

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Petition of MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.	Docket No. 060767-TP
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**REBUTTAL TESTIMONY OF**

**JAMES M. MAPLES**

**ON BEHALF OF**

**EMBARQ FLORIDA, INC.**

**March 20, 2007**

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1 **SECTION I – INTRODUCTION**

2  
3 **Q. Please state your name, title, and business address.**

4 **A.** My name is James M. “Mike” Maples. I am employed as Regulatory Manager for  
5 Embarq Management Company, which provides management services to Embarq  
6 Florida, Inc. (“Embarq”). My business address is 5454 W. 110<sup>th</sup> Street, Overland Park,  
7 KS 66211.

8  
9 **Q. Are you the same Mike Maples that filed direct testimony in this proceeding on**  
10 **February 20, 2007?**

11 **A.** Yes, I am.

12  
13 **Q. What is the purpose of your testimony?**

14 **A.** The purpose of my testimony is to rebut statements made by Verizon Access witness Don  
15 Price in the direct testimony he filed in this proceeding regarding Issue number 2.

16  
17 **Q. Please review the dispute between the parties on Issue Number 2.**

18 **A.** As stated in the matrix, the issue is: “Which Party’s Voice over Internet Protocol  
19 (“VoIP”) language should the Commission adopt?” Verizon Access supports a unique  
20 compensation arrangement for VoIP traffic that is exchanged between the parties while  
21 Embarq seeks to treat all voice traffic terminated to the public switched telephone  
22 network (“PSTN”) the same. The Commission should order adoption of the terms and  
23 conditions proposed by Embarq for Issue Number 2.

1 **SECTION II – REBUTTAL**

2

3 **Q. Do you agree with Mr. Price’s characterization that the FCC has exercised**  
4 **jurisdiction over VoIP and that the Florida Public Service Commission cannot**  
5 **establish a compensation mechanism for VoIP traffic that may or may not conflict**  
6 **with the FCC’s ultimate decision regarding interconnected VoIP compensation?**

7 **A.** Absolutely not. Mr. Price states that the FCC has determined that VoIP traffic is  
8 “jurisdictionally interstate” (Price Direct, page 12 at lines 22-23), that it has exercised  
9 jurisdiction over VoIP traffic (Price Direct, page 15 at lines 2-3), and that the FCC is the  
10 only agency that that “can decide the VoIP compensation issue” (Price Direct, page 15 at  
11 lines 5-6) essentially stating that this Commission cannot and should not determine an  
12 appropriate compensation mechanism for interconnected VoIP. At the same time Mr.  
13 Price admits that the FCC has not established an intercarrier compensation mechanism  
14 for VoIP traffic (Price Direct, page 13 at lines 3-5). This position acknowledges that  
15 there is a regulatory void but denies this Commission the right to step into the breach and  
16 resolve the uncertainty. This approach maintains the status quo of never ending disputes  
17 and litigation. As I pointed out in my direct testimony on page 10, the FCC has not  
18 determined that VoIP traffic is jurisdictionally interstate but rather found that it was  
19 jurisdictionally mixed. In fact, the FCC clearly recognized that VoIP services are used to  
20 provide intrastate services. The specific pre-emption of state jurisdiction in the Vonage  
21 Order turned on the ability to practically separate the service into intrastate and interstate  
22 components for regulatory purposes, not intercarrier compensation purposes.

1 **Q. Do you agree with Mr. Price that the FCC is the only agency that can decide the**  
2 **VoIP compensation issue?**

3 **A.** No. The FCC's non-decision regarding intercarrier compensation for VoIP traffic should  
4 not be treated as a decision pre-empting any state commission from making a  
5 determination regarding VoIP. Of interest is the Missouri Public Service Commission's  
6 attempt to regulate Comcast's VoIP service. Comcast complained to the US District  
7 Court for the Western District of Missouri, arguing (as Verizon is here) that the FCC has  
8 pre-empted the PSC regarding VoIP services. The court decided against Comcast and  
9 found that "in the absence of preemption or a contrary determination by the FCC, the  
10 MoPSC has jurisdiction to decide whether Digital Voice is a telecommunications  
11 service." (*Comcast IP Phone of Missouri v. Missouri Public Service Commission*, Case  
12 No. 06-4233-CV-C-NKL, at page 8) There is no explicit FCC decision regarding what  
13 intercarrier compensation applies to VoIP traffic, therefore, the Florida PSC is not pre-  
14 empted from making a determination.

