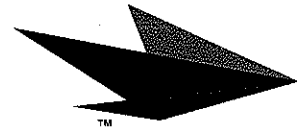


Voice | Data | Internet | Wireless | Entertainment



EMBARQ™

Embarq Corporation
EMBARQ.com

May 27, 2008

Carole J. Washburn, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

Re: Docket No. UT-83025; *In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Comcast Phone Of Washington, LLC, and United Telephone Company of the Northwest, Inc. d/b/a Embarq pursuant to 47 U.S.C. Section 252.*

Dear Ms. Washburn:

Enclosed for filing in the above-referenced docket are an original and eleven (11) copies of the Response of United Telephone Company of the Northwest d/b/a Embarq to the Petition for Arbitration of Comcast Phone of Washington, LLC.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

William E. Hendricks

cc. service list
Records Center

Embarq Attorney
(541) 387-9439 voice
(541) 400-8421 mobile
(541) 38709753 fax
tre.hendricks@embarq.com
WSBA No. 29786
OR State Bar application pending

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for Arbitration) DOCKET UT-083025
of an Interconnection Agreement Between)
COMCAST PHONE OF WASHINGTON,) RESPONSE OF EMBARQ
LLC,)
with)
UNITED TELEPHONE COMPANY OF)
THE NORTHWEST, INC. d/b/a EMBARQ)
Pursuant to 47 U.S.C. Section 252(b).)
.....)

**UNITED TELEPHONE COMPANY OF THE NORTHWEST D/B/A EMBARQ'S
RESPONSE TO COMCAST'S PETITION FOR ARBITRATION**

Barbara C. Young
State Executive
United Telephone Company of
the Northwest d/b/a Embarq
902 Wasco Street
Hood River, OR 97031
(541) 387-9850 phone
(541) 387-9753 fax
Barbara.C.Young@Embarq.com

William E. Hendricks
United Telephone Company of
the Northwest d/b/a Embarq
902 Wasco Street
Hood River, OR 97031
(541) 387-9439 phone
(541) 387-9753 fax
Tre.Hendricks@Embarq.com

ATTORNEY FOR UNITED
TELEPHONE COMPANY OF THE
NORTHWEST D/B/A EMBARQ

RESPONSE OF EMBARQ

United Telephone Company of the Northwest *d/b/a* Embarq ("Embarq") respectfully submits this Response to the Comcast Phone of Washington, LLC ("Comcast") Petition for Arbitration, filed on April 29, 2008 ("Petition"). Embarq files this Response to the Petition pursuant to Section 252(b)(3) of the Federal Telecommunications Act¹ and states as follows:

1. Embarq admits the allegations in paragraph 1.
2. Embarq admits the allegations in paragraph 2, except it denies that the Commission should resolve the unresolved issue by ordering the parties to incorporate Comcast's position into the Interconnection Agreement for execution by the parties.
3. Embarq admits the allegations in paragraph 3.
4. Embarq admits that the laws cited in paragraphs 4, 5, 6, 7, and 8 of the Petition pertain to arbitrations under the Telecommunications Act of 1996 generally. However, an incumbent LEC is not required to act as a directory listing clearinghouse for other LECs; in particular when, as is the case here, (a) the CLEC is not purchasing UNE Loops or local exchange service resale and (b) the incumbent LEC does not own or control the directory company.² The FCC ruled in the *SLI/DA Order* as follows:

¹ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.). (hereinafter "the Act").

² *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, at ¶¶ 54, 55 (released September 9, 1999) ("SLI/DA Order")* (citations omitted).

We conclude that the obligation under section 222(e) to provide a particular telephone subscriber's subscriber list information extends only to the carrier that provides that subscriber with telephone exchange service. The language of section 222(e) makes clear that a carrier need not provide subscriber list information to requesting directory publishers pursuant to that section unless the carrier "gathered" that information "in its capacity as a provider of [telephone exchange] service."

Embarq is therefore free to provide directory listing to Comcast at non-cost, market-based rates as reflected in Exhibit 1 to this Response.

5. Embarq admits that Comcast has requested an opportunity to supplement its Petition, but denies that supplementation is always appropriate.

6. Embarq lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 10.

7. Embarq admits the allegations contained in paragraph 11.

8. Embarq admits the allegation contained in paragraph 12.

9. Embarq admits the allegations contained in paragraph 13.

10. Embarq admits the allegations in paragraph 14 that the only remaining dispute involves Embarq's proposed monthly recurring charge for maintaining and storing Comcast's directory listings ("DL") in Embarq's databases:

Where Comcast is not purchasing UNE loops or resold services from Embarq, should Embarq be permitted to charge Comcast a monthly charge for "maintenance and storage" of Comcast's customers' basic directory listing information?

