

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

VERIZON SELECT SERVICES, INC.; MCIMETRO  
ACCESS TRANSMISSION SERVICES, LLC; MCI  
COMMUNICATIONS SERVICES, INC.;  
TELECONNECT LONG DISTANCE SERVICES  
AND SYSTEMS CO. D/B/A TELECOM USA; AND  
TTI NATIONAL, INC.,

Complainants,

v.

UNITED TELEPHONE COMPANY OF THE  
NORTHWEST,

Respondent.

Docket No. UT-081393

MOTION TO DISMISS OF  
UNITED

**MOTION TO DISMISS OF UNITED**

1 Pursuant to WAC 480-07-380 and RCW 80.04.110, United Telephone Company of the Northwest d/b/a Embarq ("United"), files this Motion to Dismiss the complaint of Verizon Select Services, Inc.; MCImetro Access Transmission Services, LLC; MCI Communications Services, Inc.; Teleconnect Long Distance Services and Systems Co., d/b/a Telecom USA; and TTI National, Inc., (collectively "Verizon"). For the reasons set forth below, United requests that the Commission dismiss Verizon's Complaint or, in the alternative, hold the Complaint in the abeyance until the FCC acts.

## RELIEF REQUESTED

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United moves that the Commission dismiss Verizon's Complaint, without prejudice, or in the alternative hold the Complaint in the abeyance until the FCC acts. The relief requested by United is based on the following grounds:

- (1) United's intrastate switched access rates were filed in compliance with Commission rules and orders and therefore are presumptively just, reasonable, and not unduly preferential.
- (2) Verizon baldly relies on differences between United's intrastate switched access rates and those of Verizon and Qwest to support its claims and request for relief. The mere allegation that United's intrastate switched access rates are simply mathematically higher than Verizon Northwest Inc.'s ("Verizon NW") rates, when United and Verizon are not similarly situated LECs in Washington, is not sufficient for the Commission to entertain the Complaint.
- (3) There is no support in Verizon's Complaint for Verizon's assertion that United's access rates harm consumers. To the contrary, harm could occur if the Commission were to grant the relief that Verizon requests. Existing intrastate access rate levels provide an important source of support for the provision of universal service in rural Washington and the continued maintenance of affordable local exchange service rates. The Commission should not act on Verizon's Complaint and proceed with reductions to intrastate switched access that will only harm Washington's rural consumers.
- (4) It would be inconsistent with the public interest for the Commission to proceed with the Complaint to make vital policy decisions that will profoundly affect Washington's rural areas before carefully considering alternative support mechanisms such as implementing a permanent state Universal Service Fund.

- (5) The momentum for comprehensive reform by the FCC is accelerating and compels dismissal of Verizon's complaint.

## INTRODUCTION

3           The Commission has recognized that "access services must have the flexibility to contribute to the cost of the loop and other common costs of the Company to the extent lawful and permissible."<sup>1</sup> United's local exchange rates and intrastate switched access rates today provide for such flexibility and balance the important policies associated with maintaining affordable local exchange rates and universal service. Reducing United's lawfully established intrastate switched access rates would reduce that flexibility, would compromise those policies (particularly without a state Universal Service Fund), and would adversely impact the public interest. United urges the Commission to dismiss this complaint and deny the relief requested by Verizon.

4           The Commission need not act on Verizon's complaint at this time. As described below, action by the FCC is anticipated and likely, which Verizon's own executive management has acknowledged. Until the FCC acts or until comprehensive reform occurs, including implementation of a permanent state Universal Service Fund, a piecemeal approach as suggested by Verizon's Complaint only serves to waste the Commission's finite resources and ultimately fails to benefit the public.

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<sup>1</sup> *AT&T Communications of the Northwest, Inc. v. Verizon Northwest, Inc.*, Docket No. UT-020406, Eleventh Supplemental Order, at ¶100 (August 12, 2003).

## ARGUMENT

### **I. UNITED'S INTRASTATE ACCESS RATES ARE JUST AND REASONABLE BECAUSE THOSE RATES WERE FILED IN COMPLIANCE WITH THE COMMISSION'S ACCESS RULE AND THE ORDER SETTING UNITED'S RATES**

5 Verizon's Complaint makes no mention whatsoever of the Commission orders and rules upon which United's intrastate access rates are based. United's intrastate switched access rates are compliant with WAC 480-120-540 (the "Rule") and the Commission's order in Docket No. UT-980311.<sup>2</sup> United filed its intrastate switched access rates in compliance the Rule and the Commission's orders. United's switched intrastate access rates are therefore presumed just, reasonable, and not unduly preferential.

