Exhibit No.:
Issue(s): Local Number Portability
Witness: Susan W. Smith
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel
Case No.: TC-2007-0341
Date Testimony Prepared: June 25, 2007

SURREBUTTAL TESTIMONY

OF

SUSAN W. SMITH

ON BEHALF OF

CENTURYTEL OF MISSOURI, LLC AND SPECTRA

COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL

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CASE NO. TC-2007-0341

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Socket Telecom, LLC, Complainant,	)	
v.	)	
	)	**Case No. TC-2007-0341**
CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel, Respondents.	)	

AFFIDAVIT OF SUSAN W. SMITH

STATE OF TEXAS)
) SS
BOWIE COUNTY)

I, **Susan W. Smith**, of lawful age and being duly sworn, state: I am Director – External Affairs for CenturyTel Service Group, LLC, and am testifying on behalf of CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel, collectively referred to herein as "CenturyTel." My business address is 911 North Bishop Rd., Suite C207, Texarkana, Texas 75501. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony in the above-referenced case. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge, information and belief.

Susan W. Smith

Subscribed and sworn to before me this 25th day of June, 2007.

Notary Public

My Commission expires: 5-29-11

PATRICIA S. CHEATHAM
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 5-29-11

SURREBUTTAL TESTIMONY OF SUSAN W. SMITH

ON BEHALF OF CENTURYTEL OF MISSOURI, LLC AND SPECTRA COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL

Q. Please state your name.

A. Susan Wilson Smith

Q. Are you the same Susan Smith who filed rebuttal testimony in this case?

A. Yes.

Q. What is the purpose of your surrebuttal testimony?

A. The purpose of my testimony is to clarify, address and respond to points raised in Staff's Rebuttal Testimony.

Q. On page 6 of Staff's Rebuttal Testimony, Staff states the following as the basis for their recommendations. Will you please address each of their findings?

(1) Neither Congress nor the FCC have pre-empted the MO PSC's authority to rule for nor against CenturyTel or Socket in this matter;
(2) Matters which are the focus of this complaint were generally addressed by the commission previously in Case No. TO-2006-0299;
(3) While the Act and the FCC (through its rules and policy statements) set forth a general number portability framework, the CenturyTel / Socket Interconnection Agreement offers a more specific framework for deciding the issues in this case.

A. Yes, I will address each point and/or direct you to the appropriate CenturyTel witness for each.

Q. Are the Staff's findings accurate that neither Congress nor the Federal Communications Commission ("FCC") have pre-empted the Missouri Public

Service Commission's ("Commission") authority to rule for or against CenturyTel or Socket in this matter?

A. No. This is discussed in the testimony of Dr. Furchtgott-Roth.

Q. As testified to by Staff, were matters that are the focus of this complaint generally addressed by the Commission previously in Case No. TO-2006-0299?

A. No. Staff appears to be relating location porting to the findings on V-NXX service, which is addressed in detail below. V-NXX and FX are also discussed in the testimony of Dr. Furchtgott-Roth.

Q. On page 6 of Staff's Rebuttal Testimony, Staff states that "the crux of this case may be addressed by examining the extent to which CenturyTel may be obligated to port telephone numbers that will be used in a virtual configuration (i.e. V-NXX)." (*See* Staff's Rebuttal Testimony, page 6.) Is that an accurate assessment of the dispute?

A. No, not at all. Staff makes a long argument about V-NXX and, since Staff erroneously believes that V-NXX is exchange service, concludes that CenturyTel should port these numbers. Saving the discussion of the proper jurisdiction of V-NXX for later, the ports in question do not have anything to do with V-NXX.

Q. How does the Interconnection Agreement[1] define V-NXX?

A. Article V of the Interconnection Agreement defines V-NXX Traffic as a non-local service, where Socket assigns NPA/NXXs to a customer physically located outside of the CenturyTel Local Calling Area containing the Rate Center with

[1] The CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel Interconnection Agreements with Socket Telecom, LLC will be referred to herein as the "CenturyTel/Socket Interconnection Agreement" or "Interconnection Agreement".

which the NPA/NXX is associated. By definition, V-NXX means service to a customer located outside of the exchange to which a Socket-provided NXX is rated. The numbers in question do not have Socket NXXs; they have CenturyTel NXXs. The CenturyTel NXXs are not V-NXXs; they are assigned only to customers who have a physical service location in the exchange; or who pay access to CenturyTel to transport locally-dialed calls across the exchange boundary. Therefore the question is not, as Staff asserts, is CenturyTel obligated to port to a V-NXX that is rated to the CenturyTel exchange? Rather, the question is: Does CenturyTel have an obligation to port one of its own non-V-NXX numbers to Socket when that customer will be physically relocating the service location outside of the exchange?

Q. Can the Commission now redefine V-NXX to include numbers ported away from an Incumbent Local Exchange Carrier's local exchange?

A. No. Staff's apparent position not withstanding, the FCC clearly distinguishes V-NXX from the Incumbent Local Exchange Company's ("ILEC") NXX and, in fact, uses the ILEC's NXX to define what constitutes a V-NXX. For example, in a 2003 Memorandum Opinion and Order, the FCC defines VNXX in the following way:

> "Telephone numbers consist of ten digits in the form NPA-NXX-XXXX. The first three digits, or the 'NPA', refer to the area code. The second three digits, or the 'NXX', refer to the central office code. Pursuant to standard industry practice, an NXX code generally corresponds to a particular geographic area – or 'rate center' – served by a local exchange carrier ('LEC'). By contrast, 'virtual NXX' codes are central office codes that correspond to a particular rate center but are assigned to a customer located in a different rate center. For example, if a customer physically located in a rate center in Key West, Florida, received a telephone number

containing an NXX code associated with a rate center in Miami, Florida, that customer would have a virtual NXX code."[2]

Q. For the sake of argument, if a number ported away from CenturyTel could be included in the definition of V-NXX service, would Socket's port order be valid?

A. No. Staff's entire premise for these ports being valid is the assertion that V-NXX should be exchange service. Note that even Staff says "should be," not "is."[3] The Commission is being asked to make a future determination retroactively applicable to a past action, when no legal basis for such a determination existed at the time of Socket's order placement, or even exists today. Further, the Commission cannot find that V-NXX is exchange service in this instance, as the Commission is preempted by both the FCC and the Interconnection Agreement from doing so.

Q. How has the FCC preempted the Missouri Public Service Commission from making a determination that V-NXX is an exchange service?

A. It is important to recognize that the ports in question are Internet Service Provider ("ISP") dial-up numbers. This is not in dispute. All traffic to these numbers is therefore ISP-bound traffic. The FCC stated unequivocally in the ISP Remand Order that ISP-bound traffic is interexchange traffic.[4] Further, both the First, Second and Eighth Circuit Courts of Appeal have ruled that ISP-bound traffic is

[2] In the Matter of STARPOWER COMMUNICATIONS, LLC v. VERIZON SOUTH INC., File No. EB-00-MD-19, November 7, 2003.
[3] "The first question the Commission needs to determine is whether V-NXX service should be considered an exchange service or an interexchange service.' Voight, page 6.
[4] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic,CC Docket No. 96-98, CC Docket No. 99-68, ORDER ON REMAND AND REPORT AND ORDER, April 27, 2001.

interexchange traffic.[5] In conformance with those rulings, if all traffic to the V-NXX number is interexchange, this V-NXX service cannot be exchange service.

Q. Can Staff not argue that legitimate exchange service can be used to originate or terminate interchange calls?

A. Yes, I suppose Staff can. But to do so, the interexchange calls must be dialed as interexchange calls so that those calls will not be treated as exchange traffic. This is accomplished by dialing 1+ or 0+ before the called number. In the Socket case, there would be no 1+ or 0+ to cause interexchange traffic to be handled differently than other calls to these numbers; assuming that there would be any other type of calls to ISP dial-up numbers except for the interexchange. Precisely because all calls to the numbers in question are dialed and treated identically, and all those calls are interexchange under FCC and Federal Court determinations, the service being provided is an interexchange service, not an exchange service.

Q. Could there be some flavor of V-NXX that is exchange service and another flavor that is interexchange?

A. Yes. There is ample precedent for this bifurcation of traffic jurisdiction of a telecommunications service. For example, a toll call can be either interstate or intrastate in nature. Both types of calls are dialed identically, both are interexchange, both route in the same fashion, but the compensation and regulatory jurisdiction are different for each type. There are even different flavors

[5] *See, e.g.*, GLOBAL NAPS, INC. v. VERIZON NEW ENGLAND, INC., d/b/a Verizon Massachusetts, et al., Case No. 05-2657, United States Court of Appeals for the First Circuit, April 11, 2006; GLOBAL NAPS, INC. v. VERIZON NEW ENGLAND, INC., F/K/A NEW ENGLAND TELEPHONE & TELEGRAPH CO., D/B/A BELLATLANTIC VERMONT, INC., et al., Docket No. 04-4685-CV, United States Court of Appeals for the Second Circuit, July 5, 2006; and *In re* AT&T Arkansas (f/k/a SBC Arkansas) and Connect Communications Corp., Case No. 05-3698, United States Court of Appeals for the Eighth Circuit, October 27, 2006.

of exchange service. Some Manchester, Missouri customers, for example, can call to downtown St. Louis without additional charges as part of their local service plan. Some of their neighbors, however, living within the same exchange boundary, have to pay a per-minute-of-use interexchange toll charge for the exact same call because they have different kinds of local service plans from AT&T.

Additionally, the Commission may want to take note of the new law in Michigan where the ILEC is allowed to choose whether V-NXX will be treated as local or billed as toll. Here is a case where the same type of traffic will be treated differently in the same state on a carrier-by-carrier basis. But just because some traffic may be treated as local for compensation purposes between the carriers, it does not make it local traffic. ISP-bound V-NXX may be treated as local for compensation purposes in Michigan in some cases but the traffic has clearly been ruled to be interexchange.

