

ORIGINAL

**BEFORE
THE FLORIDA PUBLIC SERVICE COMMISSION**

Petition of MCI metro 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
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**DIRECT TESTIMONY OF
EDWARD "TED" C. HART
ON BEHALF OF
EMBARQ FLORIDA, INC.**

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FPC COMMISSION CLERK

1 **SECTION I – INTRODUCTION**

2

3 **Q. Please state your name, place of employment, and business address.**

4 **A.** My name is Edward “Ted” C. Hart. I am employed by Embarq Management
5 Company, an affiliate of Embarq Florida, Inc. (In my testimony I will refer to
6 Embarq Florida, Inc. as Embarq.) I am a Senior Manager of Business Strategy
7 and Policy in the Wholesale Markets Division. My office is located at 9300
8 Metcalf Avenue, Overland Park, Kansas.

9

10 **Q. What is your educational background?**

11 **A.** I received a Bachelor of Science degree in Accounting from the University of
12 Missouri at Kansas City in 1986 and passed the C. P. A. exam in 1989. To retain
13 my C.P.A. license, I complete a minimum of approximately 40 hours of
14 continuing education each year. This continuing education, totaling an estimated
15 1,000 hours taken over the last 20 years, has consisted of a diverse mix of
16 auditing, taxation, consulting, marketing, business law, telecommunications,
17 financial valuation, quality management, and ethics courses. In addition, I have
18 taught courses in company-scheduled training sessions providing training for and
19 building proficiency with specific software applications and other computer-
20 related technology.

21 **Q. What is your work experience?**

22 **A.** Immediately after college, I practiced with a public accounting firm for seven and
23 a half years specializing in audits, accounting, and tax issues for closely-held

1 companies. After that, I held senior financial positions with a Kansas City based
2 regional general contractor and with Mobile Radio Communications, Inc., a
3 regional commercial mobile radio services (“CMRS”) paging telecommunications
4 provider. In my position with Mobile Radio Communications, I spent
5 considerable time dealing with the broad range of issues created by the
6 Telecommunications Act of 1996 (“Telecom Act”).

7 I joined Sprint’s Local Telephone Division (now Embarq Corporation) in
8 November 2000 as a Senior Manager charged with negotiation of interconnection
9 agreements with wireless carriers. Since then, I have negotiated interconnection
10 agreements with competitive local exchange carriers (“CLECs”) and have
11 managed intercarrier compensation disputes between my employer and wireless
12 vendors and customers. In connection with management of those disputes, I have
13 also become familiar with the special considerations that affect bankrupt
14 telecommunications carriers and have managed the execution of numerous
15 settlement agreements between Embarq and its affiliates and its wholesale
16 interconnected customers.

17
18 **Q. Have you previously testified before state commissions?**

19 **A.** Yes. I have testified as an expert witness before the Missouri Tax Commission
20 and in previous arbitration and mediation matters before the North Carolina,
21 Texas, and Florida public utility commissions.

22
23 **Q. What is the purpose of your testimony?**

1 A. I am providing testimony pertaining to disputed issue number 3. This issue is
2 addressed in section 55.7.1 of the interconnection agreement. The purpose of my
3 testimony is to explain and support Embarq's position regarding appropriate
4 compensation arrangements for traffic exchanged between Embarq and Verizon
5 Access and other interconnected carriers when that traffic is transmitted without
6 the calling party number ("CPN") information required by the FCC. I will be
7 referring to traffic that lacks CPN as "No CPN" traffic throughout my testimony.

8

9 **SECTION II – UNRESOLVED ISSUE DISCUSSION**

10

11 **Q. What is Issue 3?**

12 A. As stated in the Order on Procedure, Issue 3 poses the question: "How should the
13 Parties compensate one another for terminating traffic when more than 10% of the
14 traffic forwarded for termination does not contain calling party number
15 ("CPN")?"

