

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of MCImetro
Access Transmission Services LLC d/b/a
Verizon Access Transmission Services for
Arbitration of an Interconnection
Agreement with Embarq Minnesota, Inc.,
Pursuant to 47 U.S.C. § 252(b)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

A hearing in this matter was held on August 22, 2007, in the Summit Room of the Department of Commerce before Administrative Law Judge Steve M. Mihalchick. The following persons appeared:

Darrell Townsley, Assistant General Counsel, Verizon, 205 North Michigan Avenue, 11th Floor, Chicago IL 60601, and Lesley J. Lehr, Gray, Plant, Mooty, Mooty & Bennett, P.A., 500 IDS Center, 80 South Eighth St, Minneapolis, MN 55402, appeared for MCImetro Access Transmission Service Services LLC, d/b/a Verizon Access Transmission Services (Verizon Access).

Joseph R. Stewart, Senior Counsel, Embarq, 50 W. Broad St., Suite 3600, Columbus, OH 43215, appeared for Embarq Minnesota, Inc. (Embarq).

Linda S. Jensen, Assistant Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2131, appeared for the Department of Commerce (Department).

ISSUES

The Commission referred three issues for arbitration. Verizon Access and Embarq resolved one issue before hearing. The two remaining issues are:

1. What compensation, if any, should be paid by Verizon Access for VNXX-routed ISP-bound traffic?

The Administrative Law Judge concludes that this traffic should be compensated in the manner established by the Commission in the 05-721 docket. Therefore, in this docket, reciprocal compensation of \$.002862 should be paid for the termination of VNXX-routed ISP-bound traffic if the ISP has a server in the same local calling area as the caller, and no compensation should be paid for the termination of ISP-bound traffic if the ISP does not have a server in the same local calling area as the caller.

2. When Verizon Access is self-provisioning loops, what amount of monthly recurring compensation, if any, should be paid by Verizon Access for a primary directory listing in addition to the original charge for the listing?

The Administrative Law Judge concludes that the monthly recurring rate should be zero.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, any party adversely affected by this Report may file exceptions pursuant to the schedule set by the Commission. The filing must be made via the Commission's electronic filing system, if practicable. Otherwise, the paper original and 15 copies of the exceptions should be filed with the Executive Secretary, Minnesota Public Utilities Commission, 350 Metro Square, 121 - 7th Place East, St. Paul, Minnesota 55101. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if held. Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that the recommendation has no legal effect unless expressly adopted by the Commission as its final order.

Based upon the record herein, and for reasons discussed in the attached Memorandum, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. Verizon Access is a telecommunications carrier under Minn. Stat. § 237.01, subd. 6. Verizon Access is authorized to provide interLATA and intraLATA long distance services throughout Minnesota and local exchange service in certain Minnesota service territories, including the service territory of Embarq in Minnesota.¹ In that role, Verizon Access is a competitive local exchange carrier (CLEC).

2. Embarq is an incumbent local exchange carrier (ILEC) in Minnesota as that term is defined in Section 251(h) of the Telecommunications Act of 1996 (the Act).²

3. On May 10, 2007, Verizon Access filed with the Commission a Petition for Arbitration pursuant to Sections 251 and 252 of the Act asking the Commission to

¹ Verizon Access Petition for Arbitration at 2.

² Pub.L.No. 104-104, 110 Stat. 56, codified in various sections of Title 47, United States Code.

resolve three remaining disputed issues in its negotiation of an interconnection agreement (ICA) with Embarq.

4. On June 4, 2007, the Commission issued an *Order Referring Matter to Office of Administrative Hearings for Arbitration and Assigning Arbitrator* in this matter. On July 13, 2007, a telephone prehearing conference was held with Verizon Access, Embarq, and the Department.³ During the prehearing conference, the parties agreed to a schedule that included a hearing to begin August 22, 2007, and a Commission final order to be issued by December 7, 2007. Verizon Access and Embarq agreed to the schedule, waived the completion date required by 47 U.S.C. §252(b)(4)(C) of September 1, 2007, and agreed to the December 7, 2007, date.⁴

5. On August 3, 2007, Verizon Access and Embarq filed a notice that they had successfully resolved the second issue identified in the Petition and withdrew their request that the Commission resolve the issue.⁵

