BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

REPLY BRIEF
OF
COMCAST PHONE OF WASHINGTON, LLC

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1. Comcast Phone of Washington, LLC ("Comcast"), through undersigned counsel, submits this brief in reply to the Initial Brief of United Telephone Company of the Northwest, Inc. d/b/a Embarq ("Embarq").

INTRODUCTION

2. Comcast's Opening Brief demonstrated that Section 251(b)(3) of the Telecommunications Act of 1996 ("Act") precludes Embarq's proposed directory listing storage and maintenance ("DLSM") charge because it is discriminatory and because Embarq has failed to justify its disparate treatment of Comcast. Comcast also showed that there is no basis for Embarq's claim that the "nondiscriminatory access" requirement of the statute is inapplicable after the sale of Embarq's directory publication business to Donnelley. Nor is there an irreconcilable "statutory conflict" between Section 251(b)(3) and Section 222(e) that would justify dispensing with the former in favor of the latter. While Embarq attempts to defend the charge, which it concedes is discriminatory, that defense relies on overt mis-readings of the

FCC's orders and regulations defining the scope of a "providing LEC's" obligations under Section 251(b)(3). Comcast also demonstrated that the proposed charge is unjust and unreasonable because it would permit Embarq to recover its costs many times over. Finally, Comcast showed that the proposed directory listing charge contravenes long-standing Washington law and policy.

3. Embarq presented nothing in its Initial Brief that calls any of this into question. Indeed, Comcast anticipated – and rebutted – most of Embarq's arguments. We address here only new contentions not raised previously. In sum, as the arbitrators in the Texas[1] and Pennsylvania[2] versions of this case have already concluded, and as the Minnesota Public Utilities Commission concluded earlier this year,[3] Embarq's proposed DLSM charge should be rejected.

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[1] Comcast cited the Texas Arbitrators' *Proposal for Award* in its Opening Brief (at 2, n.2). The Texas Arbitrators recently issued their final Arbitration Award, which adopt their earlier proposal and found in Comcast's favor on all issues. *See Petition of Comcast Phone of Texas, LLC for Arbitration of An Interconnection Agreement with United Telephone Company of Texas, Inc. d/b/a Embarq and Central Telephone Company of Texas, d/b/a Embarq Pursuant to Section 252 of the Federal Telecommunications Act of 1934, As Amended and Applicable State Laws*, Arbitration Award, Docket No. 35403 (Tex. PUC Sept. 22, 2008) ("*Texas Arbitration Award*") (attached hereto as Exhibit A). The Arbitration Award will become final in thirty days, unless Embarq files exceptions. If it does, the full Texas Public Utilities Commission will consider the Award before the end of 2008.

[2] Soon after Comcast filed its Opening Brief in this case, the Pennsylvania arbitrator issued its recommended decision, ruling in favor of Comcast on all issues and rejecting the proposed DLSM charge. *See* Comcast's Second Notice of Supplemental Authority (Sep. 19, 2008) (informing Commission of *Petition of Comcast Business Communications, LLC d/b/a Comcast Long Distance for Arbitration of an Interconnection Agreement with United Telephone Company of Pennsylvania, Inc. d/b/a Embarq Pursuant to 47 U.S.C. § 252(b)*, Recommended Decision, Docket No. A-310190 (Pa. PUC Sept. 19, 2008) ("*Pennsylvania Recommended Decision*")).

[3] *See* Direct Testimony of Timothy J Gates (Exh. TJG-1) at 37-38 (citing *Petition of MCIMetro Access Transmission Services d/b/a Verizon Access Transmission Services for Arbitration of an Interconnection Agreement with Embarq Minnesota, Inc., Pursuant to 47 U.S.C. § 252(b)*, Order Adopting Interconnection Agreement with Modifications and Establishing Effective Date, Case No. P-430, 5421M-07-611, 2008 WL 61104 (Minn. PUC Feb. 6, 2008)). In Comcast's Minnesota arbitration proceeding with Embarq, Embarq agreed to settle the case and accept Comcast's proposed contract language, which excludes the proposed DLSM charge.

