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 VERIZON'S OPPOSITION TO EMBARQ'S MOTION TO DISMISS

INTRODUCTION

On July 25, 2008, Complainants (collectively, "Verizon") filed the Complaint in this docket alleging violations by United Telephone Company of the Northwest ("Embarq") of RCW 80.36.140 and RCW 80.36.186, as well as Commission precedent. Verizon alleges that it competes in Washington with Embarq and Embarq's long distance affiliate, and that Embarq's intrastate switched access rates are unreasonable and anticompetitive. *See* Complaint, ¶¶ 6-11. The gravamen of Verizon's complaint is that allowing Embarq to shift a large portion of its costs to competitors by charging excessive intrastate switched access rates violates Washington law and threatens the efficiency and integrity of the state's telecommunications sector. *Id.*, ¶¶ 9, 17-18, 27-30, 36. To ensure a level playing field and to reduce the "undue or unreasonable prejudice" to which Verizon and other competitors are subjected, Verizon requests that Embarq's

intrastate switched access rates be reduced to the level of Verizon Northwest Inc. ("Verizon Northwest"). *Id.*, ¶¶ 9-10.

Embarq filed its Motion to Dismiss ("Embarq Motion") on August 18, 2008. Remarkably, Embarq's motion does not even *mention* the two statutes – or the Commission precedent – that form the basis for Verizon's complaint. Instead of engaging Verizon's allegations relating to violations of RCW 80.36.140 and RCW 80.36.186, Embarq mischaracterizes Verizon's complaint as being based on a "mere allegation that United's intrastate switched access rates are simply mathematically higher than Verizon Northwest Inc.'s rate." Embarq Motion at 2. In fact, Verizon's comprehensive allegations that Embarq's intrastate switched access rates are unreasonable and anticompetitive – including specific allegations that Embarq has no justification for them (Complaint, ¶¶ 36-37, 43) – are more than sufficient to sustain Verizon's claims. Indeed, many of the arguments made by Embarq in its motion were rejected by the Commission when Verizon Northwest filed a motion to dismiss a similar complaint filed by AT&T ("AT&T Complaint"). *See* Second Supplemental Order, *AT&T Communications of the Pacific Northwest v. Verizon Northwest*, Docket No. UT-020406, Order Denying Motion to Dismiss (issued July 16, 2002) ("Second Supplemental Order").

Embarq also asserts various defenses based on its purportedly higher cost structure, and indeed casts itself as a "mom and pop" rural ILEC that is heavily dependent on intrastate switched access revenue to meet its universal service obligations. Not only do those defenses raise disputed questions of fact that render dismissal inappropriate, but they are sharply contradicted by public data – including the data Embarq *itself* provides. Despite Embarq's attempt to avoid scrutiny by incorrectly camouflaging itself among the high-cost rural providers

in Washington, there is no reason to assume that Embarq dedicates *any* of its substantial intrastate switched access revenue to ensuring universal service.

STANDARD OF REVIEW

The Commission may grant a motion to dismiss only if, when viewing the pleadings "in the light most favorable to a non-moving party," it finds "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *See* Order, *In the Matter of Integra Telecom of Washington v. Verizon Northwest*, Docket No. UT-053038 (issued Aug. 24, 2005), 2005 Wash. UTC LEXIS 422, at *6 (internal quotations omitted). Because of that high standard, the Commission grants motions to dismiss "sparingly and with care." *Id.*

DISCUSSION

I. EMBARQ'S SWITCHED ACCESS RATES ARE NOT IMMUNE FROM SCRUTINY UNDER RCW 80.36.140 AND RCW 80.36.186.

Embarq's lead argument is that Verizon's complaint should be dismissed because Embarq's rates comply with WAC 480-120-540 and because they were filed pursuant to a 1998 Commission order. *See* Embarq Motion, Section I. The Commission has flatly rejected that argument.

The Commission has held that compliance with WAC 480-120-540 is irrelevant to whether to sustain a complaint that a company's intrastate switched access rates are unreasonable and anticompetitive. *See* Eleventh Supplemental Order, *AT&T Communications of the Pacific Northwest v. Verizon Northwest*, Docket No. UT-020406, Order Sustaining Complaint, Directing Filing of Revised Access Charge Rates (issued August 12, 2003) ("Eleventh Supplemental Order"), ¶¶ 27-31.

