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March 20, 2007

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

Re: Docket No. 060767-TP
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.

Dear Ms. Cole:

Enclosed for filing in the above matter are an original and 15 copies of the Rebuttal Testimony of Don Price on behalf of Verizon Access Transmission Services. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 770-284-5498.

Sincerely,

Dulaney L. O'Roark

Dulaney L. O'Roark III

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Rebuttal Testimony of Don Price on behalf of Verizon Access Transmission Services were sent via hand-delivery(*) and/or U.S. mail(**) on March 20, 2007 to:

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Dulaney L. O'Roark III

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of MCImetro Access Transmission Services LLC for Arbitration of Disputes Arising from Negotiation of Interconnection Agreement with Embarq Florida, Inc.	)	Docket No. 060767-TP

REBUTTAL TESTIMONY OF DON PRICE ON BEHALF OF VERIZON ACCESS TRANSMISSION SERVICES

March 20, 2007

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 respective Direct Testimony of Embarq witnesses Fox (Issue 3, vNXX compensation; Issue 6, Embarq's transit reimbursement proposal; and Issue 7, transit rate); Hart (Issue 5, compensation for calls without CPN); and Maples (Issue 4, VoIP compensation). This testimony uses the same Issue numbers as in Verizon Access's Petition for Arbitration and Embarq's Response to that Petition (instead of the new numbers the Embarq witnesses gave the issues).

<u>ISSUE 3</u>: 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 3 (which he calls 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?

[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").

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 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, they eliminate billing and invoicing problems for multi-state carriers, and they 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

[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*").

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?

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

[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.

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.

ISSUE 4: WHICH PARTY'S VOICE OVER INTERNET PROTOCOL ("VOIP") LANGUAGE SHOULD THE COMMISSION ADOPT? (ICA § 55.5)

Q. DOES MR. MAPLES AGREE THAT THE FCC HAS NOT YET ADOPTED DEFINITIVE INTERCARRIER COMPENSATION RULES FOR VOIP TRAFFIC?

A. Yes. At page 9 of his Direct Testimony, Mr. Maples finally gets around to acknowledging that the FCC has not yet declared what intercarrier compensation applies to VoIP traffic (Maples DT at 9)—but only after pages of testimony about the nature of the traffic the parties might exchange and discussion of particular FCC decisions. (*See* Maples DT at 5-9.) None of that testimony appears to relate to Embarq's position on what VoIP compensation regime the Commission should adopt, but rather to the definition of VoIP traffic under the ICA. I will discuss the apparent dispute on the definitional issue below, but my point here is that, despite Mr. Maples' testimony that Verizon Access is "ignoring explicit FCC decisions" (*id.* at 5), he admits that the FCC has not

decided the VoIP compensation issue.[4] There should be no confusion on that point, despite the ambiguity in Mr. Maples' testimony as between the respective disputes about the VoIP definition and VoIP compensation.

Q. DOES VERIZON ACCESS AGREE WITH MR. MAPLES' IMPLICATION THAT THE FCC HAS NOT PREEMPTED STATES FROM REGULATING CERTAIN TYPES OF VOIP SERVICES?

A. No. Mr. Maples appears to suggest that the FCC has preempted states from regulating some types of VoIP services (*e.g.*, "portable" VoIP services), but not others. (Maples DT at 10). Verizon Access disagrees, but that is a debate best left to the companies' lawyers. It is not necessary for the Commission to resolve that debate in this case, because Verizon Access agrees that the Commission may adopt a temporary resolution to the compensation issue in this arbitration, while the FCC is considering the matter.