16

17 **Q. Have the parties agreed on a benchmark for No CPN traffic?**

18 A. On a superficial level, the parties appear to agree to use 10% as a benchmark for
19 the highest level of traffic that can omit CPN without becoming subject to an
20 alternative compensation arrangement. Stated conversely, the parties appear to
21 agree that at least 90% of the traffic must include CPN to qualify under the
22 ordinary compensation arrangement. The disagreement arises when the No CPN
23 traffic exceeds 10%. Verizon Access's proposal would result in no net change in

1 compensation because No CPN traffic in excess of 10% would be billed just like
2 No CPN traffic at volumes less than 10%. Verizon Access's proposal would
3 make the 10% benchmark meaningless.

4

5 **Q. If the parties apparently agreed upon a 90% benchmark and the application**
6 **of intrastate rates when the benchmark is exceeded, why is there a dispute?**

7 **A.** A dispute arises because Verizon Access has proposed the inclusion of the phrase
8 "technically feasible" in connection with the 90% benchmark. This phrase would
9 render the benchmark meaningless. Specifically, Verizon Access has proposed
10 inclusion of "technically feasible" in the following sentence which includes the
11 phrase (which I have underlined) in italics: "If the percentage of calls transmitted
12 with CPN is less than 90%, all calls transmitted without CPN *for which*
13 *transmission of CPN was technically feasible* will be billed at intrastate access
14 rates."

15

16 **Q. What is the problem with adding this phrase as proposed by Verizon Access?**

17 **A.** The 90% - 10% benchmark already takes into account the concept of technical
18 feasibility. Furthermore, adoption of Verizon Access's proposed language would
19 promote arbitrage and violation of FCC rules, while the benchmark language
20 proposed by Embarq should reduce arbitrage and promote compliance with the
21 rules.

22

1 **Q. Please explain why the 90% - 10% benchmark already takes into account the**
2 **concept of technical feasibility.**

3 **A.** First, carriers are required, with limited exceptions, to submit CPN pursuant to
4 FCC rules found at 47 CFR §64.1601. So, the FCC's basic premise is that all
5 traffic should include CPN and that it is technically feasible to include CPN. A
6 10% failure threshold for CPN delivery failure is more than reasonable to
7 accommodate both the ordinary exemptions contemplated by the FCC rules as
8 well as allowing for errant and unusual situations, either anticipated or
9 unforeseen, when it might not be "technically feasible" to provide CPN.

10

11 **Q. Does Embarq have empirical data substantiating the assertion that the 90%-**
12 **10% benchmark is already more than sufficient to account for instances**
13 **where it might not be "technically feasible" for a carrier to provide CPN?**

14 **A.** Yes. Embarq has looked at Verizon Access and Embarq local interconnections in
15 Florida to determine if the 10% threshold is appropriate. The data showed that
16 the 10% benchmark might be inappropriate only because it's *overly generous* to
17 Verizon Access. In fact, in November 2006, Embarq checked the [REDACTED] local
18 interconnection trunks carrying traffic from Verizon Access to Embarq in Florida
19 (which constitute all of the identified inbound to Embarq local connection trunks),
20 **and** the average amount of traffic that omits CPN was no greater than [REDACTED]%.
21 Let me reiterate, we found that the *average* rate of No CPN traffic is a mere
22 [REDACTED]. In other words, holding the other traffic elements constant, the amount
23 of No CPN traffic would have to increase by over [REDACTED] times to reach [REDACTED]%

1 and more than ■ times to reach the threshold percentage of 10%. Because it is
2 technically feasible today for Verizon Access in Florida to provide CPN on more
3 than ■% of their traffic, the 90% benchmark is more than reasonable to
4 allow for the small percentage of calls for which it is not technically feasible to
5 pass CPN.

6
7 **Q. Is there any reason to oppose Verizon Access's proposed language even if**
8 **such compelling data did not exist?**

9 **A.** Absolutely. If Verizon Access is planning to do something that will increase the
10 amount No CPN traffic by a factor of thousands, Embarq must have protective
11 measures in place to protect access revenues. As indicated above and explained
12 in greater detail below, Verizon Access's proposed requirement of "technical
13 feasibility" will promote arbitrage and is inconsistent with the FCC's premise that
14 all traffic should include CPN.

