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end user call originating and terminating within the boundary of such local calling area, regardless of the LEC [local exchange carrier] at the originating or terminating end, shall be treated as a local call.

The Commission also stated, in the *Global NAPs* Arbitration Award (May 9, 2002) at 8, that:

> To the extent that the call to a customer utilizing virtual NXX service originates or terminates outside of ... [the ILEC's] local calling area, ... the call is considered toll or interexchange. Compensation is based upon the originating or terminating party's access charges.

In Case No. 04-1822-TP-ARB, *In the Matter of TelCove Operations, Inc.'s Petition Pursuant to Section 252(b) of the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Ohio Bell Telephone Company dba SBC Ohio*, Arbitration Award (January 25, 2006) at 9, the Commission further clarified that:

> The Commission has clearly intended that the physical location of the calling and called parties is the deciding factor in the jurisdiction of the call for traffic compensation purposes.

Given that an ILEC must perform the exact same functions when originating a voice vNXX call and an ISP-bound vNXX call, the Commission sees no reason to treat these two types of calls differently, absent FCC preemption. Therefore, consistent with Local Service Guideline IV.C and previous Commission decisions, the Commission finds that, for ISP-bound vNXX calls that originate or terminate outside the ILEC's local calling area, the call is considered toll or interexchange. Compensation is based upon the originating or terminating party's access charges.

> **Issue 5: When the parties exchange traffic via indirect connection, if Verizon has not established direct end office trunking sixty days after reaching a DS1 level, should Verizon be required to reimburse Embarq for any transit charges billed by an intermediary carrier for local traffic or ISP-bound traffic originated by Embarq?**

As background, Verizon first explains that Issue 5 concerns the parties' exchange of indirect traffic, otherwise known as transit traffic. Verizon adds that such traffic is originated by one party and terminated to the other, with a third-party carrier providing the transiting service. Under these circumstances, there is no direct trunk group between the originating and terminating parties, and the third-party transiting carrier charges each originating carrier for handling the originating carrier's traffic (Verizon Initial Brief at 6).

According to Verizon, it has agreed to establish direct trunks between it and the third-party carrier once the transit traffic between them exceeds a DS1 level. To enforce this, states Verizon, Embarq proposes to require Verizon to pay all transiting charges, even on Embarq's originating traffic and not just Verizon's originating traffic, if Verizon fails to establish a direct connection with Embarq within 90 days after the traffic exchanged indirectly exceeds a DS1 level (Verizon Initial Brief at 6-7). Verizon considers Embarq's proposal to be a "deviation from the industry-standard practice of each carrier paying its own transit bills" that is, in Verizon's opinion, "unprecedented." Verizon points out that Embarq's own witness at the hearing, Edward Fox (Mr. Fox), admitted that Embarq's proposed language does not appear in any existing Embarq contracts (Verizon Initial Brief at 7).

In response, Embarq describes indirect traffic in the same way as Verizon, i.e., traffic that is exchanged between two parties via another ILEC's tandem. Like Verizon, Embarq states that the parties have agreed that Verizon must establish a direct connection once the traffic volumes reach the DS1 level. Embarq asserts that CLECs like Verizon who terminate large volumes of ISP-bound traffic "are extremely slow to establish the direct

connection with Embarq's network once the volume trigger is met" (Embarq Initial Brief at 6-7) and adds that when the parties have an indirect connection, the flow of traffic is primarily from Embarq to Verizon, a viewpoint shared by Verizon witness Mr. Price (Embarq Initial Brief at 7-8). Under these circumstances, Embarq asserts, it undisputedly incurs financial damage when Verizon fails to establish a direct connection, because as the originating carrier, it is liable to pay transit charges to the owner of the tandem switch that the parties use to indirectly connect, while Verizon has very little economic incentive to provide a direct connection (Embarq Initial Brief at 7-8). Indeed, points out Embarq, Verizon witness Mr. Price agreed on cross-examination that if Verizon did not establish a direct connection within sixty days after traffic exceeds a DS1 level, Embarq would incur transit charges that it otherwise would not have incurred if Verizon had established a direct connection. In addition, states Embarq, its own witness Mr. Fox testified upon cross-examination that it is not just theoretical that Embarq will be billed for transiting charges when it has an indirect connection with a CLEC, because the ILEC Cincinnati Bell is now billing Embarq for transiting services (Embarq Initial Brief at 7-8). Therefore, concludes Embarq, it has proposed the language at issue "to provide the appropriate incentive for Verizon to establish the direct interconnection in a timely manner" (Embarq Initial Brief at 6-7).

Verizon encourages the Commission to reject Embarq's proposal because Verizon has already agreed to establish direct trunks when indirect traffic exceeds the DS1 level. Verizon contends that the dispute resolution provisions of the interconnection agreement would apply if Verizon did not establish direct trunks once indirect traffic exceeds the DS1 level (Verizon Initial Brief at 7) and observes that there is no provision in the parties' current contract that requires Verizon to establish direct trunks when indirect traffic reaches a particular level (Verizon Initial Brief at 7-8).

Verizon notes that Embarq witness Mr. Fox stated that CLECs who terminate large volumes of ISP-bound traffic have been very slow to directly connect with Embarq after exceeding an agreed-upon threshold. Disagreeing, Verizon asserts that at the hearing Mr. Fox "cited only a single instance where an unnamed CLEC exceeded the traffic threshold." Based upon Mr. Fox's remarks, Verizon believes that Embarq (1) is often not billed for transit by the transiting carrier and (2) did not initiate a dispute resolution proceeding against the aforementioned unnamed CLEC because it was unnecessary to secure the CLEC's eventual compliance. Therefore, concludes Verizon, Embarq falsely claims that it needs a penalty provision in the interconnection agreement to prevent financial burden caused by carriers who do not establish direct trunks. To the extent that transiting carriers are not billing Embarq, adds Verizon, "delayed establishment of direct trunks is not costing Embarq anything." Verizon also claims that "if quick redress for a claimed breach of the obligation to timely establish direct trunks were as critical as Embarq claims, Embarq would have sought dispute resolution with the CLEC at issue." In sum, says Verizon, Embarq has not provided evidence that existing dispute resolution

mechanisms in the interconnection agreement are inadequate to address the direct trunking obligation, so it has not proven that a new enforcement mechanism is needed (Verizon Initial Brief at 7-8).

In reply, Embarq asserts that it is "nonsensical" for Verizon to contend that there is no need for the contract to contain a penalty because Verizon has agreed to establish a direct connection when traffic reaches the prescribed level. Embarq argues that, although Verizon has agreed to the circumstances for establishing such a connection, Verizon might not do so. Also, contends Embarq, the dispute resolution procedures may be inadequate to provide the relief to which Embarq is entitled. In Embarq's opinion, at a hearing, Verizon will likely argue that the Commission lacks jurisdiction to award monetary damages to Embarq, thus leaving Embarq with financial harm but no effective remedy. To Embarq, the main issue is whether there should be a financial incentive for Verizon to establish a direct connection when the flow of traffic is almost entirely from Embarq to Verizon, thus resulting in Embarq incurring almost all the transit charges (Embarq Initial Brief at 9). Embarq concludes that whether it is rarely billed for transit by the transiting carrier is irrelevant; if it is not billed, Embarq argues, there will be nothing for Verizon to pay, even if Verizon has breached its obligation (Embarq Reply Brief at 6).

Verizon also encourages the Commission to reject Embarq's proposal because, in Verizon's opinion, the proposal may be contrary to 47 C.F.R. §51.703(b). Verizon observes that the Commission has interpreted this rule to prohibit a LEC from charging another carrier for local traffic that originates on the LEC's own network.[5] Verizon notes Embarq witness Mr. Fox's belief that 47 C.F.R. §51.703(b) does not apply to ISP-bound traffic and his assumption that indirect traffic from Embarq to Verizon is ISP-bound because most of that traffic flows from Embarq to Verizon. Contrary to this, argues Verizon, the interconnection agreement "specifically contemplates exchange of local, *non-ISP* indirect traffic" (emphasis added by Verizon). In sum, states Verizon, even if most of the traffic from Embarq to Verizon is currently ISP-bound, not all of it is ISP-bound, and will not be entirely ISP-bound under the new interconnection agreement (Verizon Initial Brief at 8-9).

In response, Embarq contends that Verizon is merely suggesting its own interpretation of 47 C.F.R. §51.703(b). Indeed, says Embarq, Verizon has cited no authority to indicate that "it would be illegal for Verizon to agree, or for the Commission to order, that Verizon *reimburse* Embarq for Embarq's transiting charges that are incurred solely because Verizon ... has breached its contractual agreement" (emphasis added by Embarq in its Initial Brief at 8-9). Thus, says Embarq, Verizon is inaccurate when it says that

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5 Verizon refers to the *Global NAPs* Entry on Rehearing (July 18, 2002) at 3, in which the Commission states that "pursuant to 47 CFR §51.703(b), Ameritech and Sprint are precluded from charging GNAPs for exclusively local traffic that originates on their networks." 47 C.F.R. §51.703(b) states that a "LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."

Embarq's proposed penalty would assess charges on Verizon, violating 47 C.F.R. §51.703(b). Embarq believes that it would be using transit charges as an appropriate measure of damages for breach of contract, something that the aforementioned rule does not prevent (Embarq Reply Brief at 7). Further, adds Embarq, the claim that traffic may fluctuate above and below a specified threshold is theoretical, given that Verizon did not provide any examples that this has occurred. If such fluctuation does occur, says Embarq, the parties can negotiate language to address such rare situations (Embarq Initial Brief at 10).

Finally, argues Verizon, the Commission should reject Embarq's proposal because it would hold Verizon liable for delays by others whose cooperation Verizon needs to establish direct trunks. Verizon notes Embarq's acknowledgement that Verizon cannot always control the timeframe for installing direct trunks, given that this would be a joint undertaking with another carrier (Verizon Initial Brief at 9). Still, says Verizon, "while Embarq proposed language during the arbitration that addresses the situation where Embarq causes a delay in trunk installation, Verizon ... could still be held responsible for third-party delays" (Verizon Reply Brief at 6).

In response, Embarq observes that it is aware of possible situations outside of Verizon's control that might prevent timely establishment of a direct end office trunk. As a result, says Embarq, its most recent proposed language states that the CLEC will have ninety days for installation of direct end office trunking after indirect traffic exceeds a DS1; if this installation does not occur, the CLEC may be required by Embarq to provide reimbursement for transit charges. Embarq notes that it proposed a ninety-day period even though its witness Mr. Fox testified that it usually takes just two weeks for Embarq to establish a direct connection following its receipt of an order from a CLEC (Embarq Initial Brief at 9-10). Also, says Embarq, on cross-examination its witness Mr. Fox agreed that if the fault lay with a third party and not Embarq, Embarq is amenable to adding language to excuse Verizon from meeting its deadline (Embarq Initial Brief at 9-10, Embarq Reply Brief at 7-8).

ISSUE 5 ARBITRATION AWARD

The Commission will first address the applicability of 47 C.F.R. §51.703(b) and the Commission's decision in *Global NAPs* involving this rule. To the Commission, Embarq has decided to measure damages for a possible breach of contract in terms of the transit charges that could be assessed to Embarq. Indeed, upon examining Embarq's proposed language, the Commission concludes that Embarq would not unconditionally be passing along transit charges to Verizon; rather, Embarq would hold Verizon accountable for such charges if (1) the indirect traffic level exceeded a DS1 level, (2) Verizon did not establish a

direct connection within 90 days, and (3) the fault was not Embarq's.[6] Under such circumstances, the Commission does not believe that Embarq's proposal conflicts with 47 C.F.R. §51.703(b).

Next, the Commission will address Verizon's concern that the language currently proposed by Embarq could result in Verizon being responsible for Embarq's proposed penalty even when the delay in establishing a direct connection was caused by a third party. While this certainly is a legitimate concern on Verizon's part, the Commission takes notice of Embarq's willingness, as stated by Embarq witness Mr. Fox during the hearing, to amend the proposed language and eliminate this concern for Verizon. In fact, the Commission will condition our award on this issue based on Embarq's expressed willingness to forego assessment of transit charges when a delay is caused by a third party.

Next, the Commission will address Verizon's argument that Embarq could address a breach of contract via dispute resolution. The Commission notes Embarq's assertion that while Verizon has agreed to establish a direct connection once indirect traffic exceeds the DS1 level, Verizon might possibly not do so in a manner timely enough to avoid the assessment of transit charges upon Embarq by the transiting carrier. Further, relying on dispute resolution alone holds no certainty of providing financial relief in the manner or in a timeframe that will recompense Embarq. Thus, although Embarq has no had such language in its contracts previously, the Commission does not consider such language to be inappropriate.

In conclusion, then, the Commission approves Embarq's proposed language, on the condition that it is amended to eliminate the possible assessment of transit charges against Verizon for third-party actions not within Verizon's control that cause delay in establishing a direct connection.

It is, therefore,

ORDERED, That Verizon and Embarq incorporate the directives set forth in this Arbitration Award within their final interconnection agreement. It is, further,

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6 The final version of the language that Embarq proposed shortly before the hearing read, in part, "After Indirect traffic exceeds a DS1, if CLEC has not established direct end office trunking ninety days after reaching a DS1 Level as described in section 61.1.5, Embarq may require CLEC to reimburse Embarq for any transit charges billed by an intermediary carrier for Local Traffic or ISP-bound Traffic originated by Embarq. *If the time to establish direct interconnection exceeds 90 days due to the fault of Embarq, e.g.,* lack of facilities, certain equipment requirements, problems with an order, etc., the parties will extend the 90-day deadline for an appropriate period and Embarq will not require reimbursement for any related transit charges during this time" (Direct Testimony of Fox at 11-12.)

ORDERED, That, within 14 days of this Arbitration Award, Verizon and Embarq shall docket their entire interconnection agreement for review by the Commission, in accordance with the Mediation/Arbitration Guideline X.J. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each party shall file for the Commission to review its version of the language that should be used in a Commission-approved interconnection agreement. It is, further,

ORDERED, That within ten days of the filing of the interconnection agreement amendment, any party or other interested persons may file written comments supporting or opposing the proposed interconnection agreement amendment and that any party or other interested persons may file responses to comments within five days thereafter. It is, further,

ORDERED, That nothing in this Arbitration Award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this Arbitration Award does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate any party to a contract from the provisions of any state or federal law that prohibits restraint of trade. It is, further,

ORDERED, That this docket shall remain open until further order of the Commission. It is, further,

ORDERED, That a copy of this Arbitration Award be served upon Verizon, Embarq, their respective counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

JML:ct

Entered in the Journal
APR 18 2007

Reneé J. Jenkins
Secretary

STATE OF KANSAS

COUNTY OF JOHNSON

BEFORE ME, the undersigned authority, personally appeared Edward B. Fox, who being duly sworn deposes and says:

That he occupies the position of Regulatory Manager, and is the person who has furnished the answers to Staff's second set of interrogatories items 14-15, 27-31, and 33-40 and further says that said answers are true and correct to the best of his knowledge and belief.

WITNESS my hand and seal this 23rd day of April, A. D., 2007

Signature Edward B. Fox

Debra K Smith
Notary Public
State of KS

My Commission Expires:
June 29 2009

DEBRA K. SMITH NOTARY PUBLIC STATE OF KANSAS

Voice | Data | Internet | Wireless | Entertainment

EMBARQ™

024

Embarq Corporation
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1313 Blair Stone Rd.
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April 23, 2007

Ms. Ann Cole
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 060767-TP; CLAIM OF CONFIDENTIALITY

Dear Ms. Cole:

Enclosed for filing are the original of the confidential documents listed below. Embarq claims that this information is proprietary confidential business information in accordance with Section 364.183(1), Florida Statutes.

The information for which confidentiality is being claimed is as follows:

- Highlighted Information in Interrogatories – No. 38

This Notice requires that the information be treated as confidential while on file at the Florida Public Service Commission and further that the information be returned as required by Section 364.183, F.S.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer. Thank you for your assistance in this matter.

Sincerely,

Susan S. Masterton

Susan S. Masterton
COUNSEL
LAW AND EXTERNAL AFFAIRS: REGULATORY
Voice: (850) 599-1560
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EXHIBIT NO. 7

DOCKET NO.: 060767-TP

WITNESS: n/a

PARTY: Staff

DESCRIPTION: Don Price Deposition Transcript and 3 Late Filed Exhibits

1. Reference to Generic Reciprocal Compensation Order
2. Existing Transit Rate in the Parties Contract
3. Transcript of the Hearing in Ohio Case No. 06-1485-TP-ARB

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 7
Company/ FPSC Staff
Witness: Stip-7
Date: 05-03-07

PROFFERING PARTY: Staff

I.D. # n/a

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

CASE NO. 060767 TP

IN THE MATTER OF:

PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES LLC D/B/A VERIZON ACCESS TRANSMISSION SERVICES FOR ARBITRATION OF DISPUTES ARISING FROM NEGOTIATION OF INTERCONNECTION AGREEMENT WITH EMBARQ, FLORIDA, INC.,

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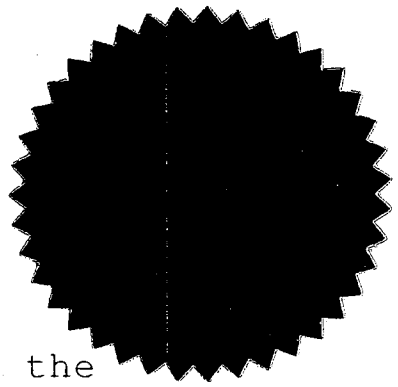
TELEPHONIC DEPOSITION OF:
DONALD PRICE

DUPLICATE ORIG.



TAKEN AT THE INSTANCE OF:	The Staff of the Florida Public Service Commission
DATE:	April 25, 2007
TIME:	Commenced at 9:10 a.m. Concluded at 11:36 a.m.
LOCATION:	Gunter Building Room 382-D 2540 Shumard Oaks Boulevard Tallahassee, FL
REPORTED BY:	JUDY CHIN RPR, CRR

ACCURATE STENOTYPE REPORTERS, INC
2894 REMINGTON GREEN LANE
TALLAHASSEE, FL 32308 (850)878-2221

002

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ALSO PRESENT: Simona Boren, Notary
Linda Bennett, Sue Ollila, Michael Barrett, Frank Trueblood, Pat Lee, Edward Fox

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STIPULATIONS

The following deposition of DON PRICE was taken on oral examination, pursuant to notice, for purposes of discovery, and for use as evidence, and for other uses and purposes as may be permitted by the applicable and governing rules. Reading and signing is not waived.

* * *

Thereupon,

DON PRICE

was called as a witness, having been first duly sworn via Judy Chin, Court Reporter, via Simona Boren, was examined and testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. TEITZMAN

Q We will go ahead and get started with Mr. Price.

We will go on the record.

Mr. Price, my name is Adam Teitzman. I'm an attorney with the Florida Public Service Commission, and I will be taking your deposition today.

I do have a cold, so if at any point you don't understand one of my questions, please let

me know and I will try to clear my sinuses and repeat the question.

Mr. Price, could you please state your full name and business address for the record.

A Yes. My full name is Donald G. Price. I go by Don. My business address is 701 Brazos, B R A Z O S, Suite 600, Austin, Texas, 78701.

Q Thank you. You filed direct and revised rebuttal testimony in Docket Number 060767-TP before the Florida Public Service Commission?

A Yes.

Just to be clear, we filed the initial direct followed by the rebuttal testimony according to the schedule, and then subsequently filed amended direct and rebuttal, my testimony in both cases, to reflect the fact that the parties had been able to resolve an additional couple of the issues in the proceeding.

Q Thank you. We will start off with issue -- with some questions on issue one.

First I have some clarifying questions on Verizon's proposed agreement language as shown in the decision point list, that's Sections 55.4 through 55.4.4.

The compensation method described in

sections 55.4.2 and 55.4.3 is LATA based and depends on whether Verizon has a point of interconnection with Embarq in each Embarq tandem-serving area where Verizon has assigned numbers, is that correct?

Do you need me to repeat it?

A No, I think I got it.

Yes; it is, quote, LATA based, although because it is often the case that there are multiple tandem-serving areas within the LATA, the compensation depends on whether or not the connections have been made to each of the appropriate tandems, Embarq tandems that is from which traffic would be originated.

Q According to Section 55.4, intraLATA calls are defined as those whose physical end points are within the LATA, is that correct?

A Yes, it is.

Q And Section 55.4.1 makes a distinction between local and intraLATA toll, is that correct?

A Yes.

Q Does the compensation method depend on whether a call is local or intraLATA toll?

A Generally --

The compensation that we are talking

about here is for a separate type of service than what's traditionally thought of as local for intraLATA toll.

Typically when we think in those terms, we are thinking about, you know, local calls where, you know, someone's teenager is calling another's teenager within the exchange, of a, quote, local call; or, you know, someone is calling the county seat, you know, in another exchange and placing an intraLATA toll call in order to determine how to get their vehicle registered, or something.

Here we are talking about ISP-bound traffic. We are talking about Embarq's customers dialing a seven-digit number in order to reach their ISP so that they can use AOL, whatever.

It is a little bit different, and that's why we structured our recommendation the way we did, because it is not traditional classifications of traffic.

Q Thank you.

According to Section 55.4.4, any intraLATA voice vNXX traffic would be exchanged on a bill-and-keep basis, is that correct?

A If it is not ISP-bound traffic, as I

just described, you are exactly right.

008

Q Does it make a difference whether the traffic is local or toll?

A Yes, it does. Because, again, when you are talking about those concepts, you are generally talking about voice traffic, and ISP-bound traffic is not voice traffic.

So there is a carve out, if you will, in our language that says that the voice traffic is exchanged on a bill-and-keep basis and it is not compensable.

Q Would traffic be exchanged on a bill-and-keep basis whether or not Embarq and Verizon have at least one POI in each tandem-serving area or not?

A I'm looking for the appropriate language, because I think our language answers that directly.

If you look at 55.4.4, if it is not ISP-bound traffic, and each LATA is exchanged on a bill-and-keep basis -- so in other words, regardless of the -- regardless of the compensation that is intended for the ISP-bound traffic, the voice traffic will be bill and keep.

Q All right. Thank you.

009

For ISP-bound traffic, Verizon would charge Embarq .0007 cents per minute if Verizon has at least one POI in each of Embarq's tandem-serving areas, is that correct?

A That is --

Yes; that is the proposal that we have in the proceeding.

Q Does it make a difference if the physical end points of the call are both within the LATA or if one end point is outside of the LATA?

A Under our proposal, it does not make a difference. And the reason that it doesn't make a difference is because, again, we are talking about -- we are talking about ISP-bound traffic, which is nontraditional, I guess one way to look at it.

Really in that context you are not talking about the, quote, end points of a call the way that you normally would on a voice call.

Q ISP-bound traffic is exchanged on a bill-and-keep basis if Verizon does not have at least one point of interconnection in each of Embarq's tandem-serving areas in the LATA, correct?

A Yes, generally.

And the only exception that I would make 010
to that is if within that tandem sector area Verizon intends to originate traffic. In other words, if there's no traffic there at all, then the requirement would not apply, because we are only talking about a compensation method and an obligation where the parties have agreed to exchange traffic.

Q Here, again, does it make a difference if the physical end points of the call are both within the LATA or if one end point is outside of the LATA?

A Under our proposed language, the answer is no.

And, again, that reflects the fact that we are talking about nontraditional traffic where the concept of an end point, if you will, is really -- essentially meaningless.

Q My next series of questions will address witness Fox's direct testimony.

On page eight of witness Fox's testimony, continuing on to page nine, line two, Mr. Fox discusses the global NAPs v Verizon New England order from the First Circuit Court of

Appeals.

How much weight, if any, should the Florida Commission give to this order? 011

MR. COHEN: I will object to the extent that calls for a legal conclusion.

THE WITNESS: To answer your question, Verizon does not believe that much weight should be given to that decision, and that is our position for the following reason: The question that was being addressed as I understand it in laymen terms in that decision had to do with whether the Commission was preempted from rendering a decision. And obviously here there is a dispute regarding compensation --

THE REPORTER: I am sorry.

THE WITNESS: I think what I was trying to say that there is no question about preemption because the parties have brought the question of compensation before the Commission as the dispute on that issue.

Did you get that?

THE REPORTER: I got it now.

MR. COHEN: That's the end of the answer.

Let me take one second and explain something to Don because of the unusual circumstances here.

It may be difficult for the court reporter to hear certain things over the telephone. If she asks you to repeat something, simply repeat it verbatim without any further explanation.

Thank you all.

BY MR. TEITZMAN

Q I'll proceed.

Witness Fox discusses the Florida Commission's decision in the generic reciprocal compensation proceeding on page nine, lines four through 12 of his testimony.

Once again, how much weight, if any, should the Commission give this order when making its decision about this issue?

MR. COHEN: Object to the question as calling for a legal conclusion.

Mr. Price is free to answer as a layman.

THE WITNESS: The problem in applying that decision strictly to the fact situation that is presented by the parties in this proceeding is that the --

013

I mean obviously the Commission did not set a rate in that proceeding, and yet that is precisely the question that the parties have brought to the Commission in this dispute.

I think that there may be some elements of the Staff recommendation in that proceeding that are useful, but the Commission order itself -- I mean they refuse to set the rate saying that the parties should negotiate. I mean while we agree with that, obviously here the parties were unable to reach resolution.

BY MR. TEITZMAN

Q The next series of questions will address witness Fox's rebuttal testimony.

On page three, lines one through six of witness Fox's rebuttal testimony, he discusses the Embarq/FDN arbitration where the Commission stated in part upon reviewing consideration of the parties' arguments and the record, virtual NXX traffic shall be subject to long-distance access charges based on the end points of the calls. I will ask how much weight, if any, do you think the Commission should give to this decision?

014

MR. COHEN: Object to the form of the question, to the extent it seeks a legal conclusion.

Mr. Price is free to answer as a layman.

THE WITNESS: Well, one of the things that is going to color my response here is that leading into that is a question at page two that Mr. Fox poses in his testimony, in his rebuttal testimony as to whether Embarq agrees that the traffic -- the vNXX calls are local.

I want to underscore the fact that that mischaracterizes the proposal that Verizon has on this issue, because we tried to make it very clear that we are talking about -- we are trying to get away from traditional legal definitions and classifications that have a lot of weight to them and reach the kind of resolution that other carriers have been unable to reach on a negotiated basis.

Now, that said it is my understanding having read that FDN arbitration decision that the end points of the calls, here, again, was referring solely to voice traffic. And because we are talking about ISP-bound

traffic, I don't think it has applicability. 015

BY MR. TEITZMAN

Q Thank you.

On page three, lines 15 through 19, witness Fox discusses the negotiation process and the tradeoffs on specific issues.

Is witness Fox correct that the resolution of any one issue might be the result of a resolution of another issue?

A In a general sense I agree that where there are multiple issues that already can render their own -- can bring their own business interest into, you know, assigning weights, if you will, to the different issues. In this instance, on this particular issue, the merits of the recommendation that I have made on the vNXX issue for ISP-bound traffic are very clear on their own.

In other words, as I've said, you know, this morning, the traditional classifications of voice traffic really aren't applicable. There is a, I think, a very identifiable public benefit to Embarq's customers of being able to, you know, set up their computers to dial their ISPs in a manner that allows them broader access to their internet service providers.

016

So it is not clear to me, and I think Mr. Fox's testimony highlights the concern or the difference of opinion, perhaps, that he and I have on this issue, at the very bottom of page three, because he says somehow or the other Embarq is not able to, quote, judge the merits of accepting the compromised solution on this issue. And I think that's just not true. I mean, the merits of the proposal can be readily identified on their own independent of other issues that may have been initially part of the negotiation.

Q On page four, line four through five, Mr. Fox asserts that Verizon must interconnect with Embarq anyway if it wants to receive Embarq's traffic. Is this statement correct?

MS. CASWELL: Are you still on Mr. Fox's direct testimony?

MR. TEITZMAN: Yes. It is page four, lines four through five.

I apologize. No. It is the rebuttal testimony. I apologize.

MS. CASWELL: Thank you.

THE WITNESS: The answer I believe is that Mr. Fox's statement is a little bit misleading.

I mean, yes, it is true that there needs to be a form of interconnection in order for traffic to be exchanged, but we are not talking about just any form of interconnection.

The proposal that you and I discussed at the outset is that very specific proposal that obligates Verizon to have transport at a minimum to the various tandems that Embarq operates in order to receive compensation.

So indirect interconnection where that POI for interconnection is elsewhere within the LATA would simply mean that there is no compensation. As we discussed at the outset, it would purely be bill and keep.

So there is a difference in my view between just having interconnection and the kinds of interconnection that's part of our proposal.

BY MR. TEITZMAN

Q Mr. Price, I'm going to go back to your amended direct testimony, page ten, lines nine through 11.

Here you assert that vNXX compensation should be addressed to market-based solutions

018

rather than by resort to the usual, polarized win-lose paradigm of regulatory decision making.

On page four of your amended rebuttal testimony, lines three through five, you describe Verizon's proposal as market based.

When negotiations fail between parties as they have here, please explain how a solution can still be considered market based if the only way it can be achieved is through paradigm of regulatory decision making.

A My answer to that is that, and I hoped this had been clear in my direct testimony, but the -- and that's why I spent time in my direct testimony characterizing what I referred to as the traditional CLEC view of the issue, where, quote, reciprocal compensation is due for ISP-bound traffic, and the traditional ILEC view, because in both of those views, traditional regulatory concepts are the principles, I guess, if you will that the parties are relying on in support of their recommendation. That's not what Verizon is doing here. That's not what my testimony was about.

I was trying to get away from the traditional concepts of traffic as local or toll

or whatever because we are talking about a different kind of traffic.

019

I was trying to point the Commission to the existence of solutions that had been reached in the marketplace as an indication of the == of solutions that had been reached that are not binary; in other words they are not either or; they are sort of an amalgam of the parties' obligations and responsibilities and then the benefits that they receive from those.

Q Let me ask you this: Can a state commission decision be considered a market-based decision?

MR. COHEN: Object to the form of the question to the extent it calls for a legal conclusion.

Obviously Mr. Price can answer to the extent he has an opinion.

THE WITNESS: Yes. I think a commission can. And perhaps a very specific example that I would tie back to my previous answer would help.

The Commission in Florida has already approved for Embarq a reciprocal compensation rate. That rate is more than two-tenths of a

cent per minute.

The traditional CLEC view of this issue would say, by golly, you know, that's the kind of traffic it is and that's what I'm entitled to, but that's not what we are recommending here.

So if the commission is taking --

I hesitate --

Well, if the commission's decision is based on something other than a traditional regulatory classification and looks to other resolutions of that issue in the marketplace, then I think it can.

BY MR. TEITZMAN

Q I will now turn to your amended rebuttal testimony, page six, lines eight through ten where you assert, if parties are unable to agree on a compensation mechanism, the Commission's default view is that non-ISP calls are not subject to reciprocal compensation.

Your footnote refers to the Florida Commission's order on reciprocal compensation, Order Number PSC-02-1248-FOF-TP at page 33, is that correct?

A Yes, it is.

Q Could you please identify exactly where in that order the Commission states that its default view is that non-ISP calls are not subject to reciprocal compensation?

021

MS. CASWELL: Don, do you have that order with you? It wasn't in the list --

THE WITNESS: I do not have it with me. I apologize for that.

MS. CASWELL: Adam, can we perhaps submit that answer later because he doesn't have the order with him?

MR. TEITZMAN: Certainly. That can be filed as a late-filed deposition exhibit.

MS. CASWELL: The question again was can --

Can you repeat it?

(Late-filed Exhibit No. 1 marked for identification.)

MR. TEITZMAN: Yes.

MS. CASWELL: Can you repeat your question, Adam?

BY MR. TEITZMAN

Q Certainly. Please identify exactly where in the Commission's order it states that it is the Commission's default view that non-ISP

calls are not subject to reciprocal compensation.

MR. COHEN: Did you understand the question, Mr. Price? 022

THE WITNESS: Yes, I do.

MR. TEITZMAN: That will be late-filed Exhibit Number 1.

MR. COHEN: Response to question pertaining to footnote three of amended -- rebuttal testimony, rather?

MR. TEITZMAN: That sounds great to me.

BY MR. TEITZMAN

Q I will proceed.

This next series of questions regards your discovery responses served on the Commission on Monday, April 23rd.

The first question refers to Verizon's response to Staff's second set of interrogatories, number 11.

MR. COHEN: I'm sorry. Could you give me just a second to get that in front of me?

MR. TEITZMAN: Certainly. I apologize.

MR. COHEN: Just again to make sure I'm on the same page, we are talking about our responses to Staff's second set?

MR. TEITZMAN: Yes. Specifically number

11.

MR. COHEN: Okay. I have it.

023

BY MR. TEITZMAN

Q Here it states that Verizon and Embarq have a POI in each of Embarq's tandem-serving areas and in each of Embarq's Florida LATA, except for the Fort Myers LATA. In the Fort Myers Lata an order has been placed for a direct connection in Avon Park, is that correct?

A Close. Just to clarify, the table that is reflected there below the verbiage in that response does indicate that there already is a connection at the Fort Myers exchange in the Fort Myers LATA. So the Avon Park connection that we are talking about is yet a separate additional direct interconnect with Embarq in the Fort Myers LATA.

Q Thank you for clarifying.

I would like to refer to Embarq witness Fox's response to Staff's second set of interrogatories. Do you have that with you, Mr. Price?

A I believe so. And this was also filed April 23rd, I believe?

Q I believe that is correct; yes.

024

A Yes, I have it.

Q Okay. Specifically number 14.

A Okay.

Q If the Commission were to determine that vNXX compensation should be based on the physical end points of calls, would you agree that for the calls shown in your Exhibit DP-1 Embarq would pay reciprocal compensation to Verizon?

A Bear with me. I'm afraid you are going to have to repeat your question. I want to get the schematics in front of me and look at that and make sure that I understood the first part of your question.

Q Certainly. I will repeat.

If the Commission were to determine that vNXX compensation should be based on the physical end points of calls, would you agree that for the calls shown in your Exhibit DP-1 Embarq would pay reciprocal compensation to Verizon?

A Yes.

Q For the calls shown in your Exhibit DP-2, would you agree that Embarq would charge Verizon originating switched access?

A Yes; with the caveat that I mentioned earlier, which is that for dial ISP traffic

determining the, quote, physical end points is not a simple matter at all.

I mean, do you define that as the ISP modem, do you define that as the --

In other words, the answer to that question sort of belies the over-simplistic nature of the hypothetical that you posed.

Q And still referring to the calls shown in Exhibit DP-2, is it correct that Verizon would not charge Embarq terminating switched access under that hypothetical?

A Yes.

Q Thank you.

My next series of questions is going to refer to issue four. On page eight of your amended rebuttal testimony, footnote four, you refer to a case in Ohio, is that correct?

A Yes, it is.

Q And did that case involve the same parties as this case?

A That's correct.

Q Does the Ohio case have an issue similar or identical to the issue here in Florida?

A Yes.

Q Recently in response to Staff's

discovery, number 12 -- request for production number 12, Embarq provided a very recent arbitration award order for this case. Have you seen that order? 026

A Yes, I have.

Q Would you accept, subject to check, that the Ohio order contains language that closely resembles what Embarq is offering your company here in Florida?

MR. COHEN: Object to the form of the question, to the extent that the opinion on whether something closely resembles something is a legal conclusion.

Mr. Price can certainly answer from the perspective of a layman.

THE WITNESS: My reading of the Ohio decision that I referenced in my testimony is that the decision does not adopt unaltered, at least, Embarq's proposed language.

BY MR. TEITZMAN

Q Are there any unique considerations here in Florida that this Commission should have in mind when it analyzes the Ohio decision?

MR. COHEN: Could you repeat the question asked?

027

MR. TEITZMAN: Yes.

BY MR. TEITZMAN

Q Are there any unique considerations here in Florida that this Commission should have in mind when it analyzes the Ohio case?

A There is one issue that I would point out, and I don't know that it is unique to Florida, necessarily, but it is something that was recently brought to my attention, and that is that Embarq requires a customer profile or a form of documentation that is separate and distinct from the process by which trunking would be ordered on Embarq. And Embarq will not accept orders for trunks until such time as that profile has been completed and approved.

So what I'm getting at is that there may be additional delays that are added to the process by virtue of Embarq's insistence on this profile, which to my understanding is unique in the industry.

So for that reason the time frame that Embarq has proposed may be insufficient for the parties to do the work, particularly if the clock starts long before an order can even be placed for a new trunking.

Q Would you agree that the proposed language for issue four requires Verizon Access to build a direct facility for transit traffic once it exceeds the DS-1 level?

A Yes. I pointed that out in my testimony, that there's no disagreement among the parties as to Verizon's obligation to establish direct trucking in those circumstances.

Q Do you believe that Embarq's language proposal for this requirement is clear and unambiguous?

MR. COHEN: Object to the form of the question, to the extent that clear and unambiguous is a legal term of art.

To the extent that Mr. Price is able to answer as a layman, he is free to do so.

THE WITNESS: From a lay perspective it is not as clear and unambiguous as we would like.

Perhaps part of that reason is because there's no other agreement that I can see in the numerous examples that Embarq provided in response to Staff's discovery, there are no other examples where this language appears.

I have the information that I'm

029

referring to that was in Embarq's responses to Staff's discovery indicates a number of instances in which there are no provisions --

I'm sorry. Let me be clear about what I'm referring to.

I'm referring to a filing made April 12, 2007 in this docket, and it was Embarq's responses to Verizon's first set of interrogatories. So I misspoke earlier.

If you look at the contract language that appears in the production of documents, response 1-A and B, there are numerous examples where the obligation of the CLEC when the traffic threshold is reached is to either implement direct interconnection or to pay the transit charges for traffic that is originated by Embarq.

And so that's very different from what Embarq has proposed here. So what I meant by the first part of my answer is that we are really reaching new ground, because the obligation that they seem to impose here is not that we do either or, but that we do -- that we establish the direct interconnection, and at the same time if that time frame

lapses, that we also agree to pay their transit charges for their own interconnected traffic.

BY MR. TEITZMAN

Q And this obligation was ordered by the Ohio Commission, is that correct?

A Well, the order --

I believe you have a copy of the order. It speaks for itself.

Q Both parties agree to the DS-1 threshold.

Could you please explain why this threshold is appropriate.

A Yes. As a matter of engineering telecommunications networks there are certain levels of traffic below which it really is more efficient for the two parties to utilize indirect interconnection. Let me provide an example.

If an Embarq exchange is behind a Bellsouth tandem, and the traffic that is originated from that Embarq exchange to Verizon would only fill up a few voice connections, if you will, then it is more efficient for both parties to utilize bigger pipes that both connect with Bellsouth then to skinny down a very small pipe

that would be used only for that small amount of traffic.

And I believe our folks use something like 250,000 minutes a month as something that would probably reach a T-1 threshold, sort ~~of~~ represent T-1 threshold. Traffic engineers talk in different terms, so that's not actually the term that they would use. 031

But once traffic from that Embarq exchange exceeded say that 250,000 minutes a month, then it no longer is efficient to utilize those indirect interconnections through Bellsouth, because there's enough traffic to justify creating -- or establishing a direct connection between Embarq and Verizon. I hope that answers your question.

Q Yes, it does. Thank you.

Is it your understanding that the current proposal by Embarq includes a 90-day time frame for direct interconnection?

A I'm a little bit uncertain sitting here today as to whether that's the case.

There was initially a 60-day time frame, and that was modified -- I'm sorry -- that may have been modified in Mr. Fox's testimony.

Sitting right here today, I don't recall.

Q Would 90 days be acceptable to Verizon? 032

A Not without recognition of some of the other factors that were discussed either in my testimony or here this morning.

I mean one of the factors that still is not completely addressed in the language that I have seen from Embarq on this is the issue of third-party responsibility. It is often the case that a third-parties' facilities would be needed in order to accomplish that direct interconnection; and without some accommodation of that, then no, the language would not be acceptable.

The other caveat that I would make is the point that I raised earlier about this profile that Embarq requires before it will even accept an order.

If Embarq were to agree that that clock would not begin until the time that it had accepted the order, then that would certainly be preferable, given the additional delay that's created by that separate process.

Q Would 120 days after the profile be acceptable?

MS. CASWELL: Could I just get some clarification on that question? Do you mean 120 days after Embarq accepted the order?

MR. TEITZMAN: Yes.

MS. CASWELL: Okay. Thank you.

THE WITNESS: That certainly addresses the second of the caveats.

Again, we would still hope that there would be recognition of the need to hold Verizon harmless where a third party -- a third-parties' actions impact the ability to turn up that interconnect.

BY MR. TEITZMAN

Q I would like to get a feel of the time it takes to establish the direct connection.

Under the best case scenario, where there are no delays, can you give me your best estimate to how many days it would take to direct connect, to establish a direct connection?

A Unfortunately I don't deal on a day-to-day basis with those kinds of orders with Embarq. I mean I would only be speculating in order to answer your question.

Q Well, do you have an opinion as to what the average time length would be, just in general?

A No, I really would not.

I mean, there could be scenarios where 034
there are already facilities in place that have spare capacity, and in that scenario it should be a relatively quick, painless, straightforward process to establish trunking on those facilities.

It's circumstances where facilities do not exist and they would either have to be constructed or procured from a third party, or whatever, that it would really lead to very -- a different kind of answer, and I just don't -- I would want to know more about the day-to-day operations between the companies and, you know, the extent of Embarq's facilities to the points where Verizon has local city networks in Florida in order to give you an answer, and I just don't have that.

Q Okay. Just one more question on that topic.

Would it be possible, for example, in five days, is that physically possible to direct interconnect within five days?

A I don't believe that the --

I don't think that that would be, quote, standard interval, as I understand the meaning of

035

the term in that industry. In other words, it would be much less than the standard interval, which would probably be something like 30 days, or something like that.

Q Mr. Price, I want to ask you about the temporary spikes which is a topic you addressed in your amended direct testimony at page 15, lines 11 through 17.

A Right.

Q Should temporary spikes be incorporated into the discussion regarding the DS-1 threshold?

A From a traffic engineering perspective, traffic does vary by season and for various reasons. I think Mr. Fox expressed a willingness to be accommodating in that area, and I see that as a good sign.

The language that exists today, the proposed language from Embarq does not address that, but it doesn't appear that there is a conceptual difference between the companies on that point.

Q Would temporary spikes be incorporated into the parties' interconnection agreement?

A Yes. That's exactly what I was trying to say in my earlier answer.

It is good that Mr. Fox expressed recognition of that possibility in his testimony, but the resolution really needs to be in language in the interconnection agreement. 036

Q I'm now going to refer to your amended rebuttal testimony. Beginning on page nine, line 21, and ending on the top of page 11.

A Okay.

Q Is it correct to say that your answers touch on the assignment of fault for one party or the other in the event of a delay?

A Could you rephrase your question or reask your question, please?

Q Certainly. This portion of your testimony, you are addressing the assignment of fault for one party or the other in the event of a delay, is that correct?

A Generally I think that's true.

You know, the way that Verizon views the proposed language as a, quote, penalty provision; and, yes, I think that the question of the need for a penalty provision has to take into account the question of -- the reason for any delay or any inactivity with regard to the obligation that we are talking about.

Q Who would determine fault if there is a delay?

A I mean, I see it as relatively straightforward from an engineering perspective.

In other words, when the company's engineers sit down and talk about this sort of thing, they have a very clear objective, which is how to get it done. And I've seen that numerous times over my tenure in the industry. But the engineers aren't the ones that would be looking at the language in the interconnection agreement and trying to determine whether or not under Embarq's proposed language Embarq was now able to begin charging Verizon for the transit fees that were caused by its own customers originating traffic.

Q So it is conceivable that parties could disagree about the determination of fault, is that correct?

A Yes, I think so. And my earlier answer was just to say that the extent of that disagreement is probably the function of whether you are talking with the engineers or whether we are talking with the lawyers that interpret the contract language. There's likely to be a lot less ambiguity when you talk with the engineers.

Q If there is an impasse and there is a disagreement as to the assignment of fault, who should resolve that disagreement?

038

MR. COHEN: Object to the form of the question, to the extent it seeks a legal conclusion.

You can answer, to the extent you have an opinion.

THE WITNESS: Well, actually that gets to one of Verizon's objections to the proposed language, because it would not necessarily be self-enforcing.

I mean, I think the idea is that Embarq would send -- you know, after the given period of time that Embarq would then begin to bill Verizon for those transit charges that it is being assessed by the tandem provider for its customers originating traffic. But it could well be the case that Verizon would dispute those charges which would lead to the need for resolution by a third party, by the Commission.

And that's why we felt like the general dispute resolution mechanism that already exists in the agreement for all of the

obligation is actually preferable than a specific provision related to this one obligation.

BY MR. TEITZMAN

Q I believe in your testimony that you discussed that a delay could be attributable to a non-party, i.e., not Embarq or Verizon Access, is that correct?

A Yes. To what I said earlier about depending on whether a third party would have facilities that would be used for that direct interconnect.

Q Has Verizon Access proposed any language that touched on the non-party delay?

A I believe the answer to that is no, because we object to the overall need for this provision.

Q If Embarq offered a language proposal where non-party delays were treated in the same manner as Embarq delays, would that satisfactorily resolve this issue for Verizon Access?

MR. COHEN: Object to the form of the question, to the extent it calls for a legal conclusion and speculation.

To the extent Mr. Price has an opinion,

you can answer.

THE WITNESS: As I noted a moment ago, Verizon has an objection to the need for this language in any event.

I mean, there has been no demonstration that I have seen by Embarq for the need for this extraordinary provision. It does not exist in other interconnection agreements, as I noted earlier.

In fact, the other interconnection agreement that Embarq has referred to has an either-or provision. You either establish the direct connect or you pay the originating transit, and that's not what it is asking for here.

So I think the question sort of puts Verizon in a position of negotiating with itself in something that it doesn't believe is unnecessary.

BY MR. TEITZMAN

Q We will move on to issue five now. I would like to refer you to page 11 of your amended rebuttal testimony, lines 11 through 12.

A Okay.

Q You state here that neither the FCC nor

this Commission has established a pricing standard for transit service.

Is the transit pricing issue one of the issues the FCC is addressing in its intercarrier compensation further notice of proposed rule making? Mr. Price, do you need me to repeat that question?

A No. I got the question.

I don't know the answer. I do not recall having seen that issue squarely raised in the FCC notice or further notice in that proceeding. It may be. I simply don't recall.

Q At the end of line 12, carrying over to line 13, you state the transit service is not required under the act.

Has the FCC determined that there is no federal obligation to provide transit service?

MR. COHEN: Object to the form of the question, to the extent it seeks a legal conclusion.

Mr. Price can answer if he is able or if he has an opinion.

THE WITNESS: First let me just, for clarity of the record here, this sentence that you are referring to both in this

question and the previous question began with the phrase, Mr. Fox is correct that. So what I'm doing is responding in this part of my testimony to Mr. Fox's direct testimony. 042

I cannot cite to you right here chapter and verse of those decisions by the Commission. But certainly the parties can brief that issue.

There's no disagreement; I mean that's the point of this answer here. The parties don't have a disagreement as to the scope of the Florida PSC's authority on this issue or what the legal foundation for the resolution really is.

And I think that I say that in my next answer, lines 13 through 15, where I say because there is an absence of controlling standard, the commission must look to whatever available reference points there are in order to resolve the issues.

BY MR. TEITZMAN

Q Let me try to clarify here. Would you agree with the statement that the FCC nor this Commission has established any pricing standard for transit service and that transit service is

not required under the Federal Telecommunications Act?

A Yes, I would.

Q Should there be a true-up provision in the agreement to take effect when and if the FCC makes a decision in the intercarrier compensation rule-making docket?

MR. COHEN: Object to the question to the extent it seeks a legal conclusion and speculation.

If Mr. Price has an opinion, he is free to state it as a layman.

MS. CASWELL: When you say when the FCC makes a decision in the intercarrier comp rule making, a decision as to what; can you clarify that?

MR. TEITZMAN: The pricing issue.

MS. CASWELL: I think Mr. Price testified that he wasn't aware that that issue was T'd up. You are asking him to assume that it is and then opine on the true-up question.

BY MR. TEITZMAN

Q Certainly. If we were to assume that they are addressing it in their rule-making

docket, would a true-up decision be appropriate?

A To my knowledge neither party has suggested that it believes there is a need for true-up language on this issue. So I think the answer is no, there is no need.

044

Q On page 17 of your amended direct testimony, lines eight through 11, you state that Verizon Access' proposed transit rate of .002867 per MOU is compromised of the common transport and tandem switching rate elements the Commission approved for Embarq for reciprocal compensation purposes.

To clarify, are these the rate elements the Commission approved for Embarq in its last unbundled network element proceeding, Docket Number 990649-B?

A Bear with me for a moment.

I'm not able to tell you with certainty that that is the source. It is my understanding that the two elements that were referenced in your question are the current approved -- commission approved rates for Embarq.

Q Do you know if these rate elements are cost based using total element long-run incremental cost or TELRIC?

045

A I believe that is the way that those were represented by Mr. Fox. It would be consistent with my understanding of traditional -- or not traditional -- it would be consistent with my understanding of the Florida PSC's processes that those rates would have been approved on a TELRIC basis.

Q Mr. Price, let me clarify quickly. That is the rate that Verizon Access is proposing, correct?

A We are at page 17 of my amended direct testimony, line nine; yes, that is correct.

Q And you are not sure how that rate was derived, is that what your previous answer stated?

A That's not what I intended to convey.

What I was trying to say is I cannot tell you --

You reference the specific order in a specific proceeding in Florida, and I said I was not able to confirm sitting here right now that that was indeed the source.

But my understanding is that this rate, the 002867 is the sum of common transport and tandem-switching rate elements that the Florida PSC approved for Embarq in the most recent case.

Now, whether that is the case that you cited or some other case, I cannot tell you that. 046

Q Why should a transit rate be comprised of elements used for reciprocal compensation?

A It is a fair question. I think the confusion in part is something that we discussed earlier, which is the sort of departure, if you will, from a legally mandated cost standard to a market-based rate, if you will.

And that's why if you go further in my testimony there at page 17, in my amended direct, you will see that we also referenced the rates that were approved in the recent Bellsouth Verizon Access arbitration that are stair step, I guess for lack of a better word, where there is one rate -- excuse me -- a slightly higher rate in '08, and then capping at 0025, thereafter. What we were trying to do here is to point to several reference points that together provided sort of a reasonableness, I guess, as to the rate that we proposed.

Q On lines 20 and 21, on page 17 of your direct testimony, your amended direct testimony, you state that the existing rate is .002867, is that correct?

A You know, I think there may be an error here. The existing rate --

I think what we meant to say here, we had the proposed rate that we talked above. The word existing may be wrong at line 20.

Because the existing rate is referenced at lines 25, page 17, over to the following page, and that is about 30 percent lower than the 002867 that is the Verizon proposed rate.

Q Could you turn to page 11 of your amended rebuttal testimony, lines 18 through 19.

The sentence starts, it is more than double the .002045 transit rate paid under the parties' existing contract.

Could you clarify what the existing transit rate is between the parties?

A This reference highlights my earlier point that something was amiss.

I will have to research and get back with you on --

MS. CASWELL: Would you like a late-filed deposition exhibit clarifying what the transit rate in the existing contract is?

MR. TEITZMAN: Yes. And we can title that current transit rate -- or existing

transit rate.

MS. CASWELL: Okay. 048

(Late-filed Exhibit No. 2 marked for identification.)

BY MR. TEITZMAN

Q Mr. Price, is it your testimony that a rate for transit service should be cost based?

A No.

Q Is the rate you are proposing cost based?

A In one sense it is, but it's really only because that was a reference point that could be used, not because there is a legal requirement that the rate be cost based.

It gets back to what I said earlier about the difficulty of, you know, moving from a legally imposed standard to one where the reference points that the Commission needs in order to render a decision really should be those that are -- they reflect a market resolution of the issue.

Q Just to clarify. You would agree that the proposed -- Verizon Access' proposed rate is cost based, correct?

A I would agree that there is a cost basis

for that rate, but that does not --

I mean, again, it is not our position and the parties don't have a dispute on any obligation that Embarq has to provide the service at a cost-based rate.

Q So should --

When reaching a decision, should the Commission consider the cost?

A No. And that's why we pointed out, for example, the interstate rate which should be seen as a, quote, reasonable rate, as well as the rates that were approved -- that the parties negotiated and then that were approved in the Bellsouth, Verizon Access arbitration.

Q Now I'm going to refer you to page 16 of your amended direct testimony, lines 16 through 21.

A Okay.

Q Is it your testimony that Verizon Access originates small volumes of transit traffic?

A Yes. Generally I would agree with that. I think the point of this part of my testimony wasn't to focus on whether it was Verizon Access originated traffic to Embarq or vise versa, just that the volume of traffic that the parties

exchange is below the T-1 threshold that we discussed earlier.

050

Q I would like to now refer you to page 12 of your amended rebuttal testimony, lines 18 through 23.

A All right.

Q Now, it is my understanding that you believe that some of the 15 companies that have accepted Embarq's transit rate could have accepted the rate in return for something else as part of the negotiation process, is this correct?

A That's actually not what I was trying to get at here.

What I was trying to get at here is that there were perhaps one, perhaps several carriers that actually negotiated that rate, but it is more likely that of the 15 the vast majority of those simply opted into an existing contract and did not negotiate anything.

Q If a company originates very little or no transit traffic, would a transit rate be of great importance to them during negotiations?

MR. COHEN: Object to the form of the question, to the extent it seeks speculation.

Mr. Price can answer, if he has an

opinion.

THE WITNESS: Yes. Certainly the particular carrier's business plan and whether or not -- whether or not it originates high volumes of traffic would be a factor that that carrier would consider.

BY MR. TEITZMAN

Q So such a company may very well agree to a high transit rate because the rate will not affect them, is that correct?

A I would agree with that.

Q If many of the 15 carriers noted by witness Fox originate no or little transit traffic, does the fact that they agreed to a .005 transit rate make that rate market based?

A In a very limited sense, I think it does.

But in the broader sense, it really does not. That's why, for example, again we pointed back to the rate that was agreed to with Bellsouth by Verizon Access.

I was involved to some extent and know that that was one of the very last issues that was resolved between Verizon Access and Bellsouth. It was heavily negotiated.

There were not dozens of issues that were still outstanding at that point where Verizon Access was willing to, you know, give up, if you will, on one issue in exchange for something here. Because like I said, it was one of the very last issues that remained in dispute.

052

Q Are market-based rates generally established based on negotiations between two parties where sufficient alternatives exist such that the purchaser has reasonably comparable bargaining power; would you agree with that statement?

A It sounds like it was written by an economist. I'm not an economist. I generally would agree with that from a policy standpoint.

Q Are there any other transit providers operating in Embarq service territory that Verizon Access could use for transit service?

A I'm aware generally of the existence of Neutral Tandem as an alternative tandem provider in Florida. The extent to which they interconnect with Embarq, I don't know.

MR. COHEN: Mr. Price indicated to me he needs to take a break. Can we take about five or ten minutes?

MR. TEITZMAN: That's fine. I will say that Staff only has about five more questions.

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But if you need a break now --

MR. COHEN: Let's finish that and we will take a break between parties.

BY MR. TEITZMAN

Q What cost is the transit rate designed to recover in your opinion, Mr. Price?

A The direct cost I think that would be associated with transit would include some port capacity on a tandem switch and perhaps some back-office related functions associated with the creation of a billing record; and that's about it.

Q Has Verizon Access quantified those costs as support for its proposed transit rate in this proceeding?