This Commission, in any event, considers all VoIP traffic to be interstate in nature, and has advised the FCC that "IP-enabled services like VoIP are truly 'borderless' and, thus, necessarily interstate in nature."[5]

Q. PLEASE COMMENT ON MR. MAPLES' CLAIM THAT VERIZON ACCESS'S LANGUAGE DESCRIBING VOIP TRAFFIC CONFLICTS

[4] *See IP-Enabled Services*, Notice of Proposed Rulemaking, WC Dkt. No. 04-36, FCC 04-28, 19 FCC Rcd 4863 (March 10, 2004). *See also Intercarrier Compensation Rulemaking*, Further Notice of Proposed Rulemaking.

[5] *IP-Enabled Services*, FCC Docket No. WC 04-36. Reply Comments of the Florida Public Service Commission ("FPSC Reply Comments"), at 3 (filed July 14, 2004).

WITH FCC DECISIONS. (MAPLES DT AT 5-6.)

A. Mr. Maples discusses three FCC decisions in the context of a lengthy criticism of what he calls Verizon Access's "overly-broad definition of VoIP." (Maples DT at 6.) He first mentions the "Pulver.com declaratory ruling." There, the FCC found that pulver.com's service facilitating direct communication between broadband Internet users, without involving the public switched telephone network, was an unregulated information service under the FCC's exclusive jurisdiction. *Petition for Declaratory Ruling that pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, 19 FCC Rcd 3307 (2004). Mr. Maples does not explain why he believes the pulver.com decision relates to any dispute in this case, so there is no need for me to respond to his reference to that decision.

The other two decisions Mr. Maples references – the *AT&T Phone-to-Phone Order* and the *Prepaid Calling Card Order*[6] -- found that certain types of traffic do not share the characteristics of VoIP traffic and therefore are classified as telecommunications traffic. Mr. Maples suggests that Verizon Access is advocating a definition that would impermissibly include this kind of telecommunications traffic.

The portion of Verizon Access's proposed language that Mr. Maples calls overly broad is the first italicized phrase in section 55.5 of the draft

[6] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone Telephony Services Are Exempt from Access Charges*, Order, FCC 04-97, WC Docket No. 02-61 (April 21, 2004) ("*AT&T Phone-to-Phone Order*") and *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report & Order, FCC 06-79, WC Docket No. 05-68 (June 30, 2006) ("*Prepaid Calling Card Order*"), cited in Maples DT at 5-6.

ICA: "***Voice calls that are transmitted, in whole or in part, via the public Internet or a private IP network (VoIP)....***" (Maples DT at 6.)

That phrase initially was the beginning phrase in *Embarq's* proposed language. It was not proposed by Verizon Access. Over the course of the negotiations, Verizon Access attempted to work with Embarq's proposed language, including the subject phrase. For whatever reason, Embarq changed its language shortly before Verizon Access filed its Petition for Arbitration. While Embarq's new language in section 55.4 still includes the term, "VoIP," it does not define that term.

Although the language Mr. Maples criticizes originated with Embarq itself, Verizon Access is willing to revise it to make clear that VoIP traffic is not intended to include IP-in-the-middle traffic. Again, Embarq has not proposed any definition of VoIP, so it is essential to add one.

Verizon Access therefore proposes replacing the first sentence of its language with language that closely tracks the FCC's VoIP definition, which states: "An Interconnected Voice over Internet protocol (VoIP) service is a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." (47 C.F.R. § 9.3)

Verizon Access will continue to try to negotiate a VoIP definition with Embarq.

Q. MR. MAPLES ARGUES THAT VERIZON ACCESS'S VOIP COMPENSATION RECOMMENDATION IS "INTERNALLY INCONSISTENT." (MAPLES DT AT 12.) IS THAT RIGHT?

A. No. Mr. Maples contends that Verizon Access "acknowledges an intrastate component by agreeing to compensate for local traffic at the reciprocal compensation rate." (Maples DT at 12.) This statement is incorrect. As explained in my Direct Testimony, and as reflected in Verizon Access's contract language (at section 55.5), the FCC has determined that VoIP traffic is jurisdictionally interstate because it cannot be separated into interstate and intrastate components for regulatory purposes.[7] The parties' negotiated agreement to apply reciprocal compensation to local VoIP traffic does not contradict the FCC's jurisdictional ruling or Verizon Access's proposal to apply interstate access rates to non-local VoIP traffic. It is, like all negotiated agreements, a compromise that both parties considered fair and reasonable. The fact that the parties have been able to reach such a compromise with respect to local VoIP compensation is certainly not evidence of what the law is or should be with respect to compensation for interexchange VoIP traffic.