15  
16 **Q. Are you advocating that the Florida Commission make a determination that**  
17 **interconnected VoIP traffic is telecommunications?**

18 **A.** No. I do not believe that such a determination is necessary to adopt the intercarrier  
19 compensation methodology recommended by Embarq. In a recent decision responding to  
20 a request by Time Warner for a declaratory ruling concerning the wholesale  
21 interconnection obligations of ILECs relating to VoIP traffic (*Time Warner Decision*, DA  
22 07-709, WC 06-55, Released March 1, 2007), the FCC states that carriers, such as  
23 Verizon Access, that are providing wholesale services to VoIP providers, such as Time

1 Warner, are common carriers and are providing telecommunications services and must  
2 establish interconnection agreements with connecting carriers pursuant to section 251  
3 (*Time Warner Decision*, ¶17). Embarq's proposal, treating all voice traffic terminating  
4 to it from Verizon Access over PSTN interconnection trunks in a technology-neutral  
5 manner, is a reasonable application of that decision.

6  
7 **Q. Do you agree with Mr. Price's characterization that Verizon Access and Embarq**  
8 **have reached a partial solution on a compensation mechanism for VoIP (Price**  
9 **Direct, page 13 at line 11)?**

10 **A.** No. Embarq's agreement to treat some VoIP traffic as "local" and subject to reciprocal  
11 compensation cannot be separated from its entire position that all interconnected VoIP  
12 traffic should be compensated on the same basis as any other voice traffic. Embarq has  
13 not agreed to treat some of this other voice traffic as local but the rest of it as Interstate.  
14 If Verizon truly believes that the FCC has determined that VoIP is Interstate, the logical  
15 response would be to apply Interstate Access charges to all VoIP traffic, both originating  
16 and terminating on the interconnection trunks.

17  
18 **Q. Do you agree with Mr. Price that Verizon Access' solution is easy to administer**  
19 **(Price Direct, page 15 at lines 3-4)?**

20 **A.** No. Other than making the claim in his direct testimony Mr. Price does not provide any  
21 data backing up his statement. As stated in my direct testimony on pages 11 through 13,  
22 there is currently no way to identify VoIP traffic separately from other voice traffic that is  
23 being terminated over the PSTN trunks between the parties using call detail records.

1 When questioned by Embarq previously regarding this, Verizon acknowledged that it  
2 does not keep detail records regarding VoIP calls in the normal course of business. It is  
3 reasonable to assume that Verizon's proposal would require special studies, manual  
4 billing adjustments, and audits resulting in billing disputes.

5  
6 **Q. Do you agree with Mr. Price that Verizon's solution is fair (Price Direct, page 15 at**  
7 **line 3), neutral (Price Direct, page 15 at line 5) and that it "balances both parties**  
8 **interests" (Price Direct, page 15 at lines 13-14)?**

9 **A.** Certainly not. Verizon is not in any position to make any determination about Embarq's  
10 interests. The fact that Embarq is arbitrating this issue makes it clear that it does not  
11 believe that Verizon's position is fair, balanced, or in Embarq's best interests. Verizon's  
12 solution is skewed in its favor, is bad public policy, and is not in the public interest.

13  
14 **Q. But isn't Embarq's recommended solution skewed in its favor?**

15 **A.** In any public policy debate, when looking at an isolated issue, any given decision will  
16 have varying impacts on the interested parties. That principle is no different here. It is  
17 true that given the current rate differentials in Florida, Embarq will receive more revenue  
18 from billing intrastate access rates for terminating intrastate, interexchange VoIP traffic  
19 versus the revenue it would receive for billing this intrastate traffic at interstate access  
20 rates. However, Embarq's proposal will not place Verizon or its wholesale customers at  
21 a competitive disadvantage. In contrast, Verizon's proposal will, in fact, place Embarq at  
22 a competitive disadvantage. When viewed in that light Embarq's position is more  
23 reasonable and fair.

