

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060767-TP

In the Matter of:

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.



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PROCEEDINGS:           AGENDA CONFERENCE  
ITEM NO. 6

BEFORE:               CHAIRMAN LISA POLAK EDGAR  
COMMISSIONER MATTHEW M. CARTER, II  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE:                 Tuesday, July 31, 2007

PLACE:                Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY:         LINDA BOLES, RPR, CRR  
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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

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3                   MICHAEL COOKE, GENERAL COUNSEL, and FRANK TRUEBLOOD  
4 and SUE OLLILA, representing the Florida Public Service  
5 Commission Staff.

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## P R O C E E D I N G S

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2 CHAIRMAN EDGAR: As I mentioned when we first began,  
3 Item 4 has been deferred, and so that will bring us to Item 6.  
4 And we'll give our staff a moment to switch out and get  
5 settled.

6 Okay. As the record reflects, this is a posthearing  
7 decision; therefore, discussion is limited to Commissioners and  
8 staff. And I also understand that we have an oral  
9 modification. And we're ready when you are.

10 MR. TRUEBLOOD: Good morning, Commissioners. I am  
11 Frank Trueblood of Commission staff. Item 6 is an arbitration  
12 case between Verizon Access and Embarq. This recommendation  
13 addresses two issues that the parties have not been able to  
14 resolve through negotiations.

15 At the time the recommendation was filed, there were  
16 three remaining issues. Subsequent to the filing of the rec,  
17 staff was notified by letter on July 26th, 2007, that the  
18 parties had resolved Issue Number 4. Therefore, staff  
19 recommends that the Commission disregard Issue 4 in its  
20 entirety since the Commission does not need to vote on this  
21 issue. Staff is available for any questions.

22 CHAIRMAN EDGAR: Thank you. Commissioners, are there  
23 questions on Item 6?

24 Yes, Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: Yes, Madam Chair. I have

1 problems with Issue 1, and I move to deny staff on that issue.  
2 I don't think it should be treated as a long distance call.

3 I have no problem with the remaining issue, Number 3.

4 CHAIRMAN EDGAR: Okay. Commissioner, just so I am  
5 clear, what you're expressing is some concern or disagreement  
6 with the staff recommendation on Issue 1, but satisfaction or  
7 concurrence with Issue 5. Is that --

8 COMMISSIONER ARGENZIANO: With the compensation  
9 portion. I thought it was Issue 1.

10 CHAIRMAN EDGAR: Okay. And, Commissioner, I am  
11 having trouble hearing you. Can we -- Mike, can you --  
12 Mr. Staden, can you help? I'm having problems hearing  
13 Commissioner Argenziano. Maybe we can, can get the amps upped  
14 or something.

15 COMMISSIONER ARGENZIANO: How is that?

16 CHAIRMAN EDGAR: Oh, that's better.

17 COMMISSIONER ARGENZIANO: Is that better?

18 CHAIRMAN EDGAR: Thank you. Yeah. Thank you.

19 COMMISSIONER ARGENZIANO: Okay. I thought it was  
20 Issue 1 where the compensation for interconnection, the  
21 interconnection agreement. Larry, is that correct? Wasn't  
22 it 1? Because I'm looking at it and reading it, it seems  
23 correct. That's the problem I have. It would then be treated  
24 as a long distance call and I don't think it should be.

25 CHAIRMAN EDGAR: Okay. And the remaining Issue 5 --

1 COMMISSIONER ARGENZIANO: No problem.

2 CHAIRMAN EDGAR: Okay. That's what I was --

3 COMMISSIONER ARGENZIANO: I'm sorry. Thank you. No  
4 problem with that.

5 CHAIRMAN EDGAR: Okay. That's what I was trying to  
6 make sure that I was clear. And I would ask staff to please  
7 give us some additional discussion.

8 MS. OLLILA: Good morning, Commissioners. Sue Ollila  
9 on behalf of staff.

10 Issue 1 concerns the compensation for virtual NXX  
11 calls. Staff recommends that the physical end points of the  
12 call determine the compensation. Staff is available for your  
13 questions, Commissioner.

14 COMMISSIONER ARGENZIANO: Madam Chair?

15 CHAIRMAN EDGAR: Yes, Commissioner.

16 COMMISSIONER ARGENZIANO: Thank you, staff. I have  
17 no questions. It's just my opinion that it should remain a  
18 local call. Using the Internet now and you're connecting, if  
19 you have Juno.com and you get a local exchange number, many  
20 people rely on that. And the companies use that now, so if you  
21 change that to have some kind of tariff or long distance, that  
22 is no longer a local call and will be charged as long distance.  
23 And I can see that being passed on to the consumer and just  
24 don't think it should be.

25 CHAIRMAN EDGAR: Commissioners, any other comments,

1 questions, discussion?

