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November 26, 2008

Ms. Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: Case No. 2007-00503 – MCI Communications Services, Inc. et al. v. Windstream Kentucky

Dear Ms. Stumbo:

Verizon filed the referenced complaint on December 5, 2007. Windstream filed a motion to dismiss in mid-January and Verizon filed a timely response. The motion has been fully briefed for seven months. The Commission has not ruled on the motion.

As Verizon explained in its February 20, 2008 Opposition to Windstream's motion to dismiss, the threshold question before the Commission is whether Verizon has adequately alleged that Windstream's switched access rates are unjust and unreasonable under Kentucky law. If the Commission agrees, it should deny the motion to dismiss, adopt a procedural schedule, and promptly conduct a proceeding to consider what Windstream's access rates should be in the future. Since any rate reduction would be prospective, continued delay in reducing excessive access rates harms all of Windstream's switched access customers.

Verizon's complaint describes how the Commission has repeatedly emphasized the need to rationalize switched access rates in Kentucky.[1] The Commission committed to access reform and achieved the first step when it reduced access rates for BellSouth Telecommunications nearly ten years ago. Since even Windstream agrees that access reform is necessary (Motion to Dismiss at 7), the Commission should take the next step now. It will be in good company, as commissions around the country recognize the need to bring the intrastate access rates of large

[1] *See* Petition at 8, *citing Review of BellSouth Telecomm., Inc.'s Price Regulation Plan*, Order, Case No. 99-434 ("*BellSouth Price Plan Review*") at 9-10 (Aug. 3, 2000); *Tariff Filing of BellSouth Telecomm., Inc. to Mirror Interstate Rates*, Order, Case No. 98-065 (*BellSouth Mirroring Order), at* 4-5 (March 31, 1999); *Cincinnati Bell Telephone*, Case No. 98-292, Order ("*Cincinnati Bell Order*.") at 13-14 (Jan. 25, 1999).

independent incumbent local exchange carriers ("ILECs") like Windstream in line with those of their competitors.

For example, the Virginia Commission, having reduced Verizon's ILEC affiliate's access charges in 2004, is currently reviewing access charges of Embarq, which, like Windstream, is a large independent telephone company with a diverse suite of services.[2] That review is the result of a petition filed by Sprint Communications in November 2007. In less than a year, that case has been heard and briefed, and awaits a final Commission decision.

Likewise, the Kansas Commission is reviewing Embarq's switched access rates, and on October 10, 2008 denied a motion to dismiss that parallels the arguments Windstream has made to the Kentucky Commission.[3] The Kansas Commission said that it would deny the motion to dismiss and "comprehensively explore the access charge issue," noting that "a 'level playing field,' and making implicit subsidies explicit, is of importance to the growth of competition."[4]

Earlier this month, the Iowa Utilities Board denied Frontier's and Iowa Telecom's motions to dismiss Verizon's complaint for access reductions, citing the fact that these ILECs' rates were established 14 years ago.[5] Windstream's access rates here are of similar vintage.

The Washington Utilities and Transportation Commission also recently denied Embarq's motion to dismiss Verizon's complaint for access reductions, finding that Verizon had stated facts on which relief might be granted.[6] The facts preventing dismissal of that case are similar to those Verizon has presented here, including the disparity between those rates and the access rates of the largest ILECs.

These other states make for good comparisons to Kentucky. The access rates of the Bell Operating Companies have been reduced in those states, but the largest independent ILECs there are resisting comparable restructuring, despite the fact that they are sizeable, sophisticated, and well-financed competitors. Windstream is following suit in Kentucky.

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[2] *Petition of Sprint Nextel for reductions in the intrastate carrier access rates of Central Telephone*, Case No. PUC-2007-00108.

[3] *See Petition of Sprint Communications Company et al. to conduct general investigation into the intrastate access charges of United Telephone Company of Kansas et al.*, Docket No. 08-GIMT-1023-GIT (October 10, 2008) (enclosed).

[4] *Id.* at 14, 18.

[5] *Verizon v. Iowa Telecom and Frontier Comm. of Iowa, Inc.*, Order Docketing Complaint, Establishing Procedural Schedule, and Denying Motions to Dismiss, Docket No. FCU-08-6, at 32-33 (Nov. 14, 2008) (enclosed).

[6] *Verizon v. Embarq*, Docket No. UT-081393, Second Prehearing Conference Order, at 3 (Nov. 20, 2008) (enclosed).

Verizon has set forth a *prima facie* case here. Windstream's motion to dismiss should be denied. Verizon urges the Commission to rule on the motion as soon as possible.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

Enclosure

cc: service list

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
Michael C. Moffet
Joseph F. Harkins

In the Matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., d/b/a/ Sprint, to Conduct General Investigation into the Intrastate Access Charges of United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas, d/b/a/ Embarq.	Docket No. 08-GIMT-1023-GIT

Order Opening General Investigation and Denying Motion to Dismiss

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission makes the following findings:

Background

1. On May 16, 2008, Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., d/b/a/ Sprint (Sprint) filed a petition requesting that the Commission review the Intrastate Access Charges of United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas, d/b/a Embarq (Embarq).

2. On June 11, 2008, Embarq filed a Motion to Dismiss.

3. On June 24, 2008, Sprint filed an Opposition to Motion to Dismiss.

4. On July 3, 2008, Southwestern Bell Telephone Company, AT&T Communications of the Southwest, Inc., and TCG Kansas City, Inc., (collectively AT&T) filed Comments in Support of Sprint's Petition and Petition for Intervention.

5. On September 2, 2008, Staff filed Comments.

6. On September 15, 2008, Sprint filed a Reply to Staff Comments.

7. On September 23, 2008, MCI Communications Services, Inc. d/b/a Verizon Business Services and MCIMetro Access Transmission Services LLC d/b/a/ Verizon Access Transmission Services (collectively, Verizon Business) filed a petition for intervention.

8. In its petition to open a general investigation, Sprint argued the Commission should examine the issue of Embarq's intrastate access rates in comparison with Embarq's interstate access rates in light of K.S.A. 66-2005(c) and the Commission's Order Approving Stipulation and Agreement, filed September 25, 2001, in the Commission's prior investigation into reformation of intrastate access charges in Docket No. 01-GIMT-082-GIT (01-082 Order). Sprint asserted Embarq's intrastate access rates are higher than Embarq's interstate access rates. Sprint's Petition, 3, 4. Sprint asserted these high rates involve implicit subsidies within the rate structure, and that the Commission had recognized in its 01-082 Order that replacing implicit subsidies with explicit

subsidies is important to stimulating competition. Sprint argued that the Kansas legislature had recognized parity between intrastate and interstate access rates promotes competition in telecommunications services, and that the Commission had also recognized parity is important to a competitive infrastructure in its 01-082 Order. Sprint's Petition, 1-2.

9. Sprint contended high intrastate access rates harm consumers by increasing the retail price of competing telecommunications services. Sprint's Petition, 3 – 5. Sprint further argued Embarq's rates are a detriment to Embarq's retail competitors because they are paying Embarq a subsidy that Embarq can use to undercut them in providing competitive services. Sprint's Petition, 5.

10. Sprint argued the Commission should "immediately" reduce Embarq's intrastate access rates to be in parity with its interstate rates under the authority of K.S.A. 66-2005(c). Sprint's Petition 6. Sprint argues the statute provided for a three-year time frame, which has long expired. Sprint's Petition, 3.

11. Sprint respectfully requested that the Commission conduct a general investigation into the intrastate switched access rates of Embarq in accordance with K.S.A. 66-2005(c) or, alternatively, docket Sprint's request as a complaint pursuant to the Commission's general complaint jurisdiction under K.S.A. 66-1,188 and 66-1,192.

12. In Embarq's Motion to Dismiss, Embarq argued the Commission action requested by Sprint has already been taken in 01-GIMT-082-GIT (01-082 Docket). Embarq contended the Commission had examined the matter, and

determined that the reduction in Embarq's intrastate access rates ordered in that docket had been balanced against the effect of further reductions on increased local exchange rates to Embarq's customers. Embarq asserted circumstances and the relationship between its intrastate and interstate rates have not changed. Embarq's Motion to Dismiss, 1-4, 6. Embarq argued its local rates are already the highest of any incumbent ILEC in Kansas. Embarq's Motion to Dismiss, 5.

13. Embarq asserted K.S.A. 66-2005(c) does not require the Commission to order parity, but recognizes parity is an objective within the discretion of the Commission. Embarq's Motion to Dismiss, 4.

14. Embarq argued Sprint had ignored the jurisdictional difference between per-minute intrastate and per-minute interstate access rates. This jurisdictional difference, asserted Embarq, results from the FCC's policy of removing implicit subsidies for basic local service embedded in interstate switched access rates, and that Embarq's current interstate switched access rates are a result of the FCC's CALLS Order released in May 2000.[1] Embarq argued the CALLS Order replaced implicit support with explicit support from the subscriber line charge and the federal universal service fund, funding mechanisms not replicated in per-minute intrastate access rates in Kansas. Embarq's Motion to Dismiss, 6.

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[1] Embarq cites *In re Access Charge Reform, Sixth Report and Order* in CC Docket No. 96-262, 15 FCC Rcd 12962 (FCC 2000). Embarq's Motion to Dismiss, fn 13.

15. Embarq argued that competition has significantly increased in Kansas over the past few years, and that the primary purpose of K.S.A. 66-2005(c) -- to create a vehicle to increase the level of competition -- has been achieved. Embarq cites to the Commission's Report to the 2008 legislature and argues the report indicates competition has increased. Embarq's Motion to Dismiss, 7-8.

16. Embarq also argues Sprint has not offered evidence that reducing Embarq's access rates will benefit the public. Embarq charges that Sprint has failed to offer any assurance that it, or other providers, would pass through any reduced costs to their customers. Embarq's Motion to Dismiss, 8.

