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February 20, 2007

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Ms. Blanca S. Bayó, Director
Division of the Commission
Clerk and Administrative Services
Florida Public Service Commission
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Re: Docket No. 060767-TP; Embarq Florida, Inc,'s Direct Testimonys

Dear Ms. Bayó:

Enclosed for filing on behalf of Embarq Florida, Inc. are the original and fifteen (15) copies of the following listed below:

1. Direct Testimony of Edward B. Fox;
2. Direct Testimony of James M. Maples w/ exhibits; and
3. Direct Testimony of Edward "Ted" C. Hart.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850/599-1560.

Sincerely,

Susan S. Masterton

Enclosure

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CERTIFICATE OF SERVICE
DOCKET NO. 060767-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. mail this 20th day of February, 2007 to the following:

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Susan S. Masterton

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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

DIRECT TESTIMONY OF

EDWARD B. FOX

ON BEHALF OF

EMBARQ FLORIDA, INC.

February 20, 2007

SECTION I – INTRODUCTION

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

A. My name is Edward (Ed) Fox. I am employed as Regulatory Manager for Embarq Management Company, which provides management services to Embarq Florida, Inc. ("Embarq"). My business address is 5454 W. 110th Street, Overland Park, KS 66211.

Q. Please summarize your education and professional background.

A. I received a Masters of Business Administration from Ashland University in 1989 and a Bachelor of Science degree in History from Taylor University. In my current position, I am responsible for developing state and federal regulatory policy and legislative policy for Embarq Corporation for collocation and network interconnection issues. I am responsible for coordinating this policy across the multiple business units of Embarq, i.e. business, consumer, wholesale, and Embarq's Competitive Local Exchange Carrier ("CLEC") operations. I have been in this position since January 2001. For the four years prior, I served as the Network Policy Manager for Sprint's ILEC operations. Between 1977 and 1996, I held positions in sales, marketing, competitive analysis, and product management within Sprint's local telecommunications division.

Q. Have you testified before regulatory commissions before?

A. Yes. I have testified before the state regulatory commissions in Maryland, Pennsylvania, Massachusetts, Florida, Nevada, and Texas on interconnection issues. I have also participated in mediation sessions before the Pennsylvania Public Utility Commission,

North Carolina Public Utilities Commission and the Nevada Public Utilities Commission, and at the United States Court of Appeals for the Ninth Circuit involving interconnection matters. I have filed written testimony in Missouri, and the District of Columbia.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to support Embarq's position on Issues 1, 4 and 5. Issue 1 (Interconnection Agreement Section 55.4) deals with the jurisdiction and intercarrier compensation for vNXX traffic. Issue 4 (Interconnection Agreement Section 61.2.4) deals with establishing an appropriate consequence for Verizon Access when it does not comply with its agreement to establish a direct connection with Embarq's network after a certain volume of indirect traffic has been exchanged. Issue 5 deals with the compensation rate for transit traffic.

SECTION II – UNRESOLVED ISSUE DISCUSSION

Q. Please describe Issue 1.

A. Issue 1 addresses how the parties will compensate each other for exchanging vNXX traffic. Verizon Access deems this traffic subject to Section 251(b)(5) of the Act and seeks to charge Embarq reciprocal compensation for any vNXX traffic it terminates when it has established a point of interconnection ("POI") within Embarq's tandem serving area. To the extent it has not established a physical presence (POI) within Embarq's tandem serving area, Verizon Access proposes bill and keep ("B&K") as an acceptable form of intercarrier compensation. Embarq, on the other hand, disagrees and argues that

any traffic subject to reciprocal compensation, that is 251(b)(5) traffic, must physically originate and physically terminate with the same ILEC mandatory local calling area. Intercarrier compensation obligations should *not* be determined based on the NPA/NXXs of the calling and called parties. Rather, reciprocal compensation should be based on the physical location of the calling and called parties (physical end-points). Therefore, any traffic, including vNXX traffic, that physically originates and terminates outside of Embarq's mandatory local calling area is interexchange traffic that is subject to access charges.

