

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**DIRECT TESTIMONY OF  
ALAN L. LUBECK  
ON BEHALF OF  
UNITED TELEPHONE COMPANY OF THE NORTHWEST, d/b/a EMBARQ**

1 **I. INTRODUCTION**

2 *Q. Please state your name, title, and business address.*

3 **A.** My name is Alan Lubeck. I am employed by Embarq (Embarq Management Company) as  
4 Regulatory Manager in the Department of Regulatory Policy and External Affairs. My  
5 business address is 5454 W. 110<sup>th</sup> Street, Overland Park, Kansas 66211.

6  
7 *Q. Please briefly describe your educational background and work experience.*

8 **A.** I have been with Embarq, and its predecessor companies, for over 21 years. I recently  
9 joined the Regulatory Policy and External Affairs group as a Regulatory Manager. As a  
10 Regulatory Manager, I am responsible for certain interconnection agreement issues. In  
11 Texas, Indiana, Pennsylvania, and now Washington, I filed or submitted testimony  
12 regarding Comcast and the issues surrounding directory listing storage and maintenance  
13 services. I also testified in the Texas Embarq-Comcast arbitration. Prior to 2006, I served  
14 as a Product Manager in Embarq's Wholesale Markets group from 2002 to early 2008. In  
15 that capacity, I was responsible for developing and managing a variety of wholesale  
16 products, including special access, database services, and CLEC products. During the six  
17 years immediately following passage of the Telecommunications Act of 1996, I also  
18 negotiated interconnection agreements with both CLECs and wireless companies. Between  
19 1991 and 1996 I managed general accounting and then billing functions for specific  
20 operating units of Sprint (Embarq's predecessor). I originally served in a variety of  
21 accounting and finance functions at Sprint's directory publishing company during 1986-  
22 1991. This directory publishing company was later sold to R.H. Donnelley. Prior to

1 working at Embarq/Sprint I spent six years working with audit and tax customers at what is  
2 now known as PriceWaterhouse Coopers. I hold a B.S. in Accounting from the University  
3 of Nebraska – Lincoln.

4

5 ***Q. What is the purpose of your Direct Testimony in this proceeding?***

6 **A.** The purpose of my Direct Testimony is to support the position of United Telephone  
7 Company of the Northwest, Inc. d/b/a Embarq (“Embarq”) monthly its proposed \$.50  
8 monthly recurring charge (“MRC”) in Washington for Directory Listing Storage and  
9 Maintenance (“DLSM”) is appropriate. My Direct Testimony addresses the Federal  
10 Communication Commission (“FCC”) rules and regulations and demonstrates that  
11 Embarq’s proposed non-cost, market-based rate for the MRC is appropriate and should be  
12 approved.<sup>1</sup> In short, my testimony demonstrates that Embarq’s proposed non-cost based  
13 monthly recurring charge for providing DLSM service to Comcast<sup>2</sup> is appropriate in  
14 today’s competitive marketplace for these services.

15

16

## **II. UNRESOLVED ISSUE**

17 ***Q. What is the sole issue in dispute in this proceeding?***

18 **A.** As set forth in Embarq’s Response, the sole remaining issue in dispute is:

19 Where Comcast is not purchasing UNE loops or resold services from  
20 Embarq, should Embarq be permitted to charge Comcast a monthly charge

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<sup>1</sup> Throughout this testimony any references to legal documents such as statutes, rulings, orders, etc. are a Regulatory Manager’s reading of the document specifically with regard to the economic and pricing issues or findings contained in the document. They are not intended to be put forth as legal opinions.

<sup>2</sup> Comcast Phone of Washington, LLC (hereinafter “Comcast”) filed a Petition for Arbitration on April 29, 2008.

1                   for “maintenance and storage” of Comcast’s customers’ basic directory  
2                   listing information?  
3

4   ***Q. Can you briefly describe the disputed Directory Listing issue in this arbitration?***

5   **A.** Yes. The sole disputed issue in this arbitration involves the MRC (or monthly recurring  
6   charge) that Comcast should pay to Embarq for Embarq’s provision of Directory Listing  
7   Storage and Maintenance (DLSM) service. Embarq asserts that Comcast pay a non-cost  
8   based MRC of \$.50 for storing and maintaining each Comcast listing, while Comcast  
9   believes it should pay nothing for this valuable service.

10

11   ***Q. Please briefly describe the divergence of positions as between Embarq and Comcast***  
12   ***regarding the DSLM service.***

13   **A.** The parties agree that when Comcast purchases a UNE Loop or Resale line from Embarq,  
14   no separate DLSM monthly recurring charge should be assessed to Comcast. Comcast,  
15   however, disagrees that it should pay an MRC when it purchases stand-alone DSLM  
16   service, with no associated Embarq UNE Loop or Resale services. Comcast believes that it  
17   should pay nothing for this service. In other words, Comcast asserts that when it provides  
18   its own telephone service to a customer and purchases no other services whatsoever from  
19   Embarq for that customer, Embarq should be required to provide DSLM to Comcast for  
20   free.

