

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

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

CMP _____
COM 5
CTR Orig.
ECZ _____
GCL 1
OPC _____
RCA _____
SCR _____
SCA _____
SSC _____
OTH _____

April 17, 2007

DOCUMENT NUMBER-DATE

03257 APR 17 07

FPSC-COMMISSION CLERK

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Don Price, and my business address is 701 Brazos, Suite
3 600, Austin, Texas, 78701.

4

5 **Q. ARE YOU THE SAME DON PRICE WHO FILED DIRECT TESTIMONY**
6 **IN THIS PROCEEDING?**

7 A. Yes.

8

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A. My testimony responds to the Direct Testimony of Embarq witness Fox
11 on Issue 1, vNXX compensation; Issue 4, Embarq's transit
12 reimbursement proposal; and Issue 5, transit rate.

13

14 **ISSUE 1: WHAT COMPENSATION SHOULD APPLY TO VIRTUAL**
15 **NXX TRAFFIC UNDER THE INTERCONNECTION AGREEMENT?**
16 **(ICA § 55.4)**

17

18 **Q. WHAT ARE YOUR GENERAL OBSERVATIONS ABOUT MR. FOX'S**
19 **TESTIMONY ON THIS ISSUE?**

20 A. Much of Mr. Fox's Direct Testimony on Issue 1 does not, in fact, relate
21 to that Issue, which concerns only the compensation method the
22 parties will apply to virtual NXX ("vNXX") traffic under the
23 interconnection agreement ("ICA"). For example, Mr. Fox alleges that
24 some CLECs' vNXX arrangements might be violating the FCC's
25 number porting rules (Fox DT, at 6-7), but that discussion is not specific

1 to Verizon Access and, in any event, there is no dispute about
2 whether Verizon Access may provide vNXX arrangements.

3

4 Mr. Fox also discusses at length the question of FCC preemption of
5 states' authority to set compensation for non-local (that is,
6 interexchange) Internet Service Provider ("ISP")-bound calls (Fox DT, at
7 8-9). As I explained in my Direct Testimony, the FCC intends to decide
8 the vNXX compensation issue in its ongoing Intercarrier Compensation
9 Rulemaking,¹ so any resolution reached here will be interim, pending
10 nationwide action by the FCC. But Verizon Access has not challenged
11 the Commission's authority to resolve the vNXX compensation issue in
12 this arbitration. The only question is *how* the Commission should resolve
13 it.

14

15 **Q. DOES MR. FOX CORRECTLY UNDERSTAND VERIZON ACCESS'S**
16 **PROPOSAL FOR VNXX COMPENSATION?**

17 A. I don't think so. His testimony ascribes to Verizon Access the traditional
18 CLEC position on vNXX compensation—that is, that vNXX traffic is
19 "subject to Section 251(b)(5) of the Act," so Verizon Access "seeks to
20 charge Embarq reciprocal compensation" for this traffic. (Fox DT, at 3-
21 4, 5, 6.) But Verizon Access has *not* argued that vNXX traffic is subject
22 section 251(b)(5), nor has it asked Embarq to pay reciprocal

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").

1 compensation on this traffic.

2 Indeed, one of the advantages of Verizon Access's proposal is that it is
3 not linked to specific legal definitions, so it avoids the usual debates
4 about the nature of vNXX traffic. It simply applies a specified level of
5 compensation to vNXX traffic if the parties have at least one point of
6 interconnection ("POI") for exchange of traffic in each ILEC tandem
7 serving area where Verizon Access assigns telephone numbers to its
8 customers. In that case, the compensation rate for dial-Internet vNXX
9 traffic would be \$0.0007 per minute of use (the same as the FCC's
10 default rate for ISP-bound traffic that an originating carrier hands off to
11 another carrier for delivery to an ISP in that same local calling area).
12 This measure of compensation is several times lower than the reciprocal
13 compensation rates the parties agreed to for the new ICA. *See* Verizon
14 Access's Petition for Arbitration, Pricing Attachment ("Reciprocal
15 Compensation Rates") (pricing local end office switching at \$0.002221
16 per minute of use ("MOU"); local tandem switching at \$0.002053 per
17 MOU; and local shared transport at \$0.000814 per MOU).

18
19 In LATAs where the parties do not have a POI in each of Embarq's
20 tandem serving areas, vNXX traffic (voice, as well as ISP-bound) would
21 be exchanged on a bill-and-keep basis under Verizon Access's
22 proposal.