Issue 1: Compensation for Virtual NXX Traffic

6. Telephone numbers assigned to end user customers generally consist of ten digits in the form of NPA-NXX-XXXX. The first three digits indicate the Numbering Plan Area (NPA), commonly known as the area code, and the next three digits refer to the exchange code (NXX). Each NPA-NXX is assigned to a rate center and calls are routed to their intended destinations based upon the NPA-NXX designations. This plan arose out of historical telephone switching devices and network configurations.⁶

7. “Virtual NXX,” or “VNXX” or “vNXX,” is an arrangement whereby a telephone number is assigned to a customer associated with a rate center other than the one that corresponds to the customer’s physical location. A call delivered to an end user located outside the local calling area to which the call’s NXX is associated is VNXX traffic. Modern computerized switch technology and network design make such configurations available and efficient.⁷

8. ILECs and CLECs often assign VNXX numbers to ISPs in order to allow the ISPs to serve dial-up internet user customers outside each ISP’s local calling area without subjecting its customers to toll charges.⁸ It is generally accepted that obvious toll charges discourage the use of that ISP and dial-up access in general.

9. The Parties’ disagreement about VNXX calls concerns the intercarrier compensation that should apply to such calls—specifically, whether either entity should receive compensation for handling VNXX traffic, and, if so, what rate should apply.

10. Verizon Access proposes the following language for § 55.4 of the ICA:

³ At that time, the Department was not a party. It subsequently petitioned for and was granted party status.

⁴ *First Prehearing Order* at 2.

⁵ Available at <https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4740979>

⁶ Ex. 1 (Fox Direct) at 3-4.

⁷ Ex. 1 (Fox Direct) at 4-5; Ex. 10 (Doherty Testimony) at 2-3.

⁸ Ex. 1 (Fox Direct) at 9.

55.4. If either Party assigns NPA/NXXs to specific Embarq rate centers within the LATA and assigns numbers from those NPA/NXXs to customers physically located outside of that LATA, the other Party's traffic originating from within the LATA where the NPA/NXXs are assigned and delivered to a customer physically located outside of such LATA ("V/FX" Traffic) shall be subject to intercarrier compensation in accordance with this Section 55.4, *et seq.*

55.4.1. IntraLATA traffic (i.e., where the physical end points of the call are within the LATA) shall be exchanged as though it were Local Traffic, if the originating and terminating NPA/NXXs indicate that the traffic is Local Traffic, and it shall be exchanged as though it were IntraLATA Toll Traffic if the originating and terminating NPA/NXXs indicate that the traffic is IntraLATA Toll Traffic.

55.4.2. In each LATA where the Parties have at least one POI in each of the ILEC Tandem serving areas in which CLEC assigns to its end user customers its own or ported telephone numbers and at which each Party delivers its originating traffic to the other Party, the rate for the Call Transport and Call Termination of V/FX Traffic that is ISP-bound Traffic is \$.0007 per minute of use.

55.4.3. In each LATA where the Parties do not have at least one POI in each of the ILEC Tandem serving areas in which CLEC assigns to its end user customers its own or ported telephone numbers and at which each Party delivers its originating traffic to the other Party, V/FX Traffic that is ISP-bound Traffic shall be exchanged on a bill and keep basis.

55.4.4. In each LATA, V/FX Traffic that is not ISP-bound Traffic shall be exchanged on a bill and keep basis. The Parties hereby agree that, as of the Effective Date, they are exchanging only a de minimis amount of V/FX Traffic that is not ISP-bound Traffic. The Parties further agree that, from time to time, upon written request from either Party, the Parties will review whether the amount of such V/FX Traffic that is not ISP-bound Traffic exchanged between them remains de minimis. If, upon such review, the amount of such V/FX Traffic that is not ISP-bound Traffic is found not to be de minimis, the Parties shall engage in good faith

negotiations to amend this Agreement to establish an intercarrier compensation regime for such non-de minimis traffic.

