

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of

Petition of the Embarq Local Operating
Companies for Forbearance Pursuant to
47 U.S.C. § 160(c) from the Contract Tariff
Filing Requirements of the Pricing Flexibility
Rules

WC Docket No. 07-258

REPLY COMMENTS OF VERIZON

INTRODUCTION AND SUMMARY

As Verizon has shown, the Commission should take two actions with respect to price cap LECs' authority to enter into contract arrangements with their customers. *First*, it should allow those carriers to offer individualized contract arrangements on a nationwide basis, irrespective of where the carriers have made the competitive showing necessary to obtain Phase I or Phase II pricing flexibility, and without requiring the filing of those contracts as tariffs. Granting carriers this ability to address the needs of particular customers is consistent with the Commission's many decisions recognizing the pro-competitive virtues of individualized contracts. Many states have likewise recognized these pro-competitive benefits in deregulating or detariffing intrastate special access (or private line) services.

Second, at a minimum, the Commission should eliminate the requirement to file contracts as tariffs — as Embarq requests — where a carrier *has* made a competitive showing under the existing pricing flexibility rules. Where a carrier has made such a showing, a requirement to file contracts as tariffs can only be detrimental to the existing competition and to consumers in that area, such as by signaling pricing behavior to competitors or by reducing carriers' ability to respond efficiently to customers' individualized demands. In light of these detrimental effects of

requiring the filing of contracts as tariffs, the statutory criteria for forbearance are satisfied, not just for Embarq, but for all price cap LECs that have obtained Phase I or Phase II pricing flexibility.

The few comments filed in opposition fail to refute that showing. *First*, the commenters err in contending that Embarq has improperly requested new rules rather than forbearance from existing obligations. The Commission’s current rules require that individualized contracts be filed as tariffs, and Embarq seeks relief from that filing requirement. *Second*, the commenters suggest that the Commission should address Embarq’s request only in the special access rulemaking docket. But the D.C. Circuit has already rejected just such a claim, holding that forbearance is a separate avenue for relief that cannot be denied simply because of the possibility of obtaining relief elsewhere.

Third, the commenters claim that price cap LECs are subject to an unspecified “public disclosure” requirement independent of the tariffing requirement, but cite nothing that creates such an obligation, which would not support a tariff filing requirement in any event. *Fourth*, the commenters assert that the special access marketplace is not competitive. Even apart from the inaccuracy of that assertion — which is based on claims Verizon has repeatedly refuted elsewhere — eliminating the requirement to file individualized contracts as tariffs could only *increase* the competitiveness of the marketplace. *Fifth*, the commenters argue that Embarq has not supplied sufficient data to justify forbearance. But the Commission has already repeatedly found that tariff filing requirements can have numerous anti-competitive effects, and the data Embarq has submitted thus far confirm that those anti-competitive effects occur here as well. *Sixth*, the commenters claim that past orders have expressly held that the filing of contracts as tariffs is necessary, but that claim misreads the Commission’s orders, which hold no such thing.

Finally, the commenters note that price cap LECs cannot provide a contract offering to a long-distance affiliate without first certifying that they are providing that same offering to a non-affiliated company, but they ignore that this certification requirement can be satisfied without requiring the filing of those contracts as tariffs.

ARGUMENT

I. THE COMMISSION SHOULD PERMIT PRICE CAP LECs TO ENTER INTO CONTRACT ARRANGEMENTS NATIONWIDE WITHOUT REQUIRING THE FILING OF THOSE CONTRACTS AS TARIFFS AND, AT A MINIMUM, SHOULD PROVIDE SUCH AUTHORITY WHERE PRICE CAP LECs HAVE OBTAINED PRICING FLEXIBILITY

A. The Commission should grant all carriers the authority to enter into contract arrangements nationwide, irrespective of where those carriers have made the competitive showing required under the Commission’s pricing flexibility regime and without requiring the filing of those contracts as tariffs. The increased availability of such commercial arrangements would “enable incumbent LECs to tailor services to their customers’ individual needs”¹ and would “benefit consumers by unleashing competitive forces for business services to the maximum extent possible.”² Individualized contracts are superior to generic tariffs, which cannot “adequately incorporate all of the individually designed variables that customers desire.”³

¹ Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 14 FCC Rcd 14221, ¶ 128 (1999) (“*Pricing Flexibility Order*”), *aff’d*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

² Report and Order, *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, ¶ 105 (1991) (“*Interexchange Competition Order*”).

