

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

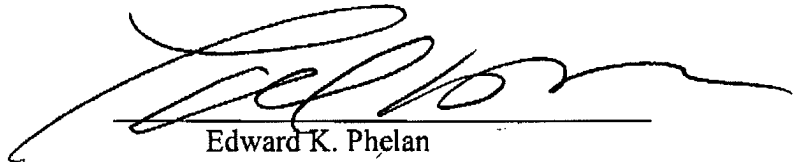
Petition of MCImetro Access Transmission)
Services, L.L.C. d/b/a Verizon Access Transmission)
Services for Arbitration of an Interconnection) Case No. TO-2008-0037
Agreement with Embarq Missouri, Inc. d/b/a Embarq)
Under Section 252(b) of the Telecommunications Act)
Of 1996)

AFFIDAVIT OF EDWARD K. PHELAN

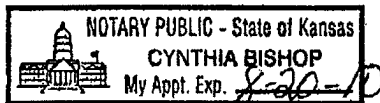
STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

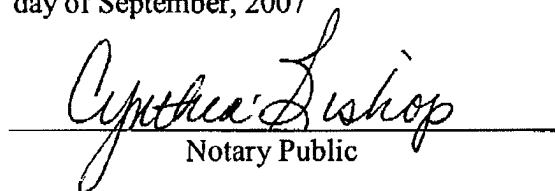
I, Edward K. Phelan, being of lawful age, and duly sworn, dispose and state on my oath:

1. I am presently Manager, Business Strategy and Planning for Embarq Management Company;
2. I have participated in the preparation of the attached testimony in question and answer form to be presented in the above entitled case;
3. The answers in the attached testimony were given by me; and
4. I have knowledge of the matters set forth in such answers and that such matters are true and correct to the best of my knowledge and belief.


Edward K. Phelan

Subscribed and sworn to before me this 12th day of September, 2007




Notary Public

My Appointment expires:
August 20, 2010

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Petition of MCImetro Access Transmission Services)	
L.L.C. d/b/a Verizon Access Transmission Services)	
For Arbitration of an Interconnection Agreement with)	Case No. TO-2008-0037
Embarq Missouri, Inc. d/b/a Embarq, Under Section)	
252(b) of the Telecommunications Act of 1996)	

DIRECT TESTIMONY OF EDWARD K. PHELAN

ON

BEHALF OF

EMBARQ CORPORATION

September 13, 2007

1

SECTION I – INTRODUCTION

2 **Q. Please state your name, business address, employer and position.**

3 A. My name is Edward K. Phelan. I am employed as Manager Business Strategy and
4 Planning for Embarq Management Company, which provides management
5 services to Embarq Missouri, Inc. (“Embarq”). My business address is 9300
6 Metcalf Avenue, Overland Park, KS 66212.

7 **Q. Please describe your educational background and business experience.**

8 A. I received a Master of Arts degree in economics from Indiana State University
9 and a Bachelor of Science degree in economics from Lewis University. Before
10 joining Sprint, I was employed by the Indiana Department of Commerce and the
11 Indiana Utility Regulatory Commission for about nine years each. At the DOC, I
12 held several economic planning and research positions, including Director of
13 Economic Research and, at the Indiana Utility Regulatory Commission, I held
14 several positions of increasing responsibility. I was Chief Economist at the IURC
15 at the time that I joined Sprint.

16 I have been employed by Sprint/Embarq since November 1992, beginning with
17 state regulatory and policy positions in Kansas City through 1997. In 1998, I
18 assumed the position of Director of Regulatory for Ohio. In 2004, joined the
19 Local Wholesale organization as Field Sales Director in Las Vegas where I was

1 responsible for CLEC sales and account management for the Western Region. In
2 2006, I began my current position as Manager Business Strategy and Planning.

3 **Q. Have you testified before regulatory commissions before?**

4 A. Yes. I have testified before regulatory agencies in Arizona, California, Colorado,
5 Hawaii, Illinois, Indiana, Michigan, New Mexico, Ohio, Oregon, Utah, and
6 Wisconsin. I have also testified before the Texas State legislature.

