

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

AMICUS BRIEF OF THE WASHINGTON  
INDEPENDENT  
TELECOMMUNICATIONS  
ASSOCIATION

1           The Washington Independent Telecommunications Association (“WITA”), by and through its attorney, Richard A. Finnigan, hereby respectfully submits its Amicus Brief addressing the policy issues inherent in the Motion to Dismiss filed by United Telephone Company of the Northwest, d/b/a Embarq (“United”) to the complaint by the Verizon entities filed in this docket (“Verizon Complaint”). It should be noted that United is a member of WITA. However, it is highly likely that WITA would have filed this Amicus Brief whether or not Embarq held membership status in WITA.

2           It is important to note that this is not a Petition to Intervene. WITA has not evaluated whether it is appropriate to intervene in a complaint by a single interexchange carrier against a local exchange carrier on what may be company-specific issues. However, there are a

number of policy issues that are important and apply more broadly than a one-to-one factual complaint. On that basis, WITA is submitting this Amicus Brief.

THE COMMISSION SHOULD GRANT UNITED'S MOTION TO DISMISS THE  
VERIZON COMPLAINT AS AN UNTIMELY ATTEMPT AT PIECEMEAL  
INTERCARRIER COMPENSATION REFORM

3           Verizon has brought its complaint against United seeking a ruling that United's tariffed access rates, although having been duly filed and approved through the statutory tariff filing process, are somehow unduly preferential or discriminatory and seeks to have United's access rates lowered to an RBOC level, be it Qwest Corporation or Verizon's own access rates. United has filed a very well thought out Motion to Dismiss the Verizon Complaint. WITA will not comment about the portion of United's Motion to Dismiss which addresses some of the particular claims set out in the Verizon Complaint. However, there are important policy issues that are raised by the Verizon Complaint and United's Motion to Dismiss.

4           Bluntly, Verizon's Complaint is a piecemeal step in an attempt to address intercarrier compensation reform. It has as its focus United's intrastate access charges, alleging that those rates are too high.

5           It is widely recognized that a comprehensive or holistic approach to intercarrier compensation reform is far superior. Such an approach, as evidenced by the Missoula Plan on file at the Federal Communications Commission ("FCC"), seeks a unitary rate for call termination where the intrastate access rate and the interstate access rate and the local reciprocal compensation rate would all be the same. A holistic approach to comprehensive intercarrier compensation reform recognizes that for rural companies such as United, there should be a transition of the lost access revenue to a support mechanism. A holistic approach

further recognizes that reform of universal service support mechanisms must be addressed. Verizon's Complaint is inconsistent with this holistic approach.

6           It is clearly evident that a solution to intercarrier compensation reform is a difficult task. The FCC began a very serious effort to address this issue in 2005.<sup>1</sup> Some might argue that the FCC has had enough time to address this situation. However, there are very strong indications that the FCC will act on FNPRM in the near future.

7           These signs include the increased level of ex parte communications concerning the FNPRM as evidenced by reports of filings in the trade press.<sup>2</sup> Further, the FCC issued an order on May 1, 2008, that capped the universal service high-cost support for competitive eligible telecommunication carriers.<sup>3</sup> When this order was issued, Chairman Martin issued a press release that stated the FCC's action enables "the Commission to now move forward expeditiously on comprehensive reform of both the universal service program and intercarrier compensation."<sup>4</sup>

8           In addition to increasing industry activity before the FCC on comprehensive intercarrier compensation reform and the FCC's own statements, there is another reason to expect FCC action. The U.S. Appeals Court for the District of Columbia issued an order on July 8, 2008, directing the FCC to explain its statutory basis for the interim compensation

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<sup>1</sup> 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>2</sup> See, for example, In Re: Intercarrier Compensation, Docket No. CC 01-92, AT&T Letter dated July 17, 2008 filed in CC Docket No. 01-92 (Intercarrier Compensation), WC 05-337 (High-Cost Universal Service); CC Docket No. 96-45 (Universal Service); WC Docket No. 99-68 (Compensation for ISP-Bound Traffic); WC Docket No. 07-135 (Local Exchange Rates). In addition, see AT&T Ex Parte Notice dated July 18, 2008; AT&T Ex Parte Notice dated July 24, 2008; and AT&T Ex Parte Notice dated August 5, 2008. See, also, Letter Notice of Verizon, AT&T, CTIA, Global Crossing, National Association of Manufacturers, T-Mobile et al. dated August 6, 2008 addressing the Vonage Preemption Decision and Intercarrier Compensation; Embargo Ex Parte notices dated July 30, 2008, July 31, 2008, and August 1, 2008 supporting intercarrier compensation reform but not the AT&T Petition; and the Ex Parte notices of Core Communications, Inc. dated July 25, 2008 and July 28, 2008 addressing the Core Remand Decision at 2008 WL 2649636.

<sup>3</sup> In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-537 and CC Docket No. 96-45, Order, FCC 08-122 (released May 1, 2008).

<sup>4</sup> FCC Press Release dated May 2, 2008.

scheme for ISP-bound traffic. The Court directed the FCC to issue a final, appealable order no later than November 5, 2008.<sup>5</sup> This requirement to act on one aspect of intercarrier compensation reform may be the incentive the FCC needs to act in a comprehensive manner.

9           Thus, there are at least three factors at play that could lead the FCC to action on intercarrier compensation reform: the FCC's own comments, increasing activity by industry in the intercarrier compensation reform docket and court pressure.

10           In its Motion to Dismiss, United points out that Verizon's own Executive Vice-President publicly stated that court pressure and growing industry consensus makes him optimistic that the FCC will act on comprehensive intercarrier reform in 2008.<sup>6</sup> If comprehensive intercarrier compensation reform is on the horizon, then a piecemeal approach through an access complaint is inappropriate and a waste of both company and Commission resources.

