

**Exhibit No. \_\_\_\_\_**

**Cross Examination Exhibit**

**Christian M. Dippon**

Before the FCC  
WC Docket No. 08-160  
Reply Comments of Embarq  
(9-5-08)

**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	)	WC Docket No. 08-160
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.	)	

**REPLY COMMENTS OF EMBARQ**

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**REPLY COMMENTS OF EMBARQ**

**INTRODUCTION AND SUMMARY**

Nearly everyone agrees on two concepts: 1) the current intercarrier compensation regime is in dire need of an overhaul, and 2) any effective comprehensive solution will be complex. Embarq's access unification Petition is fully supported by the record as a valid interim mechanism to accomplish at least one meaningful first step in the admittedly complex process of intercarrier compensation reform.

Special access is critically important for a rural carrier like Embarq. Competition has increased dramatically, and that has undermined the implicit subsidies in switched access rates that remain the foundation for universal service in rural America. Regulatory arbitrage by competitors has increased and is harming consumers and threatening continued investment in the rural networks on which they depend. Granting Embarq's Petition for a conditional, limited waiver of price cap rules would largely resolve these problems by unifying its interstate and intrastate switched access rates, on a revenue-neutral basis by study area. It would do so without raising consumer rates or increasing universal service funding in the interim, and without

undermining state jurisdiction. It would promote universal service and rural investment, benefit rural consumers, reduce administrative costs, and help advance and inform intercarrier compensation reform.

Opponents of Embarq's proposal fail to produce any tangible arguments that militate against granting Embarq's proposal. Some argue that the Commission should reject interim reform, and just wait for anticipated, and presumably more perfect, industry-wide reforms. Adopting such complex reforms is obviously challenging, and may take time. Embarq's Petition would provide meaningful benefits until comprehensive reforms can be completed and implemented.

Some self-interested switched access customers oppose the Petition, because they want *all* ILEC switched access charges to be lower -- especially interstate rates. Embarq's proposal is revenue-neutral by study area. While most interstate switched access rates would rise, those increases would be offset by larger intrastate switched access rate reductions, and the Commission has used similar revenue neutral techniques to successfully address similar policy improvements. Some commenters contend that grant of interim waiver would undermine state authority, implicate separations factors, or be procedurally improper. On the contrary, Embarq's conditional waiver would not undermine state jurisdiction, it would require no separations rule changes, and would violate no procedural standards. Additionally, Embarq's proposal would ultimately benefit consumers and special access customers alike. Embarq's Petition amply meets the standards for waiver until the comprehensive reforms are completed.

**I. THE RECORD CONTAINS SIGNIFICANT SUPPORT FOR THE EMBARQ PROPOSAL, PARTICULARLY BY RURAL CARRIERS.**

The record contains significant support for Embarq's proposal. Most commenters agree that arbitrage is a significant problem. Commenters such as Frontier, CenturyTel, NECA, OPASTCO, WTA, and ITTA, all agree that the Commission should permit Embarq to protect the integrity of its switched access revenues.<sup>1</sup> In particular, ITTA argues that the Commission must protect the revenues which provide for a substantial amount of cost recovery for building and maintaining rural networks so that consumers can obtain affordable voice and broadband services. ITTA described Embarq's plan as a "thoughtful and creative response to the dual needs of ensuring the viability of networks serving high-cost and rural areas while simultaneously limiting potential adverse effects on consumers."<sup>2</sup>

**II. ACCESS UNIFICATION SHOULD BE PERMITTED AS A FIRST STEP IN ACHIEVING GLOBAL INTERCARRIER COMPENSATION REFORM TO ADDRESS THE URGENT PROBLEM OF UNECONOMIC ARBITRAGE.**

**A. The Commission Should Not Sacrifice the Good With An As Yet Illusory Hope of Perfection.**

Voltaire wrote that "The best is the enemy of the good."<sup>3</sup> This now modern maxim of management was no more true in the 18th Century than it is in the context of reform of

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<sup>1</sup> Comments of Frontier Communications, WC Docket No. 08-160, 1 (Aug. 26, 2008); Comments of CenturyTel, Inc., WC Docket No. 08-152, 7-8 (Aug. 21, 2008); Letter from Richard A. Askoff, National Exchange Carriers Association, Inc. ("NECA"), Stuart Polikoff, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Derrick B. Owens ("OPASTCO"), Western Telecommunications Alliance ("WTA"), to Marlene H. Dortch, FCC, WC Docket No. 08-160, at 1 (Aug. 26, 2008); Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 08-160, at 9 (Aug. 26, 2008) ("ITTA Comments").