Q. So the treatment of traffic for compensation purposes does not change the nature or jurisdiction of the traffic?

A. No. I think we just proved that point in our discussions of V-NXX, interstate vs. intrastate toll, and differing exchange service plans. The type of compensation, or lack thereof, does not, *de facto*, define the type or jurisdiction of the traffic.

Q. You said earlier in your testimony that V-NXX cannot be found to be exchange service pursuant to the Interconnection Agreement. Can you explain?

A. Yes. Staff apparently missed the terms in the Agreement under Article V, Section 9.2.3, V-NXX Traffic:

> "If Socket assigns NPA/NXXs to a customer physically located outside of the CenturyTel Local Calling Area containing the Rate Center with which the NPA/NXX is associated, traffic originating from CenturyTel customers within that CenturyTel Local Calling Area to Socket customers physically located outside of the CenturyTel Local Calling Area shall ***not be deemed Local Traffic*** but shall be at Bill-and-Keep." [emphasis added]

The Agreement clearly says that V-NXX is not Local Traffic. Therefore, the Commission cannot retroactively find that V-NXX should be treated as exchange service under the Agreement.

Q. **On page 14 of Staff's Rebuttal Testimony, Staff claims that, "[i]f Socket's VNXX service was an interexchange service, exchange access charges would apply, which clearly is not the case with the CenturyTel/Socket Interconnection Agreement." Is this a valid argument?**

A. No. Staff appears to be referring to last year's arbitration decision when stating "[w]hether state commissions could assess exchange access charges to "interexchange VNXX ISP-bound calls" was "an issue that was addressed by the Commission in the recent CenturyTel/Socket arbitration under Issues 7 and 10." The previously-referenced Federal Court decisions have already said that access charges can be applied to V-NXX pursuant to a State Commission decision. Last year's decision was not whether the Commission *could* assess access but rather if the Commission *would* choose to do so. Further, just because the traffic is exchanged at bill and keep does not make it an exchange service. For example, with the Enhanced Service Provider ("ESP") exemption, the FCC clearly forebears the application of access charges upon interexchange traffic that falls under the enhanced services definition. And Staff is correct in believing that, in the arbitration, the Commission has already decided this question. The arbitration

decision is established in the previously referenced Agreement text: "[V-NXX] shall *not be deemed Local Traffic* but shall be at Bill-and-Keep". [emphasis added]

Q. If V-NXX is not exchange service but interexchange service, how does that affect this dispute?

A. I will let Staff's own words answer that question:

> "This question is important because if it is an exchange service, V-NXX is subject to certain interconnection obligations of CenturyTel whereas, if it is an interexchange service, it is not." (*See* Staff's Rebuttal Testimony, page 6.)
>
> * * *
>
> "The central question in this case is whether the V-NXX service described in the Parties' Interconnection Agreement is an "exchange service" or an "interexchange service." If it is an exchange service, then it is subject to the congressional requirements; if it is an interexchange service, it is not." (*See* Staff's Rebuttal Testimony, page 11.)
>
> * * *
>
> "However, if the Commission were to find in this case that Socket's V-NXX service was an interexchange service, and in particular if it were to find such traffic subject to exchange switched access charges, the Commission would be deciding in favor of CenturyTel, Socket's complaint should be denied, and this case should be closed." (*See* Staff's Rebuttal Testimony, page 15.)

Q. Do you agree, that while the Act and the FCC, through its rules and policy statements, set forth a general number portability framework, the CenturyTel/Socket Interconnection Agreement offers a more specific framework for deciding the issues in this case?

A. The Staff's position is that, while the Act and the FCC do not require any form of location portability, the industry and industry standards have moved beyond the Act and the FCC, and this was somehow contemplated, and therefore location portability is required, under the CenturyTel/Socket Interconnection Agreement. My testimony shows that this is not the case. In fact, the intent and scope of the

entire Interconnection Agreement is specifically stated to be only "to the extent required by the Act". Therefore, the Act, the FCC rules and the Interconnection Agreement are in parity. CenturyTel's testimony also shows that Staff does not have a clear understanding of the term "industry standards" and, as a result, reaches erroneous conclusions regarding the industry's treatment and endorsement of location portability. The testimony of Dr. Harold Furchtgott-Roth will address the Act, FCC rules, and industry standards; and CenturyTel Witness Michael Penn's testimony will also address industry standards.

Q. Does Staff acknowledge that the Act, and by extension, the FCC, does not require any form of location portability such as that requested by Socket?

A. Yes. On page 8 of Staff's Rebuttal Testimony, "Staff acknowledges that the CenturyTel/Socket Interconnection Agreement does refer generally to the Act (and by extension, the FCC), which, in the Staff's opinion, does not require any form of location portability such as that requested by Socket. In addition, Staff states on page 19: "From the Staff's perspective, in the 1996 Act the Congress defined number portability between carriers to include retention of telephone numbers at the same physical location."

Q. Does the CenturyTel/Socket Interconnection Agreement require it to be in accordance with the provisions of the Act and other applicable provisions of federal and state law?

A. Yes. The following excerpts from the CenturyTel/Socket Interconnection Agreement clarify that the parties will operate to the extent required by and in accordance with the Act and other applicable provisions of federal and state law:

SCOPE AND INTENT OF AGREEMENT

Pursuant to this Agreement, and **to the extent required by the Act** and other applicable provisions of federal and state law, ...

* * *

ARTICLE II

1.8 Applicable Law - All laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, and approvals of any governmental authority, including, without limitation, the Missouri Public Service Commission and FCC, that apply or relate to the subject matter of this Agreement.

* * *

1.10 As Defined in the Act" means as specifically defined by the Act.

* * *

1.75 Local Number Portability (LNP) – As Defined by the Act.

ARTICLE III: GENERAL PROVISIONS

13.0 COMPLIANCE WITH LAWS AND REGULATIONS

Each Party **shall comply with all federal,** State, and local statutes, **regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.** [emphasis added]

* * *

35.0 REGULATORY AGENCY CONTROL

This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the Federal Communications Commission and/or the Commission to the extent the substance of this Agreement, or any portion thereof, is or becomes subject to the jurisdiction of such agency.

* * *

50.0 DIALING PARITY; NUMBER PORTABILITY

CenturyTel further agrees to provide Number Portability **in accordance with the requirements of the Act.** Specific requirements concerning Number Portability are set forth in Article XII - Local Number Portability. [emphasis added]

* * *

ARTICLE XII: LOCAL NUMBER PORTABILITY - PERMANENT NUMBER PORTABILITY

1.0 PROVISION OF LOCAL NUMBER PORTABILITY – PERMANENT NUMBER PORTABILITY

1.1 CenturyTel and Socket shall provide to each other, on a reciprocal basis, Permanent Number Portability (PNP) **in accordance with the requirements of the Act.** [emphasis added]

Q. Does Staff acknowledge that the Interconnection Agreement refers to the Act and to the FCC, and does not require any form of location portability such as that requested by Socket?

A. Yes. On page 8 of Staff's Rebuttal Testimony, "Staff acknowledges that the Socket/CenturyTel Interconnection Agreement does refer generally to the Act (and by extension, to the FCC), which, in the Staff's opinion, does not require any form of location portability such as that requested by Socket."

Q. How does Staff condition this acknowledgement that the Act and the FCC do not require any form of location portability such as requested by Socket?

A. First, Staff opines that the Agreement requires the parties to adhere to industry practices. (*See* Staff's Rebuttal Testimony, page 8.)

Second, Staff asserts they have reviewed "various industry practices and the CenturyTel/Socket Interconnection Agreement." (*See* Staff's Rebuttal Testimony, page 5); and has concluded that CenturyTel's policies are not consistent with industry practice in Missouri, conclusively finding that industry practices have dramatically leapfrogged the FCC's rules in this matter. (*See* Staff's Rebuttal Testimony, page 8.)

Q. What Section(s) of the Interconnection Agreement does Staff reference to determine that the Agreement requires the parties to adhere to industry practices, and do you agree with Staff's conclusion?

A. Staff used Section 3.2.1 of Article XII and Section 6.4 to support this conclusion. Close review of both of these Sections will indicate that the actual terms do not support Staff's conclusion.

3.0 LOCAL ROUTING NUMBER – PERMANENT NUMBER PORTABILITY (LRN-PNP)

3.2.1 The Parties agree that the industry has established local routing number (LRN) technology as the method by which permanent number portability (PNP) will be provided in response to FCC Orders in FCC 95-116 (*i.e.*, First Report and Order and subsequent Orders issued as of the date this Agreement was executed). As such, the Parties agree to provide PNP via LRN to each other as required by such FCC Orders or industry agreed-upon practices.

As stated above, Article I, Article III, and Section 1 of Article XII all require the parties to provide portability in accordance with the Act. Section 3 of Article XII, is specifically discussing use of the Local Routing Number (LRN) describing technically how a port is completed. The industry agreed-upon practices referred to are technical standards for the use of the LRN. The term "industry agreed-upon practices" is discussed in further detail by Dr. Harold Furchtgoth-Roth and Michael Penn. They will show that Section 52.26 of the FCC's rules leaves to North American Numbering Council ("NANC"), not to State Commissions or individual industry members or group of industry members "ongoing oversight of number portability administration", subject to FCC review. The procedure for the implementation of industry LNP standards is one of industry consensus, formalized at the LNPA-WG and the NANC, and the subsequent adoption of the policy via NANC and the FCC Bureau procedures. Industry standards are not set by individual companies, nor even the coordinated actions of multiple industry participants. Section 3.2.1 clearly does not support the Staff's conclusion or even apply to what can be legally ported, but merely addresses technical standards for porting standards using an LRN.