Similarly, the fact that Embarq's current intrastate switched access rates are the product of a ten-year-old Commission order does not mean that today they are *per se* compliant with

RCW 80.36.140 and RCW 80.36.186. *See* Eleventh Supplemental Order, ¶¶ 19-20. To the contrary, the fact that Embarq's rates have not undergone scrutiny in ten years highlights the need to consider them in a contemporary light. *Id.* (holding that as conditions change, rates can become unreasonable). Indeed, as discussed in Section III-B below, Embarq's ability to continue charging the high switched access rates of the 1990's is precisely the tool it uses to gain an illegal artificial competitive advantage. It is therefore not only appropriate, but imperative that Embarq be required to "face the competitive realities of the 21st century and bring access charges more in line with current conditions." *Id.*, ¶ 39.[1]

II. VERIZON'S PARTICULARIZED ALLEGATIONS STATE CLAIMS UPON WHICH RELIEF MAY BE GRANTED.

In Section II of its Motion, Embarq asserts that Verizon's complaint is based on the "mere allegation" that Embarq's intrastate switched access rates are higher than Verizon Northwest's switched access rates. According to Embarq, because Embarq and Verizon Northwest are not similarly situated, the existence of a differential between Embarq's rate and Verizon Northwest's rate is irrelevant to the reasonableness of Embarq's rate. Embarq Motion, ¶¶ 8-9. Embarq ignores Verizon's extensive allegations regarding the anticompetitive impact of Embarq's rates, as well as Verizon's specific allegations that Embarq *is* similarly situated to

[1] The Commission has historically been reluctant to engage in "single issue ratemaking" by scrutinizing a single rate in the absence of a general rate case. *See, e.g.*, Second Supplemental Order Dismissing Complaint, *MCI Telecommunication Corp. v. GTE Northwest*, Docket No. UT-970653, 1997 Wash. UTC LEXIS 68 (issued October 22, 1997). That concern does not apply here, just as it did not apply in the AT&T Complaint. Unlike the 1997 proceeding where MCI complained of GTE's intrastate switched access rates but "did not allege a statutory violation or any other legal basis for its complaint," Verizon's complaint in the present proceeding alleges "specific statutory violations," just as the AT&T Complaint survived a motion to dismiss filed by Verizon Northwest in 2002. *See* Second Supplemental Order and Eleventh Supplemental Order, ¶¶ 9-16 (distinguishing AT&T's statutory claims, including under RCW 80.36.186, from MCI's request for single-issue ratemaking).

Moreover, as the Commission noted when requiring Verizon Northwest to reduce its intrastate switched access rates to levels it deemed procompetitive, it is now well established that there is no reason to simply *assume* that reductions in intrastate switched access rates should automatically be accompanied by offsetting increases in other rates. *Id.*, ¶¶ 174-75, 187.

Verizon Northwest and that it *does not* appear to have any cost or other justification for its high access rates.

Only one of Verizon's two statutory claims, the violation of RCW 80.36.140, involves any rate comparison. Verizon's claim that Embarq's switched access rates violate RCW 80.36.186 is not based on the fact that Embarq's rates are higher than Verizon Northwest's. *See* Complaint, ¶¶ 27-30. Thus, Embarq's argument does not even reach one of Verizon's two statutory claims.

More importantly, where Verizon does point to the difference between Embarq's rates and Verizon Northwest's rates, that comparison is part of a comprehensive set of allegations regarding why Embarq's rates are unreasonable. Verizon alleges not only that Embarq's intrastate switched access rates are more than 575% higher than what Verizon Northwest charges for the same functions (*id.*, ¶ 21), but also that (i) Embarq is similarly situated to Verizon Northwest and other sophisticated telephone companies (*id.*, ¶¶ 33-36), (ii) Embarq has no cost or other justification for its higher rates (*id.*, ¶¶ 36-37, 43), and (iii) Verizon Northwest's intrastate switched access rate (or possibly Qwest's) represents an appropriate benchmark for Embarq (*id.*, ¶¶ 10, 40-41). While Embarq disagrees with those allegations, such disagreement represents a dispute over material facts, not grounds for dismissal. Indeed, disputes over similar issues caused the Commission to reject the motion to dismiss filed by Verizon Northwest in the AT&T Complaint. *See* Second Supplemental Order, ¶ 11 ("There are factual disputes relevant to the legal issues. These factual disputes can only be determined after a full record is developed.").