21

1                                   **III. DIRECTORY LISTING SERVICE DISCUSSION**

2    ***Q. What is a Directory Listing to an end user?***

3    **A.** To a retail end user, a Directory Listing means including the customer’s name, phone  
4       number, and address in a printed directory published for the service area where the end user  
5       is physically located. This retail DL is normally ordered during discussions between the  
6       end user customer and an Embarq retail service representative. If the end user customer  
7       orders phone service from a CLEC, its service representative would have the same  
8       discussion with that end user. The CLEC would then normally order a DL as part of the  
9       initial service order, or as an update to the end user’s service. Wireless end users and VoIP  
10      end users must normally call the Embarq retail service center to order a DL, which is  
11      provided as a foreign listing service at the tariffed rate of \$.50 per month because the  
12      wireless end user is not purchasing retail telephone service related to the phone number that  
13      would be included in the printed directory.

14  
15    ***Q. What is Directory Listing between and among LECs?***

16    **A.** The FCC defines directory listing “as a verb that refers to the act of placing a customer’s  
17      listing information in a directory assistance database or in a directory compilation for  
18      external use (such as white pages).”<sup>3</sup>

19  

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<sup>3</sup> *In the Matter of 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, As Amended; Third Report and Order in CC Docket No. 96-115; Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273; FCC 99-227, Released September 9, 1999, ¶ 160 (“SLI/DA Order”).*

1 ***Q. Does Embarq charge Comcast an order processing fee for Directory Listings?***

2 **A.** Yes. Embarq proposed, and Comcast accepted, a non-recurring charge (“NRC”) for order  
3 processing. This NRC is not part of the dispute in this arbitration.

4

5 ***Q. What services does Embarq perform related to the MRC for DSLM?***

6 **A.** Embarq performs a variety of functions related to DLSM, including the following:

- 7 • Embarq stores all ILEC and CLEC listings in a DL database and maintains the  
8 operability of the database;
- 9 • Embarq maintains the electronic equipment and the software for the Subscriber  
10 Universal Directory System (SUDS), which serves as Embarq’s interactive DL  
11 database, and makes updates to enhance the efficiency and effectiveness of SUDS;
- 12 • When an end user of a CLEC requests a directory other than the one for that end  
13 user’s service area (normally by calling the R.H. Donnelley toll free number  
14 included on Embarq directories), R.H. Donnelley fulfills the requests and invoices  
15 Embarq. Embarq processes the invoices for the purchase of such out-of-area  
16 directories and remits payment to R.H. Donnelley for such directories;
- 17 • Embarq forwards to the publisher any special distribution requests received from  
18 the CLEC (such as number of books for delivery, alternate delivery address, etc);
- 19 • Embarq performs a manual review of new or changed Directory Listings once the  
20 listings are included in the Embarq DL database. When Embarq finds a  
21 questionable listing for an Embarq end user, Embarq contacts the end user directly  
22 to validate and, if necessary, correct the listing. When Embarq finds a questionable

1 CLEC entry in the database, Embarq contacts the CLEC and requests that the  
2 CLEC contact its end user to validate and, if necessary, correct the listing; and  
3 • Just prior to publishing a directory, R.H. Donnelley provides to Embarq a proof of  
4 the white pages (the layout of the listings included in the directory presented as the  
5 listings will be printed). Embarq reviews both the Embarq and the CLEC listings  
6 again for errors or omissions and works with the CLEC to validate and correct  
7 entries.

8

9 ***Q Does Comcast benefit in other ways from such storage and maintenance services that***  
10 ***Embarq provides?***

11 **A.** Certainly. For example, Comcast states in response to Embarq Data Request, DR-10 and  
12 DR-12,<sup>4</sup> that Comcast obtains Directory Assistance service (“DA”) from a third party  
13 provider, that Comcast does not provide directory listings to its own DA provider, and that  
14 Comcast understands that the information developed by the DA provider for Comcast’s DA  
15 service is obtained from ILECs like Embarq. Thus, Embarq performs a valuable service  
16 for Comcast because it allows Comcast to offer DA to end users without investing in back  
17 office systems. Providing this DLSSM service also benefits Comcast by including the  
18 Comcast end users in other DA databases and printed directories based on Comcast merely  
19 submitting accurate DL orders to Embarq.

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<sup>4</sup> See, Exhibit No. (ALL-2).