1 **Q. Why is Verizon's position bad public policy and not in the public interest?**

2 **A.** The Commission should realize that the amount of VoIP traffic terminating to the PSTN  
3 is increasing and is no small matter. Mr. Price alluded to this in his direct when he stated  
4 that VoIP traffic will become an ever-larger part of Verizon's business (Price Direct,  
5 page 12 at line 15-17). This is no surprise given the arrangements that Verizon has with  
6 other entities (see Exhibit's JMM-1 and JMM-2) and the trends in technology. As stated  
7 in my direct testimony on page 13, providers of interconnected VoIP services are directly  
8 competing with Embarq's provision of traditional voice services. The FCC recognized  
9 this in the VoIP USF Order and, as a result, ordered VoIP service providers to contribute  
10 to the interstate universal service fund (Maples Direct, page 14, VoIP USF Order, ¶44).  
11 Cable providers are major providers of interconnected VoIP and are having no difficulty  
12 competing with ILECs and winning customers. There is no valid reason why they should  
13 be given a competitive advantage via a reduction in the terminating access charges for  
14 long distance voice traffic they terminate to the PSTN. That is especially true given the  
15 fact that the market for long distance voice traffic is highly competitive. The FCC  
16 acknowledged this in the TRRO when it prohibited UNEs from being used exclusively  
17 for interexchange services. It makes more sense from a public policy perspective to  
18 provide a level playing field and let the competitors fight it out in the market place.

19  
20 **Q. If the Florida PSC adopts Embarq's recommendation will it harm broadband  
21 deployment?**

22 **A.** Broadband platforms were first deployed and are continuing to be deployed to provide  
23 video and Internet access, not just VoIP. The fact that VoIP providers terminating long

1 distance traffic to the PSTN will pay comparable access charges to those paid by other  
2 voice providers should not be the determining factor in deploying that network.  
3 Embarq's proposal does not result in a windfall for Embarq as characterized by Mr. Price  
4 (Price Direct, page 15 at line 9); rather it ensures that Embarq receives just compensation  
5 for terminating Verizon Access's traffic.

6  
7 **Q. But what if the FCC ultimately establishes a different compensation mechanism for**  
8 **VoIP than what Embarq recommends?**

9 **A.** That outcome is by no means a certainty, especially given the trend of the FCC's VoIP  
10 decisions to extend similar regulations to interconnected VoIP services as apply to other  
11 voice services. The agency's comments I cited in my direct testimony on pages 9 and 14  
12 indicate that this trend is likely to continue. The quote from the IP-Enabled Services  
13 NPRM proceeding is worth repeating. There (¶ 33) the FCC stated, "As a policy matter,  
14 we believe that any service provider that sends traffic to the PSTN should be subject to  
15 similar compensation obligations, irrespective of whether the traffic originates on the  
16 PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN  
17 should be borne equitably among those that use it in similar ways." If the FCC ultimately  
18 comes to a different conclusion, it will constitute a change in law under the agreed upon  
19 terms of the interconnection agreement and Verizon and Embarq will be required to  
20 negotiate new terms and conditions to reflect the FCC's decision.



1 **Q. Do you agree with Mr. Price that Verizon’s proposal “will eliminate potential**  
2 **disputes about the application of the ICA’s change-of-law provision once the FCC**  
3 **decides the VoIP compensation issue” (Price Direct, page 15 at lines 10-13)?**

4 **A.** No. Mr. Price’s comment implies that Verizon will disagree with Embarq regarding the  
5 details of any future FCC order regarding VoIP compensation. Verizon’s proposal does  
6 not eliminate that potential. Given the litigious atmosphere surrounding intercarrier  
7 compensation, it is reasonable to assume that there could be disagreement regardless of  
8 whether Verizon’s proposal or Embarq’s proposal is adopted.

9  
10 **SECTION III – CONCLUSION**

11  
12 **Q. Please summarize your rebuttal testimony.**

13 **A.** To date the FCC has failed to determine what intercarrier compensation applies to  
14 interconnected VoIP in the face of ongoing carrier disputes and an open proceeding that  
15 has been languishing for years. The FCC has not pre-empted the Florida Public Service  
16 Commission from making that determination and the Commission should not be reluctant  
17 to do so, thereby providing regulatory certainty. Verizon’s proposed solution is not easy  
18 to administer, is not fair, is not competitively neutral or balanced, is bad public policy,  
19 and is not in the public interest. Embarq’s proposed solution is competitively neutral and  
20 will allow the market place to work, which will ultimately benefit consumers. The  
21 Florida Public Service Commission should adopt Embarq’s proposed language, which  
22 treats all users of the PSTN in an equitable and fair manner.

1 **Q. Does this conclude your Rebuttal Testimony?**

2 **A. Yes.**

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