A No. As I said earlier, neither party is proposing that the rates need to be cost based under any definition of cost based.

Q We are getting close to the end here. I would like to refer you to Embarq's responses to Verizon Access' first set of interrogatories.

A I have that.

Q Specifically number two.

A Okay.

054

Q This response shows Embarq witness Fox's calculation of the .00464254 transit rate that he asserts is included in Neutral Tandem's Florida tariff.

Do you agree with the assumption of T-1 level of usage of 185,000 MOUs?

A No. I think the figure that I referenced in a previous answer was something along the lines of 250,000. Verizon would believe that that number is somewhat low, and as a result of that being the denominator of the calculation, the resulting rate would be artificially high in Mr. Fox's calculation.

Q Do you agree with the facility cost calculation of .00154045 per MOU for 10 miles of transit?

A Well, as I indicated in my previous answer, the number that you just provided in this answer was one that was a result of that division by the 185,000 minutes. And so that number would be artificially high.

Q I would like to refer you to Verizon Access' response to Staff's second set of production of documents; specifically number

eight.

A I think I got that. Bear with me. Yes.

Q Why is the interstate switched access rate considered analogous to a transit rate?

A I believe I indicated in a previous answer that, again going back to this transition that I referenced between a cost-based framework and a market-based framework, that it is possible, perhaps desirable to look at rates that have been approved by the FCC as a reasonable proxity.

And here we are talking about the functionality of switching. Remember when I responded earlier to the cost components, I said something about the port capacity as a tandem. In this response number eight, we are picking up the port capacity as well as the cost of switching and highlighting the fact that the result of that together is still about 30 percent below what Verizon has proposed as the market-based rate for resolution of this issue.

Q On page six of your response, FCC number one refers to the FCC's switched-access tariff, is that correct?

A That's correct.

Q Is the FCC switched-access rate market

based?

056

A No. But it has been deemed to be a reasonable rate, and therefore that's the reason that we reference that as yet another point that the Commission could look at to determine the reasonableness of the rate that Verizon has proposed for this.

Q And why did you assume 14 miles of transport?

A Because we are talking about only the transit rate. It is actually being very generous, because we are allowing even for what could arguably be referred to as compensation for transport as part of a reference point for something that does not involve any transport at all. So it is actually an overly generous part of this calculation.

Q Your response states that zone one is the zone in which most of the interconnections between the companies occur. How many interconnections occur in zone one?

A When you are looking at FCC switched-access rates, it's not really a comparable question to talk about interconnections in zone one, because the exchanges are what are

zoned, if you will.

So I think what we were saying here is the vast majority of switched-access traffic that the company has with Embarq takes place in zone one exchanges in Florida.

By the way, I've looked at the rates for the other zones, and they really don't appreciably change the results. In other words, the result could be, you know, 20 percent higher, 30 percent higher than this 002052 that is shown at page six here. Again, that simply reflects the reasonableness, in our view, of the 002867 that Verizon proposed.

Q And one more question. Should transit rates in more urban areas be less than transit rates in less urban areas?

A I would have no reason to think that they would; no.

MR. TEITZMAN: Thank you, Mr. Price.

Staff has no further questions.

MS. MASTERTON: This is Susan Masterton. We have some questions.

I would like to take that break that Mr. Price was requesting. Is that okay?

MR. TEITZMAN: Yes; I would agree.

(Brief recess.)

CROSS EXAMINATION

BY MS. MASTERTON

Q This is Susan Masterton. I'm the attorney with Embarq. Good morning.

Good morning, Mr. Price.

A Good morning.

Q I have a few questions for you. Just from the outset, I want to say that when I refer to your direct and rebuttal testimony, I'm going to be referring to your amended direct and your amended rebuttal, without saying that every time, so we will know that we are on the same page.

A Thank you.

Q Okay. First I will start with some questions relating to issue four, the indirect traffic issue.

I want you to look at your direct testimony at the bottom of page 15. Let me know if you are there.

A I am.

Q You suggest that the dispute resolution process set forth in the interconnection agreement is sufficient to address Embarq's concerns about the timeliness of Verizon establishing direct

trunks, is that a correct representation of your testimony?

A Yes, I think so.

The need for the special provision, whether it is termed an incentive or penalty is just not at all clear, given those other dispute resolution provisions that govern all of the other obligations under the agreement.

Q Okay. So are you saying that Verizon would agree to pay Embarq's transit charges if the dispute resolution process confirmed that Verizon had failed to establish a direct connection within the time frames agreed to by the parties?

A No, not exactly.

I mean, certainly as part of a dispute resolution process Embarq can present evidence that it had been harmed and that that was relief that it needed as part of that dispute resolution. But I would not agree here today in the absence of facts to that; no.

Q Verizon might agree to pay those charges?

A No. What I'm saying is that if that were to be the result of the dispute resolution process, then obviously Verizon would abide by

that.

Q When you refer to dispute resolution process, are you referring only to resolution by the Commission?

A No. Actually I should not have been. If I was, I apologize.

The purpose of those dispute resolution provisions generally, from my understanding as a layman, is to give the parties an opportunity to resolve differences, whether it is in the obligation under the agreement or interpretations of the agreement, or whatever.

And that process from our perspective is sufficient for all of the obligations under the agreement. And this direct interconnect, once the traffic reaches is a certain threshold in our view just does not rise to the level of requiring that special provision above and beyond the other dispute resolution mechanisms.

Q But then to clarify my original question, then are you saying that under the dispute resolution process, short of going to the Commission, would Verizon agree to pay Embarq's transit charges if it was established in that process that Verizon had not provided -- had not

instituted the direct interconnection in a timely 061
manner?

A I would not agree sitting here today to that because I don't hear anything in your question that assumes that there's any culpability on Verizon's part in that.

Q Well, that's what I'm asking.

If in the context of the dispute resolution process between the parties it doesn't go to the Commission, it is just between the parties, and the parties agreed that Verizon had not timely established the direct interconnection agreement, and it is Verizon's fault, we will assume that, are you saying that Verizon would then agree to pay Embarq's transit charges?

A I don't want to be misunderstood. I don't want my testimony to be misunderstood. There is no desire or intent on Verizon's part to avoid its obligations under the interconnection agreement. We already agreed that we would establish direct interconnects when traffic reaches the T-1 or DS-1 threshold.

To sit here and speculate as to what might be agreed to as part of a resolution of a dispute, I'm just not comfortable doing that here

062

today.

Q Okay. Let's move to a dispute that ends up with the Commission.

Are you saying that the Commission has the authority to order Verizon Access to pay Embarq's transit charges if the parties bring the dispute to the Commission for resolution?

MR. COHEN: Object to the form of the question, to the extent it speaks to a legal conclusion to the extent of the Commission's jurisdiction.

Subject to that qualification, Mr. Price can answer as a layman, if you understand the question.

THE WITNESS: I really don't have a basis for answering that either way. I don't know the scope of the Commission's authority in regards to your question.

BY MS. MASTERTON

Q So what is the basis of you saying that the dispute resolution is deficient if you don't know whether Verizon would agree to pay the transit charges if they caused a delay or if the Commission has the authority that Verizon pay the transit charges? What's the basis of your

testimony that the dispute resolution process is deficient?

A Generally as a lay person, when I look at an interconnection agreement, I see it in -- from the perspective of, you know, sort of -- containing the obligations and the responsibilities of both parties and means to resolve disputes when -- you know, when a dispute arises.

What Embarq is proposing here is an unprecedented compensation mechanism that doesn't exist in any other Embarq ICA, based on the information that I've seen. It certainly doesn't exist in any other interconnection agreement that I have seen from Verizon Access perspective. So no other party, no other ILEC that Verizon Access has interconnected with has ever requested, demanded, whatever, such a provision. So I don't see the need for it. I don't understand really the basis for this dispute.

Q Earlier when Staff was questioning you, we talked about the arbitration order in the Ohio proceeding. Do you remember that?

A Yes, I do.

Q Didn't the Ohio arbitrator find the

language that Embarq was proposing with minor modifications should be included in the Ohio interconnection agreement? 064

A Well, the order speaks for itself.

But, yes, there were modifications that were ordered to Embarq's original proposed language.

Q But the Ohio arbitrator did approve the assessment of Embarq's transit charges on Verizon in certain circumstances, isn't that correct?

A Well, again, the order speaks for itself.

Q But I'm just saying, this isn't unprecedented then, is it?

A My previous answer had to do with interconnection agreements with which I'm familiar, including with Bellsouth, with FCC, with Quest, with Verizon, prior to the Verizon and MCI merger, and I've never seen a provision like this. So that fact, plus the fact that Embarq hasn't been able to show that such a provision exists in any of its existing ICA does to me mean that it isn't precedented.

Q In response to an earlier question from Mr. Teitzman, you mentioned an Embarq requirement

related to customer profiles that might extend the time frame for Verizon to establish direct interconnection. Do you recall that?

065

A Yes, I do.

Q I would like you to look now at Embarq's response to Staff's POD number 12. That's in Staff's second set of discovery requests.

A Okay. I have that.

Q In that Embarq has provided in response to the Staff's question, the most recent version of the language that it is proposing. According to this response, it addresses the concerns of the Ohio arbitration decision. I would like you to take a minute to read that language. Let me know when you are done.

A Okay.

Q Doesn't this language say that Verizon doesn't have to pay Embarq's transit charges if the delay isn't Embarq's fault?

I will point you particularly to I think the second -- maybe the third sentence, at the time you establish direct interconnection exceeds 90 days due to the fault of Embarq or third party.

Do you see that?

A Yes, I see it.

066

Q If a delay was caused by Embarq's request for customer profile information, then that would not be a basis for Embarq's assessing Verizon transit charges, would it?

A I think that's purely a matter of-- interpretation. It certainly doesn't say that on its face.

Q What would you have this language say in order to address that concern?

A Well, with the caveat that again Verizon doesn't see the need for this special provision. I think the point that I tried to make in my earlier response was to trigger the timetable to the acceptance of the order or something -- I mean something other than the phrasing that is used here.

If you look in the fourth line, 90 days after reaching a DS-1 level, that doesn't say anything about ordering. It doesn't say anything about special documentation that Embarq requests or anything. It says 90 days after reaching a DS-1 level.

Q You are saying --

I understand what you are saying. Okay. Thank you.

You have the Ohio hearing transcript with you, don't you, the transcript from the Ohio arbitration with Embarq? 067

A Yes, I do.

MS. MASTERTON: Okay. And I'm thinking, Adam, that this needs to be a deposition exhibit. I don't know what number that would be. I know you all have it, because Kim sent it out last night; right?

MS. CASWELL: Yes, that's right.

MS. MASTERTON: I would like to mark that as a deposition exhibit.

MR. TEITZMAN: That would be Number 3.

(Late-filed Exhibit No. 3 marked for identification.)

BY MS. MASTERTON

Q I would like you to turn to page 54, Mr. Price.

A Okay.

Q And there, beginning on line five, and it goes through line 19, the examiner asked you a question regarding the possible fluctuation of the traffic between Embarq and Verizon below the DS-1 level, is that correct?

A I generally agree with that

characterization.

Q Okay. And then you replied on line 14 through 16, that this is relatively unlikely to occur, is that correct?

068

A Yes. I perhaps could have been a little more artful in my answer. Yes, that's what the transcript reflects.

Q Okay. Thank you.

Now, I would like to move on to issue number one. I am sorry I'm not going in numerical order.

Back to the virtual NXX issue. Then in your direct testimony on pages 10 through 12, that's what I will be referring to, you describe what you characterize as a proposal from Verizon that is a market-based solution, that's how you say it, and you say that it balances the parties' respective interests. Is that a correct representation of your testimony?

A Yes.

Q Okay. So I'm trying to understand what your compromised proposal means to Embarq. I will ask you to walk through a few questions about that. Okay?

A All right.

069

Q First, for the purposes of these questions, we are going to assume that we are talking about virtual NXX traffic that originates with an Embarq customer in one Embarq local calling area and terminates to a Verizon Access customer in another local calling area.

If you need me to repeat that, let me know.

A No, I don't need you to repeat it.

But if I could get clarification. It would be very helpful to me if we were to clarify whether talking about voice traffic or ISP-bound traffic.

Q That was my next question. I was going to ask you to agree that virtually all of Verizon Access' virtual NXX traffic is ISP-bound traffic that originates on Embarq's network and terminates on Verizon Access' network. Do you agree with that?

A Yes, I do.

Q So let's assume that Embarq sends Verizon Access approximately 75 million minutes of virtual NXX traffic a month. Okay?

A All right.

Q And would you accept subject to check

that Embarq's originating intrastate switched access charges are around 2 cents a minute? Mr. Price, do you accept that subject to check?

A I don't have a basis for agreeing or disagreeing with that, so perhaps if we treat it as a hypothetical. I'm certainly happy to accept that as a hypothetical.

Q Originating access charges were applied to Verizon's -- to Embarq's originating traffic using the vNXX number that Verizon establishes, then Embarq would get approximately $1.5 million a month of originating access based on the hypothetical that we put forward, is that correct?

A I cannot agree with that.

We are talking about customers dialing -- using their computers to dial an ISP. If Embarq's position on this were to prevail, that 75 million minutes that we are talking about would dwindle to basically nothing.

So, no, Embarq would not receive millions of dollars in compensation.

Q When you say that it would dwindle to nothing, can you explain?

A If you were to tell me that in order to dial my ISP I was going to have to place a toll

call and incur toll charges, I would tell you that I would find another way to reach my ISP.

Q So basically you are saying that the only reason you are doing this is because you can avoid paying Embarq access charges, is that correct?

MR. COHEN: Object to the form. The question mischaracterizes Mr. Price's testimony.

He is free to answer. If you need her to repeat it, let her know.

BY MS. MASTERTON

Q You are saying if you had to pay access charges, you wouldn't have a virtual NXX for your ISP traffic, is that what you are saying?

A It is in the ballpark with what I'm saying.

What I'm saying is that, you know, my Aunt Mary, or whatever, is accustomed to placing calls using her computer to her ISP that do not result in running up a toll bill. That is something that isn't related to Verizon Access' proposal in this case or something that Verizon Access dreamed up; that's the way that people are used to using their computers and reaching their

ISPs.

So what I was attempting to suggest is that the problem that I have with your hypothetical was you cannot take a volume of minutes that exist today where originating access charges are not paid and then assume that a Commission decision in favor of Embarq in this proceeding would result in that many minutes times 2 cents of compensation on a monthly basis to Embarq; that will not happen. People will not use their computers in the same way if they would have to incur toll charges in order to reach their ISP that way.

072

Q So Verizon can only do this if it can avoid paying Embarq's access charges, is that correct?

A There's a relatively long history of going back into the 1970s of what's referred to as ISP or ESP exemption from access charges. It is there.

We are not arguing in this case that the law prohibits Embarq from doing this. What we are suggesting is that other carriers have reached agreements that the Commission can look to for guidance on how to resolve what is otherwise sort

of an intractable question.

This is not traditional toll traffic. This is ISP-bound traffic that's being placed by Embarq's end-user customers. Because of that, Embarq is receiving compensation from its end-user customers for the services that they buy from Embarq. We are trying to find something other than traditional regulatory classification as a means out of what is otherwise kind of a tricky problem.

Q So let's go back then to the hypothetical.

If there was 75 million minutes of traffic and Embarq's access charges applied, and the originating access charge was 2 cents a minute, I think we established that Embarq would get $1.5 million a month of access charges, or there would be no traffic, that's what you are saying, if access charges applied, there would be no traffic. Under your proposal, with those 75 million minutes a month, Embarq would pay Verizon Access to terminate that traffic, correct?

A Correct; in exchange for Verizon Access' commitment to limit the amount of transport that Embarq would have -- to use a colloquial, to skin

the game, if you will, that Embarq would have for transport would be minimized based on our proposal.

074

Q That's what I was going to ask, what's in it for Embarq. You are saying that's minimizing Embarq's transport cost, is that correct?

A It's not minimizing it in the absolute sense that it is taking it to the lowest possible level, but it is an attempt to recognize that Embarq has a valid interest in not having all of the transport obligation to get to some distant point.

Q So how much do you think those transport costs are worth to Embarq?

A I have not done an analysis of that. I have not attempted to do that.

Q But yet you are alleging that Embarq benefits from this proposal because it doesn't have to assume transport charges, correct?

A Well, correct; in the sense that I was party to discussions with FCC that reached a resolution that is similar to what I described in my testimony. The same process with Bellsouth, similar process with Verizon. It is not clear to

me why Embarq's circumstances or its business interests are or would be radically different than these other large, sophisticated companies that have large networks that they operate in many states.

Q You don't know that they are the same either, do you?

A No. But, again, this proposal has been, you know, out there for discussion by the companies. I'm not aware that Embarq has come and said, you know, we don't mind this, but how about the following. I mean, it has always been our way or the highway kind of response.

Q But doesn't that tell you that Embarq doesn't see this as, you know, balancing its interest?

MR. COHEN: Object to the form of the question, to the extent it calls for speculation.

MS. MASTERTON: I will withdraw the question.

That's all I have.

Thank you.

MR. COHEN: Is there anyone else on the call who has any further questions or

follow-up questions?

MS. CASWELL: I have a few redirect questions. This is Kim.

076

I don't know, Adam, if you have any questions. You should probably go before me.

MR. TEITZMAN: I think Staff is okay.

We don't have any further questions.

CROSS EXAMINATION

BY MS. CASWELL

Q I have a few questions.

Mr. Price, Mr. Teitzman asked you about GNAPs, the First Circuit decision, and my question pertains to that.

Mr. Price, does Verizon dispute the Commission's authority to order an intravirtual NXX compensation method?

A Not at all.

Q My second question relates to an exchange that you had with Mr. Teitzman about the Florida Commission's generic reciprocal compensation order.

I know you may not have it in front of you. Do you have a general understanding of the Commission's ruling there with respect to virtual NXX?

A Yes.

Q And what approach did the Commission favor in that order as a means of determining virtual NXX compensation as between carriers?

A My understanding of that order was the Commission expressed a desire that the parties try to reach resolution on that outside of the regulatory arena.

Q If the carriers cannot reach agreement, did the Commission set a default for any particular type of virtual NXX traffic, a default compensation mechanism?

A Sitting here right now without the order in front of me, I do not recall.

Q Did the Commission's order deal at all with nonISP-bound traffic? I'm sorry. I said that the wrong way.

Did the Commission's order deal with compensation for ISP-bound traffic?

A To that extent, my recollection is it did not.

Q And might there be different policy considerations as between ISP-bound vNXX traffic and nonISP-bound vNXX traffic?

A Absolutely, for the reasons I discussed

several times in the first part of the deposition. When you are talking about voice calls, you are talking very clearly about traditional concepts of, quote, local and toll, and the compensation that is generally understood within the industry to be applicable. 078

When the topic then changes to ISP-bound traffic, those concepts are really no longer applicable for a variety of reasons, not the least of which is it is not a conversation, it is the customer trying to reach their ISP so that they can use the internet, and the corollary issue or difficulty that is associated in that scenario with trying to determine what constitutes, quote, the end point of the call.

Q Okay. And if the Commission orders Embarq suggested compensation mechanism for virtual NXX traffic, will Verizon Access still provide the same type of dial-up access to ISPs that it does now?

A I seriously doubt it, because the -- that I mentioned in I believe my direct testimony are the very largest ISPs. We are talking AOL, Microsoft networks, and as you might expect these companies are -- I'm trying to think of the right

word -- vicious negotiators in the sense that they are ruthless in trying to make sure that they minimize their cost of the service that they are buying. 079

So something like two cents per minute originating access would basically mean that the service could not be provided in those exchanges -- could no longer be provided in those exchanges.

Q Mr. Price, I will ask you to look at Embarq's responses to Staff's second set of interrogatories, question 15.

Can you please tell me when you locate that question.

A Did you say question 15?

Q Question 15.

A Yes, I have it.

Q Mr. Teitzman asked you about potential distinctions between Ohio and Florida with respect to the proposals on issue four, which is Embarq's transit charge reimbursement proposal.

I would like you to look at Mr. Fox's response to this question and tell me if he suggests himself any potential distinction between tandemming in Florida and tandemming elsewhere.

A Well, one such distinction is in the answer where Mr. Fox states that Embarq provides much of its own tandemming in the State of Florida, and therefore has suffered less financial damage relative to other states, and then it goes on.

Q Okay.

A So that does suggest a distinction based on Embarq's own infrastructure in Florida.

Q All right. And you discussed with Mr. Teitzman also the customer profile issue, I believe, is that right?

A Yes.

Q Was any evidence about Embarq's customer profile request presented to the Ohio commission?

A No, it was not.

This is an issue that I only very recently became aware of in talking with our network planners who deal with Embarq. So, no, it was not.

Q This question is about issue five, the transit rate.

Is Verizon insisting on a specific .002867 rate or would it be acceptable for the Commission to set a transit rate within a range of

parameters that you have given it in your testimony and discovery responses?

081

A Well, I think the 002867 figure, as I tried to characterize it, was that it was our, quote, proposal in contrast with the 005 proposal that Embarq had supported in Mr. Fox's testimony.

Certainly because we are talking about a market-based rate and one that does not have the legal baggage, for lack of a more eloquent phrase, there is certainly various rates other than the 002867 that the Commission could look to.

And, yes, those reference points that I provided in my testimony constitute other possible rates that the Commission could order.

Q Okay. My next question relates to Mr. Teitzman's question as to why interstate-switched access and transit functions might be analogous.

Is it true that the functions performed for intrastate switched access and transit service are similar?

A It is certainly true that they are similar, yes. I believe we were referring to my response, Verizon's response to Staff's second set --

Well, I thought we were. Bear with me for just a second.

Yes. It was the production of document 082 request number eight that I was discussing with Mr. Teitzman. And the point that I was trying to make there is by including transport in the reference point that Verizon developed based on interstate access, that we were being overly generous, because the transit function per se did not include transport.

So, again, we believe that the reference to interstate-switched access, because it is a similar function, it is analogous is one that at least is useful for the Commission.

The only other point that I would make about interstate access, this is related to the point of whether the rate needs to be, quote, cost-based rate. It would be my understanding that the interstate access rates are no longer, quote, cost based, in the sense that Embarq is a price capped carrier, and thus the kind of traditional regulatory cost basis that one would have some years ago associated with interstate access no longer applies. While this isn't necessarily a market-based rate, it is also no

longer a cost-based rate but one that is -- that does have relevance for providing another guide post or reference point for the Commission.

Q I'm going to ask you now about something Miss Masterton discussed with you. That was Embarq's penalty provision proposal.

Embarq has argued that its penalty provision is necessary to address financial harm Embarq might suffer if Verizon delays too long in establishing direct trunks.

And my question is, are there other instances where Embarq might claim that it suffered financial harm because of something Verizon Access did or failed to do under the interconnection agreement?

A Yes, I'm sure there are.

Q And would the dispute resolution provision apply to those situations?

A Yes. As I stated earlier in response to Miss Masterton's questions, those dispute resolution provisions are intended to apply to all the parties' obligations and responsibilities under the interconnection agreement.

MS. CASWELL: Thank you, Mr. Price.

That's all I have.

MS. MASTERTON: I want to ask an additional question as a result of Miss Caswell's questioning.

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MR. COHEN: This is Susan?

MS. MASTERTON: Yes.

This is Susan Masterton.

Is that okay?

MR. TEITZMAN: I have no objection.

RECROSS EXAMINATION

BY MS. MASTERTON

Q Mr. Price, is there any discussion or evidence in the record concerning other situations that might occur under the interconnection agreement that might impose cost on Embarq or Verizon?

Did you hear me?

A Yes, I did.

In a general sense I think there are. You and I were discussing a while ago the issue on the tradeoff of the vNXX issue on Embarq's cost of transport and the extent to which, you know, Verizon's proposal properly weighed that.

I think, yes, that aspect does have relevance to Embarq's costs.

Q Point to me in your testimony or

Embarq's testimony or any response to discovery that discusses that in the context of resolving any issues through the dispute resolution process.

A Well, there are only three issues remaining in the case.

I mean, at one point early on in the negotiations there may have been such issues. But with only three remaining, other than the one I just mentioned, I cannot point to anything.

Q There isn't really anything in the record addressing any other situations other than the indirect traffic issue related to the dispute resolution process, is that correct?

A I don't disagree with that.

MS. MASTERTON: Okay. That's all I have.

Thank you.

MS. CASWELL: I have one follow-up question now, if I could.

RECROSS EXAMINATION

BY MS. CASWELL

Q Mr. Price, you were just asked whether there was anything in the record relating to other situations where contract breach might lead to financial harm for one or both -- one or the other

of the parties.

Does the interconnection agreement itself address all the rights and obligations of the parties? 086

A I believe that is the understanding, that an interconnection agreement is supposed to be -- is supposed to -- if you will, cover the waterfront. Obviously I'm a lay person and not an attorney, but it is supposed to be a comprehensive document that the parties can refer to.

Q The interconnection agreement is in the record, correct?

A Yes, it is.

MS. MASTERTON: That's all I have.

MR. TEITZMAN: I believe that will conclude Mr. Price's deposition.

Thank you, Mr. Price.

THE WITNESS: Thank you.

MR. TEITZMAN: Before we do end, just dates for the late filed exhibits.

What is the hearing date? Do you think you can have responses in by Friday?

MS. CASWELL: Yes.

MR. TEITZMAN: So Friday. This upcoming Friday. Yes. That will conclude that

deposition.

(The proceedings concluded at 11:36 a.m.)

CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF LEON)

I, JUDY CHIN, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 88 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 26th day of April, 2007.

Judy Chin

JUDY CHIN
Notary Public - State of Florida
My Commission Expires May 25, 2009
Commission # DD 390161
Bonded By National Notary Assn.

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089

Reference to Generic Reciprocal Compensation Order

1. Identify where the Commission's generic Reciprocal Compensation Order (Order No. PSC-02-1248-FOF-TP, Sept. 10, 2002) states that it is the Commission's default view that non-ISP-bound, virtual NXX calls are not subject to reciprocal compensation.

Verizon Response:

At pages 27-28 of the Order, the Commission states:

> "We find that calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, we find that carriers shall not be obligated to pay reciprocal compensation for this traffic. Although this unavoidably creates a default for determining intercarrier compensation, we do not find that we mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic. Since non-ISP virtual NXX/FX traffic volumes may be relatively small, and the costs of modifying the switching and billing systems to separate this traffic may be great, we find it is appropriate and best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements."

Mr. Price referred to this passage at page 6 of his Amended Rebuttal Testimony, but it was incorrectly cited as appearing at page 33 of the Order (because Mr. Price was using a differently paginated version of the Order).

In addition, at page 22 of the Order, the Commission emphasized that the issue of intercarrier compensation for virtual NXX traffic was limited to non-ISP traffic ("this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers").

Existing Transit Rate in the Parties' Contract

2. What is the transit rate in the existing Verizon/Embarq interconnection agreement?

Verizon Response:

The transit rate in the parties' existing contract is $0.002045.

At page 11 of his Amended Rebuttal Testimony, Mr. Price correctly states that the "transit rate paid under the parties' existing contract" is $0.002045. Embarq's Responses to Staff's Second Set of Interrogatories, item 35, spreadsheet "Transit rates.xls," also lists $0.002045 as the transit rate in Embarq's interconnection agreement with MCImetro.

There may have been some confusion about the transit rate in the existing contract because Mr. Price's Amended Direct Testimony (at 17, lines 20-21) referenced $0.002867 as the "existing rate." However, Mr. Price explained (at 17, lines 9-11) that $0.002867 is the sum of the common transport and tandem switching rate elements the Commission approved for Embarq for reciprocal compensation purposes.

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Petition of Verizon Access Transmission Services for Arbitration of an Interconnection Agreement with United Telephone Company of Ohio d/b/a Embarq Under Section 252(b) of the Telecommunications Act of 1996.	:	Case No. 06-1485-TP-ARB

- - -

PROCEEDINGS

before Mr. James Lynn, Attorney Examiner, and Mr. Michael Twist, Arbitration Panel, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-F, Columbus, Ohio, called at 9 a.m. on Wednesday, February 21, 2007.

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092

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On behalf of the United Telephone Company of Ohio d/b/a Embarq Corporation.

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Verizon Exhibit	Identified	Admitted
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3	Adjusted VNXX Call Example	38	43

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Wednesday Morning Session,
February 21, 2007.

- - -

ATTORNEY EXAMINER LYNN: We will begin our proceedings for today. The Public Utilities Commission of Ohio has scheduled for this day and time a hearing in Case No. 06-1485-TP-ARB being in the Matter of the Petition of Verizon Access Transmission Services for Arbitration of an Interconnection Agreement with United Telephone Company of Ohio d/b/a Embarq Under Section 252(b) of the Telecommunications Act of 1996.

My name is Jim Lynn, and I have been assigned to chair the panel for this arbitration proceeding.

At this point I will request the Commission Staff Member indicate his appearance by his name and department.

MR. TWIST: Michael Twist, Telecommunications Division, Utilities Department.

ATTORNEY EXAMINER LYNN: Thank you, Mr. Twist.

And may I have an appearance on behalf of the parties. If I could begin with Verizon Access,

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please.

MR. LODGE: Thank you, your Honor. On behalf of Verizon Access Transmission Services, Inc., Thomas Lodge of the law firm Thompson Hine LLP. Also appearing with me pursuant to an entry of this Commission is Kimberly Caswell from Verizon.

ATTORNEY EXAMINER LYNN: All right. Thank you.

And on behalf of Embarq?

MR. STEWART: Joseph Stewart.

ATTORNEY EXAMINER LYNN: All right. Thank you very much. Well, needless to say there aren't too many witnesses here. We will begin with the first one which will be for Verizon, please, and if you could approach the witness stand and we will swear you in and we will get under way.

(Witness sworn.)

ATTORNEY EXAMINER LYNN: Mr. Lodge, if you would like to continue.

MR. LODGE: Ms. Caswell will be asking the questions.

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DON PRICE

called as a witness on behalf of Verizon Access, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. Caswell:

Q. Could you please state your name and business address for the record.

A. Yes. My name is Don Price. My business address is 6701 Brazos, B as in boy R-A-Z-O-S, Suite 600, Austin, Texas 78701.

Q. By whom are you employed and in what capacity?

A. I am employed by Verizon Business as the State Regulatory Policy Director for the -- in the Regulatory and Litigation Department.

Q. And on whose behalf are you testifying today?

A. Today on behalf of Verizon Access.

Q. And did you cause to be filed direct testimony consisting of 19 pages?

A. Yes, I did.

Q. Do you have any changes, additions, or deletions to that testimony?

A. Not to my knowledge.

Q. So then if I asked you those same questions today, would your answers remain the same? 098

A. They would.

MS. CASWELL: Mr. Lynn, may I have Mr. Price's direct testimony marked as an exhibit?

ATTORNEY EXAMINER LYNN: Yes. That will be Verizon Exhibit No. 1 then.

(EXHIBIT HEREBY MARKED FOR IDENTIFICATION PURPOSES.)

MS. CASWELL: Thank you.

ATTORNEY EXAMINER LYNN: Thank you.

MS. CASWELL: I am not sure if this is the appropriate time to do it, but I also have a second exhibit. It's the draft interconnection agreement showing the agreed to and disputed language. It was submitted with our arbitration package, and I would like that marked as far as an Exhibit 2, please.

ATTORNEY EXAMINER LYNN: That will be so marked.

(EXHIBIT HEREBY MARKED FOR IDENTIFICATION PURPOSES.)

MS. CASWELL: And at this time I would ask Verizon's Exhibits 1 and 2 be moved into the

record.

ATTORNEY EXAMINER LYNN: Okay. That will be done. And no further questions for the witness?

Q. (By Ms. Caswell) Mr. Price, can you briefly summarize your direct testimony for us?

A. Yes. Good morning. I am appearing today on behalf of Verizon Access sponsoring my own direct testimony on the two issues that are remaining in dispute.

Although I do wish that the parties had been able to resolve all of the issues outside of this arbitration process I am pleased to appear before you again and hope to provide input that would be helpful in resolving these issues. I do think it's noteworthy we're here with only two issues, and I think it is indicative of the efforts by both parties in attempting to -- to reduce the number of issues that the Commission must resolve.

Now, from Verizon Access's point of view the most significant outstanding issue is issue 2 that concerns compensation for VNXX traffic. My testimony provides a background discussion on the differences between the traditional ILECs' architecture used in providing their services versus

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the network architecture that CLECs utilize. In building on that I described the traditional CLEC and ILEC positions on this -- on this compensation issue and explained the basis for those opposing positions.

I note that those positions continue in opposition in spite of the FCC's prior efforts to clarify its compensation rules. Importantly the FCC has expressed its intention to decide the issue of VNXX compensation in an ongoing proceeding on intercarrier compensation rule making. For that reason whatever resolution is reached in this proceeding should be interim in nature and upon adoption of the decision by the FCC that mechanism quickly should replace this interim measure.

My testimony recommends a resolution of this issue that is an alternative to the traditional polarized CLEC and ILEC positions. The solution recognizes both perspectives and looks to market-based mechanisms that have been reached through negotiations between sophisticated adversaries.

As I describe in my testimony, the negotiated solutions with which I am familiar trade the CLEC's commitment to enter deeper -- I'm sorry,

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to extend deeper into the ILEC's network thereby reducing the ILEC's transport for the ILEC's commitment to compensate to the CLEC. Such agreements have been reached by a large number of -- I'm sorry, by a number of large ILECs and CLECs and have been filed with commissions across the country including this Commission.

Reliance on such compromises has several benefits; for example, it avoids state-specific outcomes and thereby eliminates the billing and invoicing problems for carriers that operate in multiple states, and it allows the parties to give appropriate weight to their respective business interests.

Issue 5 involves a different compensation dispute. And my testimony explains that carriers may interconnect their networks using either indirect or direct methods. Indirect interconnection utilizes a third-party's network for intermediate switching where the party's traffic volumes are relatively low and the cost of direct interconnection cannot be justified.

When indirect interconnection is used, the third party charges a fee to the originating

carrier to compensate for switching such traffic to the terminating carrier's network. That third-party fee is referred to as a transit charge. In agreed upon language in Section 61.2.4 of the ICA recognizes both parties' obligation to pay the transit charge on their own originating traffic.

The dispute on this issue involves the situation when a direct connection is warranted by traffic volumes between the parties' networks. Verizon Access's language expressly acknowledges its obligation to establish a direct connection under such circumstances and a breach of this obligation would be subject to the same dispute resolution provisions as any other breach of the agreement.

Embarq's language, however, would shift financial responsibility for transient charges on Embarq's own originating traffic to Verizon Access if the direct connection is not established within 90 days after traffic reaches the threshold level. This Commission has acknowledged the federal rules keeping ILECs from charging CLECs for local traffic originating on the ILEC's network. Embarq's proposal would do just that, so this Commission should reject this unprecedented proposal.

And that concludes my summary.

MS. CASWELL: Your Honor, the parties agreed ahead of time that the witnesses would have the opportunity to present brief appropriate rebuttal. I would like to ask Mr. Price to do that at this time.

ATTORNEY EXAMINER LYNN: All right.

MS. CASWELL: Thank you.

Q. Mr. Price.

A. Regarding issue 2 Mr. Fox's testimony makes the claim that page 3, line 17, that Verizon Access believes VNXX traffic to be 251(b)(5) traffic. It's not clear that Mr. Fox has read Verizon Access's language on this issue because Verizon Access has not taken the position that VNXX traffic is 251(b)(5) traffic.

Mr. Fox also incorrectly uses the term "reciprocal compensation" several times in his testimony, but Verizon Access has not proposed applying reciprocal compensation to VNXX traffic. The Verizon Access proposal is for compensation, but it is not linked to specific legal definitions, and the compensation that we have proposed is several times lower than the reciprocal compensation rate the

parties have agreed to.

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The point of the compromise position I discussed in my testimony and that I referenced earlier is to rely on market-driven, business-oriented solutions and to avoid relying on the legal definitions that have resulted in so much costly litigation in the past.

On issue 5 at pages 10 and 11 of his testimony Mr. Fox argues that Embarq's proposal to shift its cost of originating traffic to Verizon Access, that transit fee that I mentioned earlier, is a "effort to provide the appropriate incentive for Verizon Access to establish the direct interconnection in a timely manner."

This argument is misplaced for several reasons. First, Verizon Access has already agreed in Section 61.1.5 of the ICA to establish direct interconnection with Embarq when the indirect traffic exceeds the DS1 threshold so there is no need for the so-called incentive.

Second, Mr. Fox does not even attempt to explain why such an incentive is needed in this one situation when the ICA contains normal enforcement provisions that would apply for a breach of the

requirement to establish direct interconnection just as those provisions would apply for any other breach.

Third, Embarq's proposal is patently unfair and unprecedented as it would require Verizon Access to pay transit on both its own originating traffic and Embarq's originating traffic.

Fourth, Mr. Fox has not attempted to explain why the Commission should reject its prior acknowledgment that federal rules forbid an ILEC from assessing charges on another carrier for the ILEC's own originating traffic.

In this regard neither Mr. Fox nor Embarq has even attempted to reconcile Embarq's proposal with the language of FCC Rule 51.703(b). For all these reasons Embarq's unprecedented proposal should be rejected.

MS. CASWELL: Thank you, Mr. Price.

Mr. Price is available for cross-examination.

ATTORNEY EXAMINER LYNN: Mr. Stewart.

MR. STEWART: Thank you. Before I start just for efficiency sake I would like to mark a couple of exhibits. I am going to ask the court reporter to mark as Embarq Cross-Examination Exhibit

1 this document which is titled Direct Testimony of 106
2 Don Price on Behalf of the MCIMetro Access
3 Transmission Services, LLC before the North Carolina
4 Utilities Commission dated November 20, 2006. I will
5 subsequently ask the witness to identify this, but I
6 just want to get this out of the way.
7 And then I am going to also ask to be
8 marked as Embarq Cross-Examination Exhibit No. 2 a
9 document titled Amended Supplemental Testimony of Don
10 Price on Behalf of MCIMetro Access Transmission
11 Services, LLC before the Florida Public Service
12 Commission, file stamp of April 11, 2006.
13 (EXHIBITS HEREBY MARKED FOR
14 IDENTIFICATION PURPOSES.)
15 - - -
16 CROSS-EXAMINATION
17 By Mr. Stewart:
18 Q. Good morning, Mr. Price.
19 A. Good morning.
20 Q. My name is Joe Stewart. I am a lawyer
21 representing Embarq in this matter. I don't believe
22 we have met before.
23 It sounds as though you have testified a
24 number of times, so you are familiar with the

procedure, I take it?

A. I think so.

Q. Okay. If I ask you a question that you don't understand, please let me know and I will try to rephrase it. First, I would like to talk with you just a little bit about your experience. Have you negotiated interconnection agreements in the past?

A. Yes, to some extent. I was involved in varying degrees with negotiations with then SBC Corporation and -- and MCIMetro in the period immediately following the passage of the Telecom Act in '96 so what I think of as first generation interconnection agreements.

Q. Approximately how many have you been involved in in the negotiation of?

A. Well, strictly involved in the negotiation phase. Generally after that first round, the company became somewhat more specialized so that there were others that were directly involved with the negotiations, and then to the extent that issues were -- unresolved issues remained, then I got involved in several instances at the arbitration phase.

Q. Were you involved in the negotiation of

the interconnection agreement that's the subject of this arbitration?

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A. Not directly involved with the negotiations, no.

Q. But I infer from your answer perhaps indirectly involved in communications with your negotiators?

A. That's correct.

Q. Now, in your testimony and your summary I think you referred to a market-based solution. And what is your definition of market based? I take it from your testimony it's something that's negotiated betweens the parties; is that fair?

A. Generally. I think -- I think the term is intended to denote a variation or I guess sort of the other side of the coin, if you will, from a -- a resolution to impose strictly by the -- by the deciding agency, by the Commission, when faced with two polarized perspectives which is definitely the case on issue 2.

Q. Now, I take it you are familiar with the process pursuant to which interconnection agreements are negotiated or there are many, many issues that the parties discuss and there's give and take on

various of those issues; is that your perception of the process?

A. Yes, it is. 109

Q. And interconnection agreements as is the case here are typically lengthy documents, often in excess of 100 pages with dozens of issues addressed therein?

A. I certainly would agree with that.

Q. Now, moving to specifics of the issues involved here, do you know how much indirect traffic Embarq terminates to Verizon in Ohio?

A. No, sir. I would not have a basis for -- for any data on that.

Q. Do you know if -- do you know what percentage of that traffic, approximately, is ISP-bound traffic?

A. Specifically, no. But as a general matter, I would expect it to be a high percentage.

Q. Would you expect it to be over 90 percent?

A. It certainly could be, yes.

Q. And do you know how much traffic is generated by a Verizon CLEC customer that is terminated on Embarq in Ohio? Or customers, I should

say.

A. I understand the question. I think my expectation would be that the traffic is predominantly in the direction of Embarq to Verizon Access as opposed to the other way around.

Q. And by predominantly could you give an approximate percentage?

A. I don't have data on which to base that. Again, my general understanding would be that it would be a -- probably a significantly imbalanced situation, in other words, much, much more traffic coming towards Verizon Access then going towards Embarq.

Q. Now, are you aware of whether Embarq has opted into the FCC's default ISP rate in Ohio?

A. I'm not sure I understand the question.

Q. Well, I think in your testimony you recommend the use of the FCC's default rate of .0007 for terminating traffic?

A. I do, yes.

Q. VNXX traffic?

A. That's correct.

Q. Are you familiar with the opt in process by which carriers can elect to be bound by that rate,

the FCC's default rate?

A. That's where I think there is a disconnect. I mean, my familiarity with opt in is really in the context of a carrier adopting some other carrier's interconnection agreement. So I am not -- I am not following you with respect to adopt -- opting in, if you will, at that rate.

Q. All right. Now, I would like to ask you about non-ISP bound traffic that's -- that utilized the VNXX architecture. In Ohio do you agree that traffic is properly charged originating access?

A. I'm not sure that I can agree with that as you've stated generally. I have read some of the prior Commission orders in this area and believe there may be certain instances in which -- maybe I should say there are instances in which certain portions of voice traffic may be subject to originating access. I am not sure of what you stated generically is all I am saying.

Q. Okay. If you look at your Exhibit DP-2, if that call were a voice call as opposed to an ISP-bound call, given what your understanding the Ohio Commission to have ruled, would that call be subject to originating access?

A. Let me answer this way, part of my hesitation earlier is -- is predicated on the -- my lack of understanding, if you will, of the prior decisions here. If everything we are looking at in this diagram were within the same tandem sector so that the traffic is not hauled from the point of interconnection here into a completely different tandem sector, I don't know whether the order does apply access charges. My -- my reading of those prior orders is that where you do have passage to a separate tandem sector, that that may -- that may be the distinguishing factor that will -- that the Commission relied on in its decision.

Q. In your Exhibit DP-2 do you understand exchange A to be in a different local calling area from exchange B?

A. Yes. That's -- that's implicit in the diagram and in my discussion.

Q. Now, independently of your interpretation of the Ohio Commission's rulings on this matter, for a call that is reflected in your Exhibit DP-2 which is a voice call, do you think such a call ought to be subject to originating access?

A. Well, I have to respond by going back to

the whole point of my discussion and my testimony on this which is I clearly recognize the -- the historical perspectives of both sides and really have tried here to get away from -- from those polarized kinds of positions. And quite frankly from a factual perspective there's approaching zero voice traffic that would be subject to this kind of scenario from Verizon Access to Embarq in Ohio. In other words, we are really talking almost completely about a dial ISP traffic.

Q. Fair enough. If you would look at page 12 of your testimony, please, there you refer to some other agreements that have been entered into and that you are familiar with. Do you know whether all these agreements have adopted the rate of .0007 for the traffic?

A. I do not believe that they all have adopted that rate, no.

Q. Have some adopted a lower rate?

A. I'm thinking specifically about the then SBC now AT&T agreement, and I believe that that is a lower rate because the agreement covers both voice and dial ISP. Other agreements carve out voice and treat only dial ISP traffic so there's some

differences.

Q. When they carve out the voice, what rate has been used for that?

A. I don't have that information.

Q. Is it fair to say that the rate that the parties agree on in these situations involves a trade off between the amount of transport that the CLEC provides and the rate that the ILEC pays?

A. Generally, yes.

Q. Now, I am going to give you a copy, Mr. Price, of what I think was previously marked as No. 1, that's the North Carolina, is it not? Please take a minute to look this over. This is a portion, not all of, I believe, the testimony you filed in North Carolina. I -- it's my view that it contains all of the discussion of -- of issue 2 here but take a look and see if you can confirm that.

A. All right, sir.

MR. STEWART: And, Ms. Caswell, Mr. Lodge, I am perfectly willing to submit, if you would like, the entire testimony, but I didn't think it was necessary, and I will leave it to you. If you want me to file a late exhibit with the entire thing, I am happy to do it, although unlike the case in many

situations where somebody submits a document and it's necessary to have the whole document for the proper context, I don't think that's necessary, but I'm happy to do it if you want.

MS. CASWELL: I think this is fine.

Q. I hope just one question, Mr. Price. Do you stand by what -- first, let me back up. Is this the testimony you filed in North Carolina?

A. I believe it is, yes.

Q. And are there any changes or corrections you need make to that or would you agree that it reflects your position, the company's position?

A. No, I understand. Yes, I believe that is consistent with the -- with the position that we are taking in North Carolina.

Q. I am going to give you a copy of what was previously marked as Embarq Cross-Examination Exhibit 2. This is the Florida testimony and if you would, please look that over.

A. This does appear to be that position of my testimony in the Florida Bell South arbitration proceeding.

MR. STEWART: And, again, I will represent this is just a portion of the testimony

Mr. Price filed there, and if anyone wishes, I am happy to supply the entirety of that.

Q. Mr. Price, I will ask you the same question as before, are there any corrections or changes you would make to this or does this accurately reflect Verizon Access's position on the issue addressed there? 116

A. I do not have any changes and, yes, it does accurately represent the position that we presented to the -- to the Florida PSC for resolution of this issue. I would add that subsequent to the hearing in Florida we were able to reach agreement with Bell South on a -- on this -- on the resolution of this issue that was very much consistent with the discussion here in this testimony. So I guess the Commission did not have to resolve that dispute; the parties resolved it.

Q. Thank you. Now, if you would, please, turn to page 8 of your testimony and specifically line 13. There you indicate that certain calls are rated as local -- the calls you refer to, these calls are rated as local.

A. Yes, sir.

Q. By whom do you believe they are rated as

local?

A. In the context of this discussion it would be -- it would be Embarq's routing of those calls to its local customers, in other words, because those calls are dialed on a presumably 7 but perhaps 10 digit dialing basis without a 1 plus toll indicator, it would be my understanding that Embarq would rate those as local and consider that as part of the local calling package that the end user customer had subscribed to.

Q. Now, if this call were not an ISP-bound call, given what the Ohio Commission said in the Global Naps case which I think you are somewhat familiar with anyway, that call would not be rated as local, would it?

A. I am not sure. And the reason I am not sure is because we could apply this same fact situation to an ILEC provided or a jointly ILEC provided FX scenario and certainly in that case it would be my understanding that the call would be rated as local, that there would be no access charges applied to -- to the carrier and the end user would have that as I said earlier as part of their local calling plan.

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Q. Now, do you mean to equate an FX call with the VNXX call?

A. Certainly in terms of the -- the end user's dialing of that and the treatment of that dialing mechanism under its service provider's tariffs, yes.

Q. But you would agree there are some significant differences between the VNXX-type call you are describing here and an FX call with respect to what the customers pay to various carriers?

A. In some regards, yes. In other regards, no. I mean, FX is a term that goes back many years, long before -- long before there was even interchange competition, much less, you know, CLEC local exchange competition, so the architecture is a very old architecture. And certainly from that standpoint there are differences. The net result of a CLEC being an FX arrangement is very much like a traditional FX arrangement from the standpoint of the end user and from the standpoint of the -- I guess the receiving customer, if you will, in being able to have voice traffic delivered to a location that is distant or remote from the originating caller's exchange.

Q. With respect to the entity that subscribes to FX service, are you aware that there are generally substantial charges to have the FX number?

A. Generally, yes, although I am not -- I think the -- the qualification around substantial, it varies depending on the circumstance, where the customer is located relative to the point at which the originating calls can be placed, and whether or not that private line which is the term that is used to connect the customer -- I'm sorry, the service that's used to connect the customer, whether that's a relatively short call or a longer one.

Q. Well, let's look -- and that's fair enough. I agree with you that the charges can vary. On Exhibit DP-2, if this were an FX call, who would be paying for the FX line?

A. If we modify Exhibit DP-2 to that fact situation, the Verizon Access customer shown on the far right of the diagram would be the one who would pay for that private line facility.

Q. And they would be paying Embarq for that, correct?

A. In part, yes. It may be a jointly

provided scenario in which payments would actually go to more than Embarq but.

Q. Fair enough. But Embarq would be getting compensation from the FX customer, the one shown on the far right as a Verizon Access customer? 120

A. Under the traditional FX offering that the ILECs have made for many years as I discussed earlier, yes.

Q. Thank you. I would like to turn to the second issue and initially ask you what is a DS1.

A. DS1 is a term that's used to describe a certain transmission level. Typically it's thought of as 24 voice grade channels. In digital terms it's known as 1.54 megabit transmission speed.

ATTORNEY EXAMINER LYNN: Mr. Stewart, incidentally I will clarify that's issue 5.

MR. STEWART: I'm sorry?

ATTORNEY EXAMINER LYNN: That's issue 5, although it's the second issue remaining.

MR. STEWART: Oh, did I call it issue 2?

ATTORNEY EXAMINER LYNN: Well, you said the second issue.

MR. STEWART: Oh, that is ambiguous. Thank you.

ATTORNEY EXAMINER LYNN: Clarify it, please.

MR. STEWART: I'm sorry. 121

ATTORNEY EXAMINER LYNN: Sorry. Please continue.

Q. You refer to a DS1 level. What traffic volume do you mean by that?

A. I have to beg a little bit of ignorance. Traffic engineering is not something I have a lot of experience with. It can be expressed I think in -- in several terms but traffic engineers would understand when the volume of traffic has reached something that approximates a DS1 level, whether that's done in CCS units in the traditional ILEC measure or whether it's done in some other term.

Q. Would you accept that level as being approximately 200,000 minutes of use per month?

A. I believe that -- I believe that I have seen information that suggests that it's been quantified at that level.

Q. Do you know what the current interconnection agreement between Verizon Business and Embarq, although those names are probably not the ones used in old interconnection agreement --

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A. I would agree with that.

Q. What does that agreement require, if anything, with respect to Verizon's building a direct connection when traffic reaches a certain level? 122

A. I don't know. There may be no provisions in the agreement -- for that situation, I apologize.

Q. That's okay. Are you aware of whether Verizon has built any direct connections to Embarq in Ohio?

A. Well, I want to be careful in answering that because it's certainly not always cost effective to build facilities. In many instances I know that our preferred architecture is to lease capacity and, for example, I believe in my testimony I mention the Lebanon wire center. My understanding is that that is a fully leased unit so, in other words, Verizon Access has purchased total capacity of whatever level, DS3 or whatever, that's used to connect there in the Lebanon, Ohio, wire center.

Q. And that arrangement would obviate the need for Embarq to pay transit charges to someone who might facilitate indirect connection, right?

A. That's exactly right.

Q. Are you familiar with where Verizon

exchanges traffic indirectly in Ohio with Embarq?

A. Specifically, no.

Q. Are you aware of whether Verizon pays transit charges to any entity in situations where Verizon exchanges traffic indirectly with Embarq in Ohio?

A. Thanks for that. Short answer, no, and then to follow up the -- you know, as we discussed I think earlier, I would agree that the predominance of the traffic is coming towards Verizon Access which would mean that there would be little, if any, transit payments on Verizon Access traffic originating towards Embarq.

Q. Do you have any knowledge of the approximate cost to Verizon in Ohio in establishing a direct connection with Embarq?

A. No, and I think it would be a very unfact-specific answer. In other words, it would very much depend on location of existing Verizon Access facilities and exactly where within the Embarq network we were attempting to connect.

Q. Do you have an estimate of a low end perhaps where it's a relatively inexpensive direct connection to establish?

A. No, I don't and I mean, in the -- in the agreement Verizon Access has already agreed that, you know, when traffic reaches that level, whatever the expense we have committed to leasing or building, whichever is most efficient, from that direct connection. 124

Q. I would like you to make a few assumptions with me. First, a situation where the parties Embarq and Verizon exchange traffic indirectly and that in a particular month, let's say January, 2008, the traffic level exceeds the DS1 level, and going forward it never drops back below that level.

A. Okay.

Q. Okay. And then assume contrary to what the interconnection agreement says that Verizon does not establish a direct connection within 60 days and that there are no conditions outside Verizon's control that prevent Verizon from doing that.

A. Okay.

Q. Now, you referred several times to the dispute resolution terms of the agreement that I take it you would believe apply to that situation and give Embarq the opportunity to seek some relief.

A. Yes.

Q. Now, in this situation during this period when the traffic exceeded the DS1 level and direct connection has not been established, Embarq would have incurred transit charges to the entity that provides the transit service, right?

A. I would agree with that assumption, yes.

Q. And had Verizon established the direct connection Embarq would not have incurred those transit charges, right?

A. In accordance with the assumptions in our hypothetical, that's true.

Q. Now, is it your understanding that if in that situation Embarq were to come to this Commission and say Verizon hasn't met its obligation to build the direct connection, 60 days have past, and the hypothetical says the traffic is below the DS1 level, would it be appropriate then -- or do you believe the Commission here could say, all right, Verizon, you need to establish that direct connection, and incidentally you need to reimburse Embarq for the transit charges it had to pay because you didn't build the direct connection when you were supposed to?

MS. CASWELL: I am going to object to that question as calling for a legal conclusion. 126 Mr. Price can answer but with the understanding he is not a lawyer.

A. Yes. I was going to say that that gets into the treatment of damages under the -- under the agreement, and in spite of my lawyers trying to educate me on that, they have failed so far so.

Q. Well, putting aside the legal issue of interpreting the agreement and perhaps a legal issue as to the Commission's jurisdiction to award money damages, wouldn't you agree that it would be fair for Verizon to reimburse Embarq for those transit charges?

A. No, I wouldn't. I mean, first of all -- I mean, the whole premise that we are talking about here is that there are no circumstances beyond Verizon Access's control that precluded us from honoring our commitment under the agreement to construct release facilities for that direct interconnection and I just -- you know, I have worked for the company for a number of years and know -- know what our practices and procedures are in that area and I am simply not able to accept that part of

the hypothetical.

Q. Well, let's change the hypothetical a bit and say it was not Verizon who as you indicate would never do this. If some other CLEC didn't do it, didn't build the direct connection that was required by the agreement, wouldn't it be fair to require them to reimburse Embarq?

A. Well, I would have to speculate because, I mean, I am not here on behalf of another CLEC and don't really know -- and don't really have a basis for opining on what would or wouldn't be fair in that scenario.

Q. Well, if Embarq -- I'm sorry. If Verizon in this hypothetical situation where there is nothing that would prevent them from making the direct connection in a timely fashion, would never fail to meet its obligation, in other words, if Verizon would always build the direct connection as the interconnection applies, then what Embarq is advocating here would be academic, and Verizon would never have to worry about the conditions coming in play, right?