Q. Please describe the vNXX concept.

A. A vNXX, or virtual number, is "homed" in a central office switch that is outside of the local calling area in which the customer physically resides. In other words, a carrier may provide a vNXX service to allow its customer to obtain a telephone number in a local calling area in which it is not physically located. By assigning a telephone number that is "local", the customer establishes a "virtual" presence in the originating local calling area so that end users in that area may place calls to the vNXX number on a local basis instead of incurring toll charges.

Q. Why would a CLEC assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer physically resides?

A. One of the primary uses of the vNXX concept arises when CLEC customers are providing access to the internet. Using vNXXs, a CLEC can assign telephone numbers to

internet service providers ("ISPs") so that regardless of the location of the caller (end user), the numbers are perceived and billed as local calls. Many ISPs will not have a physical presence in each ILEC local calling area. Therefore, in an effort to make these actual interexchange calls appear "local" in nature, CLECs utilize these vNXX numbering schemes. By doing so, both the CLEC and its customers benefit. As mentioned above, the CLEC's customer (typically an ISP) is able to offer all its subscribers a locally rated number without establishing a geographic presence. The CLEC itself benefits in that the traffic, based on the originating and terminating NPA/NXXs, appears to be "local" in nature, causing the originating carrier (in this case Embarq) to incur the cost to transport the traffic to a potentially distant POI outside the local calling area to incur reciprocal compensation costs.

Q. Why is Embarq's position reasonable?

A. Simply put, no carrier should be allowed to simply assign a number to a customer physically located outside the local calling area and expect to receive reciprocal compensation. The historic end-to-end analysis confirms that calls traveling to points beyond the local calling area are not local for intercarrier compensation purposes. Calls that originate and terminate within the mandatory local calling area of the ILEC, as set forth in Embarq's local tariffs, are local calls for purposes of intercarrier compensation. If it were not for this vNXX numbering scheme, the originating end user would incur a toll charge and the originating carrier would collect originating access. To the extent the CLEC wants to provide a vNXX service to its customers, it should not be at the

originating ILEC's expense. Embarq's position is that it is owed originating access for vNXX traffic just like any interexchange call.

Q. Verizon Access claims its "compromise" position "appropriately balances the parties' respective interests" because the CLEC is committed to accepting greater responsibility for transporting traffic from the ILEC's originating end office. Is this true?

A. No. Under Verizon Access' proposal, Verizon Access receives reciprocal compensation for all vNXX traffic it terminates for a given tandem serving area, when it has a POI at that tandem. For vNXX calls in LATAs where Verizon Access does not have a POI at each tandem serving area, it proposes bill and keep. In both instances, Embarq incurs the cost of switching and transport of each vNXX call to Verizon Access's POI, whether the POI is on Embarq's network or at a distant location. Verizon Access avoids the cost of switching and transport. And by demanding reciprocal compensation for each minute of use, the inequity is exacerbated.

Q. How does a CLEC assign a vNXX number to a location outside of the local calling area to which it has been assigned?

A. The CLEC can request a block of numbers from the Numbering Plan Administrator and can establish the local calling area for the block. Alternatively, the CLEC can do this by (mis)using the local number portability ("LNP") feature of the ILEC's network by porting the vNXX number to an intraLATA (long distance) location. The LNP database only "edits" ported calls to the LATA level but not between the local calling areas within

a LATA. This allows CLECs to present their long distance call to the ILEC network as a ported "local" call within the same LATA, when in fact it is a long distance call.