15 **Q. How does Verizon Access's proposal promote arbitrage?**

16 **A.** CPN provides the information necessary to determine the correct jurisdiction of a
17 call. Because rates for terminating calls differ significantly based on the
18 jurisdiction, the telecommunications market provides an economic incentive for
19 stripping or otherwise failing to provide CPN. The two significant classifications
20 of terminated calls billed pursuant to local interconnection agreements are local
21 and intrastate access classifications. Calls are also terminated via traffic exchange
22 with interexchange carriers at interstate access and intrastate access rates.
23 Intrastate access rates for Florida are substantially higher than reciprocal

1 compensation rates for local calls, so there is an incentive to characterize calls as
2 local rather than intrastate toll. When traffic of unknown jurisdiction terminates
3 to Embarq end users across the local interconnection trunks, Embarq utilizes a
4 percent local usage (“PLU”) factor to bill the interconnected party. PLUs
5 function to bill unknown traffic in proportion to the remainder of the “known”
6 mix of local and intrastate toll traffic.

7 While Verizon Access and Embarq may have policies and procedures in place
8 forbidding the altering or stripping of CPN, other carriers may either lack such
9 policies and procedures or fail or refuse to follow them. This results in millions
10 of minutes of use (“MOU”) of No CPN traffic on the public switched network.
11 No CPN traffic makes it impossible for terminating carriers to collect the
12 appropriate compensation. Because Verizon Access’s PLUs for its Florida local
13 interconnections are ■■■%, ■■■ No CPN traffic would be rated and billed at low
14 reciprocal compensation rates.

15 **Q. What roles do Embarq and Verizon Access play in connection with such**
16 **traffic?**

17 **A.** Telephone networks are indirectly interconnected with nearly every other
18 telephone network on the planet. So, while Embarq and Verizon Access each
19 must have procedures in place to manage traffic that originates on or within the
20 other’s network, they also have interests in traffic that originates from third party
21 carriers and transits the other’s network. This traffic may pass through numerous
22 carriers on its way from the point of origination to the ultimate termination. Any
23 carrier in this chain has some ability to alter, block, or strip data contained in

1 originating call information. Embarq's proposal recognizes the interconnected
2 nature of the public switched telephone network or PSTN and attempts to hold
3 carriers who are passing along access traffic to the access rates they are required
4 to pay.

5 Reciprocal compensation rates should not be applied to access traffic. Carriers
6 who pass No CPN traffic across local interconnection trunks should not be
7 accorded any presumption that the traffic is truly local in nature.

8
9 **Q. Can you give an example of the interconnected nature of the networks and**
10 **how this works in practice?**

11 **A.** While Verizon Access and Embarq may have highly developed networks, the
12 networks are generally unable to recreate originating calling party information
13 (such as CPN) that was removed from the call record by a carrier upstream of
14 Embarq or Verizon Access. When the CPN has been removed from the call
15 record before the call reaches the Verizon Access network, it is technically
16 infeasible for Verizon Access to pass the CPN to Embarq. For example, suppose a
17 call travels through five carriers labeled Carrier A to Carrier E from originating
18 network to terminating network, respectively. While it is not technically feasible
19 under ordinary circumstances for Carrier D to divine the original CPN that Carrier
20 B eliminated, Carrier D does have options to deal with the problems created by B.
21 For example, D can refuse to accept a portion of the traffic from Carrier C that C
22 is accepting from B which is engaged in stripping or altering the data. Let's now
23 put Verizon Access into the shoes of Carrier D which does not possess the

1 technical feasibility to recreate or otherwise pass along the CPN that B is
2 removing. Verizon Access should not be permitted to simply wash its hands and
3 claim the problems of its other interconnected carriers are not its problem. By
4 passing that traffic on to the ultimate termination point, that problem becomes
5 Verizon Access's problem and the problem of any other subsequent carrier
6 transiting the traffic through to termination. By refusing to take responsibility,
7 Verizon Access would enable and encourage other carriers to ignore FCC rules,
8 undermine the integrity of the telephone network, and encourage access charge
9 arbitrage to Embarq's detriment.

