COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

September 5, 2008

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: 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 Rates of Interstate And Intrastate Jurisdictions	)	WC Docket No. 08-160
Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers	)	WC Docket No. 08-152
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
In the Matter of High-Cost Universal Service Support	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Intercarrier Compensation for ISP-Bound Traffic	)	WC Docket No. 99-68
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
In the Matter of IP-Enabled Services	)	WC Docket No. 04-36

Dear Ms. Dortch:

On September 5, 2008, the Pennsylvania Public Utility Commission filed Reply Comments in the pending Embarq Petition for Waiver of Certain FCC Rules at WC Docket No. 08-160. Those Reply Comments were filed as a written ex parte in the referenced dockets as well.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this electronic notice and the accompanying written ex parte is being filed in the referenced dockets.

Sincerely Yours,

Joseph K. Witmer, Esq., Assistant Counsel
Pennsylvania Public Utility Commission

Attachment

cc: Best Copy & Printing (via E-Mail)

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	)	WC Docket No. 08-160
Associated Rules Necessary to Permit It to	)	
Unify Switched Access Rates of Interstate	)	
And Intrastate Jurisdictions	)	
	)	
Petition of AT&T Inc. for Interim	)	CC Docket No. 08-152
Declaratory Ruling and Limited Waivers	)	

Introduction

The Pennsylvania Public Utility Commission (PaPUC) appreciates the opportunity to file these Reply Comments (the PaPUC Reply Comments) with the Federal Communications Commission (FCC). The PaPUC Reply Comments respond to the FCC Notice on the Petition of Embarq for Waiver of certain FCC Rules Regarding Access Charges at WC Docket No. 08-152 (the Embarq Petition). Embarq filed the Embarq Petition on August 1, 2008. The FCC posted notice of the AT&T Petition on August 5, 2008 at DA 08-1846 establishing a Comment and Reply Comment deadline of August 26, 2008 and September 5, 2008, respectively.

As an initial matter, the PaPUC Reply Comments should not be construed as binding on the PaPUC or any individual Commissioner in any proceeding pending before

the PaPUC. The PaPUC Reply Comments could also change in response to subsequent events, including subsequent state or federal developments. The PaPUC also notes that this is the second petition on the complex subject of intercarrier compensation reform filed at the FCC within a three week period. The other proceeding, addressing AT&T's proposed reforms for intercarrier compensation, has been the subject of another abbreviated comment and reply comment period notwithstanding this complexity.

Summary of the Embarq Petition and Comments

The Embarq Petition is one of two recent proposals addressing intercarrier compensation reform (the Reform Proposals).[1] The Embarq Petition asks the FCC to allow states to voluntarily agree to reduce the intrastate access rates within Embarq's study area to the interstate level. The costs for this reform will come from increased interstate access rates.[2] Unlike the AT&T Petition in WC 08-152, there is no proposal to increase Subscriber Line Charges (SLCs), originating access rates, or other rates reflected in the CALLS Order.[3]

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[1] *AT&T Petition on Intercarrier Compensation Reform,* WC Docket No. 08-152; Embarq Petition for Waiver of FCC Rules 61.3 and 61.44-61.48, WC Docket No. 08-160. The PaPUC Reply Comments also reflect and incorporate the concerns set out in the previously filed PaPUC Comment in that pending *AT&T Petition* proceeding.

[2] Study areas are an incumbent Local Exchange Carriers' local calling areas, historically regulated by state commissions under independent state law. Embarq has different study areas in multiple states with varying intrastate originating and terminating access rates.

[3] *In re: Access Reform,* CC Docket No. 96-45 (May 31, 2000), paragraphs 144, 150 and 155 (FCC Order reduces interstate access for Regional Bell Operating Companies (RBOCSs) to $.0055 per MOU other price cap carrier rates to $.0065 per MOU, and rural carrier rates to $.0095.

Verizon opposes the Embarq Petition and the AT&T Petition.[4] Verizon opposes these kind of narrow solutions for one type of traffic, interstate and intrastate terminating access rates. Verizon is concerned that "even though there is little (if any) difference in the work carriers perform to terminate a call, the terminating carrier may charge as little as $.0007 per minute for a "local" call rated under the "mirroring rule," or over ***175 times*** as much for an intra-state long distance call terminated by a rural carrier."[5] Verizon wants the FCC to focus on intercarrier compensation reform for *all* traffic.[6] Verizon is concerned about rate disparities between interstate and intrastate terminating access that can be as large as 175 times as much for intrastate long distance compared to local calling rates.[7] Verizon wants a comprehensive solution to avoid fraud and arbitrage. Verizon promises to file a proposal in the coming weeks.[8] Verizon believes that Embarq's proposal is fundamentally flawed because the reform gives full recovery of all lost revenues from other carriers instead of customers.[9]