³ *Id.* ¶ 104. CompTel attempts to distinguish these and other similar precedents on the theory that they concerned nondominant carriers. *See* CompTel Comments at 5-6. But the Commission made similar findings in a recent order granting forbearance to Embarq, thus confirming that these same concerns apply to dominant carriers’ tariffs as well. *See* Memorandum Opinion and Order, *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements*, 22 FCC Rcd 19478, ¶ 34 (2007) (“*Embarq Broadband*”).

The Commission should therefore take every step to encourage the availability of individualized contracts, free from the “significant costs” that tariffing requirements impose, such as preventing carriers “from quickly introducing new services in response to customer demands and opportunities created by technological developments,” and reducing their “ability to respond quickly to [their] competitors’ advanced services offerings and tailor [their] own offerings to meet customers’ individualized needs.”⁴

Indeed, a number of states have recognized the pro-competitive benefits of either completely or mostly deregulating special access services. For example, Colorado includes “[s]pecial access” in a list of services that are “exempt from regulation,” Colo. Rev. Stat. § 40-15-401(1)(l), while South Dakota lists “special access” as a “fully competitive service” as to which “regulation is not warranted,” S.D. Codified Laws § 49-31-1.3. Similarly, Indiana law provides that “the commission shall not exercise jurisdiction over any nonbasic telecommunications service,” Ind. Code § 8-1-2.6-1.2, a term that is defined to include “switched and special access services,” “customer specific contracts,” and “volume, term, and discount pricing options,” *id.* § 8-1-2.6-0.3; *see also* N.D. Cent. Code § 49-21-01.1(9) (provisions of North Dakota’s telecommunications statute “do not apply to” special access); Wyo. Stat. Ann. § 37-15-103(a)(iv) (special access not an “[e]ssential telecommunications service” subject to price regulation); Idaho Code Ann. § 62-606 (when telecommunications companies choose to operate under a deregulatory scheme, special access tariffs or “price lists” are filed “for information purposes” only); Del. Code Ann. tit. 26, §§ 704(a) (allowing a carrier to elect a

Forbearance Order”), *petitions for review pending, Sprint Nextel Corp. v. FCC*, Nos. 07-1452 & 07-1503 (D.C. Cir.).

⁴ Memorandum Opinion and Order, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 17 FCC Rcd 27000, ¶ 26 (2002) (“*SBC Advanced Services Forbearance Order*”).

deregulatory scheme that allows it to “determine its rates and prices for its telecommunications services”), 705(c)(7) (specifically including “[h]igh capacity special services (1.544 mb and above)” as a “competitive” service); 66 Pa. Cons. Stat. § 3016(d)(2) (“The commission may not require tariffs for competitive service offerings to be filed with the commission.”);⁵ *cf.* Order, *Petition of Verizon Northwest Inc. for Minimal Regulation of Bundled Telecommunications Services*, Docket UT-071574, at 5 (Finding 8), 9-10 (Finding 22) (Wash. Utils. & Transp. Comm’n Sept. 18, 2007) (applying Washington state law allowing “minimal regulation” of bundled services to “allow telecommunications companies to roll out bundled service offerings more quickly to meet market demand,” and specifically finding that “[t]ariff filing requirements” are “no longer necessary to protect the public interest insofar as they apply to . . . minimally regulated bundles”).