Q. Is porting the number outside of the geographically assigned rate center permitted?

A: No. FCC rules restrict a number from being ported outside of its geographically assigned rate center but CLECs know they can violate the rule since the database only edits to the LATA level and not to the actual rate center level. See, 47 CFR §52.26(a). FCC geographic number porting infractions notwithstanding, the ILEC incurs a real network utilization cost when it switches and transports these vNXX calls to long distance locations. If the seven-digit call is routed this way the CLEC is receiving free transport while demanding payment for terminating the call. This attempted cost-shifting is inequitable and Embarq is entitled to intrastate originating access revenue on these inter-exchange calls.

Q. Does it matter if these vNXX calls are ISP-bound?

A. No. Again, the jurisdictional nature of a call is determined on an end to end basis, not the artificial rating points of a call (to/from numbers). In the case of ISP-bound traffic, this requires that the ISP provider be physically located in the same local calling area as the end user originating the call. Therefore, whether a call is a non-local, vNXX *voice* call or a non-local, vNXX *ISP-bound* call, the physical end points of the call determine the appropriate intercarrier compensation. When a CLEC utilizes a vNXX numbering scheme to provision either voice or ISP-bound traffic, the originating ILEC incurs the same network costs to deliver this non-local interexchange traffic to the CLEC.

Q. Does the Commission have jurisdiction over these non-local ISP-bound calls?

A. Yes. While I'm not a lawyer and understand that the lawyers will provide the legal arguments in their briefs, I have read the Global NAPS decision out of the First Circuit Court of Appeals that recently addressed this issue. *Global NAPS, Inc. v. Verizon New England, Inc. et al.*, 444 F. 3d 59 (1st Cir. 2006) That decision provides several relevant quotes from the FCC's brief. According to the FCC, its ISP Remand Order does **not** provide a clear answer to the question of whether the ISP Remand order was intended to preempt states from establishing intercarrier compensation for non-local ISP bound vNXX calls. Discussing the FCC's brief, the Court stated:

> in establishing the new compensation scheme for ISP-bound calls, the Commission was considering only calls placed to ISPs located in the same local calling area as the caller.' According to the FCC, '[t]he Commission itself has not addressed application of the *ISP Remand Order* to ISP-bound calls outside a local calling area' or 'decided the implications of using VNXX numbers for intercarrier compensation more generally. (at page 74)

Given the lack of clarity about whether the ISP Remand Order preempts state regulation of access charges for non-local ISP-bound vNXX calls, the Court found that there was no broad preemption and the Massachusetts Department of Telecommunications and Energy ("DTE") was free to impose access charges for non-local calls to ISPs. Notably, in that case Verizon New England, Inc. supported the DTE's authority to act, arguing that the

FCC's ISP Remand Order preempted state commission regulation of only local traffic sent to an ISP and that the FCC did not hold that vNXX traffic is local traffic.

Q. Has this Commission previously addressed the issue of compensation for vNXX traffic?

A. Yes. In its decision in the Generic Reciprocal Compensation proceeding, the Commission has held that the location of the calling and called parties determines the compensation for non-ISP calls. See, Order No. PSC-02-1248-FOF-TP in Docket No. 000075-TP And, in a subsequent arbitration involving Embarq's predecessor company, Sprint-Florida, Incorporated and FDN Communications, the Commission held that "VNXX traffic should be subject to long distance access charges based upon the end points of the calls..." See, Order No. PSC-06-0027-FOF-TP in Docket No. 041464-TP

Q. What is the correct resolution for Issue 1?

A. Embarq should be compensated at originating access for all non-local, vNXX traffic originated by Embarq and terminated to Verizon Access. Embarq believes its contract language should be adopted:

> 55.4 Calls terminated to end users physically located outside the local calling area in which their NPA/NXXs are homed (Virtual NXXs), are not local calls for purposes of intercarrier compensation and access charges shall apply. For Embarq-originated traffic terminated to CLEC's Virtual NXXs, Embarq shall not be obligated to pay reciprocal compensation, including any shared interconnection facility costs, for such traffic.

