

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

VERIZON SELECT SERVICES, INC.;)	DOCKET UT-081393
MCIMETRO ACCESS)	
TRANSMISSION SERVICES, LLC;)	
MCI COMMUNICATIONS)	ORDER 02
SERVICES, INC.; TELECONNECT)	
LONG DISTANCE SERVICES AND)	
SYSTEMS CO. d/b/a TELECOM)	SECOND PREHEARING
USA; AND TTI NATIONAL, INC.,)	CONFERENCE ORDER;
)	
Complainants,)	NOTICE OF HEARING
)	(To be held August 5-7, 2009)
v.)	
)	
UNITED TELEPHONE COMPANY)	
OF THE NORTHWEST, d/b/a)	
EMBARQ)	
)	
Respondent.)	
.....)	

1 **NATURE OF PROCEEDING.** Docket UT-081393 involves a formal complaint against United Telephone Company of the Northwest (Embarq) filed by Verizon Select Services, Inc., MCI metro Access Transmission Services, LLC, MCI Communications Services, Inc., Teleconnect Long Distance Services and Systems Co. d/b/a Telecom USA and TTI National, Inc. (collectively “Verizon Access” or “Complainants”) with the Washington Utilities and Transportation Commission (Commission) on July 28, 2008. Embarq filed its answer to the complaint on August 18, 2008, and simultaneously filed a motion to dismiss the complaint.

2 **CONFERENCE.** The Commission convened a second prehearing conference in this docket at Olympia, Washington on Wednesday, November 19, 2008. The matter was heard before Administrative Law Judges Adam E. Torem and Ann E. Rendahl.

3 **APPEARANCES.** Gregory M. Romano, General Counsel – Northwest Region, Everett, Washington, and Christopher D. Oatway, Assistant General Counsel, Arlington, Virginia, represent the complainants, Verizon Access. William E.

Hendricks, III, Hood River, Oregon, represents the respondent, Embarq. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents Commission Staff.¹ Letty S.D. Friesen, General Attorney, Denver, Colorado, and Cindy Manheim, Redmond, Washington, represent Intervenor AT&T Communications of the Pacific Northwest, Inc., and TCG Seattle (AT&T). Richard A. Finnigan, Olympia, Washington, represents the Washington Independent Telecommunications Association (WITA).

4 **PETITIONS FOR INTERVENTION.** WITA appeared at the second prehearing conference. WITA did not seek to intervene in the matter, but sought to renew its petition to file an *amicus curiae* brief. No other parties sought intervention.

5 **MOTION TO DISMISS AND WITA'S *AMICUS CURIAE* BRIEF.** On August 18, 2008, Embarq filed a motion to dismiss the complaint, without prejudice, or alternatively hold the complaint in abeyance pending future action by the Federal Communications Commission (FCC). On August 27, 2008, WITA filed a motion seeking permission to file an *amicus* brief in support of Embarq's motion to dismiss. Also on August 27, 2008, Verizon Access filed its opposition to Embarq's motion. Verizon Access filed its objections to WITA's *amicus* brief on September 2, 2008.

6 At the previous conference held on September 24, 2008, the presiding administrative law judge deferred ruling on Embarq's motion to dismiss, pending an anticipated FCC decision. Therefore, the presiding officer did not then consider WITA's policy arguments in determining the disposition of Embarq's motion to dismiss.

7 WITA renewed its motion to file and have its *amicus* brief considered with regard to policy arguments why Embarq's motion to dismiss should be granted. As previously noted, the Rules of Appellate Procedure (RAP) Rule 10.6 serve as a guide for determining when the Commission will accept an *amicus curiae* brief. The presiding officer determined that WITA's policy arguments could assist the Commission in deciding Embarq's motion. Therefore, the presiding officer granted WITA's motion

¹ In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

to file its *amicus* brief and considered its arguments in reaching a decision on Embarq's motion to dismiss.

- 8 All parties were given an opportunity to reprise their arguments regarding Embarq's motion to dismiss. The presiding officers conferred and determined that Embarq had not satisfied the standard set out in Washington Administrative Code (WAC) 480-07-380(1) and Superior Court Civil Rules 12(b)(6) and 12(c). Therefore, because the Verizon Access complaint stated facts on which relief might be granted, the Commission denied Embarq's motion to dismiss. The presiding officers also declined to hold the proceeding in abeyance any longer pending potential action by the FCC to reform intercarrier compensation. A separate order shall set forth this ruling and its rationale in greater detail.
- 9 **PROCEDURAL SCHEDULE.** The parties agreed on a procedural schedule during the course of the prehearing conference. The Commission adopts the procedural schedule as set forth below and in Appendix A to this Order.