17. Embarq pointed to Sprint's unsuccessful attempt during the recent 2008 Kansas legislative session to obtain legislation (amendment to HB 2637) that would have required parity between Embarq's intrastate and interstate access rates as an indication that discretion on this issue remains with the Commission and that Sprint's request is not consistent with legislative will. Embarq's Motion to Dismiss, 9-10.

18. Embarq asked the Commission to dismiss Sprint's Petition. Embarq's Motion to Dismiss, 11.

19. Sprint responded, in Sprint's Opposition to Motion to Dismiss, that it had pled sufficient facts to state a claim for relief – that the Commission open a general investigation – and that Embarq was attempting to avoid scrutiny without the benefit of a proceeding to create a record. Sprint argued the Commission should not decline to examine the potential public policy and pro-competitive

benefits of reducing implicit subsidies built into Embarq's intrastate access rates. Sprint's Opposition, 2. Sprint asserted that it is simply common sense that the lower the costs to carriers like Sprint, the more likely such competitive telecomm service providers will be able to set prices that are competitive.

20. Sprint pointed to the 01-082 Order, where the Commission referred to the Telecommunications Strategic Planning Committee (TPSC) report that Sprint states the legislature relied upon in enacting the Kansas Telecommunications Act in 1996, as supportive of its position that the legislature and the Commission have recognized reduction of intrastate access charges will promote competition.

21. Sprint asserted that the Commission indicated in the 08-082 Order it would continue to evaluate intrastate access charges and that the Commission had recognized the issue would require further review. Sprint's Opposition, 4.

22. Sprint disagreed with Embarq's assertion that circumstances had not changed since the 08-082 Order. On the contrary, Sprint argued Embarq has expanded its non-regulated service offerings, including high-speed internet access and bundled offerings, and has significantly increased revenues from these non-regulated services. Sprint's Opposition, 5. Sprint asserts Embarq has also obtained competitive classification, and thus freedom from price caps, for several of its exchanges. Sprint's Opposition, 5. Sprint argues Embarq has successfully obtained Commission approval for an agreement in Docket 07-GIMT-782-MIS to raise its price levels. Sprint's Opposition, 5. Sprint also pointed to new

legislation, effective July 1, 2008, which will permit Embarq to raise prices for basic residential local service in exchanges deemed competitive.

23. Sprint asserted an economic cost study should be utilized to review Embarq's costs to provide service in high-cost areas of Kansas. The Commission should evaluate whether Embarq's claim that it would have to significantly increase prices to consumers to make up for decreased intrastate switched access fees in light of Embarq's increased revenue. Sprint argued that to the extent rate rebalancing would be insufficient to satisfy the revenue-neutrality requirement in Kansas law, Embarq could seek recovery of the deficiency from the Kansas Universal Service Fund (KUSF). Sprint's Opposition, 6.

24. Sprint pointed to the Commission's investigation into reduction of intrastate switched access rates of rural local exchange carriers to interstate levels, in accordance with K.S.A. 2007 Supp. 66-2005(c), as further support for its position.

25. Sprint respectfully requested the Commission deny Embarq's Motion to Dismiss, and to conduct a general investigation into the intrastate switched access rates of Embarq in accordance with K.S.A. 2007 Supp. 66-2005(c). Sprint's Opposition, 7.

26. As noted AT&T has filed comments in support of Sprint's Petition and a request to intervene in this docket. AT&T stated it provides switched local exchange and interexchange services within Kansas. AT&T's Petition, 1. AT&T noted it pays intrastate switched carrier access charges to Embarq and is the

largest contributor to the Kansas Universal Service Fund (KUSF). AT&T's Petition, 2, 4. AT&T asserted its legal rights, duties, and other legal interests would be substantially affected by a proceeding addressing these issues, and no other party would be able to effectively protect the rights and interests of AT&T in a proceeding that the Commission might conduct as a result of Sprint's petition. AT&T's Petition, 4. AT&T respectfully requested it be permitted to intervene. AT&T's Petition, 4.

27. As to the issues, AT&T argued Embarq's intrastate switched access rates are significantly higher than Embarq's corresponding interstate switched carrier access rates. Therefore, AT&T suggested that it would appear the intrastate rates involve an implicit subsidy and interexchange carriers (IXCs) that purchase intrastate switched carrier access from Embarq are paying artificially high rates. AT&T echoed Sprint's argument that subsidies should be explicit and implicit subsidies harm competition. AT&T pointed to K.S.A. 2007 Supp. 66-2005(c), and Commission orders in Docket No. 07-GIMT-107-GIT, for the proposition that parity in interstate and intrastate access is a major concern of the legislature. AT&T's Petition, 2.

28. AT&T also argued that switched carrier access revenues are declining as a result of consumers moving from traditional long distance services to wireless, VoIP, email, and text messaging. Therefore, AT&T asserted, support of universal service objectives via switched access revenue streams is no longer viable and a transition to alternative recovery methods is necessary. AT&T

argued that wireline interexchange carriers (IXCs) are at a competitive disadvantage compared to providers of these alternative services, because the alternative service providers do not have to pay access charges. AT&T contended that the reduction of intrastate access rates would be a step towards leveling the competitive playing field and consumers would benefit. AT&T's Petition, 3.

29. AT&T respectfully requested that the Commission grant Sprint's petition and open a proceeding to address the issues raised, require Embarq to reduce its intrastate switched access rates to parity with interstate rates, and provide Embarq with an alternative, revenue neutral recovery mechanism in the form of rate rebalancing and access to funds from the Kansas Universal Service Fund. AT&T's Petition, 3, 4.

30. Staff noted in its Comments that the FCC is developing a unified intercarrier compensation scheme, and may comprehensively address intercarrier compensation by November 5, 2008. Staff's Comments, 2. Staff favors at minimum a review by the Commission, but suggests the Commission delay until after November 5, 2008, which would permit the parties to tailor comments to any FCC scheme. Staff suggested the Commission set the matter for a prehearing conference in December 2008 to discuss outstanding issues and the status of Sprint's Petition in light of any FCC determinations. Staff's Comments, 2.

31. Staff also suggested that the Commission review the requests for access charge reductions in light of changed circumstances and historically important public interest issues. Staff stated that in 01-GIMT-082-GIT, the

Commission had decided parity between interstate and intrastate access charges was reasonable because it accomplished goals of promoting fair competition between incumbent and new providers, protected universal service, and could be achieved while maintaining local rates and an affordable level. Staff's Comments, 3. However, Staff asserted that the Commission had also acknowledged that parity may not always be a primary goal, noting the Commission had cited the Telecommunications Strategic Planning Committee's report acknowledging the difficulty of resolving transitional issues and the need to address competing objectives in an interrelated manner. Staff's Comments, 3. Staff suggested that while the Commission may have found parity a priority in 2001, the balance of competing objectives may have shifted and that policy may no longer be appropriate in 2008. As an example, Staff cited the move in industry pricing methodologies toward nationwide pricing, with the potential result that an access charge reduction in Kansas may not lead to significant rate reductions in either wireless or long distance charges in Kansas because of the dilution inherent in a nationwide pricing scheme. Staff's comments, 3-4.

32. Staff also pointed out that if the Commission elects to evaluate further access charge reductions it must consider if and how lost revenue will be recovered by Embarq. Staff asserted that recovery of lost revenue will result in Kansas consumers alone bearing the cost through higher local rates or higher KUSF assessments. Staff's Comments, 3.

33. Staff suggested the Commission set the matter for a prehearing conference and request that parties be prepared to discuss the issues to be addressed, the procedure to be utilized, and a schedule for the docket. Staff's Comments, 4.

34. In Sprint's Reply to Staff Comments, Sprint asserted that it had filed its Petition with the Commission because members of the Kansas legislature had agreed with Embarq's position that the Commission should address the issue of whether or not Embarq should be required to lower its intrastate access charges. Sprint's Reply, 1.

35. Sprint expressed doubt that the FCC would reform intercarrier compensation to a degree that issues raised by Sprint's Petition would be mooted. Sprint also disagreed with Staff that the factors that drove a policy of parity between intrastate and interstate access charges as a priority 7 years ago may have changed. Sprint asserted consumers will benefit from intrastate access rate reduction because that would be pro-competitive. Sprint's Reply, 2-3.

36. Sprint also argued that parity is a mandatory, not a discretionary, policy objective set by the legislature. Sprint argued K.S.A. 2007 Supp. 66-2005(c) requires the Commission to equalize interstate and intrastate rates and merely assigned the Commission the authority to oversee and approve the reductions. Sprint's Reply, 3.

37. Sprint also disagreed with Staff's suggestion that access charge reductions in Kansas may not lead to significant rate changes in wireless or long

distance charges for Kansas customers. Sprint argued such a conclusion is premature without an evidentiary record, and disregards statements of Sprint and AT&T regarding benefits of reduced access charges. Sprint's Reply, 3-4.

38. Sprint requested the Commission proceed with a prehearing conference as soon as possible, but in no event later than the end of November 2008. Sprint's Reply, 2, 4.

39. In Verizon Business's Petition for Intervention, Verizon Business stated it provides switched local exchange and interexchange services in Kansas. Verizon Business stated it pays intrastate switched access rates to Embarq and is a contributor to the KUSF. Verizon Business asserted its legal rights, duties, privileges, and other legal interests will be substantially affected by these proceedings, and that no other party is able to adequately protect its rights. Verizon Business stated the interest of justice and the prompt and orderly conduct of the proceedings would not be impaired by allowing it to intervene, and observed no hearing has yet been scheduled. Verizon Business respectfully requested it be permitted to intervene and participate in this proceeding and that its counsel be provided notice of all filings in the matter.

Findings and Conclusions

40. Embarq is a telecommunications public utility as defined by K.S.A. 66-104 that is certificated to provide local telephone services within Kansas.

41. Pursuant to K.S.A. 2007 Supp. 66-104, 66-1,191, 66-2005, and 66-2008, the Commission has jurisdiction to initiate an investigation into intrastate access rates and policy implications. See Order Initiating Investigation, filed November 21, 2000, p. 2, Docket 01-GIMT-082-GIT. The Commission has determined, as Staff has observed, that it has the authority to require additional access reductions for companies that have elected price cap regulation. Order filed May 18, 2001, ¶ 15, Docket No. 01-GIMT-082-GIT.