### **II. THE MERE ALLEGATION THAT UNITED'S INTRASTATE SWITCHED ACCESS RATES ARE HIGHER THAN VERIZON'S, WHEN UNITED AND VERIZON ARE NOT SIMILARLY SITUATED LECs IN WASHINGTON, IS NOT SUFFICIENT TO PROCEED AND DISMISSAL FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED IS WARRANTED**

6 Verizon's Complaint asks the Commission to find that United's existing intrastate switched access rates are unjust or unreasonable, and unduly preferential. However, no set of facts exist to support Verizon's claims or the relief it has requested. The Commission, therefore, should dismiss Verizon's Complaint for failure to make a claim for which relief can be granted.

7 The Commission has set forth the standard for granting a motion to dismiss for failure to state a claim upon which relief can be granted:

Under WAC 480-09-426, as well as the recently adopted WAC 480-07-380, the Commission will consider the standards applicable to dispositive motions made under the civil rules. Under CR 12(b)(6), a

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<sup>2</sup> *In the Matter of Determining Costs for Universal Service*, Docket No. UT-980311, Tenth Supplemental Order (November 20, 1998).

party may move to dismiss a claim or case if the opposing party's pleading fails to state a claim on which a court, or the Commission, may grant relief. Courts will dismiss claims under CR 12(b)(6) "only if it appears beyond a reasonable doubt that no facts exist that would justify recovery," and "only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994), citing *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988), *aff'd on rehearing*, 113 Wn.2d 148, 776 P.2d 963 (1989). "No dismissal for failure to state a claim should be granted unless it appears, beyond doubt, that the plaintiff can prove no set of facts in support of this claim which would entitle him to relief." *Berge v. Gorton*, 88 Wn. 2d 756, 759, 567 P.2d 198 (1977). If "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment" under CR 56. See *Cutler*, 124 Wn.2d at 756, quoting CR 12(b)(6).<sup>3</sup>

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It is beyond a reasonable doubt that no facts exist which justify the relief that Verizon requests. The claims that purportedly support Verizon's legal assertions, and justify its request for relief, can be summed up as follows: (1) United's access rates are mathematically higher than Verizon's rates; (2) Verizon NW's rates were reduced by the Commission; (3) United is more similar to Verizon NW than to small rural companies; and therefore the Commission should reduce United's intrastate switched access rates to the same level as Verizon NW or, in the alternative, Qwest. Verizon neglects to mention one incontrovertible, and critical, distinguishing fact about United: Unlike Verizon NW and Qwest, United is a *rural* local exchange carrier that serves primarily low-density, high-cost exchanges.<sup>4</sup> Verizon's attempt to characterize United as similar to Verizon NW and Qwest is entirely flawed.<sup>5</sup> Indeed, Verizon fails to acknowledge that United is a rural carrier in Washington, with a markedly different cost structure than Verizon. This omission is fatal to the Complaint because there is no set of facts

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<sup>3</sup> *WUTC v. ATG et al.*, Docket No. UT-033011, Order No. 5, ¶72 (February 12, 2004).

<sup>4</sup> See *infra*, at ¶¶12-13.

<sup>5</sup> *Verizon Complaint*, at ¶¶32-35.

under Verizon's characterization of the issues in this manner that justify the relief it seeks. The mere allegation that United's intrastate switched access rates are simply mathematically higher than Verizon's rates, when United and Verizon NW are not similarly situated LECs in Washington, is not sufficient for the Commission to entertain the Complaint. As a result, the Complaint must be dismissed for failure to state a claim for which relief can be granted.

9           United's existing intrastate switched access rates are just and reasonable and provide an important source of support for the provision of universal service in rural Washington and the continued maintenance of affordable local exchange service rates. Verizon raises very limited factual allegations in support of its complaint, placing illogical and meaningless significance on the difference between United's switched access rates and other companies. At best, Verizon's Complaint consists of nothing more than comparisons of inapplicable rates of other companies with different cost structures, different economies, and different densities.