B. At a minimum, the Commission should grant the relief Embarq requests, *i.e.*, forbearance from the requirement to file contracts as tariffs in areas where a carrier has made the competitive showing necessary to obtain Phase I or Phase II pricing flexibility. Eliminating the filing requirement for contract arrangements in these areas readily satisfies the forbearance criteria in § 10. Requiring the filing of contracts as tariffs is “not necessary to ensure” that practices and rates are “just and reasonable.” 47 U.S.C. § 160(a)(1). Instead, the presence of competition and the background requirements of §§ 201 and 202 will ensure just and reasonable practices and rates.⁶ Nor is the filing of contracts as tariffs necessary for the “protection of

⁵ See Opinion and Order, *Joint Petition of Nextlink Pennsylvania, Inc.*, 196 P.U.R.4th 172, 1999 Pa. PUC LEXIS 63, at *18 (Pa. Pub. Util. Comm’n Sept. 30, 1999) (“Special access is considered a competitive service in Pennsylvania and across the nation.”).

⁶ See, *e.g.*, Memorandum Opinion and Order, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska*,

consumers.” 47 U.S.C. § 160(a)(2). On the contrary, as the Commission recently held, forbearance from the “pricing flexibility regime” was justified precisely because that regime was not “sufficient” for a company to “meet its customers’ needs and compete effectively.”⁷

Finally, forbearance from the contract tariff filing requirement is consistent with the “public interest” and the “promot[ion of] competitive market conditions.” 47 U.S.C. § 160(a)(3), (b). As the Commission has found, requiring the filing of contracts as tariffs makes it “unnecessarily difficult” for incumbent LECs “to negotiate nationwide arrangements tailored to the needs of large enterprise customers with geographically dispersed locations, because their tariff filings necessarily provide competitors with notice of their pricing strategies and competitive innovations.”⁸

II. THE CLAIMS OF OPPONENTS OF THE FLEXIBILITY EMBARQ SEEKS LACK MERIT

A. Two commenters assert that Embarq’s petition does not actually request forbearance, but instead seeks “new alternative relief”⁹ akin to Fones4All’s forbearance petition, which the Commission denied because Fones4All sought “to use the section 10 forbearance provision to create new section 251 unbundling obligations.”¹⁰

Incumbent Local Exchange Carrier Study Area, 22 FCC Rcd 16304, ¶ 107 (2007) (“*ACS Forbearance Order*”); *Embarq Broadband Forbearance Order* ¶¶ 34-35.

⁷ *E.g.*, *Embarq Broadband Forbearance Order* ¶ 33.

⁸ *E.g.*, *id.* ¶ 45.

⁹ CompTel Comments at 2; *see also* Sprint Nextel Comments at 5-6 (“Embarq’s request is not appropriate for forbearance.”).

¹⁰ Memorandum Opinion and Order, *Fones4All Corp. Petition for Expedited Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 from Application of Rule 51.319(d) to Competitive Local Exchange Carriers Using Unbundled Local Switching to Provide Single Line Residential Service to End Users Eligible for State or Federal Lifeline Service*, 21 FCC Rcd 11125, ¶ 7 (2006) (“*Fones4All Forbearance Order*”), *petition for review pending*, *Fones4All Corp. v. FCC*, No. 06-75388 (9th Cir.).

As the Commission recognized, Fones4All’s so-called forbearance petition sought to require incumbent LECs to sell the UNE-Platform, notwithstanding the Commission’s elimination of that obligation in the *Triennial Review Remand Order*.¹¹ Fones4All thus sought to impose a new regulatory obligation on third parties, and did not seek to be free from a regulatory obligation that applied to it.¹² In addition, consistent with the D.C. Circuit’s recognition that forbearance “obviously comes into play only for requirements that exist,”¹³ the Commission found that the “result [Fones4All] seeks is unavailable” through forbearance.¹⁴

Here, by contrast, Embarq seeks to eliminate an obligation that plainly applies to it (namely, the obligation to file its contracts as tariffs), and the relief it seeks would impose no new obligations on third parties. Moreover, unlike Fones4All’s petition, where the Commission would have needed to adopt new rules to re-create the UNE-P obligation Fones4All sought, the regulations at issue here contain provisions that the Commission can cease enforcing and, thereby, afford Embarq (and other price cap LECs) the relief sought. For example, 47 C.F.R. § 61.58(c) expressly requires the filing of contracts as tariffs; the Commission can forbear from enforcing that filing requirement. Likewise, where 47 C.F.R. §§ 61.55 and 69.727(a)(2) refer to “contract-based tariffs” and “[c]ontract tariff authority,” the Commission can forbear from enforcing the italicized terms, thereby leaving price cap LECs with Phase I or Phase II pricing flexibility authority to enter into contracts, rather than contract tariffs. Forbearing from these

¹¹ *See id.* ¶¶ 2-3.