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**IV. DIRECTORY LISTING OBLIGATIONS**

*Q. Does Comcast have an obligation to provide DL information to publishers of printed directories?*

**A.** Yes. As noted above, DL information is made available to directory publishers in the form of subscriber list information. Under Section 222(e) each telecommunications carrier has certain obligations to provide subscriber list information to publishers. Specifically, the statute says the following:

222(e) SUBSCRIBER LIST INFORMATION. – Notwithstanding subsections (b), (c) and (d), a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

Under this provision, Comcast and Embarq each have the obligation to provide their own subscriber list information to requesting publishers. The FCC confirmed this obligation for all LECs to provide publishers with access to such directory listing databases in its SLI/DA Order.<sup>5</sup> Despite the law, and the nearly 7 year-old *SLI/DA Order*, Comcast’s response to Embarq Data Request, DR-3,<sup>6</sup> indicates that Comcast has not even attempted to estimate the cost of complying with §222(e), much less build the infrastructure to respond if a DA provider or directory publisher were to request subscriber list information directly from Comcast. The Comcast response highlighted some supposed difficulties that R.H. Donnelley might incur, which appear to be nothing more than operational issues that successful businesses regularly confront.

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<sup>5</sup> *SLI/DA Order*, ¶ 54.  
<sup>6</sup> *See*, Exhibit No. (ALL-3).



1 **Q. *What other obligations do all LECs have related to Directory Listing?***

2 **A.** According to the FCC's *SLI/DA Order*, upon request of another LEC, all LECs are required  
3 to offer access to directory listing and to list competitors' information.<sup>7</sup>

4

5 **Q. *Does the obligation for any LEC to "list" competitors' information, refer only to***  
6 ***directories that are owned directly by the ILEC?***

7 **A.** That context would certainly make sense, especially considering the historical situation at  
8 the time of the *SLI/DA Order*. When the Federal Telecommunications Act of 1996 was  
9 enacted, each of the large ILECs, including the RBOCs, GTE and Sprint, owned and  
10 controlled their own directory publishing businesses. Similarly, when the *SLI/DA Order*  
11 was released in 1999, all large ILECs including Sprint (Embarq's predecessor) still owned  
12 and controlled their own directory publishing businesses. Thus, access to the dominant  
13 white pages directories was largely controlled by the major ILECs during the relevant time  
14 period leading up to the *SLI/DA Order*. It makes sense to require an ILEC to provide  
15 nondiscriminatory access to directory listing when competing LECs have no alternative  
16 means of access to those dominant directories.

17

18 **Q. *Are the dominant directories still owned by the major ILECs?***

19 **A.** Not in most cases. Beginning in 2002 with Qwest, and later Sprint (2003), and then Alltel  
20 (2007), most ILECs have now sold their publishing businesses. In 2006, Verizon 'spun  
21 off' its publishing business to Verizon shareholders as an independent company.

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<sup>7</sup> *SLI/DA Order*, ¶ 160.

1           Currently, among the major ILECs, only AT&T publishes its own directory through an  
2           affiliated company (and even AT&T uses an independent third party publisher for some  
3           directories).

4

5   ***Q. Does Embarq own a directory publishing business?***

6   **A.** No. As noted above, Embarq’s predecessor (Sprint’s Local Telephone Division) sold its  
7           directory publishing business during 2003. The sale included a contract with the purchaser,  
8           R.H. Donnelley, to provide Embarq with publishing services for 50 years. R.H. Donnelley  
9           is an independent directory publisher of more than 600 directories in the United States,  
10          including directories for the Embarq and Qwest local service areas, and certain AT&T local  
11          service areas.<sup>8</sup> R.H. Donnelley is not an affiliate of Embarq. The two companies have a  
12          contractual business relationship, just as Comcast and Embarq have a contractual business  
13          relationship.

14

15   ***Q. How does the sale of Embarq’s directory publishing business impact its obligations***  
16   ***under Section 222(e)?***

17   **A.** Since the sale of the publishing business to R.H. Donnelley, Embarq no longer performs  
18          the publishing function for the “Embarq-branded” directories. Furthermore, Embarq is not  
19          in a position to, and does not, control access to R.H. Donnelley. Embarq’s position in the  
20          marketplace coincides with the fact that most ILECs no longer control their directory  
21          publishing businesses, and this changes the landscape of the obligations in paragraph 160

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<sup>8</sup> <http://www.rhd.com/>

1 of the FCC's SLI/DA Order. Because Embarq is not affiliated with the directory publisher,  
2 Comcast can access R.H. Donnelley directly, meaning that Comcast is no longer required  
3 to use Embarq service to be included in Embarq-branded directories. This change  
4 eliminates Embarq's bottleneck access to directory publishers and in my opinion,  
5 effectively eliminates the obligation for Embarq to provide DL services.

