

**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**

**EDWARD B. FOX**

**ON BEHALF OF**

**EMBARQ FLORIDA, INC.**

**March 20, 2007**

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FPSC-COMMISSION CLERK

1     **INTRODUCTION**

2

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

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

8

9     **Q.     Are you the same Ed Fox who 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 provide rebuttal to various points of Verizon  
15             Access's witness, Don Price, related to Issue #1 VNXX Compensation, Issue #4  
16             Indirect Interconnection and Issue #5 Reasonable Transit Traffic Rates.

17

18    **Issue #1 –VNXX COMPENSATION**

19

20    **Q.     On page 8, lines 4-14, of Mr. Price's testimony, Verizon Access states that**  
21            **VNXX calls are considered local by CLECs. Does Embarq agree that VNXX**  
22            **calls are local?**

1    **A.**    No. That position is inconsistent with a recent Commission decision that affirmed  
2           that the end points of a call determine compensation. In the Embarq/FDN  
3           Arbitration decision, the Commission stated in pertinent part “Upon review and  
4           consideration of the parties’ arguments and the record, VNXX traffic shall be  
5           subject to long distance access charges based on the end points of the calls...”  
6           ORDER NO. PSC-06-0027-FOF-TP at page 38.

7  
8    **Q.**    **On page 10, Lines 13-16, Mr. Price refers to an industry trend in settling**  
9           **VNXX issues and on page 11, lines 6-24 he makes reference to numerous**  
10          **carriers that entered into agreements resolving this issue without regulatory**  
11          **intervention. Does Mr. Price provide meaningful facts or terms and**  
12          **conditions of these agreements that Embarq can use for guidelines to resolve**  
13          **this issue with Verizon Access?**

14   **A.**    No. Mr. Price provides no meaningful information other than that the parties  
15          achieved agreement. Anyone familiar with the contract negotiating process knows  
16          that there are many points of negotiations and frequent trade-offs on specific  
17          issues, such as getting terms and conditions you may like in one area and  
18          compromising in others. The overarching goal in negotiating is to reach an  
19          agreement that is amenable to each party’s business objectives. Verizon Access  
20          has provided nothing substantive regarding the negotiating points between these  
21          other carriers that allow Embarq to judge the merits of accepting Verizon  
22          Access’s compromise solution on this issue.

23

1 **Q. Is Verizon’s willingness to provide transport (page 10, Lines 18-25 and page**  
2 **11, lines 1-4) in order to receive compensation for VNXX traffic a reasonable**  
3 **exchange for Embarq’s agreement to treat this traffic as local?**

4 **A.** No. Verizon must interconnect with Embarq anyway if it wants to receive  
5 Embarq’s traffic. In Section 54.2.1 of the interconnection agreement Verizon  
6 already has agreed to “establish a minimum of 1 (one) POI within each LATA, at  
7 any technically feasible point, on Embarq’s network for telecommunications  
8 traffic.” In Section 54.2.1.1 of the ICA Verizon Access has agreed to “establish a  
9 direct end office trunk at an Embarq end office when total traffic volumes  
10 exchanged between that particular Embarq end office and CLEC exceeds a DS 1  
11 equivalent;” Verizon Access admits that the vast majority of its VNXX traffic is  
12 ISP-bound traffic originated by Embarq and terminated to Verizon Access (Price  
13 Direct Testimony at page 9, lines 10-16). The nature of the traffic means that  
14 under Verizon Access’s proposal, assuming a POI at each tandem area where it  
15 assigns telephone numbers, Embarq will be required to pay Verizon Access for all  
16 of the VNXX traffic exchanged between the parties. Verizon Access’s offer to  
17 pay the costs of providing transport is entirely self-serving and in no way fairly  
18 compensates Embarq for the lost access revenues it is due for this traffic under  
19 long-established regulatory principles. Embarq’s proposed language is consistent  
20 with FCC and Florida Commission precedent regarding the jurisdiction of VNXX  
21 calls and should be adopted.

22  
23

1 **Issue #4 INDIRECT INTERCONNECTION**

2

3 **Q. On page 21, lines 13-17, Verizon Access has expressed concern over the**  
4 **legality of Embarq's proposal to assess another carrier a charge for traffic**  
5 **that has originated on Embarq's network for failing to establish a direct**  
6 **interconnection in light of the FCC rule 47CFR 51.703(b). Does Embarq**  
7 **believe this is a legitimate concern?**

8 **A.** While I am not an attorney, I do not believe Verizon Access's concerns have  
9 merit. Any expense that Verizon would incur under the terms and conditions of  
10 Embarq's proposed language would be due solely to Verizon's failure to comply  
11 with the terms of the ICA.

12

13 **Q. On pages 21-22, Verizon Access expresses concerns that factors beyond its**  
14 **control will prevent it from establishing a direct connection in a timely**  
15 **manner, so that the transit costs proposed by Embarq will be applied**  
16 **unfairly. Does Embarq think Verizon Access's concerns are legitimate?**

17 **A.** It is not Embarq's intent that Verizon Access be responsible for transit costs due  
18 to circumstances beyond its control. In that vein, Embarq has offered alternate  
19 language to Verizon Access to address these concerns. I describe this proposed  
20 language on pages 11 – 12 of my direct testimony.