[7] *See Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Util. Comm'n*, Memorandum Opinion and Order, WC Docket No. 03-211, FCC 04-267, ¶14 (Nov. 12, 2004).

Mr. Maples claims that Verizon Access is willing to separate local VoIP traffic from interexchange VoIP traffic because Embarq's reciprocal compensation rates are less than its interstate local switching rates in Florida, but that Verizon Access will not separate intrastate from interstate traffic because intrastate rates are higher than interstate rates. (Maples DT at 12.) This suggestion -- that Verizon Access develops its VoIP compensation position on an opportunistic, state-by-state basis -- is unfounded, as Mr. Maples should know. Verizon Access has agreed to the same local VoIP compensation mechanism in every state where the parties are negotiating, without regard to the relative levels of reciprocal compensation and interstate local switching rates in a particular state.

Finally, Mr. Maples claims that Verizon Access's proposal to apply interstate access to interexchange VoIP services is inconsistent with the Verizon Telephone Companies' position before the FCC that VoIP services using the PSTN to originate and terminate calls should pay access charges.[8] But Verizon Access *is* recommending application of access charges to VoIP services as part of its interim VoIP compensation proposal here, so Mr. Maples' inconsistency allegation is puzzling. In any event, the Verizon Telephone Companies' recommendations were for *FCC action*, not state action, with respect to VoIP services. Indeed, Mr. Maples ignores a fundamental theme of Verizon's FCC Comments—that the FCC should declare all IP-enabled

[8] Maples DT at 12-13, citing his Exhibit JMM-3, Comments of the Verizon Telephone Companies in FCC WC Docket No. 04-36 & 04-29 (filed May 28, 2004) ("*Verizon Telephone Companies' Comments*").

services subject to its exclusive jurisdiction to prevent the development of a patchwork of inconsistent state regulations that would chill the develop of innovative services.

Q. PLEASE COMMENT ON MR. MAPLES' ARGUMENT THAT IT IS "ADMINISTRATIVELY DIFFICULT" TO APPLY DIFFERENT INTERCARRIER COMPENSATION MECHANISMS TO VOIP AND OTHER VOICE TRAFFIC. (MAPLES DT at 11.)

A. Mr. Maples argues that Embarq's call detail records currently contain no information enabling it to separate VoIP calls from other voice traffic (Maples DT at 11), so VoIP calls should be treated like non-VoIP calls. This is not a sufficient basis for the Commission to reject Verizon Access's position. Mr. Maples acknowledges that, in other instances where traffic cannot be directly identified, the industry sometimes uses factors to apply the appropriate intercarrier compensation. (Maples DT at 11-12.) I believe the parties could do so here as well, until the issue of VoIP compensation is settled at the federal level.

Mr. Maples' assertion that the use of factors in billing systems is somehow "contrary to the general progress made on this subject" (DT at 12) makes no sense, because "this subject" is the appropriate compensation for VoIP traffic. Until the FCC adopts definitive compensation rules for VoIP traffic, the industry cannot determine whether or how billing systems should be modified.

Q. HAS MR. MAPLES EFFECTIVELY REBUTTED YOUR POINT THAT EMBARQ'S PROPOSAL DOES NOT PROPERLY RECOGNIZE THE FCC'S AUTHORITY OVER THE VOIP COMPENSATION MECHANISM?