Motion to Dismiss

42. In the Commission's 01-082 Order, the Commission recognized several legislative goals with regard to regulation of telecommunications services: universal service (described in the 01-082 Order as the maximum number of customers connected to the network); and providing Kansans with access to a first class telecommunications network offering excellent services while maintaining affordable prices. 01-082 Order, 2. The Commission observed that the Kansas legislature had selected competition as the vehicle to most effectively meet the objective of the best possible network at an affordable price over the long term. 01-082 Order, 2. See K.S.A. 2007 Supp. 66-2005(b). The legislature recognized that removing implicit subsidies for local service inherent in the price structure under the prior regulatory scheme was a means of encouraging competition. 01-082 Order, 2, 6. Parity of intrastate access rates with interstate rates provides a

vehicle to reduce or eliminate these implicit subsidies. 01-082 Order, 2. Parity moves access rates closer to economic costs. 01-082 Order, 15.

43. The Commission has previously noted that the legislature had entrusted the Commission with broad discretion to oversee the development of competition in the Kansas telecommunications markets and to carry out the legislature's mandates. 01-082 Order, citing K.S.A. 66-101 et seq. and May 18, 2001 and July 5, 2001 Orders. Although the legislature recognized parity of intrastate and interstate access rates as a tool to further competition, the legislature only explicitly mandated parity for non-rural companies over the initial three year period following enactment of the Kansas Act. K.S.A. 2007 Supp. 66-2005(c); 01-082 Order, 15. The legislature also declined to require Embarq to lower its intrastate access rates during the 2008 legislative season. (Sprint's proposed amendment to HB 2637.) The Commission does not believe it is mandated to arrive at any particular conclusion.

44. The Commission's mandate, in light of the legislature's grant of discretion, is to balance the multiple important and potentially conflicting policy concerns and objectives and address them in an interrelated and balanced manner. 01-082 Order, 3. In its Order in 08-082, the Commission recognized a "level playing field," and making implicit subsidies explicit, is of importance to the growth of competition. The Commission also observed the transition to competition from a regulatory scheme would not be easy and that multiple important policy concerns and objectives that may be conflicting must be

addressed in an interrelated and balanced manner. 01-082 Order, 3, citing TSPC Final Report at iv-v. Issues pertaining to universal service (including local rate increases), access rates, and competition are interrelated and must be balanced in the public interest. Order Denying Reconsideration and Granting Clarification filed November 8, 2001, 3, Docket 01-GIMT-082-GIT.

45. The Commission examined several questions in the course of the 08-082 investigation: (a) whether access charges should be reduced; (b) if so, what level of access rate reductions would be appropriate; (c) whether any FCC decision or Commission decision had any bearing on how access rate reductions should be implemented; (d) whether access rate reductions would affect other rates; (e) whether the KUSF would be affected; and, (f) whether and how access rate reductions are flowed through to customers. Order Initiating Investigation, filed November 21, 2000, 3-5, 01-GIMT-082-GIT; Order Denying Reconsideration and Granting Clarification, filed November 8, 2001, 8, 01-GZIMT-082-GIT.

46. In the 01-082 Order, the Commission approved a Stipulation that reduced SWBT's intrastate access rates to match the interstate access rate level, as established by the FCC in its Sixth Report and Order in CC Docket Nos. 96-262 and 94-1 ("Coalition for Affordable Local and Long Distance Service" or "CALLS" Order), issued May 31, 2000. However, the Stipulation did not reduce the intrastate access rates of the United (Embarq) telephone companies all the way to parity with interstate access rates, because Embarq's recovery of that lost

revenue through rate rebalancing to other services would have resulted in an increase to local service rates that was judged to be too high. 01-082 Order, 4-5. In approving the Stipulation, the Commission sought to balance universal service and parity issues. Order Denying Reconsideration, Docket 01-082, 3.

47. The 01-082 Order noted moving toward parity at that time achieved goals of promoting fair competition between incumbent and new carriers in the Kansas market and protecting universal service. 01-082 Order, 15. The Commission observed that at that time local competition had been slow to develop in Kansas and had not had a lowering affect on access charges. 01-082 Order, 15. In addition, in the Stipulation, AT&T and Sprint Long Distance committed to passing through access rate reductions to customers to a greater extent than required by statute or within the Commission's power to compel. The Commission believed approving the Stipulation would, as a result, bring lower long distance rates for other carriers' customers as well due to market forces. 01-082 Order, 18.

48. The 01-082 Order noted that the Stipulation provided a transitional reform plan that would necessitate further review. 01-082 Order, 15.

49. The Commission believes it is prudent to review the Commission's policy on this matter again at this time, as the Commission suggested it might in the 01-082 Order. The Commission believes an investigation will shed light on the various arguments made by the parties and whether and what changes may have occurred since 2001 relevant to these issues. As a matter of policy, it is

appropriate for the Commission to follow-up the investigation in 01-082 and review the relationship between Embarq's intrastate and interstate access charges to determine if, in light of the present circumstances, the legislative and Commission goals described above would be furthered in a balanced manner and the public would be benefited by reducing Embarq's intrastate access charges further. This will also provide an opportunity to review the effect of the 2001 Stipulation on Kansas telecommunication's infrastructure, services, and rates.

50. The Commission agrees with Staff that this investigation should take into account any changes in the intercarrier compensation scheme by the FCC. FCC action may have a significant impact on the course, and perhaps the necessity or scope of this investigation.

51. The Commission will examine this issue, as it did in the 01-082 Docket, with an open mind as to whether Embarq's intrastate rates should be reduced, and if so, how best to balance the goals of a first-rate telecommunications infrastructure and services at low prices for Kansas customers with universal service issues. It may be, as Staff has suggested, that changed circumstances will require a different approach to move forward toward legislative and Commission goals and a different balancing of policy concerns and objectives. It may be that, as Embarq argues, lowering intrastate rates would not benefit the public and would result in an unacceptable affect on local rates. It may be that, as Sprint contends, circumstances have changed such that the time has come to move Embarq's intrastate rates further toward parity which will enhance competition and benefit

ratepayers. An investigation will permit the Commission to properly address the various arguments put forth by the respective parties and review Commission policy in this area. The legislature has vested the Commission with authority and discretion in these matters. To investigate these matters at this time is particularly appropriate in light of the potential FCC action on intercarrier compensation. Dismissing this investigation at this point, without the benefit of a more informed record, would not be consistent with the Commission's responsibilities and duties of oversight as set forth by the legislature.

52. As it did in the 01-082 Docket, the Commission intends to comprehensively explore the access charge issue, including the impact of potential access charge reductions on lowering rates and improving telecommunications infrastructure and services, and the resulting effect on access rates and revenues, cost recovery, and the KUSF. This docket will address the ramifications of all related issues, including such policy principles as universal service, comparability of rates across Kansas, and the reasonableness of local exchange rates. Issues to be addressed will include:

(a) Whether Embarq's access charges should be reduced. The Commission will investigate the points noted by Staff, Sprint, Embarq and interveners that suggest circumstances may or may not support a reduction at this time, keeping in mind the ultimate goals noted above of advancing Kansas telecommunications infrastructure and services at low, affordable prices, promoting competition where

to do so serves those goals, keeping local rates affordable, and maintaining universal service.

(b) If Embarq's access charges should be reduced, what level of reduction would be appropriate.

(c) Whether any FCC decision or Commission decision has any bearing on whether and how access reductions should be implemented. This question, of course, will include the impact of any FCC determinations made with regard to intercarrier compensation in November on these issues and on the scope of this investigation.

(d) Whether access reductions will affect other rates. This issue includes the effect, if any, that a reduction in intrastate access charges would have on lowering wireless or long distance rates and the effect, if any on Embarq's local service rates.

(e) Whether and how the KUSF will be affected.

(f) Staff's concerns regarding how any access rate reductions would be flowed through to customers.

(g) Whether and how any lost revenue will be recovered by Embarq.

53. Because the Commission believes it appropriate to reexamine these policy matters in a general investigation, Embarq's Motion to Dismiss is denied.

54. To the extent Sprint's filings may be interpreted as requesting an immediate reduction in Embarq's intrastate access charges, that request is denied.

The Commission believes it prudent to examine these matters more carefully before making a decision.

Prehearing Procedural Conference

55. The Commission finds the parties should appear for a prehearing conference. At the prehearing conference, the parties should be prepared to discuss the issues to be addressed in light of any FCC action with regard to intercarrier compensation. Parties should also be prepared to discuss the procedure to be utilized, studies that should be performed, and a schedule for this docket.

56. Accordingly, the Commission gives notice that a prehearing conference will be held on **Thursday, November 13, 2008, beginning at 1:30 p.m. in the Third Floor Hearing Room, (or other room to be designated, if necessary) of the Commission's offices**, 1500 SW Arrowhead Road, Topeka, KS 66604. This Prehearing conference will focus on issues noted in the above paragraph and any other matters or issues that will promote the orderly and prompt conduct of this proceeding. K.S.A. 77-517; K.A.R. 82-1-222. Any party who fails to attend or participate in the hearing or in any other stage of this proceeding may be held in default under the Kansas Administrative Procedure Act (KAPA). K.S.A. 77-516(c)(8); K.S.A. 77-520. At the Prehearing conference, this proceeding without further notice may be converted into a conference hearing or a

summary proceeding for disposition of the matter as provided by KAPA. K.S.A. 77-516(c)(7).

Participation; Designation of Prehearing Officer; Agency Attorneys

57. All certificated local exchange carriers, including competitive local exchange carriers, and certificated interexchange carriers are automatic parties to this proceeding and will be served with this order and any order making substantive decisions. All parties that wish to participate actively in the docket and address Commission policy on these issues should have their counsel file an entry of appearance to be included on a restricted service list for receipt of testimony, pleadings, and procedural orders. Staff and the following parties will be included on the restricted service list at this time: Sprint, Embarq, AT&T, and Verizon Business. Entries of appearance should be filed by October 31, 2008. Thereafter, Staff shall prepare a service list and provide it to all parties that have entered appearances for service of testimony, pleadings, and procedural orders.