21

1 Q. **On Page 21, lines 11-17 of Mr. Price's testimony, Verizon Access voices**  
2 **concern over the possibility that one high month of traffic could be an**  
3 **anomaly. Does Embarq agree?**

4 A. Embarq is amenable to address Verizon Access's concerns by establishing a  
5 longer period of time, such as an agreed upon number of consecutive months or  
6 so many months within a six month period, for determining whether the levels of  
7 Verizon Access's traffic justify a direct interconnection. It is Embarq's intent to  
8 give Verizon Access realistic benchmarks before it must establish a direct  
9 connection, while at the same time giving Verizon a financial incentive to act in  
10 accordance with the terms of the ICA.

11

12 Q. **What is the harm to Embarq if Verizon Access fails to establish a direct**  
13 **connection as required by the interconnection agreement?**

14 A. There is no dispute that Embarq suffers financial damage when Verizon Access  
15 fails to establish a direct connection. In Florida, the majority of traffic exchanged  
16 indirectly between the parties is originated by Embarq for termination to Verizon  
17 Access. When the parties have an indirect interconnection and Embarq is the  
18 originating carrier, Embarq is liable to pay transit charges to the owner of the  
19 tandem switch through which the parties indirectly connect. This charge is in  
20 addition to the intercarrier compensation payments Embarq must make to Verizon  
21 Access for terminating Embarq's originating traffic. When a direct connection is  
22 established, Embarq no longer incurs the transiting costs.

23

1 **Q. Why does Verizon need a financial incentive to comply with the**  
2 **interconnection agreement?**

3 **A.** Without Embarq’s proposed language, Verizon Access has very little incentive to  
4 timely establish the direct interconnection required by the ICA when traffic  
5 originates from Embarq. When traffic flows from Embarq to Verizon Access,  
6 Embarq incurs the transit charges. Because in these circumstances Embarq, not  
7 Verizon Access, suffers when Verizon Access fails to establish a direct  
8 connection, it is appropriate that the ICA contain a specific financial incentive to  
9 encourage Verizon to meet its contractual obligation.

10  
11 **Q. Does Embarq agree with Mr. Price’s suggestion that disputes regarding**  
12 **Verizon Access’s compliance with the direct connection requirements can be**  
13 **handled through the dispute resolution provisions of the agreement?**

14 **A.** Embarq’s proposed language providing a financial incentive for Verizon Access  
15 to establish direct interconnection in accordance with the interconnection  
16 agreement is supplemental to, rather than in lieu of, the dispute resolution  
17 provisions. Embarq may still need to rely on the dispute resolution provisions to  
18 enforce the financial incentive, should Verizon Access dispute that it has violated  
19 the interconnection agreement such that it is required to pay Embarq’s originating  
20 transit charges. Embarq’s proposed language simply provides a specific  
21 enforcement mechanism for Verizon Access’s noncompliance. Embarq’s  
22 proposed language is reasonable and appropriate and should be adopted.

23

1 **Issue #5 REASONABLE TRANSIT TRAFFIC RATES**

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3 **Q. On page 24 Lines 7-9, Mr. Price suggests that Embarq use its Commission**  
4 **approved rate of \$.002867 (the sum of Embarq’s common transport and**  
5 **tandem switching rate elements for reciprocal compensation) for transit**  
6 **traffic. Is this proposal consistent with prior Commission and Commission**  
7 **Staff direction on the appropriate rate for transit service?**

8 **A.** No. As I stated in my direct testimony, the Florida Commission in its recent order  
9 relating to BellSouth’s transit traffic obligations (Order No. PSC-06-0776-FOF-  
10 TP in Docket Nos. 050119-TP and 050125-TP) determined that transit traffic is  
11 not a Section 251 requirement. Therefore, it is not appropriate that the rates for  
12 transit service provided by Embarq be tied to its section 251 reciprocal  
13 compensation rates. Embarq believes that the rate for transit traffic should be  
14 market based and has proposed a reasonable rate of \$.005 per minute. Embarq’s  
15 proposal is consistent with the principles reflected in the Commission Staff’s  
16 August 17, 2006 recommendation in the *Transit Traffic* proceeding (Docket Nos.  
17 050119-TP, 050125-TP) where staff’s recommended upper bound of a “just and  
18 reasonable” rate equated to a multiple of 2.6 times BellSouth’s Commission-  
19 approved rate elements (at page 66). The staff’s recommendation in the *Transit*  
20 *Traffic* proceeding was founded on the Commission’s order in an arbitration  
21 between BellSouth and several CLECs, in which the Commission approved in  
22 concept BellSouth’s proposal to apply a TIC charge. (See, *In re: Joint petition by*  
23 *NewSouth Communications Corp. et.al. for arbitration of certain issues arising in*



1           *negotiation of an interconnection agreement with BellSouth Telecommunications,*  
2           *Inc.* Order No. PSC-05-0975-FOF-TP at page 53) Embarq's proposed rate of  
3           \$.005 reflects a considerably smaller multiple (approximately 1.75) of its  
4           Commission-approved rate than the rate suggested by staff and recognized by the  
5           Commission as an upper limit of a just and reasonable market-based rate for  
6           BellSouth. Accordingly, Embarq proposed rate of \$.005 is a reasonable rate for  
7           transit traffic and should be approved by the Commission.

8  
9           **Q. Does this conclude your testimony?**

10          **A. Yes.**