ARGUMENT

I. Section 251(b)(3) Precludes Embarq's Proposal

4. The FCC has explained that the "directory listing" function contemplated by Section 251(b)(3) encompasses, "the act of placing a customer's listing information ... in a directory compilation for external use (such as a white pages)."[4] This means that all LECs have the right to have their customers' listing information placed into the local directories that other LECs (mainly incumbents) "cause to be published" on "nondiscriminatory rates, terms and conditions."[5] There is no dispute that Embarq "causes" the publication of the Embarq-branded directories.[6] Nor does Embarq dispute that its DLSM proposal would discriminate between CLECs (like Comcast) that self-provision their own last-mile facilities (who would be charged a $0.50 per listing, per month fee) and CLECs that purchase UNE-loops or resell Embarq's finished service (who, like Embarq's retail customers, would be charged nothing).

5. Embarq argues that this disparate treatment is permissible because, it claims, Section 251(b)(3) "does not apply" after the sale of its directory publication business which Embarq contends has limited its ability to "control access" to Donnelley, and for other policy reasons.[7] There is no basis for these Embarq claims, as at least two federal district courts have already

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[4] *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 [sic], As Amended*, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd. 15550, ¶ 160 (1999) ("*SLI/DA Order*").

[5] *See* Comcast Opening Br. at 10-15 (citing 47 CFR § 51.5 (defining "directory listings"), 47 CFR § 51.217(a)(2)(i) (FCC rule defining "nondiscriminatory access" requirement of Section 251(b)(3)), and the district courts' analyses of these provisions in *MCI Telecomm. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp.2d 768 (E.D. Mich. 1999) and *U.S. West Comm., Inc. v. Hix*, 93 F. Supp.2d 1115 (D. Colo. 2000)).

[6] *See* Comcast Opening Br. at 12-13; *see also Texas Arbitration Award*, at 15; *Pennsylvania Recommended Decision* at 15.

[7] *See* Embarq Initial Br. at 9-13.

found,[8] and Embarq has cited no statutory or regulatory authority for its argument. Instead, it makes a series of "policy" arguments which, at the end of the day, are largely irrelevant in light of its Section 251(b)(3) obligation to provide "nondiscriminatory access ... to directory listing[s]." Because that obligation is codified into the text of the Act, only the FCC can forbear from applying it, and may only do so under the standards set forth in the Forbearance statute – Section 10 of the Act.[9] Because the FCC has not issued an order forbearing from Section 251(b)93), the Commission must continue to enforce the statue.

6. But even if the Commission could disregard Section 251(b)(3), Embarq has not presented a persuasive reason for doing so. For example, Embarq's contention that it does not "control access" to Donnelley and that Comcast is, therefore, allegedly free to "deal directly with Donnelley,"[10] is presumably meant to suggest that there is a functioning market the presence of which the Commission can rely upon to discipline prices and maximize consumer welfare. But the evidentiary record proves otherwise. Embarq has not presented evidence that any CLEC anywhere in the country provides subscriber list information directly to any directory publisher.[11] Thus, the market for "directory listing services" is unchanged from where it stood in 1995, when

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[8] *See MCI* and *Hix* (cited *supra* note 5). Embarq may argue that *MCI* and *Hix* are distinguishable because they did not consider the applicability of Section 222(e) and because the ILECs in those cases shared in the revenue from the sale of yellow pages advertising. But those "distinctions" are immaterial. First, as Comcast showed in its Opening Brief, there is no "conflict" between Section 251(b)(3) and Section 222(e). Thus, the courts' failure to consider that non-conflict cannot be a distinguishing factor in this case. Second, both courts expressly found that the connection between the ILEC and the directory publisher was "irrelevant" to the ILECs' obligation under Section 251(b)(3). *MCI*, 79 F. Supp. 2d at 802; *Hix*, 93 F. Supp. 2d at 1133.

[9] *See generally*, Comcast Opening Br. at 14. Thus, Embarq's argument (at 23) that Comcast's role in populating the E-911 ALI database supports its contention that Comcast should be required to transmit subscriber list information to publishers directly (unless Comcast pays the DLSM charge) is the sort of argument that should be made to the FCC in a forbearance case. It is of no relevance here.

[10] Embarq Initial Br. at 12.