23

24 **Q. MR. FOX TAKES ISSUE WITH VERIZON ACCESS'S CONCLUSION**
25 **THAT ITS COMPROMISE PROPOSAL APPROPRIATELY**

1 **BALANCES ILEC AND CLEC INTERESTS. (FOX DT AT 6.) HOW**
2 **DO YOU RESPOND?**

3 A. The fact that numerous sophisticated CLECs and ILECs have, on their
4 own, worked out the same kind of market-based solution to the problem
5 of vNXX compensation is compelling evidence that it appropriately
6 balances CLEC and ILEC interests. The compensation arrangement
7 Verizon Access recommends here is the same one it recently negotiated
8 with BellSouth and that this Commission approved in the new Verizon
9 Access/BellSouth ICA. Verizon Access and other CLECs have
10 negotiated and implemented such region-wide agreements with a
11 number of other carriers, including SBC (prior to the January 2005
12 announcement of SBC's merger with AT&T) and with the Verizon ILECs
13 (before the February 2005 announcement of the Verizon/MCI merger).
14 The Verizon ILEC in Florida has, likewise, implemented similar
15 intercarrier compensation agreements with carriers including AT&T
16 Communications of the Southern States Inc. (before its merger with
17 SBC), KMC Data LLC, Level 3 Communications, TelCove Investment,
18 LLC, CommPartners, LLC, Vycera Communications, Inc., AmeriMex
19 Communications Corp., Ganoco, Inc., Bright House Networks
20 Information Services, LLC, Volo Communications of Florida, Inc.,
21 Neutral Tandem-Florida, LCC, SBC Long Distance, and Sprint
22 Communications Company Limited Partnership.

23
24 As I explained in my Direct Testimony, these multi-state agreements
25 avoid the uncertainty of litigation and disparate state outcomes,

1 eliminate billing and invoicing problems for multi-state carriers, and
2 allow parties to weigh their own business interests. In particular,
3 Verizon Access's approach addresses Embarq's concern about having
4 to provide a substantial amount of transport (*see* Fox DT at 6), because
5 Verizon Access will receive no compensation for handling vNXX traffic
6 where it does not establish a POI in the Embarq access tandem serving
7 area. Indeed, in an arbitration between FDN Communications and
8 Sprint, "Embarq's predecessor company" (Fox DT at 9), Sprint itself
9 argued that "establishing a POI at each tandem is the best approach to
10 establish efficient interconnection arrangements and ensure a
11 reasonable sharing of costs incurred to transport traffic between the
12 parties."² This "reasonable sharing of costs" is exactly what Verizon
13 Access's vNXX compensation proposal would achieve.

14
15 Despite Embarq's refusal to consider moving off the traditional ILEC
16 position that access should apply to vNXX calls, negotiated intercarrier
17 compensation agreements are clearly the industry trend. They are
18 certainly a better alternative to the protracted, expensive litigation that
19 has long been associated with vNXX compensation issues.

20

21 **Q. DOES MR. FOX CLAIM THAT PAST COMMISSION DECISIONS**
22 **PREVENT THE COMMISSION FROM APPROVING VERIZON**
23 **ACCESS'S PROPOSAL?**

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*").

1 A. No. In fact, the two cases he cites—the Commission’s *Reciprocal*
2 *Compensation Order* and the *Sprint/FDN Arbitration Order*—emphasize
3 that the Commission has explicitly declined to mandate a particular
4 intercarrier compensation mechanism for vNXX traffic.³ Commission
5 policy is, instead, that it is “appropriate and best left to the parties to
6 negotiate the best intercarrier compensation mechanism to apply to
7 virtual NXX/FX traffic in their individual interconnection agreements.”
8 *Reciprocal Compensation Order* at 33. If parties are unable to agree on
9 a compensation mechanism, the Commission’s “default” view is that
10 non-ISP calls are not subject to reciprocal compensation. *Id.* But most
11 vNXX calls are ISP-bound, and Verizon Access is not proposing
12 reciprocal compensation for non-local vNXX calls, in any event.

13
14 The Commission’s policy favoring negotiation is, of course, consistent
15 with Verizon Access’s position—and the industry trend—that intercarrier
16 compensation arrangements are best negotiated by the parties
17 themselves. Unfortunately, Embarq remains wedded to the traditional
18 ILEC view of compensation, as it has refused to consider – or even
19 acknowledge -- Verizon Access’s compromise between the traditional
20 ILEC and CLEC positions. The Commission should, therefore, adopt
21 this market-tested solution that numerous carriers—including Sprint—
22 are already using (some for over two years now) in Florida.

23

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.