11. Verizon Access is not asking that all VNXX calls be considered local. Rather, its proposal applies a specified level of compensation (not reciprocal compensation) to VNXX traffic if certain conditions are met. Under this proposal, Verizon Access receives compensation for handling VNXX calls originated by Embarq in those cases where Verizon Access has greater responsibility for transporting the traffic from Embarq's originating end office, and Embarq has less responsibility. Verizon Access has implemented the same type of VNXX compensation arrangement region-wide with SBC (prior to the January 2005 announcement of SBC's merger with AT&T), with the Verizon ILECs (before the February 2005 announcement of the Verizon/MCI merger), and, most recently, with BellSouth in all of its states. In Verizon Access's view, these and other similar multi-state agreements avoid the uncertainty of disparate, state-specific outcomes that may result from litigation, eliminate billing and invoicing problems, and allow parties to appropriately weigh their own business interests.⁹

12. Under Verizon Access's proposal, if the parties have at least one point of interconnection (POI) for exchange of traffic in each ILEC tandem serving area where Verizon Access assigns telephone numbers to its customers, the compensation rate for dial-up Internet VNXX traffic is \$0.0007 per minute of use. This is the same as the FCC's default rate for ISP-bound traffic that an originating carrier hands off to another carrier for delivery to an ISP in that same local calling area. This rate is much lower than the reciprocal compensation rates the Parties have agreed to in the ICA. Those rates are local end office switching at \$0.002862 per MOU, local tandem switching at \$0.002350 per MOU, and local shared transport at \$0.005343 per MOU.¹⁰

13. Under Verizon Access's proposal, in LATAs where the parties do not have POIs in each of the ILEC's tandem serving areas, VNXX traffic (voice and ISP-bound) would be exchanged on a bill-and-keep basis.¹¹

14. Embarq proposes the following language for § 55.4 of the ICA:

55.4. Calls terminated to end users physically located outside the local calling area in which their NPA/NXXs are homed (Virtual NXXs), are not local calls for purposes of intercarrier compensation and access charges shall apply. For Embarq-originated traffic terminated to CLEC's Virtual NXXs, Embarq shall not be obligated to pay reciprocal compensation, including any shared interconnection facility costs, for such traffic.

15. Under Embarq's proposal, the geographic locations of the end points of the call (the Embarq end user and the location of the ISP) determine whether the call is local or long distance and the appropriate compensation (whether reciprocal

⁹ Ex. 1 (Fox Direct) at 11-12; Ex. 2 (Fox Rebuttal) at 5-6.

¹⁰ Ex. 2 at 3-4; Verizon's Petition for Arbitration, Attachment C, at 161 ("Reciprocal Compensation Rates").

¹¹ Ex. 2, at 4.

compensation or access charges) that applies. For ISP-bound traffic in which the ISP is not located in the same local calling area as the calling party, the call would be subject to access charges.¹²

16. Embarq's view is that its position is consistent with existing precedent and should be adopted. It points out that the Public Utilities Commission of Ohio adopted its position in an order of April 18, 2007.¹³ The Ohio Commission held:

Given that an ILEC must perform the exact same functions when originating a voice vNXX call and an ISP-bound vNXX call, the Commission sees no reason to treat these two types of calls differently, absent FCC preemption. Therefore, consistent with Local Service Guideline IV.C and previous Commission decisions, the Commission finds that, for ISP-bound vNXX calls that originate or terminate outside the ILEC's local calling area, the call is considered toll or interexchange. Compensation is based upon the originating or terminating party's access charges.¹⁴

17. The Department recommends that neither of these positions be adopted. Instead, it recommends that already agreed-to terminating reciprocal compensation of \$.002862¹⁵ should be paid for the exchange of VNXX-routed ISP-bound traffic only if the ISP has a server located in the same local calling area as the caller, and that no terminating compensation applies to traffic where the ISP does not have a server located in the same local calling area as the caller.

18. The Department's recommendation follows Commission precedent established in *In the Matter of the Complaint of Level 3 Communications, LLC, Against Qwest Corporation Regarding Compensation for ISP-Bound Traffic*, PUC Dkt. P-421/C-05-721.¹⁶ In the 05-721 docket, the Commission interpreted the FCC's *ISP Remand Order* and determined that the FCC did not intend for the *ISP Remand Order* to apply to or regulate "non-local" ISP-bound traffic, which, the Commission stated, is traffic in which the ISP does not have a server in the calling party's local calling area. The Commission determined that the traffic, thus defined as "non-local," is not subject to reciprocal compensation, either at the FCC-established rate of \$.0007 or any other

¹² Ex. 10 (Doherty) at 5-7.

¹³ Response of Embarq to Petition for Arbitration, Attachment A (Embarq's Counter-Statement of Disputed Issues).