7 **Q. What is the purpose of your testimony?**

8 A. The purpose of my testimony is to support Embarq's position on Issue 2. It will
9 show that Federal Communication Commission ("FCC") rules and regulations
10 fully support Embarq's position of charging Verizon Access Transmission
11 Services ("Verizon") a monthly recurring charge for providing the directory
12 listing service. It will further show that Embarq's position is the best public
13 policy position for a competitive telecommunications marketplace. Finally, I will
14 show that the market-based price charged by Embarq is appropriate.

15 **Q. Please give a brief statement of Issue 2.**

16 A. When a CLEC buys services or products from Embarq, such as residential dial
17 tone or unbundled loops, Embarq does not charge the CLEC separately for
18 providing a directory listing for the CLEC's end users. In other words, the CLEC
19 pays monthly recurring rates for those services and products, and these rates
20 entitle the CLEC to one directory listing for each end user. But when a CLEC
21 does not buy any services or products from Embarq, and wants Embarq to provide

1 a directory listing for the CLEC's end users, Embarq applies a separate monthly
2 recurring charge. Although Verizon claims that Embarq does not have a right to
3 assess a monthly recurring charge for a directory listing, Embarq's offer to
4 provide Verizon with listings fully complies with Embarq's obligations as defined
5 by the pertinent FCC regulations. If Embarq is forced to provide this service to
6 Verizon at no charge, Verizon will avoid legitimate costs of doing business as a
7 CLEC, and Embarq will incur uncompensated costs to provide a service to
8 Verizon's subscribers. The Commission should order adoption of the terms and
9 conditions proposed by Embarq for Issue 2.

10
11 **SECTION II –DISCUSSION OF UNRESOLVED ISSUE**

12 **Q. Please describe the dispute regarding Issue 2.**

13 A. Embarq has engaged an independent directory publishing company to publish and
14 distribute directories within Embarq's service territory. Embarq provides CLECs
15 with a means of getting their customers' listings printed in the Embarq directory
16 even though Embarq does not own the publishing company. Alternatively,
17 CLECs can bypass Embarq and deal directly (or through an agent other than
18 Embarq) with the publishing company used by Embarq, or they can use the
19 services of a competing directory publisher if one is available in the area. When a
20 CLEC purchases services or products from Embarq, such as unbundled loops and
21 resold voice services, the CLEC pays monthly recurring rates for those services

1 and products. These rates include the cost of providing a single directory listing.
2 The CLEC thus obtains one directory listing for each end user without a separate
3 charge. But when a CLEC does not purchase any services or products from
4 Embarq, the CLEC is not entitled to include its end users in the directory without
5 the payment of a separate monthly recurring charge. Verizon does not object to
6 the payment of a non-recurring charge associated with the handling of the initial
7 service order, but Verizon objects to the payment of a monthly recurring charge,
8 claiming that Embarq has no right to charge for the directory listing. But Embarq
9 is allowed, under Federal law and FCC rules, to charge for the directory listing
10 and Embarq's market-based, monthly recurring rate is appropriate. That rate, at
11 minimum, would allow Embarq to recover its ongoing and recurring expenses
12 associated with providing the directory listing service. Embarq incurs ongoing
13 expenses to: (i) staff and operate its directory services group; (ii) maintain and
14 support Embarq's interfaces with the publisher, including implementing any
15 necessary upgrades, modifications or other changes; and, (iii) maintain and
16 support all of the systems, equipment and associated software, which are required
17 to store CLEC subscriber information in the database, including implementing
18 any necessary upgrades, modifications, or other changes. The non-recurring
19 charge is associated with one time non recurring service order related processes
20 is neither designed nor intended to recover Embarq's recurring expenses
21 associated with the directory listing charge.