A. No. I disagree with that. I mean, it could be that in your hypothetical that the fact

situation were never to develop but obviously from Verizon Access's perspective there appears to be a significant difference in the parties' interpretation of FCC Rule 51.703(b), and it's really not something that Verizon Access would do as a matter of practice to willingly agree to something that we believe is contrary to law even if it is something that we would not expect to ever have to be triggered.

MR. STEWART: I am going to ask the court reporter to mark -- no, I am not. I've marked a document as Embarq Cross-Examination Exhibit 3.

(EXHIBIT HEREBY MARKED FOR IDENTIFICATION PURPOSES.)

Q. And I will hand you a copy, Mr. Price. Take a moment, if you would, to look that over. Have you had a chance to look that over?

A. Yes.

Q. Is it fair to say that Embarq Cross-Examination Exhibit 3 is a markup of your Exhibit DP-2?

A. Yes, it is.

Q. And I will go through and describe what I intended by the handwritten changes to your exhibit. Above on the left side Embarq customer dials and then

a number, the words PICed to IXC appear. By that I would like you to assume this is an Embarq customer PICed to an interexchange carrier that generically we will just call IXC.

A. All right. In that scenario there would be an additional change in that, I believe.

Q. We will -- we will come back to that, and I am not going to prevent you from commenting on the accuracy of this scenario. Then above point of interconnection I've written IXC which is to refer to this generic interexchange carrier point of interconnection with Embarq. And then what was previously labeled as Verizon Access switch is now labeled as the IXC switch. And on the right the Verizon Access customer is now just a customer, although it doesn't really matter to me I think if we call it a Verizon Access customer but let's make it a generic customer for the moment. And that customer has a telephone number in exchange B. I've crossed out the 513 number that was in your exhibit and just written exchange B to indicate that this generic customer has a number in exchange B. And as we previously discussed, exchange A and exchange B don't share the same local calling area so a call between

the two areas would be a toll call. Are you with me so far?

A. Yes.

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Q. And the final change is on the key. I've deleted Verizon Access and inserted IXC-provided facilities. The point of these changes is to reflect a possible network arrangement for a garden variety toll call from an Embarq customer in exchange A to a customer in exchange B. So, now, let me ask you if -- if what I've done here is a reasonable representation of the way such a call could be handled? Not necessarily the only way, and we can come back to that if you want, but this is a potential network arrangement for such a call, right?

A. Yes. I would agree with that.

Q. Okay. Now, under this arrangement if an Embarq customer dials, and I don't really care how the dialing pattern is, but dials a toll call, let's say it's a 1 plus 7 digit toll call to the customer in exchange B, Embarq would receive originating access charges from the generic IXC, correct?

A. Generally, yes.

Q. Now, earlier in our dialogue I think you were going to express a disagreement with the diagram

so I'll let you do that now.

A. Okay. You just touched on one of the things that I would clarify because the far left where it reads Embarq customer dials, the way it's -- the way it was originally expressed on my exhibit was it was a 10 digit, could be 7 digit, but no toll indicator, no 1 plus.

Q. You are absolutely correct and that reflects an error on my part. I was thinking that was the Embarq customer's phone number and not what he dialed or she dialed so let's strike out dials in that phone number. I apologize. I was not trying to mislead you. And add Embarq customer dials exchange B number, whatever that may be, some number in exchange B, just a generic number.

A. Can you -- do you have an aversion to the 1 plus because to me that's significant.

Q. I do not have an aversion. We can call it a 1 plus dialing arrangement to make that call.

A. Okay. So, now, it reads Embarq customer dials 1 plus exchange B number?

Q. Right.

A. Okay. That was -- that was one. The other one is also minor but I think it's important.

In the middle of the diagram where you changed -- or added, I should say, IXC above point of interconnection?

Q. Uh-huh.

A. Point of interconnection is more a term of art for interconnection under 251 of the Telecom Act and so I would -- if we are going to talk about IXCs, I would prefer this just be point of presence, POP.

Q. Fair enough. I have no disagreement with that. Now, with that change and physically the POP and the IXC point of interconnection -- I'm sorry, the IXC POP or the -- and the point of interconnection as shown in the original diagram are physically -- or can physically be the same thing, right?

A. At a high level, yes.

ATTORNEY EXAMINER LYNN: Excuse me, Mr. Price. You were calling that the point of presence?

THE WITNESS: Yes, POP, point of presence, POP.

ATTORNEY EXAMINER LYNN: Okay. Thank you.

THE WITNESS: We tend to create all kinds of acronyms just for fun so.

ATTORNEY EXAMINER LYNN: Thank you for the definition.

MR. STEWART: One moment, please. No further questions. I would move the admission of the exhibits that I had marked.

ATTORNEY EXAMINER LYNN: All right. That will be admitted into evidence.

(EXHIBITS ADMITTED INTO EVIDENCE.)

ATTORNEY EXAMINER LYNN: Ms. Caswell, did you have further questions?

MS. CASWELL: I have a few redirect questions.

ATTORNEY EXAMINER LYNN: Fine. Please go ahead.

- - -

REDIRECT EXAMINATION

By Ms. Caswell:

Q. Mr. Price, you discussed with Mr. Stewart the FCC default of .0007?

A. Yes.

Q. Do you understand Verizon's proposal to apply that default rate for the VNXX traffic to

depend on whether Embarq has adopted or not the FCC default rate for localized traffic?

A. I'm sorry. I didn't quite get that. It's bad when I have to ask my own attorney for clarification.

Q. Does the Commission's adoption -- adoption of Verizon's proposal for compensation for VNXX traffic depend on whether Embarq has adopted or not the FCC's default rate of the .0007?

A. Thank you and, no, that would not be my understanding.

Q. Okay. And Mr. Stewart discussed with you a little bit Embarq -- Verizon Access's positions in North Carolina and Florida in these cases. And do your positions in the testimony reflected in North Carolina and Florida depend at least in part on commission and court decisions in those particular states regarding VNXX compensation?

A. Yes, very much so.

Q. And to your knowledge has this Commission ever decided what compensation -- what intercarrier compensation should apply to non-local ISP-bound traffic?

A. Not to my knowledge.

Q. And turning to issue 5 has Verizon Access already agreed to establish direct connections with Embarq when traffic reaches a specified level?

A. Yes. I believe in my summary I referenced the specific provision in the interconnection agreement where that's found.

Q. Okay. And are you aware of any complaints by Embarq against Verizon Access for unduly slow establishment of direct trunks between the parties?

A. No, I am not.

Q. And have you ever seen any other ILEC propose a provision like Embarq's proposing here for reimbursement of transit charges on its own originating traffic?

A. No, I have not.

Q. I would like you to look at the diagram that Mr. Stewart handed out, the last one, Cross-Examination Exhibit 3. And in particular can you please look at the connection in the middle that crosses the exchange boundry between the Embarq CO and what is now the IXC point of presence. Who would provide that facility? Would it be Embarq provided as the diagram shows or is that not the case if this

were to change to an IXC POP? And if you are not sure --

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A. No, no. I have an answer, and my tendency sometimes is to get lost in thinking of how to say it, so I apologize. As it's shown here in the diagram, this would actually represent what -- here is another acronym for you, what the industry thinks of as a DEOT, D-E-O-T, or direct end office trunk. In that case the IXC would be paying full freight for -- for that facility. I mean, it may be an Embarq-provided facility, but it would be fully compensated under the access tariffs.

Q. And the point of presence here on the diagram, would that need to be on Embarq's network as the -- would that need to be on Embarq's network point of presence?

A. No, it wouldn't.

MS. CASWELL: Thank you. That's all I have.

ATTORNEY EXAMINER LYNN: Mr. Stewart, any additional questions on your part?

MR. STEWART: Just a few, I think.

- - -

RECROSS-EXAMINATION

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By Mr. Stewart:

Q. I believe it was in North Carolina that you indicated you expected the Commission to stand by previous decisions, although you expressed no opinion as to their wisdom; is that fair?

A. Generally, yes.

Q. Is there some way in which I mischaracterized what you said?

A. I don't remember using those exact terms but, I mean, the document is in the record. It will speak for itself.

Q. Fair enough. Ms. Caswell asked you a little bit about the diagram and Cross-Examination Exhibit 3. And I think we can agree that the IXC point of presence may well be at the Embarq central office.

A. That's true.

ATTORNEY EXAMINER LYNN: If we could go off the record.

(Discussion off the record.)

ATTORNEY EXAMINER LYNN: Back on the record, please.

Q. So I think we can agree that as I think

initially your hesitation indicated this is not the only network arrangement that might exist for the handling of the toll call between exchange A and exchange B. But it's one that could exist and to the point that Ms. Caswell made and you responded that there might be a DEOT -- which did you define that, direct end office trunk?

A. I think I used transport but same thing.

Q. All right. And I think you indicated in your answer that as you envisioned it in one scenario at least -- well, if it were a DEOT, then the exchange carrier would be paying for it, right?

A. That's true.

Q. In this diagram, however, Embarq is paying for the transport or providing the transport to the IXC POP, right?

A. Well, that's what the legend would suggest. And the clarification -- in my mind the clarification was that regardless of who has title to that asset it's fully compensated under the access tariffs under the scenario that we are talking about in Embarq Cross-Examination Exhibit 3 which in the way that I had originally depicted it in Exhibit DP-2, that is not the case. That facility or that

trunk, I should say, between the Embarq CO and the -- in my diagram the point of interconnection would be the responsibility of Embarq.

Q. I understand. So is what you are saying in my Exhibit 3 as I've modified it, Embarq would be compensated for the connection between the Embarq's CO and the IXC POP?

A. Precisely.

Q. Now, following up on your alternative arrangement where if the IXC POP were located at the Embarq CO, then Embarq would not be providing transport from its CO to an IXC POP located outside the CO, correct?

A. That's correct. And if I might, I referenced earlier the Lebanon, Ohio, situation with the point of interconnection being at the Embarq Lebanon central office so in that particular situation Embarq is not providing any transport whatsoever for the traffic that it originates to Verizon Access.

Q. Fair enough. And by analogy if the IXC point of presence were located in the Embarq central office, Embarq would not be incurring transport costs, but Embarq in that scenario would nonetheless

still be receiving some originating access charges, right?

A. In that scenario where the point of preference would be at the Embarq CO, Embarq would be entitled to local switching on the originating end from the IXC and depending on its access tariffs in Ohio, there could be some other elements, but they would -- there would not be any transport compensation due to Embarq from IXC.

MR. STEWART: No further questions. Thank you.

ATTORNEY EXAMINER LYNN: Questions from the panel, Mr. Twist?

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EXAMINATION

By Mr. Twist:

Q. Good morning, Mr. Price.

A. Good morning.

Q. Just have a few questions for you. If you could turn to page 9 of your testimony.

A. Yes.

Q. Beginning at line 12 you say "The dispute is further complicated by the fact that the overwhelming majority of virtual NXX traffic is not

voice but dial up internet traffic." What do you mean by further complicated?

A. Further complicated in the sense that dial internet traffic has by virtue of FCC rulings has its own qualities that have yet to be resolved. So we are not talking about traditional voice traffic for the most part and which is as messed up as they are, the compensation rules for voice traffic are fairly well known. But when you insert dial internet into the equation, it makes it more -- more complicated because that adds a whole different layer of case law and disputes.

Q. If you would turn to page 12 of your testimony.

A. All right.

Q. Beginning at line 8 you are talking about agreements with other ILECs, and at line 8 you mention that "the CLECs have committed to accept greater responsibility for transporting from an ILEC's originating end office."

A. Yes.

Q. Have you proposed to do that in this instance here?

A. It's my understanding that proposal has

been made in negotiations, yes.

Q. Is it in your proposed language within the draft interconnection agreement?

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A. I do not believe so, no.

MS. CASWELL: Mr. Twist, I can show him that language if you want to refamiliarize yourself with it.

ATTORNEY EXAMINER LYNN: Go ahead, Ms. Caswell.

THE WITNESS: Actually I have the language here.

MS. CASWELL: Yeah. Again, as I understand the question, it's whether the -- whether Verizon Access would commit building farther into the ILEC's network.

MR. TWIST: Right.

MS. CASWELL: This is the proposed language.

MR. STEWART: What section is that?

MS. CASWELL: It's 55.4 and Verizon's language is the italicized bolded language.

THE WITNESS: Right.

MS. CASWELL: And it continues -- well, you'll see.

MR. STEWART: Thank you.

A. So, your Honor, yes, that language does 143 appear.

Q. Skipping back to page 10 of your testimony, beginning at line 20 and continuing on to page 11 you said "Any action by the FCC the interconnection should require rapid implementation of any new national carrier compensation following the adoption by the FCC." In your opinion should those changes be subject to a true up if they varied from what you've agreed to?

A. No. I think -- I think it's -- it's not necessary. I mean, particularly whereas here we are talking about dial internet traffic, this is not traffic that -- thinking of how to say this exactly, we are not talking about traffic that has displaced, if you will, traffic that Embarq's customers have traditionally placed on a toll basis such that, you know, two years ago, three years ago, whatever, there was always all this toll traffic that some have disappeared because of this arrangement. I mean, dial internet users typically don't place toll calls to reach their ISP. And so there's really -- we were talking about a new form of traffic as opposed to

something where Verizon once had -- not Verizon, I'm sorry, where Embarq once had a revenue stream that has somehow been taken away as a result of this innovation or development.

Q. Let's see, moving onto issue 5 at page 16, starting at line 5 you state that "Embarq's language ignores the possibility that the DS1 threshold could be triggered in a given month, only to be followed by subsequent months where traffic does not reach the threshold." Are there any provisions in the interconnection agreement where you could revert back to the transit -- the third-party transit traffic below -- drops below DS1 level?

A. No, there's not. I mean, presumably the volumes -- presumably this is relatively unlikely to occur. In other words, presumably there is a trend in the volumes and so where that trend would flatten out right around DS1 level is probably our -- a fairly unlikely scenario.

Q. Would it even be practical to do that once direct connection is established?

A. It would have to be a business decision, in other words, if the volume is really dropped significantly such that the cost of the facility

was -- was really much -- well, it became a burden, then it might be but, again, I don't -- I think that's relatively unlikely.

Q. Let's see, on page 17, line 8, you say, "There is no reason to carve out an exception for establishment of direct trunking in these circumstances." Can I take that to mean that the language that has been proposed by Mr. Fox in his testimony would not satisfy Verizon's dispute?

A. No. And I apologize that's not as clear as it should be, your Honor. What I was really trying to articulate here is with reference to the previous phrase at the end of line 6 and spilling over to the beginning of line 8 there are other provisions in the agreement that cover dispute resolution and what I was really trying to say is that here there is a specific provision that sort of carves itself out, if you will, from those other dispute resolution provisions that otherwise would apply to the entire agreement. So it's creating a special treatment, if you will, maybe that's a better way to put it, than a carve out.

Q. Does that mean you would not oppose Mr. Fox's proposed language in his testimony?

A. Well, as I tried to indicate -- short answer we still don't believe that that language is appropriate, the language Mr. Fox presented in his testimony.

Q. Correct.

A. And as I mentioned earlier, even if it is in my view unlikely that Verizon Access would find itself in the situation of not having implemented the direct interconnects within the time frame, we do not as a matter of practice agree to language that we believe is in violation of federal rules and that goes back to the 51.703(b) reference that I made earlier.

MR. TWIST: Thank you. That's all I have.

ATTORNEY EXAMINER LYNN: All right. Thank you, Mr. Twist.

Mr. Twist has actually covered some of the questions I had as well so. I have no further questions for you, Mr. Price. Thank you. And you can take your seat.

THE WITNESS: Thanks.

ATTORNEY EXAMINER LYNN: And if we could go off the record just for a minute.

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(Discussion off the record.)

(Recess taken.)

ATTORNEY EXAMINER LYNN: We are back on the record here and just to make sure we have covered all the necessary steps, we'll -- I will ask that both sides make motions that their exhibits be admitted into evidence. Ms. Caswell?

MS. CASWELL: Yes. I would move that Verizon's Exhibits 1 and 2 be admitted into the record.

ATTORNEY EXAMINER LYNN: All right. Thank you and they will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

ATTORNEY EXAMINER LYNN: And, Mr. Stewart?

MR. STEWART: Thank you, your Honor. Embarq moves the admission of Embarq Cross-Examination Exhibits 1, 2, and 3.

ATTORNEY EXAMINER LYNN: Okay. Thank you for that motion. They would be admitted as well.

And, Mr. Stewart, are you prepared for your direct examination of your witness?

MR. STEWART: Yes, thank you. Mr. Fox.

ATTORNEY EXAMINER LYNN: Mr. Fox, if you

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would take the stand, please.

(Witness sworn.)

MR. STEWART: I am going to ask that the court reporter mark as Embarq Exhibit 1 a document titled Direct Testimony of Edward B. Fox. 148

ATTORNEY EXAMINER LYNN: All right. And it will be marked accordingly.

(EXHIBIT HEREBY MARKED FOR IDENTIFICATION PURPOSES.)

ATTORNEY EXAMINER LYNN: Okay. Please go ahead, Mr. Stewart.

MR. STEWART: Thank you, your Honor.

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EDWARD B. FOX

called as a witness on behalf of Embarq Corporation, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Stewart:

Q. Mr. Fox, what is your name?

A. My name is Edward Fox.

Q. What is your business address?

A. It's 5454 West 110th Street, Overland Park, Kansas 66211.

Q. You might need to speak up a little bit.

ATTORNEY EXAMINER LYNN: Yes, please.

MR. STEWART: So he is looking less away from you I am going to move over here a little bit.

ATTORNEY EXAMINER LYNN: Fine.

Q. Who do you work for, Mr. Fox?

A. I work for Embarq.

Q. What's your job there?

A. I am a regulatory policy manager. I deal with interconnection issues and other topics within the industry.

Q. Okay. Do you have before you what's been marked -- a copy of what's been marked as Embarq Exhibit 1?

A. Yes.

Q. And is that your direct testimony in this matter?

A. Yes, it is.

Q. Was that prepared by you or under your supervision?

A. Yes.

Q. Do you have any changes or corrections to make to it?

A. I do have some small ones. Page 3 at the bottom I would delete the parenthetical section that

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begins with "It is not clear" and just that whole parentheses. After reading it, it is clear they are talking about a certain topic.

ATTORNEY EXAMINER LYNN: So the statement goes "it is clear from"?

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THE WITNESS: "It is clear."

ATTORNEY EXAMINER LYNN: Okay.

THE WITNESS: Thank you.

MR. LODGE: Excuse me. Is the correction to delete the paraenetical all together or change the language?

THE WITNESS: Yes, delete it all together.

ATTORNEY EXAMINER LYNN: Okay. Thank you for asking, Mr. Lodge.

THE WITNESS: Yeah, thanks.

A. The second one is on page 4, second line, line 2, in the "251(b)(5)," the whole statement should be in parentheses, so we need a closed paren after the 5.

MS. CASWELL: I'm sorry, Mr. Fox. I didn't quite understand that change.

MR. STEWART: After the numeral 5, there should be another closed parentheses.

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MS. CASWELL: Oh, okay.

ATTORNEY EXAMINER LYNN: That's fine.

A. And on page 9, line 4, I changed the word "were" to "was."

Q. Any other changes, Mr. Fox?

A. No.

Q. With those changes if I were to ask you today the same questions as appear in Embarq Exhibit 1, would your answers be the same as they are set forth in Embarq Exhibit 1?

A. Yes, they would.

Q. Thank you. Mr. Fox, do you have any oral rebuttal testimony that you would like to provide today to the testimony of Mr. Price?

A. On pages 18 and 19 on the two exhibits typically the point of interconnection, the point would be on the ILEC's network. Instead it shows it's out there in the middle. It doesn't impact any of the discussion he has leading up to that but.

ATTORNEY EXAMINER LYNN: So this would be Exhibits DP-1 and DP-2 that's part of Mr. Price's testimony?

THE WITNESS: Yeah.

Q. Do you have any comments with respect to

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the issue No. 5 and the establishing a DS1? Does Embarq have any real experience with that sort of situation when traffic passes the DS1 threshold?

A. Yes, we do. We have, for example, a CLEC and we have an interconnection agreement and there are a number of instances where they have exceeded the DS1 and have not made that direct connect, and we haven't gone to the dispute resolution. We have contacted them. We've told them over and over again. And their traffic in a six-month period from August to January, the months August, September, December, and January, when we have got traffic, they have increased their indirect traffic by 3-1/2 million minutes per month so -- over that time so that is a true concern of ours and some instances within Ohio we are being billed by the transit provider and so that's why this is an important issue to us.

Q. Does the CLEC in the situation as Mr. Price described it where traffic is out of balance and the flow being much more heavily from Embarq to Verizon as opposed to back, does the CLEC have an economic incentive to build that direct connection when they are sending very little traffic back to the ILEC?

A. I wouldn't think so. That's kind of like a free interconnection point. And they've -- they are already interconnected with that ILEC, so they are getting all our traffic. It's sort of like having a traffic law without any economic incentive to obey it. Otherwise, it's just a mere suggestion so there are about nine offices where we get indirect traffic from Verizon Access that are already in excess of the DS1 level in Ohio.

Q. Is that all, Mr. Fox?

A. Yes.

MR. STEWART: Okay. Thank you. Mr. Fox is available for cross-examination, and so I don't forget I will move Embarq Exhibit 1 into evidence.

ATTORNEY EXAMINER LYNN: It will be admitted into evidence.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. STEWART: Thank you.

ATTORNEY EXAMINER LYNN: And cross-examination, Ms. Caswell?

Do you need a moment? Go ahead.

MS. CASWELL: I can start.

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CROSS-EXAMINATION

By Ms. Caswell: 154

Q. Good morning, Mr. Fox.

A. Good morning.

Q. At page 3, line 16 -- actually it's line 17 of your testimony, you state that "Verizon Access deems this virtual NXX traffic subject to Section 251(b)(5) of the Act." But that's not the position that Verizon Access has taken here, is it?

A. The 251(b)(5) traffic qualifies for intercarrier compensation according to the FCC, and you are asking for intercarrier compensations, so you may not have directly stated that that's 251(b)(5), but you want it to be treated like 251(b)(5).

Q. Maybe it's just a matter of semantics but doesn't -- 251(b)(5) traffic is typically referred to as subject to reciprocal compensation, correct?

A. Subject to check, I would say it's -- or intercarrier compensation.

Q. Well, no. I am talking specifically about reciprocal compensation because that's the term that's commonly used for 251(b)(5) traffic.

A. In the ISP remand order in particular? What's referred to in that?

Q. I am not sure I understand.

A. The ISP remand order is about intercarrier compensation. Is that where it's most commonly referred to as reciprocal?

Q. In my experience -- I don't want to testify but --

A. Just for clarification.

Q. Let me go at it this way, are you aware that the parties have agreed to specific reciprocal compensation rights for traffic in the -- in the new interconnection agreement?

A. Yes.

Q. And are you aware that those rates are up to 10 times higher than the .0007 rate that Verizon is proposing here for virtual NXX traffic?

A. I know that cost-based rates are higher than .0007, .0007.

Q. Okay. So Verizon isn't seeking to charge those reciprocal compensation rates that the parties have agreed to, it's not seeking to charge those for the virtual NXX traffic under its proposal, correct?

A. That's correct.

Q. At page 4 of your direct testimony, lines 3 to 5, you state that "Intercarrier compensation

obligations should not be determined based on the NPA/NXXs of the calling and called parties, as most CLECs contend." That's not Verizon Access's contention in this proceeding, is it?

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A. In effect it is, yes.

Q. Can you -- can you point me to anywhere in Verizon's papers where it's made that contention?

A. It's not explicitly stated, but as in Mr. Price's testimony, he describes the dialing patterns of the end user dialing the 7 digit number and no matter where it terminates it's based on the number dialed and for compensation. So, in effect, you are asking for the number dialed to be the compensation basis.

Q. At page 6 of your testimony, lines 12 to 14, you're talking about transport costs, and you say, "In both instances, Embarq incurs the cost of switching and transport of each VNXX call to Verizon's POI, whether the POI is on Embarq's network or at a distant location," but I think I heard you say in your -- in your -- in your rebuttal testimony that the POI must by law be on Embarq's network; isn't that correct?

A. Well, that's what the Telecom Act says

but in this instance an indirect, the POI, would be at somebody else's network outside our network and that's where we have agreed with Verizon to do this indirect interconnect with a limited DS1 level of traffic so that would be an example of the POI being outside of our network where we would hand off traffic to your network.

Q. I am not sure I understand your answer. Are you saying that the -- are you -- are you saying that the POI changes depending on whether the parties have a direct or indirect interconnection? I am not sure what you are saying.

A. We would -- let's say if we both were attached to an SBC tandem and we passed traffic to you through them as an indirect interconnection, that would be a POI that we would -- it's outside of our network at a distant location.

Q. Mr. Fox, maybe this is the source of the confusion but, right now, I am asking you questions on your testimony on issue 2 which is the VNXX question rather than issue 5 which is the direct and indirect connection issue.

A. Right.

Q. And do you have a copy of the parties'

traffic interconnection agreement with you?

A. I do.

Q. And can you look at Section 54.2.1, please? Maybe this will clarify what we are discussing here but can you read that section, please?

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A. 54.2.1?

Q. Yes.

A. "Point of interconnection unless interconnected with Embarq on an indirect basis subject to 61 the CLEC must establish a minimum of one POI per each LATA in any technically feasible point for telecom traffic."

Q. Okay. At several points in your testimony you discuss the Commission's jurisdiction over ISP-bound VNXX traffic, and you conclude that the Commission has authority to establish a compensation mechanism for non-local ISP-bound traffic. Do you understand Verizon does not disagree with your point there?

A. We just want to make that clear we think they have authority, and whether you disagree or not is -- it's good that we agree, I suppose, but what we are saying is the authority is they can allow us to

charge originating access on calls that are outside the local calling area.

Q. So you do understand that Verizon agrees that this Commission has the authority in this case to set an intercarrier compensation mechanism for non-local ISP-bound traffic?

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A. Yes.

Q. And the issue, Mr. Fox, is whether -- is in what manner they should set that intercarrier compensation, correct?

A. That's correct.

Q. Turning to issue 5 which is the issue regarding reimbursement for transit fees, I want to make sure that I understand what your existing proposal is and what Embarq's proposal is in this case because it changed somewhat between the time you submitted your response to Verizon's petition and the time you submitted your testimony. And you state here, pages 11 to 12, that Verizon should have a 90-day period in which to establish direct trunks; is that correct?

A. That's correct.

Q. And Embarq had originally proposed 60 days, correct?

A. In our negotiations that was the original but prior to the testimonies being filed our contract negotiator had proposed this language to Verizon Access, and he did not accept it.

Q. Okay. And can you turn to the contract Section 61.1.5, please.

A. Yes.

Q. And the last sentence of that section says "Within 60 days of when the indirect traffic exceeds DS1, CLEC shall establish a direct interconnection with Embarq's end office, in accordance with provisions of Section 54." Mr. Fox, can you clarify for us whether your new proposal is to change that 60 days to 90 days?

A. No. That would be unchanged. That's not the language in dispute. 61.2.4 would be, although those two are closely related.

Q. Right.

A. The --

Q. So why does it make sense to you to change the language in 61.2.4 to 90 days but not change the language for establishment of 61.1.5?

A. We could.

Q. And I think we have already established

that Verizon has already agreed to establish direct trunks within a specified period after reaching the DS1 level, correct?

A. Right.

Q. Would you agree if Verizon violates that provision of the agreement, it would be subject to an enforcement action by Embarq?

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A. Conceivable.

Q. Mr. Fox, your new language with respect to Embarq not seeking reimbursement if it's -- if it's the cause of the delay beyond 90 days, that language would not cover a situation where a third party might be the cause of the delay establishing the direct trunk, would it?

A. It could be. The intent of that language is not to be heavy handed on Verizon Access. As long as you are making an effort to do an inter -- direct interconnection and those things you cannot control or we cannot control, we are not trying to squeeze every cent out of everyone. We just want to make sure you are moving toward that direction to get your direct connect you have committed to. As I mentioned earlier, we have got carriers that have not done and, you know, we don't want to go to the dispute

resolution to make them do it, and even after that unless the Commission says you absolutely will do it -- and has some stipulation about that, they still wouldn't do it so there is no economic incentive.

Q. But the language as it stands now covers only the situation where it's Embarq's fault rather than a third-party's fault; isn't that correct?

A. What we have proposed -- let me just check that again.

Q. And I am looking at page 12 of your testimony.

A. Uh-huh, yeah. I mean, if you are asking if we could put language in there to make it even broader that there is something Embarq doesn't control or neither party controls, we are not opposed to that. Again, our intent is to just make sure you initiate the order to get the activity going rather than doing nothing.

Q. Mr. Fox, are you familiar with the FCC's Rule 51.703 that ILECs may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the ILEC's network?

A. Yeah. I am familiar with that, and I

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don't think it applies in this case. I am not an attorney but what it looks to us at Embarq is, first of all, your traffic that is coming from -- the indirect traffic is not telecom traffic. It's ISP traffic which is information service and, furthermore, and we assume that's true because of the ratio. The preventable presumption of a 3 to 1 ratio that's defined in the ISP remand order is certainly not the ratio of indirect traffic coming from us to you is 341 to 1, so I think that 3 to 1 has been exceeded. And then that -- again, this is not a -- this is totally driven -- this indirect transit cost would be totally driven by Verizon's decision to have that indirect so if you have a direct connect, it would never be a factor.

So also this causes us to incur an expense outside of our network which is something we don't believe we are required to do. We did agree to do it up to a T1 level and so that's -- you know, that's another reason why we don't think it applies as well. Legally there are no FCC rules that say that we have to indirectly connect. That's something we agree to do and up to a T1 level and so we don't think that those -- that traffic is eligible for --

it's not telecom traffic so it's not a case of us passing our expense on and the main thing is just the economic incentive that you don't have to put those lines in. That's why we think --

Q. Mr. Fox, I understand you are not a lawyer but can you point -- point out to me where in the FCC rules it says ISP-bound traffic is not telecom traffic?

A. It's information service; ISP traffic is.

Q. But can you point to the rule that says that traffic is not subject to 703(b)?

A. It is -- there was a ruling by the FCC that established that ISP-bound traffic is -- I can't cite the rule. I have to check on that but.

Q. But you are saying that the definition of telecommunications traffic does not include any of this traffic? That --

A. No. Telecom traffic is -- that's information service traffic as opposed to title 2 telecom traffic.

Q. Are you aware that this Commission has acknowledged that Rule 51.703(b) precludes ILECs from charging CLECs for local traffic that originates on their networks?

A. I assume that's true. I can't point to any rule that says that or any order. But there could be different facts than this one so I don't know what the context was that statement was made.

Q. Now, mr. Fox, in your rebuttal testimony you referred to a situation where a CLEC had not established a direct connection despite outbound traffic exceeding the level specified at least in the contract between Embarq and Verizon Access. Was that an Ohio carrier?

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A. They do have connections in Ohio. It's kind of a nationwide carrier, and they do have -- yeah, they are in Ohio.

Q. Did that problem you referred to occur in Ohio?

A. Yes.

Q. And that CLEC was not Verizon Access, correct?

A. No.

Q. And do you know if that CLEC agreed to a provision like Verizon Access has here, that it will establish direct connections within a specified period after reaching DS1 level?

A. Yes.

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Q. It did agree to such a provision?

A. Yes.

Q. And I think I heard you say that Embarq is now going under the dispute resolution provisions to address that situation; is that correct?

A. We haven't yet.

Q. You have not yet. 166

A. No.

Q. Is there a reason for that?

A. Well, in the states where the ILEC is charging us transit charges, we are putting a lot of pressure on them short of using the dispute process to get the trunks, direct connects, so we have prioritized those states, and they are slowly getting the action -- committing to the terms they agreed to in the contract.

Q. So, in other words, the problem wasn't important enough to call or resort to the dispute resolution provisions at this point?

A. The thing that determines the importance we get -- we start getting bills from that transit provider, it becomes very important.

Q. I'm sorry. I don't think I understood your answer. I thought you said you were getting

bills from that transit authority.

A. There are some where we are, yes.

Q. You say some where we are. I heard you describe one instance in rebuttal testimony.

A. Right now, Ohio Bell or Ameritech is not charging transit, but they could start any day now. We believe they are entitled to it if they decided to charge it and I don't know if we have an agreement with them as yet and I think that's the only thing that hasn't been done yet.

Q. So in that one instance that you have talked about you have not actually been billed for any transit; is that correct?

A. We have been billed for transit. I am not sure what instance you are talking about on that one.

Q. You talked about one specific instance in your rebuttal testimony where you had a CLEC that had not established direct trunks or had unduly delayed in establishing those direct trunks, and I am just trying to understand why Embarq has not resorted to the dispute resolution provisions to remedy that situation. And I thought I heard you say that it was not a priority at this point, and then I thought I

heard you say that you had not been billed for the transit yet. 168

A. If we get -- when we start to get billed, that becomes the top priority. And in those instances where the transit provider does not bill us, it's not -- we put our resources on other areas where we are having -- are receiving bills from transit providers and ensuring that those direct trunks gets established.

Q. Okay. So have you had billed or have you not been billed by the transit provider in the situation you described earlier where the CLEC has not established a direct trunk?

A. Okay. Let's just take, for example, I don't know right now, say there are 40 locations where there is indirect interconnections where they have exceeded T1. Let's say -- again, I don't know if these numbers are right or not but just say for an example. Let's say in 20 of those we have a transit provider that does bill us for transit. The other 20 they do not bill us. The 20 where we get billed is where we are focusing all of our attention, that's a top priority.

Q. But -- and I am going to ask you the

question again. In the situation you described with one carrier who was in your opinion particularly abusive Embarq has not yet been billed for transit in that situation. 169

A. I thought I just answered that question.

Q. All it requires is a yes or no.

A. We have been billed in some cases with that carrier. That carrier is nationwide and they have got a lot of --

Q. But I am talking about only in Ohio. In Ohio have you been billed for transit?

A. Yes. Some carriers bill in Ohio. Not all of them do yet.

Q. So in that specific situation you referenced in your rebuttal testimony you have been billed for transit by the carrier.

A. Yes.

Q. Okay.

A. We get billed from Cincinnati, Cincinnati Bell.

Q. But just to clarify you are not using dispute resolution to address that situation at this point.

A. We haven't had to yet. They have slowly

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been complying with the agreement.

MS. CASWELL: Okay. I think that's all I have. Thank you, Mr. Fox.

ATTORNEY EXAMINER LYNN: Mr. Stewart, any additional questions on your part?

MR. STEWART: No.

ATTORNEY EXAMINER LYNN: No further questions. Okay.

Questions of the panel, Mr. Twist, do you have any?

Do you need a break?

MR. TWIST: No, I'm good.

ATTORNEY EXAMINER LYNN: Okay.

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EXAMINATION

By Mr. Twist:

Q. Good morning, Mr. Fox.

A. Good morning.

Q. If you could turn to page 4 of your testimony, you described the virtual NXX concept at line 12. You say "A virtual NXX, or virtual number, is 'homed' in a central office switch that is outside of the local calling area in which the customer physically resides." What do you mean by "homed"?

A. Well, that's a good question. The -- 17
yeah. VNXX is homed to central office based on where it's assigned. That's homed. So the way it's stated here could mean that you could take that location where it's homed, let's say, Worthington central office and send it to somewhere in Cincinnati and the way it's stated here is probably not exactly what happens. It might be a little confusing so there is a central office where it's homed and then through using the VNXX technologies of network routing it can go to another CO that's way outside that rate center, assign it to a customer who is in Cincinnati, for example, a Worthington number.

Q. Okay. Is it feasible for -- for VNXX to be homed in a central office outside of the -- of the local area where the customer physically resides but then if the call actually terminates in that same exchange, I think it was example -- or Exhibit 1 to Mr. Price's testimony where it goes out of the exchange to a Verizon Access central office and then the call actually terminates back in the same exchange, exchange A, would that be considered a virtual NXX recording?

A. Probably not. It wouldn't need to be.

MR. STEWART: Excuse me. May I give the witness a copy of the exhibit that you are referring to?

MR. TWIST: Sure.

THE WITNESS: I have got it.

MR. STEWART: Do you have DP Exhibit 1?

THE WITNESS: Yeah.

MR. STEWART: Take a look at that.

A. Now, that's -- that's a good question. The FCC, they use end-to-end analysis on whether a call is local or not. I know you didn't ask that particular question. You are asking about whether it was homed and so on. But whether it was VNXX -- whether it was VNXX or not it would still be a local call just based on the end-to-end analysis.

Q. Technically a VNXX can be homed in a central office outside a local calling area, and it wouldn't be technically considered a virtual NXX if it actually is terminating back in the same exchange?

A. I wouldn't see why they would ever want to use a VNXX in a situation in DP-1. It just wouldn't make sense.

ATTORNEY EXAMINER LYNN: If I can clarify something for the court reporter here, Exhibit DP-1,

that's part of Verizon Access direct Exhibit 1.

THE WITNESS: Thank you.

Q. Okay. Turning to page 7 of your testimony at line 8, you mentioned that the "FCC rules restricts a number from being ported outside of its geographically assigned rate center but CLECs know they can violate the rule since the database only edits to the LATA level and not to the actual rate center level."

A. Right.

Q. Do you have any reason to believe Verizon Access is employing this practice?

A. Yeah. I don't know whether they are or not. We don't -- we could find out, but we did not do that level of analysis to find out if that's -- VNXX calls are being -- we do know some CLECs that do that. And so I used that as an example.

Q. Okay. As far as the language that you are proposing for establishing direct connections, have any other CLECs agreed to similar language with Embarq?

A. To do a direct connect once the T1 levels are achieved?

Q. Right.

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A. Most of them do.

Q. That's typically in there; you have that with other carriers?

A. Yeah. Most of the agreements have that.

Q. And do those agreements include the financial incentive of having to pay the transit traffic charges that are charged to Embarq or is that a new twist?

A. It's new. Yeah, they don't include that language yet.

Q. And, again, under your proposal if Embarq is not being charged transit traffic expenses and Verizon Access goes beyond the 90 days and it's through their lack of action, not through any other persons, there would be no financial penalty for them to not establish those direct connections; is that correct?

A. If they are not being billed, we wouldn't have any indirect to pass on to them, although we would certainly contact them and let them know it was time to do the direct connect but it wouldn't be a billing component.

MR. TWIST: That's all I have.

ATTORNEY EXAMINER LYNN: Thank you,

Mr. Twist.

And, once again, Mr. Twist covered some of the questions I had, so I have no further questions myself.

With that you can take your seat.

THE WITNESS: Thank you.

ATTORNEY EXAMINER LYNN: Thank you very much. At this point I will ask --

MR. STEWART: Your Honor.

ATTORNEY EXAMINER LYNN: Yes.

MR. STEWART: I apologize. I have another question of Mr. Fox because of a question Mr. Twist asked.

ATTORNEY EXAMINER LYNN: Oh, okay.

MR. STEWART: If I may.

ATTORNEY EXAMINER LYNN: All right. Please proceed and then if Verizon wants to ask any follow up to that, they can go ahead.

MR. STEWART: Yes. This is for clarification. I know people always say that, but I'm -- frankly I am a little confused now.

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REDIRECT EXAMINATION

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By Mr. Stewart:

Q. If you would look at the -- Mr. Price's exhibits that have the diagrams. Do you have that in front of you? Do you have both DP-1 and DP-2?

A. I do.

Q. Mr. Twist was asking you about where the number was homed. And on this diagram it shows, this is DP-2, the Embarq customer dials (513) 282-2678. Where -- where on this diagram is that number homed?

A. Well, it appears to be in the Verizon Access switch because just based on the labels port in Verizon Access switch assigned to that (513) 282 number but then it says NXX 282 assigned to exchange A. To answer your question, it is actually exchange A and that Embarq, if it says it's in exchange A, then that's where it's homed. Would you agree?

Q. What you just described would result in the number being homed outside the area in which the Verizon Access customer is located so I thought that's the way it had to be but I wasn't sure that's what you said before. If it was clear to everyone else, I apologize.

So you're saying in this Exhibit DP-2,

that number would be homed in the Embarq CO?

A. Well, that's what -- I mean, this is not my exhibit but based on what appears on the labels 177 that's where it would be homed, and then it's sent over that transport to another customer where that number is assigned.

MR. STEWART: Thanks.

MS. CASWELL: Your Honor, I think we have a much different -- much different understanding of this situation on the number homing, and maybe it's because of a disagreement -- disagreement or miscommunication about the word homed, and I don't know if you want to have discussion about that off the record.

ATTORNEY EXAMINER LYNN: That probably would be helpful, yes. Off the record.

(Discussion off the record.)

ATTORNEY EXAMINER LYNN: Actually I would have one question.

No further questions from you then?

MS. CASWELL: No.

ATTORNEY EXAMINER LYNN: Okay. That's fine.

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EXAMINATION

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By Attorney Examiner Lynn:

Q. Mr. Fox, just so I understand something here too and this sort of ties in with Mr. Twist's questions again, some of the language you were proposing related to issue 5 and the indirect connections and so forth, that's language that the two parties are still in disagreement over?

A. Yes.

ATTORNEY EXAMINER LYNN: Okay. That's fine. Thank you very much.

THE WITNESS: Thank you.

ATTORNEY EXAMINER LYNN: With that you can indeed take your seat.

And, let's see, I will ask the parties at this point, and I must admit we were discussing how long it's been since all of us participated in arbitrations, are you interested in filing briefs after this case?

MS. CASWELL: Yes.

ATTORNEY EXAMINER LYNN: Okay. That's fine. And possibility of reply briefs as well?

MS. CASWELL: Initial briefs would be fine with us.

MR. LODGE: It depends on the what has already been scheduled. Your entry I think we already have a schedule for briefing. 179

ATTORNEY EXAMINER LYNN: I will defer to you on that.

MR. STEWART: I agree we've -- we have dates for initial and reply briefs.

MS. CASWELL: Okay.

ATTORNEY EXAMINER LYNN: Well, then that issue is resolved. Thank you for the reminder.

With that are there any other questions that would come up by anyone?

MR. LODGE: Just one other item, your Honor. In correspondence through the Commission a couple of days ago we did advise that the parties are in agreement that the Commission may extend its time for issuance of an award to April 30, 2007, and we communicated to confirm as much on the record today.

ATTORNEY EXAMINER LYNN: I appreciate that letter being filed, and we will take note of that. We will have until April 30 to issue the award. Thank you very much.

Thank you to everyone for participating today and being well prepared to do so and with that

we will call this hearing to a close.

(Thereupon, the hearing was concluded at 11:23 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, February 21, 2007, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered Merit Reporter.

(KSG-4624)

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EXHIBIT NO. 8

DOCKET NO.: 060767-TP

WITNESS: STIP-8

PARTY: Staff

DESCRIPTION: Edward Fox Deposition Transcript
and 2 Late Filed Exhibits

1. Embarq 2006 Transit Traffic of Carriers with $.005 Rate.

2. FPSC Staff Recommendation dated August 17, 2006, from Docket Nos. 050119-TP/050125-TP.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 8
Company/ FPSC Staff
Witness: STIP-8
Date: 05/03/07

PROFFERING PARTY: Staff

I.D. # n/a

001

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

CASE NO. 060767 TP

IN THE MATTER OF:

PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES LLC D/B/A VERIZON ACCESS TRANSMISSION SERVICES FOR ARBITRATION OF DISPUTES ARISING FROM NEGOTIATION OF INTERCONNECTION AGREEMENT WITH EMBARQ, FLORIDA, INC.,

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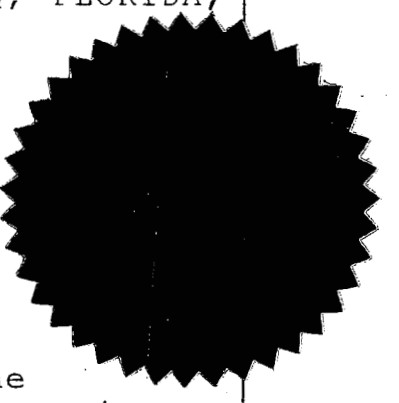
TELEPHONIC DEPOSITION OF:

EDWARD B. FOX



TAKEN AT THE INSTANCE OF:	The Staff of the Florida Public Service Commission
DATE:	April 25, 2007
TIME:	Commenced at 11:45 a.m. Concluded at 1:59 p.m.
LOCATION:	Gunter Building Room 382-D 2540 Shumard Oaks Boulevard Tallahassee, FL
REPORTED BY:	JUDY CHIN RPR, CRR

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Linda Bennett, Sue Ollila, Michael Barrett
Frank Trueblood, Pat Lee

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STIPULATIONS

004

The following deposition of EDWARD FOX was taken on oral examination, pursuant to notice, for purposes of discovery, and for use as evidence, and for other uses and purposes as may be permitted by the applicable and governing rules. Reading and signing is waived.

* * *

Thereupon,

EDWARD FOX

was called as a witness, having been first duly sworn via Judy Chin, Court Reporter, via Linda Josephs, was examined and testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. TEITZMAN

Q Mr. Fox, we will begin.

My name is Adam Teitzman. I'm an attorney with the Florida Public Service Commission, and I will be conducting your deposition today.

If you need me to restate any questions, just stop me and let me know. I do have a cold, so I do apologize. But like I said, if you don't understand me, just go ahead and stop me.

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I will start off addressing issue one, and I have some clarifying questions on Embarq's proposed agreement language.

Actually, you know what, I skipped a step.

Can you state your full name and business address for the record.

A Sure. My name is Edward Fox. I go by Ed. My business address is 5454 West 110 Street, in Overland Park, Kansas. 66211.

Q I'll now move into my first question. I got a little ahead of myself.

The first question is on Embarq's proposed agreement language, which is in your direct testimony on page nine, lines 18 through 23.

A Okay.

Q How does Embarq define local calling area?

A Local calling areas are what would be defined either by the Commission or that which would be in our tariff.

Q The second sentence of the proposed language states, for Embarq originated traffic terminated to CLEC's virtual NXXs, Embarq shall

not be obligated to pay reciprocal compensation, including any shared interconnection facility cost for such traffic.

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Does this sentence refer to vNXX calls terminated inside of the local calling area or outside of the local area?

A It would be outside, because inside the local calling area would not be a vNXX application, we don't feel.

Q My next question will refer to Embarq's response to Staff's interrogatory number eight.

A Okay. Would that be the first or second interrogatory?

Q That was in the first set.

A Okay.

Q Here Embarq states that it believes that 100 percent of vNXX traffic or nearly 100 percent originated by Embarq end users is dial-up ISP-bound traffic, is that correct?

A Yes, that's correct.

Q Is that why there is no distinction made in Embarq's proposed agreement language between voice and dial-up internet vNXX traffic?

A Partly. But in either case, the same network functions are used, so there is a voice or

ISP-bound, and so there really shouldn't be any distinction.

Q If the percentage of voice traffic were to increase, would Embarq want to modify the language?

A I think we agree, no, that it is a bill and keep, and we would be satisfied with keeping it there. We would certainly be open to any proposal that Verizon might have.

Q Does the reciprocal compensation rate differ for voice versus dial-up internet vNXX traffic under Embarq's proposal?

A No, it would not.

Q And what are those rates?

A In Florida, we have an opt-in to that FCC order model, which is .0007, and so that's what all the traffic would be compensated at that rate.

Q Do different switched access rates apply to voice versus dial-up internet vNXX traffic?

A Well, according to the ISP remand mirroring requirement, we would -- if we were to take advantage of that lower 0007 rate, it would also compensate any 251-B5 traffic at that same rate.

Q I would like to clarify.

So vNXX voice traffic is bill and keep in local areas?

A Well, in --

Yes; it would be, although we don't know why they would need to use a vNXX application for local calls, but I suppose they could.

Q I now would like to refer to your rebuttal testimony, page three, lines one through six.

A Okay.

Q In this section you quote from the Commission's decision in the Embarq FDN arbitration stating that vNXX traffic shall be subject to long distance access charges based on the end points of the calls. Do you have this order with you?

A Yes, I do.

Q Could you please turn to page 37 of that order.

A Yes.

Q The first paragraph, second sentence on page 37 states, both parties agree that the end points of a call determine whether a call is local and subject to intercarrier compensation, is that

correct?

A That's correct.

Q In the instant proceeding, do you believe that Embarq and Verizon agree that the end points of a call determine whether a call is local and subject to intercarrier compensation?

A I don't think we agree on that.

I think --

I'm not real clear on what Verizon thinks about end points.

But we think the precedent in Florida is pretty clear about end points determining the jurisdiction of the calls for compensation purposes.

Q Would you agree that the disagreement in this case is a significant distinction from the Embarq FDN order that you quoted?

A I think this Embarq FDN order is pretty clear on determining the end point. It should be used for jurisdiction of the call for compensation. Maybe I didn't understand your question.

Q That's fine. We will move on.

On page three of your rebuttal testimony, lines 19 through 22, you assert that

Verizon has not provided Embarq with anything substantive regarding the negotiating points between these other carriers that allow Embarq to judge the merits of accepting Verizon Access' compromised solution on this issue.

Could you please provide some examples of substantive information that Verizon Access should have or could have provided to Embarq?

A One example might be if --

First of all, they never stated that what they exactly got, they said that they agreed on something, and that we should agree also, because we agreed with other parties.

But, for example, what kind of transport obligations do they have, what other compensation rates, what -- overall terms and conditions. There are so many aspects. Those agreements are hundreds of pages long, 100-some, that, you know, one variable can affect many several others. So it is not that simple.

Q My next series of questions will refer to Verizon witness prices amended rebuttal testimony. Do you have that with you?

A I do.

Q If you could please turn to page five,

lines three through seven.

A Okay.

Q Do you disagree with witness Price when he asserts that Verizon's approach addresses Embarq's concern about having to provide a substantial amount of transport because Verizon Access will receive no compensation for handling vNXX traffic where it does not establish a POI in the Embarq access tandem serving area?

A Yeah, I don't agree with that.

The minutes of use that are generated with vNXX traffic and the transport are really inexecrably linked. For example, in the areas where they would not have connections that are tandem, we still would transport all vNXX traffic some distance away and handoff at a remote POI, perhaps in somebody else's operating territory.

And so we would have the transport obligations, and they are not proposing any exchange of compensation to us for that.

And then they would put transport into a tandem, which they are required to do anyway to pick up traffic, and they say that would make us, you know, make it work for us, and then we would pay them a compensation rate, which doesn't seem

reasonable, because that type of traffic is not subject to reciprocal compensation or any kind of compensation.

Q Continuing on that same page of testimony, beginning at line seven, witness Price quotes from the same Embarq FDN order we discussed a few questions ago.

A Yes.

Q The passage on page 32 of the order, under issue 35 addresses Sprint's argument.

A Can you repeat that again?

Q Sure. Page 32, under issue 35, Sprint's argument.

A I'm looking at page five of the rebuttal. Is that where I should be?

Q I'm sorry. I was referring to the Embarq FDN order.

A Okay. I set it down. Okay.

Q I'm sorry. Page 32.

A Okay. Okay.

Q The relevant part of the order reads, Sprint contends that establishing a POI at each tandem is the best approach to establish efficient interconnection arrangements and ensure a reasonable sharing of costs incurred to transport

traffic between the parties.

Does this order accurately describe Sprint's position in that arbitration?

A You know, I don't know if I can answer that. I would have to --

I did not read the background and the issues surrounding that statement and what kind of traffic they are talking about and what kind of compensation that might be involved.

So I don't know if I would agree with Mr. Price's quoting of that without better understanding the context.

Q Okay. We are now going to move on to issue four.

With regard to issue four, Mr. Fox, there is an Embarq language proposal on page 11 of your direct testimony.

A Okay.

Q Is it correct that Embarq has since revised its proposal in response to Staff's second request for production of documents?

A I believe so. I think we made an allowance for a third-party factor that may cause a delay.

Q Would you agree that the language in

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each proposal touches on the assignment of fault for one party or the other?

A Yes.

Q Who would determine fault?

A Well, initially we would -- the parties, Embarq and Verizon would certainly present us with factors that we have on that, and hopefully we could reach an agreement. That would certainly be our first step. And if there is a third party involved, it is likely we would include them.

Q If agreement could not be reached as to a determination of fault, who should then decide -- who should then make a determination regarding fault?

A We think at that point it's possible we would -- with regard to dispute resolution section of our agreement, which would be before the Florida Commission.

Q Now, if a delay is attributed to Embarq, what would occur?

A Well, there would not be no billing to Verizon. That's pretty clear in our proposed language that we are not obligated to bill them.

The way the language reads, it says Embarq may require the CLEC to reimburse Embarq

for transit charges billed. So, you know, if there is a delay, that certainly keeps us from having to charge them. We have the flexibility not to.

Q And what would occur if a delay is not attributed to Embarq?

A Well, then we would find out if it was attributed to, you know, another party, including Verizon.

Our intent is to get commitment to get some direct connect so that we don't continue to incur any transit expenses. Exactly at 90 days, their time is up, and hand this over a check, that's not -- that's the spirit of that. We want to make sure that there is movement in getting direct connects in meeting their commitment in the agreement.

Q How is the assignment of fault addressed when a delay is attributed to a non-party?

A Well, that would be a fact-based set of issues, and Sprint --

I'm sorry. I worked for Sprint so long.

In Embarq's estimation, you know, if there is a legitimate delay, we won't be billing until -- suspend the 90-day clock, if you will.

Q Does the current Embarq proposed language account for delays that are attributable to a non-party?

A A non-party, I am assuming Embarq and Verizon are the two parties --

Q A third party.

A A third party? With the proposed language we have given most recently, that should take care of factors that the third party may introduce.

Q I have one more question about production of documents, number 12.

In addition to the most recent language proposal, it appears that Embarq is included in an arbitration order from a recent case in Ohio, is that correct?

A Yes.

Q Can you briefly summarize that case.

A Yeah. We had an arbitration on two issues in Ohio, two of the same issues we have open here in Florida, vNXX and also the indirect connection time frame for establishing direct after the traffic has reached an T-1 level. And so those are the two issues we arbitrated. The settlement went in Embarq's favor in both of those

issues. Right now we are finishing up the final contract language on those two issues.

Q Is it required that you file the final contract language with the Ohio commission?

A I think there is. I think it is in early May, the first week in May sometime. I don't know the exact date. I don't have it in front of me. It may be part of the order here.

Q The language approved in the arbitration order, is that identical to the language Embarq has proposed in Florida?

MS. MASTERTON: I guess I was objecting to the form in that it is not clear which issue he is referring to.

MR. TEITZMAN: I am still referring to issue number four, issue four in Florida.

BY MR. TEITZMAN

Q The language that addresses the issue -- that same issue in Ohio, the language that has been approved, is that identical to the proposal Embarq has made in Florida?

MS. CASWELL: This is Kim. I will have to interrupt, because I think your question assumes that the commission has already approved language. And the conforming

contract has not been submitted in Ohio.

MR. TEITZMAN: I thought I clarified the language that was --

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Okay. Was there language approved in the arbitration order?

MS. CASWELL: No. I think the parties need to work out the language in accordance with the order. I think they are doing that now.

MR. TEITZMAN: All right. We will scratch that question.

BY MR. TEITZMAN

Q Mr. Fox, I have a few questions about the discovery responses Embarq provided to Verizon Access. They were dated April 12.

A Okay.

Q Do you have a copy of those with you?

A I do. Thank you.

Q I would like to turn to Embarq responses to interrogatories 1E and 1F.

A Okay. I have those.

Q Am I understanding these responses to indicate that in the time frame indicated Embarq paid to Bellsouth approximately $14,500 for transit charges due to carrier's failing to

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establish a direct connection as agreed to in their interconnection agreement?

A Yes.