A. No. The flaw in Mr. Maples' argument is simple: under Embarq's language, the only way that rates for the period from the ICA's effective date through the effective date of the FCC's compensation decision would be subject to true-up is if the FCC's order contained language specifying a true-up. Because the FCC will not have the benefit of individual parties' specific contract language or know the various interim arrangements under which carriers had been operating, it is unreasonable to suggest that the FCC's decision or any "transition language" (Maples DT at 15) would prescribe a true-up mechanism. Verizon Access's language, on the other hand, expressly provides for a true-up, thereby accommodating the existing uncertainty about VoIP compensation in a fair and neutral way, assuring that the parties will settle prior payments and receipts at the FCC-approved rates. This approach is superior to Embarq's language that simply requires renegotiation in response to an FCC VoIP compensation ruling, leaving the true-up to chance and thus inviting controversy.

Q. MR. MAPLES SUGGESTS THAT VERIZON ACCESS'S PROPOSAL IS CONTRARY TO THE FCC'S *VOIP USF ORDER*. (MAPLES DT AT 14-15.) IS THAT TRUE?

A. No. Mr. Maples suggests that the FCC's *VoIP USF Order*,[9] where the FCC extended federal universal service support obligations to interconnected VoIP providers, is somehow contrary to Verizon Access's proposal to apply interstate access charges to all interexchange VoIP traffic. (Maples DT at 13-15.) There is no basis for this conclusion, as the Commission itself can see in the FCC's own language, quoted in Mr. Maples' testimony. *Id.* at 14-15.) The FCC's discussion of competitive neutrality focused solely on federal universal service funding mechanisms and the need to prevent universal service contribution obligations from shaping VoIP providers' decisions about the technologies they use. The FCC's remarks, expressly limited to universal service funding, do not support Embarq's general theory that VoIP services should be treated no differently from other voice services.

It is, in any event, it pointless to study scattered FCC remarks to try to glean hints about its thinking on VoIP compensation. The only foolproof approach for assuring consistency with any VoIP compensation approach the FCC eventually orders is to apply that approach from the inception of the ICA, as Verizon Access has proposed.

Q. IS VERIZON ACCESS'S PROPOSAL CONTRARY TO PRIOR RULINGS OF THIS COMMISSION, AS MR. MAPLES ALLEGES? (MAPLES DT AT 15.)

A. No. There is nothing contrary to Verizon Access's compensation

[9] *Universal Service Contribution Methodology, etc.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd. 7518 (June 21, 2006) ("*VoIP USF Order*").

proposal in the old decisions Mr. Maples cites—a BellSouth/Intermedia arbitration ruling from 2000 and the Commission's *Reciprocal Compensation Order* from 2002. As Mr. Maples admits, the Commission did not make any rulings about VoIP compensation in the generic docket, instead accepting the industry consensus position that it was premature to address issues concerning "relatively nascent" IP technology.[10]

In the seven-year old arbitration ruling Mr. Maples cites, the Commission did not, contrary to Mr. Maples' implication, separate VoIP services into intrastate and interstate components, so that "access charges should apply based on the call's jurisdiction." (Maples DT at 15.) Rather, the Commission found that a "phone-to-phone IP Telephony" service that was not transmitted over the Internet was a "telecommunications service" within BellSouth's tariffed definition of switched access. This decision interpreting BellSouth's tariff is not relevant here and not even Embarq is claiming that the Commission can or has usurped the FCC's jurisdiction to decide whether or not VoIP services are "telecommunications services" for regulatory purposes. Indeed, Mr. Maples ignores legislation passed after the BellSouth/Intermedia decision that specifies that VoIP is *not* a "service" for purposes of Chapter 364 and it is "not regulated by the Florida Public Service Commission." Ch. 364 §§ 364.01(3) and 364.02(13).

[10] *Reciprocal Compensation Order*, at 34, 37.

