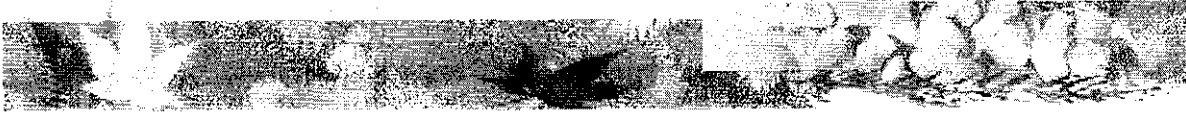


**Dorothy Menasco**

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**From:** terry.scobie@verizon.com  
**Sent:** Tuesday, July 01, 2008 4:12 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Adam Teitzman; Beth Salak; David Christian; de.oroark@verizon.com; demetria.g.clark@verizon.com; Kimberly Caswell; Susan Masterton  
**Subject:** Docket 080308-TP - Supplement to Verizon's Motion to Dismiss Embarq's Complaint Seeking Intrastate Access Charges on VoIP Traffic  
**Attachments:** 080308 VZB Supp to MTD 7-1-08.pdf



The attached filing is submitted in Docket No. 080308-TP on behalf of MCI Communications Services, Inc. d/b/a Verizon Business Services by

Dulaney L. O'Roark  
P. O. Box 110, MC FLTC0007  
Tampa, Florida 33601  
(813) 483-1256  
[de.oroark@verizon.com](mailto:de.oroark@verizon.com)

The attached document consists of a total of 23 pages (cover letter-1 page, Supplement and attachment-21 pages, and Certificate of Service-1 page).

**Terry Scobie**  
**Legal Secretary II**  
**Verizon Legal Department**  
**P. O. Box 110 - MC FLTC0007**  
**Tampa, Florida 33601-0110**  
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DOCUMENT NUMBER-DATE

05711 JUL-18

FPSC-COMMISSION CLERK

7/1/2008

Dulaney L. O'Roark III  
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Legal Department



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Phone 678-259-1449  
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July 1, 2008 – **VIA ELECTRONIC MAIL**

Ann Cole, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 080308-TP  
Complaint against MCI Communications Services, Inc. d/b/a Verizon Business  
Services for failure to pay intrastate access charges pursuant to Embarq's tariffs,  
by Embarq Florida, Inc.

Dear Ms. Cole:

Enclosed for filing in the above-referenced matter is a Supplement to Verizon's Motion to Dismiss Embarq's Complaint Seeking Intrastate Access Charges on VoIP Traffic. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (678) 259-1449.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

tas

Enclosures

DOCUMENT NUMBER-DATE

05711 JUL-1 08

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint against MCI Communications Services, ) Docket No. 080308-TP  
Inc. d/b/a Verizon Business Services for failure to pay ) Filed: July 1, 2008  
intrastate access charges pursuant to Embarq's tariffs, )  
by Embarq Florida, Inc. )  
\_\_\_\_\_ )

**SUPPLEMENT TO VERIZON'S MOTION TO DISMISS EMBARQ'S COMPLAINT  
SEEKING INTRASTATE ACCESS CHARGES ON VOIP TRAFFIC**

On June 26, 2008, Verizon filed a Motion to Dismiss Embarq Florida, Inc.'s Complaint ("Commission Complaint") asking the Commission to order Verizon to pay intrastate access charges on voice over Internet protocol ("VoIP") traffic, instead of the interstate access charges Verizon is paying.<sup>1</sup> Here, Verizon supplements that Motion to provide the Commission information that was not available when Verizon filed its Motion, but that is relevant to the Commission's deliberations on that Motion.<sup>2</sup>

Verizon's Motion explained that the Commission must dismiss Embarq's Complaint, because it would require the Commission to assert jurisdiction over VoIP services and Verizon as a VoIP services provider, in violation of Florida law "exempt[ing] from commission jurisdiction" all VoIP services.<sup>3</sup> In addition, Verizon pointed out that the FCC—the regulatory body that does have jurisdiction over VoIP

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<sup>1</sup> Because the Commission has no jurisdiction over VoIP services or VoIP providers, Verizon cannot be compelled to participate in this proceeding. Verizon provides this supplement to its Motion to Dismiss only to contest the Commission's jurisdiction over Embarq's Complaint, and Verizon does not accede to the Commission's jurisdiction in any way.