Q And in the response to interrogatory 1G, is it correct that Embarq did not formally invoke the dispute resolution provision?

A That is correct.

Q Since Embarq did not pursue dispute resolution, what methods if any did Embarq use in order to recoup the $14,500?

A That was a sum cost, so we didn't really recoup any.

What we have been able to do is any time the particular CLEC hits that threshold, of a T-1 threshold, where it has that requirement, our account manager contacts them, and in every instance that I am aware of in Florida the CLEC was responsive and initiated the order that they agreed to and fulfilled that.

There is one carrier that is actually a nationwide carrier where we have a substantially large amount of indirect traffic that is exchanged with them. They are really reticent to establish our direct connect, because of the expense to them, and they want to avoid it and keep passing

it on to us.

So in those cases we have not invoked the dispute resolution, but we have had regular contact, set up meetings with them, and prioritized direct connections that need to be established and just have ongoing projects management meetings with them.

Q Has Embarq ever invoked dispute resolution to resolve a failure to establish direct connection in a timely manner?

A Not that I am aware of. We could have, but I don't know of any.

Q Does Embarq formally notify affected carriers when it is not pursuing dispute resolutions to resolve these matters?

A I think I understand your question.

If we are not going to --

Could you ask that again, please? I want to make sure I understand it.

Q Does Embarq formally notify affected carriers when it determines that it will not pursue dispute resolution to resolve these issues, specifically failure to directly connect in a timely manner?

A When you say formally, I'm assuming that

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we would get something in writing that their obligations need to be met.

From what information I have, so far phone calls have been sufficient, or maybe an email, or something. If it goes beyond that, I think our procedure, and again I would have to check that, would be then to maybe write them a letter pointing out the terms and conditions of the contract that they are not meeting and why we don't think they are meeting it, and what they need to do to meet it. At that point we would have face-to-face or realtime telephone conversations with them to resolve it.

Q In your rebuttal testimony at page seven, line 16, you describe the language --

I will wait until you get there.

A I'm there.

Q You described the language proposal at issue as supplemental to the dispute resolution provisions, is that correct?

A Yes.

Q Will Embarq enforce or apply this supplemental provision in the same manner as the nonsupplemental dispute resolution provisions?

A Yes. I suppose a better word would be

substantive; but yes.

We think dispute resolution is really a very last resort, and we are not really sure what the outcome would be anyway, other than what --

What it should be is that the Commission would say to the defending party to be in compliance.

Q Mr. Fox, were you listening to the deposition of Mr. Price?

A Yes.

Q Mr. Price referenced a possible delay that could come into play because Embarq builds a profile when it receives an order for trunking?

A Right. That would be something that we would need to have everything totally accurate before we would start the clock. We wouldn't accept an order until that profile was accurate. So it wouldn't be fair to start the 90-day clock until we accepted that profile.

Q Is building the profile a time consuming process?

A I don't think so. I'm vaguely familiar with the information that's on there. It is typically information that's readily available to the requesting carrier.

Q And is it done on a per carrier basis or 023
on a per order basis?

A You know, I don't know that for sure. I'm guessing it is on the per carrier basis.

Q We will move on to issue five now.

Is it your testimony that the provision of transit service is not a Section 251 obligation?

A Yes, it is. We agree it is not a 251 obligation.

Q I'm now going to refer you to page 14 of your direct testimony, lines four through 16. I believe there is a similar discussion on page eight of your rebuttal testimony, lines eight through 11.

A Okay. I am sorry. What was the page number?

Q On the direct testimony, it is page 14, lines four through 16.

A Okay.

Q I think that should be sufficient. If we need to refer back to your rebuttal, I can point that out as well.

Here you state that the Florida Commission determined in the Bellsouth transit

docket that transit traffic is not a Section 251 obligation. You quote from the Bellsouth order as support for your statement.

What specific part of this quote does the Commission conclude that transit traffic is not a Section 251 obligation?

A It would be the first sentence, we agree that Section 251 contains no explicit obligation to provide transit service.

Q So you believe from that first statement that the Commission concluded that transit service is not a Section 251 obligation?

A Yes.

Q Doesn't the Commission state there that there could be an implied obligation?

A Yes. Possibly.

But that statement also says that it is keeped up and -- FNPRM, and the Commission only acknowledges that 251 required all telecom carriers to interconnect directly or indirectly, and that transit service is partially recognized the by FCC as a means to establish that. But it doesn't say that it is indeed a 251 obligation.

Q So the question of whether it is an implied obligation based on this quote, that's --

would you agree that that is still an open question before this Commission.

A It could be.

MS. MASTERTON: This is Susan Masterton. I'm objecting to the form and asking you to specify which commission you are referring to.

MR. TEITZMAN: I was referring to the Florida Commission.

BY MR. TEITZMAN

Q With that clarification, Mr. Fox, your answer would remain the same, correct?

A It could be an open issue. Whether it is or not, I don't know.

Q If transitting is not a federal obligation, is it subject to negotiation and arbitration process mandated by Section 252?

A Well, it seems like it would be, based on the Commission's comments in that order that -- If I can find that.

The Commission did not establish a rate but instead required the parties to negotiate a rate. Part of the negotiation process would be the arbitration steps, like what we have here. And the Commission has the authority to rule on

that, the Florida Commission.

Q In that order, did the Commission provide, and by order I'm referring to the Bellsouth transit order, did the Commission provide a course of action in the event that negotiations were to fail?

A I'm not aware of any in their -- it didn't state that that I can recall, that I can see just looking -- glancing over it.

Q Would you agree subject to check that on page 57 of the order the Commission determined that either party can seek arbitration under state law?

A You know, I have 57 open here, and I'm trying to find where it might say that.

Subject to check, although I would agree, and maybe my page number is a little different, but --

Q Maybe I can direct you. Under section 16, implementation matters, do you see that on page 57?

A Yes.

Q The last sentence of the second full paragraph.

A Okay. I see that. I agree it says

that.

Q Is the instant arbitration being conducted under state law?

A Well, I'm not an attorney. My opinion is that as a policy witness, yes.

Q Has the FCC established what pricing methodology should apply to transit service?

A No, it has not, to my knowledge.

I think it is being considered right now in the intercarrier compensation rule-making proceeding.

Q And has the Florida Public Service Commission established the pricing methodology to apply to transit service?

A That is a good question.

I think it has given some good pricing guidelines, one that is not necessarily -- it does not have to be cost based. And in looking at the Staff recommendation, it gives a range of -- of an upper limit of a range of a reasonable rate, and that's the guideline that Embarq has followed in proposing this .005.

Q Does that range you were referencing in the Staff recommendation appear in the Commission's order?

A It does not. It is not explicitly in there, no.

028

Q Since the transit pricing methodology is pending in the FCC's independent carrier compensation document, and since the parties have been unable to negotiate a transit rate, should an interim rate with a true-up provision be used until the FCC renders a decision?

A I think the right solution on that would be to have a rate that we would agree on, which we think is .005.

We think the change in law provisions of the contract would address whether or not there is a true-up or anything. I can't say right now whether Embarq would be okay with or without a true-up.

Q My next question, I would like to refer you to your response to Staff's second set of interrogatories, numbers 31 and 32.

A Okay.

Q Am I correct that Embarq's transit rate is designed to recover tandem switching and common transport network cost as well as a tandem intermediary cost?

A Yes; that's the general idea of a

commercially available product that would include those items.

Q Besides the network elemental costs and the tandem intermediary costs, are there any other costs involved with providing transit service?

A I can't think of any specific costs right now. I think most of the TIC charge, intermediary charge would have other business costs that we incur.

Q Has Embarq quantified the tandem switching and common transport network costs in this proceeding?

A We have not. We haven't really approached this as a cost-based topic.

We do know those two network elements are included in this service of tandem switching, but -- or transit switching, but --

We know that they are part of this whole service.

Q One second, Mr. Fox. Let me clarify something.

If the rate is designed to recover the costs we were discussing, shouldn't they then be quantified in this proceeding?

A I'm not sure I understand your question

about quantifying those costs. I'm not a cost person, so it may be really -- it may be one for them. They may --

MS. MASTERTON: What do you mean by quantified?

MR. TEITZMAN: I'm trying to think of the best way of explaining.

BY MR. TEITZMAN

Q Let me ask the question this way:

If you are unaware of the costs, how can one make a determination whether you are under- or over-recovering?

A Well, again, this isn't a cost issue.

It is a service -- transit traffic service is a commercially available product that we make, and we don't think it falls under recovery -- rate recovery guidelines that maybe a regulated product might have.

That's why we are saying this is a reasonable market-based rate. And, you know, if we were really -- real high priced, like a penny a minute, for example, that might migrate a lot of people off our network, which is certainly not our intent.

Q Okay. Does the tandem intermediary cost

relate to the cost to provide billing records, handle billing disputes, use of network resources, and product management?

031

A Yes.

Q So the tandem intermediary cost or TIC is in addition to the network cost components, is that correct?

A That's correct.

Q And have you quantified the cost of the TIC in this proceeding?

A Not exactly.

Again, I'm not sure what you mean by quantify.

You know, we've established .005 rate is market based; that's applicable in a number of other states, and, you know, we use it system-wide as often as we can, in as many instances as we can.

You know, that's a flat rate. It is not based on distance, so people can predict their cost based on their minutes of use and not have any other variables according to how close they are and how much transport they have.

Q I would like to refer you to page 13 of your direct testimony, line seven through nine.

A Okay.

Q Here you state that Embarq is proposing a commercial market based transit rate of .005 per MOU.

A That's right.

Q Thank you. Has Embarq provided any cost support for its proposed market rate?

A No. No. We don't think it is applicable in -- on this particular topic.

Q The support that the proposed rate is market based is that, among other things, 15 other carriers in Florida have agreed to this rate, is that correct?

A In part, yes. Other folks have agreed to that.

Q Were these agreements reached through negotiation?

A Yes; some of them were, and some may have been MFN.

Q I'm sorry. Could you repeat that?

A Yes. I would have to look at the list. I think we furnished it in an interrogatory.

Some of them were negotiated, and then I believe some of the parties MFN'd in those agreements at that rate.

033

Q I'm sorry. Could you --

What is MFN?

A That stands for most favored nation. That's kind of an opt-in provision that other carriers can replicate the terms and conditions of a previously agreed on agreement and have those same terms and conditions and rates.

Q If many of the 15 carriers in Florida that have agreed to Embarq's transit rate originate no or very little transit traffic, could this indicate that the transit rate was simply not worth pursuing or litigating because the effect would not be significant?

A That's possible. Or, it goes back to some of the earlier compensation we had on the vNXX issue. They could have agreed to that as a trade-off on some other items. There are a lot of variables in these. I'm guessing there could be some cases where people don't have any transit traffic, and the rates really wouldn't matter to them. In other cases that may be a pretty important number along with other terms and conditions that they could then put some takes on.

Q Now, in support for your proposed transit rate, you state that Bellsouth has a

tariffed transit rate in South Carolina of .006, and Neutral Tandem has filed tariffs in both Florida and Georgia that contains a transit rate of .004625, assuming 10 miles of transports, is that correct?

034

A That's correct.

Q Could you explain how Bellsouth's tariffed rate in South Carolina supports Embarq's proposed transit rate in this proceeding?

A Yeah. I use that as an example, as a regional carrier, and it is not some wild example place like in Alaska where it might be expensive to provide that. From a regional basis --

Q In that same vein, in determining the reasonableness of your proposed transit rate, why wouldn't it be more meaningful to compare the transit rate negotiated between Verizon Access and Bellsouth in Florida to Embarq's proposed rate in this proceeding?

A That's a good question.

For one, I think that would not be a fair baseline to use. Again, I'm not an economist at all.

Just a number of access lines, and the economy to scale, per unit network cost per

Bellsouth is substantially lower than it is for Embarq. Just looking at the Staff recommendation of that transit order, and in a number of points in that section it just shows the minute of use for a transit and for tandem switching, and it is really low compared to ours, our Commission approved rate. That's not a fair basis.

I think what can be instructive from those rates is that they are all above cost, and they are -- they include a multiple of the cost based rate. In fact, I think I pointed that out in one of our data responses. Yes. It was -- it was in the second Staff interrogatory, question number 29, a similar question, and in each case the -- those rates are well above cost and are multiples of their cost, and our multiple above our cost is a lot lower than those rates that Verizon has put forth, that they have agreed to.

Q Would it be appropriate to compare your proposed transit rate to the .002071 transit rate in the existing Verizon Florida, Inc, Sprint interconnection agreement?

A That's another one that's probably not a fair comparison. One, I don't know how old that rate is. I think -- again, I think it has been

around for a number of years.

Secondly, at the time that was negotiated, you know, our company, Sprint at the time, believed that that should be a cost-based rate because --

036

I will give you a little background. We have those three divisions of the PCS, and the local and the long-distance division, and whenever we would make a public policy decision we would quantify it based upon the overall benefit to our company. At that time PCS was paying a lot more in transit rates than the local company was billing, and so therefore because they were a net payer, they wanted to have the lowest possible expense that they could get. So that's why those agreements are out there with lower rates.

Q I would like to next refer you to page 15 of your direct testimony.

A Okay.

Q I will go to lines 22 through 23 and continuing to page 16, lines one through six.

A Okay.

Q Here you state that Embarq has demonstrated that its proposed market rate is reasonable and fair by showing five different

things you have listed.

A Yes.

Q Could you go through each of them and explain why they demonstrate that your proposed transit rate is reasonable and fair.

A Sure.

The first point is that other Florida carriers have agreed to that rate, and we have given you the list of those carriers and their contracts. Again, that's a negotiated rate.

Secondly, within the range charged by other regional carriers, and, for example, we have Neutral Tandem, which is .004 and change, we got Bellsouth in South Carolina, .006.

A third point is that FCC has not determined that it is required by the Federal Telecom Act. By that we mean that it is not -- if they were to require it, it would be a cost-based service. So therefore we read the order of Virginia Verizon arbitration order where they address that. They definitely -- they had a chance to make it a requirement and decided not to.

And tangential to that they have then allowed the parties to negotiate a market-based

rate, which again would be above cost.

And then the last point is that Florida Commission is determined the transit rate may be a commercial rate, although not explicitly stated -- the Florida Commission did not say that it must be a cost-based rate and the Staff recommendation was that there was a range that -- kind of had an upper limit suggestion. So those are the rationale with each of those five points.

Q The fact that the FCC has not determined that the transit service is a federal requirement or that the FCC has not established a pricing methodology, how does that specifically demonstrate that the rate you proposed is fair and reasonable?

A I wouldn't say it specifically says that. It doesn't state that .005 is the right number.

But it is implied that the parties have the ability to negotiate a rate and determine what is agreeable. So that's how we approached the .005.

Q In your opinion, is indirect interconnection via transit service provider an efficient way to interconnect when carriers do not

exchange significant amounts of traffic? 039

A Yeah; we think it is. In low levels of traffic it is useful.

Q So would low volumes of traffic in your opinion make indirect internet connection more cost efficient?

A You know, that's going to be based on a carrier by carrier -- case-by-case situation.

You know, in general --

Well, it depends on cost efficient for whom. Probably for the party receiving the traffic, it is good for them, because they get -- they don't have to pay anything for any transport. For us, who is originating the traffic and paying a transit provider, it becomes less and less efficient as the usage increases.

Q Now, I know you referenced the Bellsouth transit docket Staff recommendation where Staff suggested an upper bound of adjusting reasonable transit rate for Bellsouth. In your testimony you state that the recommended upper bound equated to 2.6 times Bellsouth's TELRIC component elements, is that correct?

A I believe that's the number.

Q How did you determine this rate was 2.6

times the Commission approved rate elements?

A Let me see if I can find my notes here.

I took the proposed upper-bound rate --

Okay. The upper-bound rate, I'm looking at the Staff recommendation on page 66, which was .0024441, and divided that by the composite rate of .0009441, and if I can -- and that's how I got the answer.

Q Just for purposes of clarification. Is it .002441 minus the TIC charge of .0015?

A I'm trying to do that calculation right now, just to verify what I just said.

I don't think I took the TIC charge out. No. As I described it, it was the .0024441 divided by the composite rate of .0009441.

Q That rate of .0009441, how was that determined?

A That was the --

Hold on one second. There is a description of where that --

I will refer to the order.

Where that appears --

Yes. I'm looking at the Commission order on page 41.

Q Okay.

A And in the paragraph where it states, Bellsouth witness, McKellen (phonetic), and above the --

Q In the middle of the paragraph?

A Yes. About the sixth line down, Sprint, Nextell and T-Mobile witness recommends a single composite rate in the range of .0009441, and the footnote gives the details of how that number is constructed.

Q Is it your testimony that because Embarq's proposed .005 transit rate is only 1.75 times its TELRIC rate elements it should be considered reasonable when the upper bound of a just and reasonable rate for Bellsouth was 2.5 times its TELRIC elements?

A Yes. That was our rationale that we are not trying to max out. We could have done the same multiple and made the same argument. But we think .005 is reasonable. We are not trying to run that up as high as we can get it.

Q But just to reiterate, the Commission did not approve a transit rate in the Bellsouth transit proceeding, correct?

A That's correct.

Q Should a transit rate determination in

this proceeding be based on the record evidence submitted by Embarq and Verizon Access?

942

A That's probably a good basis.

Q To your knowledge, is there anything in the Bellsouth transit order where the Commission specifically recognizes an upper limit of adjusted reasonable transit rate for Bellsouth to be two and a half times the Commission approved TELRIC elements?

A I did not find that as much as I looked for it in the Commission order.

Q Your response to Staff interrogatory number 28 --

A The second --

Q Yes.

Here you identify Neutral Tandem as an alternative transit provider.

A Yes.

Q To clarify, Neutral Tandem provides transit service at Embarq's Florida footprint?

A You know, I don't know exactly where their markets are throughout Florida.

Q You also respond that any CLEC, ILEC or AAV with a switch that has trunk-to-trunk switching capability has the ability to provide

transit services. What ILEC's operating in Embarq Florida's footprint are offering transit services? 043

A I'm not aware of any ILEC that's in there, although they could. There's not --

Yeah, I can't tell you right off of an ILEC that would be in our territory, although I'm not saying that there are none.

Q Are you aware of any AAVs that are offering transit service in Embarq's Florida footprint?

A I am assuming Neutral Tandem may be.

Q And are you aware of any CLECs?

A Yes. There are quite a number of CLECs in our area. All those that we have interconnection agreements with, there are quite a few of those.

Q Are they offering transit services?

A They have the capability to. I don't know. We never shopped with them to see what is available.

Q So you would not be aware of what rates they would be charging if they were offering the services, is that correct?

A That's correct. I do not have that information right now.

Q Is it your position that the transit rates referenced in Verizon Access' ICA with Bellsouth Florida are market-based rates?

A Could you repeat that question?

Q Sure. Is it your position that the transit rates referenced in Verizon Access' ICA with Bellsouth Florida are market-based rates?

A Those rates would be the one referred to in question 29.

Q Let me double check. Yes, that's correct.

A I would say they are more along the lines of market-based rates, not so much based on their whole number of value, but based on the fact their above-cost rates, which I think is a step in the right direction.

Q Is it your position that Embarq's transit rate should be higher than Bellsouth's Florida's negotiated rate?

A Yes. Yes. For the reasons we stated, that, again, it is a proportionate amount that we think is reasonable.

Q Is it more costly for Embarq because it provides transit services in less urban areas than Bellsouth Florida?

A Yes. Yes. It goes back to the economy-of-scale argument.

Q Does Embarq provide any testimony or evidence that supports that transit service costs more in less urban areas?

A We have not, mainly again because we don't think that this is a cost-based issue per se.

Q I have a couple more questions here.

I would like to refer you to the Excel spreadsheet you provided in response to Staff's second set of interrogatories, numbers 35 through 39.

A Okay.

Q Is this a list of all CLECs that Embarq currently has an effective interconnection agreement with in Florida that includes a transit rate?

A This list is --

You know, your question asked if we have interconnection agreements with these folks. I assume that we do.

These carriers do transit traffic to our network, although we do have --

It is possible for a carrier to send

traffic to our network without an interconnection agreement.

046

Q Well, question 36 specifically requested that you identify the transit rate included in ICAs between Embarq and each CLEC in Florida.

A Okay. Thank you. In that case these would have interconnection agreements.

Q Okay.

A Thank you.

Q Is the column which is titled effective, the effective date of the existing agreements?

A Yes.

Q And then the column headed end date is the date that the agreement expires?

A That's correct.

Q And let's see, the next column is the transit rate that's included in the contract, is that correct?

A That's right.

Q And we will move on to the next column, designates that the transit rate in the existing agreement is market based or not, is that correct?

A That's true.

Q And if it is not listed as market, what would it be?

A That would be more the cost based, which it is pretty consistent with what I said earlier, that our -- before May of last year, when we spun off from Sprint, you are going to see pretty consistently that those rates are going to be cost based prior to that, you know -- sometime in 2006, later in the year.

Q Are there 102 CLECs within which Embarq has negotiated an interconnection agreement that includes a transit rate?

A I haven't counted this list. I assume that's the right number. I can count them right now if you would like.

Q Would you agree subject to check that counting the list of CLECS provided in that spreadsheet is 102?

A Yes.

Q Okay. Thank you.

As I understand your testimony, the fact that 15 Florida carriers have agreed to Embarq's transit rate is support that the rate is market based, is that correct?

A Yes.

Q Now, is it true that only four of those 15 carriers transitted any traffic with Embarq in

December of 2006?

A I have not compared that list. I really can't confirm that or deny that. I would have to line these up and look at them side by side.

Q Could you provide that response ~~as~~ a late-filed exhibit?

A Sure. I would need to make sure that I understood the question clearly.

How would I do that?

MS. MASTERTON: Could you say exactly what the late filed exhibit -- exactly what the late filed exhibit is supposed to contain?

MR. TEITZMAN: Sure. There are 15 Florida carriers listed on page 15 of the direct testimony, lines three through six. And the question is, is it correct that only four of those 15 carriers transitted any traffic with Embarq in December of 2006.

MS. MASTERTON: Okay. What did you want to call it?

MR. TEITZMAN: I'm never good with these titles.

MS. MASTERTON: I'm not either. Just Embarq transit 2006 -- Embarq 2006 transit

traffic.

MR. TEITZMAN: I want to be specific with the 15 -- the idea is to be specific with the 15 carriers listed in the testimony. 049

MS. MASTERTON: Carriers with .005 transit rate?

Embarq 2006 transit traffic of carriers with .005 rate, how is that?

(Late-filed Exhibit No. 1 marked for identification.)

MR. TEITZMAN: That will work. We would just point out if you compare 38 with the spreadsheet, that's where we have determined that we believe it is only four carriers. It is the response to 38.

MS. MASTERTON: Okay.

MR. TEITZMAN: Staff has no further questions.

MS. CASWELL: I do have a few questions. I don't know if the witness would like to take a break or whether we would like to go ahead.

THE WITNESS: Five minutes would be great.

Thank you.

(Brief recess.)

CROSS EXAMINATION 050

BY MS. CASWELL

Q Mr. Fox, my name is Kim Caswell. I'm with Verizon. I just have a few questions today.

First I would like you to look at Embarq's responses to Staff's second set of interrogatories, and specifically at page three, question 15.

Can you please let me know when you are there.

A Yes, I have that.

Q Okay. Fifteen, the Staff asked you to identify the dollar value of the financial damage Embarq suffered last year as a result of CLECs failing to establish direct connections. And then in part B of that question, Staff asked you to identify what part of the $14,500 that you referred to is attributable to Verizon Access.

A Yes.

Q And I want to make sure that I understand your answer there is zero, correct?

MS. MASTERTON: Can I object to the form of the question and ask the answer to what was zero?

MS. CASWELL: I'm a little -- 051

I just want to clarify that the answer to B is that none of that $14,500 is attributable to Verizon Access' failing to establish direct connections. I think that's what his answer says.

BY MS. CASWELL

Q Verizon did not cause any of this expense --

A Well, Verizon did cost part of that 3500 --

Q No, I am sorry. I didn't say anything about the 3500.

I am talking about the $14,500 that you responded in subpart A was the amount that Embarq paid for other carrier's failure to establish direct connection.

A Yes, that's correct.

Q Okay.

A That's correct. In that Verizon did not achieve a T-1 level of traffic in accordance with that question.

Q So zero would be an appropriate answer?

A That's right.

Q Okay. Moving on.

On page six of your rebuttal testimony, lines 14 and 15, you state that there is no dispute that Embarq suffered financial damage when Verizon Access failed to establish a direct connection. Verizon has not agreed that it failed to establish direct connections in a timely manner, has it?

A In Florida that's true.

Q And so Verizon hasn't agreed with Embarq that Embarq has suffered any financial damage in relation to Verizon Access' actions, correct?

A Yeah. We have no dispute about the Verizon today that we incurred any financial damage by failing to establish a direct connection.

Q Okay. Mr. Fox, I believe you have the Staff's recommendation, the transit case there with you, don't you?

A Yes.

Q Could you look at page 65 of that recommendation.

The last paragraph it states on the one hand Bellsouth explains through responses to Staff discovery that the TIC is an additive charge designed to recover cost of providing billing

records, handling billing disputes, use of network resources and product management. Do you see that statement?

A Yes.

Q I would like to direct you to your responses to Staff's second set of interrogatories, specifically question 31.

There you responded that Embarq's transit rate is designed to recover cost of providing billing records, handling billing disputes, use of network resources, and product management. Do you see that statement?

A Yes.

Q So you were saying that you were covering exactly the type of expenses that Bellsouth said it was recovering, correct?

A Similar expense.

Q You used exactly the same language, correct?

A It looks like it.

Q Did you do any analysis of what particular cost element Sprint specifically had to recover in its transit rate?

MS. MASTERTON: Object as to form. You meant Embarq, right?

MS. CASWELL: I'm sorry. I meant Embarq.

THE WITNESS: I'm not sure if I understand your question on performing analysis of --

054

BY MS. CASWELL

Q Did you do any specific analysis of what particular rate element Sprint -- Embarq had to recover in its transit rate?

A I'm not sure if I understand. We haven't approached this as a cost issue.

Q But you answered the question here as to what rate -- what cost your rate is designed to recover.

A Right.

Q I'm asking you what kind of analysis you did to determine what element you had to recover in your rate, Embarq specifically.

A I was not involved in developing that rate. I know that's done by our product people.

So I do not have the -- any more detail available than what I put in the responses there at this point.

Q What was the basis for your response then to question 31?

055

A There are more factors involved in providing transit service than just the network element, the switching and transport. There needs to be administrative issues that are related to the overall transit traffic service.

Q I'm not sure that answered my question as to what was the basis to your response.

A I honestly don't understand your question. I'm not trying to be evasive.

Q The Staff asked you to identify the elemental cost that Embarq's transit rate is designed to recover. I'm asking how you came up with those elemental costs. Did you do any analysis or study any analysis that anyone else at Embarq did with respect to what cost it had to recover in its transit rate or was this based on something else?

A Basically the product both concurred that -- elements in their TIC charge or things that we incur those same kinds of costs.

Q Does your proposed transit rate include a value-added component?

A What do you mean by value added?

Q Something in addition to the element that you recite in the first sentence of question

31.

056

A Sure. It is a service that should be of value, we perceive as value, other carriers who use it. It keeps from them having to go direct connections with everybody they exchange traffic with. Network management information -- they probably have themselves, but if they don't, billing in that, although --

It is just that value added -- value is perceived by the carriers at different levels.

Q I think perhaps my question wasn't clear enough.

In the first sentence of your response to question 31 you say that the rate is designed to recover cost of providing billing records, handling billing disputes, use of network resources and product management.

Is there some value-added component in addition to those elements that you cited in the first sentence that Sprint has included in its transit rate?

A It would be an intangible that the end user would perceive as a value.

Q So is the answer yes or no?

A Yes.

Q Okay. But you haven't tried to quantify that value-added component, correct?

A No. Not that I can describe; no.

Q I think you discussed at some length with Mr. Teitzman that the Commission did not recognize any particular rate or upper bound as being advisable in the Bellsouth transit rate case, is that right?

A That's correct.

Q Can you look at your rebuttal testimony at page nine, please.

A Yes.

Q And on line two through six, you state that Embarq's proposed rate of .005 reflects a considerably smaller multiple of a commission approved rate than the rate suggested by Staff and recognized by the Commission as an upper limit of adjusting reasonable market-based rate.

But it is not true, is it, that the Commission recognized any particular rate as an upper limit in its transit order, is it?

A They did not explicitly recognize it. That inference is that they -- by them not setting a rate or not supporting what the Staff said, I took that as a passive approval.

But you are right, it is not explicitly approved by the Commission.

058

Q And where in the Commission's order do you derive the notion that the Commission passively approved the Staff's setting of an upper bound?

A I think I just explained that.

They didn't -- by not explicitly saying they disapproved the Staff's recommendation or approving it, that's a guideline that -- for the industry to start with on their negotiations of what a reasonable rate is.

Q The Commission never gave them that guideline, correct?

A Right. But it never said it wasn't any good either.

Q Okay. I would like you to look at the transit order, Bellsouth's transit order, page 44. Please let me know when you have that order.

A I have it.

Q And do you see Section C where it says decision?

A Yes.

Q And it says based upon the foregoing analysis in the record we will not establish a

rate for transit service and instead require the parties to negotiate a rate.

A That's right.

Q That says nothing at all about a rate or a reasonable bound, correct?

A It does not.

But it also doesn't restrict the parties from using what the Staff's guidelines are for upper reasonable bounds.

Q Okay. I would like to look at those Staff guidelines. If you have the recommendation, I would like you to take that out, Mr. Fox. I would like you to in particular look at page 66.

MS. MASTERTON: This is Susan Masterton. I would like to suggest that we make that Staff recommendation a late-filed exhibit, if we don't have it available to make it an exhibit here, since we are going to be discussing it.

MS. CASWELL: I don't have a problem with that. I think we can refer to it anyway, because it is a Commission document. I have no problem with making it an exhibit.

MR. TEITZMAN: The Staff has no objection either.

(Late-filed Exhibit No. 2 marked for identification.)

THE WITNESS: I have that, page 66.

BY MS. CASWELL

Q Page 66, under subheading C, the second paragraph, it says, in sum, the Staff believes the two options most viable are options A and B.

If you look at option B above you, it says interstate access rates, correct?

A Correct.

Q So the Staff expressed no preference as between Bellsouth's interstate access rate as a transit rate and Bellsouth's TELRIC rate as a transit rate, is that correct?

A It doesn't appear to have a preference.

Q And then the last line in Section C says, for sake of simplicity Staff recommends that an appropriate rate for transit service is no higher than 0.0023 per MOU, correct?

A That's correct.

Q So in order to come up with that recommended rate, Staff somehow averaged or came up with something in between the interstate rate and the TELRIC rate, is that right?

A No, I don't --

061

I don't know. I got to take a look at that. I haven't analyzed that number at all.

Q Okay. That's fine.

I would like to move to a question that relates to your discussion with Mr. Teitzman about your proposal for reimbursement of transit charges when Verizon doesn't establish direct trunk.

I believe you said in response to one of the Staff's questions that the 90-day clock for establishment of the direct trunks would not start until the customer profile was accepted by Embarq. Do I have that right?

A Right.

Q Would you be willing to put that in the contract language?

A Sure.

Q Okay.

A The 90-day clock would then start at -- after we accepted it. Sure.

Q Okay. Now, I think that Mr. Teitzman also asked you why the rate -- the transit rate in Verizon's contract with Bellsouth would not be appropriate or the parties' interconnection agreement in this case. I think you stated that Bellsouth's costs were lower, is that right?

A Right. Yeah. I am assuming they are lower.

Q You are assuming they are lower. But there is nothing in the record about that, right?

062

A Well, I think I mentioned that in the -- for example, in the Staff recommendation, the rates for similar services are a lot lower than ours, so therefore I am assuming the costs are lower per unit.

Q Okay. Now, I want to return to your responses to Staff's second set of interrogatories. In particular the chart at the back of the Florida transit fee.

A Okay.

Q And I think that you said --

Well, let me go back to the question.

Question 35 says please identify which rates are TELRIC rates versus market based. When I look at the chart I see that you identified some market-based rates. I don't see identification of anything as a TELRIC based rate. Is there a reason why you didn't answer that part of the question?

A Well, the Commission approved TELRIC rate for transit is .002867, and -- which is in

question 40. So it wasn't labeled TELRIC, but that .002867 would be TELRIC.

Now, there are some other rates that differ from that, and I do not know -- I can't explain it. It seems to be just at a glance that they are older.

Q Would those be cost-based rates?

A From my understanding, TELRIC is synonymous with cost based. Again, I'm not a cost person, but that's what I hear from the term being used.

MS. CASWELL: Those are all of my questions.

Thank you, Mr. Fox.

THE WITNESS: Sure. Thank you.

MS. MASTERTON: This is Susan Masterton. I do have a couple of redirect questions.

MR. TEITZMAN: I had one follow-up question.

I can go now or I can follow after you, whichever you prefer.

MS. MASTERTON: You go first.

REDIRECT EXAMINATION

BY MR. TEITZMAN

Q Mr. Fox, earlier I asked this question: Besides the network elemental costs and the tandem intermediary costs, are there any other costs involved with providing transit service. I believe at that time your response was no, is that correct?

A Well, I don't remember. I guess.

Q Subject to check, your answer at that time was no.

A Okay.

Q In response to Miss Caswell, you had also indicated that there is an added-value cost, is that correct?

A Yes. The added value is the --

I see what you are asking.

Q Let me summarize my question. The added-value cost is in addition to the tandem intermediary cost, is that correct?

A That's correct.

MR. TEITZMAN: That's answers my question.

Thank you.

CROSS EXAMINATION

BY MS. MASTERTON

Q This is Susan Masterton.

Mr. Fox, do you recall that Mr. Teitzman asked you about your testimony on page seven, line 16, your rebuttal testimony, that's where you talked about the penalty provision being supplemental to the dispute resolution process, do you remember that?

A Yes.

Q If Verizon Access and Embarq disputed either when the penalty was due or how much was due, how would those disputes be resolved?

A Well, we would certainly want to settle it between the two of us before we would go to a third party. We always try to do that with carriers.

Q So you are saying that it would be resolved in accordance with the dispute resolution provisions in the agreement, right?

A As a last resort we would go there. If we couldn't settle it between us, then we would invoke a dispute resolution.

Q Thank you.

Mr. Fox, even though Embarq believes the transit rate should be a market-based rate rather than cost-based rate, Embarq would set a market-based rate that would be high enough to

cover the cost, wouldn't it?

A Yes.

Q And how do Embarq's costs compare to Bellsouth's and Verizon's costs?

A They are probably higher, just again based on the economies of scale and markets served, in rural areas are more expensive than urban areas.

Q Thank you. That's all I have.

MR. TEITZMAN: I believe there are no further questions for the witness then.

We will conclude the deposition.

(Thereupon, the deposition was concluded at 1:59 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, JUDY CHIN, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 66 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 26th day of April, 2007.

JUDY CHIN, RPR, CRR
Notary Public
1-800-934-9090
850-878-2221

Embarq 2006 Transit Traffic of Carriers with $.005 Rate

068

	Transit Traffic As of December 2006
1-800-RECONEX	
AT&T Communications of the Southern States LLC dba AT&T	Y*
Bright House Networks Information Services (Florida)	
Budget Phone, Inc.	
City of Gainesville, a municipal corporation d/b/a GRUCom	
Comcast Phone of Florida, LLC	Y*
Eagle Telecommunications, Inc.	
Embarq Communications, Inc.	
Fonix Telecom, Inc.	
Hotwire Communications, Ltd.	
LecStar Telecom, Inc.	
Level 3 Communications	Y*
Navigator Telecommunications	
New Edge Networks	
Neutral Tandem	
SBC Long Distance, LLC	
T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone	Y
TCG South Florida	
Telovations, Inc.	
Trinsic Communications, Inc.	
Volo Communications of Florida, Inc.	Y*

Note: At the time Mr. Fox's testimony was prepared, Embarq had only identified 15 carriers with Transit Traffic rates of $.005. Further review indicated that there are 21 carriers with this rate. Of those 21 carriers, 5 actually sent transit traffic to Embarq in the month of December 2006. Those noted above with an asterisk are those carriers that were included in Mr. Fox's testimony.

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069

DATE: August 17, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Barrett, Higgins, P. Lee, Trueblood, Vickery)
Office of the General Counsel (Scott)

RE: Docket No. 050119-TP – Joint petition by TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC ["Joint Petitioners"] objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc.

Docket No. 050125-TP – Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC.

AGENDA: 08/29/06 – Regular Agenda – Posthearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Tew

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050119.RCM.DOC

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070

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Acronyms and Abbreviations

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Act	Telecommunications Act of 1996
AT&T	AT&T Communications of the Southern States, LLC
BellSouth	BellSouth Telecommunications, Inc.
BOC	Bell Operating Company
BTN	Billing Telephone Number
BR	Brief
CFR	Code of Federal Regulations
CLEC	Competitive Local Exchange Carrier
CLLI	Common Language Location Identifier
CMRS	Commercial Mobile Radio Service
CO	Central Office
CompSouth	The Competitive Carriers of the South, Inc.
d/b/a	Doing Business As
DEOTs	Direct End Office Trunks
DN	Docket Number
EAS	Extended Area Service
EMI	Exchange Message Interface
EXH	Exhibit
FCC	Federal Communications Commission
FCTA	Florida Cable Telecommunications Association
f/k/a	Formerly Known As
FPSC	Florida Public Service Commission
IA or ICA	Interconnection Agreement
ICO	Independent Telephone Company
ILEC	Incumbent Local Exchange Company
IP	Interconnection Point
ISP	Internet Service Provider
Joint CLECs	CompSouth & NuVox
Joint CMRS Carriers	Sprint Nextel, T-Mobile, and MetroPCS
Joint Petitioners	See "Small LECs"
LATA	Local Access and Transport Area
LEC	Local Exchange Carrier
MetroPCS	MetroPCS Florida, LLC
MOU	Minutes Of Use

MPB	Meet-Point Billed
MTA	Major Trading Area 073
NDA	Nondisclosure Agreement
NuVox	NuVox Communications, Inc.
OC	Originating Carrier
OCN	Operating Company Number
PLU	Percent Local Usage
POI	Point of Interconnection
SGAT	Statement of Generally Available Terms
Small LECs	TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida, Inc.;[1] Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC.
SPOI	Single Point of Interconnection
Sprint Nextel and T-Mobile[2]	Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership and T-Mobile USA, Inc.
Tariff	BellSouth's General Subscriber Services Tariff, Transit Traffic Service Tariff (FPSC Tariff Number T-050059)
TC	Terminating Carrier
TIC	Tandem Intermediary Charge
TELRIC	Total Element Long-Run Incremental Cost
TR	Transcript
Transit Tariff	See "Tariff"
TSP	Telecommunications Service Provider
Verizon Access	Verizon Access Transmission Services f/k/a MCIMetro Access Transmission Service, LLC
Verizon Wireless	Verizon Wireless
WCB	Wireline Competition Bureau

[1] ALLTEL Florida Inc. withdrew as a party on April 21, 2006.

[2] Filings of record up to the briefs were on behalf of Sprint Nextel and T-Mobile. For purposes of the brief, MetroPCS joined these companies to file a single brief, identifying it as on behalf of Joint CMRS Carriers.

Legal Citations

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Reference Used in Recommendation	Full Citation
Court Decisions	
8th Circuit 2000	Iowa Utilities Board v. FCC, decided July 18, 2000, 219 F.3d 744.
Mountain	D.C. Circuit Court of Appeals, Mountain Communications v. FCC, 355 F.3d 644 (D.C. Cir. 2004).
Atlas	Tenth Circuit Court of Appeals, Atlas Telephone Co. v. Oklahoma Corporation Commission, 400 F.3d 1256 (10th Cir. 2005).
Core Decision	D.C. Circuit Court of Appeals, Core Communications, Inc. v. Level 3 Communications, LLC, et al., No. 04-1368, decided June 30, 2006.
FCC Orders	
Local Competition Order	Order No. FCC 96-325, released August 8, 1996, CC Docket Nos. 96-98 and 95-185, In Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order.
TSR Order	Order No. FCC 00-194, released June 21, 2000, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, In Re: TSR Wireless, LLC, et al., Complainants, v. US West Communications, Inc. et al., Defendants, Memorandum Opinion and Order.
ISP Remand Order	Order No. FCC 01-131, released April 27, 2001, CC Docket Nos. 96-98 and 99-68, In Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-carrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order.
Texcom Order	Order No. FCC 01-347, Texcom, Inc. v. Bell Atlantic Corp., d/b/a Verizon Communications, File No. EB-00-MD-14, released November 28, 2001, Memorandum Opinion and Order.
Texcom Recon Order	Order No. FCC 02-96, Texcom, Inc. v. Bell Atlantic Corp., d/b/a Verizon Communications, File No. EB-00-MD-14, released March 27, 2002, Order on Reconsideration.

Reference Used in Recommendation	Full Citation
Virginia Arbitration Order	Order No. DA 02-1731, In Re: Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket No. 00-218, In Re: Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Arbitration, CC Docket No. 00-249, and In Re: Petition of AT&T Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., CC Docket No. 00-251, Memorandum Opinion and Order, released July 17, 2002.
Qwest Declaratory Ruling	Order No. FCC 02-276, released October 4, 2002, In Re: Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1), Memorandum and Opinion.
TRO	Order No. FCC 03-36, released August 21, 2003, CC Docket Nos. 01-338, 96-98, and 98-147, In Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking.
Qwest NAL	Order No. FCC 04-57, Notice of Apparent Liability for Forfeiture, File No. EB-03-1H-0263, released March 12, 2004, In Re: Qwest Corporation Apparent Liability for Forfeiture.
TRRO	Order No. FCC 04-290, released February 4, 2005, WC Docket No. 04-313 and CC Docket No. 01-338, In Re: Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand.
ICF FNPRM	Order No. FCC 05-33, released March 3, 2005, CC Docket No. 01-92, In Re: Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking.
T-Mobile Order	Order No. FCC 05-42, released February 24, 2005, CC Docket No. 01-92, In Re: Developing a Unified Intercarrier Compensation Regime and T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, Declaratory Ruling and Report and Order.
FPSC Orders	
BellSouth UNE Order	Order No. PSC-01-1181-FOF-TP, issued May 25, 2001, Docket No. 990649A-TP, In Re: Investigation into Pricing of Unbundled Network Elements.

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Reference Used in Recommendation	Full Citation
Level 3 Arbitration Order	Order No. PSC-01-1332-FOF-TP, issued June 18, 2001, in Docket No. 000907-TP, In Re: Petition by Level 3 Communications, LLC for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc.
BellSouth UNE Recon Order	Order No. PSC-01-2051-FOF-TP, issued October 18, 2001, Docket No. 990649A-TP, In Re: Investigation into Pricing of Unbundled Network Elements, Order on Motions for Reconsideration and Motion to Conform Analysis.
Phase 1 Compensation Order	Order No. PSC-02-0634-AS-TP, issued May 7, 2002, Docket No. 000075-TP, In Re: Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996.
Joint Petitioners' Order	Order No. PSC-05-0975-FOF-TP, issued October 11, 2005, Docket No. 040130-TP, In Re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications. Inc.
Other State Commission Orders	
Georgia Transit Order	Order on Transit Traffic Involving Competitive Local Exchange Carriers and Independent Telephone Companies, Docket No. 16772-U, In Re: BellSouth's Petition for a declaratory Ruling Regarding Transit Traffic, issued March 23, 2005.
Georgia Transit Recon Order	Order on Clarification and Reconsideration, Docket No. 16772-U, In Re: BellSouth's Petition for a Declaratory Ruling Regarding Transit Traffic, issued May 2, 2005.
Tennessee CELLCO Arbitration Order	Order of Arbitration Award, issued January 12, 2006, Docket No. 03-00585, In Re: Petition for Arbitration of CELLCO Partnership D/B/A Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga SA Limited Partnership; Collectively D/B/A Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC D/B/A AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. D/B/A Sprint PCS.

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Case Background

On February 11, 2005, TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc., d/b/a GT Com; Smart City Telecom; ITS Telecommunications Systems Inc.; and Frontier Communications of the South, LLC ("Joint Petitioners" a/k/a "Small LECs") filed a joint petition objecting to and requesting suspension and cancellation of BellSouth Telecommunications, Inc.'s (BellSouth) General Subscriber Services Transit Traffic Tariff.[3] This tariff sets forth certain rates, terms and conditions that apply when carriers receive transit service from BellSouth but have not entered into an agreement with BellSouth setting forth rates, terms and conditions for the provision of transit service. BellSouth's transit tariff does not apply to a party with whom BellSouth has an existing contractual relationship because the tariff, by its terms, applies as a default only in the absence of an existing contractual agreement. Transit traffic is traffic that originates on the network of one carrier, transits over BellSouth's network, and then terminates on the network of a third carrier.

Docket No. 050119-TP was established in response to the petition filed by the Joint Petitioners. On February 17, 2005, AT&T Communications of the Southern States, LLC, (AT&T) also filed a petition and complaint for suspension and cancellation of the same BellSouth tariff. Docket No. 050125-TP was subsequently established in response to AT&T's petition.

On March 3, 2005, BellSouth filed an answer to the Joint Petitioners in Docket No. 050119-TP, and on March 4, 2005, filed an answer and motion in Docket No. 050125-TP to consolidate the dockets. By Order No. PSC-05-0623-CO-TP, issued on June 6, 2005, the Commission consolidated the two dockets but denied the requests for suspension of BellSouth's tariff. The Order Establishing Procedure, Order No. PSC-05-1206-PCO-TP, issued December 6, 2005, set forth controlling dates for this matter.

The administrative hearing was held on March 29-30, 2006. At the conclusion of the hearing, the Commission encouraged the parties to engage in settlement discussions. On May 1, 2006, BellSouth and the Small LECs jointly filed a status report indicating that settlement discussions were not successful.

On June 9, 2006, post-hearing briefs were filed. For the purpose of briefs and pursuant to Rule 28-106.307, Florida Administrative Code, T-Mobile USA, Inc. ("T-Mobile"), Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership (collectively, "Sprint Nextel"), and MetroPCS Florida, LLC ("MetroPCS") filed a joint post-hearing brief, identifying themselves as the "Joint CMRS Carriers." In addition, the brief from Verizon Access Transmission Services LLC ("Verizon Access") only addresses Issue 5.

[3] Transit Traffic Tariff No. FL 2004-284 is also known as BellSouth's GSST Tariff A16.1, or simply as the "Transit Traffic Tariff."

This recommendation addresses the 18 outstanding issues in this consolidated proceeding. The Commission is vested with jurisdiction over this matter pursuant to Chapter 364, Florida Statutes. 078

Overview

Transit traffic is traffic that originates on the network of one carrier, transits over BellSouth's network, then terminates on the network of a third carrier. The originating carrier and the terminating carrier are not directly interconnected to one another but elect to utilize the network capabilities of an intermediary carrier, in this case BellSouth, to route and complete calls.

BellSouth's Transit Traffic Tariff, which became effective on February 11, 2005, sets forth rates, terms and conditions that apply when carriers receive transit service from BellSouth but have not entered into an agreement with BellSouth that addresses transit service. During the course of the hearing, BellSouth cited its inability to successfully negotiate a transit arrangement with the Small LECs as one reason for filing the tariff.

The FPSC has not previously addressed the specific issues presented in this docket. However, in Docket No. 040130-TP, an arbitration proceeding, the FPSC addressed BellSouth's transit intermediary charge (TIC). In that docket the FPSC concluded:

> . . . we find the TIC is not required to be TELRIC-based and is more appropriately, in this instant proceeding, a negotiated rate between the parties. A TELRIC rate is inappropriate because transit service has not been determined to be a § 251 UNE. We agree with the reasoning of the FCC Wireline Competition Bureau in rendering the Virginia Arbitration Order that found no precedent to require the transiting function to be priced at TELRIC under § 251(c)(2). The Bureau went further in saying that if there was a duty to provide transiting under § 251(a)(1), it did not have to be priced at TELRIC. (Joint Petitioners' Order, p. 52)

Like the FPSC, the FCC has not yet addressed specific transit matters at the commission level. In its ICF FNPRM the FCC noted that although many ILECs currently provide transit service pursuant to interconnection agreements, it has not had occasion to determine whether carriers have a duty to provide transit service. The reciprocal compensation provisions of the Act address the exchange of traffic between an originating carrier and a terminating carrier, but the FCC's reciprocal compensation rules do not directly address the intercarrier compensation to be paid to the transit service provider. It is not known when the FCC will take any action on transit issues.

The FCC's Wireline Competition Bureau (WCB), on delegated authority from the FCC, issued a Memorandum Opinion and Order known as the Virginia Arbitration Order, which did address transit service matters. In that Order, the WCB rejected a proposal by AT&T because it would have required Verizon to provide transit service at TELRIC rates without limitation. The WCB asserted that while Verizon as an ILEC is required to provide interconnection at forward-looking cost under section 251(c)(2), the FCC has not had occasion to determine whether ILECs have a duty to provide transit service under this provision of the statute, nor did the WCB find clear FCC precedent or rules declaring such a duty. In the absence of such a precedent or rule, the WCB declined to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section

251(a)(1) of the Act to provide transit service would not require the service to be priced at TELRIC. Like the FPSC's arbitration decision in Docket No. 040130-TP, the WCB's arbitration decision does not set precedent.

Provided below is a brief overview of each issue and, where appropriate, the discussion on certain issues has been combined.

Issue 1 is a significant issue which asks the Commission to determine whether or not BellSouth's Transit Tariff is an appropriate mechanism to address the transit service provided to parties that do not have another arrangement in place for this offering. While at first blush it appears the only parties impacted by the tariff are the Small LEC entities, other parties have also objected to the tariff for various reasons. Staff believes that under both state and federal law, transit services should not be offered via a tariff; instead, as an interconnection service it must be offered pursuant to a transit service arrangement. As such, staff contends BellSouth's Transit Tariff is not the appropriate mechanism to address its transit service offering and recommends the tariff be cancelled.

Issues 2 and 3 are related issues (both discussed under Issue 2) addressing the responsibilities of the originating carriers that utilize BellSouth's transit service. Staff recommends that the originating carrier be responsible for entering into an arrangement with BellSouth for transit service, and, as the cost causer, the originating carrier should be responsible for compensating BellSouth for its transit transport and switching services. With the exception of the Small LECs, all parties agree that the originating carrier should be responsible for compensating BellSouth for this service.

There are three issues, Issues 4, 12, and 13, where there appear to be no disputes among the parties. Issue 4 considers BellSouth's network arrangement and how it typically routes transit traffic from an originating party to a terminating party. On this issue, staff recommends BellSouth's current network arrangement and typical routing is appropriate. Issue 12 asks if, consistent with two prior Commission Orders, parties have paid BellSouth for transit service provided on or after February 11, 2005 (the effective date of the Transit Tariff). Staff concludes that all parties have paid and continue to pay for this service. Issue 13 asks if parties have paid for transit services received prior to February 11, 2005. Staff believes all parties except for the Small LEC entities have paid BellSouth for transit service provided prior to the effective date of its tariff. However, the Small LECs were not required to pay BellSouth for transit services prior to February 11, 2005; as such, no amounts are owed by any party. As noted, these issues appear to be undisputed.

Issues 5, 8, and 9 each consider whether the Commission should establish terms and conditions governing various relationships between carriers utilizing BellSouth's transit services. Staff addresses these three issues together in Issue 5 and recommends the Commission not establish any terms or conditions. The various relationships and scenarios described in these issues should be governed by bilateral interconnection arrangements. The majority of the parties support this action and point to hundreds of successfully negotiated agreements which contain appropriate terms and conditions.

Issue 6 asks if the Commission should determine whether and at what traffic threshold level an originating carrier should be required to forego use of BellSouth's transit service and obtain direct interconnection with a terminating carrier. Except for the Small LEC entities, all parties oppose the Commission establishing a threshold traffic level. The opposing parties believe that the decision to shift from an indirect interconnection to a direct interconnection should be made by the originating carrier based on its existing network and the costs to supplement its facilities. Staff agrees that carriers are in the best position to dictate their specific network arrangements and recommends that the Commission not set a traffic threshold level.

Issue 7 addresses how transit traffic should be delivered to the Small LEC's network. The primary dispute surrounds the Small LECs' assertion that BellSouth should be required to establish separate trunks to deliver third-party transit traffic rather than commingle it with "toll traffic." The Small LECs disagree with BellSouth's argument that market conditions will dictate trunking arrangements, stating that there is not a bi-directional balance of traffic between a CLEC and a rural LEC. BellSouth asserts that it is willing to provide an efficient and valuable means for Small LECs to send their originated traffic to other carriers' networks through BellSouth's network; it simply wants to be compensated for the service. Staff does not believe the FPSC should dictate how BellSouth delivers transit traffic to the Small LECs. Instead transit traffic should be delivered to the Small LECs' networks utilizing efficient network engineering developed through mutual agreement between BellSouth and the Small LECs.

Issue 10 asks what effect does transit service have on ISP-bound traffic. The Small LECs contend that the FPSC does not have the authority to approve a transit tariff which proposes and offers an interstate service with respect to ISP-bound calls. Staff believes that, contrary to the Small LECs' contention, this issue does not address intercarrier compensation for ISP-bound traffic but simply addresses the routing of the ISP traffic over a third-party intermediary carrier's network. As such, the routing of the ISP-bound traffic does not appear to change in any way the reciprocal compensation requirements set forth in the ISP Remand Order. Accordingly, staff believes transiting ISP-bound traffic is no different than transiting voice traffic. In both cases, the intermediary carrier's facilities being used to route or transit the traffic to a third-party terminating carrier are the same. Therefore, transiting has no effect on ISP-bound traffic.

Issue 11 considers how rates for BellSouth's transit service should be determined, what is the appropriate rate, and to what type of traffic should the rate apply. The majority of the parties argue that the rate for BellSouth's transit service should be a negotiated rate. Staff recommends that: 1) BellSouth's transit charges should be calculated by applying the transit rate to the local usage transited between the carriers; 2) an appropriate rate for transit service is no higher than $0.0023 per MOU; and 3) the transit rate is applicable to local traffic and local ISP-bound traffic that transits BellSouth's network to a third party. Staff believes the Commission should not mandate a transit rate, but rather designate an upper bound of reasonableness to provide a point of reference for parties when establishing a transit service arrangement.

Issue 14 addresses what action, if any, the FPSC should undertake at this time to allow the Small LECs to recover the costs incurred or associated with BellSouth's provision of transit service. The Small LEC entities contend the Commission should authorize recovery of costs incurred for transit services pursuant to a surcharge or a rate increase under Section 364.051(4),

Florida Statutes, predicated on a finding that the imposition of a transit traffic rate constitutes a substantial change in circumstances. Staff recommends that the Commission refrain from making a determination as to whether the imposition of a transit rate on the Small LECs constitutes a substantial change in circumstances under Section 364.051(4), Florida Statutes. Staff believes that this issue is not ripe and a determination at this time would be premature.

Issue 15 asks if BellSouth should issue a separate invoice for transit service and, if so, in what detail. Staff believes that BellSouth's current invoicing mechanism is acceptable, and no changes are necessary. While certain billing concerns were raised by the parties, staff believes these issues are common concerns within the industry, not specific to transit billing. The FCC sought comment on billing issues in its ICF FNPRM.