11. Embarq admits the allegations in paragraph 15 regarding Embarq's DL rates.

12. Embarq denies the allegation in paragraph 16 that its proposed monthly recurring charge is discriminatory.

13. Embarq admits in part and denies in part the allegations in paragraph 17. Embarq admits that it does not assess an explicit charge on its own retail customers who receive a directory listing as part of basic local exchange service. Embarq further denies that its DL rate must be cost justified.

The relevant FCC rule, 47 C.F.R. 51.217, to the extent that it may be applicable, does not prohibit Embarq's DL charge to Comcast. The rule requires non-discriminatory access, which includes, but is not limited to:

- (i) Nondiscrimination between and among carriers in the rates terms and conditions of the access provided; and
- (ii) The ability of the competing provider to obtain access that is at least equal in quality to that of the providing LEC.³

The essence of nondiscrimination is that *similarly situated* parties are entitled to the same rates, terms, and conditions.

Embarq's charges are not discriminatory because, in this instance, Comcast is not similarly situated; it is unlike other carriers that purchase UNE Loops or local exchange service for resale and it is unlike end users that purchase Embarq's retail local exchange service. In the case of carriers and end-users, the customer is purchasing a loop or line that, for various reasons, includes a DL as a component of the service. In

³ 47 C.F.R. 51.217(a)(2)(i) and (ii).

contrast, Comcast is not purchasing a loop or line from Embarq, but instead is seeking to obtain only DL services on a standalone basis. Furthermore, Embarq assesses to its own retail customers a similar charge for additional or stand-alone directory listings, i.e. one that is ordered in addition to a directory listing that Embarq provides in conjunction with basic local service. Under these circumstances, it is not discriminatory for Embarq to charge Comcast for the recurring DL services, even if other carriers or end users do not pay a separate DL charge when they purchase a loop or a line.

With respect to the requirement in subsection (2)(ii), Comcast does not contend that the DL service Embarq will provide is not equal in quality to that which Embarq provides to itself, and indeed Comcast's DLs would be handled and processed in the same manner as Embarq's DLs. Moreover, Embarq does not own or control the directory business. Therefore, Comcast has at this very moment the same ability as Embarq to obtain access to directory listing functions for its customers by dealing directly with a variety of directory publishers.

Embarq further denies the allegations in paragraph 17 that, under applicable rules, the DL rate must be cost-justified. Embarq admits that it refers to its proposed DL storage and maintenance rate as market-based, and denies that it has failed to provide any justification for the charge. The \$.50 per month recurring charge for a foreign listing shows that the proposed rate is market-based. A charge for a foreign listing is made in a situation analogous to that in which Comcast is being

charged for the DL storage and maintenance, i.e. when Comcast is not purchasing any UNE loops or local exchange service for resale. Embarq therefore denies that the rate must be cost-justified.

And in contrast to other obligations under the Act, such as interconnection and unbundling where the TELRIC pricing standard is very clear, neither the Act nor the FCC's rules specify a cost-based pricing standard for the DL services at issue. The Indiana Utility Regulatory Commission recently ruled in Embarq's favor on this issue. The Indiana Commission found it "significant that the FCC determined not to subject the directory listing obligation to a TELRIC pricing standard."⁴ The Commission also found:

Because the rate need not be cost-based, we conclude that it should be set based on market principles. Verizon is not prohibited from contracting directly with the publisher, and therefore, Embarq is not a monopoly bottleneck with respect to this service. If Verizon deems the rate Embarq seeks to charge too high, Verizon can bypass Embarq. We find it immaterial that Verizon's cost of doing so may be greater than the rate Embarq wishes to charge. Finally, we find Verizon's argument that inclusion of Verizon listings inures a significant material benefit to Embarq in its relationship with the directory publisher fundamentally flies in the face of the concept of marginal utility.

Accordingly, we agree with Embarq that a market-based price is appropriate and equitable to both Parties, and accept Embarq monthly directory listing charge. Embarq proposed language on this issue is adopted for insertion into the parties' interconnection agreement.⁵

The reasoning of the Indiana commission applies equally well to this case.

⁴ See, Indiana Verizon Access/Embarq DL Order at p. 19.

14. Embarq lacks sufficient information to form a belief as to the truth of the allegations in paragraph 18 that no other ILEC charges a similar charge today, or that no other ILEC has ever proposed such a charge, and therefore denies them. Embarq further denies the allegation in paragraph 18 that “[t]here is simply no basis for the charge other than as a method to significantly increase the monthly cost per subscriber that is incurred by Embarq’s facilities-based competitors.”