**III. UNITED'S EXISTING INTRASTATE SWITCHED ACCESS RATES ARE JUST AND REASONABLE AS THOSE RATES SUPPORT THE PROVISION OF UNIVERSAL SERVICE IN RURAL WASHINGTON AND THE MAINTENANCE OF AFFORDABLE LOCAL EXCHANGE SERVICE RATES; ACCORDINGLY, THE RELIEF REQUESTED BY VERIZON, IF GRANTED, WOULD HARM CUSTOMERS IN RURAL WASHINGTON**

10           The Commission was directed by the legislature to "plan and prepare to implement a program for the preservation and advancement of universal telecommunications service."<sup>6</sup> The Commission has yet to implement a permanent universal service plan thus the necessity for continued support from intrastate switched access. Unlike Qwest and Verizon NW, United serves only rural high-cost areas of the State. To maintain the affordability of local exchange rates and to further the objectives

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<sup>6</sup> RCW 80.36.600.

of universal service, existing state and federal universal service mechanisms are critical to the rural areas of Washington served by United.

11           It is, therefore, all the more surprising that Verizon compares United to Verizon NW and Qwest.<sup>7</sup> In Washington, as this Commission is aware, United's service territories are different from territories served by Verizon NW and Qwest. United does not serve any metropolitan areas, whereas Qwest and Verizon serve large, dense communities like Seattle, Tacoma, Bellevue, Everett, Spokane, the Tri-cities, and Olympia, as examples. Indeed, the most populous communities that United serves are still small by comparison, including cities like Poulsbo, agricultural communities in the Yakima Valley, and communities in the Columbia River Gorge, like Stevenson, Bingen, White Salmon, and Lyle. The differences are also clear from the average loop costs that the Commission set for Qwest, Verizon, and United (f/k/a Sprint), in Docket No. UT-980311<sup>8</sup>:

Qwest	\$21.07
Verizon	\$27.38
United	\$44.17

12           For Verizon to argue that intrastate access rates for United and Verizon NW (or Qwest) should be comparable defies reality and the underlying economics. Measures of service area scale and density for these companies Washington operations bear out that United is nothing like Verizon NW or Qwest. United serves only 2.5% of the access lines in the state, while Verizon NW and Qwest combined serve almost 90% of the state's access lines. As measured by access lines served, United is barely more than a tenth the size of Verizon NW and only 1/25<sup>th</sup> the size of Qwest in Washington.<sup>9</sup>

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<sup>7</sup> *Verizon Complaint*, at ¶¶32-37.

<sup>8</sup> *In the Matter of Determining Costs for Universal Service*, Docket No. UT-980311, Tenth Supplemental Order, Exhibit A.

<sup>9</sup> Based on loop counts from USAC Report HC05.

A more telling measure of the cost differences between United and Verizon NW and Qwest can be seen in the customer density of the companies' service areas. In simple terms, it costs less per customer to serve 50 access lines with a mile of network than it costs to serve ten access lines with the same mile of network. In Washington, Verizon serves approximately 40 lines per square mile and Qwest serves approximately 118 lines per square mile – both in stark contrast to the approximately 9 lines per square mile served by United.<sup>10</sup> In fact, a comparison of United's customer density (9 lines per square mile) with that of the remaining rural Washington ILECs (9.5 lines per square mile) reveals that United's serving territory is in fact like the rural ILECs that Verizon seeks to avoid by filing its Complaint against United. These two factors alone – economies of scale and customer density – provide both Verizon NW and Qwest with a significantly lower cost structure than United. Because of the rural and high-cost character of United's service areas, the company and its customers would be harmed if the Commission were to grant the relief that Verizon requests. Furthermore, Verizon does not allege that it would flow through any access rate reductions to end users.

13           In its disregard for the interests of rural Washington consumers, Verizon's Complaint is also self-serving. Verizon has targeted only select states where Verizon affiliates would receive a net benefit. Significantly, in states such as Florida, North Carolina, South Carolina, Texas and Oregon, Verizon ILECs have not reduced their intrastate access rates in the manner in which the Verizon IXCs assert that United must do in Washington. Specifically, the intrastate access rates in Florida, North Carolina, South Carolina, Texas and Oregon exceed those of the BOC in those states by 49% to 1274% as demonstrated in the following chart:<sup>11</sup>

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<sup>10</sup> Source of area: MapInfo Exchange Info Database; Source of Loops: USAC Report HC05

<sup>11</sup> Based on individual companies' intrastate access tariffs and assumed ten miles of local transport distance.