Although the outdated and irrelevant precedent Mr. Maples cites is not helpful, the *Sprint/FDN Arbitration Order* that Embarq witness Fox cites provides more useful guidance. There, the Commission rejected the same approach that Embarq recommends here—that is, that VoIP traffic should be treated like any other voice traffic for compensation purposes. The Commission instead agreed with FDN that "resources should not be expended on addressing the applicability of intercarrier compensation to VoIP when the FCC is currently in the process of rule making on the matter." *Sprint/FDN Arbitration Order*, at 93.

This view is consistent with Verizon Access's proposal here, which recognizes that any resolution in this arbitration will be interim only, until the FCC concludes its deliberations on VoIP compensation. Verizon Access's recommendation to apply interstate access to "non-local" VoIP traffic in this interim period is a fair and non-arbitrary measure that recognizes the FCC's exercise of jurisdiction over VoIP traffic. Unlike Embarq's proposal, Verizon Access's solution is neutral and does not try to prejudge the FCC's resolution of the compensation issue. This is because Verizon Access's language applies the FCC's VoIP compensation ruling—whatever it may turn out to be--from the start of the ICA, through a true-up mechanism.

Q. DOES THE COMMISSION AGREE WITH EMBARQ'S POSITION THAT VOIP TRAFFIC SHOULD BE TREATED "THE SAME AS ANY OTHER VOICE TRAFFIC" (MAPLES DT AT 5)?

A. No. The Commission explicitly disagrees with that approach. The FPSC Reply Comments Mr. Maples cites (DT at 16) from the FCC's *IP-Enabled Services Rulemaking* stress the need to "vigilantly guard against the 'regulatory creep' of legacy rules to IP-enabled services."[11] This is exactly Verizon Access's criticism of Embarq's VoIP compensation approach--that all voice calls should be treated alike, "regardless of the technology used." (Embarq's proposed § 55.5.) The Commission advised the FCC that the existing intercarrier compensation rules must be reformed and that applying those rules to IP-enabled technologies "is not a sustainable long-term position." FPSC Reply Comments at 18. In the near term, the Commission recognized that access charges should continue to apply to traffic originating or terminating to the PSTN. *Id.* at 19-20.

The Commission's position before the FCC is consistent with Verizon Access's proposal to apply interstate access charges to VoIP traffic under the ICA until the FCC rules on the matter. As I mentioned above, the Commission has expressly recognized that VoIP services are necessarily interstate in nature." *Id.* at 3. The Commission's observation that "[t]he jurisdictional nature of IP traffic may be impossible to determine" (Comments at 4) is contrary to Embarq's compensation approach, which would require the parties to identify each VoIP call as jurisdictionally interstate or intrastate.

[11] FPSC Reply Comments in FCC WC Docket 04-36, at 2.

Although this Commission has been called upon to decide the VoIP compensation issue in this arbitration, it agrees that the FCC should have exclusive jurisdiction over VoIP services and that uniform national treatment of IP-enabled services is critical to continued investment and innovation in IP technologies. FPSC Reply Comments at 4-5. Only Verizon Access's interim compensation proposal is consistent with the Commission's views and the Florida Statutes, because only Verizon Access's language explicitly recognizes that VoIP calls are "subject to interstate jurisdiction" and applies the FCC's VoIP compensation approach as soon as it is adopted and from the beginning of the ICA's term.

ISSUE 5: HOW SHOULD THE PARTIES HANDLE CALLS TRANSMITTED WITHOUT CALLING PARTY NUMBER ("CPN") WHEN THE PERCENTAGE OF CALLS TRANSMITTED WITH CPN IS LESS THAN 90%? (ICA § 55.7.1)

Q. DOES MR. HART DENY THAT EMBARQ ALREADY AGREED THAT THE PARTIES NEED NOT TRANSMIT CPN WHEN IT IS NOT TECHNICALLY FEASIBLE TO DO SO?