[11] *See* Comcast Opening Br. at 5-6; s*ee also Texas Arbitration Award* at 17.

this Commission first ordered ILECs to include competitors' listings in their directories, or 1996, when Congress enacted Section 251(b)(3). ILECs continue to be the sole provider of these services.[12]

7. Nor does Embarq's strained reading of what it claims are the "policies" embodied in Section 251(b) support its position.[13] The mutual and reciprocal obligations of Section 251(b) are not just directed at providing "access" in situations "where a LEC controls access." To the contrary, they are broader than that. The various Section 251(b) "duties" are aimed at assuring that the benefits of what were previously thought to be the "natural monopoly" characteristics of the local exchange market continue to inure to the public after the opening of those markets to competition.[14] Thus, the Section 251(b) obligations guarantee, among other things, that all end users can continue to call one another;[15] that end-users will be able to retain their telephone

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[12] Comcast does not suggest that there is anything pernicious about Embarq's control over this function. To the contrary, as Mr. Gates has testified, the distribution of subscriber list information to directory publishers is the sort of function that makes sense to centralize in each local service territory. *See* Direct Testimony of Timothy J Gates at 12. Thus, Embarq misconstrues Mr. Gates' "scale and scope" arguments. *See* Embarq Initial Br. at 24. The policy question is not which company is bigger nationally, but which is best situated in each given service territory to operate a uniform DL database that third-party directory publishers can access to obtain all the end-user listings. In most cases, that is still the ILEC. Moreover, Embarq is compensated for providing this function from non-recurring DL service order charge Comcast (and other CLECs) pay, and through the fees that Embarq receives from the sale of subscriber list information to directory publishers. In any event, the parties' relative size is legally irrelevant in light of the statutory mandate of Section 251(b)(3).

[13] *See* Embarq Initial Br. at 15-17.

[14] The FCC has recognized that nondiscriminatory access is one of several "critical issues for the development of local competition," and the FCC's rules implementing nondiscriminatory access "benefit consumers by making some of the strongest aspects of LEC incumbency – the local dialing, telephone numbers, operator services, directory assistance, and directory listing – available to all competitors on an equal basis." *SLI/DA Order* ¶ 6.

[15] *See* 47 U.S.C. § 251(b)(3) (dialing parity), § 251(b)(5) (duty to "transport and terminat[e]" competitors' calls).

numbers if they switch service providers;[16] and that new entrants will not be required to make wasteful expenditures acquiring duplicative rights-of-way.[17]

8. Similarly, the "nondiscriminatory access to ... directory listing" obligation of Section 251(b)(3) assures that, in the marketplace for communications services opened by the Act, end-users will continue to receive complete telephone directories containing all local listings, and that carriers will be not be able to use directories as weapons against their competitors. Embarq's proposed DLSM charge runs directly counter to this federal and Washington State policy. Indeed, it is the prototypical example of precisely the kind of carrier policies that Section 251(b)(3) was enacted to prevent.[18]

9. Nor does Embarq's claim that the FCC's decision to remove "operator services" and "directory assistance" ("OS/DA") from the list of network elements that ILECs must "unbundle" and make available to requesting LECs at cost-based rates support its contention that the Commission may disregard Section 251(b)(3).[19] There is simply no evidence for Embarq's contention that the Act's "network element" unbundling regime is "more so" directed at "mitigat[ing] the scale and scope advantages of incumbency" than the bilateral service obligations created by Section 251(b).[20] To the contrary, facilities-based providers like Comcast represent the best hope for enduring competition in the telecommunications marketplace and

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[16] 47 U.S.C. § 251(b)(2) (number portability).

[17] 47 U.S.C. § 251(b)(4) (access to rights-of-way).

[18] *See Hix*, 93 F. Supp.2d at 1132-33 (observing that Section 251(b)(3) is expressly intended to prevent a LEC from charging its competitors higher prices for including their customers' listings in directories); *see also WUTC v. US West Comm., Inc.*, 4th Suppl. Order, Docket Nos. UT-941464, UT-941465, UT-950146, 1995 WL 735315 at 4 (WUTC Oct. 31, 1995) ("*US West Order*") (recognizing that the Commission's rules help to advance the, "strong public and consumer interest in having a complete listing of subscribers for each local calling area available to subscribers").

[19] *See* Embarq Initial Br. at 11, 18-20.

[20] *See id.* at 12.

they typically do not use ILEC UNEs at all.[21] Moreover, while the UNE list is subject to the administrative discretion of the FCC, Congress expressly codified the "nondiscriminatory access ... to directory listing" obligation into the text of the statute. Thus, because of the ***statutory*** basis for the obligation, the FCC – and ***only*** the FCC – can forbear from applying Section 251(b)(3).

