

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

VERIZON SELECT SERVICES, INC.;)	
MCIMETRO ACCESS TRANSMISSION)	
SERVICES, LLC; MCI)	Docket No. UT-081393
COMMUNICATIONS SERVICES, INC.;)	
TELECONNECT LONG DISTANCE)	VERIZON'S RESPONSE
SERVICES AND SYSTEMS CO. D/B/A)	TO WITA'S AMICUS BRIEF
TELECOM USA; AND TTI NATIONAL,)	
INC.,)	
Complainants,)	
)	
v.)	
)	
UNITED TELEPHONE COMPANY OF)	
THE NORTHWEST,)	
)	
Respondent.)	

On August 27, 2008, the Washington Independent Telecommunications Association (“WITA”) filed a Motion to File *Amicus* Brief (“Motion”) and an *Amicus* Brief in this docket. WITA admits that there is no procedural vehicle authorizing its *amicus* brief, but nevertheless requests that the Commission consider it in deciding Embarq’s motion to dismiss.

WITA does not represent any party (except Embarq) that may be affected by this litigation, does not raise any issue not subsumed by Embarq’s motion to dismiss, and does not even address the core question of whether Verizon has stated claims upon which relief may be granted. If the Commission decides to consider WITA’s *amicus* brief, Verizon requests that it also consider this short response.

A. WITA Does Not Deny That Verizon Has Stated Claims Upon Which Relief May Be Granted.

WITA specifically admits that its *amicus* brief does not address whether Verizon has stated claims upon which the Commission may grant relief. *See* Motion, ¶ 3. But that is

precisely the standard for whether Verizon's complaint should be sustained. *See* WAC 480.07.380. Accordingly, WITA ignores the core issue before the Commission. As Verizon explained in its opposition to Embarq's motion to dismiss, Verizon's comprehensive and detailed allegations that Embarq's intrastate switched access rates are unreasonable and anticompetitive are more than sufficient to sustain its claims under RCW 80.36.140 and RCW 80.36.186. *See* Verizon Opposition at 4-9.

B. Verizon's Narrow Statutory Claims Have Nothing to Do With Comprehensive Reform and Do Not Require Policy Determinations.

The single issue raised by WITA – the notion that Verizon's complaint improperly seeks piecemeal switched access reform – is entirely subsumed by Sections IV and V of Embarq's motion to dismiss. As Verizon explained in detail in its opposition to Embarq's motion to dismiss, Verizon's narrow statutory claims have nothing to do with comprehensive reform and do not require policy determinations. Verizon Opposition at 9-12. Thus, the potential future reform efforts that WITA mentions will be unaffected by the present proceeding.

Verizon agrees with WITA that comprehensive reform of intercarrier compensation is sorely needed. Indeed, Verizon is one of many industry participants that have urged the FCC to undertake such reform, and Verizon hopes the FCC will act this year. But Verizon is *not* seeking reform in this docket, and the relief sought here does not conflict with any reform efforts. Here Verizon is simply exercising its statutory rights to avoid being injured by Embarq's multiple violations of Washington law. As Verizon's opposition made clear, remedying Embarq's anticompetitive conduct does not implicate any of the policy issues that may be relevant to high-cost members of WITA and the Washington Exchange Carriers Association ("WECA"). For example, Verizon's complaint does not raise universal service concerns because, *inter alia*, there is no basis to assume Embarq dedicates its substantial intrastate switched access revenue to

subsidizing local service. Verizon Opposition at 9-11.¹ And requiring Embarq to comply with Washington law does not conflict with future reform efforts: the Commission can ensure a level playing field for Embarq's competitors now, while realizing there is a chance Embarq's rates may be further modified if and when the FCC (or this Commission) acts on intercarrier compensation reform. See Verizon Opposition at 11.

Accordingly, there is nothing "disingenuous" (*Amicus* Brief, ¶ 14 n.13) about the fact that Verizon supports comprehensive reform and at the same time seeks protection from Embarq's violations of Washington statutes. Moreover, even if there were some tension between this narrow proceeding and reform efforts (and there is not), neither Embarq nor WITA explain why such tension would constitute grounds for dismissal. Dismissal is appropriate only where a complainant fails to state grounds upon which relief may be granted, and Verizon's complaint clearly alleges specific statutory violations that are more than sufficient to sustain its complaint. Indeed, Commission precedent – including its decision to sustain a very similar complaint by AT&T against Verizon Northwest – dictates that Verizon's complaint be permitted to go forward. See Verizon Opposition, *passim*.²

¹ Nor is there any reason to assume the veracity of WITA's unsupported assertion that "Verizon's Complaint could severely impede United's efforts to improve broadband access in rural Washington." *Amicus* Brief, ¶ 11. Embarq did not even make that argument on its own behalf. In any event, even if Embarq does use switched access revenue from competitors to fund competitive offerings such as broadband, that would not be a defense to violations of RCW 80.36.140 and RCW 80.36.186. Indeed, if Embarq is using revenue from its "Interim USF" charge for purposes of deploying broadband, that fact would be relevant to whether that charge should be reduced or eliminated and warrants exploration in this complaint proceeding.

² WITA also speculates that a successful complaint proceeding against Embarq might embolden AT&T or other interexchange carriers to file similar complaints against other Washington carriers. See Motion, ¶ 9. But any other complaint, like Verizon's complaint, would need to be grounded in particularized allegations of specific statutory violations. Given that hurdle, there is no reason to expect "a large number of difficult and contentious cases that would eat up the Commission's resources in administration of the complaint process." *Id.*

C. The Commission Should Make Clear that Any Future Filings by WITA Must Do More than Regurgitate Embarq's Arguments.

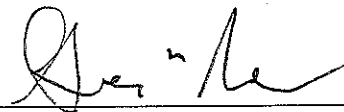
To Verizon's knowledge, filing an *amicus* brief at this stage in a proceeding is unprecedented, and it is certainly not authorized by any rule. The Commission should make clear that in the future, *amicus* briefs may be filed only in accordance with scheduling orders or similar authorizations. Moreover, the Commission should make clear that WITA is *not* welcome to simply regurgitate the same arguments made by Embarq. To permit WITA (of which Embarq is a member) to merely act in a cheerleading role (without providing any perspective or argument distinct from Embarq's) is a waste of the Commission's and Verizon's resources and adds nothing to the Commission's understanding of the issues.

CONCLUSION

If the Commission accepts WITA's *amicus* brief for filing, it should afford it no weight because it does not raise any new issue or provide any new perspective.

Respectfully submitted on September 2, 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.,



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