¹⁴ *In the Matter of the Petition of Verizon Access Transmission Services, Inc. for Arbitration of an Interconnection Agreement with United Telephone Company of Ohio dba Embarq Under Section 252(b) of the Telecommunications Act of 1996*, Case No. 06-1485-TP-ARB, April 18, 2007, at 7.

¹⁵ The FCC stated in the *ISP Remand Order* that the FCC-established rate cap of \$.0007 for ISP-bound traffic, applies "only if an incumbent LEC agrees to exchange all traffic subject to section 251(b)(5) at that same rate... For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved, or state-arbitrated reciprocal compensation rates reflected in their contracts." *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, April 27, 2001, "Order on Remand and Report and Order" ("*ISP Remand Order*"), p. 44, ¶ 89.

¹⁶ *In the Matter of the Complaint of Level 3 Communications, LLC, Against Qwest Corporation Regarding Compensation for ISP-Bound Traffic*, PUC Dkt. P-421/C-05-721, Order Adopting Recommendations and Remanding for Further Proceedings at 11 (May 8, 2006) and Order Amending Interconnection Agreement and Establishing Effective Date (December 18, 2006)(the 05-721 docket).

reciprocal compensation rate. The Commission further determined in the 05-721 docket that this ISP-bound traffic is not “long distance” for purposes of intercarrier compensation and concluded that access charges do not apply.¹⁷

19. The relevant facts and legal requirements regarding VNXX-routed ISP-bound traffic in this docket are identical to those in the 05-721 docket.

20. The Department is of the opinion that consumers expect to be able to access their ISPs by dialing a local number and that if access charges are applied to ISP-bound dial-up traffic, it would discourage such use and make it uneconomic for ISPs to serve communities where they do not have a physical presence. This is not in the public interest.¹⁸

Issue 3: Recurring Charge for Customer Directory Listing Information

21. Verizon Access and Embarq have agreed in the proposed ICA that when Verizon Access is purchasing UNE loops or resold services from Embarq, it need not pay any additional charges for ensuring that its customers receive basic (also called “primary”) directory listings.¹⁹ The ICA also provides that when Verizon Access is self-provisioning loops, it will pay Embarq a nonrecurring electronic service order charge for basic directory listings of \$9.13 for its customers.²⁰

22. The ICA also lists a charge for an electronic directory listing change order, which is also \$9.13.²¹ While it is not entirely clear, it appears Verizon Access must pay that charge whenever the basic directory listing for one of its customers needs to be updated or otherwise modified.

23. In addition to these nonrecurring charges, Embarq desires to add monthly recurring charges for "routine maintenance and storage" of basic directory listing information. Verizon Access opposes such charges.

24. Verizon Access proposes the following language for § 75.2.5 of the ICA:

75.2.5 Embarq agrees to include one basic White Pages listing for each CLEC customer located within the geographic scope of its White Page directories, at no additional charge to CLEC. A basic White Pages listing is defined as a customer name, address and either the CLEC assigned number for a customer or the number for which number portability is provided, but not both numbers. Basic White Pages listings of CLEC customers will be interfiled with listings of Embarq and other LEC customers. If CLEC's customers desire specialized listings (e.g., bold font, additional listings), they may

¹⁷ Doherty, pp. 10-11.

¹⁸ Doherty, p. 12.

¹⁹ ICA § 75.3.3. See, also, Embarq's proposed ICA § 75.2.5 set forth in Finding No. 25.

²⁰ ICA § 75.3.3 and Attachment C, Table One at 157, item 10012.

²¹ ICA Attachment C, Table One at 157, item 10013.

contract directly with Embarq or Embarq's directory publisher for such listings.

25. Embarq proposes the following language:

75.2.5. In order to recover the routine maintenance and storage costs for Directory Listings (which are normally recovered through the monthly recurring charges for UNE Loops or resold services), CLECs that are not purchasing UNE Loops or resold services shall pay a monthly recurring charge equal to the MRC for maintenance and storage of additional directory listings, as reflected in Embarq's Exchange Tariff.

26. In its Petition, Verizon Access states, in part:

Embarq has not indicated the amount of the monthly recurring charge it is proposing to use, and has not provided Verizon with a citation to its Minnesota tariff that, according to its proposed contract language, contains the monthly recurring rate for additional directory listings. Indeed, Verizon's independent effort to locate a rate for additional directory listings in Embarq Minnesota's tariff was unsuccessful.²²

In its Response to the Petition, Embarq did not address the fact that it had not indicated the amount of the charge in its proposed language and the fact that no such charge appeared in its Minnesota tariff.

