

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

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

**REPLY COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

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On the Comments:
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September 5, 2008

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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I. INTRODUCTION

Pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission"),¹ the New Jersey Division of Rate Counsel ("Rate Counsel")² submits these reply comments in the above-captioned proceeding regarding Embarq's petition for waiver to allow it to unify interstate and intrastate switched access rates.³

Far fewer parties submitted comments regarding Embarq's petition than regarding the petition of AT&T Inc. ("AT&T") in WC Docket No. 08-152. Based on its review of the initial

¹ / "Petition for Waiver of Embarq, Pleading Cycle Established," FCC Public Notice, DA 08-1846, August 5, 2008.

² / Rate Counsel submitted initial comments opposing Embarq's petition on August 26, 2008. In a related proceeding, Rate Counsel submitted initial and reply comments opposing AT&T's petition seeking immediate clarification regarding the proper terminating charges for Internet protocol to public switched telephone network ("IP-to-PSTN") traffic and PSTN-to-IP traffic, and also seeking to eliminate the disparity between its interstate and intrastate terminating switched access rates. In the Matter of Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption," WC Docket No. 08-152, Rate Counsel Initial Comments (August 12, 2008) and Rate Counsel Reply Comments (September 2, 2008).

³ / 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, August 1, 2008 ("Petition").

comments in this proceeding, Rate Counsel reiterates its opposition to the fragmented development of intercarrier compensation reform.⁴ The benefits of a coherent comprehensive policy greatly outweigh the purported benefits of providing piecemeal relief to individual carriers,⁵ particularly when, as in the case of the Embarq and AT&T petitions, the relief sought would harm consumers and exacerbate the already complex challenges confronting the Commission. Initial comments demonstrate that the Commission should deny Embarq's petition for procedural and substantive reasons.

Furthermore, initial comments submitted in this proceeding do not alter Rate Counsel's position that the Embarq petition lacks supporting documentation, and that, therefore, the Commission should dismiss the Embarq petition and require Embarq to include comprehensive supporting work papers and data in any future petition. Rate Counsel submits that the FCC should dismiss the petition or in the alternative require Embarq to supplement the petition and publish notice in the Federal Register with revised dates for comments and reply comments.

II. DISCUSSION

Initial comments unanimously support comprehensive intercarrier compensation reform, but diverge on the merits of Embarq's petition for immediate relief. AT&T recommends foremost that the Commission address comprehensive reform, and, only in the absence of such comprehensive reform does AT&T recommend that the Commission consider the merits of Embarq's (and AT&T's own) petitions.⁶ AT&T opposes Embarq's specific proposal to increase terminating access charges and extols instead its own proposal first to raise the subscriber line

⁴ / In its initial comments, Rate Counsel incorporated by reference its comments submitted August 12, 2008, regarding the AT&T Petition in WC Docket No. 08-152 because Embarq's Petition suffers similar procedural flaws to those of AT&T's Petition. In these reply comments, Rate Counsel similarly incorporates by references its reply comments submitted September 2, 2008, regarding the AT&T Petition.

⁵ / National Cable & Telecommunications Association, at 1.

⁶ / AT&T, at 1-3.

charge (“SLC”) where there is “headroom.” The Commission should reject AT&T’s (and others’) advocacy for raising the SLC.⁷ Rate Counsel concurs with AT&T’s skepticism of Embarq’s optimistic assessment of how quickly it could obtain the requisite state approval to change its intrastate access tariffs.⁸

CenturyTel, Inc. (“CenturyTel”) favors a comprehensive approach rather than a piecemeal one.⁹ CenturyTel also prefers Embarq’s approach to AT&T’s approach because, according to CenturyTel, it would better suit the construction and financial needs of mid-sized carriers, which rely on access revenues.¹⁰ Rate Counsel concurs with CenturyTel, in its comparison of AT&T’s and Embarq’s proposals, that “[a]dditions to rates, such as new or increased subscriber line charges, are not nebulous separate charges for a customer, but are indeed part of an overall monthly rate increase consumers must absorb in their household budgets.”¹¹ In that specific attribute (Embarq does not propose to raise the SLC), Embarq’s proposal is not as flawed as is AT&T’s proposal.¹²

Nonetheless, Rate Counsel concurs with the assessment by the Division of Communications of the Virginia State Corporation Commission (“VSCC Staff”) that: “Intercarrier compensation is an important issue; however, Embarq’s Unification Proposal is

⁷ / AT&T, at 3.

⁸ / AT&T, at 4.

⁹ / CenturyTel, at 3.

¹⁰ / CenturyTel, at 4.

¹¹ / CenturyTel, at 5; NCTA, at 3-4.

¹² / *See also* National Association of State Utility Consumer Advocates (“NASUCA”), at 2 (stating that “[u]nlike AT&T’s proposal (and a number of other ICC “reform” measures), Embarq’s current proposal would not affect end user rates or the federal Universal Service Fund” and that “[i]n that respect, Embarq’s proposal is substantially superior to AT&T’s.”)

self-serving and does nothing to address the complex problems and issues facing the industry today.”¹³

Frontier Communications (“Frontier”) prefers Embarq’s proposal to that of AT&T because Embarq’s proposal recognizes the need for state approval of changes to intrastate access charges, reduces incentives to misclassify intrastate traffic as interstate traffic, and is a first step toward comprehensive reform.¹⁴ Rate Counsel concurs with Frontier that *state* approval of *intrastate* rates is desirable (indeed essential), and also similarly supports the elimination of opportunities for arbitrage. However, Embarq’s petition suffers from major deficiencies, such as lacking underlying data and workpapers,¹⁵ presuming that carriers must be “made whole” as a result of intercarrier compensation reform,¹⁶ and modifying the *CALLS Order*, without proper notice and comment. Therefore, Rate Counsel asks that the Commission reject the petition, including those comments that seek to extend the option for similar relief to all other carriers.¹⁷ Instead of seeking to “prop up” the existing flawed system, the Commission should focus on completing comprehensive intercarrier compensation reform.¹⁸

III. CONCLUSION

The Commission should dismiss Embarq’s petition. If the petition is not dismissed, the Commission should require Embarq to supplement the petition with additional data and support, and the

¹³ / VSCC Staff, at 2. *See also*, Verizon, at 4, stating that “the petitions would therefore still leave in place a complicated patchwork of different rates for different types of traffic and different providers.” Verizon also indicates that it “intends to outline its complete proposal for comprehensive intercarrier compensation reform in a separate document to be filed in the coming weeks.” *Id.*

¹⁴ / Frontier, at 4. *See also*, Independent Telephone & Telecommunications Alliance, at 2, 9.

¹⁵ / *See* Verizon, at 5, stating, “Embarq’s Petition does not provide sufficient detail even to assess, let alone to justify, its proposal to increase interstate access rates to replace forgone intrastate access revenues.”

¹⁶ / NASUCA, at 4-5; Sprint Nextel, at 5-7 (describing, among other things, Embarq’s high rates of return).

¹⁷ / Frontier, at 4.

¹⁸ / Sprint Nextel, at 4.

Commission should proceed by notice of proposed rulemaking and consider such petition as part of a rulemaking. The petition seeks to modify the *CALLS Order* and modifications to the *CALLS Order* must be done through rulemaking.

Respectfully submitted,

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September 5, 2008