11           One of the key elements in any intercarrier compensation reform, as noted above, is the need for rural carriers to have a transition between lost access revenue and a new support mechanism. Verizon's own Executive Vice-President noted that some carriers are dependent on access to maintain their infrastructure and it is important to provide a bridge for those carriers.<sup>7</sup> Among the many reasons a "bridge" between reduced access charges and another revenue source is the important policy of increasing the availability of broadband in rural areas. Verizon's Complaint could severely impede United's efforts to improve broadband access in rural Washington.

12           This Commission has recognized that a comprehensive or holistic solution is the best

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<sup>5</sup> In Re: Core Communications, Inc., No. 07-1446, 2008 U.S. App. LEXIS 14501 (D.C. Cir. July 8, 2008).

<sup>6</sup> United's Motion to Dismiss at ¶24.

<sup>7</sup> Ibid.

approach. Very recently, AT&T filed for a declaratory ruling and limited waivers of certain rules relating to access charges.<sup>8</sup> On August 21, 2008, the Commission filed comments addressing AT&T's Petition. The Commission noted that there were specific aspects of AT&T's filing that may have positive attributes regarding compensation reform. However, the Commission argued to the FCC that the AT&T Petition should be denied: "...the UTC opposes grant of the Petition to the extent it would effectively leap-frog timely consideration of previously filed proposals for comprehensive intercarrier compensation put forth by parties, including AT&T, in other FCC proceedings."<sup>9</sup> The Commission further stated: "...the UTC believes that consideration of the proposal [AT&T Petition] now, on the expedited basis the company requests, risks shifting attention and resource from the longstanding need to move forward on all aspects of the compensation issue, including the host of reform proposals, such as the Missoula Plan, previously put forth by other parties (including AT&T) in other FCC proceedings."<sup>10</sup>

13           The Commission makes a very good point. The proper approach is a holistic solution to intercarrier compensation reform. Like the Commission, many of the parties commenting on the AT&T Petition emphasized the need for a comprehensive approach.<sup>11</sup>

14           Verizon itself agrees with what the Commission has stated. In its comments on the AT&T Petition, Verizon, contrary to its position in this docket, states as follows:

Given the importance of achieving comprehensive intercarrier compensation reform for all traffic and all providers, the Commission should not address AT&T's or Embarq's Petition, which focus on a particular type of traffic for only one carrier, at this time. The Commission should instead remain focused on its stated goal of

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<sup>8</sup> In the Matter of Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption", WC Docket No. 08-152 ("AT&T Petition").

<sup>9</sup> WC Docket No. 08-152, Comments of the Washington Utilities and Transportation Commission at p. 1.

<sup>10</sup> Ibid. at p. 3 (footnote omitted).

<sup>11</sup> See, e.g., Comments of the National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies and Western Telecommunications Association. WITA also made the same points in its comments on the AT&T Petition.

achieving comprehensive intercarrier compensation reform – for *all* traffic and all providers – before the close of 2008.<sup>12</sup>

Thus, Verizon expressly recognizes the need to focus on comprehensive intercarrier compensation reform.<sup>13</sup>

15 Even USTA, while filing comments supportive of its member AT&T, was careful to point out the importance of comprehensive reform by arguing “It is universally acknowledged that intercarrier compensation reform is urgently needed because the existing system for intercarrier compensation currently in place are outdated as a result of technical innovation, market evolution and legal and regulatory changes.”<sup>14</sup> USTA continued to endorse the Missoula Plan as the best solution before the FCC.<sup>15</sup>

16 The Verizon Complaint is a piecemeal approach to intercarrier compensation reform. It addresses only one aspect of that reform issue. It is directed against only one company. In light of everything that is going on at the federal level, Verizon’s Complaint could not be more ill timed.

## CONCLUSION

17 The policy issues surrounding intrastate access charge levels are best addressed as part of a comprehensive or holistic approach to intercarrier compensation reform. While WITA recognizes the policy issues alone may not provide the entire legal basis for dismissing Verizon’s Complaint, the policy issues certainly support giving great weight to United’s other arguments as to why the Verizon Complaint should be dismissed.

18 If the Verizon Complaint is not dismissed, then WITA urges the Commission to use

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<sup>12</sup> WC Docket No. 08-152, Comments of Verizon regarding AT&T Petition for Interim Declaratory Ruling and Limited Waivers at p. 1-2 (emphasis in original).

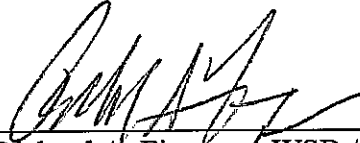
<sup>13</sup> It seems a bit disingenuous for Verizon to argue that AT&T and Embarq should not receive piecemeal relief while seeking its own piecemeal complaint against Embarq’s Washington intrastate access rates.

<sup>14</sup> WC Docket No. 08-152, Comments of the United States Telecom Association at p. 2 and following.

<sup>15</sup> It should also be noted that Verizon is a member of USTA.

its discretion for a complaint matter such as this and not establish a case schedule, holding the matter in abeyance for an indefinite period of time to determine if the FCC will address the issue of comprehensive intercarrier compensation reform. The danger to United's rural customers is too great. As Verizon's own Executive Vice-President recognizes, for rural companies access charges provide critical support for a rural company's infrastructure. Now is not the time to be putting that infrastructure at risk.

Respectfully submitted this 27th day of August, 2008.

A handwritten signature in black ink, appearing to read 'Richard A. Finnigan', written over a horizontal line.

Richard A. Finnigan, WSB #6443  
Attorney for the Washington Independent  
Telecommunications Association