II. Embarq's Attempt to Defend the Discriminatory Effect of the Charge is Unpersuasive

10. Embarq also argues, in the alternative, that its proposed DLSM charge is not ***impermissibly*** discriminatory, if Section 251(b)(3) is found to apply.[22] As we explain, Embarq's arguments are based on affirmative misreadings of the applicable law.

11. The substantive requirements of the Act's nondiscriminatory access mandate are well established. As the FCC has plainly and repeatedly explained, "[t]he term 'nondiscriminatory,' as used throughout section 251, applies to the terms and conditions a ... LEC imposes on third parties as well as on itself."[23] This view is reflected in the FCC's implementing regulation, Section 51.217(a)(2), which provides as follows:

> *Nondiscriminatory access*. "Nondiscriminatory access" refers to access to telephone numbers, operator services, directory assistance and directory listings that is at least equal to the access that the providing local exchange carrier (LEC) itself receives. Nondiscriminatory access includes, but is not limited to:
>
> (i) Nondiscrimination between and among carriers in the rates, terms, and conditions of the access provided; ***and***

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[21] Embarq's contention (Embarq Initial Br. at 17-18) that its DLSM charge will promote "facilities based competition" is likewise incorrect. In fact, the opposite is true. Every dollar spent paying Embarq a tax to get its customers' listings into Embarq's directories is a dollar that Comcast will not be able to invest in new facilities or services.

[22] *See* Embarq Initial Br. at 13-16, 28-31.

[23] *First Local Competition Order*, 11 FCC Rcd 15499, ¶ 218 (1996) (emphasis added); *see also SLI/DA Order* ¶ 129. A federal district court in Iowa recently reaffirmed the continuing validity of this rule. *See McLeodUSA Telecommunications Srvcs. v. Iowa Utilities Bd.*, 550 F. Supp. 2d 1006, 1031 (S.D. Iowa 2008).

(ii) The ability of the competing provider to obtain access that is at least equal in quality to that of the providing LEC.[24]

The FCC's rules also provide that, "[i]n disputes involving nondiscriminatory access to ... directory listings, a providing LEC shall bear the burden of demonstrating with specificity ... that it is permitting nondiscriminatory access."[25] And with respect to the nondiscriminatory rate requirement, the FCC has explained that "***price differences based not on cost differences***, but on such considerations as competitive relationships, the technology used by the requesting carrier, the nature of the service the requesting carrier provides, or other factors not reflecting costs, the requirements of the Act, or applicable rules, ***would be discriminatory and not permissible*** ...."[26]

12. Embarq advances two theories for why its proposed DLSM charge satisfies these requirements. First, despite the clear guidance from the FCC to the contrary, Embarq contends that the Commission should disregard Embarq's treatment of its own customers, claiming – incorrectly – that "nondiscriminatory access" does not require that a "competing provider" receive the same "rates, terms and conditions" as the "providing LEC" provides to itself.[27] This contention relies on an obscure textual argument that focuses on the presence of "the rates, terms, and conditions" clause in subsection (i) of Section 51.217(a)(2), and the ***absence*** of a similar clause in subsection (ii). This "structure," Embarq argues, "leads to the conclusion that it

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[24] 47 C.F.R. § 51.217(a)(2) (emphasis supplied).

[25] *Id.* § 51.217(e).

[26] *First Local Competition Order* ¶ 861 (emphasis added).

[27] Embarq Initial Br. at 13. Embarq incorrectly formulates Comcast's argument as follows: "the FCC's definition of nondiscriminatory access does not require a providing LEC, such as Embarq, to provide access at the LEC's own cost to provide the service." *Id.* at 14. As should be plain, Comcast has not made that argument. Comcast has no insight into Embarq's costs. All we know is that Embarq does not impose a DLSM charge on its own customers. And while there may be some DLSM-related costs "implicit" in Embarq's retail rates, there is no evidence that it charges its customers, or UNE-L/Resale CLECs, $6 per year to have their listings included in the Embarq Directory. *See* Comcast Opening Br. at 17-18.

is only the quality of access that needs to be equal to what the providing LEC provides itself, not the 'rate' the LEC 'charges' itself."[28]

13. The problem with this reading is that it effectively requires deleting the conjunction at the end of subsection (i). Only then is it possible to read the "equal quality of physical access requirement" of subsection (ii) separately from the "nondiscriminatory rates, terms and conditions of access requirement" found in subsection (i). Because neither the FCC's guidance nor the plain language of its regulations may be ignored, and because there is no policy justification for doing so, Embarq's arguments must fail.[29]