27. Embarq first addressed these issues in this proceeding in the June 28, 2007, prefiled testimony of its witness James Maples. Maples testified there that an Embarq end user would order an additional directory listing, perhaps for a family member, through its customer service center and then be charged a record change charge of \$8.15 and a monthly recurring charge of \$2.00. Maples further testified in a footnote there that, "The price for additional listings is displayed in the Residential Services Guide, which is mailed to residential customers annually. The service has been price deregulated and is not included in the tariff." No copy of the Residential Services Guide was provided.²³

28. In her July 26, 2007, prefiled testimony, Department witness Katherine Doherty raised several questions about Maple's claims in the footnote. She did not agree that additional directory listings were "deregulated," were a "non-price regulated service," or were anything other than "flexibly priced" under the statutes. She stated, "Embarq needs to file a tariff for additional white pages listings to bring itself into compliance with Minnesota's tariffing requirements. Until it does so, the rate should be set at \$0."²⁴

29. In his August 10, 2007, prefiled rebuttal testimony, Maples testified that the reference to the tariff came from the nationwide template that Embarq was using

²² Verizon's Petition for Arbitration, Attachment A (Statement of Disputed Issues) at 5.

²³ Ex. 8 (Maples Direct) at 8-9 and n. 5.

²⁴ Ex. 10 (Doherty Testimony) at 16-19.

and that 'he understood' that when the question had been raised, "Embarq provided Verizon Access with the \$2.14 rate during negotiations." A few lines later, he stated that the failure to make the tariff filing had been an oversight and that Embarq was that day making a tariff filing for the additional listing service classifying it as Flexibly Priced. He also testified, "It is being filed with the \$2.00 charge, the same rate that has been utilized for several years."²⁵ The filing was actually made on August 9, 2007, and Verizon Access had a copy of it at or before the August 22, 2007, hearing.²⁶

30. Maples testified that while Embarq disagreed with the Department's assertion that it was required by its AFOR Plan to offer the additional listing service MRC to Verizon Access at its discount rate of 17.66%, Embarq was willing to do so.²⁷ Thus, Embarq is proposing \$2.00, but is willing to accept a recurring rate of \$1.6468.

31. In its Response to the Petition, Embarq also states that where Verizon Access is providing local service to end user customers located in Embarq's service territory entirely over Verizon Access's own facilities, "Verizon wants its customers' names and addresses included in Embarq's directory and is demanding that Embarq provide this service free of charge."²⁸ The last half of that statement is false. As found above, the ICA already provides that Verizon Access will pay a nonrecurring charge of \$9.13 for each basic directory listing and for each change to a basic listing. That is not "free." Of course, it is the MRC that Verizon Access objects to and arguably wants "for free." But Embarq largely failed to make that distinction in its arguments, which overly complicated this matter.

32. As to the recurring charge itself, Embarq claims that the charge to its retail customers for additional directory listings is a fair proxy of its costs for an original listing because Verizon Access would be purchasing no other service from Embarq that might cover those costs. However, it is not a fair proxy, for at least the following reasons: Retail customers talk to Embarq service representatives who verify and enter the orders; they don't place electronic service orders. Despite what would appear to be lower costs, Embarq charges Verizon Access more (\$9.13) than its retail customers (\$8.15) for ordering a listing. Retail customers are not CLECs, whose purchase volumes often justify volume discounts. Additional listings are not a routine service like original listings.

33. Embarq provided no credible evidence to support *any* monthly charge for directory listings.²⁹ It made general claims about the costs of maintaining a database and providing its data to its directory publisher. But it provided no evidence as to the amount of those costs.

34. Doherty testified that she had reviewed a Qwest cost study regarding directory listings from around 1997, which showed that such costs were extremely low

²⁵ Ex. 9 (Maples Rebuttal) at 4.

²⁶ Tr. 169.

²⁷ Ex. 9 (Maples Rebuttal) at 4; Tr. 169-171.

²⁸ Response of Embarq to Petition for Arbitration, Attachment A at 3. Embarq makes the same or similar claims in subsequent documents.