Q. Please explain Issue 4.

A. Issue 4 relates to the exchange of indirect traffic between Embarq and Verizon Access. Indirect traffic is traffic that is exchanged between Embarq and other parties via another ILEC's tandem. While many ILECs refuse to interconnect on an indirect basis (and have sound legal arguments for doing so), Embarq has established a compromise arrangement to exchange a small amount of traffic indirectly with Verizon Access where Embarq's end office subtends another ILEC's tandem. Once the cumulative traffic volumes between the Embarq end office and Verizon Access reach a DS1 level, Verizon Access has agreed to establish a direct connection with Embarq's end office. See, Section 61.1.5 of the agreement. However, where Embarq has contractually agreed to exchange small volumes of indirect traffic with carriers, Embarq is finding 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. As a result, Embarq, as the originating carrier, is liable for potential transit charges from the tandem owner. In an effort to provide the appropriate incentive for Verizon Access to establish the direct interconnection in a timely manner, Embarq has proposed the disputed language.

Q. Why should Verizon Access compensate Embarq if Verizon Access does not implement a direct connection in a timely manner as required by the agreement?

A. When traffic is exchanged on an indirect basis, Embarq is potentially liable for transit charges from the tandem owner. Consequently, Embarq may pay twice for each minute of use it sends to Verizon Access. For qualifying traffic, Embarq will pay reciprocal

compensation to Verizon Access, in addition to making payments to the transit provider. Embarq's experience is that carriers need an incentive to establish the direct connection in a timely manner. Requiring Verizon Access to pay the applicable transit charges if it fails to do this is a legitimate financial incentive for Verizon Access to comply with the contract.

Q. What objections has Verizon Access raised to Embarq's proposed language?

A. Verizon Access has expressed its concern that 60 days is too short and that establishing the direct connection may take longer than 60 days due to circumstances beyond its control. Embarq believes this is a valid concern and has proposed language that is much more lenient, extending the time to 90 days, stating that Embarq *may* require Verizon Access to pay transit expense, and allowing for circumstances beyond either party's control. The proposed language is:

> 61.2.4. Until indirect traffic exceeds a DS1, each originating Party is responsible for the payment of transit charges assessed on the originating Party by the transiting Party. After Indirect traffic exceeds a DS1, if CLEC has not established direct end office trunking **ninety** ~~sixty~~ days after reaching a DS1 level as described in section 61.1.5, **Embarq may require** CLEC **to** ~~will~~ reimburse Embarq for any transit charges billed by an intermediary carrier for Local Traffic or ISP-bound Traffic originated by Embarq. **If the time to establish direct interconnection exceeds 90 days due to the**

fault of Embarq, e.g., lack of facilities, certain equipment requirements, problems with an order, etc., the Parties will extend the 90-day deadline for an appropriate period and Embarq will not require reimbursement for any related transit charges during this time.

This language ensures that Verizon Access is making a legitimate effort to establish the agreed upon direct connection while allowing for circumstances that neither party could control.

Q. How long does it usually take to have direct connections in place when facilities are available?

A. Embarq can typically establish a direct connection in two weeks from the time Embarq receives an order from a CLEC. Where facilities do not exist and construction is required, or equipment ordered or extra engineering required, etc., the parties will negotiate a time frame for direct connections. Embarq's revised language allows for these situations. Verizon Access would not incur the transit costs **when delays are not its fault.**

Q. How should the Commission resolve Issue 4?

A. The Commission should adopt the reasonable alternative language that Embarq has proposed. This will also protect Embarq to the extent any other carriers may adopt this agreement.

Q. What is Issue number 5?

A. Issue number 5 concerns the compensation that should apply to transit traffic.

Q. Please describe the issue in greater detail.

A. At issue is the proper rate to be applied for transit traffic. The parties have agreed on the definition of the service and that Embarq will provide the service. The dispute between the parties is the specific rate. Embarq is proposing a commercial, market-based rate of $.005 per minute of use ("MOU"), but Verizon Access has argued that this rate is too high.