6.4 Porting of DID Numbers.

6.4.4 Industry guidelines shall be followed regarding all aspects of porting numbers from one network to another.

Section 6.4 is specifically and only referring to porting direct-inward-dial (DID) numbers. Again, this term in the Agreement refers to technical guidelines concerning these specific types of ports. This section when reviewed in context does not support the Staff's conclusion.

Q. What industry practices did Staff review to conclude that CenturyTel's policies are not consistent with industry practice in Missouri and that industry practices have dramatically leapfrogged the FCC's rules in this matter?

A. Staff's review of the "industry practices" appears to fall into two categories. First, Staff notes that CenturyTel admits (Smith Rebuttal Page 5, lines 1-19) and Socket acknowledges (Kohly Direct, page 35, line 1) that customers are allowed to port their number when moving within the same exchange. Staff concludes that this is indicative of widespread instances of location (also called "geographic") telephone number porting. (*See* Staff's Rebuttal Testimony, page 8.)

Second, Staff's apparent acceptance of Socket's testimony that both AT&T, and the other large incumbent carrier in Missouri, Embarq, have adopted a policy of allowing location ports. (*See* Staff's Rebuttal Testimony, page 8.) The only evidence on which to base this assertion appears to be a response to a data request from Socket acknowledging that Socket has requested, and AT&T and Embarq have completed some port orders that Socket now admits were location ports. (*See* Staff's Rebuttal Testimony, Schedule 10.)

Q. Staff's Rebuttal Testimony concludes that since CenturyTel is willing to port a number when the customer is also moving within the exchange, this

"represent[s] an attempt by CenturyTel to make the law work in instances it agrees with, and not work in instances it disagrees with." (*See* Staff's Rebuttal Testimony, page 17.) Is this a reasonable conclusion, or otherwise indicative of widespread instances of location telephone number porting?

A. No. Staff is using an unrelated set of circumstances to reach a conclusion that if one type of activity can be called location porting and is practiced by the industry, then all types of location porting must be allowed as well. As I previously testified, incumbent telephone companies have for decades permitted a customer to keep his/her number if moving within the same exchange. This practice predates even the concept of "portability" and was never called by that name. The type of order used in this practice is called a "from and to" or "F&T" order. The reason a telephone company permitted this type of order was a combination of technical, cost and customer service practicalities. From a technical perspective, a number that resides within a switch can be assigned to any physical address that is served by that switch. The only costs the telephone company incurred in moving the number were personnel costs to perform the work. These costs could be fully recovered in the form of non-recurring charges to the ordering customer. Therefore, it made sense to permit a customer to keep his/her number upon request if moving to a different address that was also served by the same switch. Under no circumstances, however, could a customer take his/her number if moving to an address that was not served by the original switch since there were significant technical and cost issues with that type of move. At best, the customer could keep the number active in the original switch and pay for private

line or switched access service that could be used to forward calls from the old switch to the new.

Because telephone companies do allow F&T orders, and because incumbent telephone companies are obligated under law to provide a competitor with what it will provide for itself, incumbents like CenturyTel will permit a customer to "F&T" from CenturyTel to a competitor in the same exchange. This is consistent with our requirements under the Act as well as Article III, Section 52 of the CenturyTel/Socket Interconnection Agreement. This is not the wholesale acceptance and practice of location porting as Staff would suggest. It is a practice that is bound by vastly different technical, legal, and cost circumstances than the situation requested by Socket and accepted by Staff.

The logic apparently used by Staff could be applied to an unlimited number of situations to come up with technically possible but legally improper conclusions. For example, because I can keep the same power company service if moving to a new house within my neighborhood, I should be able to keep the same power company service if moving to a higher-priced power company's franchise area in the next town. There is certainly no technical reason why my original power company cannot transmit the same amount of power that I consume to my new incumbent company and bill me at the lower rates. Under Staff's logic, all location portability circumstances are the same.

Q. Has the FCC acknowledged this practice of keeping the same number when moving within the areas served by their current central office?

A. Yes, in the FCC's First Report and Order, and again in the Intermodal Order, the FCC clarifies that keeping the number when moving within the areas served by your current central office is expected.

> "First, the FCC points to a single sentence in the *First Order* that, it maintains, provided notice of the interpretation later adopted in the *Intermodal Order*. That sentence, which comes directly after one that defines 'location portability,' reads as follows:
>
> "Today, telephone subscribers must change their telephone numbers when they move outside the area served by their current central office." *First Order* ¶ 174, 11 F.C.C.R. at 8443.[6]

This sentence thus made clear that *unless* the Commission were to impose location portability – which it declined to do and insists it still has not done – subscribers would have to change their numbers if they moved outside the area served by their current carrier's central office. Thus, CenturyTel is not trying to make the law work in one case and not another; rather CenturyTel is in compliance with both pre-LNP industry practice and with FCC LNP Orders.

Q. Does CenturyTel agree with Staff's apparent acceptance of Socket's testimony that both AT&T and Embarq have adopted a policy of allowing location ports? (*See* Staff's Rebuttal Testimony, page 8.)

A. Definitely not. The only evidence on which the Staff bases this assertion is a response to a data request from Socket acknowledging that Socket had requested, and AT&T and Embarq had completed, some orders that were for location ports. (*See* Staff's Rebuttal Testimony, page 8.) Staff appears to limit their response to just AT&T and Embarq since these are the two companies shown in Socket's

[6] United States Court of Appeals for the District of Columbia Circuit, March 11, 2005 No. 03-1414, UNITED STATES TELECOM ASSOCIATION AND CENTURYTEL, INC., PETITIONERS v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA.

testimony and its data request response. (*See* Staff's Rebuttal Testimony, Schedule 10.) However, the Missouri Independent Telephone Group's Application to File a Brief as Amicus Curiae clearly shows that these local carriers do not endorse a policy of allowing location ports. I am also attaching copies of public testimony filed by James M. Maples on behalf of Embarq in Pennsylvania on April 27, 2007 and June 4, 2007 that contradicts any assertion that Embarq has adopted a policy of allowing location ports (Schedule SS-1).

On page 16, of his April 27 testimony Mr. Maples testifies to the following:

Q. Can the end user keep their telephone number if they change their location?

A. The end user can change location when porting their telephone number from one wireline service provider to another wireline service provider as long as that location is within the same rate center. The FCC has not ordered geographic portability and its rules prohibit porting a telephone number outside of the rate center to which it is assigned. Doing so can lead to problems with rating, routing, dialing parity, customer confusion, and E911/911.

Q. What rules are you referring to?

A. The FCC adopted and codified the recommendation of the North American Numbering Council (NANC) Local Number Portability Administration Selection Working Group Report, dated April 25, 1997(Working Group Report) in the Code of Federal Regulations, Title 47 §52.26(a). Section 7.3 of Appendix D of that report states that "location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns" and that additional limitations might be required for various reasons such as E911 operability.

Q What alternatives are available to customer that want geographic portability?

A. The FCC addressed this in the First Report and Order that mandated service provider portability and rejected geographic portability stating: "Also, users who strongly desire location portability can use non-geographic numbers by subscribing to a 500 or toll free number."[7] In spite of this instruction from the FCC some carriers take advantage of "gaps" in LNP processes to geographically port numbers to end users

[7] *In theMatter of Telephone Number Portability*, CC Docket No, 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, Released July 2, 1996, ¶184.

that are located outside of the rate center to which the number is assigned.

On page 18 of his testimony, Mr. Maples states "*had we recognized this* when we received the port requests from Core, **we could and should have disputed them.**" [emphasis added]

On Page 19 of his Rebuttal Testimony filed June 4, 2007, Mr. Maples states, "That is one of the reasons why the FCC prohibits porting telephone numbers outside of the rate center to which they are assigned." On Page 20 of his Rebuttal Testimony, Mr. Maples states, "The Guidelines do not pre-empt the FCC rules that explicitly prohibit porting telephone numbers outside of the rate center." "Furthermore, there are also other guidelines clearly prohibiting porting numbers outside of the rate center. For example, the Telecordia Local Exchange Routing Guide ("LERG"), which Telecordia Technologies will not allow any carrier to use in a proceeding without its expressed permission, clearly states that service provider portability does not equate to location/geographic portability." On Page 21 of his Rebuttal Testimony, Mr. Maples describes a location porting practice by Core that is identical to the ports processed by Socket, as a "misuse of Local Number Portability ("LNP")....flawed and suspect." On page 23 of his Rebuttal Testimony, Mr. Maples describes Core's practice as a "charade by manipulating the LNP process and inappropriately porting telephone numbers outside of the rate centers, introducing rating and routing errors."

Embarq's testimony would support the conclusion that like CenturyTel, any ports that were completed for Socket that constituted location ports were unknowingly and mistakenly processed, and not the result of any industry

practice. In fact, it must be found that it was Socket who submitted invalid port requests for processing.

Q. Do you agree that CenturyTel may be in violation of Section 4 of Article V of the Socket/CenturyTel Interconnection Agreement? (*See* Staff's Rebuttal Testimony, page 7.)

A. Absolutely not. The only issue before this Commission deals with CenturyTel's obligation to complete a port when the customer is relocating outside of the exchange. Section 4 of Article V has to do with establishing and decommissioning Points of Interconnection ("POIs"). CenturyTel's refusal to completed Socket's illegal ports is a totally different issue that establishing and decommissioning POIs.