1 **Q. What has the FCC decided on these issues?**

2 A. The Telecommunications Act of 1996 (“Act”), at §251(b)(3), requires all LECs
3 (including CLECs like Verizon) to provide non-discriminatory access to directory
4 listings upon the request of a competing provider. A competing provider is “a
5 provider of telephone exchange or telephone toll services that seeks
6 nondiscriminatory access from a local exchange carrier (LEC) in that LEC’s
7 service area.”¹ The obligation is therefore limited to a specific service area and
8 only to carriers providing competitive telephone exchange or telephone toll
9 services within the other LEC’s service area. The FCC defined the directory
10 listing obligation included in §251(b)(3) in the SLIDA Order as the “act of
11 placing a customer’s listing information in a directory assistance database or in a
12 directory compilation for external use (such as white pages).”² But the agency
13 failed to codify this specific requirement in its official rules. This access is not
14 part of an Incumbent Local Exchange Carrier’s (“ILEC”) unbundling
15 requirements pursuant to §251(c)(3) of the Act and therefore is not subject to the
16 associated Total Element Long Run Incremental Cost (“TELRIC”) pricing
17 standard (§252(d)(1) of the Act).

¹ Title 47 C.F.R. § 51.217(a)(1)

² *In the Matters of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*; Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273; FCC 99-227, Released September 9, 1999, ¶ 160 (“SLIDA Order”).

1 **Q. Did the FCC define the meaning of non-discriminatory access?**

2 **A.** Yes. The FCC codified its definition in 47 C.F.R. §51.217(a)(2) stating:

3 (2) Nondiscriminatory access. “Nondiscriminatory access” refers to access to
4 telephone numbers, operator services, directory assistance and directory
5 listings that is at least equal to the access that the providing local exchange
6 carrier (LEC) itself receives. Nondiscriminatory access includes, but is not
7 limited to:

8
9 (i) Nondiscrimination between and among carriers in the rates, terms, and
10 conditions of the access provided; and

11
12 (ii) The ability of the competing provider to obtain access that is at least
13 equal in quality to that of the providing LEC.
14

15 Part (i) of the definition means that Embarq must offer all requesting carriers
16 meeting the requirements identified above (provide telephone exchange or
17 telephone toll service within Embarq’s service territory) access to Embarq’s
18 directories on the same rates, terms, and conditions. Embarq must offer the same
19 rates, terms, and conditions to similarly situated carriers. Part (ii) of the definition
20 means that the quality of this access must be the same as Embarq provides to
21 itself. The terms that Embarq is offering to Verizon are consistent with those
22 principles.

23 **Q. How are the terms proposed by Embarq consistent with these principles?**

24 **A.** The listings for Verizon’s end-user customers flow through the same processes
25 that are used by Embarq’s directory services group for Embarq’s own end-user
26 customers. Embarq’s directory services group proofs all the listings, both
27 Embarq’s and the CLECs’, to ensure quality and accuracy, and sends all the

1 records to the publisher together. The rate, terms, and conditions that Embarq is
2 proposing to Verizon are the same that it offers to all requesting carriers.

3 **Q. Are the rates, terms, and conditions offered by Embarq the same as what**
4 **other carriers offer?**

5 A. Nondiscrimination as defined by the FCC only addresses the relationship between
6 Embarq as a provider of directory listings to requesting carriers. It does not mean
7 that all carriers providing directory listings must mirror the terms and conditions
8 of each other. LECs vary widely in size and capabilities and their costs vary
9 accordingly. In addition, business strategies differ. Some LECs, such as Verizon,
10 continue to have directory publishing affiliates and might take a different position
11 for the benefit of the larger corporate entity. The issue here is whether Embarq is
12 discriminating in its offers to other carriers that request listings from it.

13 **Q. How is Embarq's proposal consistent with the equal quality requirement?**

14 A. As I stated above, CLEC listings flow through the same processes to the directory
15 publisher through Embarq's directory services group in the same manner as
16 Embarq's own listings. In fact, the CLEC's listings are sent to the publisher
17 commingled with Embarq's listings. So, the manner and quality of access is
18 identical.

1 **Q. Has the FCC addressed whether it is appropriate to charge for a directory**
2 **listing?**

3 A. Not directly. The FCC addressed pricing for access to directory assistance
4 databases in the SLIDA order. Access to directory assistance is included in the
5 same rule as directory listing and therefore under the same non-discrimination
6 requirement. In that proceeding, MCI asked the FCC to prohibit carriers from
7 charging “for these transfers of customer information.”³ However, the FCC
8 rejected MCI’s request. The key here is that the FCC determined that charging
9 for the service did not violate the non-discrimination requirement.