15. Embarq denies that the Commission should reject Embarq’s proposal and adopt Comcast’s proposal.

16. Embarq respectfully reserves the right to raise additional arguments and defenses as a result of information obtained through discovery in this proceeding.

//

//

//

//

//

//

//

//

//

⁵ *Id.*

For the reasons set forth above, Comcast's positions on the issue as set forth in its Petition should be rejected and the language and relief requested in the Petition should be denied. Embarq requests that the Commission adopt Embarq's terms and conditions for DL, as set forth in Exhibit 1 to this Response, and grant any other relief it deems appropriate.

Respectfully submitted this 27th day of May 2008.

By:  _____

William E. Hendricks
WSBA No. 29786
United Telephone Company of the
Northwest d/b/a Embarq
902 Wasco Street
Hood River, OR 97031
Phone (541) 387-9439
Fax (541) 387-9753
Tre.Hendricks@Embarq.com

Attorney for United Telephone
Company of the West d/b/a Embarq

Exhibit 1

Exhibit 1
Embarq's Proposed DL language

71.2. Directory Listings Service Requests:

71.2.1. These requirements pertain to Embarq's Listings Service Request process that enables CLEC to (a) submit CLEC subscriber information for inclusion in Directory Listings databases; (b) submit CLEC subscriber information for inclusion in published directories; and (c) provide CLEC subscriber delivery address information to enable Embarq to fulfill directory distribution obligations.

71.2.2. When implemented by the Parties, Embarq shall accept orders on a real-time basis via electronic interface in accordance with OBF Directory Service Request standards within three (3) months of the effective date of this Agreement. In the interim, Embarq shall create a standard format and order process by which CLEC can place an order with a single point of contact within Embarq.

71.2.3. Embarq will provide to CLEC the following Directory Listing Migration Options, valid under all access methods, including but not limited to, Resale, UNEs and Facilities-Based:

71.2.3.1. Migrate with no Changes. Retain all white page listings for the subscriber in both DA and DL. Transfer ownership and billing for white page listings to CLEC.

71.2.3.2. Migrate with Additions. Retain all white page listings for the subscriber in DL. Incorporate the specified additional listings order. Transfer ownership and billing for the white page listings to CLEC.

71.2.3.3. Migrate with Deletions. Retain all white page listings for the subscriber in DL. Delete the specified listings from the listing order. Transfer ownership and billing for the white page listings to CLEC.

71.2.3.4. To ensure accurate order processing, Embarq or its directory publisher shall provide to CLEC the following information, with updates promptly upon changes:

71.2.3.4.1. A matrix of NXX to central office;

71.2.3.4.2. Geographical maps if available of Embarq service area;

71.2.3.4.3. A description of calling areas covered by each directory, including but not limited to maps of calling areas and matrices depicting calling privileges within and

between calling areas;

- 71.2.3.4.4. Listing format rules;
- 71.2.3.4.5. Standard abbreviations acceptable for use in listings and addresses;
- 71.2.3.4.6. Titles and designations; and
- 71.2.3.4.7. A list of all available directories and their Business Office close dates

71.2.4. Based on changes submitted by CLEC, Embarq shall update and maintain directory listings data for CLEC subscribers who:

- 71.2.4.1. Disconnect Service;
- 71.2.4.2. Change CLEC;
- 71.2.4.3. Install Service;
- 71.2.4.4. Change any service which affects DA information;
- 71.2.4.5. Specify Non-Solicitation; and
- 71.2.4.6. Are Non-Published, Non-Listed, or Listed.

71.2.5. The charge for storage of CLEC subscriber information in the DL systems is included in the rates where CLEC is buying UNE Loops or resold services with respect to specific addresses. CLECs that are not buying UNE Loops or resold services shall pay for such storage services at the rate reflected on Table One.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Arbitration was served by electronic mail and overnight delivery on the 27th of May 2008.

Gregory J. Kopta
Michael C. Sloan
Davis Wright Tremaine LLP
1201 Third Avenue
Seattle, Washington 98101-3045
P: (206) 757-8079
F: (206) 757-7079
Email: gregkopta@DWT.com
michaelsloan@dwt.com

Andrew Fisher, Esq.
(215) 286-3039
Andrew_Fisher@Comcast.com

Beth Choroser
(215) 286-7893
Beth_Choroser@Comcast.com

Comcast Cable Communications, LLC
One Comcast Center, 50th Floor
Philadelphia, PA 19103
F: (215) 286-5039
