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Cross Examination Exhibit

Christian M. Dippon

Before the FCC
WC Docket No. 08-160
Petition for Waiver of Embarq
(8-1-08)

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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions.	))))))))	WC Docket No. 08-160

PETITION FOR WAIVER OF EMBARQ

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EXECUTIVE SUMMARY

The Commission has been wrestling with comprehensive reform of intercarrier compensation and universal service for many years. During that time, the industry has changed dramatically, most notably through the rapid development of competition and the erosion of implicit support for universal service. Those changes certainly have made the job of foundational reform more difficult, but they have had a particularly adverse impact on the rural, high-cost customers served by carriers like the Embarq Local Operating Companies ("Embarq").[1]

Embarq supports comprehensive intercarrier compensation and universal service reform. It joined a broad industry coalition supporting the Missoula Plan. As time passes and conditions worsen for rural high-cost customers, the Commission remains at work on the difficult task of comprehensive reform. For this reason, and until the existing rules are transitioned to a new, reformed intercarrier compensation and universal service regime, Embarq seeks a waiver from applicable rules to reduce arbitrage and improve certainty and stability in the switched access charge system by unifying its interstate and intrastate switched access rates on a study area basis.

Among the most serious problems affecting rural price cap carriers is regulatory arbitrage by which other carriers seek to reclassify traffic to reduce or avoid paying the appropriate access charges, chiefly by mischaracterized intrastate traffic as interstate so as to pay lower interstate rates. The Commission has recognized that regulatory arbitrage is a serious problem. Both the Commission and industry have devoted considerable effort to establish comprehensive intercarrier compensation and universal service reform in large measure to put an end to regulatory arbitrage. Regulatory arbitrage undermines the rule of law, fosters costly intercarrier

[1] The Embarq Local Operating Companies are listed on Exhibit A.

disputes, increases transaction costs, and injects unnecessary risk into the market, which in turn drives up capital costs and discourages net work investment, especially in rural areas.

Regulatory arbitrage of switched access charges disproportionately harms rural carriesr such as Embarq. Access charges remain a principal source of support for universal service mandates imposed on incumbent local exchange carriers ("ILECs"), and ILECs alone. The arbitrage is fueled in particular by wide disparities between interstate and intrastate terminating switched access rates. Those rate disparities are common and they are the widest in rural areas where lower population densities result in increased per-customer costs. Further, due to high costs in rural areas, limited population size, and increasing competition (which targets lower-cost service areas), regulators cannot expect local subscribers of rural carriers to bear the costs of regulatory arbitrage. The problem is made worse by the continuing regulatory practice of requiring rates to be averaged across large areas that have widely varying population densities -- and hence, widely varying costs -- in an increasingly competitive environment. ILECs face keen competition, but competitors focus on low-cost areas and avoid the highest-cost areas, leaving the regulated ILEC with rates below cost in high-cost areas and with ever fewer customers in low-cost areas to generate the implicit support for those high-cost lines.

Given these difficulties, Embarq offers an Interim Access Unification Proposal. It seeks waivers of the Commission's price cap rules to permit Embarq to unify its interstate and intrastate switched access rates within each of its local operating company study areas. Embarq's petition requests company-specific waivers that would allow each company to accommodate intrastate switched access charge reductions through offsetting increases in interstate switched access rates. Each adjustment would be revenue-neutral within the specific Embarq local operating company. The Commission's waiver of its rules, and the resulting rate unification within a study area, would be conditioned on state commission approval of Embarq's tariff filing to implement the new unified rate in the study area. Embarq's plan would sharply reduce its intrastate access charges (with very limited exceptions), offset by modestly increased interstate switched access charges.

By unifying access rates to reduce arbitrage, Embarq's petition meets the standards for waiver. The Interim Access Unification Proposal would eliminate the current wide disparity between interstate and intrastate switched access rates. It would thereby resolve the most pressing intercarrier compensation issue affecting a rural carrier's end-user customers in high-cost areas. Unifying interstate and intrastate access rates would eliminate most switched access arbitrage, reduce disputes, and lower transaction and operating costs for both Embarq and its carrier customers, all without adding burdens to consumers or to the federal universal service high-cost fund. At the same time, it would protect universal service and promote investment in rural, high-cost service territories by protecting switched access revenue from the erosion of support caused by regulatory arbitrage and payment disputes. Switched access revenue includes critical support that helps rural price cap carriers like Embarq meet carrier-of-last-resort obligations in a competitive market—obligations their competitors do not have.

Embarq's waiver petition also gives the Commission an opportunity to observe the benefits of a targeted, carrier-specific solution to intercarrier compensation reform. Such an approach is particularly appropriate for rural price cap carriers because of the lower-density, higher-cost nature of their service areas. Indeed, several Embarq operating companies have reciprocal compensation rates—which are set based on forward-looking incremental cost ("TELRIC")—that are actually higher than their averaged interstate switched access charges. Embarq's proposal would not restrict the Commission's options in pending intercarrier compensation rulemakings, however, including the treatment of IP-enabled services. Overall, it would create a beneficial framework where today's access charge rules are transitioned to the Commission's future regulatory framework.

AT&T recently filed a carrier-specific access unification proposal seeking, among other things, waivers of price cap rules sufficient to unify its interstate and intrastate switched access rates.[2] Embarq agrees the Commission should embrace carrier-specific interim reform measures through limited, conditional waiver of price cap rules. Although AT&T's plan may be well-suited to larger or more urban ILECs, it is not sufficient for a rural carrier like Embarq or to consumers in the rural areas Embarq serves. Embarq proposes a simple access unification plan targeted to the special needs of its rural service areas, which will help ensure that Embarq continues to meet carrier-of-last-resort obligations until the Commission has completed and implemented comprehensive intercarrier compensation and universal service reform.

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2 Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers, WC Docket No. 08-152, at 1 (filed Jul. 17, 2008) ("AT&T Access Unification Petition").

Before the
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In the Matter of	)	
	)	
Petition for Waiver of Embarq Local	)	
Operating Companies of Sections 61.3 and	)	WC Docket No. 08-___
61.44-61.48 of the Commission's Rules, and	)	
any Associated Rules Necessary to Permit it	)	
to Unify Switched Access Charges Between	)	
Interstate and Intrastate Jurisdictions.	)	

PETITION FOR WAIVER OF EMBARQ

INTRODUCTION

Nearly everyone in the industry agrees that intercarrier compensation and universal service need comprehensive reform. The Commission has long recognized that today's intercarrier compensation rules treat "identical uses of the network differently, even though such disparate treatment usually has no economic or technical basis."[3] That breeds "opportunities for regulatory arbitrage" and distorts "incentives for inefficient investment and deployment."[4]

The Commission has opened rulemakings. Carriers have held industry roundtables. Proposals have been introduced, including the Missoula Plan, which Embarq and broad segments of the industry support.[5] But even after seven years of review, comprehensive reform has been

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3 *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, ¶ 3 (2005) ("*Intercarrier Compensation Further Notice*").

4 *Id.*

5 *See* Missoula Intercarrier Compensation Reform Plan, attached to Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-

elusive. Until such reform can be completed and implemented, the problems that are confronting ILECs and harming their customers grow steadily more acute. These problems are of particular concern for rural carriers like Embarq. Embarq serves predominately low-density rural areas where the cost of providing service is higher generally than it is in more populated areas. Moreover, as competitors increasingly target and acquire the lower-cost service areas (the small cities and towns) in Embarq's service area footprint (competition, in part, on the basis of having lower surcharges to support carrier-of-last-resort service), Embarq becomes ever more dependent on switched access revenue to meet its universal service obligations, to invest in its rural network, and to extend broadband deployment. At the same time it grows ever more vulnerable to the erosive effects of regulatory arbitrage and the unresolved disputes with carriers that take unfair advantage of purported regulatory "uncertainty."

Therefore, by this petition, Embarq seeks conditional waivers of the Commission's rules to permit Embarq to unify its intrastate and interstate switched access charges on a study-area basis. As explained in more detail below, waiver would allow Embarq to sharply lower its intrastate rates, offset by relatively modest increases in interstate rates. Rates would be unified by study area, and any increase in a study area's interstate rates would be conditional on state approval and effectiveness of the corresponding reductions in tariffed intrastate rates.