<sup>2</sup> ITTA Comments at 2.

<sup>3</sup> Voltaire, *Dictionnaire Philosophique* (1764).

intercarrier compensation today. Those who argue that the Commission must holistically solve intercarrier compensation express the perfect. But there is a reason why issues surrounding intercarrier compensation reform have not been completely solved in the last seven years: they are complex. Embarq fully understands the reasons behind the delays and comprehends the difficult factual, legal, economic, and political issues which have prevented achieving a global solution. Notwithstanding, grant of Embarq's access unification waiver Petition is a good first step toward reaching an ultimate solution that can provide a good, workable framework from which a more perfect solution can be wrought. The journey of a thousand miles does indeed begin with one step.<sup>4</sup> And the Commission should take it.

Embarq is on record that the Missoula Plan is a viable comprehensive plan which can accomplish fundamental intercarrier compensation reform.<sup>5</sup> Thus, Embarq agrees with the commenters who ask the Commission to adopt quickly intercarrier compensation reform as presented in the Missoula Plan. However, if the Commission is not going to adopt fundamental reform now, then it should nonetheless move promptly to confront the most serious problems which exist in the industry with respect to intercarrier compensation. Almost none of the commenters disagree with the Commission's repeated conclusion that uneconomic arbitrage is an evil which must be remedied.<sup>6</sup> Adopting a strong rule against phantom traffic will help minimize abuse of the intercarrier compensation rules, reduce intercarrier disputes, promote a level competitive playing field, and protect rural consumers who rely on universal service that

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<sup>4</sup> Lau Tzu, Tao Te Ching (c. 6th Century B.C.)

<sup>5</sup> Reply Comments of Embarq, CC Docket No. 01-92, at 1 (Feb. 1, 2007).

<sup>6</sup> Feature Group IP is the lone wolf positing that arbitrage is a good thing. Comments of Feature Group IP, WC Docket Nos. 99-68, et al., at 6 (Aug. 21, 2008) ("Feature Group IP Comments").

remains dependent on access revenues.<sup>7</sup> But a phantom traffic rule cannot replace the real public interest good that can be accomplished by unifying switched access rates and therefore making a significant source of uneconomic arbitrage simply disappear.<sup>8</sup>

**B. Unifying Switched Access Rates Significantly Reduces the Arbitrage Problem And Provides A Rational First Step Toward Achieving Ultimate Reform.**

The most significant financial impact felt by uneconomic arbitrage is wrapped up in the disputes, and masked traffic, which seek to rate intrastate interexchange calls as interstate. This fact was amply demonstrated in Embarq's Petition.<sup>9</sup> And no one in the record adequately disputes this record. Because access rate unification would be only an interim solution, it does nothing to undermine providing more complete reform in the future. In fact, rate unification is a fundamental tenet of a comprehensive solution, so grant of this instant Petition is consistent with any comprehensive reform that the Commission likely may adopt. The argument that Embarq's proposal fails to solve all uneconomic arbitrage is not an argument against Embarq's interim proposal at all, but rather simply another way of arguing that the Commission adopt more comprehensive reform.

Embarq also demonstrated that achieving access unification as one step toward achieving ultimate intercarrier compensation reform is a good first step.<sup>10</sup> Grant of the waiver would stabilize switched access revenues, advance the policy of setting a single rate for intercarrier compensation, and would not undermine ultimate reform. The waiver would also not affect any

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<sup>7</sup> Letter from Glenn Reynolds, US Telecom to Marlene Dortch, FCC, CC Docket No. 01-92 (Feb. 12, 2008).