<sup>2</sup> Verizon agrees to measure Embarq's time for response to Verizon's Motion to Dismiss from the date this Supplement was filed.

<sup>3</sup> Fla. Stat., § 364.011 (including VoIP services in "[e]xemption from Commission jurisdiction"). See also Fla. Stat., §§ 364.01 (VoIP activities "are not regulated by the Florida Public Service Commission....the provision of voice-over-Internet-protocol (VoIP) free of unnecessary regulation, regardless of the provider, is in the public interest"); 364.013 ("voice-over-Internet-protocol (VoIP) shall be free of state regulation"); 364.02(13) (excluding VoIP from the definition of "service" and stating that a local exchange carrier's VoIP-related duties are only those required under federal law and regulation).

issues—already has several active proceedings to clarify the intercarrier compensation that applies to VoIP.

Through its actions after Verizon filed its Motion to Dismiss, Embarq acknowledged that this Commission is not the appropriate forum to hear VoIP claims. On June 27, a day after Verizon filed its Motion to Dismiss, Embarq Florida, Inc. and other Embarq affiliates filed a complaint in federal district court (“Federal Court Complaint”) that includes exactly the same claim for intrastate access charges on VoIP traffic that Embarq raised in its Complaint here.<sup>4</sup> Embarq’s Federal Court Complaint, like its Commission Complaint, cites Embarq’s intrastate access service tariff as a basis for its claim for intrastate access charges on VoIP traffic. (Federal Court Complaint at 14-15.) *In fact, entire paragraphs of the Federal Court Complaint track the Commission Complaint almost word for word.*<sup>5</sup>

In a footnote near the end of the pleading, the Federal Court Complaint notes cryptically that “[u]nder Count I, Embarq Florida Inc. is not a Plaintiff with respect to access charges withheld by MCI as described in Paragraph 35, above.” (Federal Court Complaint n. 2.) This footnote does not change the fact that Embarq has brought the same issues before both this Commission and the District Court. First, despite the footnote, Embarq Florida Inc. and its intrastate tariff are expressly included in the Count I “Collection Action Pursuant to Intrastate Access Tariffs” (Federal Court Complaint at 14-15), so Embarq does, in fact, intend to ask the court for intrastate access charges under Embarq Florida’s intrastate access tariff. Second, Embarq made no attempt to

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<sup>4</sup> *Embarq Missouri, Inc. et al. v. MCI Communications Services, Inc. d/b/a Verizon Business Services*, Complaint, Civ. Action No.1:08cv668 (E.D. Va.) (filed June 27, 2008) (attached).

<sup>5</sup> *Compare* Commission Complaint ¶ 19 *and* Federal Court Complaint ¶ 37; Commission Complaint ¶ 20 *and* Federal Court Complaint ¶ 38; Commission Complaint ¶ 33 *and* Federal Court Complaint ¶ 39.

except Embarq Florida from other paragraphs of the Complaint that accuse Verizon of misclassifying interstate and intrastate traffic and overstating VoIP minutes—precisely the same claims that Embarq made in its Commission Complaint. (See Federal Court Complaint, ¶¶ 36-40; Commission Complaint, ¶¶ 18-20, 33.) Third, even if Embarq Florida were not included at all in the Federal Court Complaint, the fact that the Embarq companies have asked a federal court (as well as the FCC)<sup>6</sup> to resolve the same, VoIP-related compensation issues Embarq Florida brought before this Commission shows Embarq's understanding that state commissions are not appropriate forums to hear such VoIP-related claims.

The Commission **cannot**, in any event, hear Embarq's VoIP-related claims because of the statutory bar to asserting jurisdiction over VoIP services and entities providing VoIP services. Embarq's Federal Court Complaint raising the same claims provides additional motivation to promptly dismiss Embarq's Complaint that is not properly before this Commission.

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<sup>6</sup> See Verizon's Motion to Dismiss at 11-12.