10 **Q. Is it appropriate to charge for providing this directory listing service?**

11 A. Absolutely. Embarq should not be forced to provide a service to a customer
12 without compensation. In the instances where the Embarq directory listing charge
13 would apply, Verizon is purchasing no services whatsoever from Embarq. This
14 stand-alone service being requested by Verizon is similar to the stand-alone
15 directory listing service that Embarq provides to end users for which a monthly
16 recurring charge is billed. If the service is provided to Verizon at no charge,
17 Embarq will be providing a subsidy, which is inappropriate in a competitive
18 market place. No doubt Verizon pays for all of the other inputs to its local service
19 product. There is no reason that Embarq should have to provide this service to
20 Verizon subscribers on its behalf for free.

³ SLIDA Order, ¶154.

1 **Q. Is Verizon required or in any way limited to using Embarq to accomplish the**
2 **task of putting its subscriber information in the Embarq directory?**

3 A. No, Verizon is not required to go through Embarq. I will discuss the options in
4 more detail below, but Verizon can accomplish the listing without involvement by
5 Embarq. It does not need to purchase this service from Embarq.

6 **Q. Does Embarq receive any economic benefit from the directory publisher?**

7 A. Embarq does not share in any revenues received by the directory publisher,
8 including its advertising revenues, which is the primary source of income for such
9 companies. The publisher is independent, not affiliated with Embarq, and in fact
10 Embarq pays the publisher to produce the directories. The publisher does pay
11 Embarq 4 cents per initial listing, which is the standard subscriber listing rate
12 established by the FCC in the SLIDA order, for providing listings under §222(e)
13 of the Act; however, this does not cover Embarq's costs. Furthermore, the issue
14 before the Commission today is not the relationship between Embarq and a
15 directory publisher governed by §222(e), but the relationship between one LEC to
16 another LEC requesting a directory listing pursuant to §251(b)(3), and these
17 statutes have different requirements.

1 **Q. If it is appropriate for Embarq to charge for this service and doing so is**
2 **allowed under federal laws and rules, how should the pricing for the service**
3 **be determined?**

4 A. Because there is no legal requirement that Embarq provide this service at a cost-
5 based rate, Embarq is entitled to charge a market-based rate. In the marketplace,
6 if a willing seller and a willing buyer agree on a price, the transaction will occur.
7 Of course, if through government fiat, the buyer is able to force the seller to sell at
8 a price which it would not otherwise agree to, the result could be a transaction that
9 occurred at a price lower than what the seller would have agreed to and lower as
10 well than what the buyer would have been willing to pay. In determining the
11 reasonable, market-based rate that it has proposed, Embarq considered that, while
12 it (or any other seller of a stand-alone service like this) would not be willing to
13 sell below cost, neither was it required to price this service on a TELRIC cost
14 basis. The rate of \$2.25 per month is based upon the retail rate that Embarq
15 charges for residential foreign listing—an existing rate and an existing service.
16 That service is an appropriate proxy for the service Embarq provides to Verizon.
17 Just as the decision of an end user customer to obtain such a listing is
18 discretionary, the decision by Verizon to utilize Embarq's directory listing
19 database instead of establishing its own database and forming its own relationship
20 with the directory publisher is discretionary.

1 **Q. You stated that Embarq charges its own end users for stand-alone listings.**

2 **What has that to do with Embarq's ability to charge Verizon?**

3 A. It simply shows that Embarq does indeed charge for stand alone listings.
4 Embarq's tariff states that a directory listing is provided in connection with all
5 classes of exchange service, and that one listing is provided for each customer
6 account.⁴ Thus, the listing is provided to a customer who is buying other services
7 from Embarq and is included in the price that Embarq charges for that service
8 bundle. An end user can be listed in the Embarq directory without buying
9 exchange service from Embarq by paying a separate monthly recurring charge,
10 such as an additional or foreign listing. Embarq is not seeking a separate charge
11 for a directory listing from Verizon when it buys other services, only when
12 Verizon seeks a stand alone listing.