Other opponents make similar points. The Virginia State Corporation Commission supports reform but concludes that this proposal does not accomplish reform

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[4] *In re: Embarq Petition,* WC Docket No. 08-160, Verizon Comments, p. 5.
[5] *In re: Embarq Petition,* WC Docket No. 08-160, Verizon Comments, p. 2, emphasis supplied.
[6] *In re: Embarq Petition,* WC Docket No. 08-160, Verizon Comments, p. 2.
[7] *In re: Embarq Petition,* WC Docket No. 08-160, Verizon Comments, pp. 1-2.
[8] *In re: Embarq Petition,* WC Docket No. 08-160, Verizon Comments, p. 4, n. 4.
[9] *In re: Embarq Petition,* WC Docket No. 08-160, Verizon Comments, p. 5.

and may actually harm consumers.[10] The National Cable and Telecommunications Association (NCTA) supports comprehensive reform, notes that arbitrage will continue given the difference between access (long distance) and reciprocal compensation (local) rates, and does not support complete recovery of all lost revenues.[11] Sprint-Nextel opposes any relief because the current access regime is irrational, there is no proof that Embarq's rates are just and reasonable, Embarq should not get full recovery for all lost revenues, and the cost to reform intrastate rates should not be shifted to the interstate market.[12] Feature Group IP (FGIP) opposes this proposal as another compensation structure that perpetuates the irrational and retrograde status quo of the incumbents, a structure that prevents the flow through of network cost reductions through competition.[13]

Some parties liked some parts of the proposal, at least compared to the pending AT&T Petition. These include the National Association of State Utility Consumer Advocates (NASUCA) and the New Jersey Office of Ratepayer Advocate. These comments recognize that the Embarq proposal is superior to the AT&T Petition given the absence of any impact on on end user rates from SLCs or the Federal Universal Service Fund (FUSF). However, NASUCA raises several concerns.[14] NASUCA is concerned that the CALLS and MAG reforms incorrectly based interstate access charges purely on

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[10] *In re: Embarq Petition,* WC Docket No. 08-160, Virginia Comments, pp. 1-4.
[11] *In re: Embarq Petition,* WC Docket No. 08-160, NCTA Comments, pp. 1-5.
[12] *In re: Embarq Petition,* WC Docket No. 08-160, Sprint-Nextel Comments, pp. 1-9.
[13] *In re: Embarq Petition,* WC Docket No. 08-160, FGIP Comments, pp. 1-60. FGIP currently has a petition seeking continuation of the ESP Exemption for IP-Traffic in Docket No. WC 07-256. SBC wants that exemption terminated in Docket WC 05-276.

incremental traffic-sensitive costs, with no contribution to the loop, and that the end result were incorrectly low access rates.[15] NASUCA recognizes that a required contribution to joint and common costs from a service that is using the loop is not an "implicit support" that the FCC must remove, and carrier access rates must also contribute to these joint and common loop costs.[16] NASUCA is also concerned with the guaranteed recovery of all lost access revenues from a blended access rate in perpetuity because it ignores real declines in minutes of use, fails to reflect efficiency considerations, and may still result in possible preemption.[17] Finally, NASUCA identifies an "early adopter" problem in that intrastate access rates in Nevada, South Carolina, and Ohio are actually lower than interstate rates and would increase, not decrease, from this reform.[18]

The New Jersey Ratepayer Advocate shares many of the NASUCA concerns. New Jersey applauds the absence of SLC surcharges, supports inclusion of all revenues as offsets to any costs for reform, and notes that the Enhanced Service Provider (ESP) exemption from access rates is pending in the IP-Enabled Services Docket No. 04-36.[19]

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[14] *In re: Embarq Petition,* WC Docket No. 08-160, NASUCA Comments, p. 2.
[15] *In re: Embarq Petition,* WC Docket No. 08-160, NASUCA Comments, p. 4.
[16] *In re: Embarq Petition,* WC Docket No. 08-160, NASUCA Comments, p. 4.
[17] *In re: Embarq Petition,* WC Docket No. 08-160, NASUCA Comments, pp. 4-5.
[18] *In re: Embarq Petition,* WC Docket No. 08-160, NASUCA Comments, pp. 5-10.
[19] *In re: Embarq Petition,* WC Docket No. 08-160, NJ Comments, pp. 1-6.