Issue 16 considers whether BellSouth should provide to the terminating carrier sufficiently detailed call records to accurately bill the originating carrier for call termination and, if so, what information should be provided by BellSouth. BellSouth currently provides records which it believes contains adequate information to allow the terminating carrier to invoice the originating carrier. The core dispute in this issue surrounds the allegation that BellSouth alters data prior to sending it to the appropriate carriers. BellSouth denies this allegation. Staff believes BellSouth currently provides to terminating carriers sufficiently detailed call records and the status quo should be maintained.

Issue 17 asks how billing disputes concerning transit service should be addressed. Staff believes carriers with transit service arrangements in place should follow the dispute resolution provision of their agreements. For carriers that have purchased transit services from BellSouth pursuant to its Transit Tariff, the billing dispute provisions therein should govern.

The final issue, Issue 18, addresses closing the dockets. If the Commission approves staff's recommendation in Issue 1, these dockets should remain open to resolve any issues that may arise regarding the following implementation matters: (1) cancellation of the Tariff; (2) establishment of transit arrangements; and (3) the issuance of refunds under the Tariff.

Discussion of Issues

Issue 1: Is BellSouth's Transit Service Tariff an appropriate mechanism to address transit service provided by BellSouth?

Recommendation: No. Staff believes that BellSouth's Transit Service Tariff is not an appropriate mechanism to address transit service in the absence of an interconnection agreement or transit arrangement because it is invalid under Florida law. Furthermore, staff recommends that the Commission require the parties to establish an interconnection agreement or transit arrangement containing the rates, terms and conditions for use of BellSouth's transit service. Accordingly, staff recommends that BellSouth's Transit Service Tariff be cancelled.[4] **(Scott)**

Position of the Parties

Joint CLECS: Sections 251(a) and 251(c) require BellSouth to provide transit service. § 251(c)(2)(D) requires interconnection ". . . in accordance with . . . the requirements of this section and section 252." Section 252(d) requires transit rates to be TELRIC-based. If a single per-minute of use rate is used, it should be no more than $0.0009368.

Joint CMRS Carriers: No. The T-Mobile Order and recent FCC rule amendments prohibit tariffs for CMRS transit traffic, and, as an interconnection service, federal law establishes a clear preference that transit services to other carriers are to be provided by negotiated or arbitrated interconnection agreements or pursuant to an SGAT.

Small LECs: No. Under the T-Mobile Declaratory Ruling and Report and Order, BellSouth cannot establish rates, terms and conditions for the exchange of non-access traffic, including transit service, pursuant to a tariff. Furthermore, the Commission lacks jurisdiction to approve this tariff due to the interstate nature of ISP-bound calls.

AT&T: BellSouth's Transit Tariff is an appropriate alternative mechanism to address transit services, but only in the event a carrier does not have an agreement with BellSouth to obtain transit service. The rates, terms and conditions that apply to AT&T's use of BellSouth's transit network are governed exclusively by AT&T's ICA with BellSouth.

FCTA: No. BellSouth should pursue compensation for transit service through the negotiation (and if necessary, arbitration) of an interconnection agreement.

Verizon Access: The company only addressed issue 5.

Verizon Wireless: BellSouth's transit tariff should not affect the terms of interconnection and compensation arrangements between originating and terminating carriers. A transit provider cannot impose transit charges on a terminating carrier unless such carrier has accepted those terms in a negotiated contract because such cost allocation is inconsistent with principles of cost causation.

[4] Issue 18 addresses when the cancellation of the Tariff should take effect.

BellSouth: Yes, unless the tariff is superseded by a contract addressing transit traffic service. BellSouth is using its network to provide a value-added service and should be compensated accordingly.

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Staff Analysis: This issue addresses whether BellSouth's Tariff is an appropriate mechanism to set default rates, terms, and conditions for transit traffic in the absence of a negotiated agreement. BellSouth argues that its Tariff is an appropriate mechanism to ensure compensation for its provision of a "value-added" service. (McCallen TR 69; BR at 4) Generally, the parties agree that BellSouth should be compensated for provisioning transit service; however, the main dispute in this issue is whether the Tariff is an appropriate means to procure that compensation.

PARTIES' ARGUMENTS

With the exception of BellSouth, AT&T, and Verizon Access[5], the parties agree that BellSouth's Tariff is not an appropriate mechanism to address transit service. (Joint CLECs BR at 3; Joint CMRS Carries BR at 3; Small LECs BR at 5; AT&T BR at 3; FCTA BR at 5; Verizon Wireless BR at 1; BellSouth BR at 4)

The Joint CLECs argue that transit service is critical to a competitive environment because if it were not available, all carriers would have to establish direct interconnections with all other carriers. (Gates TR 437; Joint CLECs BR at 4). According to the Joint CLECs, the provision of transit traffic service is a Section 251 obligation under the Act, and BellSouth's Tariff attempts to circumvent the established procedures in Sections 251 and 252 of the Act. (Joint CLECs BR at 5) Notwithstanding the Commission's authority under the Act, the Joint CLECs contend that the Commission has independent authority under state law to require parties to interconnect. (Joint CLECs BR at 7) Specifically, they argue that Section 364.16(1), Florida Statutes, authorizes the Commission to require local connections between local exchange companies if such connections 'can reasonably be made and efficient service obtained ....' (Id.)

The Joint CLECs further argue that a transit tariff will have a detrimental impact on competition. (Joint CLECs BR at 9) Although the Joint CLECs receive transit service under their respective interconnection agreements, using a tariff, at the rate BellSouth has filed, "will make the tariffed rate a floor in all future negotiations." (Joint CLECs BR at 9) Consequently, BellSouth will have little incentive to negotiate a rate lower than the tariffed rate, which, the Joint CLECs assert, is over 300% higher than the TELRIC rate. (Joint CLECS BR at 9) The Joint CLECs aver that if the Tariff is sanctioned there will be no controls in place to evaluate or determine what an appropriate transit rate should be. (Gates TR 448; Joint CLECs BR at 10) Carriers needing this service to complete end users' calls will be forced to pay the exorbitant rate that BellSouth charges or leave the market. (Joint CLECs BR at 10) Because there is essentially no competition for the transit traffic service, the Joint CLECs conclude that the Commission should cancel BellSouth's Tariff. (Id.) The Joint CLECs argue that a tariff is unnecessary since BellSouth has provided a transit function for many years through interconnection agreements and has been compensated for this service via Commission-approved, TELRIC-compliant rates. (Gates TR 447-448; Joint CLECs BR at 10) The Joint CLECs endorse FCTA's witness Woods'

[5] Verizon Access only addressed Issue 5 in this proceeding.

recommendation that the proceeding arose as a result of the dispute between the Small LECs and BellSouth and should not disrupt existing arrangements. (Wood TR 706; Joint CLECs BR at 12)

The Joint CLECs contend that the "presumptively valid" standard is related to whether the Commission should suspend a tariff. (Joint CLECs BR at 12) Nonbasic tariffs are presumptively valid and will only be suspended if the "tariff will cause significant harm that cannot be adequately addressed if the tariff is ultimately determined to be invalid."[6] (Id.) The Joint CLECs request that in the event the Commission does not reject BellSouth's Tariff, it should make absolutely clear that the tariff provisions are specifically limited to instances in which the originating carrier does not seek an ICA with BellSouth. (Wood TR 704; Joint CLECs BR at 13)

The Joint CMRS Carriers cite to the FCC's T-Mobile Order for the proposition that a unilateral tariff, such as BellSouth's Tariff, is not an appropriate mechanism to impose compensation obligations upon CMRS providers. (Joint CMRS Carriers BR at 4) The Joint CMRS Carriers state that by filing the Tariff, BellSouth has ignored 47 C.F.R. 20.11(d), which provides that local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs. (Id.)

The Joint CMRS Carriers also assert that an important aspect of the Act is the negotiation and arbitration process established under Sections 251 and 252. (Id. at 5) In conjunction with the Act, the T-Mobile Order makes it clear that an appropriate mechanism for establishing compensation arrangements for interconnection services under the Act is through the negotiation and arbitration process, not by tariff. (Id.) The Joint CMRS Carriers cite to a federal court decision holding that state tariffs are incompatible with the Act. (Id. at 6) Specifically, the Seventh Circuit found that the tariff procedure "short-circuits negotiations, making hash of the statutory requirement that forbids requests for arbitration until 135 days after the local phone company is asked to negotiate an interconnection agreement."[7] (Id. at 6-7)

The Joint CMRS Carriers explain that a state transit tariff, prepared unilaterally by only one party, cannot be justified where BellSouth's "problem is limited to a handful of carriers and where the 'problem' exists only because BellSouth has declined to invoke the statutory remedy-arbitration that Congress has provided for such circumstances." (Joint CMRS Carriers BR at 8) As discussed by MetroPCS witness Bishop, the overwhelming majority of CLECs and some of the CMRS carriers, who are parties to these agreements, have little or no incentive to arbitrate transit rates, or even to negotiate them aggressively, because they originate little or no transit traffic. (Bishop TR at 251; Joint CMRS Carriers BR at 8; fn 18) This does not alter the fact, the Joint CMRS Carriers assert, that BellSouth has been able to reach agreement on transit rates with most carriers without the need for a tariff. (Id.)

The Joint CMRS Carriers purport that a tariff is presumed to be legal until such time as it is found to be illegal.[8] (Joint CMRS Carriers BR at 9) According to the Joint CMRS Carriers,

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[6] FPSC Order No. PSC-05-0517-PAA-TP at 3.

7 Wisconsin Bell v. Bie, 340 F.3d 441, 445 (7th Cir. 2003).

8 Ehrhardt, Florida Evidence Section 301.1, Presumptions-Generally.

the T-Mobile Order, FCC rules, and court decisions, as well as the testimony of numerous expert witnesses supports their contention that BellSouth's Tariff is impermissible. (Id.) The Joint CMRS Carriers conclude that any presumption originally attached to the tariff has ended, and BellSouth must demonstrate that the tariff complies with all applicable law.[9] (Id.) Alternatively, the Joint CMRS Carriers request the Commission find the tariff invalid under Sections 364.16, 364.161, and 364.162, Florida Statutes. (Id. at 10)

In their brief, the Small LECs argue that BellSouth cannot establish rates, terms and conditions for the exchange of non-access traffic, including transit service, pursuant to a tariff. (Small LECs BR at 6) The Small LECs state that the FCC's ruling in its T-Mobile Order confirms that BellSouth cannot establish rates, terms and conditions for the exchange of local traffic pursuant to a tariff. (Id.)

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The Small LECs argue that the rationale of the T-Mobile decision applies equally as well to wireline carriers such as the Small LECs and the CLECs. (Id.) As emphasized by witness Watkins, the FCC held in its T-Mobile Order that tariffs are generally not an appropriate on-going mechanism for the establishment of terms and conditions for the exchange of non-access traffic. (Watkins TR 337; Small LECs BR at 6-7) Furthermore, witness Watkins emphasizes that the FCC intended for compensation arrangements to be negotiated, and that negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the Act.[10] (Id.) Consistent with that rationale, the Small LECs maintain that unilateral tariffs are also not appropriate in this proceeding. (Id. at 7)

The Small LECs also contend that BellSouth's Tariff has a number of deficiencies. (Id.) First, it is deficient because it applies to local calls that terminate to ISPs. (Small LECs BR at 7; McCallen TR 65-66; 74). The Small LECs assert that the FCC held in the ISP Remand Order that ISP-bound traffic is interstate in nature and that the switching, transport and termination services that carriers provide to connect end-users to ISPs are also interstate services. (Small LECs BR at 7) Second, there is no assurance or guarantee that any of the three affected parties—the originating carrier, BellSouth, or the terminating carrier—will be able to identify or measure completely and accurately all traffic that BellSouth intends to define as transit traffic. Small LECs BR at 8; Watkins TR 342) Third, BellSouth attempts to coerce, through its Tariff, a commitment on the part of the originating carrier to enter into a traffic exchange agreement or other appropriate agreement. (Small LECs BR at 8)

AT&T's position is that BellSouth's Tariff is an appropriate alternative mechanism to address transit service, but only in instances where an agreement to provide such a service is not in place. (Guepe TR 271; AT&T BR at 3) Also, AT&T asserts that the rates, terms, and conditions of transit service are "most appropriately addressed and established in [a] carrier's individually negotiated ICA with BellSouth." (Id.) AT&T also makes the point that since the Tariff rate applies as a default in the absence of an agreement for transit service, the Tariff does not apply to AT&T. (Small LECs BR at 4)

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[9] Straughn v. K & K Land Management, Inc. 326 So. 2d 421, 424-25 (Fla. 1976).
[10] T-Mobile Order at ¶14.

According to FCTA, BellSouth should pursue compensation for transit service through negotiation of an interconnection agreement rather than a tariff. (FCTA BR at 7) FCTA explains that the rates for transit traffic, like other intercarrier compensation, should be established in a negotiated or arbitrated interconnection agreement. (Id.)

Verizon Wireless cites to the T-Mobile Order, as well as various state commissions' decisions, in support of its position that BellSouth's Tariff should not affect current ICAs and compensation arrangements between originating and terminating carriers. (Verizon Wireless BR at 5-6) Verizon Wireless maintains that there is an expansive body of law supporting the "originating carrier pay" concept. (Id. at 7-9) Verizon Wireless recommends that the Commission refrain from making broad policy in this docket, and instead order the parties to voluntary negotiate the issues in this proceeding. (Id. at 9) Finally, Verizon Wireless asserts that the FCC's rules set a clear preference for negotiation and provide an arbitration remedy, administered by state commissions, where a LEC and CMRS provider could not arrive at a negotiated agreement. (Id. at 10)

BellSouth asserts that in the absence of a contractual agreement that includes rates, terms and conditions for transit service, its tariff is an appropriate mechanism that allows BellSouth to be compensated for providing a valuable service. (McCallen TR 69; 81; BellSouth BR at 4-5) BellSouth argues its Tariff is presumptively valid as a matter of law and that it does not have an obligation pursuant to Sections 251 and 252 of the Act to provide transit traffic service. (TR 20-21; BellSouth BR at 2) In support of its position, BellSouth cites to the Commission's decision in the Joint Petitioners Arbitration Order for the proposition that transit service is not a Section 251 obligation and should not be priced at TELRIC. (TR 15; BellSouth BR at 2) BellSouth emphasizes that the tariff is only applicable to service providers, like the Small LECs, who have not contractually agreed to pay BellSouth for the use of the transit traffic service. (BellSouth BR at 5) Without the Tariff, BellSouth argues it will not be able to receive compensation from parties who use the service but do not have interconnection agreements. (Id.)

ANALYSIS

Jurisdiction

On January 27, 2005, BellSouth filed its Tariff with the Commission; the Tariff went into effect on February 11, 2005. The Commission has authority over tariffs pursuant to Section 364.051(5)(a), Florida Statutes, and Rule 25-4.034, Florida Administrative Code. No party challenges the Commission's authority and oversight over the Tariff in question with the exception of the Small LECs. The Small LECs argue that the Commission lacks authority to approve the Tariff on the basis that the transit service in question includes ISP-bound traffic, which is interstate in nature. (TR 23; Small LECs BR at 7) The Small LECs further argue that the Commission did not have the authority over the substantive part of the Tariff upon filing, and therefore the Tariff did not become valid. (Small LECs BR at 7) Staff believes, however, that the issue at hand is the service itself, and whether a Tariff is an appropriate mechanism for providing that service. Moreover, the Commission's jurisdiction was invoked by the filing of the Tariff, and the subsequent protests. Staff believes there is no question that the Commission has jurisdiction in the instant proceeding.

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Is the Tariff a Proper Mechanism for Addressing Transit Service?

In order to determine whether the Tariff is an appropriate mechanism for transit service, staff believes the Commission should consider both Florida and federal law, as well as recent FCC decisions and rule changes. Staff believes that the Tariff is inappropriate and invalid for two main reasons:

- Florida law provides that a tariff filing is an inappropriate mechanism for interconnection arrangements such as transit traffic; and
- Federal policy and law seem to indicate that the negotiation process is preferred to a unilateral tariff for transit service arrangements.

State Jurisdiction over Interconnection

At hearing the parties were asked by staff to address in their briefs the Commission's authority under Section 364.16, Florida Statutes. (TR 788) The Joint CLECs and the Joint CMRS Carriers appear to be the only parties that addressed the implications of that statutory provision. The Joint CLECs state that "the Commission has independent authority under state law to require parties to interconnect." (Joint CLECs BR at 7) The Joint CLECs further state that

> Section 364.16(1), Florida Statutes, authorizes the Commission to require connections between local exchange companies if such connections 'can reasonably be made and efficient service obtained....' Transit service (in the context of the issues in this docket) requires the Small LEC to connect with BellSouth for efficient service. Section 364.16 authorizes the Commission to mandate such interconnection. (Id.)

The Joint CMRS Carriers request that in the event the Commission finds that the Tariff does not violate federal law, that it prohibit the Tariff under Sections 364.16, 364.161, and 364.162, Florida Statutes. (Joint CMRS Carriers BR at 9-10) The Joint CMRS Carriers also emphasize that

> Congress has specified that a state commission may enforce state law so long as the law does "not substantially prevent implementation of the requirements of this section and the purposes of this part." Requiring a carrier to utilize the negotiation/arbitration process specifically provided in the Act can hardly be considered inconsistent with the Act and its purposes. (Joint CMRS Carriers BR at 10; fn 23)

Staff agrees with these statements in part and recommends that the Commission use its authority under state law in conjunction with limited federal guidance to require the parties to establish rates, terms, and conditions for transit service and to find the Tariff invalid as a matter of Florida law.

Specifically, Section 364.16(1), Florida Statutes, provides that

> Whenever the commission finds that *connections between any two or more local exchange telecommunications companies*, whose lines form a continuous line of communication or could be made to do so by the construction and maintenance of suitable connections at common points, can reasonably be made and efficient service obtained, and that such connections are necessary, *the commission may require such connections to be made, may require that telecommunications services be transferred, and may prescribe through lines and joint rates and charges to be made, used, observed, and in force in the future and fix the rates and charges by order to be served upon the company or companies affected.* (emphasis added)

Staff believes that this statutory provision encompasses the type of local interconnection arrangements, *i.e.* transit service, at issue in this proceeding. The phrase "connections between any two or more local exchange telecommunications companies" certainly describes the types of arrangements involved in transiting. BellSouth witness McCallen describes transit traffic as

> Traffic that neither originates nor terminates on BellSouth's network, but that is delivered to BellSouth by the Telecommunications Service Provider ("TSP) that originated the traffic so that BellSouth can deliver the traffic to the TSP that will terminate the traffic. (McCallen TR 3)

Based on this description, staff believes that BellSouth's transit service is more characteristic of a local interconnection arrangement within the purview of Section 364.16(1), not a nonbasic service as BellSouth asserts. Section 364.02(10) defines a nonbasic service as "any telecommunications service provided by a local exchange telecommunications company *other than* a basic local telecommunication service, a *local interconnection arrangement described in s. 364.16*, or a network access service described in s. 364.163." BellSouth argues that transit traffic falls within the nonbasic category, because it does not fit into any other category. (BellSouth BR at 10) Staff believes that transit service is clearly an interconnection arrangement under Section 364.16, Florida Statutes. Section 364.051(5)(a) provides that price regulated LECs shall maintain tariffs with the Commission for each of its nonbasic service offerings.[11] Tariffing is appropriate where a nonbasic service is involved; however, it is an inappropriate mechanism for transit arrangements. Staff also believes that the Commission has stand-alone authority under Section 364.16(1), Florida Statutes, to require parties to interconnect for the purpose of transiting.

In addition, Section 364.16(2) read in conjunction with Section 364.162, Florida Statutes, provides the Commission with the authority to require carriers to interconnect directly or

[11] Recent legislative changes to Section 364.051(5)(a), Florida Statutes, provided price-regulated LECs the option of publicly publishing their rates, terms and conditions for each of their nonbasic service offerings. At the August 15, 2006 Agenda Conference, the Commission voted to approve guidelines for the LECs to follow when publishing either on the Web or in paper format. See Docket No. 060499-TL.

indirectly, as well as, "negotiate mutually acceptable prices, terms and conditions." Section 364.16(2) provides in part that

> Each competitive local exchange telecommunications company shall provide access to, and interconnection with, its telecommunications service to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, terms, and conditions.

Staff recommends that the Commission use its authority under Sections 364.16(1) and (2) and 364.162, Florida Statutes, to require BellSouth and any other parties in this proceeding who do not have a transit arrangement in place with BellSouth to establish rates, terms, and conditions for transiting.

Based upon the foregoing discussion, staff recommends that the Commission find BellSouth's Tariff invalid and an inappropriate mechanism to address transit services. Furthermore, staff recommends that the Commission require the parties to establish rates, terms, and conditions for transit service.

Federal Law and Policy

There is no clear and decisive federal law on this issue. The following discussion takes into consideration persuasive federal authority. Nonetheless, staff believes that the Commission has stand-alone authority to decide this issue as long as it is consistent with federal law and policy.

Recently, the FCC issued its T-Mobile Order holding that a tariff is not an appropriate means to impose intercarrier compensation obligations for non-access traffic upon CMRS providers.[12] In the T-Mobile Order, the FCC addressed the issue of whether an ILEC may impose compensation obligations on wireless carriers for non-access traffic pursuant to a tariff. (Small LECs BR at 6) The FCC held, on a prospective basis, that an ILEC is prohibited from imposing such compensation obligations for non-access traffic pursuant to tariff and amended Section 20.11 of the FCC rules to add subsection 20.11(e), which provides:

> Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs. (Id.)

The FCC amended section 20.11 of its rules "to make clear [its] preference for contractual arrangements for non-access CMRS traffic."[13] Consequently, that section now prohibits LECs from using a tariff as a means to impose compensation obligations on wireless carriers for non-access traffic. (Id.) The FCC also adopted new rules to allow LECs the option of invoking the Section 252 process with CMRS providers, and establishing interim compensation arrangements.[14] An important question is whether the decision in the T-Mobile Order applies to

[12] T-Mobile Order at ¶16.
[13] T-Mobile Order at ¶14.
[14] Id. at fn 57.

the dispute in this proceeding. Although, staff recognizes that decision addresses non-access CMRS traffic specifically, the T-Mobile decision is significant in its overarching principle that contractual arrangements are preferred to a default mechanism. The compensation arrangements at issue in T-Mobile were for transport and termination of traffic, which staff believes include transit traffic. Staff recommends that the Commission stay consistent with this policy. As the Joint CMRS Carriers point out, the FCC based its rule change on the rationale that "[p]recedent suggests that the Commission intended for compensation arrangements to be negotiated agreements and [...] that [such] agreements are more consistent with the pro-competitive process and policies reflected in the 1996 Act." (Joint CMRS Carriers BR at 5)

In addition, the Joint CMRS Carriers cite to rulings from the Sixth Circuit and Seventh Circuit, both of which found that "state tariffs for intercarrier compensation are incompatible with the Act and, thereby, void under federal law."[15] Staff notes that this authority is not binding and merely persuasive. (Joint CMRS Carriers BR at 6-7; Verizon Wireless BR at 9)

Staff believes that if the Commission considers the relevant case law, the Act, and the FCC rules in conjunction with its independent authority under Florida state law, it is clear that BellSouth's Tariff is invalid and an inappropriate mechanism to address transit services. Accordingly, staff believes that there is overwhelming evidence in this record to support a finding that BellSouth's Tariff is invalid and an inappropriate mechanism to address transit services.

Is BellSouth's Tariff Presumptively Valid?

BellSouth argues that its Tariff is presumptively valid as a matter of law, and the Commission has consistently held that its tariffs are "presumptively valid" (TR 21; BellSouth BR at 10). This argument could imply that the Commission lacks the authority to decide whether the Tariff in this proceeding is valid. However, staff believes that a tariff's presumed validity under Section 364.051(5)(a) does not in any way prevent the Commission from subsequently reviewing the tariff, especially when that tariff is challenged. In the instant case, the parties have challenged the validity of BellSouth's tariff, and therefore, the Commission's jurisdiction has been invoked. Staff believes that the Commission certainly has an obligation and duty to determine whether the Tariff is appropriate. Moreover, staff believes that the question of whether the Tariff is presumptively valid as a matter of law is moot and does not warrant further analysis or consideration, because transit service is not a nonbasic service. (See staff's discussion under *State Jurisdiction over Interconnection*)

CONCLUSION

Staff believes that BellSouth's Transit Service Tariff is not an appropriate mechanism to address transit service in the absence of an interconnection agreement or transit arrangement because it is invalid under Florida law. Furthermore, staff recommends that the Commission require the parties to establish an interconnection agreement or transit arrangement containing

[15] Verizon v. Strand, 367 F.3d 577 (6th Cir. 2004) (Verizon II); Wisconsin Bell v. Bie, 340 F.3d 441 (7th Cir. 2003); Verizon v. Strand, 309 F.3d 935 (6th Cir. 2002) (Verizon I).

the rates, terms and conditions for use of BellSouth's transit service. Accordingly, staff recommends that BellSouth's Transit Service Tariff be cancelled.

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Issue 2: If an originating carrier utilizes the services of BellSouth as a tandem provider to switch and transport traffic to a third party not affiliated with BellSouth, what are the responsibilities of the originating carrier?

Recommendation: Staff recommends that the originating carrier should enter into a transit arrangement with BellSouth, and should compensate BellSouth for providing the transit service. Additionally, the originating carrier is responsible for delivering its traffic to BellSouth in such a manner that it can be identified, routed, and billed. The originating carrier is also responsible for compensating the terminating carrier for terminating the traffic to the end user. **(P. Lee)**

Position of the Parties

AT&T: The originating carrier should be encouraged to negotiate an agreement with BellSouth for transit services, and should be responsible for paying any applicable transit charges.

Small LECs: Each Small LEC has the obligation to interconnect with either BellSouth or the CLEC/CMRS provider within and on the network of the Small LEC. The CMRS providers and CLECs must interconnect on the BellSouth network or on the network of the Small LEC. All carriers have the obligation to negotiate interconnection agreements for the exchange of non-access traffic.

BellSouth: The originating carrier, or cost-causer, should pay for the transit and termination of the traffic. This is appropriate because the originating carrier collects the revenue from the originating caller.

FCTA: The responsibilities of the originating carrier, if a request is made by BellSouth, are to (1) negotiate in good faith with BellSouth to develop an interconnection agreement that sets forth the rates and terms for the transit functions performed by BellSouth, and (2) to compensate BellSouth, pursuant to a negotiated or arbitrated cost-based rate, for providing this function.

Joint CLECs: Originating carriers are responsible for: establishing trunks to the BellSouth access tandem, compensating BellSouth for transit service, delivering their traffic to the terminating party's network (or terminating carrier's POI with the transit carrier) and compensating the terminating carrier for terminating the traffic to the end user.

Joint CMRS Carriers: Originating carriers using BellSouth as a tandem provider to transit traffic are obligated to: deliver traffic to BellSouth in an industry standard format; negotiate and arbitrate an agreement with BellSouth that includes terms and conditions regarding transit service; and, when necessary, negotiate an interconnection agreement with the terminating carrier.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: The originating carrier is responsible for delivering its traffic to BellSouth in such a manner that it can be identified, routed, and billed.

Staff Analysis: The fundamental dispute in this proceeding involves who pays and what rate applies. This issue and Issue 3 address who pays. Issue 11 addresses the rate. The crux of this issue and Issue 3 is who are the cost causers. Because Issue 2 and Issue 3 are intertwined, staff addresses both issues here. Staff believes the resolution of this issue should apply only to a party that does not have an existing agreement with BellSouth that addresses transiting.

PARTIES' ARGUMENTS

Small LECs believe that the CLECs and the CMRS carriers are the cost causers because they decided to use BellSouth's network to indirectly interconnect with the Small LECs' network, presumably driven by their own cost savings. (Watkins TR 349-350, 378-379, 382, 385-386) Small LECs witness Watkins explains that with the opening of local markets to competition, traditional Extended Area Service (EAS)[16] calls from a Small LEC to BellSouth may now involve local calls from the Small LEC's customer to a CLEC or CMRS customer. Witness Watkins believes that CLECs and CMRS providers could have interconnected with the Small LECs at the border of the Small LECs' networks as BellSouth has done for EAS, but instead chose to utilize the BellSouth network to have the traffic switched and trunked through a BellSouth tandem, commingled with other BellSouth traffic either over toll/access facilities or over EAS trunks. (TR 328)

Small LECs argue in their brief that the principle of cost causation is driven by a rule of law that the Small LECs are required only to interconnect, directly or indirectly, with the CLECs and CMRS carriers for the purpose of exchanging local traffic at a technically feasible point on the actual network of the Small LECs. (Small LECs BR at 3; Watkins TR 328, 333, 345-348, 377, 387; 47 CFR 51.701-717; §251(b)(5), (c)(2)(a)-(c); Local Competition Order ¶¶26, 87, 173, and 186) Small LECs argue that "It is illogical, inequitable and unlawful to require the Small LECs to pay for and subsidize the CLECs and CMRS providers' use of BellSouth's network to establish an indirect interconnection with the Small LECs." (Watkins TR 330-331, 348-355; Small LECs BR at 3; §251(c)(2)(A)-(C); 8th Circuit 2000) Small LECs argue the following points:

- BellSouth has never imposed any charges on the Small LECs for the tandem transit traffic service arrangement that BellSouth has with the CLECs and CMRS providers. (Watkins TR 328)
- BellSouth did not involve the Small LECs in the establishment of interconnection terms with CLECs and CMRS carriers. (Watkins TR 329)
- In the Level 3 Arbitration Order, the FPSC noted that "[a] competitive LEC has the authority to designate the point or points of interconnection on the incumbent's network for the mutual exchange of traffic." (EXH 48, p. 10)
- In the FPSC's Phase 1 Compensation Order, the FPSC held "that ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications

[16] EAS is basically an arrangement established pre-Act whereby customers are provided greater non-toll calling capability between specific areas at increased local service rates. The extended service area allows "community of interest" calls to local governments, schools, and doctors located in adjacent service areas. EAS arrangements were established for local calling between specific areas at increased local service rates. (McCallen TR 196; Watkins TR 327-328)

traffic at any technically feasible location on an incumbent's network within a LATA." (Phase 1 Compensation Order, p. 25)

- BellSouth, CLECs and CMRS providers are attempting to impose competitively unfair conditions and relationships on the Small LECs without their consent and may intend to limit the alternatives for the Small LECs. (Watkins TR 331, 335, 336)
- The FCC makes clear in its TSR Order that the terminating carrier, not the originating carrier, is required to pay for transit service. (EXH 40, p. 19)
- The Georgia Transit Order and the Tennessee CELLCO Arbitration Order create no obligation for a Small LEC to involuntarily route its originating local traffic in that manner. (Watkins TR 386-387; Georgia Transit Order; EXH 31)

In contrast, AT&T, BellSouth, FCTA, the Joint CLECs, the Joint CMRS Carriers, and Verizon Wireless aver that (1) BellSouth should be compensated for the use of its network when providing the transit function, and (2) such compensation should come from the carrier that originates a call that transits BellSouth's network. Specifically, these parties assert that the originating carrier is the cost causer. (McCallen TR 95-96; Blake TR 218-219; Guepe TR 272-274; Gates TR 454-455; Sterling TR 585; Pruitt TR 629; Wood TR 703, 721-731) This cost allocation is fair, opines BellSouth witness McCallen and Verizon Wireless witness Sterling, because the originating carrier may choose alternative routes if the indirect route is not economically efficient. (McCallen TR 68; Sterling TR 585) As support for the position that the originating carrier should pay transit costs, AT&T, BellSouth, FCTA, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless assert that:

- The originating carrier decides whether to send its traffic to BellSouth for completion or connect directly with other carriers and collects the revenue from the originating caller. (McCallen TR 68, 70; Sterling TR 583-584)
- General industry concepts regarding cost causation, the notion that the originating provider pays for call termination, and the ICAs with CLECs and CMRS carriers, support the "originating carrier pays" concept. (McCallen TR 66-67; Guepe TR 273; Gates TR 454-455; Wood TR 703)
- FCC Rule 51.703(b), in connection with reciprocal compensation obligations, precludes an originating carrier from imposing costs on a terminating carrier for calls that originate on the originating carrier's network. (Guepe TR 272-273; Gates TR 520-523; Sterling TR 585-586; Pruitt TR 630; Wood TR 732)
- Two federal Circuit Courts of Appeal[17] rulings make clear that the originating carrier is responsible for transit costs. (Sterling TR 585-586)
- The Tennessee CELLCO Arbitration Order and the Georgia Transit Order conclude that the originating carrier is responsible for transit charges. (Blake TR 229-230; Guepe TR 272-273; Sterling TR 585; EXH 31, p. 24; Georgia Transit Order, p. 8)

AT&T, BellSouth, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless advocate that other responsibilities of the originating carrier include:

[17] Tenth Circuit Court of Appeals, Atlas Telephone Co. v. Oklahoma Corporation Commission, 400 F.3d 1256 (10th Cir. 2005) and D.C. Circuit Court of Appeals, Mountain Communications v. FCC, 355 F.3d 644 (D.C. Cir. 2004).

- The responsibility for delivering the traffic to the terminating party's network (or t[illegible]96 terminating carrier's point of interconnection with the transit carrier) and compensating the terminating carrier for terminating the transit traffic to the end user. (Gates TR 454-455; Pruitt TR 629)
- The obligation to negotiate rates, terms, and conditions related to the transit traffic with both the terminating LEC as well as the transiting company. (Guepe TR 277; McCallen TR 73; Pruitt TR 629)
- The responsibility for delivering its traffic to BellSouth in a manner that the traffic can be identified, routed, and billed. (Gates TR 455; Pruitt TR 629; Sterling TR 585)

ANALYSIS

All parties agree that BellSouth should be compensated for providing a transit function. (McCallen TR 66-67; Guepe TR 272-274, 281; Watkins TR 349-351, 377-378, 385-386; Gates TR 454, 536; Sterling TR 585; Pruitt TR 629-631; Wood TR 708) The dispute is over which carrier should compensate BellSouth. AT&T, BellSouth, FCTA, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless assert that the originating carrier is responsible for transiting compensation; Small LECs contend that the CLECs and CMRS carriers are responsible. (BellSouth TR 95, 218-219; AT&T TR 272-273; Small LECs TR 330-331, 348-355; Joint CLECs TR 454-455; Verizon Wireless TR 585; Joint CMRS Carriers TR 629; FCTA TR 703, 721-731)

Staff believes the record evidence is persuasive that the originating carrier utilizing BellSouth's transit service is responsible to compensate BellSouth for that service. Staff believes that any decision to the contrary would appear to conflict with 47 CFR 51.703(b), which prohibits a LEC from assessing charges on any other carrier for traffic originating on its network. Furthermore, staff believes the Small LECs have provided no valid reason to deviate from the "originating carrier pays" policy. Staff believes the Small LECs' claims that CLECs and CMRS providers, as the terminating carriers of transit traffic, are direct beneficiaries of transit connections and thus, should be responsible for compensating BellSouth for the transit function, are unsupported and have no basis in law, policy, or principles of equity. AT&T and FCTA both assert that the Small LECs' argument ignores the undisputed evidence that the Small LECs and their customers benefit equally when they terminate transit traffic originated by CLECs or CMRS providers. (Guepe TR 282-283; Wood TR 730-732, 749-750) Staff observes that the Small LECs did not refute this assertion.

Regarding the Small LECs argument that the imposition of transit costs will cause the Small LECs to incur new and additional costs, staff believes that transit costs have existed for as long as Small LEC end users have originated calls that terminated on the network of a CLEC or CMRS carrier. Just because BellSouth has not chosen until now to seek compensation for these costs is inconsequential to the issue at hand. Transiting does involve costs for the use of BellSouth's network, and all parties agree that BellSouth should be compensated.[18] Any "new"

[18] BellSouth explains that the reason it is now taking steps to obtain compensation for the use of its network is because of the increase in the number of transit calls being carried over its network due to the explosive growth of wireless and ISP-bound traffic. (McCallen TR 60-61)

cost is the result of the Act, not because other carriers entered into transit service arrangements with BellSouth.

Staff agrees with AT&T, BellSouth, FCTA, Joint CLECs, and Joint CMRS Carriers that the "calling party's network pays" (CPNP) concept is well-established policy based on principles of cost causation. (Guepe TR 273, 282; McCallen TR 105, 143; Wood TR 703; Joint CLECs TR 555; Joint CMRS Carriers TR 629) FCC Rule 51.703(b) states that "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." (47 CFR 51.703(b)) Read in conjunction with Rule 51.701(b)(2), Rule 51.703(b) requires LECs to deliver traffic, without charge, to a CMRS provider's switch anywhere within the Major Trading Area (MTA) in which the call originated. (EXH 35) Thus, staff believes that the Small LECs' claim that there should be no compensation impact on them when they originate traffic is nonsensical. If customers of the Small LEC place a call that transits BellSouth's network, staff believes it is because the Small LEC and the terminating carrier have not established a direct interconnection. The Small LEC's customer is the cost causer; the Small LEC should pay the transit costs as a cost of doing business. Even if a Small LEC directly interconnects with a CLEC thereby not using BellSouth's transit function, rules of intercarrier compensation require that the Small LEC be responsible for transporting its originating traffic; the Small LECs' use of a transit provider does not change this obligation. The terminating carrier has no control over how a call is sent to its network and thus should not be required to bear the cost of transporting the call to its network. Staff believes it is only equitable and competitively fair that the Small LEC, when using BellSouth's transit service to deliver traffic to providers who are also connected to BellSouth's tandem, be treated the same as any other carrier that uses the transiting function.

Small LECs cite to the Commission's Level 3 Arbitration Order and the Phase 1 Compensation Order to support the position that the Small LECs' obligation is only to interconnect with a CLEC on a Small LEC's network. (EXH 48; Phase 1 Compensation Order) Staff observes these orders address Point of Interconnection (POI) issues. POI issues are associated with direct interconnection; this proceeding involves indirect interconnection. Because carriers that use BellSouth's transit service are not directly interconnected, it follows that such carriers have no need to establish a POI on each other's respective network. Staff observes that absent a direct interconnection, there may be no POI between a CLEC or CMRS carrier and a Small LEC. Additionally, staff believes that the Phase 1 Compensation Order actually supports the position that the originating carrier should be responsible for the costs of calls it originates. (Phase 1 Compensation Order, p. 26) In any event, staff observes that the POI between a CLEC or CMRS provider and an ILEC is not an issue in this proceeding.

Small LECs also rely on the FCC's TSR Order to support their view that the terminating carrier, not the originating carrier, is required to pay the transit charge. (EXH 40, p. 19) Staff believes the Small LECs' interpretation of the TSR Order is incorrect. The TSR Order held that the transit carrier is not responsible for the portion of the interconnection facilities between the paging carrier and the ILEC that was used to deliver third-party transit traffic; it does not address the originating carrier's responsibility. (EXH 40) Further, there is no language in the TSR Order that would provide for calls originated or terminated by the Small LECs through the BellSouth

network to be treated any differently than calls originated or terminated by the CMRS providers or CLECs through the BellSouth network. 098

Staff agrees with the arguments proffered by AT&T, BellSouth, FCTA, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless that the Small LECs position would result in traffic originating from the Small LECs' customers being paid by everyone but the Small LEC, essentially giving the Small LECs a "free ride." Interestingly, the Small LECs argue that if they are required to pay transit charges, then they are essentially subsidizing CLECs and CMRS carriers. Staff believes that if the Small LECs' position is adopted, it is the CLECs and CMRS carriers that would be subsidizing the Small LECs. The choice of how the originating call is delivered to the end user is not the choice of the terminating carrier, but rather the choice of the originating carrier, even if the originating carrier is a Small LEC.

Staff observes that the parties rely on several Circuit Court decisions and FCC orders to support their respective positions. Atlas, Mountain, Texcom, and Texcom Reconsideration are all consistent with FCC Rule 51.703(b), holding that the originating carrier is responsible for transit costs. In Atlas, the 10th Circuit concluded that CMRS providers should not have to bear the costs of transporting calls that originated on the networks of rural LECs across the ILEC's network. (Atlas fn 11) [The 10th Circuit also found that the §251(a) obligation of all telecommunications carriers to interconnect directly or indirectly is not superseded by the more specific obligations under §251(c)(2).] In the Texcom Order, the FCC held that for third-party originating traffic, "the originating third party carrier's customers pay for the cost of delivering their calls to the LEC, while the terminating CMRS carrier's customers pay for the cost of transporting that traffic from the LEC's network to their network. (Texcom Order ¶6) On reconsideration, the FCC stated that the carrier providing the transit service may charge the terminating carrier "for the cost of the portion of these facilities used for transiting traffic, and [the terminating carrier] may seek reimbursement of these costs from originating carriers through reciprocal compensation." (Texcom Recon Order ¶4) Thus, costs should be borne by the originating carrier. Staff believes the Texcom Order and the Texcom Recon Order reflect the FCC's intent to allow the transiting LEC to recover its cost of providing the transiting service from the originating LEC. Under the Texcom Recon Order, the terminating provider may seek reimbursement of these costs from the originating carrier. Staff observes that there is no mention that the terminating carrier would not be able to recover these costs, and no basis for the argument that the terminating carrier should have to bear any of the costs of transporting a call to the terminating carrier across the transiting carrier's system.

Staff believes the reasoning in the Atlas and the Texcom Orders is compelling. They are consistent with and appear to confirm the principle that the originating party must bear the costs of transiting the call. Staff believes that the Small LECs should not be exempted from paying for transit costs incurred when a Small LEC's end user originates a call that transits BellSouth's network and terminates to a CLEC or CMRS end user. The Small LECs are not without options. The Small LECs could establish a direct connection with CLECs and CMRS carriers, rather than using BellSouth's transit service. Staff does not believe that the Small LECs have provided any valid reason to change the "originating carrier pays" regime currently in place in the industry.

Finally, staff observes that AT&T, BellSouth, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless advocate additional responsibilities of the originating carrier that no party challenged. These responsibilities include negotiating rates, terms, and conditions related to transit traffic with both the terminating LEC as well as the transiting company, delivering traffic to the terminating party's network (or the terminating carrier's POI with the transit carrier), and delivering traffic to the transiting carrier, if used, in a manner that the traffic can be identified, routed, and billed.

CONCLUSION

Staff recommends that the originating carrier should enter into a transit arrangement with BellSouth, and should compensate BellSouth for providing the transit service. Additionally, the originating carrier is responsible for delivering its traffic to BellSouth in such a manner that it can be identified, routed, and billed. The originating carrier is also responsible for compensating the terminating carrier for terminating the traffic to the end user.

Issue 3: Which carrier should be responsible for providing compensation to BellSouth for the provision of the transit transport and switching services? 100

Recommendation: This issue is subsumed in the recommendation for Issue 2 and no vote is necessary. (P. Lee)

Position of the Parties

AT&T: As explained in detail under Issue 2, the overwhelming evidence in this proceeding shows that the originating carrier should be responsible to pay the transit charges.

Small LECs: The CLECs and CMRS providers have elected to utilize BellSouth's network in lieu of paying for and establishing direct interconnection points on the networks of the Small LECs and, therefore, should be responsible for providing compensation to BellSouth for the provision of transit transport and switching services.

BellSouth: The originating carrier (cost-causer) of the transit traffic should be responsible for paying the transit charges to the transit provider. BellSouth should not be required to use network capacity to complete calls for the originating carrier without compensation.

FCTA: The originating carrier is responsible for compensating the transit provider.

Joint CLECs: The originating carrier is responsible for compensating BellSouth for transit services. Long-standing practice in the telecommunications industry requires that the originating party bear these expenses.

Joint CMRS Carriers: The FCC's Calling Party Network Pays ("CPNP") regime, pursuant to 47 C.F.R. Subpart H - Reciprocal Compensation Rule 51.703(b), requires the carrier on whose network reciprocal compensation traffic originates, to pay BellSouth for transit services BellSouth provides to deliver such traffic to a terminating carrier's network.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: The originating carrier should be responsible for paying the transit charges, because it has the option to choose the most economically efficient means to deliver traffic. A terminating carrier cannot mitigate transit costs for traffic originated by a third party and received from a transit provider.

Staff Analysis: This issue is subsumed in the recommendation for Issue 2.

Issue 4: What is BellSouth's network arrangement for transit traffic and how is it typically routed from an originating party to a terminating third party?

Recommendation: No party disputed this issue; accordingly, BellSouth's current network arrangement for transit traffic and its typical routing from an originating party to a terminating third party is appropriate. **(Trueblood)**

Position of the Parties

AT&T: AT&T has no position on this issue. As the network provider of transit traffic services, BellSouth is in the best position to describe how transit traffic is typically routed over its system.

Small LECs: Transit traffic exchanged between Small LECs and CLECs/CMRS providers traverse a BellSouth tandem switch. The traffic is then routed to the Small LECs over common trunk groups to the point of interconnection between BellSouth and the Small LEC.

BellSouth: Traffic is generally routed through a BellSouth tandem office to the terminating third-party carrier. The originating ICO should route the call over a common trunk group directly to the BellSouth tandem, or route the call to a BellSouth end office over the EAS trunk group for termination.

FCTA: FCTA believes that BellSouth is in the best position to provide information regarding its network arrangements.

Joint CLECs: BellSouth is in the best position to provide information on its network arrangements.

Joint CMRS Carriers: BellSouth typically receives traffic delivered to its tandem by an originating carrier over the originating carrier's interconnection facility with BellSouth, and the tandem then routes the traffic to the terminating carrier. The terminating carrier receives the traffic at the point where its network is interconnected with BellSouth's network.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: Verizon Wireless defers to BellSouth to explain BellSouth's network arrangement.

Staff Analysis: This issue addresses the network arrangement utilized by BellSouth to transit traffic from an originating carrier to a third-party carrier for termination. BellSouth witness McCallen provides a description of how traffic is transited, and staff notes that no party challenges this description. (McCallen TR 70; Watkins TR 356; Gates TR 456; Sterling TR 586; Pruitt TR 631-632) Specifically, he states that transit traffic is generally routed through a BellSouth tandem office to the terminating third-party carrier. (TR 70) The witness asserts that Meet-Point-Billed traffic is then routed over the common trunk group to the ICO network for termination. (McCallen TR 84-85) Sprint Nextel witness Pruitt states that transit traffic from an originating carrier is delivered to the BellSouth tandem and then routed by BellSouth to

intraLATA interconnection facilities of the terminating carrier. (Pruitt TR 631) This testimony is consistent with BellSouth witness McCallen's testimony. 102

The parties do not appear to disagree on this issue. The Small LECs, however, appear to disagree on how this traffic is identified, which is considered in Issues 7 and 16. Staff believes that BellSouth's current network arrangement for transit traffic and its typical routing of this traffic is appropriate.

CONCLUSION

No party disputed this issue; accordingly, BellSouth's current network arrangement for transit traffic and its typical routing from an originating party to a terminating third party is appropriate.

Issue 5: Should the FPSC establish the terms and conditions that govern the relationship between an originating carrier and the terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

Recommendation: No. The FPSC should not establish the terms and conditions governing the relationship between the originating carrier and the terminating carrier where BellSouth is providing transit service. The relationship should continue to be defined within bilateral interconnection agreements. Additionally, those situations involving Small LECs as originators and terminators utilizing BellSouth's transit service are best defined within bilateral transit arrangements. (**Vickery**)

Position of the Parties

AT&T: No.

Small LECs: Yes. The Commission should determine that the CLECs and CMRS providers are responsible for payment to BellSouth for any charges approved by the Commission for BellSouth's transit service. In addition, the Commission should address numerous other billing, operational and enforcement issues if not resolved through an interconnection agreement.

BellSouth: No. Both the originating and terminating carriers have the obligation to negotiate interconnection agreements. Both carriers have options as to how to deliver traffic to the other party. If those carriers cannot agree upon terms and conditions, either may petition the FPSC to arbitrate the unresolved issues.

FCTA: No. The terms and conditions that govern interconnection and intercarrier compensation should be negotiated by the carriers. It is not necessary for an originating carrier to have an interconnection agreement with the terminating carrier in order for the originating carrier to properly compensate BellSouth. If the terminating carrier elects to pursue compensation for this traffic, it should initiate negotiations with the originating carrier for the development of an interconnection agreement.

Joint CLECs: No. The Commission should establish such terms and conditions only if the parties ask for it in an arbitration proceeding. BellSouth's transit tariff would inappropriately require all carriers to have a traffic exchange agreement in effect as a prerequisite to receiving BellSouth's tariffed transit service.

Joint CMRS Carriers: No. Interconnecting carriers should follow the Act and FCC rules for the negotiation of agreements. If the most efficient network architecture for Small LECs to deliver their originated intraLATA traffic to CMRS providers is by sending it indirectly via BellSouth's transit service, then the Small LECs should negotiate appropriate agreements with BellSouth.

Verizon Access: The Commission should not establish such terms and conditions in this docket. In deciding this issue, the Commission should continue to permit CLECs to establish reciprocal

compensation arrangements with remote carriers through tariffs when the parties do not have an interconnection agreement.

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Verizon Wireless: The FCC's Declaratory Ruling and Report and Order in CC Docket No. 01-92 released February 24, 2005 (the "T-Mobile Decision") made it clear that the 1996 Act calls for negotiation and arbitration of direct and indirect interconnection arrangements. The Commission can only "establish" interconnection terms affecting CMRS providers pursuant to Section 252 process.

Staff Analysis: Issues 5, 8, and 9 describe various scenarios involving parties that are utilizing BellSouth's transit service. The carriers, regardless of whether or not they are a small LEC, CLEC or CMRS carrier, will originate or terminate calls that transit BellSouth's network. Staff notes there is an abundance of testimony suggesting the FPSC should not establish the terms and conditions governing the transit function. The majority of the parties point to successfully negotiated and arbitrated interconnection agreements that include terms and conditions for BellSouth's transit service, and the sheer volume of interconnection agreements as compared to the number of telecommunications service providers electing to not negotiate the transit function. (Guepe TR 277; Watkins TR 339; Gates TR 457, 465, 497; Sterling TR 594; Pruitt TR 632; Wood TR 702)

PARTIES' ARGUMENTS

AT&T witness Guepe states that under §251(b)(5) of the Act each local exchange carrier has a duty to establish reciprocal compensation arrangements for the transport and termination of local traffic. (TR 275) Therefore, he surmises, indirectly connected carriers fall under the umbrella of §251(b)(5) and are obligated to establish such arrangements. (TR 275) The AT&T witness concludes the FPSC should order the continuation of bill and keep arrangements based on an assumption that the traffic being exchanged is equal, and when the traffic is no longer balanced, the parties should negotiate further arrangements. (TR 277)

Small LECs witness Watkins argues that physical interconnections should not be "forced" on other carriers in the absence of an agreement that defines the terms and conditions related to that interconnection. (TR 339) He contends that BellSouth, because it is interconnected directly with the Small LECs' networks, should be required to establish contractual provisions that at a minimum:

(a) Identify the trunking facilities, physical interconnection point and scope of traffic.
(b) Establish authority for delivery of traffic from third parties over such facilities.
(c) Address abuse of the delivery of subject traffic.
(d) Ensure accurate and complete usage records are provided and identify procedures to address incomplete records.
(e) Coordinate billing, collection, compensation and auditing rights.
(f) Establish dispute resolution procedures.
(g) Define network change procedures regarding the tandem arrangement.

(h) Establish transit traffic threshold levels above which transit service would not be available
(i) Define enforcement actions by the transit provider for non-payment of transit service. (TR 339-341)

Witness Watkins states the list is not exhaustive and that these issues are "typically expected to be addressed through negotiations and agreements (and arbitrations, if necessary)." (TR 341) He further explains that the terms and conditions would be for all the carriers involved and would not just apply between the originating and terminating carriers, but would include the responsibilities of the transit provider. Thus, the agreement would be multilateral, encompassing at the very least, three parties. (TR 358)

In addition, he expresses concern that there are no statutory rights that would force CLECs into interconnection agreements with the Small LECs. He also indicates that based on his experience, BellSouth is resistant to "meaningful discussions" and the FPSC should approach the resolution of this issue in such a way as to prompt meaningful discussions. (TR 359)

BellSouth witness McCallen states that carriers have alternatives in deciding how they wish to route traffic. He argues carriers may elect to utilize BellSouth's transit service either through an interconnection agreement or the transit tariff. He explains carriers may elect to forego BellSouth altogether and use an alternative transit provider or in the extreme, block the traffic completely. (TR 61) Ultimately, argues witness McCallen, it comes down to a business decision. A carrier has a set of choices it must weigh if and when it decides to utilize BellSouth's transit service or elects to forego the transit function altogether and directly connect to the other carrier. (TR 62-63) The BellSouth witness concludes that under the Act originating and terminating carriers have an obligation to negotiate interconnection agreements and that both carriers have options, such as those above, in deciding how to deliver traffic to one another. (TR 71)

FCTA witness Wood also supports the §251/252 interconnection/arbitration process for agreements between carriers that elect to utilize BellSouth's transit service. He argues that the FCC changed its rules to promote agreements for intercarrier compensation arrangements. (TR 702) Witness Wood observes that the present proceeding arose from a dispute between the Small LECs and BellSouth. He argues the FPSC should focus on the dispute and not disrupt or set aside the interconnection agreements other carriers currently utilize to exchange traffic. (TR 706, 750)

The Joint CLECs in their brief state that the FPSC should reject the Small LECs three-party interconnection agreement as being "unnecessary, unworkable and administratively burdensome." (BR at 31) In the opinion of the Joint CLECs, the FPSC should reach the same conclusion that the Tennessee Regulatory Authority (TRA) did, citing the TRA as a state commission grappling with the same circumstances concerning transit traffic. The Joint CLECs submit that the TRA rejected the Small LECs' position concerning three-party interconnection agreements claiming the FCC discourages three-party agreements. (BR at 32) Additionally, Joint CLECs witness Gates states that he agrees with BellSouth witness McCallen that the FPSC should not establish the terms and conditions concerning the transit function between carriers. (TR 497) He argues that BellSouth's tariff, if it is allowed to remain in effect, sets the stage for

terms and conditions that are "one-sided terms in favor of BellSouth" and that the more appropriate terms and conditions for transit service should be arrived at through negotiation and, if necessary, arbitration with state commissions. (TR 497)

Joint CMRS Carriers witness Pruitt argues that there is precedent to conclude the FCC envisioned interconnection agreements between adjacent LECs such as BellSouth and the Small LECs when the FCC found in the Local Competition Order that the meaning of §252(i) is that "any interconnection agreement approved by a state commission, *including one between adjacent LECs,* must be made available to requesting carriers pursuant to section 252(i)." (Emphasis by witness)(TR 633) Witness Pruitt also states, when a Small LEC utilizes BellSouth's transit service without compensation, there is no reason BellSouth cannot seek to establish a §251/252 interconnection agreement within the requirements of the Act. (TR 634)

Verizon Wireless witness Sterling argues that the T-Mobile Decision "made it clear that the 1996 Act calls for negotiation and arbitration of direct and indirect interconnection arrangements." (TR 586) He bases his conclusion upon a carrier weighing network efficiency and opting for BellSouth's transit service; regardless of whether it is a CMRS provider or a Small LEC, the carrier is entitled to request interconnection and negotiate/arbitrate the arrangement. (TR 586) Witness Sterling states that the choice a carrier makes, such as utilizing indirect connections to transit its originated traffic to a third party, does not impose the same obligation on any other carrier. The other carriers, such as the Small LECs, should be free to determine exactly how they wish to route their end-user originated traffic. (TR 596)

ANALYSIS

Issues 5, 8 and 9 delve into the transit function and the fundamental relationships between carriers. Regardless of whether a carrier was originating or terminating transit traffic, all the parties were reluctant to have the FPSC establish terms and conditions governing the transiting relationship. (Guepe TR 277; Watkins TR 339; Gates TR 457, 465, 497; Sterling TR 594; Pruitt TR 632; Wood TR 702) Staff notes that the parties approached Issues 5, 8 and 9 by confining their arguments to a single issue and cross referencing the other issues. For example, the Small LECs witness Watkins stated in his analysis of Issue 8 that he had already discussed the issue in his responses to the other issue statements. (TR 363) Therefore, staff's analysis will be detailed within Issue 5 and following suit with the parties, will include Issues 8 and 9.