13 **Q. But aren't we talking about the primary listings that Embarq bundles with**
14 **its other services?**

15 A. No. While Verizon may want to include a listing with its bundled service
16 offerings and sell it as a primary listing, Verizon is not buying a primary listing
17 from Embarq. Embarq does not sell stand alone primary listings; that product
18 simply does not exist. Primary listings provided by Embarq are bundled with
19 other services. Verizon is seeking a stand alone listing from Embarq, which

⁴ Embarq Missouri, Inc. General Exchange Tariff, P.S.C. MO. No. 22, Section 9

1 Verizon will use as an input for its service bundle and offer as a primary listing.

2 The real issue here is the price which Verizon pays for that stand alone listing.

3 **Q. You noted that Embarq would not price this service below cost. What are**
4 **the ongoing costs associated with the systems and processes required to**
5 **ensure that accurate listings are provided to the directory publisher?**

6 A. Embarq maintains a directory services staff that manages the process of getting
7 accurate and timely directory listings to the publisher, and CLECs like Verizon
8 benefit from these personnel costs incurred by Embarq. Embarq compiles a
9 complete directory listing data base and coordinates the systems interface that
10 allows Embarq to provide the listing to the publisher annually, including listings
11 of the CLECs' end users. This data base includes each customer's name, address,
12 telephone number, and primary advertising classification. Embarq also incurs
13 systems costs to maintain the database throughout the year, including costs
14 associated with making system modifications and changes to interfaces with the
15 publisher. These are the costs that CLECs avoid by not having to maintain
16 staffing or develop their own processes and systems for interfacing with the
17 directory publisher. These ongoing costs justify the establishment of a recurring
18 charge.

1 **Q. If Embarq is allowed to charge its proposed market-based price for this**
2 **stand alone directory listing service, what factors would Verizon consider in**
3 **deciding whether to purchase the service from Embarq?**

4 A. Of course, I can't predict with certainty Verizon's considerations when faced with
5 that decision but the question has an important underlying predicate: Verizon
6 would have a market decision to make; they would have a choice. Verizon could
7 bypass Embarq and provide its listings directly to the directory publisher.
8 Alternatively, Verizon could potentially purchase this service from a third-party
9 provider. It would likely compare and contrast the three different scenarios
10 giving consideration to factors such as quality of service, reliability, and cost.
11 Naturally, as a local exchange carrier, it will incur some ongoing costs of doing
12 business associated with ensuring its subscribers' name, address and phone
13 number information is accurately published in the directory. Since this would
14 mean that Verizon would have to actually pay for the service that it was using to
15 provide directory listings, other things being equal, Verizon might want to try to
16 self-provision the service.

17 **Q. That implies Verizon has the capability to self-provision the service. What if**
18 **Verizon does not have the systems and processes?**

19 A. That is unlikely for three reasons.

20 First, the service is fundamentally one of data management, processing,
21 and transmission—table stakes for the modern American business. Verizon

1 would have to manage and process its subscriber information, e.g., collection,
2 storage, error checking, updating, backup, etc. and transmit such data to a
3 directory publisher.

4 Second, Verizon must already have in place the requisite systems and
5 processes that afford the capability to meet a Congressional mandate to share its
6 customer information. Congress adopted §222(e) of the Act to promote
7 competition in the directory publishing business. That statute and the resulting
8 FCC regulations, mandate that any “carrier that provides telephone exchange
9 service shall provide subscriber list information gathered in its capacity as a
10 provider of such service on a timely and unbundled basis, under
11 nondiscriminatory and reasonable rates, terms, and conditions, to any person upon
12 request for the purpose of publishing directories in any format.”⁵ This obligation
13 applies to Verizon to the extent it offers telephone exchange service. In addition,
14 the FCC determined that this obligation only extended to the carrier actually
15 providing the service,⁶ and other LECs could not force ILECs to act as a
16 clearinghouse for them.⁷ What this means is that, if a directory publisher
17 approaches Verizon and requests that it provide their subscriber listings, Verizon
18 cannot refuse and must provide the listings in the format requested by the
19 directory publisher. Therefore, Verizon could go to the independent directory

⁵ Title 47 C.F.R. §64.2301(b)

⁶ Title 47 C.F.R. §64.2309(b)

⁷ SLIDA Order, ¶ 8

1 publisher that Embarq uses and provide the listings using this process (the process
2 Verizon uses to fulfill its obligation under §222(e)).