The supporters of Embarq's Petition consist of incumbent trade associations and member carriers. The United States Telephone Association (USTA) wants comprehensive reform or, at least, limited reforms that incorporate the Missoula Plan components like FUSF support for setting uniform rates and addressing phantom traffic even though the needs of rate-of-return or National Exchange Carrier Association (NECA) pooling incumbents may require other arrangements.[20] The Independent Telephone & Telecommunications Alliance (ITTA) supports the Embarq proposal because it recognizes that rural carriers cannot typically seek the recovery of reform costs from end-user customers given the high-cost for rural service and ITTA supports the recovery of access from IP traffic.[21] Finally, NECA and the Organization for the Promotion and Advancement of Small Telephone Companies (OPASTCO) support removal of the ESP exemption from access for IP traffic and they propose a new Local Switching Support 2 proposal so that rate-of-return or NECA pool incumbents get full recovery of the costs of reform.[22]

Individual carriers also support the Embarq proposal. CenturyTel, Inc. considers the Embarq proposal well worth considering, particularly given the benefits for mid-sized

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[20] *In re: Embarq Petition,* WC Docket No. 08-160, USTA Comments, pp. 1-9.
[21] *In re: Embarq Petition,* WC Docket No. 08-160, ITT Comments, pp. 1-9.
[22] *In re: Embarq Petition,* WC Docket No. 08-160, NECA Comments, pp. 1-15.

carriers and the growth in the arbitrage business.[23] Frontier Communications asks the FCC to grant Embarq's petition to address arbitrage and access charges on IP traffic.[24]

The PaPUC Reply Comments

The PaPUC Reply Comments support the comments that recognize the need to reform intercarrier compensation, as set out in previously filed PaPUC Comments filed in the pending AT&T Petition in WC Docket No. 08-152 and the Missoula Plan as well. The PaPUC also identifies some positive features in this proposal. These include a voluntary decision by the states on participating in a federal compensation reform solution, the avoidance of SLCs to underwrite reform, and reliance on blended interstate and intrastate access rates adjustments to support the costs for reform.

Several considerations guide this Reply Comment. First, the PaPUC supports those comments, which recognize the reality of Early Adopter issues. For example, Pennsylvania has already undertaken extensive intrastate access charge reforms that cost more than $1 Billion in magnitude in Pennsylvania, as explained in the PaPUC's comments on the Missoula Plan proposals.[25] The PaPUC remains concerned that SLC increases do undermine universal service local service penetration rates in Pennsylvania

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[23] *In re: Embarq Petition,* WC Docket No. 08-160, CenturyTel Comments, pp. 1-9.
[24] *In re: Embarq Petition,* WC Docket No. 08-160, Frontier Comments, pp. 1-4.
[25] *In re: Intercarrier Compensation,* CC Docket No. 01-92 Reply Comments of the PaPUC, (February 1, 2007), p. 27.

and in the MACRUC Region as set out in the PaPUC Comments in the pending AT&T Petition. Finally, the PaPUC appreciates Embarq's willingness to forgo the preemption solution by favoring a solution that lets state commissions decide whether to participate in federal reform efforts.

The PaPUC remains concerned because Pennsylvania law requires that any reduction in rates be done on a "on a revenue-neutral basis."[26] The PaPUC cannot support a proposal that requires implementation of the unenviable task of having to conduct a "revenue neutral" pass through of ILEC intrastate access rate reduction in basic local exchange service rates for any federal reform that does not make a carrier whole. At a minimum, a recipient of compensation reform should be required to forego ancillary claims arising in any state where the commission opts-in to the federal solution.

The federal reform of intrastate ratemaking is not a principle that has been condoned and should not be lightheartedly taken. *Louisiana Public Service Commission v. FCC,* 476 U.S. 355, 368, 90 L.Ed. 369 (1986). State commissions would be less likely to litigate preemption under *Louisiana* if there is an "opt-in" provision that prohibits any flow through of reform costs in local rates. Moreover, state commissions must be given a right and structured opportunity to comment going forward on any future action on any adopted intercarrier compensation reform plans. The PaPUC urges the FCC to use a process similar to the PaPUC and MACRUC proposals set out in the pending

Forbearance Notice of Proposed Rulemaking.[27] Finally, any FCC decision must allow a state to revoke a decision at a later time for good cause shown, thus preventing one commission from binding future commissions in perpetuity.

The PaPUC appreciates AT&T Comments filed in the pending AT&T Petition in which AT&T expresses a willingness to work with state commissions on the state impact from any federal reform of intercarrier compensation, including intrastate rate impacts.[28] This should also be a mandate in any federal solution on the Embarq Petition as well.

Respectfully submitted,
Pennsylvania Public Utility Commission

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[26] *See* 66 Pa. C.S. § 3017(a).

[27] *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance under the Telecommunications Act of 1996*, FCC Docket Nos. WC 07-267 and 07-202, Comments of the PaPUC. The PaPUC was concerned about the use of *Ex parte* filings to propose major substantive changes in pending petitions and the lack of structured state commission input even though the result impacted a state.

[28] *In re: AT&T Petition,* Docket No. WC 08-152, Reply Comments of AT&T, p. 10, n. 27. AT&T expressed a willingness to work with state commission in response to the PaPUC's stated concern with local rate increases attributable to federal intercarrier compensation reform.