III. EMBARQ'S ATTEMPT TO CAST ITSELF AS A "MOM AND POP" RURAL ILEC IS INHERENTLY FACT-BASED AND SHARPLY UNDERCUT BY PUBLIC DATA.

Section III of Embarq's motion to dismiss makes several arguments, including that Embarq's cost structure is higher than Verizon's and that Embarq relies on intrastate switched access revenue to subsidize universal service. Embarq's attempt to align itself with "mom and pop" rural ILECs rings hollow, and public data (including data Embarq itself cites) raise strong doubts about Embarq's factual assertions.

A. Embarq's Own Data Confirm That Its Costs Do Not Justify its High Switched Access Rates.

One of Embarq's principal themes is that, unlike Verizon and Qwest, Embarq operates in rural, low-density areas, and therefore purportedly has a higher cost structure than Verizon and Qwest. *See, e.g.*, Embarq Motion, ¶¶ 2, 8-12, 14-15. To back up its assertion that its higher rates are cost-justified, Embarq provides a comparison of its loop costs with those of Verizon and Qwest. *Id.*, ¶ 11.

As discussed above, there is a material factual dispute regarding whether Embarq is similarly situated with Verizon and Qwest (Complaint, ¶¶ 33-37) or whether Embarq is "in fact like the rural ILECs" (Embarq Motion, ¶ 12). Although Embarq will have the opportunity to marshal facts to support its assertion that its rates are cost-justified, at least two undisputed facts sharply undercut it. First, Embarq does not deny that its own *interstate* switched access rate is "significantly below" the benchmark rates that Verizon proposes (either Verizon Northwest's or Qwest's *intrastate* rates). *See* Embarq Answer, ¶ 34 (answering paragraph 37 of Verizon's complaint).[2] Given that Embarq has never asserted that its own interstate rates are below-cost,

[2] Embarq claims that it "lacks sufficient information upon which to form a belief about the truth of falsity" of that key allegation. *Id.* But Embarq cannot seriously contest the fact that its interstate rate (approximately $0.006 per minute) is less than Verizon's and Qwest's *intrastate* rates (both of which are over one cent per minute).

mirroring Verizon's or Qwest's intrastate rates would provide adequate compensation to Embarq for its intrastate switched access services.

Second, and more importantly, the very data Embarq provides in its motion to dismiss demonstrate that Embarq's costs for providing local service cannot justify its high intrastate switched access rates. Embarq asserts that its local loop costs are $44.17, compared with $21.07 for Qwest and $27.38 for Verizon. Embarq Motion, ¶ 11. Even if those numbers correctly reflect a cost difference (and they probably overstate Embarq's costs), at most they suggest that Embarq's loop costs may be 61% higher than Verizon's. Embarq does not explain how a cost difference of **61%** purportedly justifies Embarq's current intrastate switched access charges, which are fully **575%** higher than Verizon's (*id.*, ¶ 21).

B. Public Data Also Confirm That Embarq's Rates Give Embarq an Illegal Competitive Advantage.

Nor does Embarq explain how its purportedly higher loop costs are even potentially relevant to the core question of whether its switched access rates are anticompetitive. Indeed, as discussed above, Embarq's motion to dismiss entirely ignores Verizon's allegations that Embarq's intrastate switched access rates create an uneven playing field and subject Verizon and other long distance competitors to "undue or unreasonable prejudice." *See, e.g.*, Complaint, ¶¶ 9, 17, 28-30, 36. Commission precedent confirms that where excessive access charges place long distance competitors at a competitive disadvantage, the respondent's intrastate switched access rates should be reduced. *See* Eleventh Supplemental Order, ¶ 162.

