

Attachment A
Statement of Disputed Issues

The parties used Embarq's standard interconnection agreement ("ICA") template as the basis for their negotiation of a new ICA. Verizon Access and Embarq have been able to resolve most of their disputes relating to a new ICA. Only the following 2 issues remain for Commission resolution.

Issue 1: What compensation should apply to virtual NXX traffic under the ICA?

Verizon Access's Position: The Commission should implement the same kind of compensation approach carriers have negotiated in the absence of regulatory intervention.

Calls delivered to end users physically located outside the local calling area to which the calls' NXX is homed are called "virtual NXX" or vNXX calls. The parties' disagreement about vNXX calls concerns the intercarrier compensation that should apply to them – specifically, which entity should receive compensation for handling VNXX traffic, and what rate should apply.

The FCC intends to decide the issue of vNXX compensation in its ongoing Intercarrier Compensation Rulemaking.¹ Until it does, Verizon Access asks the Commission to implement the same kind of compensation approach large ILECs and CLECs have agreed upon in the absence of regulatory intervention. This approach avoids the traditional polarized debate in which ILECs—like Embarq here—typically take the position that they should be paid switched access for handling vNXX traffic, and CLECs often contend that reciprocal compensation applies to vNXX calls. That debate has become increasingly irrelevant as market-based compromise solutions have emerged.

¹ By necessity, the ICA's terms on this issue will be an interim solution because the FCC intends to decide the issue of vNXX compensation in its ongoing Intercarrier Compensation Rulemaking on a nationwide basis. See *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92 (April 27, 2001) and Further Notice of Proposed Rulemaking (March 3, 2005). The interconnection agreement should specify rapid implementation of the FCC's vNXX compensation regime following its adoption.

Verizon therefore proposes a compromise solution similar to the one upon which a number of large ILECs and CLECs (including Sprint) have agreed. Although these agreements differ in their specifics, each includes a fundamental trade-off under which the CLEC receives compensation for handling virtual NXX calls originated by the ILEC, in exchange for the CLEC's commitment to accept greater responsibility for transporting the traffic from the ILEC's originating end office.

The Verizon Access companies (and other CLECs) have negotiated and implemented such region-wide agreements with SBC (prior to the January 2005 announcement of SBC's merger with AT&T), with the Verizon ILECs (before the February 2005 announcement of the Verizon/MCI merger), and, most recently, with BellSouth in its states. The Verizon ILECs, likewise, implemented intercarrier compensation agreements with AT&T (before its merger with SBC), Level 3, and Sprint (before it spun off Embarq), among many others. These multi-state agreements avoid the uncertainty of disparate, state-specific outcomes that may result from litigation; they eliminate billing and invoicing problems for multi-state carriers; and they allow parties to appropriately weigh their own business interests.

Verizon Access proposed to Embarq the same vNXX compensation arrangement here that it recently negotiated with BellSouth. Under that arrangement, if the parties have at least one point of interconnection ("POI") for the exchange of traffic in each ILEC tandem serving area where the CLEC assigns telephone numbers to its customers, the rate for vNXX traffic delivered to internet service providers is \$.0007 per minute of use, which is the FCC's default rate for ISP-bound traffic that an originating carrier hands off to another carrier for delivery to an ISP located in that same local calling area.

(Verizon's proposed § 55.4.2.) In LATAs where the parties do not have a POI in each ILEC tandem serving area, ISP-bound vNXX traffic is exchanged on a bill-and-keep basis. (Verizon's proposed § 55.4.3.)

Verizon Access's compromise solution is the best approach, as the industry itself has proven by adopting it on a widespread basis. It fairly balances the ILEC and CLEC interests, while preserving consumers' ability to use dial-up Internet access as they do today. However, if the Commission is reluctant to adopt Verizon Access's market-based proposal, Verizon Access expects the Commission to be guided by its decision last year in the Socket/CenturyTel arbitration, where it adopted a bill-and-keep arrangement for vNXX traffic. *Petition of Socket Telecom LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications Group, LLC pursuant to Section 251(b)(1) of the Telecommunications Act of 1996*, Case No. TO-2006-0299, Final Commission Decision, at 27-28 (June 30, 2006).

Embarq's Position: Access charges should apply to all vNXX traffic. (Embarq's proposed § 54.4.)

Issue 2: Where Verizon Access is not purchasing UNE loops or resold services from Embarq, should Embarq be permitted to charge Verizon Access a monthly charge for "maintenance and storage" of customers' basic directory listing information that is based on Embarq's tariffed rate for maintaining and storing additional directory listings?