State	Verizon Rate	BOC Rate	% Difference
Florida			
Originating	\$0.0270164	\$0.010578	155%
Terminating	\$0.0357705	\$0.016436	118%
North Carolina			
Originating	\$0.0256135	\$0.005015	411%
Terminating	\$0.0689135	\$0.005015	1274%
South Carolina			
Originating	\$0.0149952	\$0.01004	49%
Terminating	\$0.0149952	\$0.01004	49%
Texas			
Originating	\$0.0176608	\$0.004151	325%
Terminating	\$0.0176608	\$0.004151	325%
Oregon			
Originating	\$0.015478	\$0.007391	109%
Terminating	\$0.015478	\$0.007391	109%

14           United's existing intrastate switched access rates are just and reasonable as those rates support the provision of universal service in rural Washington and the maintenance of affordable local exchange service rates. Verizon's Complaint selectively seeks to undermine these important policies that today benefit Washington consumers. Verizon's Complaint should be dismissed as a piece-meal approach that creates harm to consumers by failing to employ a holistic approach to intrastate switched access rates that have been, and remain, critical to the provision of affordable local rates and universal service in Washington.

**IV. IT WOULD BE INCONSISTENT WITH THE PUBLIC INTEREST FOR THE COMMISSION TO MAKE SUCH A VITAL POLICY DECISION, WHICH WILL HAVE A PROFOUND IMPACT ON THE PROVISION OF SERVICE TO WASHINGTON'S RURAL AREAS, WITHOUT A PERMANENT STATE UNIVERSAL SERVICE PROGRAM**

15 Intrastate switched access charges serve as an important, necessary source of universal service support for telephone service in rural Washington. United and other rural telephone companies rely on this existing support for the provision of universal service and the maintenance of affordable local exchange service rates in rural Washington. Any Commission policy established in this proceeding affecting United's intrastate switched access rates will necessarily implicate the rates charged, and therefore the universal service support received, by the many other rural local exchange carriers that serve the majority of rural Washington. It would be inconsistent with the public interest to establish a policy that will have such broad-reaching effects looking at just one company's intrastate access rates. At bottom, Verizon's Complaint seeks reductions based upon irrational comparisons, rather than address access reductions in a meaningful and holistic manner, one that cultivates continued maintenance of universal service at affordable rates. Verizon's reliance on interstate access rate levels as a benchmark for intrastate rate levels is similarly meaningless.<sup>12</sup> The fact is that Verizon's rationale for the remedy it requests – i.e., access rates reduced based upon mathematical comparisons – remains a fundamentally piecemeal approach to fashioning regulatory policy to appropriately consider universal service and the affordability of local rates. This piecemeal approach by Verizon is not consistent with the public interest or sound regulatory policy.

16 Ultimately, whether the Commission reconsiders United's intrastate access rates is a question of policy that cannot possibly be conducted without considering access rates and industry conditions throughout Washington, rather than in isolation via a

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<sup>12</sup> *Verizon Complaint*, at ¶43.

piece-meal proceeding involving United. Changes to this important rate structure will impact all long distance carriers, local exchange carriers, and Washington consumers. The meaningful development of appropriate policy for rural Washington cannot be achieved in the context of this very narrow proceeding. It would be fundamentally inconsistent with the public interest to do so.

**V. THE MOMENTUM FOR COMPREHENSIVE REFORM BY THE FCC IS ACCELERATING AND COMPELS THE COMMISSION TO DISMISS VERIZON'S COMPLAINT**

17 The Federal Communications Commission ("FCC") has been wrestling with comprehensive reform of intercarrier compensation and universal service for several years. In 2005, the FCC issued a ruling in its pending intercarrier compensation proceeding at CC Docket No. 01-92.<sup>13</sup> This FCC proceeding might well be regarded as the most significant regulatory proceeding since divestiture.

18 In this open proceeding, the FCC is examining intercarrier compensation, including interstate and intrastate access rates, reciprocal compensation and universal service. In the FNPRM, for example, the FCC stated that one of the main reasons reform is needed is because the current intercarrier compensation system is based on jurisdictional and regulatory distinctions that are no longer linked to technical or economic differences between services.<sup>14</sup> The FCC also established several goals for the intercarrier compensation reform process including the preservation of universal service,<sup>15</sup> promotion of economic efficiency,<sup>16</sup> and maintenance of competitive and technology neutrality.<sup>17</sup> As the FCC further noted, "[b]ecause of the high costs associated with serving rural areas, we must be certain that any reform of compensation

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<sup>13</sup>See In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005) ("FNPRM").

<sup>14</sup> *Id.*, at ¶15.

<sup>15</sup> *Id.*, at ¶32.

<sup>16</sup> *Id.*, at ¶31.