6  
7 ***Q. Do Section 222(e) and the SLI/DA Order require ILECs like Embarq to provide***  
8 ***publishers with the Subscriber Listing Information (SLI) of CLECs' end users?***

9 **A.** No. Embarq is obligated to provide publishers with directory listing information for  
10 Embarq's own end users, but Embarq does not have to act as a central clearinghouse to  
11 ensure that the directory listing information for CLECs' end users is provided to publishers  
12 upon request. The *SLI/DA Order* provides a very significant finding in this regard:

13 We conclude that the obligation under section 222(e) to provide a particular  
14 telephone subscriber's subscriber list information extends only to the carrier  
15 that provides that subscriber with telephone exchange service. The language  
16 of section 222(e) makes clear that a carrier need not provide subscriber list  
17 information to requesting directory publishers pursuant to that section unless  
18 the carrier "gathered" that information "in its capacity as a provider of  
19 [telephone exchange] service." Under the statutory definition of "telephone  
20 exchange service," a carrier acts in this capacity only to the extent it  
21 "furnish[es] to subscribers intercommunicating service of the character  
22 ordinarily furnished by a single exchange, and which is covered by the  
23 exchange service charge, or...comparable service provided through a system  
24 of switches, transmission equipment, or other facilities (or combination  
25 thereof) by which a subscriber can originate and terminate a  
26 telecommunications service." This reference to "furnish[ing] to subscribers  
27 intercommunicating service" establishes that a carrier acts "in its capacity as a  
28 provider of [telephone exchange] service" only to the extent it provides  
29 telephone exchange service to subscribers of that service. When a LEC  
30 provides "nondiscriminatory access to...directory listing...." under section  
31 251(b)(3), it is not providing telephone exchange service to subscribers of that

1            service. Instead, as the language of section 251(b)(3) makes clear, the LEC is  
2            providing a service--directory listing--to "competing providers of telephone  
3            exchange service and telephone toll service."<sup>9</sup>  
4  
5

6    ***Q. Does this paragraph conclude that CLECs can require ILECs to perform a***  
7            ***clearinghouse function for providing publishers with subscriber listing information for***  
8            ***end users of the CLEC?***

9    **A.** No. Paragraph 54 clearly states that LECs need only provide directory publishers with the  
10           subscriber listing information obtained when providing telephone exchange service to a  
11           retail subscriber. LECs are not obligated to provide directory publishers with the  
12           subscriber listing information of other LECs that are obtained through wholesale business  
13           relationships. Therefore, LECs, including ILECs, are not required to be a clearinghouse for  
14           DL. This position makes a great deal of practical sense as well.

15  
16           The SLI/DA Order requires all LECs to allow the placement of a competing LEC's  
17           customer listing information in a directory assistance database or in a directory compilation  
18           for external use. When the *SLI/DA Order* was released in 1999, the major ILECs owned  
19           and controlled access to the printed directories. In that context it makes sense to require a  
20           LEC to provide nondiscriminatory access to directory listing to the competing LECs  
21           because the competing LECs have no alternative means of access to those dominant  
22           directories. I submit that the non-discrimination provisions of Section 251(b)(3) would still  
23           apply today when any LEC publishes its own directory and thus controls access to that

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<sup>9</sup> See, *SLI/DA Order*, ¶ 54 (emphasis added).

1 directory. However, today Embarq no longer controls access to any directory publisher. A  
2 competing LEC has access to and can deal directly with every directory publisher apart  
3 from Embarq. It follows that ILECs cannot be required to act as clearinghouses for  
4 placement of directory listings in third-party databases or directories.

5

6 ***Q. If Embarq does not act as a clearinghouse for CLEC directory listings, then what***  
7 ***alternatives does a CLEC have for arranging to have its end users listings printed in a***  
8 ***directory?***

9 **A.** In order for a CLEC to place the listings of its end user customers into printed directories,  
10 the CLEC has the option of using Embarq's DLSP service or dealing directly with R.H.  
11 Donnelley and other third party directory publishers. In this case, Embarq has no control  
12 over access to R.H. Donnelley – Embarq cannot control who R.H. Donnelley contracts  
13 with, nor the terms and conditions of such an agreement. When the ILEC does not control  
14 access to an independent directory publisher, and the CLEC can deal directly with the  
15 directory publisher, I do not believe that Section 251(b)(3) requires another LEC to act as a  
16 clearinghouse for access to any directory publisher. Such a requirement would also violate  
17 the limitations in Section 222(e) regarding the obligations of all LECs to provide listings to  
18 directory publishers.

19

20 ***Q. Does this obligation change if an ILEC is responsible for ensuring that a directory is***  
21 ***published?***

22 **A.** No. The requirement for ILECs to publish a directory has no bearing on how the listings

1 are submitted to the publisher. Each CLEC can contract directly with the directory  
2 publishers, or they can choose the convenience of requesting the DLSM service offered by  
3 Embarq.