¹² *See id.* ¶ 7.

¹³ *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 579 (D.C. Cir. 2004); *see Fones4All Forbearance Order* ¶ 7 n.18.

¹⁴ *Fones4All Forbearance Order* ¶ 7.

affirmative obligations is a straightforward exercise of the Commission’s forbearance authority. Indeed, the Commission has often granted forbearance from tariff filing requirements.¹⁵

B. Two commenters assert that Embarq’s claims should only be addressed in WC Docket No. 05-25, where the Commission is considering special access as part of a rulemaking.¹⁶ But the D.C. Circuit has already rejected that very argument in a case where the Commission had denied a forbearance petition in part on the ground that the carrier could seek similar relief under the regime established in the *Pricing Flexibility Order*. As the court held, “Congress has established § 10 as a viable and independent means of seeking forbearance. The Commission has no authority to sweep it away by mere reference to another, very different, regulatory mechanism.”¹⁷ The same holding applies with equal force here, mandating the rejection of these commenters’ suggestion.

C. Sprint Nextel objects to the removal of the requirement to file contracts as tariffs on the ground that it would eliminate public disclosure of the rates, terms, and conditions of those contracts. However, Sprint Nextel points only to an order regarding consumer long-distance services to support its claim that such public disclosure of rates, terms, and conditions is necessary following detariffing.¹⁸

¹⁵ See, e.g., *SBC Advanced Services Forbearance Order* ¶ 1 (forbearing from tariffing requirement for certain advanced services); see also, e.g., *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760, 766 (D.C. Cir. 2000) (affirming mandatory detariffing order in which Commission forbore from tariff requirements of 47 U.S.C. § 203, on ground that “the Commission was entitled to value the free market, the benefits of which are rather well established”).

¹⁶ See New Jersey Rate Counsel Comments at 7-8; CompTel Comments at 7.

¹⁷ *AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001) (“[T]he availability of the Pricing Flexibility Order as an alternative route for seeking pricing flexibility does not diminish the Commission’s responsibility to fully consider petitions under § 10.”).

¹⁸ See Sprint Nextel Comments at 10-11 (citing Second Order on Reconsideration and Erratum, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*;

That order, addressing the needs of mass-market consumers, did find that public disclosure would enable those individuals “to choose the long distance service plan that best suits their needs.”¹⁹ But this proceeding involves services sold to enterprise customers, which the Commission has repeatedly recognized are “highly sophisticated” purchasers that can and do “negotiate for significant discounts.”²⁰ Their sophistication is “significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because [it] show[s] that these users are likely to make informed choices based on expert advice” and to “seek out best-priced alternatives.”²¹ Enterprise customers, therefore, do not need public disclosure of the rates, terms, and conditions in price cap LECs’ contracts — and, indeed, likely view the terms of their own contracts as containing confidential business information. Moreover, price cap LECs’ competitors do not have to disclose publicly the rates, terms, and conditions in their contracts — whether by tariff or otherwise — and the relief that Embarq seeks would therefore put all carriers on an equal footing.

In any event, although tariffing entails public disclosure, the reverse is not true. That is, public disclosure can occur without tariffing, such as through a carrier’s website. Even without a tariffing requirement, however, the price signaling that mandated public disclosure of rates, terms, and conditions fosters can still harm competition.²² That competitive harm is

Implementation of Section 254(g) of the Communications Act of 1934, as Amended, 14 FCC Rcd 6004 (1999) (“*Second Order on Reconsideration*”).

¹⁹ *Second Order on Reconsideration* ¶ 16.

²⁰ Memorandum Opinion and Order, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, ¶ 75 (2005).

²¹ *Id.* ¶ 76.