Q. Do you agree that CenturyTel may be in violation of the Interconnection Agreement as to the number porting dispute? In particular, Section 3.2.1 of Article XII holds that number portability between Socket and CenturyTel will be provided to each other as required by FCC Orders *or industry agreed upon practices* and, Section 6.4.4 holds that *industry guidelines shall be followed regarding all aspects of porting numbers from one network to another.* (*See* Staff's Rebuttal Testimony, page 7)

A. No. As I have discussed above, I believe Staff has taken 3.2.1 and 6.4.4 out of context and Staff also appears to ignore the numerous terms of the Agreement that obligate the Parties to abide by Applicable Law or that limit an obligation to the extent required by Applicable Law. If any party is in violation of the

Interconnection Agreement it can only be Socket who is submitting invalid location port requests for all the reasons stated above.

Q. Is there sufficient evidence for Staff to conclude that "industry practices" do exist, and the FCC's rules do not address all forms of number portability permitted under the CenturyTel/Socket Interconnection Agreement?

A. No, for all the reasons stated above. The industry practices referenced in the Agreement have nothing to do with location portability, and the evidence clearly shows that there is no industry acceptance of this type of port, merely a few companies like Socket who abuse the existing LNP process.

Q. On page 11 of Staff's Rebuttal Testimony, Staff characterized FX and V-NXX as similar because: (1) a subscriber may physically reside in one exchange while receiving telephone service from another area; and, (2) as proposed by Socket, call rating is the same for V-NXX service as with FX service. Are FX and V-NXX similar?

A. Not in my opinion. Under FCC rules, FX service, contrary to what the Staff says, is a form of private line interexchange service, not a local exchange service. FX is "bolted on" to an exchange service. The exchange service is provisioned out of the original wire center and the FX service is an attached interexchange service to transport the calls to and from the customer's new premises that does not use exchange service but some other mode of tariffed interexchange service. Importantly, in such an arrangement, the number continues to "reside" in the original switch. As used in the Agreement, Virtual NXX Traffic or V-NXX Traffic is defined as calls in which a Party's customer is assigned a telephone

number with an NXX Code (as set forth in the LERG) assigned to a Rate Center that is different from the Rate Center associated with the customer's actual physical premises location. The Agreement further defines V-NXX as a non-local service.

Rating and routing are not the same for V-NXX service as they are for FX service, which I will explain further. The cost of FX service is totally borne by the end user purchasing the FX service. The end user is responsible for the dedicated facility from their premise to the home central office and then to the distant end office. In this case the customer would be responsible for a dedicated facility from the CenturyTel Willow Springs central office to the customer's serving central office to the customer's premise in St. Louis. With FX service, the customer, not the originating carrier (CenturyTel) or the end user calling the FX number, bears all of the costs of transporting the calls from the rate center where the number is assigned to the geographic location of the customer. In the case of Ellsinore, were Spectra and AT&T are involved, the FX customer is responsible for all costs to both carriers, and calls are routed over the customer's dedicated facility, not a common wholesale carrier facility as proposed by Socket. FX calls do maintain appropriate rating and routing since all calls are routed through the appropriate central office providing dial tone or the open end. In other words, all calls to the FX customer are routed and rated identical to any call that would terminate to an Ellsinore customer. FX rating requires the customer to pay for transport from the Ellsinore central office, to the AT&T Sikeston office, to the AT&T St. Louis office, and then to the Socket central office, and

then to the customer premise, and calls are routed over these dedicated facilities, not common facilities. All calls to the customer's Ellsinore number our routed through Ellsinore; therefore, they are appropriately rated. In this case, Socket is requesting that the Ellsinore number be moved to a customer location in St. Louis. Now calls originating in St. Louis will terminate in St. Louis, but the originating customer will be billed toll, even though there were no costs associated with transport facilities; however, when a CenturyTel Ellsinore customer calls the Ellsinore customer in St. Louis, CenturyTel and AT&T, not the customer will be responsible for almost 200 miles of transport, while the customer is not responsible for anything since they are colloated with Socket in St. Louis. Rating and routing are not the same. FX service recognizes that there are interexchange transport costs, while merely porting the number to a customer outside the exchange demands that Spectra and AT&T's customers subsidize Socket's St. Louis customer. Illegally porting the number to a St. Louis customer, results in an immediate shift in existing costs from Socket's customer to CenturyTel and AT&T's customers. If Socket actually planned to provide local competition in Ellsinore, Socket would establish a collocation allowing for access to local loop facilities in Ellsinore, and all calls would be handed to Socket at the Ellsinore location, not St. Louis.

Q. Please address Kohly's description of CenturyTel's FX service to Computer Magic in Prairie Home (page 37, lines 1-5 and page 24, line 6).

A. All FX service that is provided allows for two-way communications; however, I acknowledge Socket and Staff's point that not every customer may desire or use

the provided service for two communications. Also, in every instance the cost of dedicated facilities from the serving central office, or open end, to the customer premise is built into the rates for the tariffed service provided to the customer. In no instance has CenturyTel asked another carrier to subsidize the provision of a foreign exchange service to our retail customer or affiliate as Socket is proposing.

Q. Is FX service an exchange service as claimed by Staff on page 12, lines 10-17 of Staff's Rebuttal Testimony?

A. No. As Dr. Furchtgott-Roth testifies, under FCC rules, FX service is a form of private line interexchange service, not a local exchange service.

Also, Staff has ignored previous findings that FX service is not exchange service. I respectfully refer Staff again to page 29 of the final arbitration order in Case No. TO-2006-0299, effective June 30, 2006, where the Commission found "that the reference to Foreign Exchange Traffic should be removed because it had been deemed non-local traffic." This is consistent with the FCC's definition of Foreign Exchange, hence the term "Foreign Exchange". Staff cannot now determine that Foreign Exchange service is exchange service when it has already been deemed non-local traffic. I again refer you to Staff's testimony concerning interexchange service.

> "[I]f it is an exchange service, ...it is subject to certain interconnection obligations of CenturyTel whereas, if it is an interexchange service, it is not." (Staff Rebuttal Testimony, page 6.)
>
> * * *
>
> "If it is an exchange service, then it is subject to the congressional requirements; if it is an interexchange service, it is not." (Staff Rebuttal Testimony, page 11.)
>
> * * *
>
> "However, if the Commission were to find ...service was an interexchange service, and in particular if it were to find such traffic

subject to exchange switched access charges, the Commission would be deciding in favor of CenturyTel, Socket's complaint should be denied, and this case should be closed."(Staff Rebuttal Testimony, page 15.)

Q. Do you agree with Staff's statement on page 14 of Staff's Rebuttal Testimony that it is the telephone rate center that forms the basis of legal and regulatory treatment and the associated intercarrier compensation scheme, not the physical end points of the telephone connection?

A. No. The simplest example to understand is an interexchange call. For a traditionally-dialed voice toll call, it is the fact that the called rate center is different than the calling rate center that implies access compensation is due to the originating and terminating local carriers. But it is the physical end points of the telephone connection that determines if the compensation and regulatory oversight is interstate or intrastate.

More relevant to the arguments in this case, as another example, the called rate center and the calling rate center are the same with FX and Remote Call Forwarding, but varying access compensation is due to the originating local carrier based on the physical end points of the telephone connection. The regulatory treatment may vary as well if the end points are in different states.

Q. On Page 15 of Staff's Rebuttal Testimony, Staff acknowledges that Socket has generally asked the Commission to address location portability, but characterizes the market or issue before them as dealing with "dial-up" Internet access service only. Do you agree with this characterization?

A. This is not just a "dial-up" Internet access market issue as characterized by Staff. Competitive Local Exchange Carriers ("CLECs") like Socket, are telling businesses that they can relocate to other cities, take their telephone numbers with

them, and not have to pay for the cost of transport. This is not a marketing plan unique to ISP services but could be used by any Socket subscriber. However, we recognize that dial-up internet access is a big problem because of the call volumes, holding times, and associated high transport costs. Under this scheme, Socket does not compensate CenturyTel for the interexchange transport associated with this customer who is no longer located in the exchange. To make the sale, Socket passes some of that savings on to the end user buying the service but most likely Socket increases its profits, while shifting the financial burden to CenturyTel. CenturyTel does not and cannot port telephone numbers out of the appropriate rate center.

Q. Does CenturyTel agree with Staff's statement on Page 3, lines 13-15 of Staff's Rebuttal Testimony, that, "Although Socket asks the Commission to address the specifics of its complaint, Socket also requests the Commission more globally address CenturyTel's overall policy of fulfilling Socket's orders to port telephone numbers."?

A. No, as described in further detail below there is only one issue that has and can be brought before this Commission for dispute resolution.

Q. What is the only issue before this Commission for resolution?

A. CenturyTel, pursuant to the 1996 Telecommunications Act and the FCC rules, has maintained that we are not required to port an existing telephone number when the customer physically moves to a site located outside of the exchange. Socket admits that the customers subject to this dispute are relocating outside of the exchange, yet argues that CenturyTel is still required to port the number.

Q. Has Staff attempted to address several other issues that are not part of this complaint proceeding?

A. Yes. Respectively, Staff has addressed several issues that were mentioned by Socket in its testimony as Socket attempted to cloud the only real issue before this Commission. These issues are not part of, and cannot be addressed under this complaint proceeding.

Q. What provision of the interconnection agreement allowed Socket to file this complaint?

A. Article III, Section 18 contains the dispute resolution provisions of the CenturyTel/Socket Interconnection Agreement:

> **18.0 DISPUTE RESOLUTION**
>
> 18.1 Alternative to Litigation.
> Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
>
> 18.2 Negotiations.
> Upon written notice from either Party initiating the dispute resolution process, each Party will appoint a knowledgeable, responsible and empowered representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives, except that the Parties' representatives will hold an initial discussion within ten (10) days of the written request initiating the dispute resolution process.

Written requests may be provided via electronic mail followed by registered mail to the contacts listed in this Agreement.