Verizon's Position: No. Embarq seeks to assess an additional (though unspecified) charge that is based on the tariffed rate of a different service. Embarq cannot justify its proposed charge.

Both parties agree that when Verizon Access is purchasing UNE loops or resold services from Embarq, it need not pay any additional charges for ensuring that its customers receive basic directory listings. See ICA § 75.3.3; Embarq proposed ICA § 75.2.5. This dispute, therefore, involves situations where Verizon Access is self-provisioning loops. Verizon Access does not in principle oppose reasonable charges associated with directory listings, and indeed has agreed to pay Embarq a nonrecurring service order charge for basic directory listings in situations where Verizon Access is not purchasing resold service or UNE loops. See ICA § 75.3.3. Embarq, however, seeks to also assess monthly recurring charges for “routine maintenance and storage” of basic directory listing information – a charge that other ILECs, including Verizon’s in-region ILEC affiliates, do not assess.

Embarq proposes to base its monthly recurring charge on Embarq’s *tariffed rates* for maintenance and storage of *additional directory listings for retail customers*. (Embarq proposed ICA § 75.2.5). Embarq has not justified charging such a rate for maintaining and storing basic directory listings – which it admits is a “routine” function (Embarq proposed ICA § 75.2.5) and which it has historically provided without charge. Embarq has not indicated the amount of the monthly recurring charge it is proposing to use. Its language simply refers to the monthly recurring charge for additional directory listings, “as reflected in Embarq’s Exchange Tariff.” Embarq did not provide an actual tariff reference (let alone a copy of the tariff itself), but Verizon’s independent review of Embarq’s Missouri “General Exchange Tariff” indicates that Embarq’s charges for additional directory listings range from \$2.25 to \$2.90 per month, depending on the competitive classification of the exchange and whether the listing is for a residence or

business.² So it remains unclear what recurring monthly rate, exactly, Embarq seeks to charge Verizon Access. There is, in any event, no justification for picking *any* rate out of the retail tariff and applying it to a different, routine database function. This is the same conclusion the Minnesota Department of Commerce (“DOC”) reached when Embarq advanced the same proposal there.³

Embarq’s proposal is also discriminatory. Under 47 U.S.C. § 251(b)(3) and 47 C.F.R. 51.217, Embarq has an obligation to provide CLECs with nondiscriminatory access to directory listings.⁴ In a dispute involving that obligation, Embarq “shall bear the burden of demonstrating *with specificity*” that it is “permitting nondiscriminatory access.” 47 C.F.R. 51.217(e) (emphasis added). It has not met that burden. For example, last year Embarq entered into an Interconnection Agreement with Level 3 Communications which provided that “Embarq agrees to include one basic White pages listing for each Level 3 customer located within the geographic scope of its White Page directories, at no additional charge to Level 3.” *See* Master Interconnection, Collocation and Resale Agreement for the State of Missouri between Level 3 Communications, LLC and Embarq Missouri, Inc. (filed with the Missouri Public Service Commission Oct. 16, 2006 and approved by the Commission in Case No. TK-2007-0157 effective Dec. 1,

² Embarq General Exchange Tariff, No. 22, § 9 (“Directory Listings”), page 7.

³ Direct Testimony of Katherine A. Doherty, Minn. Dep’t of Commerce, Petition of Verizon Access for Arbitration of an Interconnection Agreement with Embarq Minn., Inc., OAH Docket No. 12-2500-18075-2, MPUC Docket No. P430,5321/M-07-611, at 19-22 (advising that Embarq had not met its burden to justify establishment of any rate for directory listings).

⁴ Importantly, Verizon Access, like most CLECs, does not maintain its own database of its customers’ directory listing information, and therefore is unable to contract directly with the directory publisher in order to ensure that the listings are published. Verizon Access therefore relies on Embarq’s obligation to provide nondiscriminatory access in order to publish its customers’ information.

2006), at § 74.3.3. Embarq has provided no justification for such discriminatory treatment.

The Commission should reject Embarq's proposal to charge a monthly fee for routine maintenance and storage of directory listings. Verizon Access has already agreed to pay Embarq a nonrecurring service order charge for directory listings where Verizon Access is not purchasing resold service or UNE loops – and Embarq is unjustified and unreasonable in seeking an additional, unspecified charge.

Embarq's Position: CLECs that are not purchasing UNE Loops or resold services should pay a monthly recurring charge equal to the MRC for maintenance and storage of additional directory listings, as reflected in Embarq's Exchange Tariff. (Embarq's proposed § 75.2.5.)