2 Commissioner Carter.

3 COMMISSIONER CARTER: Thank you, Madam Chair.

4 Just -- I don't know if I -- maybe I was, had a moment where my  
5 brain was on loan to the Smithsonian.

6 What is the perspective in terms of how would we  
7 re-craft Issue 1 based upon Commissioner Argenziano's  
8 statement? That's what I'm listening, I'm trying to find -- I  
9 don't think I heard that.

10 MS. OLLILA: Excuse me. Verizon Access proposed that  
11 based on where it has facilities, any vNXX call would be  
12 treated essentially as a, as a local Internet call; that is,  
13 the rate would be the same. Obviously if you wanted to go that  
14 way, certainly that would be a proposal that you could accept.

15 There was not, if I might, really any evidence beyond  
16 a brief mention at the deposition. And although it is out of  
17 the, really the scope of the issue, if, if you're -- if you  
18 would like, I could explain a little bit of how, of what might  
19 happen if staff's recommendation were to be approved and how it  
20 might impact customers.

21 CHAIRMAN EDGAR: Yes, ma'am, please.

22 MS. OLLILA: Well, the ISP is Verizon's customer.  
23 And if Embarq were to start charging Verizon originating access  
24 for those vNXX calls that terminated outside the local calling  
25 area, Verizon Access, depending on what kind of contract it has

1 with the ISP, may or may not pass those calls on and that's --  
2 those charges on and that's what we don't know. We also don't  
3 know what the ISP would do.

4 COMMISSIONER ARGENZIANO: Madam Chair.

5 CHAIRMAN EDGAR: Commissioner Argenziano.

6 COMMISSIONER ARGENZIANO: I'm willing to guarantee  
7 that that would be passed on to the consumer. There are  
8 probably thousands of consumers who use those local exchange  
9 numbers for their Internet service now. And without a  
10 guarantee that that would not be passed on to the consumer,  
11 what we're then doing is adding a long distance charge, which I  
12 think the company just can't eat on their own. I think that's  
13 going to be passed to the consumer. So without that guarantee  
14 of it not being passed on to the consumer or the rates going up  
15 for the consumer, those thousands, if not millions, of people  
16 who are using that type of Internet service now, I'm afraid  
17 that we'd be passing on a very, you know, what could be a very  
18 large -- changing the way things are now, and that's moving  
19 towards probably, you know, making it harder or more expensive  
20 to use the Internet.

21 MS. OLLILA: And that was the point that the Verizon  
22 witness made, that, that the minutes would disappear, that  
23 people would find other ways to access the Internet, you know,  
24 as opposed to the rate increase.

25 COMMISSIONER ARGENZIANO: And, Madam Chair, possibly

1 then signing up with a pay Internet instead of the free  
2 Internet providers like Juno and FastMail and all those that  
3 are out there now. So that to me is taking away from the  
4 consumer. Thank you.

5 CHAIRMAN EDGAR: Thank you.

6 Commissioner Skop.

7 COMMISSIONER SKOP: Thank you, Madam Chair. And the  
8 question is directed to staff regarding Commissioner  
9 Argenziano's concern.

10 My understanding with respect to the Commission  
11 precedent on this specific issue is that it is based on the  
12 precedent and just soundly on doing what we've done in the  
13 past; whereas, third parties are free to negotiate to, amongst  
14 themselves to either waive these charges or what have you. Am  
15 I correct to understand that I believe in staff's briefing that  
16 was a point that was articulated that probably hasn't come out  
17 in the course of our discussions?

18 MS. OLLILA: Yes, you are correct. I mean,  
19 negotiations between parties are something very much apart.  
20 And what the Commission has decided in the past actually does  
21 serve as a guide. Although not in this recommendation but in  
22 others, if staff believes that there's a compelling reason to  
23 change what the Commission has decided, staff would recommend  
24 that.

25 COMMISSIONER SKOP: And as a follow-up, Madam Chair,

1 just to echo on Commissioner Argenziano's concern, again, this  
2 could be an instance where, you know, although parties are free  
3 at arm's length to negotiate things, they're mutually  
4 beneficial to themselves. Commission precedent could also be  
5 used as a stick, if you will, to leverage people to get the  
6 desired results. So, again, I do think Commissioner Argenziano  
7 raises a valid point even if it represents a significant  
8 departure from Commission past precedent. I think maybe, you  
9 know, that might be worthy of discussion amongst the Commission  
10 as to what we want our policies to be, whether to adhere to  
11 precedent, which is, should be given deference, or whether  
12 maybe it's time to reconsider where we should go with that.

13 CHAIRMAN EDGAR: Commissioner McMurrian.

14 COMMISSIONER McMURRIAN: This is where I step in and  
15 complicate things, I guess, as usual.

16 I guess, you know, I have concerns about what we're  
17 talking about too, and I guess that I have to admit that I  
18 hadn't given that as much consideration as I probably should  
19 have. And I guess for my purposes it seems like it's going to  
20 be rather difficult to kind of get through all that here today  
21 and that perhaps, perhaps, I'd just put it on the floor,  
22 deferring this item so that we can each maybe have the benefit  
23 of talking through this with staff, knowing more detail and  
24 getting more up to speed on Commissioner Argenziano's points as  
25 she's made them here today and be prepared to give that full

1 consideration. Because at least from my part I haven't, and I  
2 would like to give that some more consideration before I vote.