14. Second, Embarq claims that Comcast is not "similarly situated" to resale and UNE-L CLECs, and Embarq retail end-users who would be exempt from the proposed charge. The argument is based on the unsupported contention that Embarq's retail, and UNE-L/Resale CLEC customers pay an implicit, but undisclosed, amount for DLSM services, so that it would be discriminatory not to also charge Comcast.[30]

15. But this argument conflicts with the requirements of Section 51.217(e) of the FCC's rules, which places the burden squarely on Embarq to ***prove*** that its charge is ***not*** discriminatory. Embarq's unsupported claim that its retail and wholesale rates implicitly include some unidentified DLSM costs simply does not meet this burden.[31] The FCC's rules implementing

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[28] Embarq Initial Br. at 15.

[29] Embarq's proposal that the reference to "carriers" in subsection (i) of Section 51.217(a)(2) should be read as "requesting carriers" is misplaced for the same reason. Embarq Initial Br. at 16-17. While the term "carriers" is undefined, the best reading of its usage here is as a reference to ***both*** "requesting" and "providing" LECs. This is in keeping with the FCC's guidance that, the term "nondiscriminatory" applies to the terms and conditions that a carrier imposes on third parties as well as on itself.

[30] Embarq Initial Br. at 28-31.

[31] *See id.* at 29-30.

Section 251(b)(3) require price differences to be cost justified.[32] Thus, while Embarq's claim that some portion of its DL costs are allocated to overhead expenses included in UNE rates may be true, the law places the burden squarely on Embarq to demonstrate that to be the case. Not only has Embarq failed to present such evidence, it has admitted that it is no costlier to provide its DLSM services to Comcast than to those retail and wholesale customers that are exempt from the charge.[33]

16. Nor is it true that application of the nondiscriminatory access requirement would be tantamount to imposing a cost-based rate on Embarq's DL service offering.[34] To the contrary, it is a simple matter of complying with the law. If Embarq seeks to charge Comcast and UNE-L/Resale CLECs different rates for the same directory listing service, Embarq must provide a cost justification for that disparate pricing, as the FCC's rules require.

III. Embarq Has Not Rebutted Comcast's Showing that the Proposed DLSM Charge is Unjust and Unreasonable

17. Comcast has demonstrated that the proposed DLSM charge is unjust and unreasonable because the cost of the "activities" that Embarq has identified as associated with it are either (i) covered by activities that the parties have agreed will be covered by the non-recurring charge that Comcast has agreed to pay; (ii) involve functions that the parties have agreed will be performed by Comcast or the directory publisher and not by Embarq; or (iii) are charges that the FCC has definitively ruled are to be recovered through the Section 222(e) rates that directory

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[32] *See supra* notes 24-26 and accompanying text.

[33] *See* Comcast Opening Br. at 18-20.

[34] *See* Embarq Initial Br. at 18-19. Nor is it true that "this Commission found" the FCC's failure to "subject the directory listing obligation to a TELRIC standard" was "significant." *See id.* at 18, n.29. While the Indiana Commission did make that finding with respect to Verizon Business' arbitration against Embarq, Comcast is hopeful that the Indiana Commission will soon depart from its earlier decision after it considers the evidence and legal arguments that Comcast has presented, which are essentially the same as those presented here. The Comcast-Embarq DLSM charge arbitration proceeding is still pending before the Indiana Commission.

publishers and directory assistance service providers pay for subscriber list information that they purchase from Embarq.

18. In response, Embarq offers only Mr. Lubeck's unsupported testimony that the DLSM-related activities are somehow "different" from those explicitly set forth in the agreed upon terms of the Prospective Agreement or in the plain text of the FCC's *SLI/DA Order*.[35] At other points, Embarq asserts that the Prospective Agreement means something other than what it actually says. For example, Section 71.3.1 explains that, "[t]his Section 71.3 pertains to listings requirements published in the traditional white pages."[36] Section 71.3, in turn, provides that, "CLEC acknowledges that many directory functions including but not limited to ... directory proofing, and directory distribution are not performed by Embarq but rather are performed by and are under the control of the directory publisher." Nonetheless, Embarq proposes to charge Comcast for certain unidentified "directory proofing" activities, arguing that the clear "acknowledgement" in Section 71.3 is actually intended to refer to Yellow Pages proof-reading, despite the fact that Section 71.3.1 states that, "[t]his Section 71.3 pertains to listings requirements published in the traditional white pages." Embarq further proposes to charge for "special" directory distribution services, notwithstanding the clear language of Section 71.3, and despite Embarq's own admission in its own Initial Brief that "Embarq has agreed to provide and pay for distribution services, through R.H. Donnelley, to all residences and businesses within the geographic area covered by the directory."