AT&T has submitted its own interim proposal, offering a carrier-specific option until broader reforms have been completed.[6] Embarq will join other parties in providing comments in

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Chair, NARUC Task Force to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92 ("*Missoula Plan*").

6 AT&T's interim plan would unify interstate and intrastate switched access rates by offsetting intrastate rate reductions by increasing subscriber line charges on consumers and, in some areas, by also raising originating access rates.

response to the Commission's public notice.[7] In meantime, Embarq will note that, conceptually, AT&T makes a compelling case for allowing, through limited and conditional waiver of price cap rules, carrier-specific regulation during the transition until comprehensive reform is completed and implemented. AT&T is also right in recognizing that different carriers may need different regulatory relief to unify switched access rates successfully. Its proposal, however, does not meet the needs of a rural price cap carrier like Embarq and the areas it serves. For Embarq, interim access unification must include increases in interstate switched access rates to reflect its higher cost service territories, protect rural consumers, and offset its far greater proposed reductions in intrastate switched access rates. Switched access revenues are especially critical to Embarq so that it can meet its carrier-of-last-resort requirements and universal service obligation in the areas it serves.

Embarq's Interim Access Unification Proposal would make significant progress toward the Commission's goals for intercarrier compensation reform. The Commission established its goals for intercarrier compensation reform : (1) encourage investment in telecommunications networks and the development of efficient competition; (2) preserve universal service; (3) achieve competitive and technological neutrality; and (4) minimize regulatory intervention and enforcement.[8] In establishing these goals, the Commission noted general agreement on the goals among parties commenting on the record (while acknowledging differences among commenters on specific goals).

The effect of Embarq's plan would be to end access arbitrage, reduce disputes, simplify rates, and reduce costs, while protecting universal service and rural investment. Embarq's

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7 *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers*, Public Notice, WC Docket No. 08-152, DA-08-1725 (Jul. 24, 2008).

8 *Intercarrier Compensation Further Notice* at ¶¶ 31-33.

switched access rate unification plan would be an interim step. It is simple, easily implemented, and does nothing to limit the Commission's future rulemaking options. In the meantime, it provides public interest benefits and preserves Embarq's ability to continue to provide quality services to its customers, until the Commission can complete comprehensive intercarrier compensation and universal service reform. Embarq's petition is carrier-specific, although Embarq believes the Commission may agree it is also appropriate for other rural price cap carriers who find themselves similarly situated.

I. UNIVERSAL SERVICE HISTORICALLY RELIED ON IMPLICIT SUBSIDIES, AND IT REMAINS RELIANT ON INTRASTATE SWITCHED ACCESS REVENUES, ESPECIALLY IN RURAL AREAS.

Telecommunications markets are undergoing seismic changes through competition, technological substitution, and deregulation. Although these changes are generally quite positive for the nation, they have not been matched to date with necessary reforms to the access charge and universal service support structure that made high-quality, affordable telephone service to nearly all residents of the United States of America, no matter how remote their residence. A system of interstate and intrastate access charges remains the primary mechanism whereby universal service was established and has been maintained. Until it is replaced by a comprehensive new regime, the access charge system remains essential to economic stability and investment incentives in high-cost and rural service areas. Just as implicit subsidies were key to ensure investment in telephone networks in rural areas, switched access revenue is key to universal service—both in maintaining the highest level of service and reliability for all consumers and in making it possible to extend broadband availability outside of rural towns. It is important to understand how access charges developed before considering both how the Commission should respond to competition, arbitrage and eroding support for universal service and how it should act to reduce the growing problem of regulatory arbitrage and disputes in the transition period until comprehensive intercarrier compensation and universal service reform is completed and implemented.

A. Rate-of-return interstate switched access charges.

Until 1984, AT&T operated both local and long distance telephone companies. Additionally, hundreds of smaller, independent ILECs provided local services to primarily rural areas and interconnected with AT&T's long distance operations to complete interexchange calls. Under that system, AT&T compensated ILECs for access services through a complicated system of separations and settlements administered by AT&T. In 1984, the Bell System was broken up following settlement of an antitrust suit brought by the United States Department of Justice.[9]

Due to the newly separated intrastate and interstate operations of the Bell System, the Commission and state regulatory commissions established a system of interstate and intrastate switched access charges that replaced the systems in place prior to divestiture. Access charges permit ILECs to recover the costs of allowing the long distance companies to originate and terminate long distance calls on local exchange networks. The Commission established interstate access charges and required each ILEC to file tariffs, specifying the rates, terms, and conditions under which they would provide switched access to long distance companies.[10] This allowed local carriers to recover a portion of their regulated costs allocated to the interstate jurisdiction. At the same time, ILECs also introduced in their state tariffs charges for intrastate switched access, which were the counterpart to interstate switched charges. Intrastate switched access charges, however, recovered a portion of the intrastate costs of the local network.

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9 *United States v. American Tel. & Tel.. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub. nom. Maryland v . United States*, 460 U.S. 1001 (1983).

10 *Investigation of Access and Divestiture Related Tariffs*, 97 FCC 2d 1082, ¶ 69 (1983).

Usually, intrastate switched access rates have been set at levels designed to achieve universal service and other state policy goals.

B. Price cap regulation.

The Commission adopted price cap regulation in 1991 as a way to improve regulation of access rates,[11] and provide incentives that would encourage incumbent LECs to become more efficient, while ensuring that rates remained within a zone of reasonableness.[12] The price cap mechanism itself, including the pricing flexibility that it afforded carriers, was designed to resemble more closely the way prices behave in competitive markets (something the current spread between interstate and intrastate access rates assuredly does not do). Price cap regulation was intended to be a transition until market forces could replace rate regulation altogether.[13]

Today, the essence of price cap regulation is that ILEC rates, including access charges, are limited so that total revenues within a basket, the actual price index ("API"), cannot exceed the price cap index ("PCI") as determined by a formula based on historic demand figures. There are also limits on how much individual rates for similar services can be raised or lowered. The price cap mechanism was made mandatory for Bell Operating Companies ("BOCs") and GTE. Any other incumbent LEC could voluntarily opt into price caps, but once the election was made it was permanent.[14] A small number of carriers voluntarily opted into price caps, including

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[11] *See Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990) ("*LEC Price Cap Order*").

[12] *Id.* at ¶¶ 2-4.

[13] *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, ¶ 64 (1995) ("*1995 Price Cap Review Order*").

[14] 47 C.F.R. § 61.41(d).

Embarq's predecessor company, Sprint Corporation.[15] The Commission failed, however, to tailor its regulations to take into account the unique needs of mid-sized and smaller carriers,[16] despite the fact that there was substantial evidence that smaller incumbent LECs required modified (and often relaxed) regulation.[17]

C. The 1996 Telecommunications Act and access reform.

The 1996 Telecommunications Act fundamentally altered the provision of telecommunications services in this country. In particular, it allowed competition for local exchange services for the first time.[18] The Act also directed the Commission to devise an explicit universal service fund and act to remove the implicit subsidies found in interstate rates to promote competition.[19] The Commission adopted rules to implement the pro-competitive provisions of the Act,[20] and competition began to grow as the mandatory local service monopolies disappeared. These pro-competitive steps, however, had no direct impact on interstate switched access charges, because these charges were specifically exempt from implementation regulations that promoted local competition.[21]

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15 Embarq Corporation formerly was the Local Telecommunications Division of Sprint Corporation, later Sprint Nextel Corporation. Embarq became a separate, independent company through a stock dividend to shareholders completed in May 2006.

16 *Price Cap Performance Review for Local Exchange Carriers*, Fourth Report and Order, 12 FCC Rcd 16642 (1997) ("*1997 Price Cap Review Order*").

17 Reply Comments of ITTA, CC Docket No. 94-1, at 2 (Apr. 17, 2000).

18 47 U.S.C. §§ 251-253.

19 47 U.S.C. § 254(e).

20 *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report & Order, 11 FCC Rcd 15499, ¶ 3 (1996).

21 47 U.S.C. § 251(g).