Respectfully submitted on July 1, 2008.

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Attorneys for MCI Communications Services,  
Inc. d/b/a Verizon Business Services

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

EMBARQ MISSOURI, INC. f/k/a SPRINT  
MISSOURI, INC. f/k/a UNITED TELEPHONE COM-  
PANY OF MISSOURI; UNITED TELEPHONE  
COMPANY OF KANSAS; UNITED TELEPHONE  
COMPANY OF SOUTHCENTRAL KANSAS;  
EMBARQ FLORIDA, INC. f/k/a SPRINT - FLORIDA,  
INCORPORATED; CAROLINA TELEPHONE AND  
TELEGRAPH COMPANY LLC; UNITED TELE-  
PHONE COMPANY OF THE CAROLINAS LLC;  
UNITED TELEPHONE COMPANY OF TEXAS, INC.;  
CENTRAL TELEPHONE COMPANY OF TEXAS;  
EMBARQ MINNESOTA, INC. f/k/a/ SPRINT  
MINNESOTA, INC.; and UNITED TELEPHONE  
COMPANY OF THE NORTHWEST,

Plaintiffs,

v.

MCI COMMUNICATIONS SERVICES, INC. D/B/A  
VERIZON BUSINESS SERVICES

Defendant.

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Civil Action No. \_\_\_\_\_

**COMPLAINT**  
(with Jury Demand)

Plaintiffs Embarq Missouri, Inc. f/k/a Sprint Missouri, Inc. f/k/a United Telephone Company of Missouri; United Telephone Company of Kansas; United Telephone Company of Southcentral Kansas; Embarq Florida, Inc. f/k/a Sprint - Florida, Incorporated; Carolina Telephone and

Telegraph Company LLC; United Telephone Company of the Carolinas LLC; United Telephone Company of Texas, Inc.; Central Telephone Company of Texas; Embarq Minnesota, Inc. f/k/a Sprint Minnesota, Inc., and United Telephone Company of the Northwest, for this complaint against defendant MCI Communications Services, Inc. d/b/a Verizon Business Services f/k/a MCI WORLDCOM Communications, Inc. ("MCI") allege as follows:

### NATURE OF ACTION

1. This case involves the failure of defendant MCI Communications Services, Inc. d/b/a Verizon Business Services f/k/a MCI WORLDCOM Communications, Inc. ("MCI") to pay legally required charges for its use of Plaintiffs' local network facilities to originate, receive and complete long-distance calls. Whenever one of MCI's long-distance customers makes a long-distance call from a telephone connected to a Plaintiff's network, MCI uses the Plaintiff's local facilities to "originate" the MCI long-distance call to the called party. Whenever one of MCI's long-distance customers makes a long-distance call to one of Plaintiffs' local telephone customers, MCI uses the Plaintiffs' local facilities to complete, or "terminate," the MCI long-distance call to the called party. To the extent that such calls are between a calling party and a called party who are both located in the same state, MCI is required to pay Plaintiffs for this "access" to Plaintiffs' local exchange facilities pursuant to Plaintiffs' state tariffs on file with the applicable state regulatory commissions. To the extent that such calls are between a calling party and a called party who are located in different states, MCI is required to pay Plaintiffs for this "access" to Plaintiffs' local exchange facilities pursuant to Plaintiffs' interstate tariffs on file with the Federal Communications Commission.



2. While MCI has paid a portion of the lawful access charges billed by Plaintiffs in accordance with Plaintiffs' state tariffs, it has wrongfully withheld a significant portion of the payments billed and due for the access services that Plaintiffs have provided. Plaintiffs seek to recover the access charges that MCI has unlawfully avoided or failed to pay, together with late charges in accordance with Plaintiffs' tariffs.

### JURISDICTION AND VENUE

3. Plaintiffs contend that MCI violated the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* and breached Plaintiffs' federal tariffs. Thus, this case arises under the laws of the United States, and this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1337.