58. The Commission finds a prehearing officer should be designated for this proceeding. The Commission designates a prehearing officer to conduct any necessary prehearing conferences and to address any matters that may arise that might be appropriately considered in such conferences, including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b), and any matters that may otherwise be addressed by the prehearing officer pursuant to the KAPA. The Commission designates Charles R. Reimer, Advisory Counsel, 1500

SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3361, email address c.reimer@kcc.ks.gov, to act as the prehearing officer in this proceeding. K.S.A. 2007 Supp. 77-514; K.S.A. 77-516; K.S.A. 2007 Supp. 77-551. The Commission, as it deems necessary, may designate other staff members to serve in this capacity.

59. The attorneys designated to appear on behalf of the agency in this proceeding are Bob Lehr and Melissa Walburn, telephone number 785-271-3288, 1500 SW Arrowhead Road, Topeka, KS 66604. K.S.A. 2007 Supp. 77-518(c)(2); K.S.A. 77-516(c)(2).

Petitions to Intervene

60. The Commission has broad discretion to grant a petition for intervention at any time if it is in the interests of justice, if the intervention will not impair the orderly and prompt conduct of the proceedings, and if the petitioning party has stated facts demonstrating its legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding. K.S.A. 77-521; K.A.R. 82-1-225. At any time during a proceeding, the Commission may impose limitations on an intervener's participation. K.A.R. 82-1-225(c). See K.S.A. 77-521(c). This can include limiting an intervener's participation to designated issues in which the intervenor has a particular interest and its use of discovery and other procedures. The Commission also may require two or more interveners to combine their presentation of evidence and argument, cross-

examination, discovery, and other participation in the proceedings. K.A.R. 82-1-225(c)(1) – (3).

61. The Commission finds and concludes that AT&T and Verizon Business have met the requirements for intervention and should be granted intervention.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission will pursue an investigation into the matter of Embarq's intrastate and interstate switched access rates as discussed above. All certificated local exchange carriers and interexchange carriers are made parties to this docket. Parties wishing to actively participate and be on a restricted service list should have counsel file an entry of appearance by October 31, 2008.

B. Embarq's Motion to Dismiss is accordingly denied.

C. To the extent Sprint has requested an immediate reduction in Embarq's intrastate access rates, that request is also accordingly denied.

D. The Petitions for Intervention by AT&T and Verizon Business are granted.

E. A prehearing procedural conference is scheduled for November 13, 2008, at 1:30 pm, in the Third Floor Hearing Room at the Commission's Offices, 1500 S.W. Arrowhead Road, Topeka, Kansas, as discussed above. The Commission designates a prehearing officer for this investigation, as discussed above.

F. A party may file a petition for reconsideration of this order within 15 days of the service of this order. If this order is mailed, service is complete upon mailing and 3 days may be added to the above time frame.

G. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Moffet, Com.; Harkins, Com.

Dated: OCT 10 2008

ORDERED MAILED

OCT 13 2008

EXECUTIVE DIRECTOR

Susan K. Duffy
Executive Director

CTT

STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: MCIMETRO ACCESS TRANSMISSION SERVICES LLC, d/b/a VERIZON ACCESS TRANSMISSION SERVICES, AND MCI COMMUNICATIONS SERVICES, INC., d/b/a VERIZON BUSINESS SERVICES, Complainants, vs. IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM; IOWA TELECOM NORTH; IOWA TELECOM SYSTEMS; IOWA TELECOM COMMUNICATIONS, INC.; IT COMMUNICATIONS LLC; AND FRONTIER COMMUNICATIONS OF IOWA, INC., Respondents.	DOCKET NO. FCU-08-6

ORDER DOCKETING COMPLAINT, ESTABLISHING PROCEDURAL SCHEDULE, AND DENYING MOTIONS TO DISMISS

(Issued November 14, 2008)

I. *BACKGROUND*

A. Verizon's complaint

On February 20, 2008, MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services (*collectively, Verizon*), filed with the Utilities Board

(Board) a complaint asking the Board to reduce the intrastate switched access rates charged by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, Iowa Telecom North, Iowa Telecom Systems, Iowa Telecom Communications, Inc., and IT Communications, LLC (collectively, Iowa Telecom); Frontier Communications of Iowa, Inc. (Frontier); and Citizens Mutual Telephone Company (Citizens Mutual). Verizon bases its complaint on Iowa Code §§ 476.1, 476.3, 476.11, and 476.101(1), and the Board's rules at 199 IAC chapter 6. Verizon directed its complaint against Iowa Telecom's incumbent local exchange carrier (ILEC) and competitive local exchange carrier (CLEC) operations, along with Frontier and Citizens Mutual.[1]

Based on a comparison of Iowa Telecom and Frontier's average access revenues per minute, Verizon asserts that the intrastate switched access rates charged by Iowa Telecom and Frontier exceed the rates charged by Qwest Corporation (Qwest) for similar services by as much as 650 percent and are unreasonable and anticompetitive. Verizon identifies disparities between what Iowa Telecom and Frontier charge for specific rate elements, including the carrier common line charge (CCLC) and local end office switching charge, and Qwest's charges for those elements. Verizon claims that, to its knowledge, Iowa Telecom and Frontier have not reduced their intrastate switched access rates since 1995.

[1] In its March 11, 2008, answer and motion to dismiss, Frontier stated that while Verizon's complaint includes allegations about Citizens Mutual, Frontier's parent company is Citizens Communications Company. Frontier denied it is affiliated with Citizens Mutual. In Verizon's March 26, 2008, opposition to Frontier's motion to dismiss, Verizon explained that because Frontier denied any affiliation with Citizens Mutual, Verizon would withdraw its complaint as to Citizens Mutual.

Verizon asserts Iowa Telecom and Frontier are subject to the Board's rate regulation authority and asks the Board to order Iowa Telecom and Frontier to match Qwest's intrastate switched access rates. In support of the request, Verizon cites Iowa Code § 476.3(1), which provides, in part, that when the Board finds a utility's rates are unjust, unreasonable, or discriminatory, the Board "shall determine just, reasonable, and nondiscriminatory rates." Verizon also cites Iowa Code § 476.11, which authorizes the Board to resolve complaints alleging a telephone company has failed to provide just, reasonable, and nondiscriminatory interconnection arrangements.

B. Motions to dismiss

1. Iowa Telecom

On March 10, 2008, Iowa Telecom filed a motion to dismiss, arguing the complaint should be dismissed because it does not raise a claim for which the Board may lawfully grant the requested relief. Iowa Telecom explains that House File 518, enacted in 1995 and codified at Iowa Code § 496.97, allowed ILECs to elect price regulation as an alternative to rate-of-return regulation. Iowa Telecom's predecessor, GTE Midwest Incorporated (GTE), a carrier serving fewer than 500,000 access lines in Iowa, elected to be price regulated pursuant to § 476.97(11). The Board approved GTE's reduction in intrastate switched access rates, subsequent compliance filings,

and, later, Iowa Telecom's adoption of GTE's price regulation election and rates.[2] Iowa Telecom has not modified the GTE rates.

Iowa Telecom argues that nothing in § 476.97(11) would allow the Board to order Iowa Telecom to reduce intrastate switched access rates and that even if the Board were allowed to do so, the statute does not specify how to measure the reductions. Iowa Telecom argues that Iowa Code § 476.97(11)"i" allows a local exchange carrier (LEC) to voluntarily reduce its rates, but does not authorize the Board to require reductions. With respect to Verizon's claim regarding the rates of Iowa Telecom's CLEC operations, Iowa Telecom notes that the complaint does not allege that the Iowa Telecom CLECs' intrastate switched access rates violate the Board's rules governing CLEC access charges at 199 IAC 22.14(2).

2. Frontier

On March 11, 2008, Frontier filed an answer to and motion to dismiss Verizon's complaint, arguing the Board should dismiss the complaint because there is no reasonable basis to investigate the complaint. Frontier explains it operated under a Board-approved price regulation plan pursuant to Iowa Code § 476.97 and reduced its intrastate access rates over a multi-year period as provided in Iowa Code § 476.97(3)"c." Frontier contends there is nothing in § 476.97(3) that would allow the Board to order Frontier to make further reductions in intrastate access service rates.

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[2] See In re: GTE Midwest Incorporated, Docket No. TF-95-359, "Order Approving Access Services Tariff," issued October 6, 1995, and In re: Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, Docket Nos. TF-00-132, TF-00-133, TF-00-166, WRU-00-47-3424 (SPU-99-29), "Order Approving Tariffs, Granting Waiver, Approving Maps, Consolidating and Transferring Certificates, and Approving Discontinuance of Service," issued July 31, 2000.

Frontier states it is not currently operating under a price regulation plan, explaining that on May 31, 2005, it opted into deregulation under House File 277 (HF 277).[3] Frontier explains that since its renewed price regulation plan ended on July 1, 2005, its retail local exchange services (other than single-line flat-rated residential and business services) have not been subject to regulation, pursuant to Iowa Code § 476.1D(1)"c."

Frontier notes that Verizon's complaint does not address the Board's rule at 199 IAC 22.14(2)"d"(2), which prohibits carriers from assessing an intrastate subscriber line charge. According to Frontier, access charges are an important source of revenue that allows Frontier to maintain affordable basic service rates. Frontier states that if it were required to match Qwest's rates, it would have to recover lost revenues by raising basic local service rates by an amount that would exceed the cap in § 476.1D.

Frontier disagrees with Verizon's reliance on Qwest's rates as an appropriate benchmark for the rates of other carriers, arguing instead that each carrier's rates must be evaluated by considering the carrier's unique circumstances. Frontier suggests that community population, customer geographic density, and number of access lines are factors that give Qwest a lower average cost structure than Frontier. Frontier claims that the mere fact that its access service rates are higher than Qwest's does not give the Board sufficient reason to investigate Verizon's complaint.