A. No. As I explained in my Direct Testimony, the parties have agreed upon language in section 55.7.1 that provides that, "[t]o the extent technically feasible," the Parties will transmit CPN for each call terminating on the other's network. If more than 90% of calls exchanged have CPN, then the calls without CPN will be billed as local or intrastate

in proportion to the minutes of use of calls with CPN. (ICA, § 55.7.1.) But the parties disagree on the compensation for calls without CPN when less than 90% of calls are transmitted with CPN.

Embarq proposes to bill all such no-CPN calls at intrastate access rates. But because the parties already agreed that CPN must be transmitted only when it is technically feasible to do so, it is unreasonable for Embarq to presume that the intrastate access rates (the highest level of compensation) applies to all no-CPN calls when CPN is transmitted on less than 90% of calls.

Mr. Hart's only response is that the 90% benchmark already assumes that it is technically feasible to transmit CPN on at least 90% of calls. There is no support for this theory. Indeed, Embarq's proposal to prescribe a specific technical feasibility threshold is incompatible with its agreement that parties need not transmit CPN where it is not technically feasible to do so.

Q. MR. HART ARGUES THAT DATA FROM EXISTING INTERCONNECTION TRUNKS BETWEEN EMBARQ AND VERIZON ACCESS PROVE THAT THE 90% BENCHMARK FOR CPN TRANSMISSION "IS MORE THAN ADEQUATE TO ENCOMPASS WHAT IS 'TECHNICALLY FEASIBLE.'" (HART DT AT 7.) IS MR. HART RIGHT?

A. No. Even if Mr. Hart's data are accurate, they do not support Embarq's

position. Mr. Hart's figures represent a snapshot of current services, whereas the purpose of this arbitration is to craft language governing the parties' responsibilities for the future, over the term of the agreement.

The "click-to-call" IP-enabled service I described in my Direct Testimony – and many other new IP-enabled services -- are expected to grow from their modest levels today. And while I have no way of knowing the rate of growth (and Verizon Access has no plans "to do something that will increase the amount [of] No CPN traffic by a factor of thousands," Hart DT at 7), it certainly is reasonable for Verizon Access to plan for future services in its negotiations with Embarq. For that reason, current figures for traffic passed without CPN do not necessarily provide a reasonable or accurate basis for delineating the parties' obligations in the future. While Mr. Hart's data showing a very low percentage of calls without CPN do not prove that Embarq's position is reasonable, they do prove the point that Verizon Business takes very seriously its obligation to always pass CPN without modification. There is no issue of Verizon Access choosing to "exclude indicators that would establish the traffic is local," nor does Mr. Hart accuse Verizon Access of engaging in this practice. (Hart DT at 12.)

Q. THEN WHY DOES MR. HART CLAIM TO BE CONCERNED ABOUT CPN-STRIPPING AND ARBITRAGE?

A. Embarq's concerns appear to lie with other carriers. Mr. Hart asserts that "[w]hile Verizon and Embarq may have policies and procedures in

place forbidding the altering or stripping of CPN, other carriers may either lack such policies and procedures or fail or refuse to follow them." (Hart DT at 9.) In the example Mr. Hart gives, a call travels through five carriers labeled A through E, where Verizon Access is Carrier D and Embarq is the terminating carrier, Carrier E. Embarq's solution to the problem of Carrier B stripping CPN from calls before they get to Verizon Access is to make Verizon Access, Carrier D, pay a "financial penalty" for Carrier B's elimination of CPN (Hart DT at 11)—even though Mr. Hart openly recognizes that Verizon Access and Embarq "are generally unable to recreate originating calling party information (such as CPN) that was removed from the call record by a carrier upstream of Embarq or Verizon Access." (Hart DT at 9.) (The "financial penalty" Embarq references would be payment of intrastate access charges, the highest intercarrier compensation rate, for calls without CPN.)