4

5 ***Q. Has the FCC established any regulatory prohibition against Embarq's charging a non-***  
6 ***cost based MRC?***

7 **A.** No. Because §251(b)(3) should not apply when a LEC doesn't control access to the  
8 directory publisher, and Section 222(e) does not require Embarq to provide to publishers  
9 the directory listings of other LECs that are gathered through Embarq's offering of a  
10 wholesale service, Embarq's DLSM service is a commercial service offered as a  
11 convenience to Comcast and other CLECs. Therefore, commercial pricing principles  
12 apply, not regulatory pricing principles. Furthermore, it is significant that in the *SLI/DA*  
13 *Order*, the FCC chose to subject the bulk sale of subscriber list information to directory  
14 assistance competitors and directory publishers to a "presumptively reasonable" rate, but  
15 chose not to set any pricing methodology to Directory Listing.

16

17 Even if Comcast contends that the FCC ordered all LECs to provide Directory Listing  
18 services upon request, the FCC did not require the service to be provided at cost-based  
19 rates. The FCC did not preclude or prohibit LECs from charging a non-cost based price for  
20 a Directory Listing service when the LEC does not control access to the directory  
21 publisher. If Comcast purchases an access line at resale rates, Embarq agrees that it will  
22 provide a directory listing to Comcast's end user customer as part of the resale service

1 bundle without a separate monthly charge. If Comcast purchases the UNE Loop, Embarq  
2 will provide a directory listing to Comcast's end user customer as part of the service bundle  
3 without a separate monthly charge. If Comcast does not purchase the underlying line from  
4 Embarq, it is appropriate for Embarq to provide the stand-alone DLASM service to  
5 Comcast's end user customers in the same manner and at the same rate that Embarq  
6 charges its own or another LEC's end user customer that is purchasing similar services – in  
7 this case the stand-alone foreign listing service.

8  
9 ***Q. Is Embarq's proposed non-cost based MRC consistent with all other FCC requirements?***

10 **A.** Yes. Because Embarq does not control access to any directory publisher, Embarq is not  
11 required to provide the DLASM service to Comcast. Should Comcast choose to utilize  
12 Embarq's DLASM service, Comcast's DL orders will flow through the same processes used  
13 by Embarq for its own end user customers' DL orders, and will be published in the same  
14 directory. To the extent Embarq has agreed in the resulting interconnection agreement  
15 between the parties to be the clearinghouse for Comcast Directory Listings, marketplace  
16 forces are the most effective and efficient way to establish prices for the DLASM service. It  
17 has been nearly seven years since the FCC's SLI/DA Order was released. Embarq does not  
18 control access to DL publishers. Comcast has access, but elects not to access DL  
19 publishers directly. If Comcast wants Embarq to access the directory publishers on  
20 Comcast's behalf, Comcast should be required to pay non-cost, market-based rates for such  
21 access.

1                                   **V. MARKET FOR DIRECTORY LISTING SERVICE**

2   ***Q. Please describe the marketplace surrounding this issue.***

3   **A.** Markets are characterized by supply and demand. The specific market here is listings that  
4       are included in printed directories. In this specific market, on the *demand* side, the service  
5       that Comcast is demanding is the placement of its customers' listings in a specific local  
6       directory or local directories. On the *supply* side, the publisher R.H. Donnelley supplies  
7       this service to Embarq. Embarq does not own the publishing company, nor manage the  
8       publishing company, nor control access to the publishing company. However, Embarq  
9       does store and maintain its own listings and the listings of CLECs and others that desire to  
10      be included in the directories using Embarq's services. For example, as part of storing and  
11     maintaining the directory listings, Embarq maintains the directory publishing schedule as  
12     provided by R.H. Donnelley; maintains white pages premium listings (e.g. extra lines or  
13     bold listings); reviews every listing or change that enters Embarq's directory system to  
14     improve accuracy; coordinates change requests with the CLEC or the retail end user;  
15     forwards special directory distribution instructions to the publisher; reviews pre-publication  
16     proofs containing the white pages listing information for every directory; processes  
17     invoices and pays R.H. Donnelley for out-of-area directories requested by both Embarq's  
18     and the CLEC's end users; stores the listings in on-site interactive servers, and in off-site  
19     storage for disaster recovery; and develops and maintains the directory listing software.  
20     Because R.H. Donnelley provides the printed directories, Comcast has the choice to satisfy  
21     its customers' demand by 1) dealing with R.H. Donnelley directly to have its customers  
22     listed, 2) using Embarq as an intermediary provider to arrange for Comcast's customers to



1 be listed, or 3) using the services of a competing directory publisher. And because  
2 Comcast is the fourth largest residential LEC in the nation and claims to be larger than  
3 Embarq,<sup>10</sup> it would be particularly surprising if Options 1 or 3 were not considered highly  
4 viable, as shown by Cox Communications recently announced co-marketing and  
5 distribution agreement with Yellow Book to publish competitive directories in Cox  
6 markets.<sup>11</sup>

7

8 ***Q. So in this market, does Comcast have the option of by-passing Embarq entirely and still***  
9 ***meeting its end users' need for directory listings?***

10 **A.** Yes, in addition to using Embarq's intermediary services, Comcast has at least the other 2  
11 options noted above available to meet the needs of its customers.