In every party's discussion, whether it was within Issue 5, 8 or 9, they all pointed to interconnection agreements already in place. Staff notes BellSouth witness McCallen listed over 275 companies within Florida that had agreements containing terms and conditions for transit service. (EXH 39) The number of existing agreements weighs heavily in staff's thinking. By setting the terms and conditions for BellSouth's transit service, the FPSC could undermine bargaining positions of carriers as they negotiate interconnection agreements at some later date. We agree with witness Woods that a carrier is in the best position to weigh terms and conditions in relation "to their traffic patterns, to their balance of traffic, to their locations, all of those things." (TR 766) Staff believes the terms and conditions that are appropriate for one carrier are unique to that single carrier and establishing terms and conditions that would work for all carriers is highly unlikely. As witness Woods states, ". . . this is not a one size fits all." (TR 766)

The Small LECs, in staff's opinion, seem reluctant to negotiate and instead want the Commission to order BellSouth to address the matters identified in "a" through "i" above. Staff believes that an interconnection agreement or transit arrangement would be more appropriate because it involves negotiation and possible arbitration between the Small LECs and BellSouth. Additionally, staff does not support the argument regarding the multilateral agreement suggested by Small LECs witness Watkins. We agree with the TRA's analysis and subsequent rejection of the Small LECs' multilateral agreements for transiting since the TRA relied on the FCC finding that ". . . opening the process to all third parties would be unwieldy and would delay the process." (Joint CLECs BR at 32)

Staff also agrees with the Joint CMRS Carriers that the FCC clearly envisioned there would be interconnection agreements between adjacent LECs and believes it is applicable to the current situation between the Small LECs and BellSouth. Staff notes Verizon Wireless' argument that the T-Mobile Order indicated that negotiations and arbitrations were recognized by the FCC as the more appropriate vehicle to deal with intercarrier relationships.

Staff concludes that carriers have options in deciding whether or not to connect directly or indirectly, and when indirectly connected, to utilize BellSouth's transit service or the transit service of another carrier (if it is available), or as a last resort to block their originating traffic by not activating certain NPA/NXXs within their switches. There are a myriad of business decisions concerning the operation of a carrier's telecommunications network. Staff believes the best avenue for carriers to develop terms and conditions for the various scenarios addressed in Issues 5, 8 and 9 is through negotiating transit arrangements.

CONCLUSION

The FPSC should not establish the terms and conditions governing the relationship between the originating carrier and the terminating carrier where BellSouth is providing transit service. The relationship should continue to be defined within bilateral interconnection agreements. Additionally, those situations involving Small LECs as originators and terminators utilizing BellSouth's transit service are best defined within bilateral transit arrangements.

Issue 6: Should the FPSC determine whether and at what traffic threshold level an originating carrier should be required to forego use of BellSouth's transit service and obtain direct interconnection with a terminating carrier? If so, at what traffic level should an originating carrier be required to obtain direct interconnection with a terminating carrier?

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Recommendation: No. The FPSC should not set a traffic threshold level. **(Trueblood)**

Position of the Parties

AT&T: No.

Small LECs: Yes. Generally speaking, a reasonable level of traffic for a threshold would be the amount of traffic that constitutes one T-1 of traffic usage. When the threshold is exceeded by an individual CLEC or CMRS provider, that provider would establish a single, dedicated T-1 trunk group for transit traffic.

BellSouth: No. The threshold for direct interconnection should be negotiated between the carriers that originate and terminate the traffic, and if those carriers cannot agree, either carrier may petition the FPSC pursuant to Section 252 of the Act to arbitrate the unresolved issues.

FCTA: No. Carriers should be permitted to determine how best to efficiently interconnect their networks.

Joint CLECs: No. The market can and does determine when it is appropriate to establish direct interconnection between two carriers for exchanging traffic that has been exchanged heretofore as transit traffic. This is especially true since BellSouth is being compensated for its role in transiting the traffic.

Joint CMRS Carriers: No. Each originating carrier is solely responsible for the methods it uses to deliver its traffic to the terminating carrier's network. As a practical matter, only the originating carrier is in a position to determine how best to route its traffic and meet the needs of its business.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: No. The Commission should allow carriers to make their own network engineering and economic determinations as to if and when it is appropriate to shift from indirect to direct connections. If there is a dispute between the originating and terminating carrier, the Commission may rule pursuant to section 252(c).

Staff Analysis: This issue addresses whether or not a traffic threshold level should be established for carriers transiting traffic through the BellSouth tandem. Small LECs witness Watkins believes that the FPSC should set the traffic threshold at a DS1 level that applies to all carriers. (TR 360) However, all other parties are in agreement that the FPSC should not set a traffic threshold level and argue that the decision to establish a direct interconnection should be left to the carriers using the transit service, based on the economic and engineering needs of the carriers. (McCallen TR 72; Gates TR 458; Guepe TR 277; Sterling TR 586; Pruitt TR 634).

PARTIES' ARGUMENTS

Small LECs witness Watkins states that the FPSC should establish a threshold level at which CLECs and CMRS providers would be required to establish direct interconnection with the Small LECs, thereby no longer commingling traffic with BellSouth and other carriers' traffic. (TR 325) While witness Watkins supports establishing a traffic threshold level, he does not believe that a rigid requirement would be appropriate. Instead, the witness believes the threshold level should be flexible because some carriers may want to continue to exchange traffic indirectly, even when some distinct threshold has been reached and exceeded, and they should be allowed do so under voluntary terms. (Watkins TR 360) Witness Watkins contends that the Small LEC is not required to subtend its end office to a BellSouth tandem, and BellSouth has no automatic right to commingle third-party traffic delivered to the Small LECs with its access or local traffic. The witness states that just because a specific level of traffic may be exceeded, this does not mean that the CLEC or CMRS provider has to build its own facilities to meet the Small LEC on its network. (TR 360) He asserts that the CLEC or CMRS provider could continue to interconnect indirectly with the Small LEC, but would do so using dedicated trunks, instead of commingling their traffic on BellSouth's common trunk group. (TR 360) Witness Watkins asserts that a reasonable level of traffic for a threshold, at which direct trunking could be required, would be the amount of traffic that constitutes one DS1. (TR 361)

Small LECs witness Watkins in his rebuttal testimony expresses disagreement with Joint CLECs witness Gates' assertion that the market can and should determine when it is appropriate to establish dedicated trunking arrangements. Witness Watkins asserts that traffic exchanged between Small LECs and CLECs is often out of balance. (TR 391-392) The witness contends that the CLECs want an interconnection arrangement that unduly burdens the Small LECs. He asserts that where there is EAS calling between the rural markets of the Small LECs and the urban markets of the CLEC, an ISP is able to offer Internet access to rural customers and to receive dial-up calls. (TR 391-392) However, he believes it is inequitable if the Small LEC, in order to send dial-up traffic to the ISP served by the CLEC, must pay BellSouth to transport traffic to the CLEC on its way to the ISP. (TR 391-392) Witness Watkins notes that the Small LECs agree with Joint CLECs witness Gates that if a threshold is established that it should be based on a sustained level of traffic over three consecutive months to account for isolated variations. (TR 393)

Joint CLECs witness Gates asserts that the market can, and should, determine when it is appropriate to establish a direct interconnection between two carriers that are transiting traffic through BellSouth's network. (Gates TR 459) To support his assertion witness Gates provides four reasons why the FPSC should not set a direct interconnection threshold.

- First, the market already provides the proper signals to determine the appropriate form of interconnection. (TR 460)
- Second, an arbitrary threshold will cause network duplication by forcing an originating carrier to interconnect directly with a terminating carrier. (TR 460-461)
- Third, a threshold would place inappropriate limitations on carriers that utilize transit service provided by BellSouth pursuant to §251 of the Act. (TR 462)
- Fourth, there is absolutely no basis for establishing a traffic threshold. (TR 462-463)

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Witness Gates believes direct interconnections between originating and terminating carriers are more efficient and economical when they are driven by the market. He asserts that if a traffic threshold level is set, that it should be higher than a DS1 and based on traffic patterns over three consecutive months to account for isolated spikes in transit traffic that could send a false signal that a direct interconnection should be established. (TR 464) Consequently, in rebuttal testimony the witness contends that Small LECs witness Watkins did not provide any basis for setting a direct trunk threshold at the DS1 level. He asserts that no threshold should be set because all direct trunking thresholds are by definition rigid and inflexible. (Gates TR 530) Witness Gates asserts that witness Watkins' proposal for a flexible threshold is not a realistic option. The witness believes that direct trunking decisions are most flexible when they are reached through negotiation between the parties, and he contends that the DS1 threshold level recommended by Small LECs witness Watkins may be the lowest capacity threshold available. He opines that while witness Watkins advocates a flexible threshold, he proposed possibly the most inflexible threshold available. (TR 530)

Witness Gates also contends that witness Watkins' proposal is vague and does not specify who would be required to pay for the dedicated facilities or whether the trunk would be one-way or two-way. He asserts that if the Small LECs' proposal is implemented, the Small LECs' customers could originate 100% of the DS1 level traffic, and the Small LECs would inappropriately shift their costs to the CLECs or CMRS providers who would be required to bear the cost to establish a direct connection when the threshold level is exceeded. (Gates TR 531) Witness Gates also disagrees with witness Watkins' assertion that carriers could still interconnect with Small LECs indirectly even if a threshold is established, but would do so using dedicated trunks instead of commingling their traffic on a BellSouth's common trunk group. The witness contends that a dedicated connection between a CLEC and a Small LEC, regardless of who actually owns the dedicated facility, is a direct connection - not an indirect interconnection. (Gates TR 532)

Sprint Nextel and T-Mobile witness Pruitt testifies that the originating carrier is responsible for paying the cost to deliver its traffic to the terminating carrier and, therefore, the originating carrier should decide when it is best to establish a direct interconnection with the terminating carrier. The witness asserts that direct trunks between the originating carrier's switch and the terminating carrier's switch should be based on the trunk capacity requirements of the traffic and the most economic means of transporting that traffic to the terminating carrier. He further asserts that facility prices vary by LEC and that an artificial threshold could create an unfair economic advantage for BellSouth and the Small LECs if dedicated meet-point facilities are established when it has been determined to be more economical to continue to utilize BellSouth's transit service. (Pruitt TR 634-635) Witness Pruitt asserts in rebuttal testimony that the distance between a tandem and end offices varies and transport costs are mileage-sensitive; therefore, the originating carriers should determine when direct interconnection is justified. (Pruitt TR 669) The witness contends that the FCC addressed and rejected the threshold issue in the Virginia Arbitration Order, and that there is no basis for a threshold to be set by the FPSC that would be contrary to FCC precedent. (Pruitt TR 669)

AT&T witness Guepe contends that the Act does not require carriers to establish direct trunking arrangements, which can be cumbersome and time consuming to develop. He believes

that a regulatory mandated threshold for direct interconnection with another carrier could impose unreasonable constraints on telecommunication carriers that may not be technically feasible. (TR 277) In a discovery response, Verizon Wireless witness Sterling agrees with witness Guepe that direct trunking arrangements to rural LEC networks can be more cumbersome and time consuming to develop. (EXH 2, p.195) Except for the Small LECs' witness, all the other witnesses agree that the decision to connect directly or indirectly with another carrier should be left to the originating carrier's discretion, based upon his network architecture and associated costs. (McCallen TR 72; Gates TR 460-461; Guepe TR 277; Sterling TR 586; Pruitt TR 634-635). They also agree that transport costs are mileage-sensitive, no volume threshold should be mandated, and that carriers should negotiate and arbitrate ICAs. (McCallen TR 72; Gates TR 460-461; Guepe TR 277; Sterling TR 586; Pruitt TR 634-635). BellSouth states in a discovery response that based on economics, if certain factors determine that it is more economical to establish a direct interconnection, and there is enough traffic to fill a DS1 (24 trunks) in one of the average Time-Consistent Busy Hours, a direct trunk group should be built. (EXH 2, pp. 19-22)

ANALYSIS

Other than the Small LECs, all of the parties oppose the FPSC establishing a traffic threshold level at which a carrier would be required to forego the use of the transit service provided by BellSouth. These parties believe that the decision to shift from an indirect interconnection to a direct interconnection should be made by the originating carrier based on its existing network and the costs to supplement its facilities. They testify that it is a business decision to choose when to directly interconnect with a Small LEC. (Gates TR 461; Pruitt TR 634; Guepe TR 277; Sterling TR 586; McCallen TR 72)

Small LECs witness Watkins is alone in his assertion that a threshold should be set by the Commission. The witness recommends a DS1 threshold but fails to provide a thorough justification to substantiate his proposal. Also, the Joint CLECs witness Gates argues that if a threshold is set by the FPSC then it should be at a level higher than a DS1. (Gates TR 464) The witness asserts that the DS1 threshold that the Small LECs propose is not flexible and may be the lowest capacity threshold available, which could increase costs in the greatest number of circumstances. (TR 530-531)

Staff believes the FPSC should not establish a traffic threshold because the parties are in the best position to make decisions regarding their networks. Specifically, staff believes the establishment of any threshold level for transit traffic should be decided by the carriers utilizing BellSouth's transit service because the economic crossover from indirect to direct interconnection will vary depending on volume, mileage, and the LEC's prices. Therefore, staff believes the record evidence weighs heavily on the side of not mandating direct interconnection based upon a specified threshold of any kind.

CONCLUSION

The FPSC should not set a traffic threshold level.

Issue 7: How should transit traffic be delivered to the Small LEC's networks?

Recommendation: Transit traffic should be delivered to the Small LECs' networks utilizing efficient network engineering developed through mutual agreement between BellSouth and the Small LECs. (**Vickery**)

Position of the Parties

AT&T: The delivery of transit traffic to the small LECs is a network engineering decision that is best left to the parties to negotiate. Traffic should be delivered in the most economically and technically feasible manner that the carriers decide and agree upon.

Small LECs: Subject to and apart from specific negotiated arrangements, BellSouth should be required to establish separate trunk groups for CLEC and CMRS provider local transit traffic, to avoid commingling such traffic with toll/access traffic.

BellSouth: Most third-party carriers interconnect with the BellSouth's network at the tandem. Calls are routed from the tandem over the common trunk group to the ICO network.

FCTA: The FCTA does not have a position on this issue.

Joint CLECs: Traffic should be delivered in the most economically and technically feasible manner.

Joint CMRS Carriers: As a practical matter, transit traffic should be delivered to the Small LECs' networks in the most economically and technically feasible manner possible. It is incumbent upon the transit service provider and the Small LEC to determine how best their respective networks should be interconnected to deliver transit traffic.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: Through common transport facilities at the point of interconnection between the small LEC and BellSouth.

Staff Analysis: This issue was primarily addressed by the Small LECs and BellSouth, and concerns the termination of traffic on the Small LECs network that has transited BellSouth's network. The Small LECs want the FPSC to require separate and distinct trunk groups for CLEC and CMRS carrier traffic, which it claims, is being commingled on common carrier trunk groups used for local access.

PARTIES' ARGUMENTS

AT&T, the Joint CLECs, the Joint CMRS Carriers and Verizon Wireless all indicate that transit traffic should be delivered to the Small LECs in the most economically and technically feasible manner possible. (AT&T BR at 8; Joint CMRS Carriers BR at 19); Verizon Wireless BR at 3) The FCTA and Verizon Access did not address this issue. (FCTA BR at 16; Verizon Access BR at 1)

AT&T witness Guepe argues there is no need to change the way transit traffic is delivered unless the parties mutually agree to effect changes. (TR 278) Both parties have to weigh the various options and decide what the best solution is. (TR 298) He states it is the Small LECs that decide to send traffic indirectly because that is the way they choose to interconnect; there is nothing preventing them from asking for direct interconnection other than the fact that none have asked to do so. (TR 299)

Small LECs witness Watkins argues that the trunking arrangements between the Small LECs and BellSouth following the breakup of AT&T address intraLATA toll traffic that is subject to the terms and conditions of access tariffs. (TR 329) He surmises that BellSouth unilaterally decided to provide its transiting service to CMRS carriers and CLECs using those same intraLATA toll trunks, including ones established for Commission-ordered EAS routes. (TR 329) He argues that at the request of a Small LEC, BellSouth should be required to establish separate trunks to deliver third-party transit traffic rather than commingle it with "toll traffic." (TR 362)

BellSouth witness McCallen states that calls from third party carriers (CLECs and CMRS carriers) interconnect with the BellSouth network at the tandem office and that the calls are then routed over the common trunk group to the Small LECs' network. (TR 72) He also indicates that some traffic may be routed over the EAS trunk group (Id.) The witness contends that BellSouth is "willing to provide an efficient and valuable means" for Small LECs to send their originated traffic over a common trunk group to other carriers networks through BellSouth's network; it simply wants to be compensated for the service. (TR 61) Moreover, BellSouth asserts in its brief that the Small LECs provide no authority for segregating traffic that has traditionally been delivered over the common trunk group onto separate and distinct trunk groups for a particular carrier. (BR at 16)

In addressing the Small LECs' argument regarding EAS trunks, the BellSouth witness admits that previously no other carrier, other than BellSouth, served an EAS destination. However, because circumstances have changed a CLEC could be serving that former BellSouth EAS destination. A small LEC would not only have to perform a local number portability query to determine the proper routing of the call, but it would also incur the transit service fee. He indicates the small LEC may not know that the former BellSouth EAS customer had ported his number to a CLEC. Witness McCallen argues that it is "just part of the business and industry of where we are now." (TR 198-199) He states the Small LECs could elect to not activate the NPA/NXX codes in their switches. This would result in the Small LECs' end users not being able to complete local calls to certain carriers, which is known in the industry as blocking. Witness McCallen states it is a viable option to avoid paying a transit service fee. (TR 200) He recalls a scenario involving a rural LEC that employed this technique (call blocking) to get a CLEC to the negotiating table. (TR 200)

Joint CMRS Carriers witness Pruitt agrees that the commingling of traffic on trunk groups is an efficient method of routing traffic, is technically feasible and is a common industry practice. (TR 671) Witness Pruitt argues that should the FPSC require the establishment of distinct trunks for transiting CLEC traffic, it would be contrary to an interconnecting carrier's right under the Act to choose to either connect directly or indirectly with a small LEC's network.

(TR 671) He states "[a] common pipe also works efficiently in the opposite direction, allowing the small LEC to bundle its outbound traffic on a single facility, gaining economies of scale." (TR 671) He believes BellSouth should be allowed to continue its practice of commingling transit traffic as long as it can provide properly timed calls and industry standard records. (TR 672)

ANALYSIS

Directing BellSouth to deliver transit traffic to the Small LECs on specific and distinct trunk groups, in lieu of using existing common transport trunk groups, is not supported by the record in this proceeding. Staff is not swayed by the Small LECs' argument concerning EAS routes and the possibility that CLECs acquired BellSouth's customers. The Small LECs witness indicated that TDS Telecom, GT Com, and Northeast Florida Telephone Company do not exchange any transit traffic on the EAS routes with BellSouth. (Watkins TR 399)

In lieu of using BellSouth's transit service, it was suggested that the Small LECs could de-activate the NPA/NXX codes of CLECs or CMRS carriers which prevents the Small LECs' end users from being able to complete certain calls as local calls. Staff is reluctant to support this option since there are alternatives available. Specifically, the Small LECs may elect to utilize the transit service of BellSouth with its associated fees, or request interconnection and negotiation with the terminating carrier for direct interconnection. These options, as indicated by the arguments above, are best left to the parties based on their evaluation of the economics of the situation.

Staff recognizes that BellSouth, through its legacy network, is in the best position to offer transit service. At this time, changing the way transit traffic is being delivered may place additional costs on both BellSouth and the Small LECs. Requiring distinct trunk groups and direct interconnection does not appear warranted, particularly when the Small LECs suggest the change only when there is not an agreement already in place. Staff finds support for distinct trunk groups for CLECs and CMRS carriers to be non-existent and believes the requirement should not be imposed on BellSouth, particularly when there are successful agreements in existence.

Staff agrees that BellSouth should furnish sufficiently detailed call information to allow billing by the terminating carrier to the originating carrier. Staff notes that the Small LECs responded that they did not have the independent means to bill transit traffic that is commingled on common trunk groups. (EXH 2, p. 104) However, the Small LECs supported the option of being able to voluntarily continue their subtending arrangements with BellSouth or to discontinue and deploy their own tandem switch. Staff believes this is indicative of the business decisions involved in the transiting arrangement. Having this Commission mandate how CLEC and CMRS carriers interconnect, while allowing Small LECs to negotiate interconnection terms, is inconsistent and inequitable. Staff believes the appropriate solution involves negotiated agreements between the Small LECs and BellSouth that address the individual situations of the Small LECs and BellSouth rather than a one-size-fits-all regulatory requirement.

CONCLUSION

Transit traffic should be delivered to the Small LECs' networks utilizing efficient network engineering developed through mutual agreement between BellSouth and the Small LECs.

Issue 8: Should the FPSC establish the terms and conditions that govern the relationship between BellSouth and a terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

Recommendation: This issue is subsumed in the recommendation for Issue 5 and no vote is necessary. (Vickery)

Position of the Parties

AT&T: No.

Small LECs: Yes. Such terms and conditions should be established by the FPSC absent contractual agreements addressing the rights and responsibilities of all of the participants. The Commission should resolve open issues to the extent voluntary negotiations do not result in agreements.

BellSouth: No. BellSouth is not required, but willing to provide transit service. BellSouth's Transit Tariff contains sufficient terms and conditions regarding its relationships to the originating and terminating carriers involved in transit traffic. Additionally, BellSouth is willing to negotiate interconnection agreements with carriers addressing transit traffic service.

FCTA: No. The terms and conditions that govern interconnection and intercarrier compensation should be negotiated by the carriers. It is not necessary for an originating carrier to have an interconnection agreement with the terminating carrier in order for the originating carrier to properly compensate BellSouth.

Joint CLECs: No. Transiting arrangements in ICAs sufficiently establish this relationship. No additional terms and conditions are necessary. Parties can request negotiation, and if needed, arbitration with other parties related to transiting arrangements and compensation. Broader Commission involvement into transiting carrier - terminating carrier relationship is unnecessary.

Joint CMRS Carriers: No. Section 251(a) of the Act imposes a duty upon all telecommunications carriers to interconnect directly or indirectly with other telecommunications carriers. Each carrier should establish interconnection agreements with BellSouth for the exchange of traffic using BellSouth's transit service. Originating and terminating carriers may use a bill-and-keep arrangement.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: See Response to Issue No. 5. The terminating carrier, should it desire to do so, has the right to request negotiation of an interconnection agreement with the originating carrier.

Staff Analysis: This issue is subsumed in the recommendation for Issue 5.

Issue 9: Should the FPSC establish the terms and conditions of transit traffic between the transit service provider and the Small LECs that originate and terminate transit traffic? If so, what are the terms and conditions?

Recommendation: This issue is subsumed in the recommendation for Issue 5 and no vote is necessary. (**Vickery**)

Position of the Parties

AT&T: No.

Small LECs: Yes. *See* the Small LECs' responses to Issues 5 and 8.

BellSouth: No. The carrier originating the traffic has the obligation, to negotiate the rates, terms and conditions with the terminating LEC. No carrier is obligated to provide a transit function. Carriers must negotiate with the transiting company. If a carrier refuses to negotiate yet uses those services, transit providers should be compensated.

FCTA: No. These terms and conditions should be negotiated by the carriers. The Commission's involvement should be limited to those occasions in which the parties are unable to reach an agreement and have submitted the dispute to the Commission for arbitration.

Joint CLECs: No. Terms and conditions of transit traffic between BellSouth and small LECs should be established as they are established between BellSouth and CLECs – negotiation and ICA. Since transit service must be provided in a nondiscriminatory manner, the means to establish transit terms and conditions should be the same for all carriers.

Joint CMRS Carriers: No. Section 251(a) of the Act imposes a duty upon all telecommunications carriers to interconnect directly or indirectly with other telecommunications carriers. Each carrier should establish interconnection agreements with BellSouth for the exchange of traffic using BellSouth's transit service. Originating and terminating carriers may use a bill-and-keep arrangement.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: See Responses to Issue No. 5 and Issue No. 8. Further, the Commission should clarify that the originating carrier is responsible for transit fees charged by the transit service provider.

Staff Analysis: This issue is subsumed in the recommendation for Issue 5.

Issue 10: What effect does transit service have on ISP-bound traffic?

Recommendation: Transiting ISP-bound traffic is no different than transiting voice traffic. In both cases, the intermediary carrier's facilities being used to route or transit the traffic to a third-party terminating carrier are the same. Therefore, transiting has no effect on ISP-bound traffic. **(P. Lee)**

Position of the Parties

AT&T: Transit Service has no effect on ISP bound traffic.

Small LECs: The Commission does not have the authority to approve BellSouth's Transit Tariff as it includes the transiting of ISP-bound traffic which is an interstate service. The FCC's limit of $0.0007 per MOU to recover all costs for ISP-bound traffic confirms no compensation for transiting should be paid.

BellSouth: ISP traffic is included in transit traffic charges. BellSouth is neither the originator nor terminator of the ISP traffic and should be compensated for the use of the network. The originating carrier, as the cost causer, should compensate other carriers that assist in the termination of such traffic.

FCTA: The FCTA does not have a position on this issue.

Joint CLECs: Transiting allows Carrier A's customer (dial-up internet subscriber) to call Carrier B's customer (ISP) through indirect interconnection. It lets the user access the Internet where its carrier is not directly interconnected with his/her ISP's carrier. A high transit rate would significantly increase costs for dial up internet service.

Joint CMRS Carriers: CMRS providers do not regularly or routinely handle this type of traffic

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: It is technically feasible to route ISP traffic over transit facilities. Verizon Wireless does not terminate ISP traffic routed from BellSouth's transit facilities.

Staff Analysis: This issue addresses the effect of routing ISP-bound traffic over an intermediary carrier's network.

AT&T, BellSouth, and Joint CLECs opine that transiting ISP-bound traffic is no different than transiting voice traffic; the transiting function is indifferent with regard to the types of traffic being transited. (McCallen TR 65, 87; Guepe TR 278, 288-289; Gates TR 469-471; EXH 2, pp. 139-140, 166.1) Small LECs argue that such a position ignores the jurisdictional nature of ISP-bound calls, as well as the financial implications to the originating carriers and the pronouncement of the FCC regarding intercarrier compensation for ISP-bound calls. (Watkins TR 363-368; Small LECs BR at 31) Small LECs argue in their brief that the Commission lacks authority to authorize a transit fee for ISP-bound traffic because this traffic is jurisdictionally interstate. (BR at 30; ISP Remand Order ¶¶55, 57, 58, 65)

BellSouth witness McCallen asserts that Independent Telephone Companies (ICOs) that send their originated ISP-bound traffic to BellSouth are using BellSouth's network and transit service, and should compensate BellSouth. (TR 65, 74, 87-88) Witness McCallen explains that the transit tariff addresses traffic that uses the BellSouth network -- that is, traffic exchanged between two non-BellSouth Telecommunications Service Providers (TSPs). As such, adds the witness, the tariff has nothing to do with reciprocal compensation that BellSouth pays to or receives from other TSPs; it simply provides for compensation from TSPs that use BellSouth's network. (TR 65) Notwithstanding this, because the hold times for a call terminated to an ISP are typically longer than a traditional local voice call, BellSouth witness McCallen and the Small LECs' witness Watkins note that the resulting transit charges could be substantial and may exceed the amount billed by the originating carrier to its subscriber for local service. (McCallen TR 153; Watkins TR 365) Joint CLECs witness Gates contends the problem centers on BellSouth's transit tariff rate. (TR 472)

Joint CLECs witness Gates explains that in an ISP-bound situation, the transit function allows a dial-up Internet subscriber to access the Internet without the subscriber's service provider being directly interconnected with an ISP carrier. (TR 469-470) This, the witness believes, fosters choice and expands the benefits of the Internet to a larger group of Floridians. (TR 470) The witness asserts that dial-up Internet access is the universal service equivalent of a primary line for voice service. Dial-up access is important to rural consumers where broadband is not always available, and competitive alternatives such as Digital Subscriber Line (DSL) and cable broadband are limited. (Gates TR 470-472)

In contrast, Small LECs witness Watkins believes it is the CLECs and CMRS providers that have requested and are using BellSouth's transit service, whether transiting voice or ISP-bound traffic, and those carriers, not the small LECs, should provide compensation to BellSouth. (TR 363-364) In any event, contends witness Watkins, BellSouth and the CLECs have been providing dial-up ISP-bound transit traffic service to ISPs without any charge to the Small LECs for as long as ISP-bound traffic has existed and for as long as BellSouth has been providing transit arrangements. (TR 365)

Effect of transit tariff rate on ISP-bound traffic

Joint CLECs witness Gates and Small LECs witness Watkins believe that BellSouth's transit tariff rate will significantly increase and detrimentally impact the availability of ISP service. Witness Gates and witness Watkins point out that in the ISP Remand Order, the FCC reduced compensation rates for ISP-bound traffic to $0.0007 per MOU. BellSouth's transit tariff rate is 329% higher than the ISP-bound total intercarrier compensation rate, thus contradicting the FCC's holdings in the ISP Remand Order. (Watkins TR 364-365; Gates TR 472) Such an increase in transit costs, contends Joint CLECs witness Gates, will translate into increased customer rates that could well result in end users canceling Internet accounts, thus detrimentally impacting the market. (TR 471-472) Small LECs witness Watkins contends that the FCC's $0.0007 per MOU intercarrier compensation rate recovers all costs for ISP-bound traffic and so no separate compensation for transiting is warranted. (TR 364; Small LECs BR at 31)

Nonetheless, asserts witness Watkins, if the Small LECs are "forced" to pay for BellSouth's transit service, the Small LECs would be subjected to adverse economic

consequences. The amount of originated dial-up ISP-bound traffic could be large for some Small LEC end users, resulting in potentially high charges to the Small LEC. "The Small LECs do not intend to be responsible for such compensation and would not voluntarily participate in such transit arrangements if they were to be subjected to such compensation obligations." (TR 364-366)

ANALYSIS

In the Core Decision, the D.C. Court of Appeals explained that before the advent of high-speed broadband connections, customers generally gained access to the Internet through dial-up connections provided by the LEC. In such a situation, a customer uses a phone line provided by the LEC to dial the local telephone number of an ISP, which then connects the customer to the Internet. Typically, the ISP subscribes to a CLEC that interconnects with the incumbent. A customer who dials-up to the Internet usually obligates an originating ILEC to transfer the call to a CLEC, which then delivers the call to the ISP. (Core Decision, p. 3)

In its ISP Remand Order, the FCC determined that the categories of traffic listed in §251(g)[19] are excluded from the mandatory reciprocal compensation obligations of §251(b)(5).[20] (ISP Remand Order ¶¶31-37) The FCC held that ISP-bound traffic is properly classified as interstate and subject to the FCC's regulatory authority under §201. (ISP Remand Order ¶1, 3, 30, 52) The FCC stated that the record in that proceeding failed to demonstrate there were different costs in delivering ISP-bound and local voice traffic to warrant disparate treatment under §251(b)(5). (ISP Remand Order ¶92) These holdings were upheld by the D.C. Circuit Court in the Core Decision. (Gates TR 468-469)

Staff observes that the central theme to the Small LECs' arguments is that they should not be assessed a transit rate because 1) BellSouth has not assessed a charge in the past and 2) the FCC's interim intercarrier compensation rate in the ISP Remand Order recovers all costs for ISP-bound traffic including transit costs. The arguments as to whether or not the Small LECs should pay transit costs are addressed in Issue 2 and will not be restated here. Staff believes that this issue does not address intercarrier compensation for ISP-bound traffic, but simply addresses compensation for the routing of ISP traffic over an intermediary carrier's network to a third-party carrier, who terminates the traffic. As such, transiting of ISP-bound traffic is independent from the reciprocal compensation requirements set forth in the ISP Remand Order.

AT&T, BellSouth, Joint CLECs, and Joint CMRS Carriers assert that an ISP call that transits BellSouth's network uses the same facilities under the same processes that any other similarly-routed local call uses. (EXH 2, pp. 14, 140, 166.1, 224) The functions performed in transiting a call are not dependent on the call's termination point, terminating carrier, the type of call, or the network protocol used on the terminating end. The transit provider performs a switching function when an originating and terminating carrier are both directly interconnected to the transit provider's network, and a transport function is required to meet the facilities of one

[19] Section 251(g) provides that "each local exchange carrier . . . shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers . . ."

[20] Section 251(b)(5) imposes a duty on all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."

or both of the interconnected carriers. Therefore, the charges for transiting ISP-bound traffic should be the same as transiting other types of traffic, although there is disagreement with respect to the transit rate. (EXH 2, pp. 15, 167, 224-225; Guepe TR 278) 121

Staff believes that the record evidence overwhelmingly supports the conclusion that the routing of ISP-bound traffic over BellSouth's network has no effect on the compensation associated with terminating this traffic. There is nothing to suggest a need to change the FCC's reciprocal compensation requirements. (McCallen TR 65, 88-89; Guepe TR 278) Simply stated, whether a call originates from an ICO end user, transits BellSouth's network, and ultimately is delivered to a CLEC's end user or a CLEC's ISP provider, staff agrees with BellSouth, AT&T, and the Joint CLECs that BellSouth's network has been used, and BellSouth is entitled to compensation.

CONCLUSION

Transiting ISP-bound traffic is no different than transiting voice traffic. In both cases, the intermediary carrier's facilities being used to route or transit the traffic to a third-party terminating carrier are the same. Therefore, transiting has no effect on ISP-bound traffic.

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Issue 11: How should charges for BellSouth's transit service be determined?
(a) What is the appropriate rate for transit service?
(b) What type of traffic do the rates identified in (a) apply?

Recommendation: BellSouth's transit charges should be calculated by applying the transit rate to the local usage transited between the carriers.

(a) Staff recommends that an appropriate rate for transit service is no higher than $0.0023 per MOU.

(b) The transit rate is applicable to local traffic and local ISP-bound traffic that transits BellSouth's network to a third party. **(P. Lee)**

Position of the Parties

AT&T: The rates, terms and conditions for the provision of transit service should be those negotiated by the specific carrier and BellSouth and set forth in an agreement between the carrier and BellSouth.

Small LECs: If the Commission approves a charge for BellSouth's transit service, the rates should be no higher than the rate that would apply for BellSouth's equivalent interstate access services. For ISP-bound traffic, no transit rate should be approved. However, if the Commission determines that transit should apply to ISP-bound traffic, the Commission should establish a rate that is less than the reciprocal compensation rate established by the FCC for ISP-bound traffic.

BellSouth: BellSouth will apply the transit traffic rate to the local usage and local ISP-bound usage transited between other carriers.

(a) BellSouth has established a composite transit tariff rate for all entities of $0.003 per MOU. This rate is comparable to rates in recently negotiated agreements between BellSouth and CLECs, and between BellSouth and CMRS carriers.

(b) The rates apply to local traffic and local ISP-bound traffic originated by a carrier, handed to BellSouth for transiting and ultimate delivery to the appropriate terminating third-party carrier. Either the rate established by BellSouth's Transit Tariff or within an agreement addressing transit traffic with the originating carrier would apply.

FCTA: The appropriate rate for transit service is the rate negotiated by the parties to an interconnection agreement. If no agreement is reached and the issue is submitted for arbitration, the appropriate rate is a cost-based rate as determined by the Commission. This rate would apply whenever a carrier that is not the originating or terminating carrier delivers a local call to the terminating carrier so that the call can be completed.

Joint CLECs: Sections 251(a) and 251(c) require BellSouth to provide transit service. §251(c)(2)(D) requires interconnection ". . . in accordance with . . . the requirements of this section and section 252." Section 252(d) requires transit rates to be TELRIC-based. If a single per-minute of use rate is used, it should be no more than $0.0009368.

Joint CMRS Carriers: Pursuant to section 251(c)(2) of the Act, interconnection obligations are required to be provided through rates, terms and conditions that are just, reasonable and nondiscriminatory. Section 252(d) provides the methodology that ILEC must use in developing costs for transporting or terminating calls. The prescribed methodology is TELRIC.

(a) A TELRIC-based rate for BellSouth's interconnection transit service should be no higher than $0.0009441 per minute of use.

(b) The rate applies to any non-access traffic that is to be transited to third party.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: Verizon Wireless does not take a position as to the appropriate rate for BellSouth's transit service.

Staff Analysis: This issue addresses the rate to be paid to BellSouth when it transits traffic, thereby connecting carriers that are not directly interconnected. Staff believes the salient question before the Commission is whether or not BellSouth has a duty to provide a transiting function, as this answer directly affects the pricing standard and appropriate rate.

PARTIES' ARGUMENTS

1. How should charges for BellSouth's transit service be calculated?

BellSouth witness McCallen asserts that BellSouth will apply the transit traffic rate to the local usage transited between other carriers. The witness explains that the local traffic can be identified by one of the following means:

- The originating carrier recording and reporting the actual local usage;
- The originating carrier providing a Percent Local Usage (PLU) factor based on their own traffic study; or
- BellSouth providing a PLU factor for the originating carrier based on traffic studies. (McCallen TR 74)

Aside from the parties' disagreement on the appropriate rate, no other party presented testimony on how charges for BellSouth's transit service should be calculated.

2. Is provisioning transit service a §251 obligation?

BellSouth maintains it has no §251 obligation or any other obligation to provide transit service, but will do so voluntarily as long as it is fairly compensated for the use of its network. BellSouth is willing to provide transiting because it has a ubiquitous network that is interconnected with most Telecommunications Service Providers (TSPs) in its region. (Blake TR 218, 224, 231-232; McCallen TR 62, 73, 82, 89; BellSouth BR at 1) BellSouth witness Blake asserts that §251(a)(1) imposes obligations on any two carriers to interconnect their networks either directly or indirectly; it does not address a third carrier's obligation to facilitate the indirect interconnection. (TR 218, 224) Therefore, such an obligation is beyond what Congress intended. (EXH 5, p. 13; Blake TR 224) Moreover, purports witness Blake, the FCC specifically declined

to require transiting in the TRO, and the Wireline Competition Bureau declined to require such in the Virginia Arbitration Order; the FCC is seeking comment on this issue in the ICF FNPRM. (TRO ¶534, fn 1640; Blake TR 224-225; BellSouth BR at 18-19) Witness Blake contends that while the FCC has not expressly held that transit service is not a §251 obligation, it has "refused to make it a requirement to date, notwithstanding many opportunities to do so." (TR 225) Additionally, states witness Blake, the Commission concluded that transit service is not a §251 obligation in the Joint Petitioners' Order. (Blake TR 228, 539; Joint Petitioners' Order, p. 52) Finally, contends witness Blake, the issue of whether transiting is a §251 requirement is not an issue identified to be addressed in this proceeding. (TR 218)

FCTA, Joint CLECs, and Joint CMRS Carriers aver that transit service is a §251 obligation, a point they claim BellSouth conceded in a North Carolina proceeding.[21] (Bishop TR 253-258; Gates TR 446, 473-475, 487-489; Pruitt TR 616-617, 622-623, 675-677, 680; Wood TR 711-717; EXH 2, p. 261) Joint CMRS Carriers and Joint CLECs opine that even though the word "transit" is not used in §251, §251(a)(1) specifically calls for direct and indirect interconnection, and indirect interconnection is dependent on transit service, thereby implying a transit obligation. (Gates TR 444-445, 487-490; Pruitt TR 622-623, 675-677, 680; Joint CMRS Carriers BR at 27) Moreover, asserts Joint CLECs witness Gates, BellSouth's allowance that it will provide transiting because it has an interconnected ubiquitous network is the very reason why Congress imposed additional obligations in §251(c) on ILECs. (McCallen TR 63; Gates TR 488-489) Additionally, FCTA purports that no evidence was provided, other than a website, that there are alternative transit providers in Florida. (Wood TR 710, 746-747; 756) Joint CLECs believe that if transit service is not a §251 obligation, as BellSouth alleges, carriers will be required to establish direct interconnection facilities with every local carrier regardless of cost. (Gates TR 447) Finally, Joint CLECs argue in their brief that if transiting is not a §251 obligation, it makes no sense that BellSouth has included it in hundreds of ICAs. (BR at 4)

FCTA witness Wood asserts that contrary to BellSouth's contention, the TRO and the Virginia Arbitration Order simply note that the FCC has not yet made a determination whether or not transit service is a §251 obligation. (Wood TR 711-713; Virginia Arbitration Order ¶¶117-118; Joint CMRS Carriers BR at 27) However, contends the witness, in the ICF FNPRM the FCC recognizes the importance of transit service in establishing indirect interconnection, stating that transiting is an explicit form of interconnection supported by the Act, and seeks comment on its legal authority to require transit obligations pursuant to §251. (Wood TR 713-714; ICF FNPRM ¶¶125-126) Thus, opines witness Wood, the FCC is considering the very same issues as BellSouth is attempting to force the Commission to address now. (TR 441-442)

Joint CLECs argue that the Commission's decision in the Joint Petitioners' Order, that transit service is not a §251 obligation, is not controlling in this instant proceeding because that was a bilateral arbitration where non-arbitrating parties were not allowed to intervene, and the record in the instant proceeding is significantly different. (Gates TR 539; Pruitt TR 680-681; Joint Petitioners' Order, p. 52)

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[21] Recommended Arbitration Order, issued July 26, 2005, Docket Nos. P-772, Sub 8, P-913, Sub 5, P-989, Sub 3, P-824, Sub 6, P-1202, Sub 4, In Re: Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc., pp. 52-54.

MetroPCS witness Bishop believes the FCC's Qwest Declaratory Ruling and subsequent Qwest NAL indicate that the FCC believes that transit service is governed by §251(c). (TR 254-256; Qwest Declaratory Ruling ¶¶8, 12, fn 26; Qwest NAL ¶¶15, 25-42) The witness asserts that when the FCC proposed to fine Qwest for failing to file agreements that dealt with transit service, a requirement that the FCC previously held applies to agreements that provide for ongoing obligations under §251(b) and §251(c), the FCC necessarily found that transit service is governed by §251(c). (TR 255-256; EXH 24) Finally, FCTA witness Wood, Joint CLECs witness Gates, and Sprint Nextel and T-Mobile witness Pruitt, cite to other state commission and district court decisions[22] they believe conclude that ILECs are obligated to provide transit service. (Gates TR 446-447, 489-490; Pruitt TR 620-622; Wood TR 714-717)

3. Should the Commission establish a rate for transit service?

All parties agree with BellSouth that it should be compensated when providing transit service. (McCallen TR 61, 201-202; Guepe TR 272-274, 281; Watkins TR 350-351, 377, 385-386; Gates TR 454; Sterling TR 581; Pruitt TR 629-631; Wood TR 708) BellSouth witness McCallen testifies that BellSouth has negotiated transit-related provisions with many carriers and continues to negotiate with carriers that do not have transit agreements. (TR 81, 98; EXH 6, p. 51; EXH 8; EXH 39) However, there are service providers who have not negotiated with BellSouth and yet continue sending transit traffic over BellSouth's network without compensating BellSouth. (BellSouth BR at 1) Through its filed tariff, BellSouth seeks a transit rate to apply in order to be compensated for providing transit services when there is no negotiated agreement in place. (BellSouth BR at 5)

Joint CLECs witness Gates opines that transit rates should be established through the interconnection negotiation process. (EXH 17, p. 32) Small LECs witness Watkins opines that the Commission has no authority to set a transit rate for ISP-bound traffic because it is an interstate service. This argument is addressed in Issue 10.

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[22] Arbitration Award Track 1 Issues, Public Utility Commission of Texas, issued February 22, 2005, In Re: Arbitration of Non Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreements (Texas Arbitration Award). Order 11: Commission Order on Arbitrator's Award, State Corporation Commission of Kansas, Docket No. 05-ABIT-507-ARB, issued July 21, 2005. Michigan Bell Telephone Co, d/b/a Ameritech Michigan v Laura Chappelle, et al., Case No. 01-CV-71517, United States Court for the Eastern District of Michigan, Southern Division, 222 F. Supp. 2d 905; 2002 U.S. Dist. LEXIS 15269, August 12, 2002. (Chapelle Decision) Order of Arbitration Award, Tennessee Regulatory Authority, Docket No. 03-00585, issued January 12, 2006, In Re: Petition of Arbitration of Cellco Partnership d/b/a Verizon Wireless; Petition for Arbitration of BellSouth Mobility LLC, BellSouth Personal Communications, LLE Chattanooga MSA Limited Partnership, collectively d/b/a Cingular Wireless; Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless; Petition for Arbitration of T-Mobile USA, Inc.; and Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS. Kentucky Public Service Commission Order in Case No. 2004-00044, issued September 26, 2005, In Re: Joint Petition for Arbitration of NewSouth Communications Corp., Nuvox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. of Lexington, LLC and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended.

4. What is the appropriate transit rate?

BellSouth witnesses Blake and McCallen assert that there is no legal requirement that the transit service BellSouth voluntarily provides be priced at Total Element Long-Run Incremental Cost (TELRIC) or at cost-based rates, arguing that the interconnection provisions of §251 do not require BellSouth to provide the service. (McCallen TR 89-90; Blake TR 227, 231-232) The witnesses allege that even if the FCC were to impose a transiting obligation, there is no indication that TELRIC rates would apply. (McCallen TR 83-90; Blake TR 225) As support for BellSouth's view, witness Blake proffers that the Commission held in the Joint Petitioners' Order that transit service should not be priced at TELRIC since it has not been determined to be a §251 Unbundled Network Element (UNE). A similar conclusion should be afforded in this instant proceeding, asserts the witness. (Joint Petitioners' Order, pp. 49-53; TR 218) Also, the witness notes that the Kentucky Commission found that BellSouth has a requirement to transit third-party traffic, but that requirement is not a §251 obligation and therefore not subject to TELRIC pricing. (TR 230)

BellSouth witness McCallen proffers that BellSouth's transit rate of $0.003 per MOU is a market-based composite rate. The rate, opines the witness, is comparable to the transit rates in agreements recently negotiated between BellSouth and CLECs and between BellSouth and CMRS carriers, thus establishing a valid market-based rate level. (TR 67, 75, 89, 97, 113; EXH 8; EXH 39) Witness McCallen readily admits that BellSouth did not submit any cost support for its transit rate; there was no reason to do so, contends the witness, since the rate is market-based. (TR 203-204)

BellSouth witness McCallen describes the cost components of transit service as:

- Tandem switching per MOU;
- Tandem trunk port per MOU;
- Common transport per mile; and
- Common transport facilities termination per MOU. (TR 110-113, 169; EXH 6, p. 61-66)

However, rather than using separate elemental rates, BellSouth has chosen to establish a single composite rate. (McCallen TR 112)

BellSouth witness McCallen states that the transit rate is intended to recover not only the cost of providing the transit service, but also an "added value." (TR 110-113) Witnesses McCallen and Blake assert that BellSouth's transit service is a valuable service in that it allows the originating carriers to place calls to the networks of other TSPs in instances where the originating carrier and the terminating carrier are not directly connected. This arrangement allows originating carriers to avoid the expense of building facilities to directly interconnect with all other TSPs. (McCallen TR 60-63, 98-99; Blake TR 232) Witness McCallen opines that BellSouth is willing to provide the efficient and valuable transiting service in return for "receiving appropriate market comparable compensation for the use of its network." (TR 98-99)

In contrast, all other parties urge the Commission to reject BellSouth's transit rate. They believe the rate should be cost-based and established through negotiations and arbitration, if needed. (Gates TR 473, 476, 535-536; Pruitt TR 615-616, 637-638, 648, 676-677; Wood TR

708; Small LECs BR at 32) FCTA, Joint CLECs, and Joint CMRS Carriers contend that a rate predicated only on the fact that it is comparable to rates that some parties have negotiated reflecting company-specific business needs and constraints is inappropriate and not evidence of a "market" rate. (Bishop TR 251-253; Gates TR 499; Pruitt TR 646-648; Wood TR 717-718; EXH 8; EXH 9; EXH 39; Joint CLECs BR at 20) Joint CLECs and Joint CMRS Carriers espouse that negotiated agreements involve "gives" and "takes" by the respective negotiating parties to reach a final agreement; thus, all of the terms are interdependent. (Bishop TR 259; Gates TR 498; Pruitt TR 646-647) If a carrier does not use transit service, then the transit rate being negotiated would not matter because it would have no effect. (Bishop TR 251-253; Watkins TR 415; Gates TR 570; Pruitt TR 645-648) For this reason, many witnesses believe that "negotiated rates" should carry no weight in this proceeding, and that it is inaccurate to imply that a $0.002 to $0.006 transit rate a competing carrier may have obtained through negotiations would still be considered acceptable by that carrier if obtained on a stand-alone basis. (Watkins TR 415; Gates TR 570; Pruitt TR 647-648)

FCTA, Joint CLECs, and CMRS Carriers assert that even if transit is determined not be a §251(c) interconnection service, the service would still be required to meet the "just and reasonable" pricing standards of §§201 and 202, which BellSouth's rate does not. (Gates 475, 485-486, 517; TRO ¶¶663-664; Joint CLECs BR at 18; Wood TR 703-705; Joint CMRS Carriers BR at 25) Small LECs, FCTA, Joint CLECs, and Joint CMRS Carriers argue that BellSouth's transit rate is discriminatory and anticompetitive. The basis for this view is the fact that BellSouth provided no cost support, even though asked by many parties to do so. (McCallen TR 203-204; Gates TR 474-475; Wood TR 717; EXH 6, pp. 34, 36-37, 71; EXH 3, p. 87; EXH 11) Small LECs, Joint CLECs, and Joint CMRS Carriers believe the following facts demonstrate that BellSouth's transit rate should be rejected:

- BellSouth's transit rate is 114% higher than its Florida interstate tandem switching and common transport elemental rates. (Watkins TR 366-367; Gates TR 475-476; Joint CMRS Carriers BR at 43)
- BellSouth's transit rate is more than 400% higher than the FCC's intercarrier compensation charge for ISP-bound traffic ($0.0007 per MOU). (Watkins TR 364)
- BellSouth's transit rate is about three times the total transit charge a proper forward-looking cost-based analysis would produce. (Gates TR 475-476; Joint CMRS Carriers BR at 43)
- BellSouth's transit rate is higher than the total transit charge currently assessed on some CLECs, including those paying a Transit Intermediary Charge (TIC). (Gates TR 498-504; 507)
- BellSouth's transit rate is 600% higher than BellSouth's intrastate tandem switching rate ($0.0005 per MOU) which BellSouth has previously claimed is above cost, thus creating an uneconomic subsidy. (Watkins TR 366, 391)

Joint CLECs and Joint CMRS Carriers do not dispute which elements comprise transit service, as explained by BellSouth witness McCallen. (Gates TR 505; Pruitt TR 618-638) Since BellSouth witness McCallen admits that no other costs are associated with the transit function, Joint CLECs witness Gates recommends that the Commission require BellSouth to assess the Commission-approved tandem switching and common transport TELRIC-based elemental rates

yielding a single composite rate of $0.0009368[23] per MOU, at least until the FCC renders a decision on this matter in the ICF FNPRM proceeding; Sprint Nextel and T-Mobile witness Pruitt recommends a single composite rate in the range of $0.0009441.[24] (Gates TR 476-477, 504-505; Pruitt TR 627-628; BellSouth UNE Order p. 574; BellSouth UNE Recon Order pp. 50-51) As discussed by Joint CLECs witness Gates, Sprint Nextel and T-Mobile witness Pruitt, and FCTA witness Wood, TELRIC prices not only recover the costs of providing the transit service, but also include an allocation of joint and common costs, and a fair level of profit. (Gates TR 571; Pruitt TR 686; Wood TR 769) Witness Gates alleges that anything above TELRIC would provide a windfall to BellSouth, which he estimates could be as much as $45 million annually assuming BellSouth's $0.003 per MOU transit rate is applied. (TR 571) 128

Small LECs witness Watkins believes that if a transit rate is established, it should be no higher than the rate that would apply for the equivalent interstate access service functions. (TR 367) To the extent BellSouth has offered a lower transit rate to some carriers, then that rate should be available to all carriers. (TR 390)

Joint CLECs and Joint CMRS Carriers agree with BellSouth that its transit service is an important and valuable service in that it is the primary means by which indirect interconnection can be accomplished. (Gates TR 438; Pruitt TR 619; Wood TR 709-710) Indeed, asserts Sprint Nextel and T-Mobile witness Pruitt, the FCC has stated that "[w]ithout the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks." (Pruitt TR 626; ICF FNPRM ¶125) However, if transit service is not available at reasonable rates, each carrier would be forced into directly interconnecting with other TSPs, which is inefficient, costly, and contrary to the Act, and results in duplication of facilities. (Gates TR 437; Pruitt TR 625-626; Wood TR 709-710) The Joint CLECs argue in their brief that only BellSouth's network can provide the ubiquity needed by carriers to transit traffic with all other carriers. (Joint CLECs BR at 2) While the Joint CLECs have no issue with BellSouth being compensated for the costs it incurs in providing transit service, they object to BellSouth's "added value" component. The Joint CLECs argue in their brief that no evidence was presented for this "added value." (BR at 14)

FCTA, Joint CLECs, and Joint CMRS Carriers note that other state commissions have found that transit service should be priced at TELRIC. (EXH 28; EXH 31; Wood TR 713-717)

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[23] The composite rate consists of a tandem switching rate of $.0001263 per MOU plus a tandem port shared rate of $0.0002252 per MOU plus a common transport rate of $0.000136 plus a common transport facility rate of $0.0004493. (The witness' rate for common transport assumes 40 miles at .0000034 per mile).

[24] The composite rate consists of a tandem switching rate of $.0001319 per MOU plus a tandem port shared rate of $0.0002350 per MOU plus a common transport rate of $0.00014 plus a common transport facility rate of $0.0004372. (The witness' rate for common transport assumes 40 miles at .0000035 per mile).

5. To what type of traffic does the transit rate apply?

BellSouth witness McCallen asserts that the transit rate[25] applies to local traffic and local ISP-bound traffic originated by a TSP, and handed to BellSouth for transiting and ultimate delivery to a terminating third-party TSP. (TR 65, 75)

Sprint Nextel witness Pruitt agrees. (TR 638-649) No other witnesses addressed the type of traffic to which the transit rate applies.

ANALYSIS

1. How should charges for BellSouth's transit service be calculated?

As noted under the parties' arguments, the only party providing testimony on how transit charges should be calculated is BellSouth. Barring any evidence to the contrary, staff believes BellSouth's calculation of applying the transit rate to the local usage transited between the carriers is appropriate.