²⁹ Ex. 2 (Price Rebuttal) at 17; Ex. 10 (Doherty Testimony) at 21-22.

and in no way near \$2.00. Further, she believed that the costs would have gone down since 1997.³⁰

35. Embarq is paid by its directory publisher for its directory data. All directory publishers or telephone companies that wish to purchase any white page directory listings contained in Embarq's listing database are billed the FCC recommended SLI rate of \$0.04 per initial listing and \$0.06 for updated listings. So, Embarq is paid for every Verizon Access customer listed in its database.³¹ This benefit to Embarq is reflected in the fact that the proposed ICA requires Verizon Access to provide Embarq customer listing information at no charge.³²

36. Embarq must provide all requesting carriers access to Embarq's directories on the same rate, terms, and conditions and quality of access that it provides to itself. Embarq's interconnection agreement with Level 3 provides Level 3 with free directory listings.³³ Thus, Embarq is not treating CLECs on a nondiscriminatory basis as it has contracts with certain CLECs that contain terms that are more favorable than those proposed by Embarq to Verizon Access.

37. Competitors' practices may be considered in determining the reasonableness of a charge. Other large ILECs (Citizens, Frontier, and Qwest) in Minnesota do not charge a monthly recurring rate for primary listings for CLECs who interconnect with the ILEC, but do not purchase UNEs or resold services.³⁴

38. Embarq also claimed that Verizon Access could choose to take its data directly to a directory publisher. Verizon Access's witness Price testified that, while there may be alternatives, they are not of the same quality³⁵ as that which Embarq provides to itself and its customers.³⁶ Within an Embarq service territory, it is most advantageous to Verizon Access and its end user to be in the Embarq directory.

39. While the evidence as to actual costs and revenue for maintaining the directory database is entirely lacking in this record, it appears most likely that Embarq's costs are more than covered by the nonrecurring charges to Verizon Access for primary listings and listing changes, the revenues it receives from end users for monthly recurring charges, and from purchases of the listings.

Based upon the foregoing findings of fact, the Administrative Law Judge makes the following:

³⁰ Tr. 235.

³¹ Ex. 2 (Price Rebuttal) at 21-22.

³² ICA, § 75.3.4.

³³ Ex. 1 (Price Direct) at 21-22.

³⁴ Tr. 234.

³⁵ See 47 C.F.R. § 51.217(a)(2) ("Nondiscriminatory access" is required, including "access to... directory listings that is at least equal to the access that the providing local exchange carrier (LEC) itself receives," including "the ability of the competing provider to obtain access that is at least equal in quality to that of the providing LEC")(emphasis added).

³⁶ Tr. 76-78.

CONCLUSIONS OF LAW

1. Because the facts in the presented in this docket are not materially different from those in the 05-721 docket, the Commission's analysis from that docket should be applied here, with the same conclusions. Thus, VNXX ISP-bound traffic is defined as "non-local" and is not subject to reciprocal compensation, either at the FCC-established rate of \$.0007 or any other reciprocal compensation rate. Further, such ISP-bound traffic is not "long distance" for purposes of intercarrier compensation and access charges do not apply.

2. The evidence presented is not sufficient to support any monthly recurring charge for primary directory listings in cases in which Verizon Access is not purchasing resold services or UNEs from Embarq. Therefore, Verizon Access's proposal should be adopted or the monthly recurring charge for directory listings should be set at zero.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commission order that:

1. Section 55.4 of the Interconnection Agreement provide:
 - 55.4. Reciprocal Compensation for Local End Office, as set forth in Table One, shall be paid for the exchange of VNXX-routed ISP-bound traffic if the ISP has a server located in the same local calling area as the caller. No terminating compensation shall be paid for such traffic where the ISP does not have a server located in the same local calling area as the caller.
2. Section 75.2.5 of the Interconnection Agreement provide:
 - 75.2.5 Embarq agrees to include one basic White Pages listing for each CLEC customer located within the geographic scope of its White Page directories, at no additional charge to CLEC. A basic White Pages listing is defined as a customer name, address and either the CLEC assigned number for a customer or the number for which number portability is provided, but not both numbers. Basic White Pages listings of CLEC customers will be interfiled with listings of Embarq and other LEC customers. If CLEC's customers desire specialized listings (e.g., bold font, additional listings), they may contract directly with Embarq or Embarq's directory publisher for such listings.

Dated: November 2, 2007

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge