BEFORE THE 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 ORDER NO. PSC-07-0383-PHO-TP ISSUED: May 1, 2007

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on April 23, 2007, in Tallahassee, Florida, before Commissioner Matthew M. Carter II, as Prehearing Officer.

APPEARANCES:

DULANEY L. O'ROARK III, ESQUIRE, 6 Concourse Parkway, Suite 600, Atlanta, Georgia 30328, and KIMBERLY CASWELL, ESQUIRE, P.O. Box 110, MC FLTC007, Tampa, Florida 33601-0110
On behalf of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (Verizon Access).

SUSAN S. MASTERTON, ESQUIRE, 1313 Blair Stone Road, Tallahassee, Florida 32301
On behalf of Embarq Florida, Inc. (Embarq).

T. LEE ENG TAN, ESQUIRE, and ADAM J. TEITZMAN, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

PREHEARING ORDER

I. CASE BACKGROUND

On November 27, 2006, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (Verizon Access) filed its Petition for Arbitration (Petition) of disputes arising from negotiation of an interconnection agreement with Embarq Florida, Inc. (Embarq). On December 22, 2006, Embarq filed its Response to the Petition. Pursuant to Verizon Access' Petition, this matter has been scheduled for an administrative hearing.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 364, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapter 25-22, Florida Administrative Code, as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 119.07(1), F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, F.S.. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, F.S., at the hearing shall adhere to the following:

(1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Each witness whose name is preceded by a plus sign (+) will present direct and rebuttal testimony together.

Witness	Proffered By	Issues #
Direct and Rebuttal		
+Don Price	Verizon Access	1, 4, 5
+Edward B. Fox	Embarq	1, 4, 5

VII. BASIC POSITIONS

VERIZON ACCESS: The Commission should adopt Verizon Access' proposed contract language to resolve the parties' disputes in this arbitration of a new interconnection agreement.

EMBARQ: There are three issues remaining in dispute between the parties. On the three disputed issues Embarq's has proposed that:

- Reciprocal compensation for VNXX traffic should be based on the physical location of the calling and called parties, not the NPA/NXXs.

- Verizon Access should pay Embarq any transit traffic charges Embarq incurs if Verizon Access fails to comply with the terms of the interconnection agreement to establish a direct interconnection when indirect traffic exceeds a DS1 threshold.

- Transit traffic should be compensated at the rate of $.005. This rate is a reasonable commercial, market-based rate and is consistent with prior Commission orders regarding the appropriate rate for transit traffic.

Embarq's positions on these issues are fair, reasonable and consistent with the Act and with Commission and FCC precedent and, therefore, the Commission should approve Embarq's proposed language and reject the language proposed by Verizon Access.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: WHAT COMPENSATION SHOULD APPLY TO VIRTUAL NXX TRAFFIC UNDER THE INTERCONNECTION AGREEMENT?

POSITIONS

VERIZON ACCESS: The FCC intends to decide the issue of vNXX compensation in its Intercarrier Compensation Rulemaking. Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking, CC Docket No. 01-92, (April 27, 2001) and Further Notice of Proposed Rulemaking, (March 3, 2005). Until it does,

Verizon Access asks the Commission to implement the same kind of compensation approach major ILECs and CLECs have agreed upon in Florida and elsewhere in the absence of regulatory intervention. This approach compensates the CLEC 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, compensation 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 the 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' petition for Arbitration, Pricing Attachment ("Reciprocal Compensation Rates"). In LATAs where the parties do not have a POI in each Embarq tandem serving area, vNXX traffic (voice, as well as ISP-bound) would be exchanged on a bill-and-keep basis under Verizon Access' proposal.

Verizon Access' proposal here is the same vNXX compensation arrangement that it and BellSouth recently negotiated, and the Commission approved, for the Verizon Access/BellSouth ICA, and that same arrangement applies in all BellSouth states. Verizon Access (and other CLECs) have implemented such region-wide agreements with a number of other carriers, including SBC (before its merger with AT&T) and with the Verizon ILECs (before their merger with MCI). In Florida, the Verizon ILEC has, likewise, implemented similar intercarrier compensation agreements with numerous carriers, including AT&T (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, LLC, SBC Long Distance, and Sprint Communications Company Limited Partnership.