Embarq's Confirmation of Schedule and Need for Comprehensive Cost Study	December 12, 2008
Pre-Filed Direct Testimony (Verizon Access and AT&T)	February 18, 2009
Embarq's Pre-Filed Responsive Testimony (to include comprehensive cost study)	April 17, 2009
Pre-Filed Rebuttal Testimony (Verizon Access and AT&T)	June 5, 2009
Pre-Filed Responsive Testimony (Commission Staff)	June 5, 2009
Embarq's Pre-Filed Sur-rebuttal Testimony	June 26, 2009
Pre-Filed Final Reply Testimony (Verizon Access only)	July 15, 2009
Evidentiary Hearing	August 5-7, 2009
Post-Hearing Briefs (Simultaneous)	September 4, 2009

- 10 This procedural schedule is based on Embarq's assumption that it will require production of a comprehensive cost study in order to defend against the Verizon Access complaint. Embarq will notify the Commission and all parties no later than December 12, 2008, whether its initial assumption remains accurate. If not, the Commission will modify and shorten the span of the procedural schedule.
- 11 In addition to the above-noted agreed dates, the procedural schedule adopted at the second prehearing conference includes the possibility of both Intervenor AT&T and Commission Staff wishing to pre-file final reply testimony along with Verizon Access on July 15, 2009. In that instance, the filing party's submission shall be accompanied by a motion akin to the sort required by WAC 480-07-370(d), seeking permission for the filing. Further, as summer 2009 approaches, the Commission will issue a separate notice setting a deadline for the filing of cross-examination exhibits. Finally, the parties have reserved the possibility of filing a second round of post-hearing briefs, but only if necessary. In order to preserve this possibility, the parties must file an appropriate motion with the Commission no later than Friday, September 11, 2009.
- 12 The agreed procedural schedule adopted herein makes it impossible for the Commission to issue a final order in this matter within the ten (10) month period following filing of the complaint as generally required by statute. In accordance with RCW 80.04.110(3), the Commission finds cause to extend the date for entry of a final order beyond May 28, 2009.
- 13 **PROTECTIVE ORDER.** The parties have asked that the Commission enter a standard form protective order in this docket under RCW 34.05.446, RCW 80.04.095, WAC 480-07-420 and WAC 480-07-423 to protect the confidentiality of proprietary information. The request was granted, pending the parties' determination of whether or not the order should address highly confidential information. The Commission will promptly issue an appropriate protective order after the parties communicate their requirements for the free exchange of information in this docket.
- 14 **DISCOVERY.** Verizon Access renewed its previous motion to invoke the Commission's discovery rule, WAC 480-07-400(2)(b). In accordance with the Commission's rule on discovery, WAC 480-07-400(2)(b), the Verizon Access motion is granted because the Commission finds that the needs of this case are best served by

the methods of discovery specified in Commission rules. Discovery will proceed pursuant to the Commission's discovery rules, WAC 480-07-400 – 425.

- 15 Compliance with the procedural schedule adopted above requires expedited discovery after the initial dates for pre-filing of testimony. Therefore, effective June 5, 2009, the Commission's discovery rule regarding the timing for responses to data requests and record requisitions (WAC 480-07-405(7)) is modified to reduce the response interval from ten business days to five business days.
- 16 **NOTICE OF HEARING.** The Commission schedules a hearing on the merits in this matter, to commence on **Wednesday, August 5, 2009, at 9:30 a.m., in Room 206 of the Commission's headquarters, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** Parties may seek permission for witnesses to attend telephonically through use of the Commission's teleconference bridge line at (360) 664-3846. **The hearing will continue in the same location on Thursday, August 6, 2009, and, as necessary, conclude on Friday, August 7, 2009.**
- 17 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** The requirements set out in Order 01, paragraphs 13 to 16, remain in effect.
- 18 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective November 20, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

APPENDIX A
PROCEDURAL SCHEDULE
DOCKET UT-081393

EVENT	DATE	INTERVAL
Complaint Filed	Monday, July 28, 2008	—
Prehearing Conference	Weds, September 24, 2008	58 Days
Second Prehearing Conference	Weds, November 19, 2008	56 Days
Pre-Filed Direct Testimony	Weds, February 18, 2009	91 Days
Pre-Filed Responsive Testimony	Friday, April 17, 2009	58 Days
Pre-Filed Rebuttal Testimony and Staff Testimony	Friday, June 5, 2009	49 Days
Pre-Filed Sur-rebuttal Testimony	Friday, June 26, 2009	21 Days
Pre-Filed Final Reply Testimony	Weds, July 15, 2009	19 Days
Hearing on the Merits	Wednesday, August 5, 2009 through Friday, August 7, 2009	21 Days
Post-Hearing Opening Briefs	Friday, September 4, 2009	28 Days