<sup>17</sup> *Id.*, at ¶33.

mechanisms does not jeopardize the ability of rural consumers to receive service at reasonable rates.”<sup>18</sup>

19           Thereafter, various comprehensive access reform proposals emerged in the FCC’s proceeding intending to replace the outmoded system of intercarrier payments in the telecommunications industry with a uniform regime suited for competitive markets and new technologies. Notably, on July 18, 2006, the Missoula Plan was submitted to the FCC. The Missoula Plan was the product of a NARUC Task Force, including the involvement of numerous working groups and stakeholders.<sup>19</sup> The proposals could have a significant impact on rural access rates. In many of these proposals, the proposed reforms cover both interstate and intrastate access rates and could impact both interstate and intrastate USF. The FCC now appears poised to act – and to act very soon – in this significant regulatory proceeding. While no crystal ball can predict the extent of reform that the FCC will undertake, the undisputed fact is that the FCC will act. In addition to the proposals pending before the FCC noted above, new proposals have been recently submitted to the FCC and, in light of other recent regulatory and court activity, it is now undeniable that FCC action is imminent.

20           For example, on May 2, 2008, Chairman’s Martin’s office issued a press release in conjunction with the FCC’s approval of the Competitive ETC (“CETC”) interim cap as the first step toward comprehensive reform of intercarrier compensation and USF. Chairman Martin stated:

The Commission’s action to cap competitive ETC support, as proposed by Chairman Martin six months ago, will stabilize the Fund, enabling the Commission to now move forward expeditiously on comprehensive reform of both the universal service program and

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<sup>18</sup> *Id.*, at ¶33.

<sup>19</sup> Generally, the Missoula Plan – through a track system -- seeks to unify intercarrier charges for all traffic over a four-year time period, providing an opportunity to recover reduced rates through explicit means, move rates for all traffic closer together, and establish uniform default interconnection rules.

intercarrier compensation.<sup>20</sup>

21 On July 8, 2008, the U.S. Appeals Court for the District of Columbia Circuit directed the FCC to explain its statutory basis for a nine-year-old interim compensation scheme for ISP-bound traffic.<sup>21</sup> The FCC is required to issue a final, appealable order no later than November 5, 2008.

22 On July 17, 2008, AT&T Inc. filed with the FCC a petition for waiver, along with two Ex Parte letters, seeking that the FCC act to unify terminating intercarrier rates for all carriers.<sup>22</sup> AT&T Inc. requested that the FCC approve AT&T Inc.'s "dial" approach to intercarrier compensation reform, which among other things, if adopted, would ultimately unify interstate and intrastate access rates on an individual carrier basis:

To achieve comprehensive reform, the Commission must facilitate industry-wide rate rebalancing to substantially eliminate today's arbitrary regulatory disparities in terminating intercarrier charges. To do this, the Commission should adopt a framework that begins by establishing a national comparability benchmark, which will promote the reasonable comparability of end-user rates in accordance with section 254(b)(3) of the Act, and then by adjusting a number of variables in the systematic fashion. The simplest way to conceptualize the variable at play here (terminating intercarrier charges, SLC's and federal universal service support) is to view them as interdependent "dials" that can each be turned to adjust a flow of revenue or to achieve a specific policy outcome. Optimally, the Commission should set these reform dials so that they collectively minimize arbitrage and promote the transition to broadband, thus furthering the goals of

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<sup>20</sup> See, Attachment 1, FCC Press Release dated May 2, 2008 (emphasis added).

<sup>21</sup> *In re: Core Communications, Inc.*, No. 07-1446, 2008 U.S. App. LEXIS 14501, (D.C. Cir. July 8, 2008).

<sup>22</sup> In one of the Ex Parte letters, AT&T Inc. implored the FCC to consider carrier-specific rules (beyond the 3-track system proposed in the Missoula plan) to allow different intercarrier rates, end user rates, and USF support levels for different carriers or classes of carriers depending on their different circumstances. See, Attachment 2. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Intercarrier Compensation for ISP-Bound Traffic*, WC Docket No. 99-68; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *IP-Enabled Services*, WC Docket No 04-36, Ex Parte Letter from Robert W. Quinn, Jr., to Chairman Kevin Martin, (July 17, 2008) ([http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6520034556](http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520034556)).

section 706. We introduce the critical “dials” and their purpose below, and then discuss both the national comparability benchmark and the reform dials in more detail in the following sections.<sup>23</sup>