1 **ISSUE 4: WHEN THE PARTIES EXCHANGE TRAFFIC VIA**
2 **INDIRECT CONNECTION, IF VERIZON ACCESS HAS NOT**
3 **ESTABLISHED DIRECT END OFFICE TRUNKING SIXTY DAYS**
4 **AFTER REACHING A DS1 LEVEL, SHOULD VERIZON BE**
5 **REQUIRED TO REIMBURSE EMBARQ FOR ANY TRANSIT**
6 **CHARGES BILLED BY AN INTERMEDIARY CARRIER FOR LOCAL**
7 **TRAFFIC OR ISP-BOUND TRAFFIC ORIGINATED BY EMBARQ?**
8 **(ICA § 61.2.4.)**

9
10 **Q. HAS MR. FOX DEMONSTRATED ANY NEED FOR EMBARQ'S**
11 **SPECIAL PENALTY PROVISION?**

12 A. No. This issue concerns the parties' exchange of traffic originated by
13 one party and terminated to the other, but where a third-party carrier
14 provides the transiting service. ICA, § 1.63. Embarq proposes a special
15 penalty provision to enforce the parties' agreement (in section 61.1.5)
16 that Verizon Access will establish direct trunks with the third-party carrier
17 once transit traffic exceeds a DS1 level. This provision would require
18 Verizon Access to pay *all* transiting charges--*on Embarq's originating*
19 *traffic*, as well as on Verizon Access's own originating traffic--if Verizon
20 Access does not establish a direct connection with Embarq within 90
21 days after traffic exchanged by indirect interconnection exceeds a DS1
22 level. (Embarq proposed § 6.1.2.4.)

23
24 This deviation from the industry-standard practice of each carrier paying
25 its own transit bills is, to Verizon Access's knowledge, unprecedented.

1 Indeed, in the Ohio hearing to establish a new Embarq/Verizon ICA, Mr.
2 Fox admitted that its proposed language does not appear in any existing
3 Embarq contracts.⁴

4
5 Mr. Fox offers no facts to support Embarq's extraordinary penalty
6 proposal, but only vague, ambiguous allegations. He claims that
7 "carriers (particularly CLECs who terminate large volumes of ISP-bound
8 traffic) are extremely slow to establish the direct connection with
9 Embarq's network once the volume trigger is met." (Fox DT 10.) But Mr.
10 Fox provided no evidence of any problem in this regard. He did not and
11 could not raise any problems with Verizon Access's behavior because
12 there is no provision in the parties' existing contract that requires direct
13 trunks to be established when indirect traffic reaches any particular
14 level. Moreover, I understand that Embarq is often not billed for transit
15 by the transiting carrier—indeed, Mr. Fox's testimony is carefully worded
16 in terms of "potential," rather than actual, transit charges. (Fox DT at
17 10.) To the extent transiting carriers are not billing Embarq, then
18 delayed establishment of direct trunks is not costing Embarq anything.
19 In short, there is nothing to support Embarq's claim that carriers' failure
20 to establish direct trunks imposes so great a financial burden on Embarq
21 that it justifies a special self-enforcing penalty provision.

22
23 **Q. HAS MR. FOX SHOWN THAT THE ICA'S DISPUTE RESOLUTION**
24 **PROVISIONS ARE INADEQUATE TO ADDRESS A CLAIMED**

⁴ 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).

1 **BREACH OF THE CONTRACTUAL OBLIGATION TO ESTABLISH**
2 **DIRECT TRUNKS?**

3 A. No. Embarq cannot expect the Commission to approve its
4 unprecedented self-enforcing penalty provision in the absence of
5 compelling proof that existing enforcement mechanisms for breach of
6 the ICA are inadequate. But Mr. Fox's testimony is silent in this regard.

7
8 In the unlikely event that Verizon Access fails to comply with its
9 contractual obligation to establish direct trunks after indirect traffic
10 reaches the specified threshold, Embarq can use the ICA's dispute
11 resolution provisions to address that claimed breach, just as it would for
12 other claimed breaches. Mr. Fox offers no reason why one obligation
13 out of a 150-page contract should be singled out for special enforcement
14 treatment. Because Embarq has not shown that existing dispute
15 resolution mechanisms cannot address claimed violations of the direct
16 trunking obligation, it has not proved the need for the extraordinary new
17 one it proposes. The effect and possible intent of Embarq's proposal is
18 to shift its expenses to its competitor, which is not a legitimate reason to
19 adopt it.