As the Commission began to implement the 1996 Telecommunications Act, it also adopted reforms to the price cap rules pursuant to an agreement reached among most price cap ILECs and long distance carriers to reform interstate access submitted by the Coalition of Local and Long Distance Service providers, dubbed CALLS.[22] The Commission adopted the *CALLS Order* in 2000, based on this recommendation. The CALLS plan was designed to be a transition plan that would solve a number of contested issues, until more permanent reforms could be made to intercarrier compensation in general. The *CALLS Order*, adopting the CALLS plan in modified form, incorporated this transitional aspect. [23]

Among other things, the *CALLS Order* made significant reductions in per minute switched access charges, and created an explicit support mechanism—Interstate Access Support ("IAS")—to replace the revenues lost from removing some (but not close to all) implicit support for carrier-of-last-resort obligations. The IAS fund was capped at $ 650 million, and was divided among price cap carriers in accordance with a complex formula established in the rules.[24] Certain provisions that were made part of the CALLS plan that were designed to accommodate mid-sized and small price cap carriers, such as Embarq.[25] Embarq's rate of $0.0065, while slightly higher than the RBOC rate of $0.0055, is the lowest among rural carriers. On the other hand, the CALLS plan also adopted relatively uniform rates across each carrier's study areas,

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22 The CALLS Proposal was first submitted in July 1999. *See* Letter from John Nakahata, Counsel to CALLS, to Magalie Salas, Secretary, FCC, CC Docket Nos. 96-262, 94-1, 99-249, 96-45 (filed July 29, 1999; resubmitted Aug. 20, 1999). CALLS submitted a modified proposal in 2000. Letter from John Nakahata, Counsel to CALLS, to Magalie Salas, Secretary, FCC, CC Docket Nos. 96-262, 94-1, 99-249, 96-45 (filed Mar. 8, 2000).

23 In a separate proceeding, the Commission solicited comment on the need for comprehensive intercarrier compensation reform. *Intercarrier Compensation Notice*.

24 47 U.S.C. §§ 54.801, *et seq.*

25 For example, smaller carriers could set their average switched access rates at $ 0.0095 instead of the $0.0055 BOC rate. *CALLS Order* at ¶ 142.

despite the fact that the underlying costs can vary dramatically. While this produced acceptable results during a transition mechanism, it has increasingly become problematic. Simply put, over time, regulation should allow revenue and support flows to correspond to underlying costs and averaging access charges across study areas can violate this principle. Accordingly, Embarq proposes that access charges be reformed to reflect individual company circumstances going forward, including during the pendency of its Interim Access Unification Proposal.

D. Continued state reliance on intrastate access charges.

As all of this regulatory activity occurred throughout the decades of the 1990s and 2000s, many states have made little change to intrastate switched access charges. Although several states implemented changes that set intrastate switched access charges at rates that mirrored interstate rates, and certain interstate rate structures were correspondingly introduced at the state level, the level of intrastate switched access charges in each state has remained relatively stable throughout this time period. To date, the Commission has recognized that Section 254(e) of the Communications Act expects that implicit subsidies should be replaced with explicit support.[26] Nevertheless, with few exceptions, little has been accomplished at the state level to eliminate universal service subsidies that have been included in intrastate access rates over time and to address recovery of support from other means, such as increased local exchange rates or a state universal service fund.

II. SWITCHED ACCESS REVENUE IS ESPECIALLY IMPORTANT FOR A RURAL CARRIER LIKE EMBARQ.

Although some in the industry fail to acknowledge it, in the absence of comprehensive intercarrier compensation and universal service reform, access charges remain a critical part of

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[26] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, 18 FCC Rcd 22559, at ¶ 22 (2003).

the foundation for universal service in rural America. Embarq must serve uneconomic areas, and at geographically averaged rates. Access revenues account for the large majority of support for operating, maintaining, and upgrading the public switched telephone network ("PSTN") in high-cost and rural areas. As a universal service funding source, reliance on access revenues predates the 1996 Act and creation of the universal service fund.

Embarq is an independent incumbent local carrier and traces its roots to an Abilene, Kansas phone company organized in 1899 to offer communications services in rural areas. Today, Embarq is the largest carrier in that class, with approximately 6 million access lines. It provides service through 19 local operating companies, in 21 study areas, and serves non-contiguous service territories spread out widely in portions of 18 states. In 17 of its 18 states, and all but one of its study areas, Embarq is classified as a rural telephone company, as defined by the Communications Act.[27] Among states in which Embarq operates, only a minority have made any significant progress in reforming the implicit subsidies that have, for years, been critical to support universal service. At the same time, because it is a mid-sized ILEC, Embarq receives comparatively little federal or state universal service support compared to that received by smaller carriers serving similar low-density, high-cost areas.

Access charges have been in place since the 1984 divestiture that broke apart "Ma Bell". With respect to the independent ILECs that had not been part of the Bell System, such as the

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[27] A "rural telephone company " is a local exchange carrier operating entity that (1) provides common carrier service in a study area that does not include either an incorporated place of 10,000 inhabitants or more or any territory including any urbanized area as defined by the Census Bureau as of August 10, 1993; (2) provides telephone exchange service to fewer than 50,000 access lines; (3) provides telephone exchange service to any study area with fewer than 100,000 access lines; or (4) has less than 15 percent of its access lines in communities of more than 50,000 as of date of enactment of the Telecommunications Act of 1996. 47 U.S.C. § 153(37). Embarq is rural according to this definition in 18 of its 19 operating companies, accounting for 20 of its 21 study areas. Embarq is classified as non-rural carrier only in the State of Nevada, where it provides service in the Las Vegas metropolitan market.

Embarq Local Operating Companies, access charges replaced the settlements regime that had been in place for the better part of a century, by which support flowed from the Bell System to the independent ILECs to help compensate them for fulfilling carrier-of-last-resort mandates in low density areas not served by the Bell System.[28] Although the federal and state switched access rules have changed periodically, those rules have basically provided that each carrier should charge rates for switched access at both the state and federal levels based on its costs (averaged across the relevant study area), or on a reasonable surrogate of its costs. Switched access charges were intended to allow the local telephone company to recover a portion of the costs of the local network, together with local service revenues and implicit and explicit universal service support.

Switched access revenue was then, and remains now, a critical and integral part of the overall compensation system that has ensured investment in local network infrastructure, and it has provided the platform for the many other services that utilize and depend on this network. Dramatic shifts in compensation, technology, competition, and universal service support—indeed the very way in which telecommunications, data, and video services are provided to the public—have created challenges that increasingly undermine the switched access charge mechanism's ability to fulfill its critically important function of ensuring economic investment, supporting a vital network, and providing universal service.

These significant changes have affected Embarq and other price-cap rural ILECs disproportionately. They threaten Embarq's ability to invest in rural network infrastructure, upgrade and maintain its local network to provide voice and broadband services, and meet its

[28] With respect to the local Bell Operating Companies, access charges replaced the regulatory accounting mechanisms that also used long distance rates in high-density areas (which was in effect for everyone, as a matter of fact) to provide substantial support for the high cost of carrier-of-last-resort service in low-density areas.

carrier-of-last-resort obligations. Embarq's competitors do not face these obligations, even though they necessarily rely on and benefit from Embarq's ubiquitous network in providing their competing service in rural areas.

Telecommunications services account for 91 percent of Embarq's regulated revenue. Interstate and intrastate access together account for approximately 13 percent of Embarq's regulated revenues. The total amount of its switched access revenues, including local service, access, and reciprocal compensation, all contribute to the ability to build network infrastructure necessary to deliver local telephone services. Intrastate access charges alone account for 8 percent of regulated revenues nationwide, a figure which is much higher than Embarq's combined federal and state universal service support, which reaches only 5 percent of regulated revenue. The overall revenues associated with access have been at risk due to line loss from competition in low-cost service areas, and from rapidly growing regulatory arbitrage and unresolved disputes over intrastate switched access charges have been rising. Preserving access revenues is essential to ensure that Americans in all areas of the country, including those in rural areas, receive quality services. These rural service territories face unique burdens in building out and maintaining infrastructure and expanding broadband deployment. Switched access revenue remains the principal foundation for universal service support for Embarq, given its rural service territories and the fact that it receives relatively little USF support, primarily as a result of the flawed and now-outdated study-area averaging mechanism.

Given these facts, Embarq's intrastate switched access rates have remained (with a few exceptions) significantly higher than its interstate switched access rates. It is that differential between interstate and intrastate switched access rates that Embarq's petition uniquely seeks to resolve. It does not solve the problem permanently, but provides a good interim step until comprehensive reform is completed and implemented.