Q. Has the FCC established a rate for transit traffic?

A. No. In an arbitration proceeding involving Verizon (the ILEC) and WorldCom (the CLEC) in Virginia in which the FCC acted as the arbitrator, it declined to require the ILEC to provide transit service at TELRIC rates. See, Order No. DA 02-1731 in CC Docket No. 00-251. In that order, the FCC declined, "on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC." The FCC clearly said that they would not require Verizon (the ILEC) to provide transit at TELRIC even if transit were a required 251(a)(1) service. However, the FCC has not ruled that ILECs have a duty to provide the transiting function, and the FCC has not determined that a specific pricing standard should be set for that function. This

transit issue is one of the topics that the FCC is addressing in its pending intercarrier compensation docket (CC Docket No. 01-092).

Q. Has the Florida Commission ruled in this matter?

A. Yes. In its recent order relating to BellSouth's transit traffic obligations (Order No. PSC-06-0776-FOF-TP in Docket Nos. 050119-TP and 050125-TP) the FPSC determined that transit traffic was not a §251 requirement, stating that

> We agree that §251 contains no explicit obligation to provide transit service, but as the FCC has stated, the question is whether there is an implied obligation. Indeed, the FCC has acknowledged that this issue needs to be decided and has teed it up in the ICF FNPRM. (ICF FNPRM ¶128) This Commission need only acknowledge in this proceeding that §251(a) requires all telecommunications carriers to interconnect directly or indirectly, and that transit service has been expressly recognized by the FCC as a means to establish indirect interconnection. (ICF FNPRM ¶125). (at page 44)

Q. In the BellSouth docket did the Florida Commission establish a rate for transit service?

A. No. The Commission did not mandate a rate and determined that the rate should be negotiated between the parties.

Q. Have other Florida carriers agreed to Embarq's commercial rate of $.005?

A. Yes. There is substantial support for $.005 as a market-based rate. In Florida alone, 15 carriers have agreed to this rate. None of these carriers has felt the need to arbitrate or formally dispute this rate. These carriers include AT&T, Budget Phone, Fonix, LecStar, Level 3, SBC Long Distance, TCG, Volo, Brighthouse Networks, City of Gainesville, Comcast, Embarq Communications, Hotwire Communications, Navigator Telecommunications, and Televations.

Q. Are there other regional carriers with a transit traffic rate of $.005 or higher?

A. Yes. BellSouth has an approved transit traffic rate of $.006 in its South Carolina tariff. (*General Subscriber Service Tariff*, First Revised page 1 and original Page 2, Sec. A.16.1 to A.16.1.3.) This supports Embarq's claim that its $.005 transit rate is not an anomaly, but that it is a reasonable commercial, market-based rate. In addition, Neutral Tandem (an independent tandem company whose purpose is to market its services to up-and-coming carriers to reduce their network costs and eliminate the need to rely on the ILEC) has filed tariffs in both Florida and Georgia that contain a transit rate of $.0046425 (assuming ten miles of T1 transport). This is very close to Embarq's proposed rate of $.005 and supports Embarq's position that this rate is not unreasonable, that there are other parties offering this same service at or very near this rate, and that it is, therefore, a commercial, market-based rate.

Q. Has Verizon Access stated that a market-based transit rate should not apply?

A. No. Verizon Access's position is that Embarq's transit rate should be "reasonable". Embarq has demonstrated that the proposed $.005 market rate is reasonable and fair by

showing that numerous Florida carriers have agreed to this rate; by showing that this rate is within the range charged by other regional carriers; by showing that the FCC has not determined that transit is a required service under the federal Telecommunications Act; by showing that the FCC, by not established a pricing model for this service, is allowing parties to negotiate market-based rates for transit service; and by showing that the Florida Commission has determined that the transit rate may be a commercial rate.

Q. Does this conclude your testimony?

A. Yes.