18.3 Arbitration.

If the negotiations do not resolve the dispute within thirty (30) days of the initial written request, the dispute shall be submitted to binding arbitration. The Parties may mutually agree to postpone submitting the dispute to binding arbitration. At the election of either Party, arbitration shall be before the Commission, FCC, or court of competent jurisdiction. Otherwise, arbitration shall be by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement. If the Commission is selected as the arbitrator, its arbitration rules shall apply. Otherwise, the rules described in part (a) below shall be applicable. Nothing herein shall limit the right of either Party to bring a matter to court for injunctive relief or to address matters outside the scope of the Agreement.

(a) A Party may demand arbitration in accordance with the procedures set out in the AAA rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral deposition of the other Party on subject areas identified in advance, and the other Party shall produce the appropriate individuals to respond. Additional discovery may be permitted upon mutual agreement of the Parties or order of the arbitrator. The arbitration hearing shall be commenced within sixty (60) Business Days of the demand for arbitration. The arbitration shall be held in a mutually agreeable city or as determined by the arbitrator. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) Business Days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause.

(b) Judgment upon the award rendered by the arbitrator, whether it is the Commission or an AAA or other arbitrator, may be entered in any court having jurisdiction.

18.4 Expedited Resolution Procedures.
If the issue to be resolved through the negotiations referenced in Section 18.2 directly and materially affects or threaten to materially affect service to either Party's end-user customers or the ability of one Party to provide service to an end-user customer, the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration, or at the election of either, directly to the Commission, FCC, or court shall be five (5) Business Days. Once such a service-affecting dispute is submitted to arbitration, and if arbitration with the Commission is not selected, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (*i.e.*, rules 53 through 57). Nothing herein shall limit the right of either Party to bring a matter to court for injunctive relief or to address matters outside the scope of the agreement.

Q. What issue was submitted by Socket to CenturyTel for dispute resolution pursuant to Section 18.2 of the parties' Interconnection Agreement, and was this addressed in previous testimony?

A. The issue submitted to CenturyTel under section 18.2 initiating the dispute resolution process, and subsequently submitted to this Commission by Socket under section 18.4, for negotiations and expedited resolution, dealt with CenturyTel's obligation to complete location ports, specifically the Willow Springs ports. Pursuant to the Interconnection Agreement all disputed issues must be submitted in writing under section 18.2. If the issue referenced in Section 18.2 cannot be resolved, the issue may be submitted for expedited resolution under Section 18.4, if it directly and materially affects or threaten to materially affect service to either Party's end-user customers or the ability of one Party to provide service to an end-user customer, to binding arbitration, the Commission, FCC, or court for resolution.

I did address this issue in my Rebuttal Testimony as can be seen in the following Q&A (Susan W. Smith Rebuttal Testimony, page 3):

> **Q. What is the actual dispute between Socket and CenturyTel in this case?**
> A. As stated by Mr. Kohly on page 8 of his testimony, CenturyTel, pursuant to the Telecommunications Act and the FCC rules, has maintained that we are not required to port an existing telephone number when the customer physically moves to a site located outside of the exchange. Socket admits that the customers subject to this dispute are relocating outside of the exchange, yet argues that CenturyTel is still required to port the number.

Q. Is Staff mistaken when they claim there have been service outages as a result of CenturyTel denying completion of the location ports?

A. Yes, as discussed on page 18 of my rebuttal testimony no outages occurred as a result of CenturyTel denying completion of the location ports; more specifically in Clarence, Missouri, where Socket seems to have had an outage, it was not due to any action by CenturyTel.

ISSUES ADDRESSED BY STAFF NOT BEFORE THIS COMMISSION FOR RESOLUTION

Q. On page 22 of Staff's Rebuttal Testimony, has Staff properly characterized a prior dispute discussed by Mr. Kohly, (Kohly page 18, line 12 and page 20, line 4), and is that even a part of the complaint now before the Commission?

A. Yes. It became obvious to CenturyTel that Socket was relocating existing customers to locations outside of the exchange and requesting location ports. Socket was not prepared to provide basic local service in the questioned exchanges, they did not have any local facilities in the exchange, nor had they implemented any E911 services. CenturyTel questioned Socket if the customer was relocating. While Socket did not initially admit that the customer was

moving from the exchange, they also did not deny that the customer was relocating in St. Louis. Later, Socket did acknowledge that the customer was relocating to St. Louis, which is the subject of this complaint. Pending resolution of this complaint, CenturyTel has requested that Socket, when requesting a port where it has no facilities, to merely provide a statement on their LSR certifying that the customer is not relocating outside of the rate center.

Q. On page 25 of Staff's Rebuttal Testimony, Staff addresses the same numbering resource issue raised by Socket (Kohly, page 45, line 10): "[In] Staff's view, carriers such as Socket should not have to obtain numbering resources in order to serve exchange areas unless they are needed, CenturyTel should not be permitted to unilaterally impose such a requirement on another carrier. Did the Staff accurately reflect the issue between the companies?

A. First, this is again not part of the complaint now before the Commission, and has nothing to do with whether CenturyTel is required to complete location ports.

Second, CenturyTel did not unilaterally impose any requirement on another carrier. We merely referred Socket to ¶ 7. FCC Local Number Portability Second Report and Order, where the FCC adopted recommendations from the North American Numbering Council (NANC) for the implementation of wireline-to-wireline number portability. Under the guidelines developed by NANC, porting between LECs was limited to carriers with facilities or numbering resources in the same rate center to accommodate technical limitations associated

with the proper rating of wireline calls. In addition, the following references were provided to Socket:

> § 52.26 NANC Recommendations on Local Number Portability Administration.
> (a) Local number portability administration shall comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (Working Group Report) and its appendices, which are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. Except that: Section 7.10 of Appendix D of the Working Group Report is not incorporated herein.

The FCC understands the NANC report to require that the requesting carrier have facilities or numbering resources in the rate center as seen in the following quote from the Intermodal LNP Order:.

> 7. In 1997, in the Local Number Portability Second Report and Order, the Commission adopted recommendations from the North American Numbering Council (NANC) for the implementation of wireline-to-wireline number portability. Under the guidelines developed by NANC, porting between LECs was limited to carriers with facilities or numbering resources in the same rate center to accommodate technical limitations associated with the proper rating of wireline calls.

MO&O and FNPRM released November 10, 2003 in CC Docket No. 95-116 (at paragraph 7).

Q. Can you address Staff's discussion of the Firm Order Commitment process? (*See* Staff's Rebuttal Testimony, page 27.)

A. First, discussion of an FOC is again not part of this complaint and has nothing to do with whether CenturyTel is required to complete location ports.

Second, an FOC is a Firm Order **Confirmation**, not a Firm Order Commitment. This is a common industry term defined in Newton's Telecom Dictionary, and testified to by Michael Penn, and consistently defined and

explained in the CenturyTel Service Guide, which is part of the Interconnection Agreement.

Third, the process flow that Mr. Kohly produced as his understanding of an FOC specifically deals with Special Access Circuits requested via an Access Service Request, and is appropriately titled as such. Access service orders follow different guidelines, and an FOC is not received by the requesting carrier until day five. This allows for adequate time to verify available facilities. This is not the case with a port order. There is no system, process or set of guidelines that would require or allow for CenturyTel to verify that interexchange facilities are in place within the 48 hours required to process a port request.

Fourth, it should be noted that the vast majority of ports are associated with single line residential and business lines, and this is not an issue.

Q. Can you respond to Staff's response on page 28 of Staff's Rebuttal Testimony concerning POIs?

A. First, POIs are again not part of the complaint pending before the Commission. Traffic studies were produced to show the effect on the network of these types of location ports and the illegal shifting of exchange access costs associated with location ports. The traffic studies were produced in each instance where Socket provided the porting request detail to show the integrity of our traffic reports and verify our capacity limitations.

Second, CenturyTel adamantly disagrees with any characterization that we are attempting to reargue interconnection issues that were resolved in the arbitration in Case No. TO-2006-0299. It has been Socket, not CenturyTel that

has attempted to avoid and evade any requirements to establish and/or compensate CenturyTel or Spectra for POIs.

Third, it is unfathomable in any situation that Socket Telecom should be allowed to shift costs from their existing affiliate, Socket Internet, to CenturyTel and their customers, to allow Socket to move a customer outside of the exchange area.

Fourth, under no existing circumstances can the Commission require CenturyTel to establish direct trunking from each end office to Socket, or any other CLEC, for the provision of VNXX traffic.

Q. What are your conclusions?

A. The following are my conclusions:

1. As discussed by Dr. Harold Furchgott-Roth, Section 251(d)(3) by itself is not a source of authority for state commission decisions.
2. Location Portability was not generally addressed by the commission previously in Case No. TO-2006-0299.
3. Staff has correctly acknowledged that the Act and FCC rules do not require location porting.
4. The Interconnection Agreement requires the parties to provide local number portability according to the Act and FCC orders.
5. The "industry practices" referenced in the Interconnection Agreement would not require location porting. Staff refers to the concept of "industry practices," but offers no reliable evidence or documentation of "industry agreed-upon practices."

6. Evidence shows that it is Socket ignoring and abusing industry practices, the Act and FCC orders, and not CenturyTel.

Q. Does this conclude your surrebuttal testimony?

A. Yes.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Core Communications, Inc.	:	
for Arbitration of Interconnection Rates,	:	
Terms And Conditions with The United	:	Docket No.
Telephone Company of Pennsylvania	:	A-310922F7002
d/b/a Embarq Pennsylvania pursuant to	:	
47 U.S.C §252(b)	:	

DIRECT TESTIMONY OF JAMES M. (MIKE) MAPLES

EQ PA STATEMENT 3.0

ON BEHALF OF
THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA
D/B/A EMBARQ PENNSYLVANIA

Prefiled: April 27, 2007

DIRECT TESTIMONY OF
JAMES M. (MIKE) MAPLES
EQ PA STATEMENT 3.0

SECTION I – INTRODUCTION

Q. Please state your name, title, and business address.

A. My name is James M. "Mike" Maples. I am employed as Regulatory Manager for Embarq Management Company, which provides management services to The United Telephone Company of Pennsylvania *d/b/a* Embarq Pennsylvania ("United PA" or "Embarq PA"). My business address is 5454 W. 110th Street, Overland Park, KS 66211.