²² See, e.g., Second Report and Order, *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756, ¶ 89 (1997) (“If we were to require BOC interLATA affiliates to file tariffs for interstate, domestic, interexchange

compounded when public disclosure occurs through tariffing, which entails a formal filing subject to the Commission’s review and thus impedes the rollout of new services or packages aimed at customers’ individual needs.²³ If, after granting Embarq’s petition, the Commission were to determine that public disclosure is warranted, it could impose such an obligation, but there is no occasion for it to do so now.

D. Commenters repeat claims that the provision of special access, even in pricing flexibility areas, is not competitive.²⁴ But Verizon has extensively refuted those claims elsewhere, demonstrating that the special access market is robustly competitive and that special access rates have declined since the advent of pricing flexibility.²⁵ Even aside from the fact that these commenters are incorrect, a lack of competitiveness would not be reason to *discourage* individualized contracts, by requiring carriers to file them as tariffs, when such contracts can only “benefit consumers by unleashing competitive forces for business services to the maximum extent possible.”²⁶

Sprint Nextel similarly asserts that the tariff filing requirement prevents “discriminatory practices, such as price squeezes.”²⁷ But, under this Commission’s precedents, such vague

services, the ready availability of that information might facilitate tacit coordination of prices.”). The Commission’s reasoning on this point applies equally well to any form of public disclosure, not just to tariffs.

²³ See, e.g., *SBC Advanced Services Forbearance Order* ¶ 26 (tariff regulations inhibit a carrier’s “ability to respond quickly to its competitors’ advanced services offerings and tailor its own offerings to meet customers’ individualized needs”).

²⁴ See Sprint Nextel Comments at 8-9; CompTel Comments at 6.

²⁵ See, e.g., Comments of Verizon at 6-37, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 & RM-10593 (FCC filed Aug. 8, 2007); Reply Comments of Verizon at 5-36, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 & RM-10593 (FCC filed Aug. 15, 2007).

²⁶ *Interexchange Competition Order* ¶ 105.

²⁷ Sprint Nextel Comments at 7.

allegations of price squeezes are not cognizable. That is because “a price squeeze inquiry is a complex undertaking that can take years to resolve,” so parties alleging a price squeeze “bear a significant burden in filing a thorough and well supported analysis.”²⁸ Sprint Nextel no more meets that “significant burden” than did AT&T in a proceeding where the Commission granted Verizon a waiver from the Phase I competitive showing for its packet-based broadband services.²⁹ In declining to address AT&T’s price squeeze allegations, the Commission noted that AT&T had posed a “fact-intensive, highly contentious allegation that turns on economic analysis,” but — like Sprint Nextel here — without offering any “significant data or analysis to support its assertion.”³⁰

E. The New Jersey Rate Counsel and CompTel take issue with the quantity of evidence Embarq filed with its petition.³¹ But, as Embarq and Verizon have shown,³² the Commission has repeatedly found that tariff filing requirements “may harm consumers by impeding the development of vigorous competition, which could lead to higher rates,”³³ and that “tariff regulation may create market inefficiencies, inhibit carriers from responding quickly to

²⁸ Order on Remand, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 18 FCC Rcd 24474, ¶¶ 14, 16 (2003).

²⁹ See Memorandum Opinion and Order, *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services; Petition for Forbearance Under 47 U.S.C. Section 160(c) from Pricing Flexibility Rules for Fast Packet Services*, 20 FCC Rcd 16840, ¶ 1 (2005).

³⁰ *Id.* ¶ 13.

³¹ See New Jersey Rate Counsel Comments at 6; CompTel Comments at 5.

³² See Embarq Petition at 2-6, 10-13; Verizon Comments at 5-9.