23       Embarq is also taking affirmative steps before the FCC to ensure an expeditious and rational solution to the current intercarrier compensation dilemma. On August 1, 2008, Embarq filed with the FCC an Interim Access Unification Proposal seeking waivers of the Commission’s price cap rules in order to permit Embarq to unify its interstate and intrastate access rates within each of its local operating company study areas, including the State of Washington. Embarq’s access unification petition is a company-specific waiver allowing for reductions in intrastate switched access charge rates through offsetting increases in interstate switched access rates. As Embarq noted in its pleading:

The Interim Access Unification Proposal would eliminate the current wide disparity between interstate and intrastate switched access rates. It would thereby resolve the most pressing intercarrier compensation issue affecting a rural carrier serving high-cost territories. Unifying interstate and intrastate access rates would eliminate most switched access arbitrage, reduce disputes, and lower transaction and operating costs for both Embarq and its carrier customers, all without adding burdens to consumers or to the federal universal service high-cost fund. At the same time, it would protect universal service and promote investment in rural, high-cost service territories by protecting switched access revenue from the erosion of support caused by regulatory arbitrage and payment disputes.<sup>24</sup>

24       Even more compelling in favor of the dismissal of this Complaint, on or about August 7, 2008, Verizon and a coalition of major telecom and technology companies filed an Ex Parte letter asking that the FCC assert federal jurisdiction over IP traffic and

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<sup>23</sup> See *id.*, Attachment 2, at p.4.

<sup>24</sup> See, *In the Matter of the Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission’s Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions*, Petition for Waiver of Embarq, at p. v, Executive Summary ([http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6520036635](http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520036635)) (emphasis added).

set a uniform terminating rate not to exceed \$0.0007 per minute.<sup>25</sup> The group also indicated support for an “access replacement mechanism” and indicated its plan for additional filings in the next several weeks.<sup>26</sup> As Verizon in the trade press noted:

The FCC will reform intercarrier compensation and the Universal Service Fund together, perhaps this year, Tom Tauke, Verizon executive vice president, told reporters Thursday. “If [reform is] going to happen, it’s going to happen in a package,” Tauke said. Two months ago, he doubted intercarrier reform could happen this year, he said. Taking compensation together with USF distribution and contribution is “a lot to swallow,” but court pressure and growing industry consensus makes him optimistic, Tauke said.<sup>27</sup>

Tom Tauke, Verizon executive vice president, acknowledged that companies like United are dependent on access charges and that it would not be wise to simply “pull the rug out” from under it:

An access replacement mechanism is needed because “some carriers are dependent on access to maintain their infrastructure,” Tauke said. As telecom goes to IP, “it is important to provide a bridge” for those carriers, he said. Access replacement will decline as carriers trade access lines for IP services, he said.<sup>28</sup>

25 As the 17<sup>th</sup> ranked company on the Fortune 500 list with nearly \$100 billion in revenues,<sup>29</sup> Verizon may have the resources to carry on redundant efforts on multiple fronts. However, it is disingenuous at best for Verizon to claim on one hand that FCC will likely act, participate in the process supposedly in good faith, and then turn around

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<sup>25</sup> See, Attachment 3. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Intercarrier Compensation for ISP-Bound Traffic*, WC Docket No. 99-68; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *IP-Enabled Services*, WC Docket No 04-36, Ex Parte Letter of Verizon et al. (August 6, 2008).

<sup>26</sup> See, Attachment 4. “Tauke Sees FCC Revamping USF, Intercarrier Compensation in 2008,” *Communications Daily*, August 8, 2008 (Author: Adam Bender).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See, <http://money.cnn.com/magazines/fortune/fortune500/2008/snapshots/2773.html>.

and require state commissions to expend limited resources in only those states where it serves Verizon's peculiar interests.

26           Clearly, given the imminent action expected at the FCC – action which Verizon's own affiliate acknowledges – it would be unreasonable, unproductive and inefficient for this Commission to act on Verizon's instant complaint. If Verizon's complaint goes to hearing and an evidentiary record is adduced, that record will be obsolete and irrelevant given anticipated action by the FCC. Dismissal of Verizon's state complaint is in the public interest. Dismissal would not preclude Verizon from re-filing its complaint after the FCC has acted. The prudent course of action is to dismiss without prejudice to re-file after the FCC has acted on comprehensive reform of intercarrier compensation and universal service funding support.

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## REQUEST FOR RELIEF

27 For the reasons stated in this Motion, United requests that the Commission dismiss Verizon's Complaint without prejudice, or in the alternative, hold the complaint in abeyance until the FCC acts on intercarrier compensation, in its CC Docket No. 01-92.

Respectfully submitted this 18th day of August 2008.

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