Q. Please summarize your education and professional background.

A. I received a Bachelor of Science degree from East Texas State University, Commerce, Texas, in December 1973 with majors in mathematics and industrial technology. Beginning in 1968, I was also employed by Sprint/United Telephone Texas as a technician responsible for installing and repairing residential, simple, and complex business systems. I completed the company's Management Training program in 1974 and was promoted to the position of Revenue Requirement Analyst later that year.

For the next seventeen years, I held positions of increasing responsibilities in state, regional, and corporate Sprint organizations. During that period, I prepared or was responsible for jurisdictional separation studies, revenue budgets, demand forecasts, access charge rates, and financial reporting to various regulatory agencies.

From 1991 through 1995, as Manager Cost Allocations at Sprint United Management Company, I developed financial models for alternative regulation, participated in a two year project to develop a system-wide product costing model, developed and trained personnel on revenue budget models, and standardized systems for separations costing through system design, development, testing, and implementation.

In 1995 I accepted the position of Manager-Pricing/Costing Strategy and for 17 months coordinated several system-wide teams that were charged with the identification and development of methods, procedures, and system changes required to implement local competitive services. During that period, I coordinated the technical support needed to establish and maintain relationships with competitive local exchange carriers ("CLECs").

From September 1996 through July 1999, I held the position of manager of Competitive Markets – Local Access with the responsibility for pricing unbundled network elements, supporting negotiations with new competitive carriers, and assisting in implementation issues.

I began my current position for Sprint United Management Company in August 1999, and later transferred to Embarq Management Company in the same capacity. My responsibilities include the review of legislation and Federal Communications Commission ("FCC") and state commission orders affecting telecommunications policy; interpreting the impact on the company; and developing positions, communicating them throughout the organization, and representing them before regulatory bodies such as the

Pennsylvania Public Utility Commission.

Q. Have you testified before regulatory commissions before?

A. Yes. I have testified before the Missouri, Florida, Nevada, and California regulatory commissions regarding interconnection and network unbundling issues. In addition, I have filed written testimony in Texas, North Carolina, and Georgia on network unbundling matters.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to offer support for Embarq's position with respect to the portion of Issue 8 that deals with the treatment of VoIP calls and the porting of telephone numbers between Embarq PA and Core (Issues 8 and 2).

Q. Please give a brief statement of Issue 8.

A. The terms proposed by Embarq PA at §55.7 state that Voice over Internet Protocol ("VoIP") calls will be treated on the same basis as all other voice calls with respect to intercarrier compensation. Core deleted §55.7 on the basis that it disagreed with Embarq PA's position that the geographic end points of a voice call determine its jurisdiction. This action leaves the agreement silent on how VoIP calls should be compensated. Core's position is inappropriate for VoIP products that are interconnected with Public Switched Telephone Network ("PSTN"), especially since VoIP products are increasingly being sold as a replacement for traditional circuit switched voice service. The Commission should order adoption of the terms and conditions proposed by Embarq PA

for Issue 8 with respect to VoIP.

With respect to the porting of telephone numbers (Issues 8 and 2), Embarq PA has reviewed telephone numbers that it has ported to Core and determined that the numbers have been ported outside of the rate center to which those numbers were originally assigned, in contravention of current FCC rules. In order to maintain use of existing numbers and be consistent with FCC rules and industry standards, Core should establish an interconnection arrangement as proposed by Embarq PA's witness Ed Fox. Alternatively, consistent with the FCC's comments in the local number portability proceeding, Core could be required to replace the numbers with toll free 800 numbers, which were designed to provide the service that Core is actually offering.

SECTION II – Unresolved Issues

A. Issue 8 (VoIP)

Q. What is VoIP?

A. The FCC has defined VoIP as "...any IP enabled services offering real-time, multidirectional voice functionality, including, but not limited to, services that mimic traditional telephony."[1] An IP enabled service includes any service or application that relies on the Internet Protocol ("IP") family.[2] Neither definition specifies how the IP

[1] *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28, Released March 10, 2004 ("IP Enabled NPRM"), footnote 7.

[2] IP Enabled NPRM, footnote 1.

technology is used in providing the service, which means that the IP transmission segment could be at the point where the call originates, somewhere along the route the call traverses, or at the termination point.

Q. Why should the terms of the agreement address intercarrier compensation for VoIP?

A. VoIP traffic is terminated to the PSTN over the traditional circuit switched trunks between connecting companies commingled with all other voice traffic. There are currently no means of identifying which calls are VoIP and which calls are circuit switched based on the recording equipment employed to create records to bill connecting companies for intercarrier compensation. It is important that the parties reach agreement on the appropriate terminating compensation for such voice traffic. The terms proposed by Embarq PA properly treat this VoIP traffic the same as any other voice traffic that utilizes the PSTN and determine compensation based on the jurisdiction of the call. By eliminating the terms proposed by Embarq PA, Core would leave the agreement silent on the treatment of VoIP, effectively deferring the issue to some future date should Core disagree with treating VoIP calls like any other voice calls.

Q. Is Core obligated to negotiate terms for sending VoIP traffic to Embarq PA?

A. Yes. VoIP providers cannot seek interconnection under section 251 of the Act since the FCC has not reached a decision regarding the statutory classification of that service and must therefore seek access through a telecommunications carrier, often a CLEC.[3] In

[3] *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale*

addition, the CLEC offering the wholesale service to the VoIP provider must provide telecommunications services to its customers[4] and must reach agreement with Incumbent Local Exchange Carriers ("ILECs") on interconnection and intercarrier compensation for such traffic.[5] If Core refuses to negotiate terms it forfeits any rights to send VoIP traffic to Embarq PA.

Q. Would you please give some practical examples of VoIP services that are available to the public today?

A. There are generally three types of VoIP calls that are currently available. The first type of call originates and terminates on a computer or similar customer premises equipment ("CPE"), is transmitted wholly in IP, and does not originate or terminate on the PSTN. Such services are often referred to as computer to computer or IP-IP services. Examples include instant messenger based services such as Skype and Window's Live Messenger. These types of calls usually do not traverse the PSTN trunks connecting carriers. The second type of call originates on the PSTN using normal CPE, is routed over IP transmission facilities, and is terminated on the PSTN on normal CPE. These services are referred to as PSTN–IP–PSTN or "IP in the middle" services. Given the fact that IP based transport is becoming the de-facto standard in the industry it is probably safe to say that much of the long distance traffic and even some local voice services are provided in this fashion. The last type of VoIP service utilizes a computer or similar CPE at one end

Telecommunications Services to VoIP Providers, WC Docket No. 06-55, Memorandum Opinion and Order, DA 07-709, Released March 1, 2007 ("Time Warner Declaratory Ruling"), ¶13.

[4] Time Warner Declaratory Ruling, ¶ 14.

[5] Time Warner Declaratory Ruling, ¶ 17.

of the call, is routed using IP over some portion of the call, and is ultimately connected to the PSTN at the other end. These services are referred to as IP–PSTN services. Vonage and CATV companies are prime examples of providers offering these types of services. Instant messenger based service providers also offer this capability.

Q. Please describe these services.

A. Customers of Vonage and Skype or other "over the top" services, including Windows Live Messenger, make voice calls over Internet broadband connections they have purchased from providers such as Embarq PA. These customers use their computers or other specialized customer premises equipment to connect to Vonage and Skype servers over the Internet and place voice calls.[6] The calls can be directed to other Vonage or Skype customers utilizing unique numbers or addresses assigned by the provider and remain entirely on the public Internet or the calls can be directed to any telephone number on the PSTN. When such calls are directed to a number on the PTSN, the VoIP call is handed off to a telecommunications carrier to terminate the call. That carrier converts the call from the IP protocol to traditional circuit switched voice in order to do so.

CATV companies such as Time Warner and Comcast have modified their cable networks and enabled the provision of voice services. The customer can use a regular standard telephone, but it must be connected to specialized customer premises equipment that

[6] End users can install software on their computers allowing them to use the microphone and speakers; they can install an adapter that allows a standard telephone to be connected; or they can connect a telephone using IP.

converts the audio signal to IP and routes it over the broadband connection. When calls are placed between a CATV customer and an Embarq PA customer, the call is usually routed through a telecommunications carrier over interconnection trunks the carrier has established with Embarq PA. These calls are converted from IP to traditional circuit switched voice to accomplish this.

The FCC has defined these types of product offerings, which have the ability to connect to the PSTN, as "Interconnected VoIP services." These services enable real-time, two-way voice communications; require a broadband connection from the user's location; require Internet protocol-compatible CPE; and permit users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN.[7]

Q. What has the FCC decided regarding VoIP services?

A. The FCC determined that free VoIP calls over the Internet using broadband connections (IP-IP or computer to computer) are an unregulated information service subject to FCC jurisdiction.[8] These calls never touch the PSTN, are restricted to subscribers of the service, and do not use telephone number resources. This type of traffic is not at issue in this proceeding.

[7] *See,* C.F.R., Title 47, §9.3.

[8] *Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27 , Released February 19, 2004 ("Pulver.com").