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[3] 2005 Acts, ch. 9, § 1, codified at Iowa Code § 476.1D.

Frontier asks the Board, if it does not dismiss the complaint, to initiate a broader proceeding to consider policy issues relating to access charge rates, establishment of a state universal service fund (USF), and rebalancing local service rates.

C. Verizon's opposition

On March 26, 2008, Verizon filed its opposition to the motions to dismiss, arguing that when evaluating a motion to dismiss, the Board should read the allegations in the light most favorable to the petitioner, disregarding any ambiguity in the pleadings.[4] Verizon disputes Iowa Telecom's assertions that the Board cannot require further reductions and that Iowa Telecom continues to operate as a price-regulated carrier. According to Verizon, the 2005 amendments to Iowa Code § 476.1D *ended the price plan regime.*

As support for its position that the Board has jurisdiction to consider a challenge to a company's switched access rates, Verizon cites the Board's decision in In re: Iowa Telecommunications Association, "Order Setting Procedural Schedule and Setting Date for Hearing," Docket Nos. TF-07-125 and TF-07-139, issued November 15, 2007 (ITA Order), in which the Board reversed its previous conclusion that it lacked jurisdiction over switched access rates of non-rate-regulated carriers. Verizon argues it would be unfair and anticompetitive not to provide Verizon with a forum to review the rates it must pay to Iowa Telecom.

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[4] Citing In re: Coon Creek Telecommunications Corp. v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, Docket No. FCU-06-42, "Order Docketing Complaint, Denying Motion to Dismiss, and Setting Procedural Schedule," issued June 27, 2006.

Verizon's position is that the price regulation provisions of § 476.97(11) no longer apply to Iowa Telecom and that the appropriate standard for evaluating access rates is whether they are just, reasonable, and nondiscriminatory, as provided in §§ 476.3 and 476.11. Verizon suggests that even if Iowa Telecom were still a price-regulated carrier, if only for access services, the Board would have jurisdiction over Iowa Telecom's access rates pursuant to § 476.97(11)"i," which provides that § 476.97(11) "shall not be construed to prohibit an additional decrease or to permit any increase in a local exchange carrier's average intrastate access service rates during the term of the local exchange carrier's operation under price regulation."

With respect to its complaint against Iowa Telecom's CLECs, Verizon asserts it was not necessary to allege a violation of the Board's rules at 199 IAC 22.14 because Iowa Code § 476.101 allows the Board to apply any provision of chapter 476 to a CLEC once the Board finds that the CLEC has market power. Verizon states that the Board determined in its 2004 "Access Charge Order"[5] that it has jurisdiction over CLEC access charges, having found that CLECs possess market power in the provision of access services to their end users.

Verizon counters Frontier's motion to dismiss by stating that its complaint, viewed in the light most favorable to Verizon, is sufficient to warrant investigation into Frontier's rates. Verizon asserts that the fact that the rates were set 14 years ago is

[5] In re: Intrastate Access Service Charges, Docket No. RMU-03-11, "Order Adopting Amendments," issued March 18, 2004.

reason enough for the Board to consider the complaint. Further, the Board expressed a commitment in a recent order to rationalize switched access rates.[6]

Verizon says it would not oppose the Board opening a generic proceeding to examine a cap on CLEC rates and other issues suggested by Frontier. However, Verizon asserts that because there are no limits on the Board's ability to consider the rates of an individual CLEC in a complaint proceeding, the Board should deny Iowa Telecom's motion to dismiss Verizon's complaint against the Iowa Telecom CLECs.

D. Iowa Telecom's reply

On April 9, 2008, Iowa Telecom filed a reply to Verizon's opposition to Iowa Telecom's motion to dismiss. Iowa Telecom rejects Verizon's assertion that Iowa Telecom's election to have its retail local exchange service rates deregulated under § 476.1D took its intrastate access rates outside of the coverage of § 476.97(11). Iowa Telecom contends that nothing in HF 277 indicates that § 476.97(11) would not continue to apply to all other remaining rate-regulated services, including intrastate access services. Iowa Telecom argues that if it were true that an election under § 476.1D invalidated an election under § 476.97(11) for other services, affected carriers would have no way to recover costs.

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[6] *Citing* In re: South Slope Coop. Tel. Co., Docket No. RPU-07-1, "Final Order," issued February 13, 2008 (South Slope Order).

Iowa Telecom observes that Verizon fails to explain why the Iowa Telecom CLECs should be singled out for access rate reductions when there are other, larger CLECs charging the same rates, based on concurrence in the access services tariff of the Iowa Telecommunications Association (ITA).

E. Verizon's response

On April 21, 2008, Verizon filed a response to Iowa Telecom's reply, focusing on Iowa Telecom's assertion that Verizon ignored § 476.97(11) in its complaint. Verizon states that § 476.97(11) is not relevant because Verizon asserts the Board has jurisdiction under §§ 476.3 and 476.11. Verizon re-asserts that Iowa Telecom's interpretation of the price-cap statute, which would leave Iowa Telecom's current switched access rates in place forever, is contrary to legislative intent.

F. Board order requesting briefs and establishing briefing schedule; Qwest's intervention

On May 29, 2008, the Board issued an order requesting briefs and establishing a briefing schedule. The Board noted that Verizon's complaint raises the question of whether the Board has the authority in a complaint proceeding to order the respondent companies to reduce their intrastate access service rates. To assist the Board in ruling on the motions to dismiss, the parties were asked to submit briefs analyzing the following issues:

1. What is the interaction between Iowa Code § 476.1D and the price regulation provisions of Iowa Code § 476.97?

2. Are intrastate access service rates determined according to a price regulation plan under Iowa Code § 476.97 subject to challenge in a complaint proceeding brought pursuant to Iowa Code §§ 476.3 and 476.11?

3. Does the Board have jurisdiction to order a local exchange carrier to reduce its intrastate access rates and, if so, under what statutory provision? How does the answer to that question change for different local exchange carriers (rate regulated or not, incumbent or competitor, different price regulation plans, and whatever other factors the parties believe to be significant)?

4. If the Board has jurisdiction to order a local exchange carrier to reduce its intrastate access rates, what is the appropriate measure of just, reasonable, and nondiscriminatory rates?

5. How would any of the possible outcomes of the Board's proceeding in Docket No. INU-08-1, In re: Possible Extension of Board Jurisdiction Over Single Line Flat-Rated Residential and Business Rates for Local Exchange Carriers, affect the resolution of Verizon's complaint?

On June 4, 2008, Qwest filed a petition to intervene, asserting that the Board's decision on one or more of the issues identified in the proceeding could affect Qwest's financial and operational interests. No objections to Qwest's intervention were filed, and on June 27, 2008, the Board issued an order granting Qwest's petition to intervene. Qwest did not file a brief responding to the Board's questions.

G. Verizon's initial brief filed July 14, 2008; reply brief filed August 4, 2008

Verizon argues that Iowa Telecom's position that it has elected deregulation for retail services and price regulation for access services is contrary to the language and purpose of the statutes in Iowa Code chapter 476. According to Verizon, the Legislature identified "just, reasonable, and affordable rates" in Iowa Code § 476.95(1) as a principal regulatory objective; required in § 476.95(2) that the Board encourage competition; and sought to eliminate subsidies and move prices to cost, as evident in § 476.95(3). Verizon contends Iowa Telecom and Frontier ignore these

objectives and argues the Board can and should ensure that Iowa Telecom and Frontier have access rates that are appropriate for today, not for 14 years ago.

On the issue of the interaction between Iowa Code § 476.1D and the price regulation provisions of § 476.97, Verizon argues that the provisions present incompatible rules for treating a LEC's communications services. According to Verizon, HF 277 "essentially eliminated price cap regulation."[7] Verizon contends that a carrier could elect to adopt one regime or the other (deregulation under § 476.1D or price plan regulation), but could not follow both. Deregulation under § 476.1D(1)"c" negated a carrier's ability to comply with price controls and other mandatory features of a price plan under § 476.97. Verizon notes that Frontier acknowledges that its price place terminated upon its election to opt into deregulation under § 476.1D(1)"c."

According to Verizon, the price regulation provisions of § 476.97 are an integrated whole; nothing in § 476.97 suggests that a carrier can choose to operate under certain aspects and disregard others, nor did the Legislature express in § 476.1D any intent to allow a carrier to maintain particular terms of a price regulation plan. Verizon suggests that the Legislature's silence on how the new deregulation provisions in HF 277 were to interact with existing price plan regulation provisions indicates no interaction was intended.

[7] Verizon initial brief at 4, quoting from the Board's "Second Statewide Telecommunications Competition Survey for Retail Local Voice Services in Iowa," March 2006, at ii.

Verizon's position is that rates originally set under a price regulation plan are subject to challenge in a complaint proceeding regardless of whether a carrier is or once was price-regulated under § 476.97. Verizon notes that § 476.3 does not constrain the Board's jurisdiction to hear a rate complaint. Verizon also relies on § 476.11, which provides that when a toll connection is made between carriers and they cannot agree on terms for interchange of toll communications, the Board, upon complaint, shall determine the terms.

Verizon argues further that even if Iowa Telecom is found to be a price-regulated carrier, the Board has authority to hear Verizon's complaint because Iowa Telecom and Frontier are not satisfying the purpose of their price regulation plans to produce just and reasonable rates. Verizon argues that § 476.97(6), which provides that any person may file a written complaint pursuant to § 476.3(1) regarding a carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan, confirms that carriers are not exempt from the Board's complaint jurisdiction just because they are price-regulated. Verizon contends that Iowa Telecom's argument that § 476.97(11) permits only voluntary reductions in access rates violates the rule of statutory construction that statutes must be given their plain meaning. According to Verizon, nothing in § 476.97(11) suggests that access rate reductions must be voluntary. Moreover, § 476.97(11)"i" forbids the Board from construing subsection (11) to prohibit an additional decrease in access rates.

