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Subject: Embarq's Response to Regulatory Assessment Fee Audit (Redacted Version)
Attachments: Embarq RAF Audit,05-244-4-10,Redacted.pdf

<<Embarq RAF Audit,05-244-4-10,Redacted.pdf>>

Filed on behalf of:
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August 15, 2006

Ms. Blanca Bayó
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Embarq's Response to Regulatory Assessment Fee Audit
Control No. 05-244-4-1 (Redacted Version)

Dear Ms. Bayó:

This letter sets forth the response of Embarq Florida, Inc., Embarq Payphone Services, Inc. and Embarq Communications, Inc. ("EFI," "EPSI" and "ECI" respectively or, collectively, "Embarq") to the Commission's audit of the 2003-2004 regulatory assessment fees paid by various then-Sprint Corporation subsidiaries. Subsequent to the audit, Sprint Corporation has separated its former local companies to a new parent company, Embarq Corporation (also, "Embarq"). As a result of this separation, EFI (Company No. TL 727) and EPSI (Company No. TF 170) will respond to the findings as they relate to them. In addition, ECI (Company No. TX 866) will respond to the findings that involve the entity designated as SMNI, formerly a part of the Sprint Communications Company Limited Partnership CLEC entity (Company No. TX 045). As part of the separation of Sprint Nextel and Embarq, the assets and customers of SMNI have been transferred to the ECI CLEC entity. In a separate filing, Sprint Communications Company Limited Partnership (SCCLP) will respond to the findings related to the SCCLP IXC entity (Company No. TI 793) and to any findings related to the SCCLP CLEC entity that do not involve SMNI.

Audit Finding #1 – Reconciliation of Warehouse Data Files to RAF Return – SCCLP (CLEC and IXC)

On behalf of the entity designated as SMNI, ECI is responding to the issues raised in the audit report related to line items 2 and 8 in 2003 and line item 9 in 2004.

The adjustment for SMNI revenues on line 8 in 2003 is necessary to correct the amount reflected on line 2 – "year End Adj (SMNI)". The amount on line 2 for SMNI revenues was a preliminary number that was too high. The adjustment of $[redacted] is needed to properly reflect the correct 2003 intrastate SMNI revenues. The audit report raised a concern that the 2003 and 2004 allocations of SMNI revenues between the intrastate and interstate jurisdictions were not the same. However, the Commission Staff's analysis shown in the audit report includes an error in the amount for the 2003 intrastate amount which results in an incorrect conclusion on Staff's part. Below are Staff's analysis and the corrected analysis:

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Audit Report Analysis

	Total	Intrastate	Interstate	% Intrastate
2003	[redacted]	[redacted]	[redacted]	[redacted]
2004	[redacted]	[redacted]	[redacted]	[redacted]

Corrected Analysis

	Total	Intrastate	Interstate	% Intrastate
2003	[redacted]	[redacted]	[redacted]	[redacted]
2004	[redacted]	[redacted]	[redacted]	[redacted]

- See audit response number 17g

Based on the corrected analysis, the SMNI revenues for 2004 were allocated between interstate and intrastate jurisdictions in the same proportion as the 2003 revenues. Embarq maintains that revenues associated with SMNI were properly reflected in the RAF assessment for 2003 and 2004 and no adjustment is warranted for this item.

<u>Audit Finding No. 4 – Reported Revenue and Revenue Allocations – SPSI (Payphone)</u>

EPSI does not dispute the discrepancy found by the staff that results in an additional RAF due of $30.00. EPSI will remit the $30.00 additional RAF upon resolution of the issues raised in Embarq's response to the audit. As EPSI stated in response to audit staff inquiries, EPSI is currently working to identify a new factoring process that will address the concerns identified in the audit. It is EPSI's position that these newly-developed factors should apply on a prospective basis only.

<u>Audit Finding No. 5 – Intrastate/Interstate Allocation of Access Fee Revenue – SCCLP (CLEC) and SFI (Local)</u>

As Embarq reads this audit finding, the staff accepted the methodology used by Sprint-Florida, Incorporated (now Embarq Florida, Inc.) to calculate access fee revenue. Therefore, no response by EFI appears to be required.

As far as SMNI, the audit report raised a concern that 2004 revenues were not identified separately between interstate and intrastate jurisdictions. ECI acknowledges that the 2004 revenues in question were not uniquely identified by jurisdiction, but believes the allocation of 2004 revenues based on the percentages as reflected in the 2003 revenues (which reflect actuals) is a reasonable approach. There is no evidence that there was any significant change in the jurisdictional split of the traffic between interstate and intrastate in 2004 versus that experienced in 2003. ECI has implemented process changes that account for the revenues separately between interstate and intrastate jurisdictions effective with 2006 revenues. No adjustment to the 2004 RAF fees is necessary for this item.