Not only are Verizon's allegations sufficient to sustain its complaint, but they are backed up by public data. For example, in December 2006, Embarq's long distance affiliate introduced its "4 Cent Plan," which offers all of Embarq's end users a rate of four cents per-minute for all

interstate and intrastate toll calls.[3] Given that Embarq's intrastate switched access charges are much higher than $0.04 per minute (Complaint, ¶¶ 21-22), Embarq's competitors' costs for intrastate switched access functions appear to be substantially higher than Embarq's own retail price for intrastate long distance calls. The Commission has held that Embarq's apparent practice of charging access charges that exceed its retail toll prices violates Washington law: "Because competing carriers must pay the access charges, they earn much less on a comparable volume of comparable services and may need to sell below their costs to compete." *See* Eleventh Supplemental Order, ¶ 162 (requiring Verizon to reduce access rates to the Qwest level in order to "reduce prejudice to interexchange carriers").[4] The Commission should not dismiss Verizon's complaint in the face of *prima facie* evidence that Embarq is violating RCW 80.36.186.

C. The Data Embarq Cites About Verizon's Operations in Other States *Further* Undercut Embarq's Position.

Embarq also asserts that Verizon's complaint is "self-serving," and supplies a table purporting to show that five of Verizon's ILECs in other states charge intrastate switched access rates that are higher than the BOC rates in their states. Embarq Motion, ¶ 13. Of course, what matters here is whether Embarq's rates violate *Washington* law, but in any event Embarq is wrong to suggest that Verizon is inconsistent. Verizon does not claim to be above any state's laws, and the switched access rates of its ILEC affiliates *have* been targeted in other states (as

[3] *See* Embarq Communications, Inc.'s Intrastate Schedule (applicable in Washington), (*available at* www2.embarq.com/tariffs), Section 5.1.1(D). Embarq charges a per-call surcharge of $0.39 for calls made under its "4 Cent Plan." One of the factual issues that Verizon will pursue in discovery is how that surcharge, and other factors, affect the average per-minute price of telephone calls. Embarq also has a "7 Cent Plan," which does not include any surcharge and which also is below what competitors must pay Embarq for intrastate switched access services. *Id.*, Section 5.1.1(F).

[4] Verizon alleges that it competes with Embarq's long distance affiliate (Complaint, ¶ 6), but names only the ILEC as a respondent. Verizon is not complaining of Embarq's toll pricing, but rather of the prejudices and disadvantages created by Embarq's intrastate switched access rates. There is no need to name the long distance affiliate. *See* Eleventh Supplemental Order (reducing respondent's intrastate access rates because they were higher than the prices charged by its long distance affiliate, even though long distance affiliate was not a party to the case).

well as Washington). More importantly, all of the Verizon ILEC rates that Embarq cites in paragraph 13 are lower than Embarq's rates in Washington. In fact, most of the Verizon ILEC rates in Embarq's table are more than **300% lower** than Embarq's Washington rate. *See* Embarq Motion, ¶ 13; Verizon Complaint, ¶ 21. If Embarq is willing to adopt some of the Verizon ILEC rates in its table as a reasonable benchmark, that may constitute a framework for resolving this dispute.[5]

IV. THIS TARGETED PROCEEDING DOES NOT REQUIRE ANY BROAD POLICY DECISION.

Embarq argues that any reduction in its intrastate switched access rate would be a "vital policy decision" with "profound impact on the provision of service to Washington's rural areas." *See* Embarq Motion, Section IV. According to Embarq, any action on Verizon's complaint would implicate sensitive universal service issues, which must be addressed "holistically." That argument misconstrues the nature of Verizon's complaint and incorrectly seeks to insert big-picture policy questions into this targeted complaint proceeding.

A. Verizon Does Not Seek "Reform," and the Relief Requested Does Not Require a State USF.

There is no basis for Embarq's apparent assumption that it would have a right to fully offset access reductions with revenue from a state USF fund. Once the parties present their evidence, the Commission can determine whether and to what extent Embarq needs to offset intrastate switched access reductions with revenue from another source. *If* such an offset is appropriate (and as discussed above, there is no reason to expect that Embarq would need a significant offset), that would not implicate the USF fund issue. To the extent that Embarq's costs for providing local service are (as Embarq's data suggest) slightly higher than Verizon's,

[5] However, when Verizon approached Embarq about the possibility of settling this dispute informally, Embarq declined to engage in settlement discussions.

one way to assuage any universal service concerns might be to permit Embarq to retain some portion of its Interim USF Additive. The Commission did something similar with regard to the "interim terminating access charge" that was imposed previously by Verizon Northwest as an interim universal service funding mechanism: it reduced the charge by 25% in the AT&T Complaint, and later approved a settlement eliminating the charge altogether. Eleventh Supplemental Order, ¶ 137; Order No. 15 in Docket No. UT-040788 and Order No. 03 in Docket No. UT-040520 (April 12, 2005). Another solution would be to require Embarq to recover more of its costs from its own customers rather than from its competitors – as Qwest and Verizon already must do.[6] There would be no reason to create a USF fund if Verizon's requested relief is granted.