12

13 ***Q. Have you verified that Comcast can deal directly with the publisher R.H. Donnelley?***

14 **A.** Yes. I have personally verified that Comcast can deal directly with the publisher of  
15 Embarq's directories in Indiana, R.H. Donnelly. R.H. Donnelley has informed Embarq that  
16 Comcast is absolutely free to deal directly with them. There is no prohibition of any kind.  
17 Therefore, Comcast has an economic choice to make – build the service internally and deal  
18 directly with R.H. Donnelley, or purchase the service from a third party. Should Comcast  
19 decide to build the service internally, they will have to negotiate with the publishing  
20 companies, develop software to send listings, maintain databases and publishing calendars,

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<sup>10</sup> See Exhibit No. (ALL-4), Comcast press release dated 1/8/08. The three largest residential telephone service providers are widely reported to be AT&T, Verizon and Qwest.

<sup>11</sup> See Exhibit No. (ALL-5), Cox Press Release 3/17/08.

1 and hire, train, and employ personnel to manage the services and internal processes  
2 discussed above, just as Embarq and Cox have made the investment to do so. As can be  
3 seen from the effort necessary to deal directly with R.H. Donnelley and other third party  
4 publishers, Comcast may simply *prefer* to deal through an intermediary such as Embarq so  
5 Comcast can spend its time, capital, and other resources on activities Comcast considers  
6 more valuable. But that preference does not constitute a restriction or prohibition on  
7 Comcast other than the type of restrictions and limitations that marketplace realities impose  
8 on businesses every day. In fact, Comcast, or any wholesale customer, preferring to  
9 purchase the service from Embarq simply reinforces the value of Embarq's service and  
10 supports Embarq's decision to propose a rate it believes reflects the value of the service.  
11 Comcast has alternatives to meet its customers' demands. In light of such alternatives,  
12 marketplace forces are the most effective and efficient way to establish prices in this  
13 market.

14

15 ***Q. What is the significance in saying that Comcast can deal directly with the publisher to***  
16 ***obtain access to directory listings?***

17 **A.** It means that Comcast cannot be considered a "captive" customer in this case (a customer  
18 without purchase alternatives). Embarq does not control access to the publisher, leaving  
19 Comcast with alternatives to provide Directory Listings for their customers. In light of  
20 such alternatives, it also means that marketplace forces are the most effective and efficient  
21 way to establish prices in this market. This is also discussed in detail below.

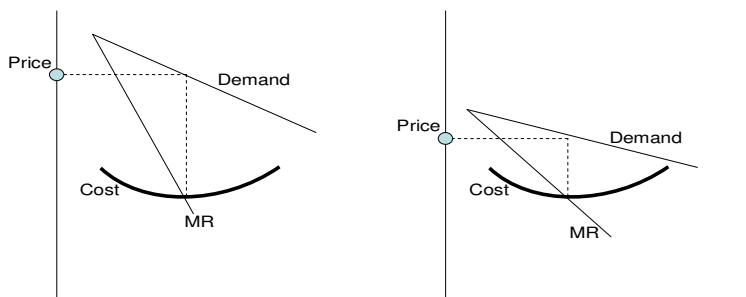
22

1 **VI. PRICE FOR THE DIRECTORY LISTING SERVICE**

2 ***Q. Is cost a determinant of price?***

3 **A.** In most cases, cost is not the primary means to determine price.<sup>12</sup> A non-cost based price is  
4 a function of the value that customers perceive in the good, which is a part of demand. The  
5 diagram below shows two different markets which have identical costs. But because the  
6 demand conditions are different in the two markets, the non-cost based price will be very  
7 different in the two markets. Identical costs produce very different non-cost based prices.  
8 Clearly costs are not what determine the final price. As a Wholesale Product Manager  
9 managing both regulated and non-regulated products, I used the information included in the  
10 graphs below as inputs into establishing prices for non-regulated products.

Identical Costs Produce Significantly Different Market-Based Prices



11  
12 The graphs above show the sloping demand curve of all real-world markets. In both  
13 graphs, price is established where the vertical dotted line meets the demand curve, and the  
14 placement of the vertical dotted line is determined by the intersection of the marginal

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<sup>12</sup> Cost plays a part to the extent that if the market-based price does not at least cover costs then there will be no transaction because generally no rational actor will consistently price its services below cost.