2. Is provisioning transit service a §251 obligation?

There is extensive discussion in the parties' testimonies as to whether or not transiting is a §251 obligation. While BellSouth adamantly contends that transiting is not a §251 obligation and thus not subject to the negotiation and arbitration processes mandated by §252, it concedes that transit rates, terms, and conditions have been included in many §252 agreements. (EXH 2, p. 43; EXH 6, p. 30; Blake TR 239-240; Joint CLECs BR at 15, fn 24)

Section 251 sets forth three tiers of obligations applicable to three sets of carriers. (Pruitt TR 616) Section 251(a) imposes on all telecommunications carriers[26] the obligation to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(b) imposes five additional obligations applicable to all LECs[27], such as the small LECs in this case, including the duty to establish "reciprocal compensation arrangements for the transport and termination of telecommunications."[28] (§251(b)(5)) Section 251(c) imposes six additional obligations solely on ILECs, such as BellSouth. These additional obligations include the express duty of BellSouth and the requesting carrier "to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements" to fulfill the obligations of §251(b). (§251(c)(1)) Section 251(c)(2) specifically obligates BellSouth to provide interconnection with its network "for the transmission and routing of telephone exchange service and exchange access" traffic "that is at least equal in quality to that provided by" BellSouth to itself, "on rates, terms and conditions that are just, reasonable, and

[25] Either the tariff rate or the rate established within an agreement addressing transit traffic with the originating carrier.

[26] A telecommunications carrier is defined as any provider of telecommunications service. This would include ILECs, CLECs, IXCs, and CMRS providers.

[27] A LEC is defined as a provider of telephone exchange service, exchange access, or both.

[28] The originating and terminating carriers are compensated according to the roles they play in the transport and termination of the traffic as provided in the ICA between the parties.

nondiscriminatory, in accordance with . . . the requirements of . . . section 252 [of the Act]." (§251(c)(2)(A)-(D)) Section 252 provides for a system of negotiation and arbitration for parties to arrive at agreements. 130

In the Local Competition Order, the FCC held that under §251(a), carriers "should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices." (Local Competition Order ¶997) The FCC also held that the term "interconnection" under §251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic, and not the transport and termination of traffic. (Local Competition Order ¶¶26, 176) Additionally, the FCC held that the duty to route and terminate traffic applies to all LECs and is clearly expressed in §251(b)(5). (Id. at ¶176)

In the ICF FNPRM, the FCC discusses transit issues and the reciprocal compensation rules; while the outcome of this rulemaking will have prospective applicability, staff believes the FCC's discussion is still pertinent. The FCC observes that it has not adopted rules governing the charges of intermediary (i.e., transiting) carriers. The FCC recognizes at ¶¶120 and 132 that reciprocal compensation provisions set forth in §252(d)(2)(A)(i) address the exchange of traffic between two carriers, but do not explicitly address the intercarrier compensation to be paid to the transit service provider for carrying §251(b)(5) traffic. Further, at ¶125 the FCC states that CLECs, CMRS providers, and small LECs often rely on transit service to facilitate indirect interconnection with each other and without its availability, these carriers may have no efficient means to route traffic between their respective networks. At ¶128, the FCC questions whether §251(a) should be read to encompass an obligation to provide transit service, or whether a transiting obligation could arise under §251(b)(5) or other sections of the Act, including §201.

BellSouth relies heavily on the FCC Wireline Competition Bureau's Virginia Arbitration Order for the proposition that there is no ILEC obligation to provide transit service. Contrary to BellSouth's representations, staff observes that in the Virginia Arbitration Order, the FCC Wireline Competition Bureau declined to declare whether or not an ILEC is obligated to provide transit service, in view of the fact that the FCC had not previously decided the issue. (Virginia Arbitration Order ¶117) The Bureau specifically stated:

> In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a section §251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service be priced at TELRIC. (Id.)

The FCC thus has not yet decided if ILECs have a §251(c)(2) duty to provide the transiting function, and thus has neither accepted nor rejected a specific pricing standard for the function.

In the Qwest Declaratory Ruling, the FCC held that an agreement entered into by an ILEC "that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation must be filed . . ." with a state commission under § 252(a)(1). (Qwest Declaratory Ruling ¶8) Further, the FCC concluded that "only those agreements that contain an ongoing

obligation relating to section 251(b) or (c) must be filed under § 252(a)(1)." (Id. at footnote 26, ¶ 12) Qwest filed copies of thirty ICAs with the Minnesota PUC, one of which only addressed transit services, the exchange of call detail records for transit traffic, and the confidentiality of those records. The FCC agreed with the Minnesota PUC that the agreements were ICAs in whole or in part and rejected Qwest's arguments that the filed agreements were not ICAs. (Qwest NAL ¶¶15, 25-42; MetroPCS Bishop TR 254-255) Staff understands that this ruling leads some parties to conclude that transit service is an ongoing §251 obligation. However, staff believes that if the answer were so clear, the FCC would not be seeking comment on this very issue in the ICF FNPRM.

Staff agrees that §251 contains no explicit obligation to provide transit service, but as the FCC has stated, the question is whether there is an implied obligation. Indeed, the FCC has acknowledged that this issue needs to be decided and has teed it up in the ICF FNPRM. (ICF FNPRM ¶128) Staff believes the Commission need only acknowledge in this proceeding that §251(a) requires all telecommunications carriers to interconnect directly or indirectly, and that transit service has been expressly recognized by the FCC as a means to establish indirect interconnection. (ICF FNPRM ¶125)

3. Should the Commission establish a transit rate for BellSouth?

As addressed in Issue 2, staff believes BellSouth has a right to be compensated for the use of its network. Staff also believes that a negotiated transit rate is preferable to confrontation in a regulatory environment. This issue exists, however, because BellSouth and the Small LECs have not been able to negotiate agreements with respect to transit traffic. For this reason, BellSouth asks the Commission in this proceeding, albeit through a tariff mechanism, to establish a transit rate to use when negotiations fail. (EXH 6, p. 41)

The only party objecting to the Commission establishing a transit rate in this proceeding is the Small LECs, specifically with respect to ISP-bound traffic. As discussed in Issue 10, staff believes that transiting ISP-bound traffic over BellSouth's network has no effect on the compensation associated with terminating this traffic or in any way interferes with the FCC's jurisdiction over ISP traffic. For this reason, staff does not believe establishing a transit rate applicable to ISP-bound traffic in any way violates the ISP Remand Order.

Staff agrees with the parties that transit arrangements are best established through negotiations. For this reason and because of uncertainty in the record, staff believes the Commission should not mandate a transit rate, but rather designate an upper bound of reasonableness to provide a point of reference for parties when establishing a transit service arrangement.

4. What is the appropriate transit rate?

BellSouth argues that its rate for transit service should be market-based because 1) there is no federal obligation to provide the service and 2) the Commission already concluded such in the Joint Petitioners' Order. (Blake TR 218-219, 228) All other parties argue a cost-based standard, specifically TELRIC, should apply because §251(c) creates a duty for ILECs to

provide the facilities for interconnection at cost-based rates. (TRO ¶366; TRRO ¶140; EXH 2, p. 261; Gates TR 535-536; Pruitt TR 637-638; Wood TR 703-704; Small LECs BR at 32)

The sole support for BellSouth's "market-based" transit rate is the list of negotiated agreements with CLECs and CMRS carriers that contain transit rates. (EXH 8; EXH 39) BellSouth argues in its brief that there is no requirement that it provide supporting evidence for its transit rate because the tariff is presumptively valid. (BR at 10) Indeed, BellSouth asserts that there is no cost support for its transit rate, because the rate is a market-based rate. (EXH 6, p. 34) As discussed in Issue 1, staff believes that BellSouth's tariff is invalid, thereby rendering the presumptively valid argument irrelevant.

Staff believes that simply providing a list of rates contained in negotiated agreements as BellSouth has done, neither supports nor disproves BellSouth's allegation that its transit rate is market-based. Staff observes that in negotiations there are gives and takes on both sides based on the needs of the individual carriers negotiating. If a CLEC or CMRS carrier does not expect to originate much transit traffic, it seems logical that transit issues would not be of great import to them and so not much time would be afforded to negotiating the rate. (Bishop TR 259; Pruitt TR 646-647; EXH 15, pp. 42-43; Joint CMRS Carriers BR at 42) Moreover, staff believes it is most telling that of the 279 CLECs listed on Exhibit 39 that have negotiated agreements containing rates for transit service with BellSouth, only 39 were identified as originating any transit traffic at all in November 2005, and only five CLECs originated over 10,000,000 MOU of transit traffic throughout Florida. (Bishop TR 251-252; EXH 9; EXH 10; EXH 39)

BellSouth believes that the Commission can ensure that its proposed transit rate is fair and reasonable without having cost data to review because carriers have options other than using BellSouth's transit service – direct interconnection or another transit provider. (EXH 6, p. 50) As noted by the FCC in the ICF FNPRM, however, direct interconnection is not cost-efficient between carriers who do not exchange significant amounts of traffic. (ICF FNPRM ¶¶125-126) BellSouth even echoes this same view. (EXH 6, p. 31) Additionally, BellSouth concedes that it is only aware of one alternative transit provider in Florida, Neutral Tandem. (EXH 5, pp. 18-20; EXH 6, pp. 68-69) BellSouth and AT&T observe that Neutral Tandem is operational only in Tampa and Miami at this time and advertises itself as the "industry's only independent tandem service provider." (EXH 51; EXH 2, p. 152; EXH 5, pp. 18-20) Joint CLECs assert that market rates are generally established based on negotiations between two parties where sufficient alternatives exist such that the purchaser has reasonably comparable bargaining power. (EXH 2, pp. 170-170.1) Staff observes that this is not the case here; the record indicates there is only one alternative provider. Given BellSouth's uncontroverted ubiquitous network in Florida, and record evidence demonstrating the lack of alternative transit providers operating in Florida, staff believes there is no transit service "market" from which to derive a market-based rate. For this reason, no reliance on BellSouth's previously negotiated transit rates is warranted.

Staff agrees with FCTA, Joint CLECs, and Joint CMRS Carriers that, at a minimum, transit service is subject to the "just and reasonable" pricing standards of §201 and §202. While it can be argued that "just and reasonable" rates should be higher than TELRIC, staff believes that a rate almost 300% higher than TELRIC is a strained interpretation of "just and reasonable" with respect to transit service. Moreover, given that the FCC has found that interstate access

rates are "just and reasonable," one could argue that a transit rate that is 114% higher than the interstate tandem switching and common transport elemental rates cannot be considered "just and reasonable." Although BellSouth argues that the competitive market will discipline the rates, there is no showing in this record of the transit service market being competitive.

For reasons discussed above, staff does not believe that BellSouth's proposed $0.003 transit rate is "just and reasonable." However, staff believes other options are supported by the record and available for the Commission to consider.

A. Commission-approved elemental rates:

Transit service consists primarily of tandem switching and common transport, as testified by BellSouth witness McCallen. Using the Commission-approved tandem switching and common transport elemental TELRIC-based rates, assuming 40 miles of transport, plus a Tandem Intermediary Charge (TIC) of $0.0015, as the Commission suggested in the Joint Petitioners' Order,[29] results in a composite transit rate of $0.0024441[30] per MOU. (BellSouth UNE Recon Order, pp. 50-51; Joint Petitioners' Order, pp. 51-53; EXH 2, pp. 63, 70) Although BellSouth opines that the specific characteristics for transit traffic were never used in the last BellSouth UNE proceeding, staff is unable to verify this assertion because BellSouth did not provide any cost information.

Joint CLECs and Joint CMRS Carriers recognize that the Commission found in the Joint Petitioner's Order that BellSouth was entitled to charge a TIC based on BellSouth's indication that it incurred certain costs associated with transit service that were not covered by its TELRIC rates. The Commission also found that the TIC is more appropriately a rate negotiated between the parties. However, Joint CLECs and Joint CMRS Carriers argue that the Joint Petitioners' Order was the result of a bilateral arbitration where non-arbitrating parties were not allowed to intervene and, in this instant proceeding, BellSouth provided no record evidence for the TIC or any other "added-value," and that any additive rate should not be considered.

Staff observes that there is conflicting record evidence regarding the TIC. On the one hand, BellSouth explains through responses to staff discovery that the TIC is an additive charge designed to recover costs of providing billing records, handling billing disputes, use of network resources, and product management that are not recovered by the Commission-approved elemental TELRIC rates for tandem switching and transport. (EXH 2, pp. 53, 65, 70) On the other hand, however, BellSouth witness McCallen asserts that the TIC represents the "added-value" for BellSouth of providing transit service. (EXH 6, pp. 34-35) Staff also notes that witness McCallen specifically attests that BellSouth does not incur any costs in providing transit service that are not recovered through the elemental TELRIC rates. (EXH 6, p. 66) Staff is uncertain, however, whether the witness is addressing the cost of transit service in its totality or merely the network costs.

[29] Staff notes that the Joint Petitioners' Order, specifically the TIC issue, is currently on appeal.

[30] The rate consists of a tandem switching rate of $0.0001319, plus a tandem port shared rate of $0.0002350, plus a common transport rate of $0.00014, plus a common transport facility rate of $0.0004372, plus a TIC charge of $0.0015. The rate for common transport assumes 40 miles at $0.0000035 per mile. ($0.0001319 + $0.0002350 + (40 * $0.0000035) + $0.0004372 + $0.0015 = $0.0024441)

Although possibly contrary to certain assertions of BellSouth witness McCallen, staff believes that there are costs not recovered in the Commission-approved elemental TELRIC rates that the TIC is intended to recover. However, it appears that the TIC charge also contains "added value," although the magnitude of such added value (i.e., mark-up over cost) is unknown.[31] (As discussed earlier, staff and the parties attempted to obtain cost data from BellSouth. BellSouth responded that it has no responsive documents.) Given this uncertainty, an option available to the Commission is to exclude the TIC in its entirety, which yields a composite rate of $0.0009441. At a minimum, the $0.0024441 rate that includes the full TIC should be considered the upper bound of a "just and reasonable" rate.

B. Interstate access rates:

A carrier purchasing the transiting functions from BellSouth's interstate access tariff, assuming 40 miles of transport, would be charged $0.002294 per MOU.[32] (EXH 9; TR 503) The parties assert that BellSouth's interstate access tariff has no bearing or relevance to the transit issues in this proceeding because transiting is an intrastate service. Notwithstanding this, staff notes that the FCC has determined that interstate access rates are "just and reasonable."

C. Hold docket in abeyance:

The Commission could hold this issue in abeyance pending the outcome of the Intercarrier Compensation FNPRM, but there is no indication the FCC will rule in the near future and parties have specifically requested action from the Commission.

In sum, staff believes the two options most viable are options (A) and (B). There is little difference between the two composite rates and either is supported in the record. For sake of simplicity, staff recommends that an appropriate rate for transit service is no higher than $0.0023 per MOU.

CONCLUSION

BellSouth's transit charges should be calculated by applying the transit rate to the local usage transited between the carriers.

(a) Staff recommends that an appropriate rate for transit service is no higher than $0.0023 per MOU.

(b) The transit rate is applicable to local traffic and ISP-bound traffic that transits BellSouth's network to a third party.

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[31] Staff notes that about 61% of the composite transit rate of $0.0024441 is associated with the TIC.

[32] BellSouth Florida's interstate switched access tandem switching rate of $0.001198, plus a common transport fixed termination rate of $0.000176, and plus a common transport rate of $0.00092 yields a composite rate, assuming 40 miles of transport, of $0.002294 ($0.001198 + $0.000176 + (40 * $0.000023) = $0.002294). BellSouth Telecommunications, Inc. FCC Tariff No. 1, 14th revised 6-157.27 and 7th revised 6-157.2.4.

Issue 12: Consistent with Order Nos. PSC-05-0517-PAA-TP and PSC-05-0623-CO-TP, have the parties to this docket ("parties") paid BellSouth for transit service provided on or after February 11, 2005? If not, what amounts if any are owed to BellSouth for transit service provided since February 11, 2005?

Recommendation: Yes. All parties have paid, and continue to pay, BellSouth for transit service provided on or after February 11, 2005. No amounts are owed to BellSouth for transit service provided on or after the Tariff effective date of February 11, 2005. **(Higgins)**

Position of the Parties

AT&T: AT&T has no knowledge of any other parties' transit traffic relationship or financial obligations to BellSouth. AT&T's ICA with BellSouth provides the rates terms and conditions for the provision of transit traffic service to AT&T, and as a result, the Transit Tariff is not applicable to AT&T.

Small LECs: Yes. BellSouth has billed Smart City Telecom and Frontier Communications and these Small LECs have paid for transit service billed by BellSouth on or after February 11, 2005. These charges are being held by BellSouth subject to refund pending the outcome of this proceeding.

BellSouth: Yes. Since February 11, 2005, ICO parties have paid BellSouth, via the existing BellSouth-ICO monthly settlements system, at the tariffed rate for usage.

FCTA: The FCTA does not have a position on this issue.

Joint CLECs: Transit service provided by BellSouth to Joint CLECs is provided via ICAs. Joint CLECs do not owe BellSouth for unpaid transit service charges. BellSouth does not dispute this.

Joint CMRS Carriers: The Joint CMRS Carriers have their own respective interconnection agreements with BellSouth, and the parties have fulfilled their obligations under those agreements.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: Verizon Wireless has negotiated transit rates with BellSouth as a part of its interconnection agreement with them in nine states. Verizon Wireless does not have any outstanding charges due to BellSouth for transit traffic covered under these agreements.

Staff Analysis: In effect, Issue 12 sets February 11, 2005, which is the effective date of BellSouth's Transit Tariff, as a critical date. The issue examines whether payments for transit service provided on and after February 11, 2005 have been made. The amount of record evidence for Issue 12 is very limited.

PARTIES' ARGUMENTS

Although Issue 12 remains an "open" issue in this proceeding, it appears that all parties are in agreement. Joint CLECs witness Gates states: "The transit service provided by BellSouth to the CompSouth members is provided via ICA. CompSouth members have paid BellSouth for transit service pursuant to these agreements prior to February 11, 2005 as well as on and after February 11, 2005. To my knowledge, the CompSouth members do not owe BellSouth for any unpaid transit service charges." (TR 477)

The Joint CMRS providers have their own respective interconnection agreements (ICAs) with BellSouth, and they have fulfilled their obligations under those agreements. (Joint CMRS BR at 46)

AT&T's ICA with BellSouth also contains the rates, terms, and conditions for the provision of transit traffic service to AT&T, and as a result, the transit tariff is not applicable to AT&T. (AT&T BR at 11) There is no testimony on behalf of AT&T that indicates whether or not payment has been made pursuant to its ICA.

Verizon Wireless witness Sterling testifies that "Verizon Wireless has paid, and continues to pay BellSouth for transit service both before and after February 11, 2005." (TR 587)

Small LECs witness Watkins acknowledges that BellSouth has been billing the Small LECs, and the Small LECs have been making payment for the transit services billed by BellSouth. Witness Watkins also claims that while they have provided compensation to BellSouth for transit traffic service received on or after February 11, 2005, they have no obligation to do so. He contends that the compensation due to BellSouth for transiting service is not their responsibility; instead, he believes the responsibility rests with the competitive local exchange companies (CLECs) or the commercial mobile radio service (CMRS) providers. (TR 368)

In response to Staff's First Set of Interrogatories, No. 7, BellSouth witness McCallen states "All ICOs have paid for local transit services for which they have been billed after February 11, 2005." (EXH 2, p. 11)[33]

ANALYSIS

Issues 12 and 13 both revolve around the critical date of February 11, 2005, and the compensation mechanism BellSouth had in place to receive payment for its transiting service. Before February 11, 2005, BellSouth received compensation for providing transit service through ICAs with other telecommunication providers. On February 11, 2005, BellSouth's General Subscriber Services Tariff § A.16.1, Transit Traffic Service, went into effect. This tariff sets forth certain default rates, terms and conditions that apply when carriers receive transit

[33] Staff believes witness McCallen is referring to the Small LECs when he states "ICO parties."

service from BellSouth but have not entered into an agreement with BellSouth that sets forth rates, terms and conditions for the provision of transit traffic service.

BellSouth has ICAs with CompSouth, Joint CMRS Carriers, AT&T and Verizon Wireless. (Gates TR 477; Joint CMRS BR at 46; AT&T BR at 11; Sterling TR 587) This leaves the Small LECs as the only party that does not have ICA that address compensation for transit services; thus, the Small LECs are the only entities subject to BellSouth's transit traffic service tariff. As noted above, the Small LECs have paid the tariffed charges billed by BellSouth, and all other parties have paid for transit service pursuant to their ICAs.

CONCLUSION

All parties have paid, and continue to pay, BellSouth for transit service provided on or after February 11, 2005. No amounts are owed to BellSouth for transit service provided on or after the Tariff effective date of February 11, 2005.

Issue 13: Have parties paid BellSouth for transit service provided before February 11, 2005? If not, should the parties pay BellSouth for transit service provided before February 11, 2005, and if so, what amounts, if any, are owed to BellSouth for transit service provided before February 11, 2005? 138

Recommendation: All parties except the Small LECs paid BellSouth for the provision of transit service prior to February 11, 2005. However, the Small LECs were not required to pay BellSouth for transit service prior to February 11, 2005, and thus no amounts are owed. **(Higgins)**

Position of the Parties

AT&T: AT&T has no knowledge of any other parties' transit traffic relationship or financial obligations to BellSouth. AT&T's ICA with BellSouth provides the rates terms and conditions for the provision of transit traffic service to AT&T. Consequently, the Transit Tariff is not applicable to AT&T.

Small LECs: No amounts have been paid and no amounts are owed to BellSouth for periods prior to February 11, 2005. If the Commission approves a transit rate, no amount should be paid by the Small LECs for period prior to February 11, 2005.

BellSouth: No. ICO's have not paid BellSouth for local transit services prior to February 11, 2005. So long as the Tariff remains effective, BellSouth will not seek to collect any funds due from the Small LEC's for local transit prior to February 11, 2005, and therefore this issue is moot.

FCTA: The FCTA does not have a position on this issue.

Joint CLECs: Transit service provided by BellSouth to the Joint CLECs is provided via ICAs. Joint CLECs do not owe BellSouth for unpaid transit service charges. BellSouth does not dispute this.

Joint CMRS Carriers: The Joint CMRS Carriers have their own respective interconnection agreements with BellSouth, and the parties have fulfilled their obligations under those agreements.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: See Response to Issue No. 12. Verizon Wireless does not owe BellSouth for any transit service provided before February 11, 2005.

Staff Analysis: Issue 13 specifically asks whether BellSouth was compensated for the provision of transit service it provided to the parties prior to February 11, 2005, the effective date of its transit traffic service tariff, and if not, what amounts are owed to BellSouth. It appears that BellSouth did not bill any of the Small LECs for transit service prior to February 11, 2005. (EXH 2, p. 11) Staff believes that BellSouth was unable to charge the Small LECs because no mechanism existed – either an interconnection agreement or a tariff – until the transit traffic

tariff became effective. Accordingly, while the Small LECs did not pay BellSouth for transit service, no amounts are owed.

PARTIES' ARGUMENTS

As in Issue 12, all parties except for the Small LECs have ICAs that address compensation for transit service. Joint CLECs witness Gates states: "The transit service provided by BellSouth to the CompSouth members is provided via ICA. CompSouth members have paid BellSouth for transit service pursuant to these agreements prior to February 11, 2005 as well as on and after February 11, 2005. To my knowledge, the CompSouth members do not owe BellSouth for any unpaid transit service charges." (TR 477)

The Joint CMRS providers have their own respective interconnection agreements (ICA) with BellSouth, and the parties have fulfilled their obligations under those agreements. (Joint CMRS Carriers BR at 46)

AT&T's ICA with BellSouth also contains the rates, terms, and conditions for the provision of transit traffic service to AT&T, and as a result, the transit tariff is not applicable to AT&T. (AT&T BR at 11) There is no testimony on behalf of AT&T that indicates whether or not payment has been made pursuant to its ICA.

Verizon Wireless has paid, and continues to pay BellSouth for transit service both before and after February 11, 2005. (Sterling TR 587)

Small LECs witness Watkins asserts: "No amounts are owed to BellSouth for periods prior to February 11, 2005. To the extent any money is owed to BellSouth, it is the CLEC, or CMRS providers' responsibility for payment. BellSouth has knowingly provided transit service without charge and has no right to now impose charge for doing so." (TR 369)

In response to Staff's First Set of Interrogatories, No. 7, BellSouth witness McCallen states "There are no ICOs that BellSouth has billed and not received payment for local transit service prior to February 11, 2005." (EXH 2, p. 11)

ANALYSIS

As in Issue 12, compensation for transit service only becomes a concern where there is no ICA in place between BellSouth and a carrier that contains rates, terms and conditions for this offering. Only the Small LECs did not have such an ICA. However, the Small LECs chose to route traffic over the BellSouth network. (Watkins TR 369) BellSouth witness McCallen testified that its transit traffic service tariff is meant to address this situation and serve as a default mechanism for transiting compensation. (TR 69; 81)

By not having an ICA or tariff in place, BellSouth had no means to levy charges upon the Small LECs for local transit traffic, and thus no amounts are owed for transit service provided prior to February 11, 2005. All parties paid for transit service pursuant to ICAs; hence, no amounts are owed.

CONCLUSION

All parties except the Small LECs paid BellSouth for the provision of transit service prior to February 11, 2005. However, the Small LECs were not required to pay BellSouth for transit service prior to February 11, 2005, and thus no amounts are owed.

Issue 14: What action, if any, should the FPSC undertake at this time to allow the Small LECs to recover the costs incurred or associated with BellSouth's provision of transit service?

Recommendation: None. Staff recommends that the Commission refrain from making a determination as to whether the imposition of a transit rate on the Small LECs constitutes a substantial change in circumstances under Section 364.051(4), Florida Statutes. Staff believes that this issue is not ripe and a determination at this time would be premature. (Scott)

Position of the Parties

Joint CLECS: None. The Small LECs' recommendations would turn the "originating party pays" concept on its head and force CLECs to pay the costs of calls Small LEC customers originate. The originating carrier should continue to be responsible for transit costs. See discussion of Issue 11, which is incorporated herein by reference.

Joint CMRS Carriers: None. This docket should only address transiting issues. If necessary, cost recovery should be considered separately. Generally, however, transit costs incurred by Small LECs to deliver originated traffic to other carriers are a normal cost of business and do not require any action by the Commission.

Small LECs: The Commission should authorize the Small LECs to recover such costs pursuant to a surcharge or a rate increase under Section 364.051(4), Florida Statutes, predicated by a finding that the imposition of a transit traffic rate constitutes a substantial change in circumstances.

AT&T: No position.

FCTA: It is FCTA's position that any questions regarding the recovery of costs by the Small LECs are separate and distinct from questions regarding the appropriate method of compensation for transit services. Any action regarding Small LEC cost recovery is properly addressed within the context of the Commission's regulation of each individual LEC.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: The Commission should take no unilateral action. The Small LECs have procedural options since the T-Mobile Decision that obviate the need for generic Commission action.

BellSouth: BellSouth is not in a position to determine or address the financial position and recovery options of other carriers.[34]

Staff Analysis: This issue addresses whether the Small LECs should recover costs incurred as a result of the imposition of a transit rate. The Small LECs assert that they should recover such costs, *i.e.* assess a rate increase, because requiring them to compensate BellSouth for its transit

[34] McCallen TR 76; BR at 30.

service constitutes a substantial change in circumstances under Section 364.051(4), Florida Statutes. (Watkins TR 370-71; Small LECs BR at 37) 142

PARTIES' ARGUMENTS

All of the parties,[35] except for the Small LECs, share the opinion that the Commission should not take any action regarding recovery of costs incurred by the Small LECs resulting from BellSouth's Tariff.

The Joint CLECs maintain that the originating carrier should be responsible for transiting costs based on the established concept that the originating carrier pays because it chooses to route traffic on BellSouth's network. (Joint CLECs BR at 24) The Joint CLECs further note that the costs associated with a call originating on the Small LECs' network is an "ordinary" cost of doing business and not an extraordinary cost as the Small LECs assert. (Gates TR 519; Joint CLECs BR at 25)

The Joint CMRS Carriers' position is that only issues pertaining to transiting should be considered by the Commission in this docket, and the Small LECs should simply absorb the costs associated with use of BellSouth's transit service. (Pruitt TR 641; Joint CMRS Carriers BR at 46)

Verizon Wireless points out that the FCC's decision in the T-Mobile Order provides the Small LECs the opportunity to recoup costs associated with transit traffic by initiating negotiations with originating carriers. (Sterling TR 587; Verizon Wireless BR at 6)

The Small LECs request that the Commission authorize recovery of the additional costs that may be imposed upon them in the event there is a finding that a transit rate applies. (Small LECs BR at 37) The Small LECs aver that they have historically exchanged EAS traffic and transit traffic on a bill and keep basis with BellSouth. (Id.) The Small LECs request that these "new" costs be recouped by way of a rate increase pursuant to Section 364.051(4), Florida Statutes. (Id.) Small LECs witness Watkins asserts, that the imposition of a transit rate on the Small LECs would constitute "a substantial change in circumstances which would trigger the right to increased local rates." (TR 370) Witness Watkins further asserts that a finding of a substantial change in circumstances in this proceeding would save the Small LECs the expense of filing a separate petition under Section 364.051(4), and would be sufficient to comply with the requirements under that statutory provision. (TR 370-71; Small LECs BR at 37)

ANALYSIS

Pursuant to Section 364.051 (4)(a), Florida Statutes, a price-regulated ILEC may petition the Commission for a rate increase based on a substantial change in circumstances.[36] More specifically, that section provides that:

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[35] BellSouth, AT&T and Verizon Access did not take a position on this issue.

[36] Staff notes that this particular issue arose at the issue identification meeting and was not addressed in the Small LECs' Joint Petition filed on February 11, 2005.

> any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant the petition only after an opportunity for a hearing and a *compelling showing of changed circumstances.* (emphasis added)

Staff's interpretation of this provision is that the petitioning party has the burden of making a compelling showing of changed circumstances. To date, the Small LECs have not formally petitioned the Commission for a rate increase associated with BellSouth's transit rate, or any transit rate for that matter. Moreover, there are many important factors to consider in determining whether a rate increase is justified for the Small LECs. Staff believes that determinations under Section 364.051(4), Florida Statutes, should not be made lightly. Case in point, the Commission recently found that Sprint-Florida, Incorporated's (Sprint) costs associated with four consecutive hurricanes in 2004 met the requirements pursuant to Section 364.051, Florida Statutes, and constituted a compelling showing of changed circumstances.[37] Furthermore, the Commission noted that the provision requiring a "compelling showing of changed circumstances" is a safety valve obviously put in place so that the provision would be used "sparingly."[38] In that case, the Commission had the benefit of a stipulation between Sprint and the Office of Public Counsel, which included cost data and the overall impact sustained by Sprint.

In the instant proceeding, the Commission has no cost data to consider with respect to the financial impact BellSouth's transit rate has had on the Small LECs. Staff believes that without such data, the Commission would be unable to accurately determine the impact any transit rate has had or would have on the Small LECs. It is also impossible at this time to determine the financial impact the Commission's decisions will have on the Small LECs, particularly since any rate resulting from a transiting arrangement would likely be an important factor in determining financial impact. In the event a negotiated rate is incorporated into an ICA or transiting arrangement between BellSouth and the Small LECs, that rate would apply. In other words, at this time, the Commission does not have the benefit of knowing the transit rate that will apply to the Small LECs. Consequently, this issue is not ripe[39] for determination. Staff believes that this issue has not sufficiently developed for there to be an adequate showing as to whether a rate increase is justified for the Small LECs.

CONCLUSION

Staff recommends that the Commission refrain from making a determination as to whether the imposition of a transit rate on the Small LECs constitutes a substantial change in

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[37] See In re: Petition for approval of storm cost recovery surcharge, and stipulation with Office of Public Counsel, by Sprint-Florida, Incorporated, Docket No. 050374-TL, FPSC Order No. PSC-05-0946-FOF-TL at 3, Issued October 3, 2005.

[38] Id. at 2.

[39] "Ripeness" is defined in Black's Law Dictionary 1328 (7th ed., West 1999), as "[t]he circumstance existing when a case has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made."

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circumstances under Section 364.051(4), Florida Statutes. Staff believes that this issue is not ripe and a determination at this time would be premature.

Issue 15: Should BellSouth issue an invoice for transit services and if so, in what detail and to whom?

Recommendation: No. BellSouth's current settlements system for transit service is appropriate. If applicable, carriers should follow the terms and conditions of current interconnection agreements to address invoicing for transit services. **(Barrett)**

Position of the Parties

AT&T: The structure and format of BellSouth's invoice for transit services should be established pursuant to negotiation between the carrier and BellSouth. AT&T's ICA with BellSouth governs the billing and payment for transit traffic.

Small LECs: Any transit service charge approved by the Commission should be reflected by BellSouth in a separate invoice reflecting only the transit charge and not a netting of the charge against compensation due from BellSouth. The separate invoice should include details of call records and any other information necessary to determine accuracy and completeness of usage.

BellSouth: No. BellSouth includes transit charges on existing ICO settlements system reports, in the established monthly payment process. A line item for transit traffic is identified with the month of usage on the Miscellaneous Settlement report. Monthly Transit Minutes of Use can also be found at a BellSouth web-site for further validation.

FCTA: BellSouth should seek payment from the originating carrier according to the terms set forth in its interconnection agreement with that carrier.

Joint CLECs: Yes, just as it does today. The originating carrier should be responsible for compensating BellSouth for the transit charges related to transit traffic. As such, BellSouth should provide the invoice for transit services to the originating carrier.

Joint CMRS Carriers: Yes, BellSouth should issue invoices for transit service to telecommunications carriers using its transit service to deliver originating traffic to other carriers subtending BellSouth's network. BellSouth's invoice should identify the number of minutes transited, the price of each element used, and the CLLI location of the terminating carrier.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: BellSouth should issue invoices for transit services to the originating carrier. The invoices should identify the minutes transited by terminating end office CLLI code.

Staff Analysis: Staff believes the crux of this issue is ensuring that BellSouth provides accurate and verifiable invoices to the carriers that purchase its transit service.

PARTIES' ARGUMENTS

Witness McCallen asserts that BellSouth includes the transit traffic charges on the existing settlements system reports/statements as a line item that is identified with the month of

usage on the Miscellaneous Settlement report. (TR 77) The billed carrier has the ability to verify the call-related detail that BellSouth used in calculating the line item charge via a BellSouth website. (McCallen TR 77) Witness McCallen states that all of the input variables come from in-house measurement records, and that the supporting data on the website includes:

- A summary by date of the minutes of use and messages
- The type of terminating carrier
- The name and operating company number (OCN) of the terminating carrier. (EXH 6, p. 16; TR 90)

According to witness McCallen, BellSouth bills for transit traffic using a long-established system that Florida Independent Telephone Companies (ICOs) are used to seeing. (EXH 6, p. 16) He contends that BellSouth is currently billing for transit services in "the standard way we do business," and that is through a process of settlement summaries and reports that track monthly payments and charges for other services. (EXH 6, p. 16)

Joint CLECs witness Gates asserts that the current level of detail in invoices provided by BellSouth to carriers is acceptable, and states that transit service arrangements for the parties he represents are captured in IAs. (TR 479, 538) Member companies of CompSouth are not overly concerned about Issue 15, but are more troubled that the existence of a tariff "would be damaging to future negotiations." (Gates TR 538)

Small LECs witness Watkins contends that to the extent the Small LECs are billed, invoices for transit services should provide accurate and verifiable information, to include at least the following three items: 1) the dates for the billing period; 2) a carrier-specific summary of the number of calls and transited minutes; and 3) a total summary of the calls and minutes to which the transit rate applies. (Watkins TR 371)

Witness Watkins, however, objects to BellSouth's current practice of "netting" transit service charges against other traditional access and settlement assessments. He argues that when transit service charges are "netted" in this manner, resolving billing disputes becomes more problematic since BellSouth would have already taken its payment prior to the dispute being resolved. (Watkins TR 372) In its brief, the Small LECs urge the Commission to forbid BellSouth from taking a payment prior to resolving a dispute; the brief describes this as a "self help" approach that is advantageous for BellSouth. (BR at 38)

FCTA witness Wood asserts generally that the "parties should go negotiate, which is what ought to be happening here between BellSouth and the Small LECs." (TR 765) Witness Wood also asserts that if BellSouth's tariff is not rejected by the Commission, the Commission should clearly state that "the existence of the tariff cannot interfere in any way with the rates or terms of future interconnection agreements." (TR 705-706) AT&T witness Guepe did not address specific aspects of Issue 15, though he claims that AT&T's interconnection agreement with BellSouth currently governs the rendering of bills between the two carriers. (TR 280) According to the Verizon Wireless witness, BellSouth's invoice for transit service should identify the minutes transited by each terminating end office CLLI code. (Sterling TR 587) Sprint Nextel and T-Mobile witness Pruitt states that invoices for transit services should be provided in an industry standard format, and should minimally include the following:

- the total minutes of use transited in that billing period;

- the tandem switching elements billed in the transiting;
- the number of transport minutes; and
- CLLI code information. (TR 641-642)

ANALYSIS

Evidence demonstrates that BellSouth bills for transit traffic using a long-established system that is familiar to Florida ICOs. Transit service charges are listed on a settlement summary along with monthly payments and charges for other services. (McCallen TR 77; EXH 6, p. 16) Small LEC witness Watkins explicitly states that BellSouth's transit invoices should set "forth sufficient details of call records and any other information necessary to determine the accuracy and completeness of usage." (Watkins TR 371) Staff notes that BellSouth's summary reports include the information the Small LECs request: 1) the dates for the billing period; 2) a carrier-specific summary of the number of calls and transited minutes; and 3) a total summary of the calls and minutes to which the transit rate applies. (Watkins TR 371; McCallen TR 90; EXH 6, p. 16) Because BellSouth makes its website resource available to all billed carriers, staff believes such carriers are able to verify BellSouth's invoices, which is an important objective.

Staff believes the "netting of payments" practice that witness Watkins discusses appears to be a component of the standard billing protocol that BellSouth follows for all ICO billings. BellSouth witness McCallen points out that the billing method BellSouth adopted for transit service charges is not new, and staff believes the same is true regarding the "netting of payments." (EXH 6, p. 16) Staff is not swayed by the allegations that this practice is problematic with respect to resolving transit service disputes, since staff believes BellSouth follows the same practice for resolving disputes for all non-transit settlement assessments. (Watkins TR 371-372) Staff also notes that no other witness or party made similar assertions regarding this topic.

Staff believes that no changes are necessary in BellSouth's current settlements mechanism for transit service. Joint CLECs witness Gates appears to agree; he states that BellSouth should do "just as it does today." (TR 478)

CONCLUSION

BellSouth's current settlements system for transit service is appropriate. If applicable, carriers should follow the terms and conditions of current interconnection agreements to address invoicing for transit services.

Issue 16: Should BellSouth provide to the terminating carrier sufficiently detailed call records to accurately bill the originating carrier for call termination? If so, what information should be provided by BellSouth?

Recommendation: Yes, BellSouth should continue to provide to terminating carriers sufficiently detailed call records with as much information as it has available to it from originating carriers. Such call records should be delivered unaltered in the EMI Category 11 format. Nothing precludes individual parties from agreeing to other arrangements, and if applicable, carriers should follow the terms and conditions of current interconnection agreements that address the provision of call records. **(Barrett)**

Position of the Parties

AT&T: No position.

Small LECs: Yes. At minimum, BellSouth should provide call detail records in the "EMI Category 11 - - Carrier Access Usage" format and include the actual originating number, the Carrier Identification Code of the originating carrier, and the local routing number, if present.

BellSouth: BellSouth provides Industry Standard EMI Records, where available, to terminating carriers for billing. Summary Reports are also provided for UNE-P CLEC usage and for Non-MPB CMRS usage. Summary Reports contain adequate information to allow the terminating carrier to invoice the originating carrier.

FCTA: Yes. The scope and form of this information should be pursuant to the terminating carrier's interconnection agreement with BellSouth.

Joint CLECs: Yes. If approved, any tariff should specify that BellSouth will provide sufficiently detailed call records to identify the originating carrier and render accurate bills. Some carriers have SS7 networks that obviate the need for BellSouth's call records. No tariff should require such carriers to pay for records they do not need.

Joint CMRS Carriers: Yes. At BellSouth's tandem, traffic from multiple carriers is commingled for routing to customers or to various other carriers. Standard industry routing and billing protocols have been developed for billing of commingled traffic. For transit traffic, BellSouth should continue using the protocols and provide 11-01-01 records to terminating carriers.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: BellSouth, as the provider of transit service, should provide records to the terminating carrier that enable the terminating carrier to bill accurately the originating carrier for call termination. At a minimum, this information should include originating carrier name, originating carrier OCN, and minutes of use.

Staff Analysis: In its role as the transiting carrier, BellSouth provides a record of each transited call to the terminating carrier (TC), which that carrier may use to bill the originating carrier

(OC). Issue 16 addresses the provision of these transit records. Staff believes the points of contention in this matter concern the level of detail in such records. 149

PARTIES' ARGUMENTS

CompSouth witness Gates believes the accuracy of call records is critical in carrier-to-carrier relationships, and claims that BellSouth is uniquely positioned to collect accurate records since it has an easily identifiable physical interconnection with the OC, and physically transports a transited call to a TC. (Gates TR 480) He asserts that TCs need the Operating Company Number (OCN), the Carrier Identification Code (CIC), the Location Routing Number (LRN), and the Calling Party Number (CPN) in order to accurately bill OCs. (Gates TR 480-481) Conceptually, Small LEC witness Watkins agrees. He states that BellSouth is "the only carrier that can completely and accurately identify and measure the traffic it switches." (Watkins TR 373) The Small LECs brief includes a specific discussion on a transit service billing matter one member company has with BellSouth. The brief states, in part, that "BellSouth should be required to provide . . . unaltered call detail records . . . including the actual *originating telephone number*, the 'Carrier Identification Code' of the originating carrier, and the 'Local Routing Number,' if present." (emphasis in original)(Small LECs BR at 38-39)

Verizon Wireless witness Sterling believes BellSouth should provide to the terminating carrier sufficiently detailed call records. He states that such records should minimally identify the OC name and operating company name, plus the number of minutes transited by each terminating end office CLLI code. (Sterling TR 587-588) Sprint Nextel witness Pruitt states that TCs need to know the OCN of the originating carrier, the called and calling telephone numbers, and the call timing information in order to accurately bill OCs for call termination. (TR 642)

According to CompSouth witness Gates, a point of emphasis in Issue 16 is that the provision of such records should be done without any "manipulation of this data by BellSouth." (TR 481) Small LECs witness Watkins claims that BellSouth's practice of inserting billing telephone numbers (BTNs) into such records yields an incomplete and inaccurate record. (TR 372-373) He asserts that this practice can result in TCs not knowing the originating telephone number, and this is a concern to the Small LECs because TCs may not be able to discern the jurisdiction of such calls, which impacts the accuracy of intercarrier billing between TCs and OCs. (Watkins, TR 372-373, 405) He explains that different traffic types can be subject to different terms and conditions, and asserts that "BellSouth is terminating calls for which the call record information would suggest are local (non access) but are calls that are actually subject to access charges." (Watkins TR 372-373) He claims that BellSouth's practice regarding BTNs "diminishes our ability to police and to correctly identify calls and the jurisdiction of calls." (TR 424-425) A BellSouth discovery response flatly denies the allegation that BellSouth adds, deletes, modifies, or manipulates its carrier access call records. (EXH 2, p. 49)

BellSouth witness McCallen explains that BellSouth assigns BTNs to CLEC trunk groups, and states that BellSouth will use the BTN designations as needed to identify call records. (TR 162; EXH 2, p. 51) When this occurs, such billing records will not provide the actual originating number for transited calls, and the witness admits that this practice could mask the jurisdiction of transited calls. (McCallen TR 163) Witness McCallen states that "our systems

that have been in place for years to generate these records and provide them to terminating carriers." (EXH 6, p. 18) 150

Witness McCallen asserts that BellSouth follows industry guidelines in providing such records in the industry-standard EMI format. In addition, he states that BellSouth participates in the collaborative fora that set the standards for industry participants. (EXH 2, p. 7; EXH 6, p. 17) He acknowledges the concerns other witnesses raise regarding the jurisdictional component of EMI records, but states that those very topics are teed up in the fora, and that BellSouth is engaged in deriving an industry-wide solution. (EXH 6, p. 23) Witness McCallen believes this is significant because in this proceeding, BellSouth is facing allegations that its use of BTNs for identification purposes could be masking the jurisdiction of transited calls, yet he believes information provided by OCs may be masking the jurisdiction. (EXH 6, pp. 23-24) He also states:

> the intention [of EMI records] is not to establish jurisdiction. The intention . . . is to give the terminating carrier sufficient and adequate information to know who the originating carrier was, and we provide that by information in those records and the number of minutes so that they can bill the originating carrier for the traffic they have terminated. (McCallen TR 163)

Witness McCallen concludes by stating "what BellSouth provides already today is as much information as we can gather from the originating carrier to provide to the terminating carrier." (EXH 6, p. 22) He states repeatedly that BellSouth does not alter its call records and that BellSouth's Summary Report contains adequate information for TCs to bill OCs. (EXH 6, pp. 17-18; McCallen TR 77-78) Finally, he asserts that BellSouth's billing systems "seem to be working fine." (McCallen TR 162)

Terminating carriers may also have other options rather than relying on BellSouth for billing records. Verizon Wireless witness Sterling suggests that carriers may implement their own measurement devices, although he did not elaborate. (TR 588) CompSouth witness Gates states that "some carriers have deployed SS7 networks that obviate the need for BellSouth providing separate call records." (TR 480) Small LEC witness Watkins advocates what he believes is a far simpler solution; he believes the Commission should order BellSouth to "send the complete record [to TCs] as it is recorded." (Watkins TR 374)

ANALYSIS

Staff believes the crux of this issue is whether the call-related information from BellSouth is sufficient for TCs to bill OCs for call termination. Staff notes, however, that as the transit provider, BellSouth has no direct role in the billing arrangements between TCs and OCs.

Several parties allege that BellSouth provides TCs "altered" call records, including Small LECs witness Watkins. (EXH 12, pp. 30-32, 82-88; EXH 2, p. 95) As noted previously, BellSouth witness McCallen emphatically denies this. Although the Small LECs brief cites a specific example where BellSouth provided BTN entries rather than actual originating telephone numbers, Small LECs witness Watkins acknowledges that there may be technical reasons why information is not available in some instances; the witness did not elaborate. (Small LECs BR at 39; EXH 12, p. 86) BellSouth witness McCallen contends that it provides to TCs "as much

information as we can gather from the originating carrier." (EXH 6, p. 22) Staff infers from this statement that the amount of information from OCs can fluctuate.

Staff believes BellSouth's practice of inserting a BTN is done out of necessity when data is not provided by an OC. (Watkins TR 374; EXH 6, pp. 22-23) BellSouth acknowledges that it can identify the originating carrier by attaching the BTN to the calling record, which it does. Although a BTN may not be as useful for jurisdictional purposes as an originating telephone number, staff believes that BellSouth's practice of providing the BTN, when necessary, allows BellSouth to meet its stated objective of giving TCs sufficient and adequate information to identify OCs. (McCallen TR 163)

BellSouth witness McCallen acknowledges that BellSouth provides BTNs to TCs as a component of the call record for a transited call, as necessary. (EXH 6, pp. 17-18) Although BellSouth has identifiable trunking arrangements to accommodate in-bound calls from OCs, staff notes that BellSouth has no control over whether in-bound calls include an originating telephone number. Staff believes that some do not, and quite simply, BellSouth cannot provide what it does not possess. Furthermore, staff believes this illuminates what may be a widespread matter that affects the entire industry, and not just the parties to this proceeding. Although staff recognizes the claims made by the Small LECs in its brief, staff believes that party made an attempt to utilize the instant docket to address carrier-specific matters. Staff believes this may not be feasible since issues related to the exchange of records are such large-scale concerns, and such matters are also currently teed up at the federal level.[40] Staff believes an industry-wide collaborative effort may be necessary to "fix" the problems identified, although in the interim, staff believes BellSouth should continue in its efforts to provide sufficiently detailed call records to enable TCs to bill for call termination.

As CompSouth witness Gates points out, BellSouth's unique trunking arrangement with OCs enables it to capture the data that it later delivers to TCs. (TR 480) BellSouth records such data in the industry-standard EMI format and entered into evidence two sample EMI records.[41] (EXH 6, pp. 17, 103-109) Although the samples themselves provide over 70 fields that could be populated, several fields in the sample were "reserved for future use." Staff makes this point to demonstrate that carriers may require or use different portions of the EMI call record for various purposes. Staff believes that transit call records should, at a minimum, include:

- The date, time, and duration of a given transited call;
- the telephone numbers of the calling and called parties;
- the OCNs for the originating and terminating carriers;
- in and out-bound trunking data that is recorded
- terminating end office CLLI codes.

[40] Staff notes that the FCC is seeking comment on this and other broad policy matters that will impact all carriers in its ICF FNPRM.

[41] The EMI 11-01-01 sample from BellSouth captures two call records for transit IntraLata calls terminating to a Florida ICO; the first is a call that originates from a CLEC, and the second sample is of a similar call originating from a CMRS carrier. (See Exhibit 6, pp. 104-106)

With this most basic information, staff believes TCs should be able to accurately bill OCs for call termination, although individual carriers may have specific arrangements or requirements with BellSouth for more or less data. Staff believes BellSouth currently provides such call records, where available. Although terminating carriers may use the subject records for billing purposes, staff notes that BellSouth has no direct role in the billing arrangements between the terminating and originating carriers.

CONCLUSION

BellSouth should continue to provide to terminating carriers sufficiently detailed call records with as much information as it has available to it from originating carriers. Such call records should be delivered unaltered in the EMI Category 11 format. Nothing precludes individual parties from agreeing to other arrangements, and if applicable, carriers should follow the terms and conditions of current interconnection agreements that address the provision of call records.

Issue 17: How should billing disputes concerning transit service be addressed?

Recommendation: Billing disputes concerning transit service should be addressed in one of two ways, based on how transit service was purchased: 1) for carriers that have IAs or contractual arrangements with BellSouth that contain billing dispute provisions, such provisions should be followed to resolve transit service billing disputes; and 2) for carriers that have purchased transit services from BellSouth pursuant to the Transit Tariff, the billing dispute provisions therein should govern the resolution of billing disputes. BellSouth's rōlē in billing disputes between OCs and TCs should be to provide to such carriers the support material for traffic or records-related data it supplied. **(Barrett)**

Position of the Parties

AT&T: Billing disputes involving transit services provided by BellSouth should be resolved in accordance with dispute resolution procedures set forth in the carrier's ICA with BellSouth. Absent such an agreement, a transit traffic billing dispute involving Florida carriers should be resolved by the Commission based on the facts related to the particular situation.

Small LECs: Billing disputes should be resolved among all of the carriers and, if necessary, by the Commission.

BellSouth: Any disputes involving the validity of the terminating carrier's billing to the originating carrier, or the authority of the terminating carrier to bill the originating carrier should be resolved by the controlling regulatory body or pursuant to the dispute resolution process in accordance with their contract.

FCTA: Billing disputes for transit services, like other interconnection services, should be handled according to the dispute resolution language in each carrier's interconnection agreement with BellSouth.

Joint CLECs: Billing disputes between CLECs and BellSouth should be addressed according to the terms of their ICAs, and the same should be the case between BellSouth and any other party. There is no need to change these processes or create new processes.

Joint CMRS Carriers: Transit billing disputes should be resolved by utilizing the dispute resolution provisions of a Commission-approved interconnection agreement between BellSouth and the other carrier. Blocking by an ILEC should not be a viable option.

Verizon Access: The company only addressed Issue 5.

Verizon Wireless: Any billing disputes should be resolved pursuant to the process outlined in the applicable interconnection agreement.

Staff Analysis: Although this issue is straightforward as worded, staff believes the answer must distinguish between situations where BellSouth is providing its transit service pursuant to the Transit Tariff, and situations where it is providing transit service pursuant to an interconnection

agreement, or other contractual arrangement. Staff's recommendation will be framed in this manner. 154

PARTIES' ARGUMENTS

Many witnesses believe that disputes involving transit service should be addressed in accordance with the contract or IA that BellSouth may have with an individual entity. (AT&T witness Guepe TR 280; CompSouth witness Gates TR 481; Verizon Wireless witness Sterling TR 587-588; Sprint Nextel witness Pruitt TR 642-643) Small LEC witness Watkins asserts that in billing disputes, "BellSouth necessarily must be involved and has some financial responsibility because what cannot be billed to one carrier has to be billed to one or more of the others, including BellSouth." (TR 374) A discovery response from the Small LECs states that "BellSouth has provided no assurance to the Small LECs that BellSouth will be responsible for the resolution of disputes in a manner under which the Small LECs would not be harmed." (EXH 2, p. 94)

BellSouth witness McCallen believes that billing disputes should be addressed in accordance with the nature of the dispute. He states:

> Any disputes involving the validity of the TC's billing to the OC, or the authority of the TC to bill the OC should be resolved by the controlling regulatory body or pursuant to the dispute resolution process in accordance with their contract. To the extent the dispute involves questions related to the minutes of use billed or other issues surrounding the record information supplied by BellSouth, BellSouth will provide support regarding questions on that data. (TR 78)

ANALYSIS

In the transiting scenario, BellSouth is "the middle carrier," although staff does not believe BellSouth needs to be in the middle of dispute resolution matters between OCs and TCs. BellSouth witness McCallen conveys a willingness on BellSouth's part to provide to such carriers the support material for traffic or records-related billing disputes, but commits to nothing more. (McCallen TR 78) Staff believes this is appropriate and should be the extent of BellSouth's involvement in such disputes. Staff disagrees with Small LEC witness Watkins that BellSouth should assume some level of financial responsibility in the resolution of disputes, since it is only providing back-up data upon request.

Staff believes the answer to Issue 17 is two-fold, since transit service was provided either pursuant to the Transit Tariff, or pursuant to an interconnection agreement or other contractual arrangement. Staff believes billing disputes concerning transit service should be addressed based on how such service is purchased.

Dispute Resolution for Transit Service Pursuant to the Tariff

Staff observes that BellSouth's Transit Tariff contains dispute resolution provisions in Sections (H) through (J) of A16.1.2. In summary fashion, the terms are as follows:

- in the event of a dispute, BellSouth will continue to bill until the specific dispute is resolved; and
- if negotiations to resolve a dispute are unsuccessful after 30 days, the aggrieved party may seek dispute resolution with the appropriate regulatory body; and
- once a dispute is resolved, the parties shall negotiate a retroactive true-up. (EXH 7, p.3)

Staff notes that no party specifically voiced an objection to the provisions in BellSouth's Transit Tariff, and upon review, staff believes the terms therein are clear, adequate, and reasonable.

Dispute Resolution for Transit Service Pursuant to an IA or Contract

Presumably, an IA or contract for transit services would include dispute resolution provisions, and if so, staff believes such terms should be followed. No party offers a contrasting position. Staff notes that the Transit Tariff itself reinforces this approach in Section (B) of A16.1.2. In part, this Section of the Tariff states:

> If Transit Traffic is specifically addressed in a separate agreement . . . then the rates, terms, and conditions contained in that separate agreement will apply in lieu of this tariff. (EXH 7, p. 2)

CONCLUSION

Billing disputes concerning transit service should be addressed in one of two ways, based on how transit service was purchased: 1) for carriers that have IAs or contractual arrangements with BellSouth that contain billing dispute provisions, such provisions should be followed to resolve transit service billing disputes; and 2) for carriers that have purchased transit services from BellSouth pursuant to the Transit Tariff, the billing dispute provisions therein should govern the resolution of billing disputes. BellSouth's role in billing disputes between OCs and TCs should be to provide to such carriers the support material for traffic or records-related data it supplied.