<sup>8</sup> Embarq Petition at 15.

<sup>9</sup> *Id.* at 16-17, 25-26.

<sup>10</sup> *Id.* at 27-28.



other carrier's ability to charge their own switched access charges. No commenter disputes this fact, but some make vague and unsupported allegations that raising some rates would go against the trend.<sup>11</sup> This is again simply another way to argue that customer rates should be reduced for them.

### **III. THE COMMISSION SHOULD PERMIT A REVENUE NEUTRAL ADJUSTMENT TO ILECS' SWITCHED ACCESS RATES.**

#### **A. The Commission Should Ignore the Self-Interested and Unsupported Allegations of Opponents That Request Reductions in All Rates.**

Even though Embarq's access unification proposal will lead to substantially lower intrastate switched access rates, some commenters claim that this reduction should be forced down even further.<sup>12</sup> These commenters do not cite any evidence that lower rates would be compensatory or cost-based. Rather, these efforts are solely a self-interested attempt to lower their own access costs. The Commission should reject these misguided efforts in favor of taking an initial step towards the necessary overall reform.

The AT&T group advocates that all terminating access rates should be set at \$0.0007.<sup>13</sup> This rate is so far below any of Embarq's access rates it would be woefully insufficient to compensate Embarq for building and maintaining backbone networks that provide voice and broadband services to rural America. This rate is far lower than any rate which would be applicable under the Missoula Plan for a Tier 2 carrier, a class for which Embarq would clearly

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<sup>11</sup> Comments of National Cable & Telecommunications Association, WC Docket No. 08-160, at 3 (Aug. 26, 2006) ("NCTA Comments").

<sup>12</sup> Comments of Sprint Nextel, Inc., WC Docket No. 08-160, at 3-4 (Aug. 26, 2008) ("Sprint Nextel Comments"); Comments of Verizon, WC Docket Nos. 08-152, 08-160, at 5 (Aug. 21, 2008).

<sup>13</sup> See Letter from AT&T, et al., to Chairman Martin and FCC Commissioners, WC Docket No. 04-36, CC Docket No. 01-92 (Aug. 6, 2008).

qualify.<sup>14</sup> And the AT&T Group proposal does not contain any of the other Missoula Plan conditions and safeguards that were built in to protect the viability of existing networks.

AT&T's petition for waiver suffers for the very same reason. Embarq has pointed out these flaws to AT&T's petition.<sup>15</sup>

The Commission should resist efforts by customers to manipulate carrier rates to levels that are so low as to not adequately compensate Embarq for the higher costs it expends to maintain and build out rural networks. An ILEC like Embarq bears a carrier-of-last-resort ("COLR") obligation. It is the foundation of universal service. It provides the network to serve all customers in its territory -- and must offer service to all at geographically averaged rates -- when its competitors are free to choose where and whom to serve, and where to invest in network. Embarq provides the network that all other carriers use to reach those customers.

ITTA notes, "A critical first step toward intercarrier compensation reform must be the affirmation that entities choosing to use the PSTN must pay for that use in the same way as others who terminate traffic there."<sup>16</sup> The Commission cannot responsibly ratchet down switched access rates without establishing other mechanisms to permit cost recovery. If it did not allow for adequate cost recovery, it would harm the very rural customers that rely on the network to obtain reliable, affordable services and jeopardize the promise of universal service on which rural customer have relied for decades. While all carrier rates could be lowered from

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<sup>14</sup> See 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-Chair, NARUC Task Force to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92, Missoula Intercarrier Compensation Reform Plan, at 13 (Jul. 18, 2006) ("*Missoula Plan*").

<sup>15</sup> Comments of Embarq, WC Docket No. 08-152 (Aug. 21, 2008).

<sup>16</sup> ITTA Comments at 5. See also Embarq Petition at 9-13.

current levels if measured and timely modifications to subscriber rates or universal service support are instituted, reductions in switched access rates alone are not achievable absent more fundamental reform.