20

21 **Q. DID EMBARQ'S CHANGES TO ITS PROPOSAL FULLY ADDRESS**
22 **VERIZON ACCESS'S CONCERNS ABOUT ITS PROPOSED**
23 **PENALTY PROVISION?**

24 A. No. The language for section 61.2.4 that Mr. Fox presents in his Direct
25 Testimony differs from the language Embarq filed in its response to

1 Verizon Access's arbitration petition. The new language changes the
2 time for establishing direct trunks from 60 days to 90 days and excuses
3 Verizon Access from reimbursing Embarq for transit charges if the delay
4 in establishing direct trunks is Embarq's fault. (Fox DT at 12.) While
5 these changes are an improvement, they do not fully address Verizon
6 Access's stated concerns about Embarq's language. That language
7 would still hold Verizon Access liable for delays by others that must
8 cooperate with Verizon Access to establish direct trunks. Mr. Fox
9 acknowledges that Verizon Access alone cannot always control the
10 timeframe for installation of direct trunks (see Fox DT at 11), which is a
11 joint undertaking with another carrier. That other carrier is not always
12 Embarq, but may be a third party that sells transport in the area where
13 Verizon Access needs it. While Embarq's language may excuse
14 Verizon Access from paying Embarq's transit charges when Embarq has
15 to build new facilities or perform extra engineering (Fox DT at 12), it will
16 not excuse Verizon Access from those charges when a third party needs
17 to perform the new construction or engineering, or for any other delays
18 caused by another carrier filling Verizon Access's transport order. It is
19 unfair to hold Verizon Access responsible for delays that are not its fault.
20
21 Embarq's language also fails to address Verizon Access's legal
22 concern, raised in negotiations, that Embarq's language for section
23 61.2.4 may be contrary to FCC rule 51.703(b), which states that "[a]
24 LEC may not assess charges on any other telecommunications carrier
25 for telecommunications traffic that originates on the LEC's network." 47

1 CFR § 51.703(b). This legal issue is best left to the parties' briefs, but
2 Mr. Fox has not denied that Embarq's proposal would allow it to charge
3 Verizon Access for Embarq's originating traffic.

4

5 **ISSUE 5: WHAT RATE SHOULD APPLY TO TRANSIT TRAFFIC**
6 **UNDER THE PARTIES' INTERCONNECTION AGREEMENT? (ICA**
7 **PRICE LIST)**

8

9 **Q. HAS MR. FOX PROVED THAT EMBARQ'S PROPOSED TRANSIT**
10 **RATE IS REASONABLE?**

11 A. No. Mr. Fox is correct that neither the FCC nor this Commission has
12 established any pricing standard for transit service and that transit
13 service is not required under the federal Telecommunications Act. In
14 the absence of any controlling standard, the Commission must look to
15 the available reference points to derive a reasonable transit rate. As I
16 explained in my Direct Testimony, the available reference points
17 demonstrate that Embarq's proposed rate of \$0.005 is unreasonably
18 high. It is *more than double* the \$0.002045 transit rate paid under the
19 parties' existing contract. Aside from this existing rate, the Commission
20 might look to (1) the analogous Embarq interstate rate of \$0.002052; (2)
21 the sum of the common transport and tandem switching rate elements
22 the Commission approved for Embarq for reciprocal compensation
23 purposes, which is \$0.002867; (3) the transit rates Verizon Access
24 recently negotiated with BellSouth here in Florida and elsewhere—that
25 is, \$0.0015 in 2007, \$0.0020 in 2008, and \$0.0025 thereafter; and (4)

1 the \$0.002071 transit rate in the existing Verizon Florida Inc./Sprint ICA.
2 These reference points are in line with Verizon Access's proposed
3 \$0.002867 rate.

4
5 In contrast to Verizon Access's reference points, Mr. Fox alleges only
6 that BellSouth has a tariffed transit rate of \$.006 in South Carolina;
7 another company, Neutral Tandem, has Georgia and Florida tariffs
8 setting its transit rate at \$.0046425, "assuming 10 miles of T1 transport";
9 and 15 carriers in Florida (including an Embarq affiliate) have agreed to
10 Embarq's \$.005 transit rate. (Fox DT at 14-15.) I don't know where Mr.
11 Fox got his Florida Neutral Tandem rate; my review of Neutral Tandem's
12 Florida price schedule shows a transit rate of \$0.003102 and no per-
13 minute rates for transport. But even assuming that Mr. Fox has
14 accurately presented other companies' rates, they are not as compelling
15 as Verizon Access's reference points that are specific to Florida and the
16 parties before the Commission—unlike Mr. Fox's South
17 Carolina/BellSouth and Neutral Tandem references. With respect to the
18 Embarq Florida contracts Mr. Fox mentions, I do not know how many of
19 the carriers that allegedly agreed to Embarq's \$.005 rate actually
20 negotiated that rate, or, most importantly, what the puts and takes of any
21 negotiations may have been. But I can say that the transit rate Verizon
22 Access agreed to with BellSouth here in Florida (starting at \$0.0015 and
23 eventually rising to \$0.0025) was heavily negotiated. Because Verizon
24 Access has offered a wider variety of more relevant references, the
25 Commission should look to these references to set an appropriate

1 transit rate.

2

3 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

4 A. Yes.

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