10
11 **Q. Why does Verizon Access's proposed billing method fail to adequately**
12 **address correct billing of No CPN traffic?**

13 **A.** The net effect of Verizon Access's position is to encourage access arbitrage.
14 Verizon Access's agreement to use a 10% threshold for No CPN traffic is
15 meaningless because of the "technical feasibility" escape. Verizon Access is
16 willing to pay switched access rates on No CPN traffic when this traffic exceeds
17 10% *and* it is simultaneously "technically feasible" to provide CPN. But if a
18 carrier upstream of Verizon Access strips or drops the data from the call record,
19 Verizon Access can claim it is not technically feasible to pass CPN to Embarq.
20 Verizon Access's proposed language gives Verizon Access no incentive to
21 discourage an upstream carrier from removing CPN, but Embarq's language does.
22 The Commission should not allow language that permits, indeed encourages, the
23 removal of CPN and the concomitant arbitrage.

1 **Q. Why is it appropriate for Embarq to apply intrastate access rates to all No**
2 **CPN traffic when the No CPN rate exceeds 10%?**

3 **A.** Carriers do not have an interest in stripping the originating and jurisdiction-
4 determining data from traffic that is correctly terminated at the lowest rates – here
5 reciprocal compensation rates. Their financial interest is served by stripping data
6 only from traffic that would otherwise terminate at higher (intrastate access) rates.
7 Intrastate access rates are typically the highest MOU rates. When a carrier in the
8 call path undertakes a process to eliminate CPN, it is a logical presumption that
9 the data was stripped from the highest-rated traffic to avoid paying the higher rate.
10 In Florida that would be intrastate access rates.

11 When No CPN traffic exceeds the 10% threshold, it is reasonable to assume that
12 other interconnected carriers are removing the CPN to avoid paying the
13 appropriate (and higher) intrastate access rates. The most effective way to add
14 teeth to prevent this and to insure that the terminating carrier receives the
15 compensation to which it is entitled is to have a financial penalty to deter carriers
16 from stripping CPN from calls.

17

18 **Q. Are there any other matters of record before the Florida Commission that**
19 **establishes the propriety of applying intrastate access rates to the unknown**
20 **traffic.**

1 **A.** Yes. The Florida Commission has previously held,, in Order No. 96-1031-
2 FOF-TP issued in Docket No. 950985-TP relating to local interconnection,
3 that carriers are required to pay terminating switched access charges in
4 instances where the traffic cannot be otherwise proven local in nature.
5 The order states:

6 When it cannot be determined whether a call is local or toll, the local
7 exchange provider originating the call shall be assessed terminating
8 switched access charges for that call unless the local exchange
9 provider originating the call can provide evidence that the call is
10 actually a local call.

11
12 Embarq believes the order is applicable in this matter and supports Embarq’s
13 position. When a carrier has chosen to exclude indicators that would
14 establish the traffic is local, it is appropriate for intrastate access rates to
15 apply.

16

17 **SECTION III – CONCLUSION**

18

19 **Q.** **Please summarize your testimony.**

20 **A.** Embarq and Verizon Access disagree about how to compensate one another when
21 traffic crossing the parties’ local interconnection trunks contains CPN on less than
22 90% of the traffic. Embarq’s position allowing for 10% No CPN traffic
23 constitutes a reasonable, in fact very generous, threshold to allow for technically

1 infeasible situations contemplated by the FCC's rules. Verizon Access's proposal
2 would allow and encourage access arbitrage. Carriers across the industry need
3 strong measures in place to discourage the practice of altering and omitting traffic
4 data contrary to FCC rules. It is technically feasible today to determine the CPN
5 on over █████% of Verizon Access's traffic. It is inappropriate to encourage a
6 compensation regime that would exert downward and unfavorable pressure on
7 those high compliance rates. Applying intrastate access rates to No CPN calls is
8 one measure carriers can rely upon to maintain the integrity of their networks and
9 maintain the lawful access regime. Embarq's proposed language should be
10 adopted.

11
12 **Q. Does this conclude your direct testimony?**

13 **A. Yes it does. Thank you.**