Although NASUCA wholeheartedly supports access unification, it worries that Embarq will raise intrastate switched access rates that are currently below interstate levels.<sup>17</sup> As Embarq stated in its Petition, only slight intrastate switched access rate increases would be required in only three study areas, and therefore that purported concern is of no significance to customers and cannot merit rejection of Embarq's proposal.<sup>18</sup>

**B. Granting Embarq's Petition Would Resolve on an Interim Basis the Growing Problem of Uneconomic Arbitrage Associated with Different Interstate and Intrastate Switched Access Rate Levels.**

Various parties claim that the Embarq local operating companies should not be allowed to make a revenue neutral adjustment to the relative level of switched access charges in order to achieve unification. These parties claim that Embarq is not entitled to a "guarantee" of its revenues and that these rates have not been shown to be cost-based.<sup>19</sup> These parties produce no evidence of their own that Embarq's switched access rates are unreasonable.<sup>20</sup> Their arguments

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<sup>17</sup> Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 08-160, at 9 (Aug. 26, 2008)("NASUCA Comments").

<sup>18</sup> Embarq Petition at 20 & note 45.

<sup>19</sup> Sprint Nextel Comments at 9; NCTA Comments at 3-4; Comments of New Jersey Division of Rate Counsel, WC Docket No. 08-160, at 3 (Aug. 26, 2008)("New Jersey Division of Rate Counsel Comments").

<sup>20</sup> Indeed, no party produces any evidence that Embarq's intrastate switched access charges are unreasonable. Sprint Nextel cites to Embarq's historic ARMIS special access and total interstate figures to argue that Embarq's returns from special access and unregulated services are already very high, and therefore there is no demonstrated need for switched access rate increases. Sprint Nextel Comments at 7. Embarq has already thoroughly discredited the use of ARMIS data to evaluate the costs for specific services such as special access. Therefore,

are simply another way to achieve their own self-interested end goal of decreasing their own total access expense levels. Given the level of arbitrage and phantom traffic problems, Embarq is precluded from obtaining accurate information about the revenues which should be received from the various types of access. Until such accurate rating and compensation is completely evaluated, a productive analysis is impossible. This is one of the reasons why unification is a beneficial first step toward achieving ultimate reform. Once traffic is accurately measured and billed, then fundamental reform can be completed more rapidly because all parties can understand and accommodate the financial impact of any policy changes to operations.

In fact, a revenue neutral approach makes perfect sense in the context of highly regulated switched access charges. Contrary to opponent's arguments, ILECs have never had a "guarantee" that a certain level of revenues would be achieved. In fact, switched access traffic has been declining, markedly so in some areas, and Embarq has not been immune from this market onslaught.<sup>21</sup> Much of this decline is accelerating because of carrier-customer self-help efforts and masking of the true jurisdictional nature of traffic. Embarq has been forced to request that it be permitted to take the step of unifying switched access rates in order to create a structural mechanism that can counteract the perverse motivations that currently exist to misidentify traffic so that lower rates would apply.

Embarq's Petition would reduce those incentives. At the same time, because the combined receipts of post-waiver intrastate and interstate switched access would be equivalent to

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such information is simply not useful in making the analysis proposed by Sprint Nextel. *See, e.g.,* Comments of Embarq, WC Docket No. 05-25, RM-10593, at 10-11 (Aug. 8, 2008).

<sup>21</sup> Embarq Petition at 9-13.

what they were before grant of the waiver, both intrastate and interstate rates would continue to be reasonable.<sup>22</sup>

**C. The Commission Has Successfully Used Revenue Neutral Techniques in the Past to Affect Needed Policy Shifts.**

The Commission has often directed ILECs to make revenue neutral changes to switched access charges in response to a number of restructuring initiatives in the past. In these examples, the Commission does not somehow reopen the level of existing rates, but bases its decision on the fact that the rates have been reviewed, and adjusted if necessary, in other previous proceedings. For instance, when the Commission first required certain ILECs to convert to price caps, it ordered them to readjust their rates on a revenue neutral basis in order to begin price caps.<sup>23</sup> The Commission reformed carrier common line cost recovery by ordering decreases in carrier common line charges, while allowing offsetting increases to end user charges and universal service support.<sup>24</sup> Similar revenue neutral policies were followed for ILECs when adjustments to price cap baskets and bands were made, such as when transport services were removed from the traffic sensitive price cap basket and combined with the special access services basket.<sup>25</sup> The instant restructure would simply be another example of a revenue neutral