In response to Iowa Telecom's argument that statutory deregulation under § 476.1D is no different from discretionary deregulation under which the Board

deregulated particular services, Verizon suggests that electing complete deregulation of retail services was a fundamental change from previous deregulatory proceedings. Verizon emphasizes that the price regulation provisions allow a carrier to elect to become price-regulated, not to choose which services it would like to be price-regulated.

Verizon's answer to the question of whether the Board has jurisdiction to order a local exchange carrier to reduce its intrastate rates is yes. Verizon points to the Board's decision in In re: FiberComm., L.C., et al. v. AT&T Comm. of the Midwest, Inc., "Final Decision and Order," Docket No. FCU-00-3, October 25, 2001, (FiberComm Order), in which the Board confirmed its § 476.3 jurisdiction over access rate complaints against CLECs because CLECs have market power for access services.

Verizon also relies on the Board's ITA Order, where the Board found it has jurisdiction under § 476.3 to review and set access rates of non-rate-regulated ILECs. Verizon argues that the logic followed by the Board to exercise jurisdiction in the ITA case applies here, quoting the Board's conclusion that because

> the LECs have market power over access service to their own customers, they may have the ability to charge rates that exceed their costs, and if that were to occur, it would be unfair and potentially anticompetitive to force IXCs [interexchange carriers] to pay the LEC's rates without offering the IXCs a forum for review.

(Verizon initial brief at 17-18, quoting ITA Order at 8-9.)

Further, Verizon argues that Iowa Code § 476.7 authorizes a public utility or the Board to initiate a formal proceeding to determine the reasonableness of the utility's rates; § 476.8 requires charges for communications services to be reasonable and just; and § 476.11 authorizes the Board to determine terms for interchange of toll communications when the parties cannot agree.

In response to Frontier's arguments that there is no reasonable basis to investigate Verizon's complaint, Verizon restates its position that the age of the existing rates, the Board's policy of rationalizing access rates, and the legislative policy of moving rates closer to cost and removing subsidies are reasons for further investigation. Verizon also argues that just because Frontier does not charge the full amount allowed for the carrier common line charge does not make its access rates reasonable.

In response to the Board's question about the appropriate measure of just, reasonable, and nondiscriminatory rates, Verizon states its position is that the parties may submit cost data, but the Board does not need to undertake a cost case to set reasonable access rates. For example, Verizon asserts the Board did not conduct a cost study when reducing CLECs' and non-rate-regulated carriers' access rates in the FiberComm, Access Charge, or ITA orders.

Verizon states that benchmarking is an efficient, reliable approach to determining reasonable access rates and has been used at the federal level and by the Board in other cases and regulators in other states. According to Verizon, Qwest's rates are an appropriate benchmark as they are subject to the closest

regulatory scrutiny and the strictest economic discipline regarding recovery of revenues from its end users, rather than from other carriers. Verizon contends that from a competitive standpoint, it makes sense to put carriers on an equal footing by moving to a common rate. Further, Verizon suggests that an easy and efficient way to move toward more just and reasonable rates is to phase out Iowa Telecom's and Frontier's CCLC, in keeping with the presumption against the CCLC established in the FiberComm and South Slope orders.

Verizon urges the Board to disregard Iowa Telecom's call to establish an explicit recovery mechanism and asks the Board to reject the assumption that Iowa Telecom is entitled to maintain its existing access revenues, regardless of its earnings and costs. Verizon states that Iowa Telecom's retail services are *completely deregulated and it is free to price its services as it likes, recovering its* costs in the prices charged for those services.

If the Board decides it must determine Iowa Telecom's and Frontier's costs of providing access services, Verizon recommends that the Board set parameters to assure more costs are not shifted to access providers. Verizon recommends against using the TELRIC (Total Element Long Run Incremental Cost) methodology for any purpose.

Verizon notes that the Board's decision in Docket No. INU-08-1 declining to extend its jurisdiction over rate-regulated carriers' single-line flat-rated residential and business rates beyond July 1, 2008[8] (Deregulation Order), does not affect resolution of this complaint except to stop Iowa Telecom and Frontier from arguing they lack flexibility to increase retail rates to recover potential lost revenues from reduction in access charges. Verizon contends that Iowa Telecom is wrong in its characterization of the Deregulation Order because (1) Iowa Telecom is not entitled to continue receiving its current level of revenues from access charges forever; (2) the Board did not make a categorical finding that Iowa Telecom and Frontier are practically unable to raise retail local exchange rates; and (3) raising the single-line and business rates that were the subject of the deregulation proceeding are not the only options Iowa Telecom would have to recover costs. Verizon suggests that Iowa Telecom could spread network costs over other telecommunications services, as Qwest does.

H. Iowa Telecom's initial brief filed July 14, 2008; reply brief filed August 4, 2008

Generally, Iowa Telecom's position is that as long as it is in compliance with § 476.97(11), the Board does not have jurisdiction to hear a complaint about Iowa Telecom's intrastate access rates under §§ 476.3, 476.11, or any other provision. Iowa Telecom contends that the Legislature could have created a means by which intrastate switched access rates could be reduced after they reached the 1995

[8] In re: Possible Extension of Board Jurisdiction Over Single Line Flat-Rated Residential and Business Rates for Local Exchange Carriers, Docket No. INU-08-1, "Final Order," June 27, 2008.

interstate levels, but chose not to. Iowa Telecom points out that larger ILECs are *subject to further reductions,*[9] *but there is no such provision in* § 476.97(11).

Iowa Telecom explains that there are four ways its intrastate switched access rates could change. Three of the means are involuntary: the relevant statutes could be amended either (1) at the state or (2) federal level; (3) the Federal Communications Commission (FCC) could take action; or (4) Iowa Telecom could voluntarily reduce its rates. Iowa Telecom suggests that the most likely scenario in which it would voluntarily reduce its rates would be if the Board conditions receipt of funding from a state USF on a voluntary reduction in intrastate access rates. Iowa Telecom states it is likely to accept such an offer given its limited opportunities to recover network costs through per-minute rates for intrastate switched access. Iowa Telecom suggests it might also make a voluntary reduction if the FCC were to permit elections for the creation of a unified rate for interstate and intrastate access services.

Iowa Telecom also argues Verizon is mistaken in asserting that removing implicit subsidies is the "be-all-end-all" of Iowa telecommunications and economic policy. Iowa Telecom points to the Board's conclusion in Docket No. NOI-99-1, the proceeding in which the Board first considered whether to establish a state USF, that a state fund was not required at the time as evidence that the Board was satisfied with the 1995 level of implicit subsidies in interstate access charges (which were

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[9] Iowa Code § 476.97(3)"a"(2) provides that carriers with 500,000 or more access lines may be subject to "further reductions toward economic costs in the local exchange carrier's average intrastate access *service rates.*"

mirrored in intrastate charges) and the levels of cross-subsidy built into those rates. Iowa Telecom also argues that the Board's recent conclusion in the Deregulation Order to allow retail local exchange service regulation to sunset demonstrates that the goal of competition has been achieved even with the current level of subsidies inherent in Iowa Telecom's intrastate access charges.

Iowa Telecom asks what competitive interest Verizon seeks to protect by reducing Iowa Telecom's intrastate access rates. Iowa Telecom states there is no circumstance in which Iowa Telecom could undercharge its own facilities-based intrastate toll operations for access charges while charging higher rates to competing intrastate toll providers.

Iowa Telecom also suggests that § 476.95 is not the only source of legislative intent. Iowa Telecom argues that by enacting § 476.95 simultaneously with § 476.102 (which required the Board to initiate a proceeding to preserve universal service in Iowa), the Legislature was setting a policy that subsidies cannot be removed if a means for replacing the subsidy has not been established.

Iowa Telecom also argues that there is no public policy reason for the Board to allow Verizon's complaint to proceed. Iowa Telecom acknowledges the need to reform the intercarrier compensation and universal service systems and states that Verizon's complaint raises issues relating to universal service that should be considered in a rule making proceeding.

In response to the Board's question regarding the interaction between § 476.1D and the price regulation provisions of § 476.97, Iowa Telecom argues that

Verizon's assertion that HF 277 created a "binary choice" between discretionary and statutory deregulation is inaccurate. Iowa Telecom's view is that § 476.1D removes certain services from the price regulation provisions of § 476.97 and such removal does not affect elections previously made for services which remain price regulated. Iowa Telecom asserts that even though certain services (including intraLATA 1+ equal access, several interexchange services, and voice messaging) were deregulated, GTE and the Board recognized that § 476.97(11) continued to apply to all other services.

Iowa Telecom argues that if an election under § 476.1D invalidated an election under § 476.97(11) for other services, affected carriers would have no means for cost recovery. Iowa Telecom suggests that if Verizon's claims about the effect of an election under § 476.1D were correct, Verizon could have challenged Iowa Telecom's intrastate access rates on January 1, 2006, and, assuming the Board ordered Iowa Telecom to match Qwest's intrastate rates, the required reductions in intrastate access charges would have exceeded the amount by which a carrier was allowed to increase residential rates. Iowa Telecom argues this was not an intended result.

Iowa Telecom's position is that intrastate access service rates established pursuant to a price regulation plan under § 476.97 are not subject to challenge in a complaint proceeding brought under §§ 476.3 and 476.11. According to Iowa Telecom, § 476.97(11)"e"(6) authorizes Iowa Telecom to charge its current access rates and that specific provision cannot be controlled by the general complaint provisions. Citing the provision in § 476.3(2) which precludes the Consumer

Advocate Division of the Department of Justice (Consumer Advocate) from challenging a LEC's rates as excessive while the carrier operates under price regulation, Iowa Telecom argues that if Consumer Advocate cannot bring a complaint, then neither can any member of the public. Iowa Telecom reads § 476.97(11)"i" as permitting a LEC to voluntarily decrease its rates, but not authorizing the Board to require reductions. Iowa Telecom suggests that reading § 476.97(11)"i" to allow the Board to hear Verizon's complaint would render § 476.3(2) meaningless.