In the AT&T Phone-to-Phone[9] proceeding, the FCC decided that VoIP calls that use ordinary CPE, originate and terminate on the PSTN, do not undergo a net protocol change, and do not receive any enhanced functionality due to the provider's use of IP technology are telecommunications services and access charges apply (PSTN-IP-PSTN). This ruling also applies to prepaid calling card services that utilize IP technology to transport all or a portion of the calling card call.[10]

With respect to Interconnected VoIP service providers the FCC has determined that they must provide E911/911 access,[11] must be CALEA compliant,[12] and must contribute to the interstate Universal Service fund.[13]

Q. Has the FCC determined the method for carriers to compensate each other for these VoIP services?

A. As stated above, computer to computer calls are not at issue in this proceeding. It is possible that an individual could make a VoIP call utilizing a dial up Internet connection, but to the extent this occurs it would be treated as ISP traffic and indistinguishable from it. With respect to PSTN-IP-PSTN calls, the FCC has determined that those services are

[9] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone Telephony services are Exempt from Access Charges*, WC Docket No. 02-61, Order, FCC 04-97, Released April 21, 2004 ("AT&T Phone-to-Phone").

[10] *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, FCC 06-79, Released June 30, 2006 ("Prepaid Calling Card Order").

[11] *IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, WC Dockets No. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, Released June 3, 2005 ("VoIP 911 Order").

[12] *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295 and RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, FCC 05-153, Released September 23, 2005 ("VoIP CALEA Order").

[13] *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, Released June 27, 2006 ("VoIP USF Order").

telecommunications services and are subject to normal voice compensation, which means that access charges or reciprocal compensation would apply based on jurisdiction. The FCC has not made a determination regarding Interconnected VoIP services; however, in its IP-Enabled Services proceeding the FCC stated, "As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways."[14] That is effectively what Embarq PA is requesting this Commission to order.

Q. Can the Pennsylvania Commission order the application of intrastate charges to VoIP since the FCC has classified interconnected VoIP as an Interstate service?

A. Yes. The FCC has not specifically pre-empted state commissions regarding intercarrier compensation for interconnected VoIP services. A recent court decision found that the Congress did not intend for VoIP services to be totally unregulated and that absent a specific determination a state can exercise jurisdiction.[15] When the FCC reviewed Vonage's petition for a declaratory ruling concerning its Digital Voice Service, it concluded that the service was jurisdictionally mixed and that it was used to enable intrastate communications.[16] In addition, the FCC established a VoIP safe harbor of

[14] IP Enabled Service Proceeding, ¶33.

[15] See the decision in Comcast IP Phone of Missouri, LLC V. Missouri Public Service Commission, United States District Court for the Western District of Missouri Central Division, Case No. 06-4233-CV-C-NKL.

[16] *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, Released November 12, 2004, ¶18 ("Vonage Order").

64.9% interstate in the VoIP USF Order, which classifies 35.1% as intrastate.[17] The FCC decision in the Vonage Order was specific to Vonage's Digital Voice service. It relied heavily on the portable nature of the service and decided that there was no way to practically separate the service into intrastate and interstate components without thwarting federal law and policy.[18] But not all Interconnected VoIP services are portable. The FCC refused to declare Vonage's Digital Voice service as either telecommunications or information and has yet to establish rules regulating intercarrier compensation for such traffic. There is, therefore, no explicit federal rule prohibiting this Commission from adopting Embarq PA's terms and conditions (§55.7). The Commission has the authority to arbitrate this issue and to render an order on it consistent with Embarq PA's position. Embarq PA's position is eminently reasonable given the nature of the service (real-time voice to/from the PSTN), the fact that the service competes directly with circuit switched voice services, and because methods to treat the service uniquely are administratively more difficult.

*Q. **But didn't the FCC say in the Vonage Order that it would likely pre-empt any attempts by states to regulate services with similar characteristics?***

A. While there are comments to that effect in the order, the fact remains that the FCC did not pre-empt regulation of those services with similar characteristics and effectively punted the establishment of current interconnection arrangements to the negotiating parties and

[17] VoIP USF Order, ¶53.

[18] Vonage Order, ¶ 14.

state commissions.[19]

Q. ***Are there any other reasons why the Pennsylvania Commission should treat interconnected VoIP on the same basis as circuit switched voice?***

A. Regulations that favor one carrier or business plan over another encourage market development based on regulatory arbitrage, which is inappropriate. Therefore, it is important that the Commission establish public policy on the basis of competitive neutrality. The FCC recognized this when it ordered interconnected VoIP providers to contribute to the Interstate USF. Embarq PA competes directly with VoIP providers in offering long distance voice services. Embarq PA pays access charges, both intrastate and interstate, for the services it provides. If VoIP providers pay interstate access charges or reciprocal compensation for intrastate voice traffic, they will have a competitive advantage because interstate access charges and reciprocal compensation are usually lower than intrastate access charges. VoIP providers should not be rewarded or favored simply because they use a different technology to provide competitive voice services.

Q. ***You mentioned in your previous response that the FCC recognized the importance of competitive neutrality in its VoIP USF Order. Please explain.***

A. The FCC recognized that to maintain competitive neutrality it could no longer exempt VoIP providers from USF obligations when VoIP service is being used as a replacement

[19] In the recent decision from the United States Court of Appeals for the Eight Circuit the court specifically stated that the FCC did not address fixed VoIP services in the Vonage Order and any assumption that it would do so is "a mere prediction". (Minnesota Public Utilities Commission v. Federal Communications Commission, No. 05-1069, page 21.).

for analog voice service stating:

> We also find that the principle of competitive neutrality supports our conclusion that we should require interconnected VoIP providers to contribute to the support mechanisms. Competitive neutrality means that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." as the Commission has noted, interconnected VoIP service "is increasingly used to replace analog voice service." As the interconnected VoIP service industry continues to grow, and to attract subscribers who previously relied on traditional telephone service, it becomes increasingly inappropriate to exclude interconnected VoIP service providers from universal service contribution obligations. Moreover, we do not want contribution obligations to shape decisions regarding the technology that interconnected VoIP providers use to offer voice services to customers or to create opportunities for regulatory arbitrage. The approach we adopt today reduces the possibility that carriers with universal service obligations will compete directly with providers without such obligations. We therefore find that the principle of competitive neutrality is served by extending universal service obligations to interconnected VoIP service providers.[20]

Furthermore the FCC found that it was in the public interest to treat interconnected VoIP service providers on the same basis recognizing that such providers are dependent upon the wider PSTN network and received great benefit from it.[21]

*Q. **Are there similar situations where state commissions have ordered intercarrier compensation schemes not specifically defined by the FCC?***

A. Yes. The Public Utilities Commission of Ohio considered this very issue in an arbitration proceeding between TeleCove Operations, Inc. and SBC Ohio and ordered the application of access charges to VoIP calls terminated to the PSTN based on the

[20] VoIP USF Order, ¶44, footnotes omitted.

[21] VoIP USF Order, ¶¶43, 45.

jurisdiction of the call.[22] In addition, I understand that the state commissions of Massachusetts and Vermont ordered Global NAPS, Inc. to pay Verizon's ILEC intrastate access charges for ISP calls made by Verizon end users to ISPs served by Global NAPS, Inc. using virtual NXX telephone numbers. The two cases were appealed to separate United States Courts of Appeals and both were upheld.[23]

Q. What VoIP language is Embarq PA proposing?

A. Embarq PA is proposing that the resulting interconnection agreement include the following language, as provided to Core on April 4, 2007:

> 55.7 All voice calls exchanged between the Parties originating from or terminating to the PSTN shall be compensated in the same manner (eg., reciprocal compensation, interstate access, and intrastate access) regardless of the technology used to originate, terminate, or transport the call. The Parties further agree that this Agreement shall not be construed against either Party as a final position on the treatment of VNXX. Both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Sec. 252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.

[22] *In the Matter of TelCover Operations, Inc.'s Petition for Arbitrations Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Ohio Bell Telephone Company d/b/a SBC Ohio*, Case No. 04-1822-TP-ARB, Arbitration Award, pages 10-17.

[23] *Global NAPS, Inc., Plaintiff, Appellant, v. Verizon New England, Inc., d/b/a/ Verizon Massachusetts; Massachusetts Department of Telecommunications and Energy*, United States Court of Appeals for the First Circuit, No. 05-2657, April 11, 2006 and *Global NAPS, Inc., Plaintiff-Appellant, v. Verizon New England, Inc., F/K/A New England Telephone & Telegraph Co., D/B/A Bell-Atlantic Vermont, Inc., Vermont Public Service Board*, United States Court of Appeals for the Second Circuit, Docket No. 04-4685-cv, July 5, 2006.

Q. Are you aware of the Pennsylvania Public Utility Commission's Policy Statement at Investigation into Voice over Internet Protocol as a Jurisdictional Service, Docket No. M-00031707?

A. Yes, I have reviewed the Commission's Policy Statement.

Q. Do you believe that the Pennsylvania Commission should come to a different conclusion in this proceeding?

A. Yes. The decision was made in April, 2004, three years ago and the situation with respect to VoIP has changed. First, VoIP is no longer a nascent technology. It has entered the mainstream, many carriers are providing voice service to end user customers, and it is no longer restricted to private networks or the Internet. VoIP traffic is being converted and sent to the PSTN over existing trunks. Second, the FCC has made decisions subjecting a subset of VoIP (Interconnected VoIP) to E911, CALEA, USF, and is now considering whether or not to subject them to additional regulatory fees. Third, the VoIP services that Embarq PA is seeking the Commission's decision on are not all VoIP services, but just VoIP that is interconnected to the PSTN. Fourth, the VoIP services in question utilize number resources from the North American Numbering Plan Administrator ("NANPA"). Fifth, the FCC's IP Enabled Proceeding is still open and the FCC has still not made a decision on this issue. And finally, the Commission is being asked to exercise authority to resolve arbitrations under Section 251 of the 1996 Telecom Act, thus as granted by federal statute, rather than under state authority.