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<sup>22</sup> For this reason, the Commission should also reject Sprint Nextel's claim that federal ATS rates would become unreasonable simply because they would be at a different level than adopted in *Access Charge Reform*, Sixth Report & Order, 15 FCC Rcd 12962, 13053, ¶ 209 (2000) ("CALLS Order"). Sprint Nextel Comments at 8.

<sup>23</sup> *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report & Order, CC Docket No. 87-313, 5 FCC Rcd 6786, ¶ 230 (1990).

<sup>24</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order, 16 FCC Rcd 19613, ¶¶ 40, *et seq.* (2001) ("MAG Order").

<sup>25</sup> *Transport Rate Structure and Pricing*, CC Docket No. 92-213, Second Report & Order, 9 FCC Rcd 615, ¶ 37 (1994).

adjustment to accomplish, for each Embarq study area, a clearly supportable and highly beneficial policy initiative.

#### **IV. EMBARQ’S PROPOSAL DOES NOT UNDERMINE STATE JURISDICTION.**

Some commenters grasp for ways to conclude that Embarq’s unification proposal somehow undermines state jurisdiction. These commenters are simply wrong.

##### **A. State Jurisdiction Over Embarq’s Intrastate Switched Access Rates Will Continue.**

Embarq made clear in its Petition that any change to interstate switched access rates pursuant to its access rate unification proposal was contingent on a state commission allowing Embarq to make intrastate rate adjustments that match the federal rate.<sup>26</sup> Embarq would follow existing state procedures and policies in making any adjustments. If the state for some reason did not permit Embarq to lower its intrastate switched access rates, then unification would not take place in that study area.<sup>27</sup> Therefore, states would continue to be able to exercise jurisdiction over intrastate switched access rates.

The Virginia Corporation Commission Staff raises concerns about how Embarq’s “unique” intrastate switched access rates could be unified with interstate switched access rates due to the fact that the state carrier common line charge is designed to recover a fixed amount of common line revenues.<sup>28</sup> As Embarq stated in its Petition, it intends to unify rates as closely as possible, primarily based on the average traffic sensitive (“ATS”) amalgamated rate model

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<sup>26</sup> Embarq Petition at 19.

<sup>27</sup> *Id.*

<sup>28</sup> Comments of Virginia State Corporation Commission Staff, WC Docket No. 08-160, at 3 (Aug. 21, 2008)(“Virginia State Corporation Commission Staff Comments”).

contained in Section 61.3(e) of the Commission's rules.<sup>29</sup> To the extent that there are differences in individual rate elements between the state and federal tariffs, Embarq would make adjustments on a revenue neutral basis by study area so that the ATS rates were identical and the other rate elements harmonized. The Virginia Corporation Commission will be able to review Embarq's eventual filing for its Virginia study areas in order to assure itself that any rate changes have been completed in a reasonable fashion in accordance with Embarq's access unification proposal. Therefore, Virginia's issue should not cause a problem, and at most has been raised prematurely.<sup>30</sup>

Nevertheless, Embarq believes that all states should be interested in permitting Embarq's access unification proposal to be implemented for a period of time in order to evaluate the full measure of success it achieves in checking unwarranted access revenue declines and to prevent uneconomic arbitrage. Such stabilization will produce public interstate benefits that states should want to encourage.<sup>31</sup>

**B. Since Separations Factors Are Frozen, No Separations Rule Changes Are Necessary Under Embarq's Proposal.**

Separations allocation factors and category relationships have been frozen at annual 2000 levels for over seven years.<sup>32</sup> Embarq is not proposing to change any of its frozen separations

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<sup>29</sup> 47 C.F.R. § 61.3(e). *See* Embarq Petition at 19 n.42.