III. COMPETITION HAS INCREASED DRAMATICALLY IN EMBARQ'S SERVICE AREAS, CREATING REAL THREATS TO UNIVERSAL SERVICE.

No one disputes that the telecommunications industry has changed markedly since interstate and intrastate switched access charges were created. The market for telecommunications services is now largely subject to significant competition, especially in urban and suburban areas. Despite being a rural carrier, in 17 of its 18 states, fully 43 percent of Embarq's total access lines are in markets subject to pricing flexibility pursuant to FCC rules.[29] Based on demonstrated, facilities-based competition in these markets, Embarq has received pricing flexibility, for example, even in relatively small, low-density markets like Rocky Mount, North Carolina; Lima, Ohio; and Johnson City, Tennessee.[30]

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[29] 47 C.F.R. § 69. 701, *et seq.* An ILEC is permitted to price access service flexibly if it meets the competition triggers identified in the rules. Deregulation of access is permitted in accordance with two Phases. Phase I entitles a carrier to introduce volume and term discounts without cost support and contract tariffs. Phase II allows a carrier to avoid Part 69 rate structure, price cap regulation, and a carrier may file tariff revisions on one days' notice. 47 C.F.R. § 69.727. Dedicated transport and special access services other than channel terminations between LEC end offices and customer premises may obtain Phase I deregulation if 15 percent of wire centers are served by at least one collocated carrier using these services, or if that competitor is collocated in wire centers that comprise at least 30 percent of carrier access revenues and at least one competitor is using non-ILEC transport services. Phase II requires collocation in 50 percent of wire centers, or wire centers that comprise 65 percent of the petitioner's revenues. 47 C.F.R. § 69.709. Channel termination pricing flexibility requires competitive collocation in at least 50 percent of wire centers or 65 percent of revenues for Phase I relief and 65/85 percent for Phase II flexibility. 47 C.F.R. § 69.711. Common line, traffic-sensitive and tandem-switched transport flexibility is obtained if its competitors offer services to at least 15 percent of the carrier's customer locations. 47 C.F.R. § 69.713. The Commission has not yet defined Phase II triggers for this category of access services.

[30] *Petition of the Embarq Local Operating Companies for Phase I and Phase II Pricing Flexibility for Special Access and Dedicated Transport Services in the Lima, Ohio and Mansfield, Ohio Metropolitan Statistical Areas and Phase I and Phase II Pricing Flexibility for Channel Termination Services in the Lima, Ohio Metropolitan Statistical Area*, 22 FCC

Customers now utilize their wireless phones for voice and data, substituting these services for those that they traditionally have obtained through the ILECs' networks.[31] In addition, customers increasingly are "cutting the cord" and obtaining their voice services solely through wireless connections, despite the fact that wireless services are more expensive, provide lower quality, and are far less reliable than wireline connections. Nationally, there are more wireless-only than wireline-only households, and the gap is growing. The Commission has already recognized that this increased competition from wireless carriers is sufficient to justify deregulation of key aspects of telecommunications services.[32]

Cable-based voice services, in particular, have dramatically changed the competitive landscape. VoIP-based service providers win a growing share of voice customers through provision of bundled offerings including video, voice and broadband services. This VoIP-based competition serves more than 15 million customers nationwide.[33] Moreover, the potential competition that VoIP actually represents is even greater than it appears, given that cable-based telephony, which nearly always also provides a broadband connection into households, is available to more than 70 percent of customers in Embarq's service territories—a percentage that continues to grow. Meanwhile, Embarq's costs to provide universal service in the lowest density

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Rcd 16651 (2007); *Sprint Local Telephone Companies Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 21 FCC Rcd 3412 (2006); *Sprint Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 16 FCC Rcd 11005 (2001).

31 Research and Markets recently noted that U.S. wireless subscribers have topped 250 million, with wireless-only households now outnumbering wireline-only households. *See* Wireless, *Communications Daily* at 17 (Jul. 18, 2008).

32 *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements,* WC Docket No. 02-112, 22 FCC Rcd 16440, ¶ 41 (2007).

33 Cable-based voice services, in particular, have changed the competitive landscape. VoIP-based service providers win a growing share of voice customers, especially through bundled video, voice, and broadband service offerings.

areas rises to unsustainable levels due to regulations—now outdated—that mandate geographic rate averaging.

Embarq is also losing access lines at a significant rate. Despite serving many areas that have grown faster than the national average, Embarq's total access lines declined by more than 4 percent in 2004, more than by 5 percent in 2005, and by more than 6 percent each in 2006 and 2007. It has lost nearly 1.9 million lines, out of 7.9 million, in little more than four years. This line loss is largely concentrated in low-cost areas that have been a historic source of implicit universal service subsidy, because unlike Embarq, its competitors are not required to serve high-cost areas. The reduction and pricing along with market share losses produce increasing erosion of implicit support for high-cost rural areas, as fewer low-cost customers provide revenue to support the lowest-density, high cost rural areas. This is further evidence that, although the 1996 Act produced benefits for urban, suburban, and many small town customers, the Commission urgently needs to reform intercarrier compensation to ensure the goal of universal service is realized for rural America.

IV. ACCESS CHARGE ARBITRAGE TO GAIN REGULATORY ADVANTAGE HAS INCREASED AND IS HARMING CONSUMERS.

Local exchange carriers face growing regulatory arbitrage aimed at avoiding the implicit subsidies in access charges. This arbitrage is particularly serious for ILECs that are predominately rural. Arbitrage exploits the different rates that apply to terminating traffic depending on classifications such as the type or jurisdictional end points of a call. For example, the termination of a call on a given loop can be charged as little as less than one-tenth of a penny per minute or as much as several cents per minute depending on the source of the call, even though the cost of providing the service varies little. Vibrant and fast-growing competition, coupled with resulting erosion of essential support for carrier-of-last-resort obligations, exacerbates the regulatory arbitrage problem by making it easier for carriers to engage in arbitrage, and by increasing the harms caused by arbitrage.

The artificial arbitrage that is caused by the current disparities in intercarrier compensation arrangements is harming competition and investment in many other ways. Network owners are experiencing increasing threats to their opportunity to recoup their investments as some users mischaracterize traffic and take advantage of loopholes to avoid lawful charges. The unpredictability and risk associated with arbitrage and competitive distortion, therefore, are harming network investment and innovation. In addition, because rural networks are even more dependent on intercarrier compensation than are networks in more densely-populated areas, the current problems are threatening universal service.

The current varying regimes for intercarrier compensation are also administratively costly and impose substantial overhead compliance burdens on providers. Substantial differences in the treatment of traffic create an expensive and uncertain process for resolving regulatory disputes over the proper treatment of traffic and the collection of monies owed. Indeed, the Commission and providers have expended countless hours and dollars disputing the appropriate treatment for particular types of traffic, such as in the *Level 3,*[34] *Sprint,*[35] *T-Mobile,*[36] and *AT&T Calling*

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[34] *Petition of Level 3 Communications LLC for Forbearance Under 47 U.S.C. Section 160(c) from Application of Section 251(g) of the Communications Act of 1934*, WC Docket No. 03-266, *withdrawn*, Letter from John T. Nakahata, Counsel to Level 3 Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 21, 2005).

[35] *Sprint Petition for Declaratory Ruling -- Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers*, CC Docket No. 01-92 (filed May 9, 2002).

[36] *T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Report & Order, 20 FCC Rcd 4855 (2005).

Card[37] proceedings, among others. Moreover, the ability to dramatically reduce costs by reclassifying traffic presents some carriers using intercarrier termination services with an irresistible incentive to misclassify traffic, which further burdens the entire industry with costly monitoring and enforcement processes. This inefficiency and administrative uncertainty also threatens the Commission's goal of promoting broadband deployment, especially in rural areas, by increasing capital costs and diverting funding away from new broadband projects to offset reduced support for traditional carrier-of-last-resort obligations.