Nor would removing Embarq's artificial competitive advantage raise any other policy issues. Verizon is requesting that the Commission remedy specific statutory violations by Embarq in what Embarq acknowledges is a "very narrow proceeding" (Embarq Motion, ¶ 16), and the narrow remedy ordered here will not affect any other local exchange carrier. While the Commission may choose to defer action on comprehensive reform, perhaps until after the FCC provides some guidance, this complaint proceeding does not implicate any policy issue associated with such reform.[7]

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[6] Given that Embarq's local rates are significantly lower than Verizon's – its most common rate is $12.15 per month and some customers pay as little as $8.90 per month – there is room to increase Embarq's local rates without creating affordability concerns. *See* Exhibit TLW-6 to Testimony of Thomas L. Wilson, Docket No. UT-061625, January 29, 2007.

[7] It is ironic that Embarq accuses Verizon of seeking "piecemeal" reform. *See* Embarq Motion, ¶¶ 15-16. Embarq's waiver petition before the FCC would give Embarq – but no other carrier – special permission to unify its intrastate and interstate switched access rates on a revenue-neutral basis. *Id.*, ¶ 23. Verizon has pointed out to the FCC that Embarq's waiver petition – which implicitly acknowledges that Embarq's current intrastate switched access rates are excessive – fails to demonstrate a need to offset reduced revenue. *See* Comments of Verizon Regarding AT&T Petition for Interim Declaratory Ruling and Limited Waivers, WC Docket Nos. 08-152 and 08-160 (filed August 21, 2008).

B. Embarq Does Nothing to Contribute to the Universal Service Obligations of High-Cost Carriers.

Embarq has *no obligation* to use *any* of its substantial intrastate switched access revenue – including revenue from its $0.064851 per minute Interim USF Additive – to support universal service. Embarq is free to either (i) use its intrastate switched access revenue to fund competitive offerings or (ii) remit it as profit to its corporate parent and shareholders. Indeed, Embarq has taken actions to maximize its own flexibility in how it uses intrastate switched access revenue. For example, several years ago, Embarq withdrew from the pool of interim USF revenue administered by the Washington Exchange Carriers Association ("WECA"); as a result, its collection of its own interim USF subsidizes only one carrier: Embarq. Accordingly, the Commission should reject Embarq's attempt to insert into this proceeding the sort of policy issues that may apply to the high-cost rural providers in Washington (including certain members of WECA) but that do not apply to Embarq.

V. REQUIRING EMBARQ TO COMPLY WITH WASHINGTON LAW DOES NOT CONFLICT WITH FEDERAL REFORM EFFORTS.

Embarq notes that momentum for comprehensive reform appears to be building at the FCC (Embarq Motion, Section V), and argues that the Commission should "dismiss without prejudice to re-file after the FCC has acted on comprehensive reform of intercarrier compensation and universal service funding support." *Id.*, ¶ 26.

There is no conflict between going forward with Verizon's complaint while realizing that there is a chance Embarq's rates may be further modified if and when the FCC issues an order in its ongoing rulemaking. As discussed above, Verizon's complaint does not request that the Commission make any policy determination. Verizon is simply asserting its statutory right to compete on a level playing field with Embarq, and ensuring such a level playing field is

necessary to protect both Verizon and the efficiency of Washington's telecommunications sector. Indeed, parties have encouraged FCC action for years on various related issues, and there have been signs that such action might occur in the past, but those facts did not cause the Commission, for example, to require AT&T to wait and re-file its access charge complaint against Verizon Northwest. Against that backdrop, and given the Commission's practice of granting motions to dismiss "sparingly and with care" (*In the Matter of Integra Telecom of Washington v. Verizon Northwest*, at *6), the Commission should reject Embarq's "wait for the FCC" argument.