<sup>30</sup> In any event, one anomaly in one state should not undermine Embarq's overall proposal, although Embarq does not believe that the Virginia intrastate carrier common line rate element will pose any material issue to unifying rates in that State.

<sup>31</sup> Embarq Petition at 29.

<sup>32</sup> 47 C.F.R. § 36.3(b). The effective time period for that rule was extended in *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, 21 FCC Rcd 5516 (2006).

factors or category relationships. Therefore, Sprint is simply wrong that Embarq's Petition is illegal or defective because it fails to request a change to those rules.<sup>33</sup>

NASUCA raises concerns about the shift in revenues, but fails to identify what the real nature of its concern would be.<sup>34</sup> It recognizes that there is no preemption of state ratemaking authority involved with Embarq's proposal, which is accurate. NASUCA does argue, however, that implementing Embarq's proposal would be unfair to states that have decreased intrastate switched access charges by shifting some cost recovery to state universal service funds. Its theory is that ratepayers in rate rebalancing states already are paying higher rates, whereas end users in states which have not rebalanced are not. In order to rectify this perceived unfairness, NASUCA suggests that Embarq reverse the switched access rate reductions on a prospective basis in rate rebalancing states before unifying switched access rates.<sup>35</sup>

This state-to-state equalization argument should not be adopted. States which have correctly reduced intrastate switched access charges by increasing support from state universal service funds have made a sound policy decision; consumers and carriers in those states have been paying what they should according to the circumstances that prevail in those states. These supportable policy decisions should not be undone. Rather, those states which have not rebalanced rates should be encouraged to do so promptly and responsibly.

Embarq recognizes, as NASUCA must as well, that such a result is unlikely in the near term. Therefore, regardless of whether consumers are in the same position from state to state, Embarq should be permitted to protect its ratepayers and network users overall by unifying rates

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<sup>33</sup> Sprint Nextel Comments at 7.

<sup>34</sup> NASUCA Comments at 5-7.

<sup>35</sup> *Id.* at 8-9.



to reduce uneconomic arbitrage. Global reform may well correct any perceived inequity between states, which should be considered in that context. In the meantime, however, Embarq urges the Commission to take appropriate steps forward to remedy intercarrier compensation issues in a way that benefits consumers. Going backward in those states which have not rebalanced rates is clearly a step in the wrong direction.

**C. Procedural Arguments Against Embarq's Petition Are Misplaced.**

The New Jersey Division of Rate Counsel raises three procedural issues, and they should all be rejected out of hand. First, the New Jersey Division argues that the Embarq's Petition should be dismissed because it is not "complete" as filed.<sup>36</sup> The complete-as-filed rule does not apply to petitions for waiver.<sup>37</sup> In any event, Embarq actually provided detailed information with its Petition concerning what would happen to rates if its proposal were adopted.<sup>38</sup> Second, the New Jersey Division argues that Embarq has failed to exhaust its administrative remedies, because it has not availed itself of the Section 208 process to recover switched access rates from VoIP providers.<sup>39</sup> The exhaustion principle only applies when a party is challenging the decision of a government agency to the courts.<sup>40</sup> Embarq is simply asking the Commission for a waiver

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<sup>36</sup> New Jersey Division of Rate Counsel Comments at 5.

<sup>37</sup> The Commission to date has only applied the complete-as-filed rule to RBOC Petitions filed pursuant to Section 271 of the Act. *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 49 (1997).

<sup>38</sup> Embarq Petition, Appendix B. The New Jersey Division fails to identify the information that it claims it needs to evaluate the filing. Embarq notes that New Jersey commission would be entitled to ask for information in the context of any intrastate rate filing and therefore is not impeded in its ability to evaluate the waiver petition.

<sup>39</sup> New Jersey Division of Rate Counsel Comments at 5.