The risk to switched access revenues as a result of this arbitrage and various self help measures taken by access customers is taking a serious toll on Embarq. There is no doubt that there have been a growing number of access charge disputes and regulatory arbitrage given the variance between interstate and intrastate switched access rates. For instance, some carriers have argued that calling card calls are enhanced services in order to avoid paying intrastate access rates.[38] Some carriers have wrongly claimed that the ESP exemption somehow applies to carriers routing what they allege to be VoIP-originated calls for termination on Embarq's network.[39] MCI began unlawfully short-paying terminating access on alleged VoIP-originated calls, mistakenly arguing calls originated using IP-technology should be deemed jurisdictionally

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37 *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services,* WC Docket No. 03-133, 20 FCC Rcd 4826, ¶ 15 (2005)("*Prepaid Calling Card Order*").

38 *Prepaid Calling Card Order at* ¶ 15; *Qwest Services Corp. v. FCC*, 509 F.3d 531, 536-37 (D.C. Cir. 2007).

39 For this reason, Embarq filed a petition asking the Commission to forbear from any application or enforcement of the ESP exemption to IP-to-PSTN voice calls, so as to prevent such mischaracterization of the ESP exemption. *See Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption*, WC Docket No. 08-8 (filed Jan. 11, 2008).

interstate even when they originate and terminate in the same state.[40] This practice continues by Verizon, its purchaser.

The nation's telecommunications markets can no longer tolerate the disruption produced by arbitrary distinctions between jurisdictions, customers, or technologies for performing the same service. The Commission should move to minimize arbitrage by adopting a uniform rate structure for traffic regardless of the identity of the service provider, the jurisdiction of the call, or the underlying technology (e.g., wireless, wireline, cable, etc.) with which the call was made.[41] Embarq's Interim Access Unification Proposal is a significant first step in that direction. In particular, Embarq's proposal would address the most serious problem—the disparity between interstate and intrastate rates.

V. THE COMMISSION SHOULD GRANT WAIVERS TO ALLOW EMBARQ TO UNIFY INTERSTATE AND INTRASTATE SWITCHED ACCESS RATES.

Embarq is a predominately rural carrier, and it and the areas it serves suffer harm because of regulatory arbitrage of access charges. That arbitrage threatens the ability of rural carriers to continue investing in their high-cost areas. The benefits of competition and deregulation brought about by the 1996 Act, because of abuse of current intercarrier compensation rules, are benefitting urban and suburban customers at the expense of many rural consumers. Embarq

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[40] Embarq local operating companies have brought three proceedings against Verizon's long distance affiliates for failure to pay Embarq's tariffed intrastate access charges due on ostensible IP-originated calls and/or on enhanced prepaid card calls. *See Complaint Against MCI Communications Services, Inc. d/b/a Verizon Business Services for Failure to Pay Intrastate Access Charges Pursuant to Embarq's Tariffs, by Embarq Florida, Inc.*, Docket No. 080308-TP, Fla. Pub. Serv. Comm'n (filed Jun. 26, 2008); *Embarq Missouri, Inc., et al. v. MCI Communications Services, Inc. d/b/a Verizon Business Services*, Civ. No. 1:08cv668 (E.D. Va., filed Jun. 27, 2008); *United Telephone Southeast, LLC, Central Telephone Co., and United Telephone of the West v. MCI Communications Services., Inc. d/b/a Verizon Business Services*, Case No. 50654, Cir Ct. Loudoun Co., Va. (filed Jun. 27, 2008).

[41] Embarq notes that ISP-bound traffic is not within any intercarrier compensation regime, because the ISP/competitive LEC does not terminate the call.

proposes on an interim basis to unify its interstate and intrastate switched access rates to address the arbitrage it faces and to protect the services it provides to rural communities across the country.

A. Embarq would adjust interstate and intrastate switched access rates to achieve a unified rate by study area.

Embarq requests waivers of Commission rules as needed to allow Embarq conditionally to modify its interstate pricing, irrespective of the Commission's price cap rules. Specifically, conditioned on state tariff approvals, Embarq would be permitted to adjust its interstate switched access rates so as to make them equal to correspondingly reduced intrastate access rates, to the extent applicable,[42] in each study area.[43] Embarq also asks that the Commission waive the rules to permit it to reset, if necessary, its PCIs, APIs, and SBIs on a one-time basis in order to accomplish the unification rate changes.[44]

The implementation of interstate rate changes would be conditioned on implementing a corresponding downward intrastate rate adjustment, to be obtained by Embarq upon approval of this Petition. No state authority is limited or preempted. The adjustments would be made on a revenue neutral basis for each local operating company and within each study area.

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[42] To the extent rate elements differ between the intrastate and interstate jurisdictions, Embarq proposes to ensure overall revenue neutrality within each local operating company and study area as a result of access unification. Embarq would unify the overall average traffic sensitive rate ("ATS") between the intrastate and interstate jurisdictions.

[43] Although Embarq identifies specific sections which require waivers, Embarq also requests that it receive waivers of any associated rules and orders which may also need to be waived to accomplish its access unification proposal.

[44] PCIs are adjusted in accordance with Sections 61.45(a), (b), (c), & (i). APIs are adjusted in accordance with Sections 61.46(a) & (c), and SBIs are adjusted in accordance with Sections 61.47(a), (e) & (f). Embarq commits to working with the Commission staff to demonstrate on a pro-forma basis that the one-time adjustment is made by study area on a revenue neutral basis only in order to accomplish the rate unification permitted by the waiver. The eventual interstate adjustments would of course be conditional on the state rate changes anticipated under this waiver becoming effective and final.

The resulting unified switched access rates are certainly reasonable for a carrier with Embarq's chiefly rural service profile. The impact of these interim rate changes is illustrated in Exhibit B, which shows by study area the current interstate and intrastate revenues per minute by study area, and the resulting unified rate. By unifying interstate and intrastate switched access rates in this way, intrastate rates would decline in 18 of Embarq's 21 study areas and increase only very slightly in the other three.[45] In a dozen of Embarq's study areas, intrastate switched access rates would be cut by half or more.

The resulting unified rates compare favorably overall to Track 2 rates proposed in the Missoula Plan for rural carriers. The weighted average of Embarq's unified rates under this proposal is just $ 0.0134 per minute.[46] In study areas where the unified rate is higher, the Embarq local operating company is comparable to a NECA carrier, and a high unified rate is appropriate and would be expected. Embarq's unified rate involves a significant increase from current interstate rates for most study areas, but its current interstate switched access rates are generally unrealistically low. In some instances, Embarq's interstate switched access rate is below its TELRIC reciprocal compensation rate.

B. Embarq would set an initial ATS rate for each study area.

Currently, the Commission's price cap rules constrain Embarq's pricing flexibility if its rate changes would exceed the average traffic sensitive rate ("ATS"). Embarq asks the Commission to waive the rules on a one-time basis to allow the unification changes without

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45 Intrastate rates would rise slightly in three Embarq study areas, those which have reduced intrastate switched access rates slightly below interstate levels. Two study areas would increase by $0.0003, while the remaining study area would experience an increase of $0.0009.

46 For comparison, AT&T is an urban carrier. Its Access Unification Petition would take originating access rates up to $0.0095, and not unreasonably. Embarq's weighted average compares favorably, given its rural service territories. The rate for some study areas would actually be lower than AT&T's.

making the evidentiary showings mandated by the rules. Embarq also asks that the Commission waive its rules to permit Embarq to have an ATS set at the unified rate for each Embarq study area.[47] Once the ATS rate has been reestablished for each study area, Embarq would comply with Section 61.45(i)(3), and any subsequent rate changes would be maintained at the then-current ATS level.

C. Waiver would be conditioned on state tariff approval applicable to each study area.

The waiver would be conditional on Embarq's action pursuant to state law to introduce unified prices for the corresponding intrastate switched access rates. Once the instant waiver petition is granted and effective, Embarq would immediately take steps to implement intrastate rate changes in accordance with state law procedures. Embarq would seek to make the corresponding changes by filing new tariffs for each of the local operating companies.