VI. COMMISSION PRECEDENT DICTATES REJECTION OF THE MOTION TO DISMISS.

As indicated throughout this document, Verizon is very familiar with the arguments made by Embarq in its motion to dismiss. Faced with the AT&T Complaint several years ago, Verizon Northwest made similar arguments in an unsuccessful attempt to avoid intrastate access charge reductions. As illustrated by the following chart of examples, those arguments were rejected by the Commission (first in the Second Supplemental Order rejecting Verizon Northwest's Motion to Dismiss, and then substantively in the Eleventh Supplemental Order):

Embarq Arguments.	**Commission Rejection of Similar Arguments Made By Verizon Northwest.**
"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." Embarq Motion, ¶ 2(1). "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. United filed its intrastate switched access rates in compliance	"Verizon's argument is essentially that once a rate is found to be fair, just, and reasonable, or once a rate structure is determined in an adjudicative proceeding, the rates are lawful and cannot be changed without reopening the determining dockets. The Commission disagrees with this premise." Eleventh Supplemental Order, ¶ 19. "Verizon contends that once it establishes compliance with the rule [WAC 480-120-540], its rates are immune from all further challenge.... The Commission rejects Verizon's contention that hearing the

with the Rule and the Commission's orders. United's switched intrastate access rates are therefore presumed just, reasonable, and not unduly preferential." Embarq Motion, ¶ 5.	complaint is inconsistent with the rule, or that the Commission must amend the rule in order to address the complaint." Eleventh Supplemental Order, ¶¶ 28-31. "And the record is also clear that an activity countenanced in one rule may – inadvertently or not – act to stifle competition, and therefore violate another rule or law." Eleventh Supplemental Order, ¶ 39.
"The mere allegation that United's intrastate switched access rates are simply mathematically higher than Verizon Northwest Inc.'s rates, when United and Verizon are not similarly situated LECs in Washington, is not sufficient for the Commission to entertain the Complaint." Embarq Motion, ¶ 2(2).	"Setting [Verizon's] rates at Qwest's level is consistent with our authority in RCW 80.04.110 to set uniform rates to counter anticompetitive practices." Eleventh Supplemental Order, ¶ 108.
"The Complaint seeks relief that would result in single-issue ratemaking." Embarq Answer, Affirmative Defense, ¶ 43.	"Verizon's principal challenge to the complaint is that it would constitute 'single issue ratemaking,' that is, that the Commission should not look only at one component of the Company's revenue out of context of its overall operations. It relies on a Commission order in a complaint proceeding involving predecessors of two of the parties to this docket, MCI and GTE-NW." Eleventh Supplemental Order, ¶ 9. "In this case, AT&T specifically has alleged that Verizon's access charges violate RCW 80.36.186 and 80.36.180, the Commission's imputation test, and federal law. Commission Staff argues that this docket is therefore clearly distinguishable from the MCI proceeding. We find that the MCI v. GTE order is not controlling, for the reasons Staff cites." Eleventh Supplemental Order, ¶¶ 10-11. "Second, the [MCI v. GTE] holding was not a blanket statement that the Commission would never hear a complaint that could affect a company's achieved rate of return. The order itself recognized in stating a 'general' rule, that even in its limited application to circumstances where a complaint does not allege a specific basis, the Commission might find it necessary

	or appropriate to deal with a complaint. For these reasons, we reject Verizon's contention that the MCI order requires dismissal of the complaint." Eleventh Supplemental Order, ¶ 12.

Accordingly, Commission precedent dictates that the same arguments made by Embarq here be rejected as well. The Commission made clear in the AT&T Complaint that carrier-specific access charge complaints are to be adjudicated by the Commission, and not to be dismissed in the face of factual disputes evident in the pleadings (as in the Complaint and Answer here).

CONCLUSION

The Commission should deny Embarq's motion to dismiss because "[t]here are factual disputes relevant to the legal issues" and because the Commission "has a responsibility to oversee the development of a competitive telecommunications market." Second Supplemental Order, ¶ 11.

Respectfully submitted on August 27, 2008

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.,

Gregory M. Romano, WSBA #38544
1800 41st Street, WA0105GC
Everett, WA 98201
Phone (425) 261-5460