³³ Second Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, 11 FCC Rcd 20730, ¶ 37 (1996), *petition for review denied, MCI WorldCom, Inc. v. FCC*, 209 F.3d 760, 764 (D.C. Cir. 2000) (noting that the Commission has “long been concerned that the necessity of filing tariffs hinders competitive responsiveness”).

rivals’ new offerings, and impose other unnecessary costs.”³⁴ The data that Embarq submitted show that the Commission’s conclusions apply in the special access contract arena as well.³⁵ No further data are necessary for the Commission to find that the forbearance criteria are satisfied here, just as the Commission found them to be satisfied in numerous other orders eliminating tariffing obligations.³⁶

F. Misinterpreting the Commission’s previous orders, CompTel asserts that the *Pricing Flexibility Order* “obviously still found that contract tariff filings were necessary to serve the public interest[.]”³⁷ In fact, in the *Pricing Flexibility Order*, the Commission noted that carriers *would* be required to file such contracts as tariffs,³⁸ but it did not make a judgment that such contracts *should* be filed as tariffs, especially in light of the fact that tariff filing requirements can impede competition (a judgment that the Commission *has* made in numerous other contexts). In other words, CompTel mistakes the Commission’s descriptive statement for a normative judgment.

Making a similar mistake, the New Jersey Rate Counsel asserts that, in the *Embarq Broadband Forbearance Order*, the Commission “relied upon the continued existence of the

³⁴ *ACS Forbearance Order* ¶ 106.

³⁵ See Embarq Petition, Attach. C (Declaration of Mike Jewell) (describing opportunities lost to competitive suppliers); *id.* at 9 & Attach. D (demonstrating number of lines subject to competition).

³⁶ See, e.g., *Embarq Broadband Forbearance Order* ¶ 22 (granting forbearance to Embarq despite noting that “the record in this proceeding does not include detailed market share information for particular enterprise broadband services,” and holding that, in light of “other available data” as to “competing providers for these types of services nationwide,” “we do not find it essential to have such detailed information”).

³⁷ CompTel Comments at 6; see also *id.* at 7 (same).

³⁸ See, e.g., *Pricing Flexibility Order* ¶ 4 (“In Phase I, we allow price cap LECs to offer contract tariffs and volume and term discounts for those services for which they make a specific competitive showing.”).

‘Contract Tariff Filing’ requirements.”³⁹ Although the Commission, in the paragraph the New Jersey Rate Counsel cites, stated that its “rules still require these contract-based tariffs to be filed,”⁴⁰ the Commission was describing the rules’ effect *before* the grant of forbearance. In the very next sentence, the Commission went on to explain that — as to the broadband services at issue in that petition — “*eliminating* these requirements would make the petitioners more effective competitors for these services, which in turn we anticipate will increase even further the amount of competition in the marketplace, thus helping ensure that the rates and practices for these services overall are just, reasonable, and not unjustly discriminatory.”⁴¹

G. Finally, commenters point to the rule providing that, before a price cap LEC “provides a contract tariffed service . . . to one of its long-distance affiliates,” it must “certif[y] to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer.” 47 C.F.R. § 69.727(a)(2)(iii). These commenters then claim that “[t]ariffs are needed for enforcement” of that certification requirement.⁴² But nothing about the certification obligation entails that all contracts must be filed as tariffs. Indeed, the regulation itself simply requires the carrier to make a certification to the Commission, and such a certification can occur independent of the filing of the contracts in question as tariffs (let alone those contracts not provided to affiliates).

³⁹ New Jersey Rate Counsel Comments at 4; *see also id.* at 6 (same).

⁴⁰ *Embarq Broadband Forbearance Order* ¶ 33, *quoted in* New Jersey Rate Counsel Comments at 6.

⁴¹ *Id.* ¶ 34 (emphasis added; footnote omitted).

⁴² CompTel Comments at 5; *see* Sprint Nextel Comments at 7.

CONCLUSION

The Commission should allow price cap LECs to enter into contract arrangements nationwide, without regard to whether and where such carriers have made the competitive showing required to obtain pricing flexibility, and with no obligation to file such contracts as tariffs. At a minimum, in those areas where carriers *have* made a competitive showing (under either Phase I or Phase II), the Commission should grant Embarq’s petition and should forbear from requiring all carriers to file their contracts as tariffs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Andrew Kizzie, do hereby certify that, on this 10th day of January 2008, I caused to be served a true copy of the foregoing Reply Comments of Verizon by delivering copies thereof via first-class mail to the following:

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