Audit Finding No. 6 – Unreported Revenues – SFI (Local)

Embarq disputes the staff's recommendation that regulatory assessment fees are due on the identified non-telecommunications services revenues. The Florida Supreme Court has ruled that the Commission may only apply the fee to the revenues of telecommunications companies providing services under its jurisdiction. See, *Verizon v. Jacobs*, 810 So. 2d 906 (Fla. 2002)[1] Further, not only are the revenues in question not subject to Florida Commission jurisdiction, they are not subject to FCC jurisdiction for the following reasons:

CNAM (Caller Name) – The revenues in question are derived from queries for calling name information associated with the telephone numbers of non-affiliated carriers who have chosen to store their calling name information in the Embarq database. The queries are launched by non-affiliated carriers and are not associated with Embarq numbers. The services Embarq provides to these other carriers falls under the 1996 Telecommunications Act definition of an enhanced service[2] and is not subject to the FPSC's or FCC's regulation of telecommunications carriers.

LIDB – The revenues in question are derived from queries launched to the Embarq line information database (LIDB) for call completion information associated with the telephone numbers of non-affiliated carriers who have chosen to store their LIDB information in the Embarq database. These revenues are not associated with EFI's provision of telecommunications services, and are not subject to FCC jurisdiction.

Even if the Commission should determine that these non-telecommunications revenues are subject to RAF, EFI would only be liable on the intrastate portion. In addition, because these are non-telecommunications revenues not subject to the Commission's jurisdiction, EFI has not deducted the intrastate amount it pays when it obtains these services from other carriers from its reported intrastate RAF revenues. If the Commission should determine that these revenues are subject to RAF, then, likewise, EFI would be entitled to deduct the amounts paid to others for these services, as provided in s. 364.336, F.S.

Gateway – The revenues in question are derived from charges to third-party SS7 gateway providers for signaling services used in combination with the third-party providers' other connections to provide SS7 connectivity to non-affiliated carriers. The signaling services provided by Embarq are not associated with EFI's provision of telecommunications services, are not subject to FCC jurisdiction, and are provided on an unregulated contract basis.

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[1] These revenues are an arbitrary allocation of revenues generated from another Embarq business unit that by FCC rules is required to be allocated to each legal entity. The revenue is generated by queries from other companies that reside, for the most part, outside the state of Florida. The queries are run against data bases containing information from a number of different carriers and owned by a legal entity physically located outside the state of Florida. The billing, collection, and initial recording of the revenues from these queries are generated by a legal entity outside the state of Florida. In accordance with FCC rules the revenues and expenses of the legal entity owning the data bases must be allocated at the end of the month to each business unit. The basis of allocations is the number of access lines of each LEC entity. The recording of these revenues on the Florida LEC's books is incidental to this allocation.

[2] Section 64.702(a) For the purpose of this Subpart, the term "enhanced service" shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under Title II of the Act.

Even if the Commission should determine that these non-telecommunications revenues are subject to RAF, EFI would only be liable on the intrastate portion.

Audit Finding No. 7 – Amounts Paid to Others - SPSI (Payphone)

As stated in response to staff data requests, EPSI is not able to trace the origination of the [redacted]% allocation factor applied to determine the intrastate portion of the amounts paid to others. EPSI does not believe it is reasonable to disallow the entire deduction, as staff suggests, since it is irrefutable that EPSI pays a substantial amount to other carriers for the underlying services, including the local exchange services and the resold intrastate long distance services, that enable EPSI to provide payphone services. However, to the extent that the staff believes that the [redacted]% factor used by SPSI is too high, EPSI proposes to apply a factor of 74.6%, based on the interstate/intrastate factor approved by the FPSC in Order No. PSC-05-0735-PAA-TL to apply to EFI's 2004 storm cost recovery. Application of this factor will result in an additional $[redacted] being due from EPSI in regulatory assessment fees for the 2003-2004 audit periods. To the extent the Commission accepts EPSI's proposed resolution of this finding, EPSI will pay the additional RAF upon resolution of the issues raised in Embarq's response to the audit. Prospectively, EPSI is developing a new factor based on its current data bases to address the concerns raised by staff in the audit findings.

Audit Finding No. 9 – Amounts Paid to Others - SFI (Local)

EFI disputes staff's findings related to the amounts paid to others by SFI (now EFI). Staff questions whether SFI has adequately demonstrated that the amounts were appropriately classified as intrastate. However, staff has misunderstood the nature of these payments, which are 100% intrastate. The payments included in this category represent "reciprocal compensation" payments made by interconnecting carriers, under applicable Florida local interconnection agreements, to terminate local and intraLATA toll traffic to EFI's local network. Therefore, by definition, they are intrastate revenues, as SFI properly reported them, and no further inquiry is required.

Embarq hopes that these responses resolve the issues identified in the RAF Audit as it relates to the Embarq entities. To further discuss Embarq's Response, please contact me 599-1027.

Sincerely,

Sandra A Khazraee

for F. Ben Poag

Cc: Beth Salak, FPSC
Denise Vandiver, FPSC
Charles J. Rehwinkel, Embarq
Susan S. Masterton, Embarq
Mike Whitney, Embarq
Todd Clapp, Sprint Nextel
Doug Nelson, Sprint Nextel