Embarq expects that rate change filings in these states would take approximately three to six months to accomplish, although this time frame would be longer in any state where such changes were contested in accordance with state procedures. Embarq expects that making rate changes in some states could require a waiver proceeding or other procedure to permit Embarq to make the proposed changes. Notwithstanding the procedure or time frame that needs to be followed in any particular state, federal rates would continue to be set in accordance with existing procedures until such state rate adjustment is complete. Once a particular study area's

[47] *See* 47 C.F.R. § 61.3(qq)(3). Embarq commits to working with the Commission staff to demonstrate on a pro-forma basis that the one-time adjustment is made for each local operating company on a revenue neutral basis only in order to accomplish the rate unification permitted by the waiver. The eventual interstate adjustments would of course be conditional on the state rate changes anticipated under this waiver becoming effective and final.

intrastate unified, switched access rates become effective and final,[48] Embarq would modify its interstate rates in that study area to complete the access unification proposal in a manner to make the unified interstate and intrastate switched access rate effective simultaneously.[49] Each operating company would implement its unified access rate independently, as soon as practical after its state approval is received.[50]

D. Unified rates initially would be determined based on 2007 data.

Individual unified switched access rates would be determined based on calendar year 2007 total interstate and intrastate switched access revenues and minutes of use. Thus, interstate and intrastate data would be combined in a particular study area and divided by the total interstate and intrastate minutes.[51] Embarq anticipates that the resulting intrastate and interstate ATS rates[52] would be equal in each study area. The resulting unified rates would be adjustable in future years in accordance with federal price cap rules and associated state rate requirements; however, the same adjustments would be made to both interstate and intrastate rates at

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[48] Finality means that the tariffed rate proposals are no longer subject to challenge under state procedures, such as the denial of an opposition or petition to deny a proposed tariff change, or the termination of a state-initiated investigation of the proposed tariffed rate.

[49] This step would be undertaken individually for each of the 19 relevant local operating companies and 21 study areas.

[50] For tariff administration simplicity, Embarq anticipates that it may implement federal rate changes in groups as intrastate rate approvals occur.

[51] Given that the Part 36 category relationships and jurisdictional cost allocation factors have been frozen for a number of years, and the fact that separation of costs and revenues have become virtually irrelevant for price cap carriers, Embarq anticipates that no waivers of separations rules are required at this time. *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, 16 FCC Rcd 11382 (2001); 21 FCC Rcd 5516 (2006).

[52] For simplicity's and uniformity's sakes, Embarq will target a basket of switched access rates using the same definition as used under the CALLS ATS rates. *See* 47 C.F.R. § 61.3(e).

approximately the same time.[53] In order to expedite the Interim Access Unification Proposal, Embarq asks the Commission to approve the unified rates identified in Exhibit C for each local operating company study area. Embarq will provide the Commission with whatever additional supporting documentation the Commission may request to approve these proposed rates in accordance with this proposal.

E. Embarq's Interim Proposal would not affect end user rates or Universal Service Fund assessments.

Embarq recognizes the Commission's likely concern about the impact that access charge unification might have on consumers. Embarq's proposal would serve to protect consumers from rate increases during the interim period until comprehensive reform is implemented. In particular, there would be no impact on federal common line elements such as the federal subscriber line charge ("SLC") and presubscribed interexchange carrier charge ("PICC").[54] In areas as sparsely populated as the 17 states where Embarq is classified as a rural carrier, it is not reasonable or feasible to require its end user customers to pay an even greater share of the cost of carrier-of-last-resort service. SLC increases would have to be so substantial that they ultimately could not be an effective source of support. Customers in lower-cost towns would rationally seek to avoid the cost of providing increased universal service support by switching to a cable or wireless provider for primary line voice services—carriers that do not face carrier-of-last-resort obligations.

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[53] At the present time, it does not appear to Embarq that there is any conflict between the state and interstate rules that would prevent rate changes in a unified fashion. However, if an anomaly between specific federal and state rules arises in the future, Embarq would seek a further waiver of the federal or state rules at that time in order to maintain access rate unification.

[54] SLCs are currently capped at \$ 6.50 per line (\$ 7.00 nonprimary), 47 C.F.R. §§ 69.152(d)(1), (c)(1). PICCs are currently capped at \$ 9.20 per line. 47 C.F.R. § 69.152(k)(1).

Embarq believes this Interim Access Unification Plan should have no impact on the current Universal Service Fund ("USF"). Once Embarq reallocates its interstate or intrastate revenues in a study area, as the case may be, its IAS calculations will remain unchanged because Embarq's average price cap CMT revenues would not change to accomplish the rate unification adjustments. Embarq's petition thus will not have any effect on federal USF, and Embarq believes it petition would have no impact on state USF.

VI. EMBARQ MEETS THE LEGAL STANDARD FOR WAIVER.

The Commission has clear authority to waive its rules at any time "for good cause shown."[55] The Court of Appeals for the D.C. Circuit has explained that "[t]he FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."[56] A showing of specific hardship is not necessary to justify grant of a waiver.[57] Given the unique operating conditions of Embarq, the dramatic shifts which have occurred in the industry, the need to preserve access revenues to promote underlying Commission policies, and the public interest all support granting Embarq a waiver of the enumerated rules identified in Section IV, above.

A. Embarq needs waiver to protect universal service in its rural service areas.

Embarq, and the rural areas it serves, face a critical need for the above-described waivers. Embarq's operating companies, with just one exception, are rural telephone companies that serve small to medium-sized towns, small cities, and many far lower density rural areas. Many of its study areas have average line densities below 12 per square mile; one entire study area has a

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[55] 47 C.F.R. § 1.3. *See WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (DC Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[56] *Northeastern Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[57] *Rochester Telephone Corporation, Petition for Waivers to Implement its Open Market Plan,* Order, 10 FCC Rcd 6776, ¶15 (1995) ("*Rochester Waiver Order*").

density of just 3 lines per square mile. Despite this rural profile, Embarq operates principally as a price cap carrier at both the federal and state levels. Embarq is fully price subject to federal price cap regulation and is subject to alternative or state price cap regulation in all but 3 of its 18 states.[58] Price cap regulation governs rates for more than 95 percent of its customers. In particular, regulatory averaging of rates has caused interstate access rates to fall below costs for several of Embarq's local operating companies.

At the same time, Embarq's intrastate switched access rates necessarily are still generally much higher than its interstate rates, and there is little likelihood in the near future that it will be able to take steps wholly at the intrastate level to reduce intrastate rates and maintain its universal service support obligations. Embarq receives comparatively little USF support, even though its carrier-of-last-resort obligations in rural areas make it particularly vulnerable if its switched access revenue streams are interrupted or undermined.[59] Therefore, Embarq is uniquely in need of the conditional waivers it has requested to effectuate access unification. However, its situation has little potential of creating adverse effects if Embarq's petition is granted.

B. Granting Embarq's waiver petition is in the public interest.

Granting Embarq's conditional waivers would be in the public interest for five reasons:

1. Embarq's waiver would reduce regulatory arbitrage and disputes.

First, grant of the waivers would significantly reduce regulatory arbitrage by customers who either misreport or conceal the true identity of traffic that traverses Embarq's network. The

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[58] Embarq is subject to rate of return regulation at the state level in just three of its smallest study areas, representing only a very small share of its total access lines, fewer than 350,000 of 6 million. The large majority of those lines are in New Jersey, where Embarq's alternative state price cap regulation plan is under review.

[59] Embarq does not have any facilities-based long distance operations, but provides long distance services largely through resale of other carrier services. As such, there is no chance that it can create a competitive advantage for long distance services through cross-subsidy or a price squeeze.

Commission has said many times that regulatory arbitrage is a serious problem, requiring reform of intercarrier compensation.[60] As the Commission is aware, regulatory arbitrage is a serious problem, and particularly acute for Embarq because of its rural territories and consequent higher intrastate switched access rates. The problem is growing every day that nothing is done to resolve it. Regulatory arbitrage reduces the total amount of revenues that should be received to cover costs of providing access services. It also complicates rate setting regulations because Embarq is unable accurately to predict accurate traffic patterns, capacity needs, and costs necessary to provide the tariffed services. Establishing unified switched access rates reduces the harm that regulatory arbitrage causes. It also reduces the growing number of disputes associated with the difference in interstate and intrastate access rates.

2. Embarq's waiver would promote universal service and rural investment.

Second, grant of the waiver would promote universal service, because it would protect Embarq's switched access charge revenues that are needed to build out and maintain its local network, while promoting greater broadband deployment in rural areas. As Embarq has explained, a significant percentage of its revenue comes from access revenues, and specifically intrastate switched access revenues.[61] At the same time, only approximately 5 percent of its revenues are derived from federal universal service support. Thus, preservation of switched access revenues is particularly important to Embarq and its customers and the integrity of its local infrastructure and broadband development. The added advantage of granting the waivers is that universal service would be served without placing significant new strain on the USF. Embarq's plan would thus provide continued support for carrier-of-last-resort obligations and

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[60] *Intercarrier Compensation Notice* at ¶ 11; *Intercarrier Compensation Further Notice* at ¶ 3.