Issue 18: Should these dockets be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, then:

(1) These dockets should remain open to allow parties in this proceeding who do not have rates, terms and conditions in place for BellSouth's transit service additional time to establish a transit arrangement prior to cancellation of the Tariff. Staff recommends that the Commission require BellSouth and any party without a transit arrangement to establish such an arrangement within 70 days of the issuance of the Final Order from this recommendation.

(2) The Tariff should be cancelled on the 71st day after the issuance of the Final Order from this recommendation.

(3) Staff recommends that BellSouth be required to issue a partial refund, including interest, to those parties who paid under BellSouth's Tariff during the period beginning February 11, 2005 and ending upon cancellation of the Tariff.

(4) If the Commission does not approve staff's recommendation in Issue 1, then these dockets should be closed. **(Scott)**

Staff Analysis: In Issue 1, staff recommends the Commission find that BellSouth's Tariff is invalid and an improper mechanism to address compensation for use of its transit service; therefore, the Tariff should be cancelled. If the Commission approves staff's recommendation in Issue 1, then the following implementation matters need to be addressed: (1) cancellation of the Tariff; (2) establishment of transit arrangements; and (3) the issuance of refunds under the Tariff.[42]

Cancellation of the Tariff and Establishment of Transit Arrangements

Since staff recommends that the Tariff be cancelled, it is necessary for the parties to have some arrangement for transit service in place with BellSouth prior to the Tariff's cancellation. If the Tariff is cancelled, there will be no mechanism available for BellSouth to provide its transit service and receive compensation without a transit arrangement. As such, staff recommends that those parties establish the rates, terms, and conditions for use of BellSouth's transit service within 70 days of the issuance of the Final Order. Staff also recommends that the Tariff be cancelled on the 71st day after the Final Order is issued. If negotiations fail and the Tariff is cancelled, then the parties without a transit arrangement should either use alternative means, or risk blocking by BellSouth if they continue to transit calls over BellSouth's network.

[42] For clarification, this case is not a generic proceeding; therefore, staff's recommendations regarding implementation should not affect existing ICAs with BellSouth, whether the carrier is a party to this proceeding or not. Some parties to this docket already have existing ICAs containing transit provisions with BellSouth, and have not expressed a desire to change those rates, terms, and conditions.

Refunds

With regard to refunds, staff recommends that the Commission require BellSouth to issue refunds in accordance with Commission Order No. PSC-05-0517-PAA-TP, issued May 11, 2005. In that Order, the Commission ruled that the "revenues from the tariff [are to] be held by BellSouth *subject to refund* pending the outcome of this proceeding. Furthermore, at the end of the proceeding, if the tariff is found to be invalid, a refund would be appropriate."[43] (emphasis added) If the Tariff is found to be invalid, a question arises as to whether the refunds should be issued in full or in part for the entire period or a portion of the period during which the Tariff was effective. An argument can be made that once a tariff is deemed invalid, all monies should be refunded.

While Section 364.05(5), Florida Statutes, does not apply to price regulated LECs such as BellSouth, this Section does address a subject-to-refund process that applied in the context of a rate case under rate base/rate-of-return regulation. Staff believes that this Section establishes the customary meaning of the phrase "subject to refund" and provides guidance, absent anything more specific in Order No. PSC-05-0517-PAA-TP in this proceeding. Section 364.05(5) describes refunding "such portion of the increased rate or charge as by its decision shall be found not justified." The word "portion" seems relevant and supports the idea of refunding the difference between the tariffed rate and the rate established in the transit service arrangement.

From staff's perspective, there are two periods for purposes of determining refunds. First, there is the period beginning February 11, 2005 and ending May 11, 2005, which is the time between the Tariff becoming effective and the issuance of the previously mentioned Order. Second, there is the period beginning May 11, 2005 and ending upon the cancellation of the Tariff.

Staff notes that the Commission has wide latitude under Rule 25-4.114, Florida Administrative Code, to order refunds. The various possible refund scenarios in this proceeding are shown in the chart below.

Timeframes	***Full Refund***	***Partial Refund***[44]	***No Refund***
February 11, 2005 – May 11, 2005	X	X	X
May 11, 2005 – Date the Tariff is Cancelled	X	X	X

[43] See Notice of Proposed Agency Action Order Consolidating Dockets and Denying Suspension of Tariff at 4.

[44] As discussed below, staff is recommending that the Commission require BellSouth to issue partial refunds, with interest, for the entire period beginning February 11, 2005 through the date the Tariff is cancelled.

February 11, 2005 through May 11, 2005

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One approach within this timeframe is for the parties who paid under the Tariff from February 11, 2005 through May 11, 2005 to receive a full refund with interest. The rationale behind this approach is that if the Tariff is found to be invalid, then the parties were paying under an invalid Tariff and should therefore be made financially whole. Moreover, if the Commission's "subject to refund" determination in Order No. PSC-05-0517-PAA-TP is only applicable going forward, a full refund for the first three months may be warranted if the Tariff is deemed invalid. From a policy perspective, this approach would deter price regulated LECs from filing tariffs that have a likelihood of later being deemed invalid. It could also be argued that BellSouth made a business decision and should have known the costs and risks associated with such a decision.

On the other hand, if BellSouth is required to issue a full refund to the parties who paid under the Tariff, then arguably those parties have been unjustly enriched.[45] Staff notes that under the legal theory of quantum meruit, BellSouth should receive the reasonable value of the services it has rendered.[46] Those parties received a service for the period beginning February 11, 2005 and ending May 11, 2005. If they were to receive a full refund, then a windfall could result in their favor, which staff believes is neither fair nor equitable. Since there is no explicit guidance in the law as to which refund approach is appropriate in this instance, staff recommends that the Commission look to the principles of equity to render a sound decision.[47] Accordingly, staff recommends that the Commission require BellSouth to issue a partial refund, including interest, for the period beginning February 11, 2005 and ending May 11, 2005. The partial refund would be based on the difference between the tariffed rate and the rate in the resulting transit arrangement.

May 11, 2005 through the Date the Tariff is Cancelled

Staff notes that May 11, 2005 is the date the previously mentioned Order was issued. That Order provided that if the Commission ultimately found the Tariff to be invalid, then a refund would be appropriate. The customary meaning of "subject to refund," as discussed earlier, suggests that a partial refund is appropriate for the period beginning May 11, 2005, the date on which the Commission memorialized its "subject to refund" determination in Order No. PSC-05-0517-PAA-TP. Staff believes that the fair and equitable rationale, discussed above, also applies during the time period beginning May 11, 2005 and ending upon the Tariff's cancellation, which would be the 71st day after issuance of the Final Order from staff's recommendation.

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[45] Unjust enrichment is defined as "the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected." See *Black's Law Dictionary* 1536 (7th ed., West 1999).

[46] "Quantum meruit is still used today as an equitable remedy to provide restitution for unjust enrichment. It is often pleaded as an alternative claim in a breach-of-contract case so that the plaintiff can recover even if the contract is voided." Id. at 1255.

[47] Staff believes that by applying principles of equity the Commission may attain a just result "where the prescribed or customary forms of ordinary law seem to be inadequate." 22 Fla. Jur. 2d Equity §1 (2005).

CONCLUSION

If the Commission approves staff's recommendation in Issue 1, then:

(1) These dockets should remain open to allow parties in this proceeding who do not have rates, terms and conditions in place for BellSouth's transit service additional time to establish a transit arrangement prior to cancellation of the Tariff. Staff recommends that the Commission require BellSouth and any party without a transit arrangement to establish such an arrangement within 70 days of the issuance of the Final Order from this recommendation.

(2) The Tariff should be cancelled on the 71st day after the issuance of the Final Order from this recommendation.

(3) Staff recommends that BellSouth be required to issue a partial refund, including interest, to those parties who paid under BellSouth's Tariff during the period beginning February 11, 2005 and ending upon cancellation of the Tariff.

(4) If the Commission does not approve staff's recommendation in Issue 1, then these dockets should be closed.

EXHIBIT NO. 9

DOCKET NO.: 060767-TP

WITNESS: STIP-9

PARTY: Verizon Access

DESCRIPTION: Embarq's Responses to Verizon's First Set of Interrogatories

1. Item Nos. 1-2 of Embarq's Responses to the First Set of Interrogatories (1-3) from Verizon Access. No. 3 is not being included into the record – issues resolved.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 9
Company/ Verizon Access
Witness: Stip-9
Date: 05/03/07

PROFFERING PARTY: Verizon Access

I.D. # STIP-9

Embarq Corporation
Mailstop: FLTLHO0102
1313 Blair Stone Rd.
Tallahassee, FL 32301
EMBARQ.com

April 12, 2007

Ann Cole
Office of Commission Clerk
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

Re: Docket No. 060767-TL; Embarq Florida, Inc,'s Responses to Verizon's First Set of Interrogatories (Nos. 1-3) and First Request for Production of Documents (Nos. 1-4)

Dear Ms. Cole:

Enclosed for filing on behalf of Embarq Florida Inc. is Notice of Service of Embarq's Responses to Verizon's First Set of Interrogatories (Nos. 1-3) and First Request for Production of Documents (Nos. 1-4)

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850/599-1560.

Sincerely,

s/Susan S. Masterton
Susan S. Masterton

Enclosure

Susan S. Masterton
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LAW AND EXTERNAL AFFAIRS REGULATORY
Voice: (850) 599-1560
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CERTIFICATE OF SERVICE
DOCKET NO. 060767-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. Mail (* POD #1 to Kimberly Caswell only) this 12th of April 2007 to the following.

Theresa Tan, Staff Counsel
Florida Public Service Commission
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s/ Susan S. Masterton
Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	Docket No. 060767-TP

NOTICE OF SERVICE OF EMBARQ FLORIDA, INC.'S RESPONSES TO VERIZON'S FIRST SET OF INTERROGATORIES (NOS. 1-3) AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (1-4)

Embarq Florida, Inc., pursuant to Rule 1.340, Florida Rules of Civil Procedure and Rule 28-106.206, F.A.C., hereby gives notice that it has served its Response to Verizon's First Set of Interrogatories (Nos. 1-3) and First Request for Production of Documents (Nos. 1-4) via electronic and US mail to Kimberly Caswell, 201 N. Franklin, 37th Floor, Tampa, FL 33602, *kimberly.caswell@verizon.com*, RESPECTFULLY SUBMITTED this 12th day of April 2007

s/Susan S. Masterton
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ATTORNEY FOR EMBARQ

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

004

In re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	DOCKET NO. 060767-TP DATED: APRIL 12, 2007

EMBARQ'S RESPONSES TO VERIZON'S FIRST SET OF INTERROGATORIES (NOS. 1-3) AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-4)

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340, 1.350, and 1.280(b), Florida Rules of Civil Procedure, by and through undersigned counsel, Embarq Florida, Incorporated (hereinafter "Embarq") hereby submits the following Responses to Verizon's First Set of Interrogatories and First Request for Production of Documents, which were served on Embarq on March 23, 2007.

Interrogatory	Prepared by	Title
1-2	Edward B. Fox	Regulatory Manager

INTERROGATORIES

1. **At page 10, lines 10-15 of Mr. Fox's Direct Testimony, Mr. Fox states: "However, where Embarq has contractually agreed to exchange small volumes of indirect traffic with carriers, Embarq is finding that carriers (particularly CLECs who terminate large volumes of ISP-bound traffic) are extremely slow to establish the direct connection with Embarq's network once the volume trigger is met. As a result, Embarq, as the originating carrier, is liable for potential transit charges from the tandem owner." The following subparts of this question relate to this quoted passage.**

   a. **Does any currently effective Embarq interconnection agreement in Florida include a transit charge reimbursement requirement that is the same as or similar to the requirement Embarq has proposed in section 61.2.4 of its proposed interconnection agreement in this arbitration?**

   Response: Yes.

   b. **If your answer to subpart a of this question was yes, then please provide (1) the names of the carriers in whose interconnection agreements this requirement appears; (2) the contract section number(s) where such a requirement appears; (3) the language of that section or sections.**

   Response: Embarq reviewed its CLEC interconnection agreements in Florida. Attachment 1st Vz Iterrog 1a.-1b.doc identifies the interconnection agreement provisions that are responsive to this request.

   c. **What does Mr. Fox mean by the term, "volume trigger," in the passage quoted above from his Direct Testimony? In particular, is the referenced "volume trigger" embodied in any Embarq interconnection agreements in Florida?**

   Response: The term "volume trigger" means when the cumulative traffic volumes between the Embarq end office and Verizon Access reach a DS1 level.

   Yes, the "volume trigger" language is embodied in certain Embarq interconnection agreements in Florida.

   d. **If any currently effective Embarq interconnection agreements in Florida include a "volume trigger" that gives rise to an obligation to establish direct interconnections, please provide (1) the names of the carrier to these**

interconnection agreements; (2) the section number(s) of the agreements where the volume trigger is found; and (3) the language of that section.

Response: Embarq reviewed its CLEC interconnection agreements in Florida. Attachment 1st Vz Iterrog 1c.-1d.doc identifies the interconnection agreement provisions that are responsive to this request.

e. **With respect to Mr. Fox's allegation that "carriers...are extremely slow to establish the direct connection with Embarq's network once the volume trigger is met" so that Embarq "is liable for potential transit charges from the tandem owner," how much has Embarq paid in transit charges from 2004 to the present that it would not have had to pay but for a carrier's failure to establish a direct connection within 90 days of reaching the volume trigger in the applicable Florida interconnection agreement?**

Response: Embarq was able to track individual trunk usage data on specific carriers from March 2006 to present. For that time period to March 2007 Embarq has paid approximately $14,500 in Florida for transit charges due to carriers failing to establish a direct connection as agreed to in their Interconnection Agreements.

f. **If Embarq's response to subpart e of this question was anything other than zero, please provide a breakdown of how much was paid to the transiting carrier and in what year.**

Response: All payments are to BellSouth. See response in 1.e. above.

g. **In cases where Embarq believes the other party to a Florida interconnection agreement has breached a contractual obligation to establish direct connections within the specified period after reaching the specific traffic level, has Embarq used the dispute resolution provisions in that Florida interconnection agreement to address the claimed breach? If so, in how many instances has it done so, and in what year(s)?**

Response: Embarq has not formally invoked the dispute resolution provision to get carriers to fulfill their agreement to establish direct connections. Embarq notifies each carrier whenever its T1 threshold has been met. In most all cases these carriers have proceeded to establish direct connections. There have been a small number of

carriers, those with a larger volume of traffic (multiple T1s), who have been extremely slow to establish their direct connections. In those instances, Embarq has repeatedly followed up through direct contacts, and in one case established regular meetings with the carrier to track their progress in fulfilling their contractual commitment for establishing direct connections.

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2. **Please provide the tariff reference, including section number(s), to support Mr. Fox's allegation, at page 15, lines 12-16 of his Direct Testimony, that Neutral Tandem has a Florida tariffed transit rate of $.004625, "assuming ten miles of T1 transport".**

Response: The relevant sections of the Neutral Tandem price sheet on file with the Commission are: section 5.1.1 Tandem Switching and section 5.1.4 Transit Dedicated Transport Facility. The calculation supporting the number in my testimony follows:

5.1.1 Tandem Switching Per minute of use $0.003102
5.1.4 Transit Dedicated Transport Facility
Per DS1 - First 5 miles $210.00
Per DS1 - Each additional mile $ 15.00
10 miles = $285.00/Mo.

10 miles was used since it is a commonly used distance when calculating transit services. 40 miles of common transport was used in the BellSouth transit proceeding, but Embarq chose not to use that distance in order to present a transit rate that is conservative by containing a smaller transport element.

The calculation assumes a T1 level of usage (approx 185,000 MOUs)
Facility cost for 10 miles of transit is $285 divided by 185,000 MOUs = .00154054/mou

Tandem Switching MOU rate: .003102 + .00154054 = **.00464254**

3. **In responding to Commission Staff's First Set of Interrogatories, number 2, subpart c, Mr. Hart responded that: "When calls terminated lack CPN at a rate of greater than 10%, PLUs are no longer used to bill that traffic, instead, intrastate access rates are applied to the [sic] all of the traffic lacking CPN." Was this sentence intended to describe an aspect of the "ordinary compensation mechanism" Staff asked about in question 2, or does that sentence describe Embarq's proposed approach to the issue of compensation for calls without CPN?**

EXHIBIT NO. 10

DOCKET NO.: 060767-TP

WITNESS: STIP-10

PARTY: Verizon

DESCRIPTION: Embarq's Responses to First Requests for Production of Documents from Verizon Access

1. Item Nos. 1-4 of Embarq's Responses to First Requests for Production of Documents from Verizon Access.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 060767-TP Exhibit No. 10
Company/ Verizon Access
Witness: Stip-10
Date: 05/03/07

PROFFERING PARTY: Verizon

I.D. # STIP-10

REQUEST FOR PRODUCTION OF DOCUMENTS

1. **Please provide copies of all documents produced by Embarq in response to Staff's First Request for Production of Documents (Nos. 1-11).**

Response: Although Embarq believes that it already provided Verizon Access copies of these documents at the same time as they were served on staff, attached is an additional copy of Embarq's responses to Staff's 1st PODs.

2. **Please provide the supporting documentation used in responding to Verizon Access' Set of Interrogatories, Interrogatory No. 1(b).**

Response: See attachment 1st Vz Iterrog 1a.-1b.doc. Copies of the complete interconnection agreements are publicly on file with and available at the Florida Public Service Commission.

3. **Please provide the supporting documentation used in responding to Verizon Access' First Set of Interrogatories, Interrogatory No. 1(d).**

Response: See attachment 1st Vz Iterrog 1c.-1d.doc. . Copies of the complete interconnection agreements are publicly on file with and available at the Florida Public Service Commission.

4. **Please provide the supporting documentation used in responding to Verizon Access' First Set of Interrogatories, Interrogatory No. 2.**

Response: Please see attached Neutral Tandem price sheet.

DATED this 12th day of April 2007.

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Susan S. Masterton

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ATTORNEY FOR EMBARQ FLORIDA, INC.

CLEC	Indirect Traffic Provision	Transit Charges
1-800-RECONEX	Indirect Traffic not authorized under the agreement.	56.8 To the extent Embarq identifies, either through its own recording capabilities or through call detail records provided by another carrier, Local Traffic that is originated by CLEC and terminated indirectly to Embarq through an intermediary carrier (transit carrier), Embarq will bill CLEC terminating compensation according to Section 55. In addition,
Atlantic.net Broadband	61.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, and upon request by a Party, CLEC must establish a direct interconnection with Sprint for the exchange of traffic. A Party will notify the other Party when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification, the notified Party shall establish a direct interconnection.	61.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Broadband Communities of Florida, Inc.	66.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	66.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Camarato Distributing, Inc. dba Nex-Phon	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
City of Gainesville, a municipal corporation d/b/a GRUCom	Indirect Traffic not authorized under the agreement.	55.7 To the extent Embarq identifies, either through its own recording capabilities or through call detail records provided by another carrier, Local Traffic that is originated by CLEC and terminated indirectly to Embarq through an intermediary carrier (transit carrier), Embarq will bill CLEC terminating compensation according to Section 55. In addition, CLEC will reimburse Embarq for any transit charges billed by the intermediary carrier for Local Traffic or ISP-bound Traffic originated by Embarq.

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CLEC	Indirect Traffic Provision	Transit Charges
dPi-Teleconnect	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Embarq Communications, Inc.	Indirect Traffic not authorized under the agreement.	55.10 To the extent Sprint identifies, either through its own recording capabilities or through call detail records provided by another carrier, Local Traffic that is originated by CLEC and terminated indirectly to Sprint through an intermediary carrier (transit carrier), Sprint shall bill CLEC terminating compensation according to Section 55. In addition, CLEC will reimburse Sprint for any transit charges billed by the intermediary carrier for Local Traffic or ISP-bound Traffic originated by Sprint.
Ernest Communications, Inc.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Excel Telecommunications, Inc.	66.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	66.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Florida Digital Network, Inc.	61.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, and upon request by a Party, CLEC must establish a direct interconnection with Sprint for the exchange of traffic. A Party will notify the other Party when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification, the notified Party shall establish a direct interconnection.	61.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.

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CLEC	Indirect Traffic Provision	Transit Charges
Fonix Telecom, Inc.	Indirect Traffic not authorized under the agreement.	55.6.2 To the extent Sprint identifies, either through its own recording capabilities or through call detail records provided by another carrier, Local Traffic that is originated by CLEC and terminated indirectly to Sprint through an intermediary carrier (transit carrier), Sprint shall bill CLEC terminating compensation according to Section 55. In addition, CLEC will reimburse Sprint for any transit charges billed by the intermediary carrier for Local Traffic or ISP-bound Traffic originated by Sprint.
Harbor Communications, LLC	61.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, and upon request by a Party, CLEC must establish a direct interconnection with Sprint for the exchange of traffic. A Party will notify the other Party when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification, the notified Party shall establish a direct interconnection.	61.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Hotwire Communications, Ltd.	Indirect Traffic not authorized under the agreement.	55.10 To the extent Sprint identifies, either through its own recording capabilities or through call detail records provided by another carrier, Local Traffic that is originated by CLEC and terminated indirectly to Sprint through an intermediary carrier (transit carrier), Sprint shall bill CLEC terminating compensation according to Section 55. In addition, CLEC will reimburse Sprint for any transit charges billed by the intermediary carrier for Local Traffic or ISP-bound Traffic originated by Sprint.

CLEC	Indirect Traffic Provision	Transit Charges
LecStar Telecom, Inc.	Indirect Traffic not authorized under the agreement.	55.6.2 To the extent Sprint identifies, either through its own recording capabilities or through call detail records provided by another carrier, Local Traffic that is originated by CLEC and terminated indirectly to Sprint through an intermediary carrier (transit carrier), Sprint shall bill CLEC terminating compensation according to Section 55. In addition, CLEC will reimburse Sprint for any transit charges billed by the intermediary carrier for Local Traffic or ISP-bound Traffic originated by Sprint.
Metro Teleconnect Companies, Inc.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Navigator Telecommunications	Indirect Traffic not authorized under the agreement.	55.7.2 To the extent Sprint identifies, either through its own recording capabilities or through call detail records provided by another carrier, Local Traffic that is originated by CLEC and terminated indirectly to Sprint through an intermediary carrier (transit carrier), Sprint shall bill CLEC terminating compensation according to Section 55. In addition, CLEC will reimburse Sprint for any transit charges billed by the intermediary carrier for Local Traffic or ISP-bound Traffic originated by Sprint.
Neutral Tandem	58.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	58.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.

CLEC	Indirect Traffic Provision	Transit Charges
NuVox Communications, Inc.	62.1.5 NuVox must establish direct end office trunking at any Embarq end office that subtends a non-Embarq tandem when total Indirect traffic volumes exchanged between that particular Embarq end office and NuVox exceeds a DS1 level of Local Traffic and ISP-Bound Traffic per month for three consecutive months. Embarq shall inform NuVox when traffic volumes exceed this level at an Embarq end office. NuVox shall then have ninety (90) days from the date of such notification to establish direct end office trunking to such end office.	62.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges for its originating traffic assessed by the transiting party. After Indirect traffic exceeds a DS1, if NuVox has not established a direct end office trunking 90 days after Embarq notifies NuVox in accordance with section 20, NuVox will reimburse Embarq for any transit charges billed by an intermediary carrier for Local Traffic or ISP-Bound Traffic originated by Embarq.
Orlando Telephone Company	61.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint for the exchange of traffic. Sprint will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification CLEC shall establish a direct interconnection with Sprint.	61.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
PaeTec Communications, Inc.	61.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, and upon request by a Party, CLEC must establish a direct interconnection with Sprint for the exchange of traffic. A Party will notify the other Party when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification, the notified Party shall establish a direct interconnection.	61.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Quality Telephone, Inc.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Ring Connection, Inc.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.

CLEC	Indirect Traffic Provision	Transit Charges
Smart City Solutions, LLC	61.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint for the exchange of traffic. Sprint will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification CLEC shall establish a direct interconnection with Sprint.	61.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Southern Telecom Network, Inc.	66.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	66.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Sprint Communications Company LP	44.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint for the exchange of traffic. Sprint will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification CLEC shall establish a direct interconnection with Sprint.	44.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Supra Telecommunications and Information Systems, Inc.	61.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, and upon request by a Party, CLEC must establish a direct interconnection with Sprint for the exchange of traffic. A Party will notify the other Party when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification, the notified Party shall establish a direct interconnection.	61.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
TelCove Investment, LLC and TelCove of Jacksonville, Inc. fka Adelphia, Hyperion	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	67.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.

CLEC	Indirect Traffic Provision	Transit Charges
Telovations, Inc.	Indirect Traffic not authorized under the agreement.	55.10 To the extent Embarq identifies, either through its own recording capabilities or through call detail records provided by another carrier, Local Traffic that is originated by CLEC and terminated indirectly to Embarq through an intermediary carrier (transit carrier), Embarq shall bill CLEC terminating compensation according to §55. In addition, CLEC will reimburse Embarq for any transit charges billed by the intermediary carrier for Local Traffic or ISP-bound Traffic originated by Embarq.
The Ultimate Connection, L.C.	62.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint for the exchange of traffic. Sprint will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification CLEC shall establish a direct interconnection with Sprint.	62.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
Trinsic Communications, Inc.	Indirect Traffic not authorized under the agreement.	55.7.2 To the extent Sprint identifies, either through its own recording capabilities or through call detail records provided by another carrier, Local Traffic that is originated by CLEC and terminated indirectly to Sprint through an intermediary carrier (transit carrier), Sprint shall bill CLEC terminating compensation according to Section 55. In addition, CLEC will reimburse Sprint for any transit charges billed by the intermediary carrier for Local Traffic or ISP-bound Traffic originated by Sprint.
U.S. Metropolitan Telecom, LLC	44.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint for the exchange of traffic. Sprint will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification CLEC shall establish a direct interconnection with Sprint.	44.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.

CLEC	Indirect Traffic Provision	Transit Charges
Unitycomm, LLC d/b/a U4Com	58.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint for the exchange of traffic. Sprint will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification CLEC shall establish a direct interconnection with Sprint.	58.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement a direct interconnection as provided for in this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.
VarTec Telecom, Inc.	66.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.	66.3.1.3 Once total Indirect Traffic volume between CLEC and Sprint reaches a DS1 equivalent of traffic, CLEC shall either implement and direct interconnection as provided for this Agreement or reimburse Sprint for any third party transit charges incurred by Sprint.

Florida Agreements

CLEC	Indirect Traffic Provision	Transit Charges
ess Point, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
ACN Communications Services	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
Advantage Group of Florida Communication, LLC	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.3.2 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
AT&T Communications of the Southern States LLC dba AT&T	61.1.7 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between AT&T and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and AT&T must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, AT&T shall establish a direct interconnection with Sprint's end office.	61.2.6 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
BellSouth Long Distance, Inc.	47.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	47.2.4 Until Indirect Traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.

CLEC	Indirect Traffic Provision	Transit Charges
Bright House Networks Information Services (Florida)	54.1.2 Interconnection to a CLEC will provide Sprint with access to the CLEC's end-users and to other companies which are likewise connected to CLEC for local and toll service purposes. Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint for the exchange of traffic. Sprint will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within ninety (90) Days of such notification CLEC shall establish a direct interconnection with Sprint.	012
Budget Phone, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
BullsEye Telecom, Inc.	58.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint for the exchange of traffic. Sprint will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification CLEC shall establish a direct interconnection with Sprint.	
City of Quincy dba Netquincy dba Netquincy.com dba www.netquincy.com	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.

013

CLEC	Indirect Traffic Provision	Transit Charges
Comcast Phone of Florida, LLC	56.1.2 Interconnection to a CLEC will provide Embarq with access to the CLEC's end-users and to other companies which are likewise connected to CLEC for local and toll service purposes. Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and an Embarq end office exceeds a DS1 equivalent of traffic, Embarq will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Embarq for the exchange of traffic. Embarq will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within ninety (90) Days of such notification CLEC shall establish a direct interconnection with Embarq.	
Cox Florida Telecom dba Cox Communications	58.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint for the exchange of traffic. Sprint will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within sixty (60) Days of such notification CLEC shall establish a direct interconnection with Sprint.	
DeltaCom Communications	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
Eagle Telecommunications, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.

014

CLEC	Indirect Traffic Provision	Transit Charges
Granite Telecommunications, LLC	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
Hayes E-Government Resources	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
KMC Data LLC	8.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between KMC and a Sprint end office exceeds a DS-1 equivalent of traffic, the Parties agree to establish a direct interconnection for the exchange of traffic with that end office. Sprint will notify KMC when the traffic volume reaches a DS-1 equivalent of traffic. Within ninety (90) days of such notification KMC shall establish a direct interconnection with Sprint.	8.1.1.1 For the purposes of the Parties exchange of traffic in the state of Florida, Sprint has three exchanges in LATA 452 that subtend the BellSouth Jacksonville tandem. The Parties will exchange traffic on an indirect basis through the BellSouth tandem and each Party will bear responsibility for the related transit charges for its originated traffic as long as the traffic exchanged with each end office does not exceed a DS-1. Once traffic volumes exchanged with KMC at an end office exceeds a DS-1, the Parties agree to establish a direct interconnection and provision direct trunks to that end office to mitigate Sprint's transit cost concern.

CLEC	Indirect Traffic Provision	Transit Charges
KMC Telecom III, Inc.	8.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between KMC and a Sprint end office exceeds a DS-1 equivalent of traffic, the Parties agree to establish a direct interconnection for the exchange of traffic with that end office. Sprint will notify KMC when the traffic volume reaches a DS-1 equivalent of traffic. Within ninety (90) days of such notification KMC shall establish a direct interconnection with Sprint.	8.1.1.1 For the purposes of the Parties exchange of traffic in the state of Florida, Sprint has three exchanges in LATA 452 that subtend the BellSouth Jacksonville tandem. The Parties will exchange traffic on an indirect basis through the BellSouth tandem and each Party will bear responsibility for the related transit charges for its originated traffic as long as the traffic exchanged with each end office does not exceed a DS-1. Once traffic volumes exchanged with KMC at an end office exceeds a DS-1, the Parties agree to establish a direct interconnection and provision direct trunks to that end office to mitigate Sprint's transit cost concern.
KMC Telecom V, Inc.	8.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between KMC and a Sprint end office exceeds a DS-1 equivalent of traffic, the Parties agree to establish a direct interconnection for the exchange of traffic with that end office. Sprint will notify KMC when the traffic volume reaches a DS-1 equivalent of traffic. Within ninety (90) days of such notification KMC shall establish a direct interconnection with Sprint.	8.1.1.1 For the purposes of the Parties exchange of traffic in the state of Florida, Sprint has three exchanges in LATA 452 that subtend the BellSouth Jacksonville tandem. The Parties will exchange traffic on an indirect basis through the BellSouth tandem and each Party will bear responsibility for the related transit charges for its originated traffic as long as the traffic exchanged with each end office does not exceed a DS-1. Once traffic volumes exchanged with KMC at an end office exceeds a DS-1, the Parties agree to establish a direct interconnection and provision direct trunks to that end office to mitigate Sprint's transit cost concern.
Knology of Florida, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
Level 3 Communications	61.2 For end offices that subtend another ILEC's tandem and exceed a DS1's worth of traffic for three consecutive months, Level 3 will be responsible for establishing a POI where Embarq does not have capacity on existing Embarq trunking facilities (owned and operated by Embarq's local division and there is no forecasted limitation to the availability of those existing facilities.	

CLEC	Indirect Traffic Provision	Transit Charges
Lightyear Network Solutions, LLC	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
Metropolitan Telecommunications of Florida, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
Nationwide Computer Systems, Inc. dba Desoto.net and dba Greenwood.net	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
New Edge	60.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	60.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
Nexus Communications, Inc. dba Nexus Communications TSI, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.

CLEC	Indirect Traffic Provision	Transit Charges
Spirited Technologies, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party. 017
T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone	56.1.2 Interconnection to a CLEC will provide Embarq with access to the CLEC's end-users and to other companies which are likewise connected to CLEC for local and toll service purposes. Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and an Embarq end office exceeds a DS1 equivalent of traffic, Embarq will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Embarq for the exchange of traffic. Embarq will notify CLEC when the traffic volume reaches a DS1 equivalent of traffic. Within ninety (90) Days of such notification CLEC shall establish a direct interconnection with Embarq.	
3 South Florida	61.1.7 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between TCG and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and TCG must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, TCG shall establish a direct interconnection with Sprint's end office.	61.2.6 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
US LEC of Florida, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between US LEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and US LEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, US LEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.

CLEC	Indirect Traffic Provision	Transit Charges
Novus Communications, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
Optical Telecommunications, Inc.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.3.2 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
Pac-West Telecomm	8.1.3 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between KMC and a Sprint end office exceeds a DS-1 equivalent of traffic, the Parties agree to establish a direct interconnection for the exchange of traffic with that end office. Sprint will notify KMC when the traffic volume reaches a DS-1 equivalent of traffic. Within ninety (90) days of such notification KMC shall establish a direct interconnection with Sprint.	8.1.1.1 For the purposes of the Parties exchange of traffic in the state of Florida, Sprint has three exchanges in LATA 452 that subtend the BellSouth Jacksonville tandem. The Parties will exchange traffic on an indirect basis through the BellSouth tandem and each Party will bear responsibility for the related transit charges for its originated traffic as long as the traffic exchanged with each end office does not exceed a DS-1. Once traffic volumes exchanged with KMC at an end office exceeds a DS-1, the Parties agree to establish a direct interconnection and provision direct trunks to that end office to mitigate Sprint's transit cost concern.
SBC Long Distance, LLC	61.1.7 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between AT&T and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and AT&T must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, AT&T shall establish a direct interconnection with Sprint's end office.	61.2.6 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.

CLEC	Indirect Traffic Provision	Transit Charges
Volo Communications of Florida,	61.1.7 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between AT&T and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and AT&T must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, AT&T shall establish a direct interconnection with Sprint's end office.	61.2.6 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.
YMax Communications Corp.	61.1.5 Notwithstanding any other provision to the contrary, once the Indirect Traffic volume between CLEC and a Sprint end office exceeds a DS1 equivalent of traffic, Sprint will no longer allow indirect interconnection and CLEC must establish a direct interconnection with Sprint's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, CLEC shall establish a direct interconnection with Sprint's end office.	61.2.4 Until Indirect traffic exceeds a DS1, each Party is responsible for the payment of transit charges assessed by the transiting party.

019

SECTION 5: RATES AND CHARGES

5.1 Transit Service Charges

		NRC	Monthly
5.1.1	Tandem Switching		
	Per minute of use		$0.003102
5.1.2	Database Charge		
	LNP Query - per query		$0.002002
5.1.3	Blocked Call Charge		
	Per Blocked Call		$0.001880
5.1.4	Transit Dedicated Transport Facility		
	Per DS1 - First 5 miles		$210.00
	Per DS1 - Each additional mile		$ 15.00
5.1.5	Trunk Group Charge		
	First trunk group		$ 00.00
	Each additional trunk group		$ 50.00
5.1.6	Transit Service Non-Recurring Charges		
	Per Service Order Fee:	$ 50.00	
	Per Reconfiguration:	$150.00	
	Install (per DS1)	$885.00	

020

Ronald W. Gavillet
1 South Wacker
Suite 200
Chicago, Illinois 60606

000092

EXHIBIT NO. 11

DOCKET NO.: 060767-TP

WITNESS: Don Price

PARTY: Verizon

DESCRIPTION: Local Call Example: ILEC to CLEC

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 11
Company/ Verizon Access
Witness: Don Price (DP-1)
Date: 05/02/07

PROFFERING PARTY: Verizon

I.D. # DP-1

Docket No. 060767-TP
Local Call Example: ILEC to CLEC
Exhibit DP-1, Page 1 of 1

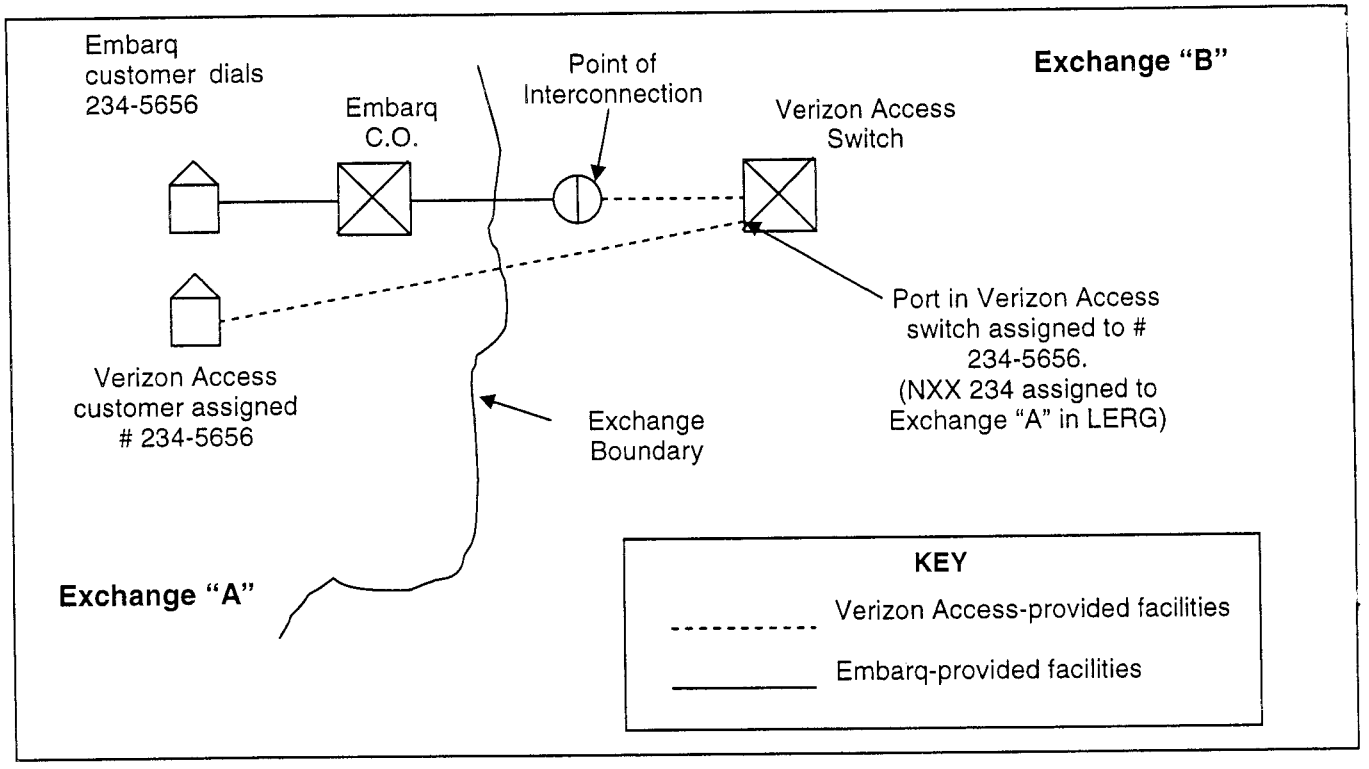

EXHIBIT NO. 12

DOCKET NO.: 060767-TP

WITNESS: Don Price

PARTY: Verizon

DESCRIPTION: VNXX Call Example: ILEC to CLEC

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 060767-TP Exhibit No. 12
Company/ Verizon Access
Witness: Don Price (DP-2)
Date: 05/03/07

PROFFERING PARTY: Verizon

I.D. # DP-2

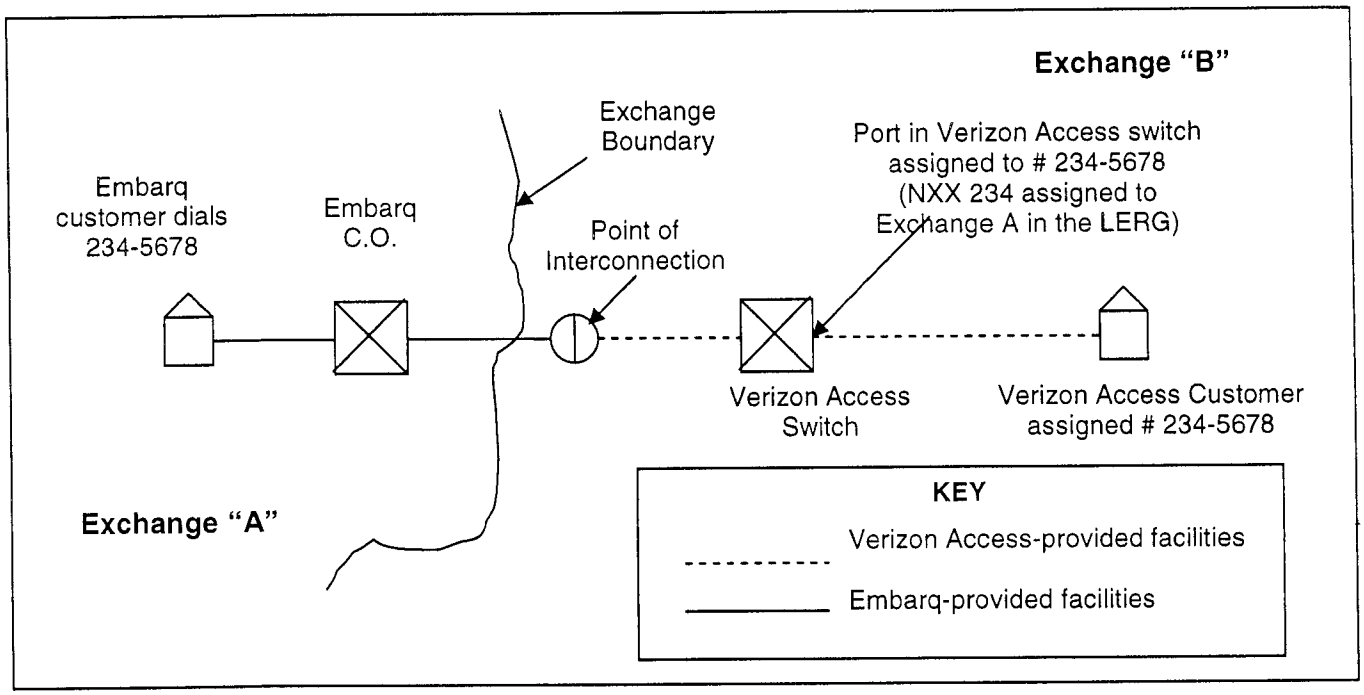
Exchange "B"
Exchange Boundary
Port in Verizon Access switch assigned to # 234-5678 (NXX 234 assigned to Exchange A in the LERG)
Embarq customer dials 234-5678
Embarq C.O.
Point of Interconnection
Verizon Access Switch
Verizon Access Customer assigned # 234-5678
Exchange "A"
KEY
Verizon Access-provided facilities
Embarq-provided facilities

EXHIBIT NO. 13

DOCKET NO.: 060767-TP

WITNESS: n/a

PARTY: Embarq

DESCRIPTION: Verizon Access' Responses to the First Set of Interrogatories from Embarq.

1. Item Nos. 11-17 of Verizon Access' Responses to the First Set of Interrogatories (1-17) from Embarq. Nos. 1-10 are not being included into the record because the issues have been resolved.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 060767-TP Exhibit No. 13
Company/ Witness: Embarq Stip-13
Date: 05/03/07

PROFFERING PARTY: Embarq

STIP: #13

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	Docket No. 060767-TP

VERIZON ACCESS TRANSMISSION SERVICES' OBJECTIONS AND RESPONSES TO EMBARQ FLORIDA, INC.'S FIRST SET OF INTERROGATORIES (NOS. 1-17)

Verizon Access Transmission Services ("Verizon Access") provides its objections and responses to the First Set of Interrogatories (Nos. 1-17) served by Embarq Florida, Inc. ("Embarq"). All responses were provided by Don Price, Director-State Regulatory.

GENERAL OBJECTIONS

1. Verizon Access objects to Embarq's discovery requests and all instructions and definitions associated with those discovery requests to the extent they purport to impose obligations that are different from, or go beyond, the obligations imposed under Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and the Rules of the Florida Public Service Commission ("Commission").

2. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek information outside the scope of the issues raised in this proceeding, and to the extent their principal purpose appears to be to harass Verizon Access and unnecessarily impose costs on Verizon Access.

3. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek documents

or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, attorney work-product doctrine, or other applicable privileges or doctrines.

4. Verizon Access objects to each discovery request to the extent that it is vague and ambiguous, particularly to the extent that it uses terms that are undefined or vaguely defined in the discovery requests.

5. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Verizon Access further objects to the discovery requests to the extent they seek documents or information protected by the privacy protections of the Florida or United States Constitutions, or any other law, statute, or doctrine.

6. Verizon Access objects to the discovery requests to the extent they seek documents or information equally available to Embarq as to Verizon Access through public sources or which is already in the possession, custody or control of the Commission, because such requests subject Verizon Access to unreasonable and undue burden and expense.

7. To the extent Verizon Access responds to Embarq's discovery requests, Verizon Access reserves the right to amend, replace, supersede, and/or supplement its responses as may become appropriate in the future. However, it undertakes no continuing or ongoing obligation to update its responses.

8. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent that they seek to impose an obligation on Verizon Access to respond on behalf of subsidiaries, affiliates, or other persons that are not subject to the jurisdiction of this Commission.

9. Verizon Access has interpreted the discovery requests to apply to its regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any discovery requests or any instructions and definitions associated with those discovery requests are intended to apply to matters outside Florida and which are not related to Florida intrastate operations subject to this Commission's jurisdiction, Verizon Access objects to such discovery requests as irrelevant, overly broad, unduly burdensome, and oppressive.

10. Verizon Access objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding.

11. Verizon Access objects to the discovery requests to the extent they are duplicative and overlapping, cumulative of one another, overly broad, and/or seek responses in a manner that is unduly burdensome, expensive, oppressive, or excessively time-consuming for Verizon Access.

12. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to obtain "all," "each," or "every" document, item, customer, or such other piece of information because such discovery is overly broad and unduly burdensome. Any answers that

Verizon Access provides in response to the discovery requests will be provided subject to, and without waiver of, this objection. 004

13. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they seek to require Verizon Access to create documents not in existence at the time of the discovery requests because such discovery is overly broad and unduly burdensome.

14. Verizon Access objects to the discovery requests and all instructions and definitions associated with those discovery requests to the extent they are not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of this proceeding, as such discovery is overly broad and unduly burdensome.

15. Verizon Access objects to the disclosure of confidential or proprietary information or trade secrets prior to entry of a protective order restricting disclosure of such information in a manner to be agreed upon by the parties. Verizon Access further objects to the disclosure of confidential or proprietary information of third-parties which Verizon Access is required to maintain as confidential pursuant to agreements with such parties and/or pursuant to statute, administrative decree, or court order.

16. Verizon Access objects to the definition of "document" to the extent it seeks to impose an obligation that is greater than that imposed by Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedure, and to the extent that it would pose an unreasonable and undue annoyance, burden, and expense on Verizon Access. Verizon Access' objection includes, but is not limited to, the definition of "document" to the extent it includes network transmissions, switch data, or other electronic routing information which was not generated in the form of a written or printed record, on the

grounds that it would be unduly burdensome and expensive to require Verizon Access 005 to search through computer records or other means of electronic or magnetic data storage or compilation.

Interrogatory 11: Does Verizon Access assign telephone numbers to end users that are physically located outside of the rate center to which the telephone number is assigned?

Response:

The concept of physical location of an end user cannot readily be applied to a customer that is an internet service provider. Subject to this condition, Verizon Access has modems used to provide service to internet service providers that are not located in the rate centers to which the telephone numbers of the modems are assigned. As Embarq

knows, Verizon Access has never denied using virtual NXX ("vNXX") arrangements; otherwise, compensation for vNXX traffic would not be a disputed issue in this proceeding.

Interrogatory 12: If the answer to Interrogatory 11 is yes, has Verizon Access ever ported a telephone number from Embarq and assigned it in this manner?

Response:

Verizon Access objects to this Interrrogatory because it does not seek information that is relevant to any issue in this proceeding and is not calculated to lead to any relevant information. This question asks for information about how Verizon Access provides services using vNXX number assignments. But the only vNXX-related dispute the parties identified for arbitration is Issue 1: "What compensation should apply to virtual NXX ("vNXX") traffic under the interconnection agreement ('ICA')?" This issue relates only to *compensation* for vNXX traffic exchanged between the parties under their new ICA. Its resolution does not depend on how vNXX arrangements may be provided, or the history of how a particular number came to be used for vNXX arrangements. Each party's proposed contract language for vNXX compensation proposal treats all vNXX traffic alike, without making compensation distinctions based on the details of how the vNXX services are provided.

Interrogatory 13: If the answer to Interrogatory 12 is yes, does Verizon Access ever assign the number to a switch that is physically located outside of the rate center to which the telephone number is assigned (that is, the switch providing dial tone is outside of the rate center to which the telephone number is assigned) in order to serve the end user that is physically located outside of the rate center?

Response:

Verizon Access objects to this Interrrogatory because it does not seek information that is relevant to any issue in this proceeding and is not calculated to lead to any relevant information. This question asks for information about how Verizon Access provides services using vNXX number assignments. But the only vNXX-related dispute the parties identified for arbitration is Issue 1: "What compensation should apply to virtual NXX ("vNXX") traffic under the interconnection agreement ('ICA')?" This issue relates only to *compensation* for vNXX traffic exchanged between the parties under their new ICA. Its resolution does not depend on how vNXX arrangements may be provided, or the history of how a particular number came to be used for vNXX arrangements. Each party's proposed contract language for vNXX compensation proposal treats all vNXX traffic alike, without making compensation distinctions based on the details of how the vNXX services are provided.

Interrogatory 14: If the answer to Interrogatory 13 is yes, please describe with specificity the types of facilities used to transport calls from the rate center where the telephone number is assigned to the rate center where the end user resides. For example, are they dedicated facilities or are they shared facilities? Do the calls route over EAS trunks? Toll trunks?

Response:

Verizon Access objects to this Interrrogatory because it does not seek information that is relevant to any issue in this proceeding and is not calculated to lead to any relevant information. This question asks for information about how Verizon Access provides services using vNXX number assignments. But the only vNXX-related dispute the parties identified for arbitration is Issue 1: "What compensation should apply to virtual NXX ("vNXX") traffic under the interconnection agreement ('ICA')?" This issue relates only to *compensation* for vNXX traffic exchanged between the parties under their new ICA. Its resolution does not depend on how vNXX arrangements may be provided, or the history of how a particular number came to be used for vNXX arrangements. Each party's proposed contract language for vNXX compensation proposal treats all vNXX traffic alike, without making compensation distinctions based on the details of how the vNXX services are provided. Subject to this objection and without waiving it, Verizon Access states that all vNXX traffic is transported from Embarq to Verizon Access' point of interconnection ("POI") over interconnection trunks. EAS and/or toll trunks are not utilized for passing such traffic from Embarq to Verizon Access.

Interrogatory 15: Does Verizon pay for or own the facilities to transport the calls described in Interrogatory No. 14?

Response:

Verizon Access objects to this Interrrogatory because it does not seek information that is relevant to any issue in this proceeding and is not calculated to lead to any relevant information. This question asks for information about how Verizon Access provides services using vNXX number assignments. But the only vNXX-related dispute the parties identified for arbitration is Issue 1: "What compensation should apply to virtual NXX ("vNXX") traffic under the interconnection agreement ('ICA')?" This issue relates only to *compensation* for vNXX traffic exchanged between the parties under their new ICA. Its resolution does not depend on how vNXX arrangements may be provided, or the history of how a particular number came to be used for vNXX arrangements. Each party's proposed contract language for vNXX compensation proposal treats all vNXX traffic alike, without making compensation distinctions based on the details of how the vNXX services are provided. Subject to this objection and without waiving it, Verizon Access' response is yes.

Interrogatory 16: If the answer to Interrogatory 13 is yes:

a. When the end user with the ported number originates a local call to the rate center in which the end user resides (not the rate center where the telephone number is assigned) is the call routed through the rate center to which the telephone number is assigned?

b. When the end user with the ported number originates a long distance call, does the call route through the rate center where the telephone number is assigned or is it routed differently? If it is routed differently, please describe with specificity the manner in which the call is routed.

Response:

Verizon Access objects to this Interrrogatory because it does not seek information that is relevant to any issue in this proceeding and is not calculated to lead to any relevant information. This question asks for information about how Verizon Access provides services using vNXX number assignments. But the only vNXX-related dispute the parties identified for arbitration is Issue 1: "What compensation should apply to virtual NXX ("vNXX") traffic under the interconnection agreement ('ICA')?" This issue relates only to *compensation* for vNXX traffic exchanged between the parties under their new ICA. Its resolution does not depend on how vNXX arrangements may be provided, or the history of how a particular number came to be used for vNXX arrangements. Each party's proposed contract language for vNXX compensation proposal treats all vNXX traffic alike, without making compensation distinctions based on the details of how the vNXX services are provided.

Interrogatory 17 : Does Verizon currently offer or have plans to offer products similar to VoIP providers such as Vonage where they assign a telephone number from one state to an end user in another state (for example, a Florida telephone number would be assigned to an end user in another state, such as Georgia)?

Response :

Verizon Access and Embarq have settled the only VoIP-related issue in this arbitration (concerning compensation for VoIP traffic), so this Interrogatory should be considered moot because it appears to relate to VoIP.

To the extent Embarq contends that the Interrogatory is still proper, Verizon Access objects to it because it is vague and ambiguous. It does not define what is meant by "products similar to VoIP providers such as Vonage where they assign a telephone number from one state to an end user in another state...." Vonage's VoIP products are not at issue in this case, and, to the extent that the question assumes that Verizon Access has comprehensive knowledge of Vonage's products and how Vonage provides them, that assumption is incorrect.

Verizon Access objects to this Interrogatory, in addition, because it seeks information that is not relevant to any Issue in this arbitration and it is not designed to lead to the

discovery of any relevant information. Verizon Access' plans for potential future services are not relevant to any issue in this arbitration. None of the parties' proposals for contact language on the disputed issues in this arbitration depends on what new services Verizon Access might be planning to provide in the future.

VERIFICATION

STATE OF FLORIDA)
) ss.
COUNTY OF HILLSBOROUGH)

BEFORE ME, the undersigned authority, personally appeared Frank App, who deposed and stated that the answers to the First Set of Interrogatories (Nos. 1-17) served on Verizon Access Transmission Services by Embarq Florida, Inc. in Docket No. 060767-TP were prepared at his request and he is informed that the responses contained therein are true and correct to the best of his information and belief.

DATED at Tampa, Florida, this 23rd day of April, 2007.

Frank App

Sworn to and subscribed before me this 23rd day of April, 2007.

Teresa Ann Scobie
Notary Public
State of Florida

My Commission Expires:

TERESA ANN SCOBIE
MY COMMISSION # DD 566618
EXPIRES: October 21, 2010
Bonded Thru Notary Public Underwriters

Docket No. 060767-TP Exhibit – Comprehensive Testimony List –May 4, 2007			
Hearing I.D. #	**Witness**	**Proffered By**	**Description**
1	Don Price	Verizon Access	1. Amended Direct Testimony addressing Issues # 1, 4, and 5. 2. Amended Rebuttal Testimony addressing Issues # 1, 4, and 5.
2	Edward B. Fox	Embarq	1. Direct Testimony addressing Issue # 1, 4, and 5. 2. Rebuttal Testimony addressing Issues # 1, 4 and 5.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 060767-TP Exhibit No. 14
Company/ EMBARQ & Verizon Access
Witness: Don Price & Edward B. Fox
Date: 05/03/07