Q. IS IT FAIR OR OTHERWISE APPROPRIATE TO MAKE VERIZON ACCESS POLICE THIS INDUSTRY PROBLEM?

A. No. By Mr. Hart's own admission, Verizon Access is in no better a position than Embarq to police problems of CPN-stripping (*see* Hart DT at 9). Therefore, Embarq's proposal to penalize Verizon Access for other carriers' fraudulent activity is purely a cost-shifting scheme.

The FCC recently took comments on how to address the issue of traffic without sufficient billing information. Some smaller carriers there, like Embarq here, suggested foisting upon transiting carriers the

responsibility for payment of traffic without such information. In response, the Verizon companies explained, as Verizon Access has here, that the transit provider is entirely dependent on the originating carrier and other upstream carriers for correct jurisdictional information in the call signaling stream. Therefore, the originating carrier must be responsible for populating proper signaling information, and upstream intermediate carriers must be responsible for passing on the information they receive unaltered. Holding transiting carriers responsible for CPN or other jurisdictional information they do not have will do nothing to solve any problem with no-CPN traffic. Verizon Access's refusal to accede to Embarq's penalty proposal will not "enable and encourage" other carriers' CPN-stripping, as Mr. Hart alleges. (Hart DT at 10.) On the contrary, Embarq's approach would, if anything, provide a greater inducement to originating or upstream carriers to strip off necessary signaling information, in order to shift payment responsibility to the transiting carrier.[12]

Mr. Hart's suggestion that Verizon Access could block any no-CPN traffic that Verizon Access receives from other carriers is not viable. (Hart DT at 9.) Even if it were technically feasible to evaluate and selectively block traffic (and I understand that it is not), doing so would confuse and harm consumers, who cannot control how their carrier sends signaling information.

[12] Reply Comments of Verizon on the Missoula Phantom Traffic Proposal, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No.01-92 (filed Jan. 5, 2007), at 5-7.

Finally, Mr. Hart tries to support his arbitrage argument by citing Verizon Access's current PLU (percent-local-usage) factor, but he incorrectly assumes that PLU factors are necessarily static. They are not; they are recalculated on a quarterly basis, so changes in the mix of traffic passed would be reflected in the PLU used as a basis for billing the no-CPN traffic under Verizon Access's approach.

The bottom line is that I agree with Mr. Hart that carriers should be penalized for stripping CPN from calls (Hart DT at 11), but the carrier engaging in the fraudulent conduct is the one that should be penalized—not Verizon Access, which is merely passing on whatever CPN information it receives from other carriers.

Q. IS MR. HART CORRECT THAT THERE ARE "MATTERS OF RECORD BEFORE THE FLORIDA COMMISSION" (HART DT AT 11) THAT SUPPORT EMBARQ'S POSITION ON THIS ISSUE?

A. No. Mr. Hart suggests that the Commission made some kind of general holding that an originating carrier must pay the terminating carrier switched access unless the originating carrier can prove that a call is actually a local call. (Hart DT at 12.) The so-called "matter of record before the Florida Commission" that Mr. Hart cites for this proposition is a pre-Telecommunications-Act era interconnection case under Florida law.[13] The specific ruling quoted concerns the Commission's now-

[13] Mr. Hart cited the decision incorrectly as Order No. 96-1031-FOF-TP. (Hart DT at 12.) The correct and complete citation is *Resolution of Petition(s) to Establish Nondiscriminatory Rates, Terms, and Conditions for Interconnection Involving Local Exchange Companies and Alternative Local Exchange Companies Pursuant to*

obsolete default toll mechanism intended to address the then-novel issue of differing CLEC and ILEC local calling areas. This ruling sheds no light on any issues relating to transmission of CPN, and, of course, ignores the decisive fact that Embarq already agreed to language providing that carriers will pass CPN only where it is technically feasible to do so.

ISSUE 6: 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

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Section 364.162, F.S., Order on Motions for Reconsideration, 96 FPSC 10:23, Order No. PSC-96-1231-FOF-TP (1996).

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.[14]

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

[14] 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).

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 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' 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 7: 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.