4. In addition, Plaintiffs and Defendant are citizens of different states. The matter in controversy with respect to Plaintiffs Carolina Telephone and Telegraph Company LLC, Embarq Florida, Inc. *f/k/a* Sprint - Florida, Incorporated, Embarq Minnesota, Inc. *f/k/a* Sprint Minnesota, Inc., Embarq Missouri, Inc. *f/k/a* Sprint Missouri, Inc. *f/k/a* United Telephone Company of Missouri, and United Telephone Company of the Northwest exceeds the sum or value of \$75,000. This Court has diversity jurisdiction over this action for those Plaintiffs with claims greater than \$75,000 pursuant to 28 U.S.C. § 1332(a)(1).

5. The remaining Plaintiffs' claims against Defendant are so related to the claims within the Court's jurisdiction discussed in Paragraph 4, above, that they form part of the same case or controversy under Article III of the United States Constitution. These remaining Plaintiffs' claims are based upon (i) access tariffs governing the rates and terms for the access charges of the Plaintiffs, (ii) MCI's liability to Plaintiffs for its failure to pay in full access charges on

interexchange traffic that MCI delivered to Plaintiffs for termination, (iii) MCI's liability to Plaintiffs for its failure to pay in full access charges on interexchange traffic that Plaintiffs originated and delivered to MCI, (iv) Plaintiffs' full performance of their obligations under the tariffs, (v) MCI's material violation of the tariffs by failing to pay the access rates for services that it used, and (vi) resulting damages to the Plaintiffs. Accordingly, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over these remaining Plaintiffs' claims.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(2), as a substantial part of the events or omissions giving rise to the claims occurred in this district.

#### **PARTIES**

7. *Embarq Missouri, Inc. f/k/a Sprint Missouri, Inc. f/k/a United Telephone Company of Missouri* is a Missouri corporation and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of Missouri.

8. *United Telephone Company of Kansas* is a Kansas corporation and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of Kansas.

9. *United Telephone Company of Southcentral Kansas* is an Arkansas corporation and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of Kansas.

10. *Embarq Florida, Inc. f/k/a Sprint - Florida, Incorporated* is a Florida corporation and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of Florida.

11. Carolina Telephone and Telegraph Company LLC is a North Carolina limited liability company and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of North Carolina.

12. United Telephone Company of the Carolinas LLC is a South Carolina limited liability company and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of South Carolina.

13. United Telephone Company of Texas, Inc. is a Texas corporation and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of Texas.

14. Central Telephone Company of Texas is a Texas corporation and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of Texas.

15. Embarq Minnesota, Inc. f/k/a/ Sprint Minnesota, Inc. is a Minnesota corporation and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of Minnesota.

16. United Telephone Company of the Northwest is an Oregon corporation and is the incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h), providing local telephone and other telecommunications services in parts of Oregon and Washington.

17. Each of the aforementioned Plaintiffs is a subsidiary of Embarq Corp. and has its principal place of business in Kansas.

18. MCI Communications Services, Inc. d/b/a Verizon Business was formerly known as MCI WORLDCOM Communications, Inc. and changed its name to MCI Communications Services, Inc. in approximately 2005. It is an interexchange carrier incorporated in Delaware and having its principal place of business in Ashburn, Virginia.

## **BACKGROUND**

### **The Access Charge Regime**

19. This action centers on MCI's non-payment of switched access charges owed to Plaintiffs in accordance with Plaintiffs' lawful tariffs. Access charges are the fees that long-distance carriers (also known as interexchange carriers or "IXCs") such as MCI must pay local exchange carriers such as Plaintiffs to defray the costs associated with the IXCs' use of the local exchange carriers' facilities for originating and terminating long-distance calls. These switched access charges are established and mandated by federal and state regulations and tariffs.

20. Since the breakup of the Bell System in 1984, local exchange carriers ("LECs"), such as Plaintiffs, and long-distance carriers, such as MCI, have played largely distinct roles in the telecommunications industry. LECs have primarily carried local calls – *i.e.*, calls between end users located within local calling areas or exchanges. Long-distance carriers have traditionally carried calls between exchanges, on both an intrastate and interstate basis. This long-distance service is known as "interexchange" service.