[61] *See* Section II, *supra*.

ensure that its switched access revenues can recover relevant costs of building out and maintaining local network infrastructure.

3. Embarq's waiver would benefit consumers.

Third, grant of the waiver would protect consumers. Embarq's waiver would protect consumers from sharp increases in local service costs. The plan involves no increases in SLCs and PICCs. Embarq's end-user rates would be effectively unchanged. Embarq's access unification proposal would have less far impact on end user customers than other intercarrier compensation proposals that would impose large increases in consumer charges.[62] At the same time, Embarq's waiver would sharply reduce intrastate switched access charges to other carriers. As a chiefly rural carrier, Embarq's intrastate access rates are higher than those of urban ILECs. The reduced intrastate switched access rates would benefit carriers, and ultimately their end-user customers, by promoting greater competition for intrastate toll calling.

4. Waiver would help advance intercarrier compensation reform.

Fourth, Embarq's switched access unification plan would move reform of intercarrier compensation forward, at least in part, until other issues associated with global reform of both the intercarrier compensation and universal service can be resolved. The Courts have recognized that the Commission is fully within its power to take incremental steps to resolve regulatory issues.[63] The proposal is a simple, rational plan that would be easily implemented during this interim. Furthermore, switched access unification would not undermine fundamental reform, but would in fact provide the very breathing room the Commission needs to engage in the comprehensive analysis associated with these two fundamental telecommunications policies.

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[62] The Missoula plan, for instance, would increase SLCs by up to $ 3.50 for Track One carriers over a four-year period. *Missoula Plan*, Executive Summary, at 7.

[63] *Qwest Corp v. FCC*, 258 F.3d 1191,1205 (10th Cir. 2001)("*Qwest I*").

And by taking this interim step, the plan would not affect any other ILECs' switched access charge filings, thereby limiting the difficulty in achieving an industry-wide solution. Embarq's interim waivers would also avoid the concern about whether the Commission has the authority to exercise jurisdiction over intrastate switched access rates that has been one of the most significant legal issues associated with reform of intercarrier compensation.[64] Embarq would unify rates in a study area only if the state public utility commission allows it to adjust intrastate access rates to the unified level in accordance with the state's own procedures and policies. Therefore, state jurisdiction is not called into question under Embarq's waiver.

5. Waiver would reduce administrative costs.

Fifth, Embarq's operating, administrative, legal, and regulatory costs would decline because switched access rate unification would simplify its tariff filings and eliminate many of the issues associated with establishing separate rates for intrastate and interstate access. Switched access rate unification also creates a more stable and predictable system of levying access charges. Embarq would no longer be at the mercy of customer estimates of PIU factors because jurisdictional estimation or measurement of traffic would be less significant. What is more, customers would have significantly less motive to misreport traffic or PIU factors in the first place. Embarq could also consolidate the separate administrative and operational systems necessary to establish jurisdictionally separate access charges. And because unified rates would eliminate one of the circumstances that produce many of its current intercarrier compensation disputes, further cost savings would be achieved by avoiding these access disputes.

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[64] *Intercarrier Compensation Further Notice* at ¶ 78, *et seq.*

C. Embarq's waiver would provide the Commission useful lessons for broader intercarrier compensation reform.

After the Commission grants Embarq's petition, and allows it time to work, the Commission doubtless will want to see how Embarq's switched access rate unification proposal has performed. If it works effectively, as Embarq fully expects, it would be natural for the Commission to review its experience and confirm that the plan delivered benefits in reducing regulatory arbitrage, reducing disputes, lowering administrative costs, and providing greater simplicity.

Embarq's unification plan provides a useful opportunity to test and observe the benefits of unified switched access rates without burdening consumers or the federal high-cost fund. Granting Embarq's waiver could be a first step toward a future, complete unification of network access at an appropriate rate, as a potential component of comprehensive intercarrier compensation and universal service reform. At the same time, it does not restrict the Commission's options in addressing any aspects of intercarrier compensation or universal service, including treatment of IP-enabled services.

D. Conditional waivers are within the Commission's authority.

Grant of a waiver conditioned on the occurrence of another event is consistent with other waivers the Commission has granted. For example, in the 1995 *Customer First* decision, the Commission granted a conditional waiver to Rochester Telephone to permit it to charge a reseller end user charges if it sold a line to a reseller of local exchange services.[65] Grant and use of the waivers was conditioned on Rochester's opening up its network to local competition, something

[65] *Rochester Waiver Order* at ¶12.

which was not required at the time the waiver was granted.[66] Thus, grant of Embarq's requested conditional waivers is consistent with other actions the Commission has utilized.

CONCLUSION

Embarq supports comprehensive reform of intercarrier compensation and universal service. In the interim, however, the Commission should act to protect universal service in rural areas. Embarq's petition waiver provides a ready opportunity to do so. The petition is in the public interest. It is simple, is easy to administer, and can be implemented quickly. It would reduce regulatory arbitrage, minimize disputes, and reduce costs, while allowing the Commission an opportunity to advance reform through carrier-specific unification of switched access rates. The Commission should grant Embarq conditional waivers, on an interim basis, pending global intercarrier compensation and universal service reforms.

Respectfully submitted,

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August 1, 2008

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66 *See also Petitions for Waivers of Part 69 to Provide Resold Local Exchange Services and Unbundled Common Lines*, 12 FCC Rcd 18249 (Com. Car. Bur. 1997)(requesting ILECs were granted waivers to assess end user charges to resellers and to charge the per minute CCL charge on a flat-rated basis if a line was sold to a reseller of local exchange services).

Certificate of Service

I hereby certify that I have on this 1st day of August 2008 caused a copy of the foregoing "Petition for Waiver of Embarq" to be served by electronic mail upon the following:

Federal Communications Commission
Wireline Competition Bureau
Competition Policy Division
445 12th Street, S.W.
Washington, DC 20554
cpdcopies@fcc.gov

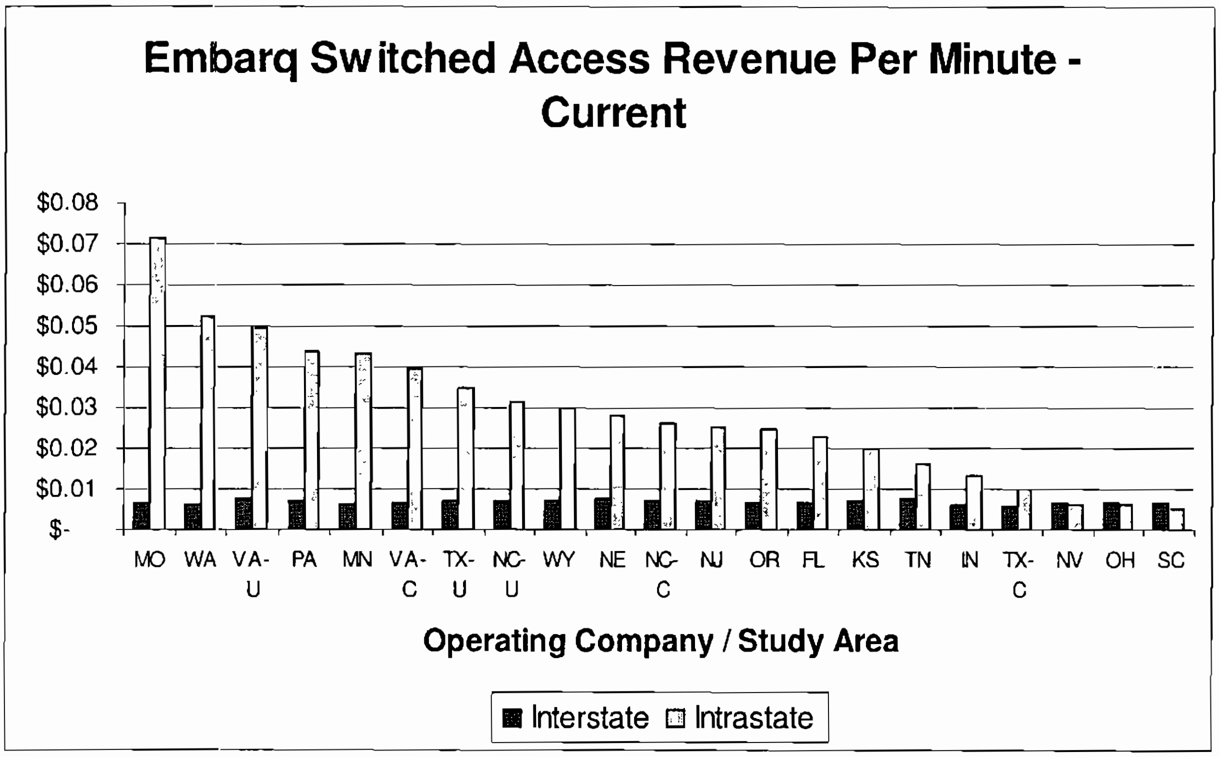
Best Copy and Printing, Inc.
Portals II
445 S.W. Twelfth St.
Washington, D.C. 20554
fcc@bcpiweb.com