3 Third, Verizon is affiliated with this country's second largest ILEC and
4 has an affiliated directory publishing company. It is hard to believe that Verizon
5 could not use the expertise and resources of its affiliates to accomplish this task,
6 thereby bypassing Embarq entirely.

7 **Q. If Verizon has to provide subscriber listings under §222(e), how does this**
8 **obligation square with the obligation under §251(b)(3)?**

9 A. Section 251(b)(3) obligates LECs to include other LECs listings only in the
10 directories that the providing LEC publishes or causes to be published.⁸ So,
11 Embarq is required under §251(b)(3) to accept Verizon's listings and put them in
12 Embarq directories. Embarq is not, however, required under §251(b)(3) or
13 §222(e) to provide Verizon's listings to competing directory publishers upon
14 request. That obligation resides solely with Verizon.

15 **Q. Despite a supposed predilection for self-provisioning, you mentioned that**
16 **Verizon might consider purchasing service from a third-party provider to get**
17 **its subscriber information to the independent directory publisher. Can you**
18 **explain that?**

19 A. Embarq is one such third-party provider, i.e., an intermediary company used to
20 get Verizon's subscriber listings to the independent directory publisher. If

⁸ See the definition of Directory Listings at Title 47 C.F.R. §51.5

1 Verizon could find a quality third-party provider to reliably handle this function
2 for them at a cost less than it could do it itself, Verizon would be interested, e.g.,
3 Verizon's demand that Embarq provide this service for free. There may be others
4 who could meet that test, albeit for a non-zero price. As previously noted, the
5 service is fundamentally one of data management, processing, and transmission.
6 Verizon may determine that it would like to outsource this business operation, as
7 it might very well be doing today for several others of its requisite business
8 functions, e.g., IT or payroll processing. Although Embarq would be one
9 possible provider, it is by no means uniquely situated to provide this data handling
10 service. In fact, other than the fact that the result is publishing in a phone
11 directory, this information processing performed by or for a business of its
12 customer data is not even unique to the communications industry.

13 **Q. Are you aware if there are third-party providers from which Verizon can**
14 **purchase this data management and transmission service?**

15 A. I am not aware of a third-party vendor currently providing this service or which
16 would be willing to provide the service if Verizon investigated the market, e.g.,
17 by issuing a Request for Proposal. There are not significant barriers to entry so
18 new vendors could enter the market if Verizon is willing to pay for the service.
19 One thing is clear: the market cannot flourish if the other vendors are forced to
20 compete with a free service provided by Embarq. If Verizon is successful in
21 establishing Embarq's charge (and, therefore, Verizon's cost of doing business) at

1 zero, Verizon will not endeavor to perform this business function on its own and
2 will have no reason to try to find other vendors from which it might be able to
3 purchase the service.
4

5 **SECTION III – CONCLUSION**

6 **Q. Please summarize your testimony.**

7 A. The terms offered to Verizon by Embarq are consistent with its obligations under
8 the Act as well as the resulting FCC rules. The terms proposed by Embarq are
9 consistent with those it offers to all requesting carriers. The quality of the service
10 that Embarq provides CLECs is the same as what it provides itself. Embarq
11 incurs ongoing costs for its database directory services group to maintain listings
12 on behalf of Verizon, and Embarq is within its rights to charge for providing this
13 service. Embarq has no ownership or economic interest in the directory publisher,
14 and the service which is being disputed by Verizon is more valuable to Verizon
15 than it is to Embarq. The rates requested by Embarq are not discriminatory, but
16 Verizon's proposal for receiving free service would provide it with preferential
17 treatment over Embarq's other CLEC customers and is bad public policy for a
18 competitive marketplace. Verizon is free to bypass Embarq and enter into its own
19 agreement with the publisher for its listings employing the process that it uses to
20 meet its obligations under §222(e) of the Act or by employing a third-party
21 vendor. Because there is no legal requirement that Embarq provide this service at

1 a cost-based rate, Embarq is entitled to charge a market-based rate. Embarq has
2 proposed a reasonable, market-based rate of \$2.25 per month for residential and
3 business listings. The Commission should order adoption of the terms and
4 conditions proposed by Embarq for Issue 2.

5 **Q. Does this conclude your Direct Testimony?**

6 **A. Yes.**