1 revenue curve (MR) and the cost curve. In the graph on the left, the customer places a  
2 higher value on the good being purchased than the graph on the right. It is this value that  
3 ultimately determines the non-cost based price. There are many examples showing that  
4 prices are not primarily cost-based. Consider an example of a market where there are two  
5 competing vendors selling the same product, and each has the ability and capacity to serve  
6 the entire market. Vendor X can produce the product at a per-unit cost of \$1. Vendor Y  
7 can produce the same product at a per-unit cost of sixty cents. In theory the market price in  
8 this instance will neither be \$1 nor sixty cents. It will be a price charged by Vendor Y that  
9 is a miniscule amount below Vendor X's cost, allowing Vendor Y to capture the entire  
10 market. Avoiding all other variables, the market price in this case would be something like  
11 ninety-nine cents. Vendor Y's costs are sixty-cents per unit, but the per-unit price set by  
12 the market will be as high as ninety-nine cents until either Vendor X responds by lowering  
13 costs and prices, or a new competitor with costs less than \$1 enters the market.

14  
15 Another reason price is not determined primarily by cost is product differentiation. To the  
16 extent that a provider can successfully convince buyers that his or her product is different  
17 or better—whether it is or not—the price will reflect this difference in perceived value  
18 rather than the cost. Aspirin is a non-telecom example of product differentiation. If  
19 customers believe, rightly or wrongly, that a name-brand aspirin (such as Bayer®) is  
20 superior in some way to generic aspirin, then the price charged for that name-brand will  
21 reflect that perceived value, rather than the cost, which may be identical to the cost of  
22 producing generic aspirin. This outcome is both desirable and appropriate because, if

1 consumers are not willing and content to pay the higher price, they will opt not to purchase  
2 that product.

3

4 ***Q. Why is it appropriate to use the non-cost based approach proposed by Embarq?***

5 **A.** In the marketplace, if a willing buyer and a willing seller agree on a price the transaction  
6 will occur. As discussed above, the price will reflect the value that the buyer places on the  
7 service. In this case, the service being offered is a DLSSM service. This is a service that  
8 Comcast can provide for itself—by dealing directly with R.H. Donnelley—or it can  
9 purchase the service from an intermediary such as Embarq. Therefore the value that we are  
10 discussing is *the value of Embarq's providing the service for Comcast rather than Comcast*  
11 *doing the job itself.* It is exactly the same as a consumer's decision about whether to go out  
12 to dinner in a restaurant or cook dinner at home. The value of the restaurant meal is not  
13 just the worth of the steak and the potatoes; it is also the worth of not cooking them. It is  
14 also the worth of the expertise and experience of the chef, which may exceed that of the  
15 diner. It is also the worth of not having to wash the dishes.

16

17 Because the consumer can supply dinner to herself, the restaurant is permitted to charge  
18 what the market will bear for its meals. And because Comcast can supply itself with access  
19 to the Directory Listing service, Embarq should similarly be permitted to charge a non-cost  
20 based rate.

21

22 Comcast's own actions will help determine the acceptable non-cost based price. It is

1 possible that Comcast can provide itself with access to directory listings at a price lower  
2 than the one proposed by Embarq. It might be able to do this by dealing with R.H.  
3 Donnelley directly. If so, Comcast would either pursue one of those actions or—at a  
4 minimum—signal to Embarq its intent to do so. Embarq, in return, could signal its  
5 willingness during negotiations to adjust its price in order to meet Comcast’s demand.  
6 Conversely, if Comcast accepts Embarq’s non-cost based price it is also a signal that the  
7 value Comcast places on access to directory listing is at least equal to Embarq’s proposed  
8 price, whether or not they can offer themselves a better price. These are the market forces  
9 that should determine the final price, just as they do in the above-mentioned restaurant  
10 example.

11  
12 ***Q. But doesn’t Comcast’s contention that Embarq is obligated to provide access to DL***  
13 ***somehow change this comparison?***

14 **A.** Not at all. First, as discussed above, the FCC requirement for access to Directory Listing<sup>13</sup>  
15 is a requirement of all LECs. Because Embarq does not control access to the publisher of  
16 any printed directory, Embarq is in no way acting in a discriminatory manner by charging  
17 Comcast a market-based rate for DSLM services. In its discussion of section 222(e), the  
18 FCC stated that LECs are not required to provide the subscriber list information of other  
19 LECs to third-party directory publishers.<sup>14</sup> Therefore, since Embarq does not control  
20 access to any directory publisher, Embarq is not required to provide Comcast subscriber list

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<sup>13</sup> See, *SLI/DA Order*, ¶ 160.

<sup>14</sup> See, *SLI/DA Order*, ¶ 54.