<sup>40</sup> *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938).

that will bring about a more efficient mechanism with which to collect switched access charges, a remedy that would preclude the filing of numerous court complaints against those who fail to pay switched access charges as required by the tariff. The exhaustion principle consequently does not apply here. Third, the New Jersey Division argues that the subject matter of Embarq's Petition has already been raised in the *IP-Enabled* proceeding and should simply be addressed there.<sup>41</sup> The Commission did not raise the issue of access unification in the NPRM, and accordingly it would not serve as a vehicle for addressing the subject of the Petition.

**V. EMBARQ'S PROPOSAL IS BENEFICIAL TO CONSUMERS AND SWITCHED ACCESS CUSTOMERS ALIKE.**

Unlike the AT&T Access Unification Petition, Embarq is not raising any end user charges in this proceeding.<sup>42</sup> Therefore, the proposal would be beneficial to end users and avoid the difficult issues associated with raising end user charges that will inevitably have to be faced when intercarrier compensation is reformed comprehensively.

Overall, switched access customers will benefit from Embarq's proposal because its intrastate switched access charges will decline. These reductions will correspondingly decrease the costs of users of intrastate switched access and promote competition.<sup>43</sup> Sprint Nextel argues that other carriers should not have to pay for the COLR requirements of an ILEC.<sup>44</sup> This

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<sup>41</sup> New Jersey Division of Rate Counsel Comments at 5.

<sup>42</sup> Embarq Petition at 23.

<sup>43</sup> *Id.* at 27.

<sup>44</sup> Sprint Nextel Comments at 8.

argument blatantly disregards the need of Sprint Nextel's end users to call customers in all areas of the country, including those in Embarq's primarily rural study areas.<sup>45</sup>

The entire rationale for the imposition of the switched access charges in the first place was based on the need for these users to contribute to the payment of the costs of those networks.<sup>46</sup> Switched access revenues already serve as an important revenue source for rural ILECs who build and maintain networks needed by customers to obtain voice and broadband services. In fact, the switched access services Embarq provides are an essential component of Sprint Nextel's services it provides to its own customers, contrary to Sprint Nextel's casual dismissal of the desire to pay for access to these networks. Given this critical reliance, it is perfectly justifiable that other carriers, and consequently their end users, pay for their fair share of the costs of using Embarq's local network. Sprint Nextel's rhetoric should be dismissed.<sup>47</sup>

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<sup>45</sup> The Division of the Virginia State Corporation Commission Staff similarly argues that raising interstate rates to offset reductions in intrastate rates is "unfair" to consumers because they may end up paying more for interstate calling. Virginia State Corporation Commission Staff Comments at 2. Even assuming that were true, however, the staff disregards the fact that interstate rate increases are offset -- in a revenue neutral manner by study area -- by greater reductions in intrastate rates, which would provide an offsetting consumer benefit.

<sup>46</sup> *Investigation of Access and Divestiture Related Tariffs*, 97 FCC 2d 1082, ¶ 1 (1983).

<sup>47</sup> Feature Group IP deposited a lengthy pleading in this docket, which engages in a long diatribe on the application of switched access charges to IP-enabled traffic. Feature Group IP Comments. Simply put, Feature Group IP is wrong that switched access charges do not apply to IP-enabled traffic. Embarq has already completely addressed these issues in other dockets. Embarq will not repeat those arguments here, as they are not directly relevant to the instant access charge unification proposal. *See, e.g.*, Petition of Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption, WC Docket No. 08-8 (Jan. 11, 2008); Reply Comments of Embarq, WC Docket Nos. 07-256, 08-8 (Mar. 14, 2008); Comments of Embarq, WC Docket No. 07-256 (Feb. 19, 2008).

## **CONCLUSION**

Embarq has exhaustively demonstrated that there is a public interest need for it to be able to unify intrastate and interstate switched access rates on an interim basis to check uneconomic arbitrage. Such relief clearly meets the waiver standards established by the Commission and the courts, and the commenters have done nothing to demonstrate that this interim step would not meet the public interest. Therefore, Embarq respectfully requests that its Petition be granted.

Respectfully submitted,

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September 5, 2008

### **Certificate of Service**

I hereby certify that I have on this 5th day of September 2008 caused a copy of the foregoing "Reply Comments of EMBARQ" to be served by electronic mail upon the following:

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