Iowa Telecom states that the Legislature created in § 476.97(11)"h" a process by which a carrier's operation under its § 476.97(11) compliance plan could be reviewed after the required reductions were implemented. In § 476.97(11)"h"(1), however, the Legislature forbade the Board from interpreting § 476.97(11)"h" to serve as a means of ordering a reduction in basic communications service rates, which include intrastate access rates.

Iowa Telecom disputes Verizon's claim that its complaint is permissible under § 476.97(6), which allows complaints about a LEC's implementation, operation under, or satisfaction of the purposes of its price regulation plan. Iowa Telecom emphasizes that the Board's jurisdiction over access rates charged by price regulated carriers is limited to ensuring that the carrier has complied with the provisions of § 476.97. If the complaint is about whether the required reductions were implemented, Iowa Telecom asserts there is nothing for the Board to consider, given that the Board has approved the relevant tariff filings and Iowa Telecom's adoption of GTE's price regulation

election and plan. Further, Iowa Telecom suggests that the only "purpose" of its price regulation plan was to reduce average intrastate access charges to the 1995 interstate levels. Iowa Telecom suggests that a complaint regarding satisfaction of this purpose might relate to whether the proper rate elements were selected for reductions. A complaint about satisfaction of the purpose of a plan, though, could not seek a reduction in average intrastate switched access rates because § 476.97(6) would then contradict § 476.3(2), which was enacted at the same time and provides that Consumer Advocate shall not file a petition alleging that a LEC's rates are excessive while the carrier is operating under a Board-approved price regulation plan.

Iowa Telecom appears to defend the validity of the unaltered GTE rates by noting that the rates frozen by an election under § 476.97 were "at least" based on the federal price cap formulae using actual carrier data as inputs. In contrast, Iowa Telecom states that most non-rate-regulated Iowa ILECs are "average schedule companies who, at the federal level, rely on the National Exchange Carrier Association tariff that hardly purports to derive a measure of such carriers' costs." (Iowa Telecom initial brief at 11-12.)

On the issue of what is the appropriate measure of just, reasonable, and nondiscriminatory rates, Iowa Telecom insists that if universal service subsidies are removed from switched access charges, the Board must create another cost recovery mechanism. Iowa Telecom cautions that by eliminating the subsidy without creating a replacement, the Board would risk violating the United States Constitution by taking property without due process of law.

Iowa Telecom asserts that, given the existence of competitive offerings as recognized in Docket No. INU-08-1, the market will not bear a significant shift of cost recovery from switched access charges to retail local exchange rates. Iowa Telecom also points out that the Board filed comments with the FCC in CC Docket # 01-92 on October 25, 2006, stating that "further burdening of consumers is not the correct path."

Iowa Telecom believes its costs should be measured using forward-looking costs, such as TELRIC. Iowa Telecom claims that because it is modernizing its network, the most suitable framework for its switched access pricing is the future-oriented, efficient network analysis provided by TELRIC methodology. Iowa Telecom claims that the FCC allowed it to use a company-specific TSLRIC cost (Total Service Long Run Incremental Cost) to justify its federal switched access rates. Further, Iowa Telecom asserts that the FCC used a TELRIC-based formula to distribute Interstate Access Support (IAS) to price cap carriers such as Iowa Telecom. The IAS was established to replace certain universal service subsidies that were being eliminated from interstate access charges.

With respect to the effect of the Deregulation Order, Iowa Telecom states that the Board's factual findings in that decision pertain to this proceeding. Iowa Telecom contends that the Board concluded Iowa Telecom has no practical ability to raise rates, regardless of its legal authority to do so. Consequently, retail local exchange rates do not provide a means of recovering any revenue lost through reductions that might be ordered in this proceeding.

I. Frontier's initial brief filed July 14, 2008; reply brief filed August 4, 2008

Generally, Frontier disputes Verizon's assertion that the Board must review Frontier's intrastate access rates because they are alleged to be unreasonable. Frontier objects to Verizon's claim that the Board can reform intrastate access rates without considering Frontier's costs of providing intrastate access. Frontier urges the Board to consider whether the benefit to Verizon shareholders of any reductions in access rates the Board might order would outweigh the ultimate harm to Iowa consumers.

Frontier suggests that the Board should first determine if there really is a problem and then determine if the proposed remedy will fix the problem without causing more significant problems. Frontier argues Verizon has not clearly demonstrated the need for reform. With respect to the proposed solution, Frontier argues the reductions proposed by Verizon would benefit Verizon in the form of lower expenses but would force consumers to pay higher rates for local service. Further, Frontier argues that in light of the fact that the Board has limited or no ability to force long distance companies like Verizon to reduce long distance rates, the Board should not try to force lower long distance rates by mandating access charge reductions when competitive options are available to consumers.

Frontier asserts that a reduction in its intrastate access rates is not necessary or appropriate, but counsels the Board to observe the following four principles if it does decide to modify the rates. First, the Board should recognize that mandating Frontier to reduce intrastate access rates will result in local service rate increases.

Second, if the intrastate access revenues of Frontier and other carriers are reduced, the Board should consider whether an intrastate USF is necessary. Third, interexchange carriers (IXCs) like Verizon must continue to pay local service providers for the use of their facilities, including the cost of loop facilities. Fourth, Frontier cautions the Board that any changes adopted by the FCC with respect to intercarrier compensation could undermine decisions of state commissions. Frontier notes that its customers could be doubly impacted by intrastate access reform and interstate access reform, resulting in higher local service charges.

On the question of whether intrastate access rates determined according to a price regulation plan are subject to challenge in a complaint proceeding under §§ 476.3 and 476.11, Frontier argues the price regulation provisions supersede the complaint procedures in § 476.3 and 476.11.

On the issue of whether the Board has jurisdiction to order a LEC to reduce its intrastate access rates, Frontier emphasizes that § 476.3 authorizes the Board to dismiss a complaint if it concludes there is no reasonable basis to investigate the complaint. According to Frontier, the essence of Verizon's complaint is that Qwest has lower intrastate access rates than Frontier and therefore Frontier's rates are unreasonably high and should be reduced. Frontier argues that Verizon fails to provide any further factual basis for the complaint; fails to identify any requirement for Frontier to reduce intrastate access rates; fails to consider that Frontier's intrastate rates were reduced in accordance with Board-approved plans; fails to acknowledge that Frontier charges a lower CCLC than is allowed by Board rules; and fails to

address Board rules that limit the imposition of an end user access charge. Frontier asserts that Verizon's complaint is not legally or factually supported and should be dismissed because there is no reasonable basis for investigation.

Regarding the appropriate measure of just, reasonable, and nondiscriminatory rates, Frontier states there is not a single method to best measure switched access rates for all carriers. Frontier maintains that Qwest's intrastate access rates are not an appropriate benchmark for Frontier due to major differences in Frontier's and Qwest's size, network, and customer base. Frontier asserts that the FCC rules to determine interstate access costs can be used to evaluate the cost of providing intrastate access services, with some modifications.

J. Consumer Advocate's initial brief filed July 14, 2008

In response to the Board's question about the interaction between Iowa Code § 476.1D and the price regulation provisions of § 476.97, Consumer Advocate contends the two provisions do not interact. Instead, they offer alternate and mutually exclusive methods which can be elected by a LEC for setting retail rates in Iowa. Consumer Advocate explains the history of price regulation legislation, noting that § 476.97(1) provided that during the term of a price regulation plan, the Board shall regulate the prices of the LEC's basic and non-basic communications services pursuant to the requirements of the plan approved by the Board. Consumer Advocate explains that switched access was included in the list of "basic communications services" even though it was not an end-user customer retail service

because the rates for switched access services had been set in the traditional rate base, rate of return framework.

Frontier's written plan had to include provisions for reducing intrastate switched access rates. The switched access provisions in the law were not to be construed as prohibiting any additional decrease or permitting any increase in Frontier's average intrastate access service rate "during the term of the plan." § 476.97(3)"a"(3)"a"-"b." With respect to Iowa Telecom's election under § 476.97(11), Consumer Advocate notes a written plan was not required. The statute required reductions in switched access rates and provided that the statute was not to be construed to prohibit an additional decrease or to permit an increase in average intrastate access rates.

Consumer Advocate explains that as long as Frontier and Iowa Telecom's price-regulation elections were in place, neither was subject to traditional rate regulation and both were immune from complaints under § 476.3(1) unless the complaint addressed implementation, operation under, or satisfaction of the purposes of the price regulation plan. Consumer Advocate contends that by filing elections for regulation under § 476.1D, Frontier and Iowa Telecom terminated their § 476.97 elections. Consumer Advocate notes that Frontier's election specifically states, "[b]y opting into the new requirements, Frontier's Price Regulation Plan is null and void as of July 1, 2005."[10] According to Consumer Advocate, the provisions of § 476.97 no

[10] See Consumer Advocate initial brief at 6 and Attachment A to Consumer Advocate's initial brief, which includes Frontier's May 31, 2005, election under HF 277, in which Frontier states, "By opting into the new requirements, Frontier's Price Regulation Plan is null and void as of July 1, 2005."

longer apply to Frontier and Iowa Telecom. Consumer Advocate asserts that both Iowa Telecom and Frontier elected to be regulated under § 476.1D(1)(c) knowing that because switched access rates are not retail rates, they would not be deregulated in 2008.

Consumer Advocate contends that intrastate access service rates determined according to a price regulation plan under § 476.97 are subject to challenge in a complaint proceeding brought under §§ 476.3 and 476.11. According to Consumer Advocate, switched access rates established under § 476.97 remain in place today only because no carrier has challenged them. Consumer Advocate explains that throughout the tenure of price regulation, § 476.11 has been in effect and authorizes the Board, upon complaint, to determine the terms and conditions of interconnections between local and toll carriers absent agreement between the carriers. Consumer Advocate asserts the Board has broad, general, and comprehensive authority under § 476.11.