1 information to any directory publishers. To the extent Embarq is willing to provide this  
2 service to Comcast, the DLSM service is a commercial service voluntarily offered by  
3 Embarq, and should be priced as a commercially offered service available at a non-cost  
4 based price.

5  
6 ***Q. In terms of the marketplace dynamics surrounding this issue, is the foreign listing***  
7 ***service a reasonable proxy service to look at for comparison and pricing of the MRC?***

8 **A.** Yes, foreign listing service is similar to directory service in terms of marketplace dynamics.  
9 The similarity is that in both cases (foreign listings and the directory listing issue at hand)  
10 the party demanding the Directory Listing service is not purchasing UNE Loops, Resold  
11 service, or retail service within the local service area from Embarq, yet the party desires a  
12 directory listing. In addition, it is appropriate to charge both types of customers for the  
13 service (the Directory Listing) because the requesting party perceives value in being placed  
14 in the “Embarq” directory that is provided by R.H. Donnelley.<sup>15</sup> In this comparison  
15 obviously one of the parties requesting the service is a retail purchaser and the other is a  
16 wholesale purchaser, but that does not change the dynamics of the market transaction.  
17 Finally, Embarq is treating similarly-situated customers in the same way. Customers  
18 purchasing a retail line, UNE Loop, or a Resold service from Embarq receive a listing with  
19 their service. Embarq Wholesale customers not purchasing a UNE Loop or Resold service  
20 (including Embarq Wholesale customers purchasing special access services) must purchase

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<sup>15</sup> Obviously in this case Comcast believes their *customers* perceive some value to being placed in the Embarq branded directory.

1 a stand-alone \$.50 per month foreign listing to be treated like a similarly situated wireless  
2 or VoIP customer. Embarq's proposed \$.50 per DL should therefore be adopted by the  
3 Commission.

4

5 ***Q. What is the basis for Embarq's proposed DL MRC rate of \$.50?***

6 **A.** Embarq agrees to treat Comcast like other retail and wholesale customers. If Comcast  
7 purchase a resold service or a UNE Loop service, Embarq agrees to include a directory  
8 listing as a component of that service. However, if Comcast seeks only to purchase a  
9 stand-alone directory listing, Embarq should treat Comcast just as it treats other retail and  
10 wholesale customers that request a stand-alone directory listing, and charge the same price  
11 for that service. Embarq already charges a non-cost based MRC for a retail foreign listing  
12 service. Embarq relied upon this foreign listing service as a reasonably analogous service,  
13 and priced the Directory Listing service provided to Comcast, albeit on a wholesale basis,  
14 at the same \$.50 tariffed price. The proposed \$.50 MRC thereby has a rational and logical  
15 basis in that it reflects the rate that Embarq's retail end user customers pay to be included in  
16 either a directory when the end user does not purchase a retail access line (including end  
17 users purchasing services from the Intrastate or Interstate Special Access tariff), or in a  
18 directory that is not associated with the end user customer's physical location. Embarq also  
19 charges this same retail foreign listing charge to non-Embarq retail end user customers  
20 (typically an end user customer of a different Local Exchange Company (LEC) in a  
21 neighboring city) requesting a listing in an "Embarq" directory. Similarly, Embarq bills  
22 this charge to wireless end users, VoIP end users who request that Embarq list their names



1 and numbers in a printed directory. Embarq likewise proposes to charge Comcast a DLSM  
2 service MRC on the same basis and at the same rate that it charges retail end users and  
3 other wholesale customers.

4  
5 Therefore, Embarq's proposed charge for stand-alone DLSM service is reasonable and  
6 customary because Embarq is applying the same charge to Comcast that Embarq charges  
7 (i) to its own end users, (ii) to other LEC end users, (iii) to wireless end users, and (iv) to  
8 VoIP end users, that request a listing in a directory where the end user customer is not  
9 purchasing basic residential or business service through retail, Resale or UNE Loop  
10 services. As such, Embarq's proposed charges are reasonable, customary and at parity with  
11 what Embarq provides to itself and others.

12

13 ***Q. Is this foreign listing charge related to foreign exchange service?***

14 **A.** No. Foreign listings are sometimes confused with foreign exchange service. Foreign  
15 exchange service (or FX service) is a service ordered by a retail end user who purchases a  
16 local telephone number in a service area other than the one where the end user is located.  
17 The FX service and the foreign listing service are separate and distinct services.

18

19 ***Q. Does Embarq propose specific language for inclusion in the resulting interconnection***  
20 ***agreement?***

21 **A.** Yes. Embarq's proposed language is set forth in Exhibit 1 to Embarq's Response to  
22 Comcast's Petition, filed with the Commission on May 27, 2008.

- 1 ***Q.*** *Does this conclude your Direct Testimony?*
- 2 ***A.*** Yes it does.