21. In order to provide long-distance "interexchange" service, carriers such as MCI typically establish one or more points of presence (POPs) within a given area. POPs are facili-

ties that provide a point of interconnection between local exchange networks and interexchange networks. When a customer makes an interexchange call, that customer's local exchange carrier transports the call over the local exchange carrier's network to the POP of the long-distance carrier that the customer has selected (say, MCI). The long-distance carrier then transports the call from the POP in the area where the calling party is located (*i.e.*, where the call originates) to the POP in the area where the called party is located (*i.e.*, where the call terminates). The called party's local exchange carrier then receives the call from the long-distance carrier, either directly or through an intermediary, and delivers it to the called party.

22. The transmission of an interexchange call from the calling party to a long-distance carrier is known as "originating access." The transmission of an interexchange call from a long-distance carrier to the called party is known as "terminating access."

23. With respect to Plaintiffs' access services to MCI, federal and state tariffs dictate the appropriate originating and terminating access charges that apply to a given interexchange call, depending on whether the call is interstate or intrastate. If the call originates in one state and terminates in another, the access charges that apply are set forth in interstate tariffs filed with the Federal Communications Commission ("FCC"). If the call originates and terminates within the same state, the access charges that apply are set forth in intrastate tariffs filed with individual state regulatory commissions.

24. For historical and regulatory reasons beyond the scope of this Complaint, Plaintiffs' intrastate access charges are typically considerably higher than their interstate access charges.

25. Most of MCI's traffic bound for Plaintiffs' customers is provided over large capacity telephone lines called trunks between MCI's POP and Plaintiffs' tandem switches or the tandem switches of another LEC. A tandem switch is an intermediate switch that connects one trunk to another, providing an intermediate connection between the originating telephone call location and the switch ("end office switch") that serves the end user customer. The tandem switch then directs the call to the end office switch that serves the end user customer that is the recipient of the call. Plaintiffs also have direct end office trunk connections from MCI.

**MCI's Obligations to Pay Access Charges to Plaintiffs**

26. During the entire relevant period, Plaintiffs have offered intrastate switched access service pursuant to tariffs filed with the respective state commissions and interstate switched access service pursuant to tariffs filed with the FCC. The provisions of the intrastate tariffs are binding on MCI and govern the rates, terms and conditions by which Plaintiffs provide intrastate switched access services to MCI. The provisions of the interstate tariffs are binding on MCI and govern the rates, terms and conditions by which Plaintiffs provide interstate switched access services to MCI.

27. MCI has disputed and withheld payment of portions of Plaintiffs' invoices on two different theories - neither of which has merit. MCI's first theory is based on its contention that certain calls between parties in the same state were only subject to interstate access charges because the calls were prepaid calling card calls that MCI asserts were the subject of an FCC decision (discussed below) allowing MCI to avoid paying intrastate access charges even where the caller and called party are in the same state. MCI is incorrect that the FCC decision exempts such prepaid card calls from intrastate access charges and Plaintiffs do not concede that the calls

in question qualify for such an exemption, even if one could be said to exist. Moreover, the FCC decision upon which MCI has relied was vacated by an appellate court. *Qwest Services Corp v FCC*, Case No. 06-1274 (D.C. Cir., Dec. 4, 2007).

28. For some time prior to 2005, MCI had been offering a long-distance telephone service using prepaid calling cards. To use the prepaid calling card, the purchaser dialed a toll-free number that was connected with a calling card platform operated by MCI. The purchaser then entered in a code provided by MCI or its representative, and dialed the number of the called party. For many years prior to 2005, the FCC had made clear that the jurisdiction of such calls (interstate or intrastate) was determined by reference to the locations of the calling and called parties, and not by the location of the calling card platform. Thus, if a caller in North Carolina placed a long distance call to one of Plaintiffs' customers elsewhere in North Carolina, the long-standing rulings of the FCC required that the call be treated as an intrastate call, even if the call was routed through a calling card platform in another state.

29. Under Plaintiffs' tariffs, billing of terminating access charges as interstate or intrastate is based on data transmitted by the interexchange carrier as to location of the calling party, using the first six digits of the caller's 10-digit telephone number (referred to as the "NPA-NXX").

30. On information and belief, consistent with prevailing law, MCI correctly transmitted to Plaintiffs the NPA-NXX of the calling party (and not the NPA-NXX of the calling card platform) for at least some of its prepaid card calls. This enabled Plaintiffs to issue bills to MCI for terminating switched access service based on the correct jurisdiction of the calls.

31. Under Plaintiffs' tariffs, when a customer of Plaintiffs places a call to a toll free number (typically a number with area code 800, 888, 877, or 866, and referred to as "8YY"), Plaintiffs are entitled to receive payment of originating switched access charges from the IXC that carries the call to the toll free number. Because Plaintiffs cannot determine whether such a call is interstate or intrastate from the telephone number itself, each Plaintiff's tariffs require the IXC to provide it with a report setting forth the percentage of 8YY calls that are interstate. This percentage is referred to as a "PIU," or percentage interstate usage."

32. On information and belief, MCI provided Plaintiffs with accurate Originating 8YY PIU reports. Plaintiffs utilized MCI's Originating 8YY PIU reports in submitting bills to MCI for originating switched access charges for 8YY calls. MCI, however, disputed the invoices based on these MCI Originating 8YY PIU Reports. MCI contended that the jurisdiction of its calls should not be based on the location of the calling and called parties (which was how its Originating 8YY PIU Reports were computed), but on the basis of the location of the calling parties and the MCI calling card platform.

33. As stated above, MCI refused to pay some of invoices that were based on the correct jurisdiction of the calls, citing two theories. Under the first theory offered by MCI to support its refusal to remit full compensation to Plaintiffs, MCI asserted incorrectly that it is was justified in failing to fully pay plaintiffs lawfully billed intrastate access charges for periods between approximately February 2005 and November 2006 based on an FCC decision, released June 30, 2006, to which the FCC assigned the number 06-79 and in which the FCC appeared to deny prior claims for reasons of "manifest injustice." That decision, which was vacated on appeal, related to "menu-driven" prepaid calling cards, which the caller could use to gain infor-



mation, such as weather or horoscope, as well as to place conventional telephone calls. The FCC reiterated that when callers placed long-distance telephone calls with such prepaid cards, such calls were telecommunications services subject to access charges and the jurisdiction of the calls was determined by the location of the calling and called parties, which is consistent with the call detail provided to Plaintiffs by MCI with regard to the prepaid card calls.

34. The FCC also recognized that some parties “may have relied on the assumption that they would not be subject to . . . burdens” such as payment of access charges and found that in such cases, it would work a “manifest injustice” to apply its ruling retroactively. Such exemption clearly does not apply to MCI because MCI manifested its recognition that its menu-driven card calls were telecommunications services by paying access charges, and manifested its recognition that the charges were based on the location of the calling and called parties by providing Plaintiffs with call detail reflecting the location of the calling party. MCI now contends incorrectly that, notwithstanding the requirement in Plaintiffs’ tariffs that the jurisdiction of the calls be determined on the basis of the call detail provided by MCI, Plaintiffs must ignore the call detail provided by MCI and treat all of MCI’s prepaid card calls as interstate (even where the caller, the platform and the called party are all in the same state) was not supported by the FCC’s decision, and in any event, the FCC’s “manifest injustice” decision was vacated by the appellate court.

35. MCI’s second theory for paying interstate access charges, rather than intrastate access charges, on calls between parties in the same states is MCI’s contention that the calls were

carried in whole or in part as voice over internet protocol (“VoIP”) calls.<sup>1</sup> Since approximately February, 2006, and continuing through the present, MCI has wrongfully paid only interstate access charges on calls it contends were VoIP calls, even when they were between parties located in the same state. Plaintiffs do not agree with MCI that such VoIP calls are exempt from intrastate access charges and do not concede that the calls in question qualify for such an exemption from intrastate access charges, even if one exists.

36. Plaintiffs do not concede that all of the calls for which MCI disputed Plaintiffs’ access bills are either menu-driven prepaid card calls or VoIP calls.

37. In calculating the amount of Plaintiffs’ access billings in dispute, MCI has self-identified a subset of the minutes of total interexchange traffic terminated to Plaintiffs that it alleges to be VoIP. MCI has represented that its classification of VoIP traffic as either interstate or intrastate is based on the actual endpoints of each call. However, MCI’s classification of interstate versus intrastate minutes for its VoIP traffic differs substantially from the jurisdictional percentages for MCI interexchange traffic Plaintiffs have developed in accordance with their tariffs, using actual traffic data compiled through the industry-standard Agilent call tracking system. Thus, for example, of the 93 million minutes MCI identified to Plaintiff Carolina Telephone and Telegraph Company LLC as VoIP minutes from August 2005 through April 2008, MCI classified 17.1 million minutes to be interstate minutes, 75.7 million minutes to be intrastate minutes and 0.2 million minutes as unknown jurisdiction. Using Agilent, the percent interstate usage (“PIU”) Carolina Telephone and Telegraph Company LLC has applied in North Carolina

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<sup>1</sup> With respect to MCI’s liability under the theory set forth in this Paragraph 35, Embarq Florida, Inc. is not a Plaintiff.

for the period August 2005 through April 2008 to all MCI interexchange terminating traffic is 67%. However, comparing the minutes of use that MCI claimed was VoIP traffic to the interstate-intrastate breakdown MCI claimed for this VoIP traffic, it appears that MCI has classified only 18% of this VoIP traffic as being interstate in nature. This percentage is a significant difference from the 67% for all of MCI's terminating traffic that Carolina Telephone and Telegraph Company LLC calculated using Agilent. While the percentages vary from state to state, the result is that overall, MCI has claimed that a much larger percentage of VoIP minutes were intrastate than is warranted by Plaintiffs' data.

38. MCI's classification of the traffic as interstate or intrastate is important, because MCI has wrongly claimed that all of the VoIP minutes it has identified as intrastate were billed by Embarq at intrastate access rates. This unfounded assumption is the basis for the amount of Plaintiffs' access billings that MCI has disputed and withheld from payment.

39. Even if one accepted MCI's patently wrong and self-serving claim that interstate access charges, rather than intrastate access charges, apply to all VoIP traffic regardless of the physical endpoints, MCI has identified more VoIP minutes to be jurisdictionally intrastate than Plaintiffs actually billed at intrastate rates. Because MCI has significantly understated the percentage of its VoIP traffic that is interstate, it has in turn significantly underpaid Plaintiffs for non-VoIP intrastate traffic for which intrastate access charges are unquestionably due.

40. The amounts that MCI has improperly withheld under MCI's menu-driven prepaid card and VoIP theories, as discussed above, are well in excess of \$4,000,000.00, not including late charges, and late charges through the date of this Complaint are well in excess of \$1,500,000.00.

41. In addition, on information and belief, MCI has also improperly avoided paying both interstate and intrastate access charges in another way. MCI informed the FCC that starting in May 2005, it would terminate long distance calls over "local interconnects," and therefore pay Plaintiffs and other LECs only the reciprocal compensation that is required for the termination of local calls, rather than the higher interstate and intrastate access charges that are due on long distance calls. On or about April 8, 2005, it similarly informed Plaintiffs that it would start migrating interexchange traffic to local interconnection trunks where it would be treated as local traffic, stating that it expected to commence such migration in June, 2005.

42. The MCI approach described in the preceding paragraph injured Plaintiffs in at least two ways: (1) for terminating MCI's interstate calls, Plaintiffs recovered at most reciprocal compensation from MCI, instead of interstate access charges at a higher rate; and (2) for terminating MCI's intrastate calls, Plaintiffs recovered at most reciprocal compensation from MCI, instead of intrastate access charges at a higher rate.

43. In addition, MCI owes Plaintiffs late fees, and owes attorneys fees and costs incurred by Plaintiffs in connection with collection of the unpaid amounts, in accordance with Plaintiffs' intrastate and interstate access tariffs.

## **COUNT I**

### **(Collection Action Pursuant to Intrastate Access Tariffs)**

44. Plaintiffs incorporate by reference as though fully set forth herein the allegations of the preceding paragraphs of this Complaint.

45. The rates and terms for the intrastate access charges of Plaintiff Embarq Missouri, Inc. f/k/a Sprint Missouri, Inc. f/k/a United Telephone Company of Missouri, are set forth in

Embarq Missouri, Inc. - P.S.C. MO.-No. 26. The rates and terms for the intrastate access charges of Plaintiffs United Telephone Company of Kansas and United Telephone Company of Southcentral Kansas are set forth in United Telephone Companies of Kansas - Access Service Tariff. The rates and terms for the intrastate access charges of Plaintiff Embarq Florida, Inc. f/k/a Sprint - Florida, Incorporated are set forth in Embarq Florida, Inc. - Access Service Tariff. The rates and terms for the intrastate access charges of Plaintiff Carolina Telephone and Telegraph Company LLC are set forth in Carolina Telephone & Telegraph LLC - Access Service Tariff. The rates and terms for the intrastate access charges of Plaintiff United Telephone Company of the Carolinas LLC are set forth in United Telephone Company of the Carolinas LLC - Access Service Tariff. The rates and terms for the intrastate access charges of Plaintiff United Telephone Company of Texas, Inc. are set forth in United Telephone Company of Texas, Inc. - Access Service Tariff. The rates and terms for the intrastate access charges of Plaintiff Central Telephone Company of Texas are set forth in Central Telephone Company of Texas - Access Service Tariff. The rates and terms for the intrastate access charges of Plaintiff Embarq Minnesota, Inc. f/k/a/ Sprint Minnesota, Inc. are set forth in Embarq Minnesota, Inc. - Access Service Tariff. The rates and terms for the intrastate access charges of Plaintiff United Telephone Company of the Northwest are set forth in United Telephone of the Northwest - PUC Or. No. 6 and United Telephone Company of the Northwest - WN U-9.

46. MCI is liable to Plaintiffs for its failure to pay in full intrastate access charges on intrastate interexchange traffic that MCI delivered to Plaintiffs for termination.<sup>2</sup>

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<sup>2</sup> Under Count I, Embarq Florida, Inc. is not a Plaintiff with respect to access charges withheld by MCI as described in Paragraph 35, above.

47. The tariffs referenced above provide, among other things, that MCI must pay Plaintiffs' intrastate access charges for terminating access.

48. MCI utilized the intrastate access services provided by Plaintiffs and Plaintiffs fully performed their obligations under the tariffs referenced above, except for those they were prevented from performing, those that they were excused from performing, or those that were waived by MCI's misconduct as alleged herein.

49. MCI materially violated the tariffs referenced above by failing to pay in full the tariffed intrastate access rates for the services it used.

50. Plaintiffs have been damaged in an amount to be determined at trial.

## COUNT II

### **(MCI's Breach Of Plaintiffs' Interstate Access Tariffs)**

51. Plaintiffs incorporate by reference as though fully set forth herein the allegations of the preceding paragraphs of this Complaint.

52. The rates and terms for interstate access charges for long distance calls for all Plaintiffs set forth in their interstate tariff, Embarq Local Operating Companies Tariff F.C.C. No. 1.

53. MCI is liable to Plaintiffs for its failure to pay in full interstate access charges on interstate interexchange traffic that MCI delivered to Plaintiffs for termination.

54. The tariffs referenced above provide, among other things, that MCI must pay Plaintiffs' interstate access charges for terminating access.

55. MCI utilized the interstate access services provided by Plaintiffs and Plaintiffs fully performed their obligations under the tariffs referenced above, except for those they were

prevented from performing, those that they were excused from performing, or those that were waived by MCI's misconduct as alleged herein.

56. MCI materially violated the tariffs referenced above by failing to pay in full the tariffed interstate access rates for the services it used.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court grants relief for all misconduct as follows:

- (a) An award in favor of Plaintiffs and against MCI for money damages in an amount to be proven at trial, plus late fees and/or prejudgment interest;
- (b) all costs and attorney's fees incurred by Plaintiffs; and
- (c) such further relief as this Court deems appropriate and just.

**JURY DEMAND**

Plaintiffs hereby request a jury trial on all issues and claims.

Respectfully submitted this 27th day of June, 2008



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail and U.S. mail on July 1, 2008 to:

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s/ Dulaney L. O'Roark III