Consumer Advocate's position is that the Board has jurisdiction to order a LEC to reduce its intrastate access rates. Consumer Advocate notes that the Board has decided in other cases (the FiberComm and ITA decisions) that it has jurisdiction over the access rates of CLECs and LECs that are normally exempt from rate regulation when the LEC or CLEC has market power. Consumer Advocate argues that the Board's reasoning in those cases should apply equally to Frontier and Iowa Telecom's switched access rates, as both LECs have monopoly power in providing switched access service to any IXC that originates or terminates a call to the LEC's

customer. Consumer Advocate suggests it would make no sense for the Board to find that smaller LECs and CLECs in Iowa are subject to the Board's complaint resolution of toll connection disputes, but not to allow a forum to address complaints against two of the largest LECs.

On the issue of how to measure just, reasonable, and nondiscriminatory rates, Consumer Advocate states that the default method for setting rates for toll connections is through negotiation. In this case, though, § 476.11 was invoked, indicating an agreement had not been reached. Consumer Advocate suggests the Legislature's policy statements in Iowa Code § 476.95 provide guidance; one objective is to further the development of competition for local exchange services as well as toll services. Consumer Advocate believes the Board should attempt to move switched access charges toward the cost of providing the service and eliminate subsidies. Consumer Advocate states that the Board could review the cost of switched access services to determine just and reasonable rates, mirror interstate access rates, or compare to a relevant benchmark.

II. DISCUSSION

The Board begins its consideration of Verizon's complaint by noting that Frontier has acknowledged that its price regulation status ended upon its election to deregulate retail services. Frontier's resistance to Verizon's complaint focuses on whether there are reasonable grounds for further investigation of the complaint. Most of the following discussion relates to Iowa Telecom's arguments that the Board does not have jurisdiction to hear Verizon's complaint.

The statutes relevant to the Board's consideration of Verizon's complaint are potentially conflicting and require careful reading. Certain provisions in the price regulation statutes regarding the Board's ability to hear complaints about a price-regulated carrier's operation under price regulation are not entirely clear. Iowa Telecom disputes Verizon's assertion that its complaint is permissible under § 476.97(6), which provides that any person, including Consumer Advocate or the Board on its own motion, may file a written complaint pursuant to § 476.3(1) regarding a local exchange carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan. Iowa Telecom points to § 476.3(2), which provides that Consumer Advocate shall not file a petition alleging that a LEC's rates are excessive while the LEC is participating in a price regulation plan approved by the Board pursuant to § 476.97. Iowa Telecom argues that if Consumer Advocate is permitted to bring a complaint under § 476.97(6) regarding satisfaction of the purposes of a price regulation plan but cannot file a petition demanding reduction in a carrier's rates, then "satisfaction of the purposes" of a price regulation plan cannot mean that the intrastate access rates set pursuant to the price regulation plan are too high.[11]

[11] Verizon disputes Iowa Telecom's argument that because § 476.3(2) precludes Consumer Advocate from filing a petition alleging that a price-regulated carrier's rates are excessive, no one else can file such a petition. Verizon notes that the statute only limits Consumer Advocate and the Board cannot permissibly read further limitations into the statute.

The Board has evaluated these statutes and arguments and concludes that it should deny the motions to dismiss and conduct a hearing regarding Iowa Telecom's and Frontier's rates for intrastate access services. The Board finds more support in the statutes for an interpretation that allows the Board to consider Verizon's complaint than for Iowa Telecom's interpretation that the Board does not have jurisdiction to consider the complaint.

The Board agrees with Consumer Advocate and Verizon that a price regulation election was not meant to apply to individual services chosen at the discretion of the carrier, and that once a carrier opts for its retail services to be deregulated pursuant to § 476.1D, that carrier's previous price-regulated status is no longer in effect. In other words, a carrier cannot opt into price regulation for access services only while choosing deregulation under § 476.1D for its retail rates. Because Iowa Telecom's and Frontier's price regulation status ended when they elected deregulation under § 476.1D, their intrastate switched access rates are subject to review in a complaint proceeding under § 476.11, which authorizes the Board, upon complaint and hearing, to determine terms for toll connection between lines or facilities of two or more telephone companies. Section 476.11 provides that whenever

> toll connection between the lines or facilities of two or more telephone companies has been made, or is demanded under the statutes of this state, and the companies concerned cannot agree as to the terms and procedures under which toll communications shall be interchanged, the board upon complaint in writing, after hearing had upon reasonable notice, shall determine such terms and procedures.

Even if the Board found that Iowa Telecom retains its price regulation status for intrastate access rates only, the Board would have jurisdiction pursuant to the provision in § 476.97(11)"i" that the subsection "shall not be construed to prohibit an additional decrease" in a LEC's average intrastate access rates during the term of the price regulation plan. The Board does not agree with Iowa Telecom that this provision precludes anything other than a voluntary reduction in rates. Instead, the Board agrees with Verizon that nothing in § 476.97(11)"i" suggests that rate reductions must be voluntary and that to read such a condition into the provision would violate the requirement that the plain meaning of the statute be given effect.

Nor does the Board agree with Iowa Telecom's interpretation of § 476.97(11)"h," which provides that the Board could review a LEC's operation under § 476.97(11) after four years of the LEC's price-regulation election. Iowa Telecom argues that a § 476.97(11)"h" proceeding was the mechanism the Legislature established for the Board to review a LEC's operation under price regulation and the Legislature specifically precluded the Board from using such a proceeding as a means of ordering reductions in rates for basic communications services, which include switched access. However, § 476.97(11)"h" is better read to mean that the prohibition in § 476.97(11)"h"(1) applies only to subsection "h" proceedings. The fact that the Legislature needed to restrict the use of a § 476.97(11)"h" proceeding to order further reductions in access rates, combined with the immediately following provision that permits decreases in access rates, indicates that the Legislature

recognized and intended that the Board has the option to order reductions in access rates in other proceedings.

Support for the Board's jurisdiction can also be found by considering Verizon's complaint as a review for price plan modification under § 476.97(11)"h." While subpart "h"(1) says that the plan modifications cannot require a reduction in rates for any basic communications service, § 476.97(11)"i" states that subsection (11) does not prohibit decreases in intrastate access service rates. The specific reference to intrastate access service rates in the section that *allows* reductions (§ 476.97(11)"i") outweighs the reference to basic communications services in general that *prohibits* reductions (§ 476.97(11)"h"(1)).

Allowing Verizon's complaint to go forward will be consistent with previous decisions in which the Board asserted jurisdiction over the access rates charged by RLECs and CLECs. It would be an absurd result to read the price regulation statutes to mean that of all local exchange carriers in Iowa, only Iowa Telecom's access rates are not subject to review by the Board. Allowing Iowa Telecom to avoid Board review and possible modification of its intrastate access rates while other carriers have been subject to that review might raise equal protection issues. On this point, the Board concludes that the better course is to read the statutes in a manner that avoids Constitutional issues.

If the allegations in Verizon's complaint are read in the light most favorable to Verizon, the Board concludes that Verizon has sufficiently identified a basis for considering the complaint under § 476.11. If the complaint is examined under

§ 476.3, which requires reasonable grounds for further investigation, Verizon has identified reasonable grounds for investigation of the reasonableness of Iowa Telecom's and Frontier's intrastate access rates, which were established 14 years ago by reference to interstate rates that have since been reduced.

Finally, the statutes contain sufficient direction from the Legislature to guide the Board in resolving any competing interpretations of the price regulation and complaint statutes. In § 476.95, the Legislature instructed that communications services should be available throughout the state at just, reasonable, and affordable rates from a variety of providers; that the Board must consider the effect of its decisions on competition; and that the Board should address issues relating to the movement of prices toward cost and the removal of subsidies in ILEC price structures. These policy statements support the Board's consideration of Verizon's complaint regarding the reasonableness of the Iowa Telecom and Frontier intrastate access charges. The Board will deny the motions to dismiss and docket Verizon's complaint for formal proceeding.

The Board will not prevent the parties from presenting any relevant information regarding the cost of providing intrastate switched access service. As examples of the type of evidence the Board will consider, the Board offers the following non-exhaustive list: reasonable proxies, historical cost, a comparison of interstate and intrastate switched access rates, and TELRIC studies.

III. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The complaint filed on February 20, 2008, by MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services, is docketed for investigation of the matters asserted in the complaint and such other issues as may develop during the course of the proceedings.

2. The following procedural schedule is established for this proceeding:

a. Verizon and any intervenors aligned with Verizon shall file prepared direct testimony, with supporting exhibits and workpapers, on or before December 15, 2008.

b. Iowa Telecom and Frontier and any intervenors aligned with Iowa Telecom and Frontier shall file rebuttal testimony, with supporting exhibits and workpapers, on or before January 12, 2009.

c. Verizon and any intervenors aligned with Verizon shall file reply testimony, with supporting exhibits and workpapers, on or before February 9, 2009.

d. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 9 a.m. on Monday, March 30, 2009, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices

to observe or participate should contact the Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made. The parties are advised that the Board has reserved five days for the hearing in this matter.

e. Any party desiring to file a post-hearing brief may do so on or before April 24, 2009.

f. Any party desiring to file a post-hearing reply brief may do so on or before May 15, 2009.

3. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record three days after filing. All evidence filed pursuant to this paragraph shall be filed no later than five days after the close of hearing.

6. The motion to dismiss filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, on March 10, 2008, is denied.

7. The motion to dismiss filed by Frontier Communications of Iowa, Inc., on March 11, 2008, is denied.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

Dated at Des Moines, Iowa, this 14th day of November, 2008.

[Service Date November 20, 2008]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

VERIZON SELECT SERVICES, INC.; MCIMETRO ACCESS TRANSMISSION SERVICES, LLC; MCI COMMUNICATIONS SERVICES, INC.; TELECONNECT LONG DISTANCE SERVICES AND SYSTEMS CO. d/b/a TELECOM USA; AND TTI NATIONAL, INC.,	)	DOCKET UT-081393
	)	ORDER 02
	)	SECOND PREHEARING 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., MCImetro 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

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[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