3 CHAIRMAN EDGAR: Commissioner Carter.

4 COMMISSIONER CARTER: Madam Chair, I think  
5 Commissioner McMurrian was reading my mind. Because still, I'm  
6 still uncomfortable with the response in terms of the impact of  
7 Commissioner Argenziano's perspective in terms of how it  
8 impacts this. So maybe we need to re-craft this. So I was  
9 really, I was going to ask Mr. Cooke if he would look at this  
10 in totality and see what impact Issue 1 would have on the  
11 remaining issues in this case. But I think that maybe given  
12 additional time we could probably review this. So I would move  
13 we defer this case to a future agenda.

14 CHAIRMAN EDGAR: Okay. Commissioner Carter, before  
15 we take that up, let me look to Mr. Cooke. I am seeing no  
16 critical dates in the information that is before me. However,  
17 I do recognize once again that it is posthearing, excuse me,  
18 posthearing and, of course, we are limited to the material that  
19 is in the record. And I'm going to give Mr. Cooke a moment  
20 here.

21 MR. COOKE: The only deadline that I can think of off  
22 the top of my head is there's generally a 90-day deadline after  
23 a close of a hearing for us to render an order. I think this  
24 happened on May, early May. So May, June, July -- perhaps we  
25 can get a waiver of the time frame. And we have on some

1 occasions gone beyond that time frame when circumstances  
2 warrant. The way the court looks at it is is there a prejudice  
3 that occurs to the party? So I think we can defer this, I  
4 guess, is the bottom line. We may have a 90-day issue, but  
5 we'll try to address that.

6 CHAIRMAN EDGAR: Okay. Well, I think what I'm  
7 hearing, Commissioners, and, of course, let me know if I get it  
8 wrong, but Commissioner Argenziano has raised a point of  
9 concern about potential impacts to customers from the  
10 information, from the recommendation that is before us. I'm  
11 also hearing some other Commissioners express a desire for  
12 perhaps the opportunity to look at that issue more closely and  
13 to have staff reexamine or at least look at that issue and give  
14 us the opportunity for their further thoughts as to that  
15 potential impact. I recognize, as always, that we try to move  
16 forward timely and meet deadlines, but we also want to make  
17 sure that we move forward thoroughly.

18 So Commissioner Carter has made a motion for a  
19 deferral. You've heard from our General Counsel about the time  
20 frame. Are there additional thoughts?

21 COMMISSIONER CARTER: Madam Chairman, just to be  
22 heard on my motion, what I'm suggesting is not an indefinite  
23 deferral, but certainly give staff an opportunity to come and  
24 talk to the Commissioners individually about the perspective  
25 here because this is a consideration, frankly, that I had not

1 made or even considered. And I think that having the  
2 opportunity to consider it in context, I think we could  
3 probably be ready for this within the next agenda or certainly  
4 within two agendas from now. So that's the context of my  
5 motion for deferral.

6 CHAIRMAN EDGAR: Thank you, Commissioner Carter.

7 Mr. Cooke, did you have an additional comment?

8 MR. COOKE: Just that we would try to bring this to  
9 the next agenda and do this as timely as possible. I also  
10 think that if there's an issue of deviating or changing a prior  
11 policy, it behooves us to have articulated a reason for doing  
12 that, making sure it's based on substantial competent evidence.  
13 So there's good reason to have further reflection and  
14 discussion with staff on this to make sure that you can get to  
15 that point.

16 CHAIRMAN EDGAR: Commissioners, we have a motion for  
17 a deferral in keeping with the discussion that we have had, and  
18 the expectation that it will come before us at the next agenda  
19 conference with our staff having had a little more time to look  
20 at the record evidence that was presented. Is there a second?

21 COMMISSIONER SKOP: Second.

22 CHAIRMAN EDGAR: Okay. We have a motion, we have a  
23 second. Is there any further discussion?

24 Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: What I would like, I think,

1 before the next agenda, if possible, from staff is more  
2 information on the direct trunk issue that was, I think there  
3 was agreement between the two companies. And I'd like to know  
4 the status of that and maybe some kind of time frame to see  
5 when that could be possible, if it is possible.

6 CHAIRMAN EDGAR: Yes, ma'am.

7 MS. OLLILA: Commissioner, may I ask if you're  
8 referring to the facilities that Verizon would, would have in  
9 Embarq's -- okay.

10 CHAIRMAN EDGAR: Okay. Additional comment or  
11 question? Seeing none, all in favor of the motion, say aye.

12 (Unanimous affirmative vote.)

13 Opposed? Show it adopted.

14 Thank you to our staff. Thank you, Commissioners.

15 (Agenda Item 6 concluded.)

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 7<sup>th</sup> day of August, 2007.

Linda Boles  
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