As Mr. Price has explained, 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 obviate the need for state commissions to decide difficult, controversial issues about the nature of vNXX traffic.

EMBARQ: Consistent with past Commission precedent, reciprocal compensation should be based on the physical location of the calling and called parties, not the NPA/NXXs. Any traffic, including VNXX traffic, that physically originates and terminates outside of Embarq's local calling area is interexchange traffic that is subject to access charges. (Fox)

STAFF: Staff has no position at this time.

ISSUE 2: WHICH PARTY'S VOICE OVER INTERNET PROTOCOL ("VOIP") LANGUAGE SHOULD THE COMMISSION ADOPT?

Staff understands that the parties have resolved this issue and, therefore, it is no longer in dispute.

ISSUE 3: HOW SHOULD THE PARTIES COMPENSATE ONE ANOTHER FOR TERMINATING TRAFFIC WHEN MORE THAN 10% OF THE TRAFFIC FORWARDED FOR TERMINATION DOES NOT CONTAIN CALLING PARTY NUMBER ("CPN")?

Staff understands that the parties have resolved this issue and, therefore, it is no longer in dispute.

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 ACCESS BE REQUIRED TO REIMBURSE EMBARQ FOR ANY TRANSIT CHARGES BILLED BY AN INTERMEDIARY CARRIER FOR LOCAL TRAFFIC OR ISP-BOUND TRAFFIC ORIGINATED BY EMBARQ?

POSITIONS

VERIZON ACCESS: No. Embarq proposes a special penalty provision to enforce the parties' agreement (in ICA § 61.1.5) that Verizon Access will establish direct trunks with the third-party transiting 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' 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.)

Verizon Access cannot be forced to pay Embarq's bills from a third-party transiting carrier, particularly when Verizon Access alone cannot control the timeframes for establishment of direct trunks, which is a joint undertaking with Embarq or with a third-party carrier. 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.

Embarq has offered nothing to support its 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. Indeed, Embarq is often not even billed for transit by the transiting carrier. 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.

In addition, Embarq has failed to address Verizon Access' legal concern that Embarq's penalty proposal 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). Embarq's proposal would assess charges on Verizon Access for telecommunications traffic originated on Embarq's network.

EMBARQ: The parties have already agreed that a direct connection must be established when indirect traffic exceeds a DS1 level. Embarq will suffer economic consequences if Verizon Access fails to establish a direct connection as required by the agreement. Embarq is proposing a specific enforcement mechanism--Verizon Access must pay any transit charges incurred by Embarq--if Verizon Access fails to establish the required direct connection within a certain time frame. This specific enforcement mechanism is designed to provide a reasonable incentive for Verizon Access to comply with the direct connection requirement. (Fox)

STAFF: Staff has no position at this time.

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

POSITIONS

VERIZON ACCESS: The Commission should develop a transit rate for the Parties' ICA by referring to the comprehensive, relevant range of data points Verizon Access 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 transit rates in Embarq's recently negotiated agreement with BellSouth in Florida and the other BellSouth states ($0.0015 in 2007, $0.0020 in 2008, and $0.0025 thereafter). Embarq's few references to rates in other states

and contracts with other carriers are not as compelling as the range of reference points Verizon Access has presented. Verizon Access' information demonstrates that Embarq's proposed rate of $0.005--more than double the $0.002045 transit rate paid under the parties' existing contract—is unreasonably high.

EMBARQ: The parties agree that transit service is not a § 251 obligation. Embarq's proposed transit traffic rate of $.005 per minute of use is a reasonable commercial, market-based rate. In addition, Embarq's proposed rate is consistent with prior Commission orders regarding the appropriate rate for transit traffic. (Fox)

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
Direct			
Price	Verizon Access	(DP – 1)	Local Call Example: ILEC to CLEC
Price	Verizon Access	(DP – 2)	"VNXX" Call Example: ILEC to CLEC

There are no exhibits for rebuttal witnesses. Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulated issues at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Parties have waived opening and closing statements.

It is therefore,

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 1st day of May, 2007.

MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.