Exhibit A

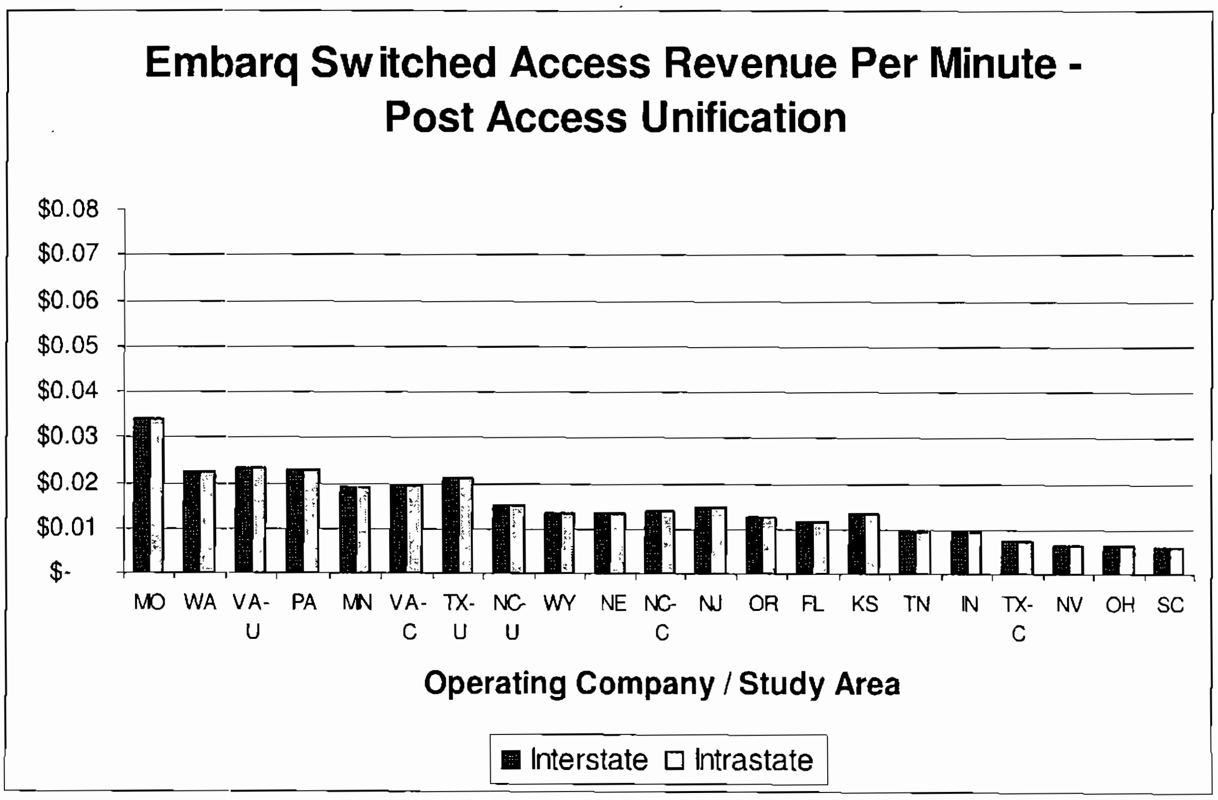
EMBARQ STUDY AREAS
OPERATING COMPANIES

Florida:	Embarq Florida, Inc.
Indiana:	United Telephone of Indiana, Inc. d/b/a Embarq
Kansas:	United Telephone Companies of Kansas d/b/a Embarq (includes the following): United Telephone Company of Eastern Kansas United Telephone Company of Kansas United Telephone Company of Southcentral Kansas United Telephone Company of Southeast Kansas
Minnesota:	Embarq Minnesota, Inc.
Missouri:	Embarq Missouri, Inc.
Nebraska:	United Telephone Company of the West - Nebraska d/b/a Embarq
Nevada:	Central Telephone Company - Nevada d/b/a Embarq
New Jersey:	United Telephone Company of New Jersey, Inc. d/b/a Embarq
North Carolina:	Carolina Telephone & Telegraph LLC d/b/a Embarq Central Telephone Company - North Carolina d/b/a Embarq
Ohio:	United Telephone Company of Ohio d/b/a Embarq
Oregon:	United Telephone Company of the Northwest - Oregon d/b/a Embarq
Pennsylvania:	The United Telephone Company of Pennsylvania LLC d/b/a Embarq
South Carolina:	United Telephone Company of the Carolinas LLC d/b/a Embarq
Tennessee:	United Telephone Southeast LLC - Tennessee d/b/a Embarq
Texas:	Central Telephone Company of Texas d/b/a Embarq United Telephone Company of Texas, Inc. d/b/a Embarq
Virginia:	Central Telephone Company of Virginia d/b/a Embarq United Telephone Southeast LLC - Virginia d/b/a Embarq
Washington:	United Telephone Company of the Northwest - Washington d/b/a Embarq
Wyoming:	United Telephone of the West - Wyoming d/b/a Embarq

Exhibit B



Embarq Switched Access Revenue Per Minute - Current
$0.08
$0.07
$0.06
$0.05
$0.04
$0.03
$0.02
$0.01
$-
MO WA VA-U PA MN VA-C TX-U NC-U WY NE NC-C NJ OR FL KS TN IN TX-C NV OH SC
Operating Company / Study Area
Interstate Intrastate



Embarq Switched Access Revenue Per Minute - Post Access Unification
$0.08
$0.07
$0.06
$0.05
$0.04
$0.03
$0.02
$0.01
$-
MO WA VA-U PA MN VA-C TX-U NC-U WY NE NC-C NJ OR FL KS TN IN TX-C NV OH SC
Operating Company / Study Area
Interstate Intrastate

Exhibit C

Embarq Local Operating Companies

Switched Access Rates

Access Unification Filing

Study Area	Interstate ATS	Intrastate ATS	Unified Rates ATS
MO	$0.0065	$0.0712	$0.0340
WA	$0.0062	$0.0525	$0.0222
VA-U	$0.0076	$0.0494	$0.0231
PA	$0.0069	$0.0438	$0.0226
MN	$0.0062	$0.0435	$0.0188
VA-C	$0.0065	$0.0393	$0.0194
TX-U	$0.0071	$0.0346	$0.0210
NC-U	$0.0072	$0.0317	$0.0150
WY	$0.0070	$0.0301	$0.0133
NE	$0.0075	$0.0281	$0.0135
NC-C	$0.0070	$0.0260	$0.0137
NJ	$0.0072	$0.0250	$0.0148
OR	$0.0067	$0.0245	$0.0126
FL	$0.0066	$0.0226	$0.0117
KS	$0.0070	$0.0198	$0.0132
TN	$0.0077	$0.0164	$0.0094
IN	$0.0064	$0.0133	$0.0094
TX-C	$0.0057	$0.0101	$0.0075
NV	$0.0067	$0.0064	$0.0066
OH	$0.0068	$0.0063	$0.0066
SC	$0.0065	$0.0052	$0.0061
Weighted Average	$0.0067	$0.0269	$0.0134