19. At yet other points, Embarq seeks to impose new meanings on otherwise well understood words. A good example is its response to Comcast's argument that the DLSM charge involves non-recurring activities the (unidentified) cost of which Embarq impermissibly seeks to recover

[35] *See* Embarq Initial Br. at 25-28.

[36] Ex. ALL-9.

through recurring charges.[37] While conceding that the FCC has condemned such an approach to cost recovery, Embarq claims that any activity that it may perform more than once – even if no more than once a year – is appropriately considered recurring.[38]

20. In sum, the Texas Arbitrators' finding that, "Embarq is sufficiently compensated for maintaining and storing Comcast customer directory listings by other revenue sources,"[39] is correct on this record as well. Embarq has made no argument or presented any evidence that would suggest otherwise.

IV. The Commission's Prior Decisions Are Still Applicable Today

21. In its Initial Brief, Embarq attempts to distinguish the Commission's 1995 *US West Order* by raising three points which Embarq believes "impacts" that order. Each of these points, however, fails to demonstrate that the *US West Order* is no longer relevant today. First, Embarq's continued reliance on its control argument has no bearing on the *US West Order* because the Commission had rejected the USWC's proposed monthly charge even though it found that the CLECs had alternatives, including the ability to directly negotiate with US West Direct for publication of a directory.[40] Second, Embarq's statement that the *US West Order* did not require the ILECs to distribute directories to CLECs or their customers is incorrect; it simply said that ILECs did not have to distribute extra copies.[41] Third, although the *US West Order* observed that the ILECs may receive advertising revenue from yellow page listings, that

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[37] *See id.* at 27-28.

[38] *Id.*

[39] *Texas Arbitration Award* at 2.

[40] Comcast Opening Brief at 29-31 (citing *US West Order* at 4).

[41] *See US West Order*, 1995 WL 735315 at 4. In contrast, the ILECs were still required by state law to provide an *initial* copy of their directories to all customers in the service area. *See id.* (citing WAC 480-120-042).

observation had nothing to do with the listing obligation and, in any event is irrelevant as the *MCI* and *Hix* cases illustrate.

22. Not only did Embarq fail to distinguish the Commission's *US West Order*, it entirely ignored the Commission's recent 2002 decision rejecting Qwest's proposed "market-based rate" for directory assistance and directory listings.[42] As Comcast explained, the Commission unequivocally held that "a market-based rate is discriminatory under Section 251(b)(3)."[43] That remains the case today, as the Commission implicitly ruled in 2003, when it reaffirmed its long-standing rules.[44] Embarq simply cannot avoid this Commission's long-standing policy favoring uniform white pages directory at non-discriminatory rates, which the Commission has categorically stated does not include "market-based rates."

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[42] Comcast Opening Brief at 31 (citing *In re Unbundled Network Elements, Transport, and Termination*, 44th Suppl. Order, Docket No. UT-003013, 2002 WL 32128606, ¶¶ 122, 212 (WUTC, Dec. 20, 2002) ("*Qwest Order*")).

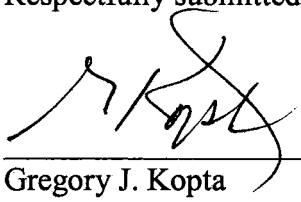
[43] *Qwest Order* at 40, ¶ 132.

[44] *See* Comcast Br. at 31-32.

CONCLUSION

23. For the foregoing reasons, the Commission should reject Embarq's proposed DLSM charge and adopt the interconnection agreement that Comcast has recommended.

Respectfully submitted:



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September 26, 2008

CERTIFICATE OF SERVICE
Docket No. UT-083025

I hereby certify that on the date given below the original and 3 true and correct copies of the ***Reply Brief of Comcast Phone of Washington, LLC*** were delivered via overnight delivery and email to:

Mr. David W. Danner, Secretary
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On the same date, a true and correct copy was sent by email and by regular U.S. Mail, postage prepaid, to:

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DATED this 26th day of September, 2008.

By: Roni L Grant
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