B. Issues 8 & 2 (Porting)

Q. What is number portability?

A. Number portability is the ability of a user of telecommunications services to retain, at the same location, their existing telephone number when they change service providers.[24]

Q. Can the end user keep their telephone number if they change their location?

A. The end user can change location when porting their telephone number from one wireline service provider to another wireline service provider as long as that location is within the same rate center. The FCC has not ordered geographic portability and its rules prohibit porting a telephone number outside of the rate center to which it is assigned. Doing so can lead to problems with rating, routing, dialing parity, customer confusion, and E911/911.

Q. What rules are you referring to?

A. The FCC adopted and codified the recommendations of the North American Numbering Council (NANC) Local Number Portability Administration Selection Working Group Report, dated April 25, 1997 (*Working Group Report*) in the Code of Federal Regulations, Title 47 §52.26(a). Section 7.3 of Appendix D of that report states that "location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns" and that additional limitations might be required for various reasons such as E911 operability.

[24] Title 47 C.F.R. § 52.21(l).

Q. *What is a rate center?*

A. A rate center (also know as an "Exchange") is a geographic area used as a metric in rating calls (i.e., local, toll, distance where applicable). This area coincides with ILEC wire center(s) boundaries, which are regulated by the Commission.

Q. *What alternatives are available to customers that want geographic portability?*

A. The FCC addressed this in the First Report and Order that mandated service provider portability and rejected geographic portability stating, "Also, users who strongly desire location portability can use non-geographic numbers by subscribing to a 500 or toll free number."[25] In spite of this instruction from the FCC some carriers take advantage of "gaps" in LNP processes to geographically port numbers to end users that are located outside of the rate center to which the number is assigned.

Q. *What gaps are you talking about?*

A. The FCC rules for porting numbers between wireline carriers prohibit the number from being ported outside the rate center but the rules for porting numbers between a wireline and wireless carrier are not restricted in the same fashion due to the mobility of the wireless service. Wireline to wireless ports are restricted to the same LATA and therefore the edits performed by the NPAC (Number Portability Administration Center) just ensure that the port is within the LATA, not within the same rate center. It is possible for a wireline carrier to request a number to be ported from another wireline

[25] *In the Matter of Telephone Number Portability,* CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, Released July 2, 1996, ¶ 184.

carrier outside the rate center in contravention of the FCC rules and for that request to pass the NPAC edits. This is the case of many of the numbers that Embarq PA has ported to Core and had we recognized this when we received the port requests from Core we could and should have disputed them.

Q. ***Why do you believe that these numbers have been ported outside the rate centers to which they were originally assigned?***

A. Several of the telephone numbers that were ported to Core were initially provided by Embarq PA to an end user that purchased Remote Call Forwarding in order to route calls from the rate center where the number was assigned to the end user location in a different rate center. This method of call routing treats the forwarded call as a "second call" that is treated appropriately as toll or local based on the rate center that the call was being forwarded to. We therefore had reason to believe that the end user was not geographically located in the rate center to which the number was assigned. I then reviewed the Core switch locations to which these numbers were assigned and all of them are physically located outside of the rate centers in question. Coupled with the fact that Core has not established physical points of interconnection in the rate centers, this indicates that both the switch to which the number was ported and the end user location are both outside of the rate center to which the number is assigned.

Q. ***Why didn't Embarq PA discover this?***

A. We did not realize that the NPAC edits would not prevent this from occurring until we conducted our investigation for this proceeding. We do not have internal edits to catch

such abuse and are investigating that potential. A carrier cannot get number resources assigned to it without first meeting a facilities readiness test. When a carrier states via its inputs into various industry systems that a number is actually working in a specific rate center, the industry assumes that the carrier is abiding by the rules and guidelines.

Q. What is the facilities readiness test?

A. Before a carrier can secure numbering resources for a particular area from the North American Numbering Plan Administrator (NANPA), they must file an application and provide evidence that they are or will be capable of providing service within that area within sixty (60) days.[26] Examples of such proof include interconnection agreements, network information, and business plans.[27]

Q. Did Core provide this information to get number resources for Embarq PA rate centers?

A. Core would have to do so to secure numbers directly from NANPA. It is possible that they could have gotten them from another provider as an Intermediate number.

Q. Do you know what Core provided?

A. No. The applications are confidential and I have not reviewed them.

[26] Title 47 C.F.R. §52.15(g)(2)(ii).

[27] *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rule Making, Adopted March 17, 2000, ¶97.

Q. You mentioned previously that porting a number outside of a rate canter can cause several problems, one of which is E911 operability. Can you provide an example of problems with E911/911 that might arise out of number portability if not handled properly?

A. Certainly. If the end user was not geographically located in the same rate center and they called 911 during an emergency and they were not registered in the 911 database appropriately, then they could get routed to the wrong PSAP and may not receive timely assistance. This is why the FCC ordered interconnected VoIP providers to implement a method for their end users to register their physical location. Wireless providers employ similar capabilities registering the location of individual handsets.

Q. Should Core be providing E911 capability for these numbers?

A. Yes. FCC rules mandate that E911 capability be provided.

Q. What FCC rules are you referring to?

A. In Title 47 of the Code of Federal Regulations §52.23(a)(1), one of the performance criteria of the LNP methodology listed by the FCC is that the existing emergency services would not be adversely impacted. The FCC concluded in ¶ 50 of the First Report and Order on Number Portability that "The public interest also requires that service provider portability not impair the provision of network capabilities that are important to public safety, such as emergency services and intercept capabilities. In our proposal to ensure that PBXs and CMRS provider support enhanced 911 services, we reaffirmed that 911 services enable telephone users to receive fast response to emergency situations, and that

broad availability of 911 and E911 service best promotes "safety, of life and property through the use of wire and radio communication."".

Q. What action should the Commission take with respect to Core's porting of numbers outside of the rate center?

A. It should be clear that the telephone numbers in question are assigned to an end user located in a rate center that is foreign to the rate center to which Core has assigned the telephone numbers. Embarq PA's provision of service was consistent with the FCC rules since calls were actually routed through the appropriate rate center and the end user subscribing to the call forwarding feature paid for the cost of extending the call outside the rate center and terminating it to a foreign point.[28] The fact that Core simply "maintained" the appropriate rate center designation in the Local Exchange Routing Guide ("LERG") and did not appropriately route the call to the foreign point is not consistent with the FCC rules and wireline industry standards. If Core wants to keep these numbers the Commission should require Core to establish an interconnection arrangement as presented by Embarq PA's witness Ed Fox. Alternately, consistent with the FCC's comments in the LNP proceeding Core could be required to replace the numbers with toll free 800 numbers, which were designed to provide the service that Core is offering.

[28] To be clear, the end user originating the call did not pay for the cost of routing the call to the foreign rate center. The end user that was being called paid the cost of routing to the foreign rate center.

SECTION III – CONCLUSION

Q. Please summarize your testimony.

A. **Regarding Issue 8 (VoIP):**

If Core wants to send VoIP traffic to Embarq PA it is obligated to negotiate the terms and conditions of the intercarrier compensation arrangement. The traffic in question is real time voice traffic exchanged between Core and Embarq PA over the PSTN trunk facilities connecting the two carriers' networks. The traffic coincidentally utilizes IP somewhere in the transmission path. The traffic directly competes with voice products offered by Embarq PA using circuit switched technology.

While the FCC has not defined the intercarrier compensation structure for VoIP, it has stated that the cost of the PSTN should be shared equitably among carriers using it in the same manner. Competitive neutrality mandates treating interconnected VoIP traffic like any other voice traffic. The agency has left the determination of compensation to carrier negotiations and arbitration proceedings such as this one. The FCC has not said that states cannot establish VoIP intercarrier compensation in the context of an arbitration proceeding, and the parties in this proceeding are asking this Commission to resolve this issue. Interconnected VoIP is used to provide voice communications for all jurisdictions. Embarq PA's recommendation treats all voice traffic exchanged on the PSTN trunks on an equal basis. The Commission should order adoption of the terms and conditions proposed by Embarq PA for Issue 8.

Regarding Porting (Issues 8 &2):

Current FCC rules regulating the porting of telephone numbers between wireline carriers restrict such porting to service provider portability, not geographic portability. The rules mandate that rate center assignments be maintained. Investigation of numbers ported from Embarq PA to Core indicate that Core has violated the current rules since both the end user and carrier switch are located outside of the rate center and the carrier does not have any physical presence within the rate center. If Core wants to keep these numbers the Commission should require Core to establish an interconnection arrangement consistent with the recommendations of Embarq PA's witness Mr. Ed Fox. Alternately, consistent with the FCC's comments in the LNP proceeding Core could be required to replace the numbers with toll free 800 numbers, which were designed to provide the service that Core is offering.

Q. Does this conclude your Direct Testimony?

A. Yes

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms And Conditions with The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania pursuant to 47 U.S.C §252(b)	:	Docket No. A-310922F7002

REBUTTAL TESTIMONY OF JAMES M. (MIKE) MAPLES

EQ PA STATEMENT 3.1

ON BEHALF OF
THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA
D/B/A EMBARQ PENNSYLVANIA

****PUBLIC VERSION****

Prefiled: June 4, 2007

REBUTTAL TESTIMONY OF

JAMES M. (MIKE) MAPLES

EMBARQ PA

SECTION I - INTRODUCTION

Q. Please state your name, title, and business address.

A. My name is James M. "Mike" Maples. I am employed as Regulatory Manager for Embarq Management Company, which provides management services to The United Telephone Company of Pennsylvania *d/b/a* Embarq Pennsylvania ("United PA" or "Embarq PA"). My business address is 5454 W. 110th Street, Overland Park, KS 66211.

Q. Are you the same Mike Maples who filed Direct Testimony in this proceeding on April 27, 2007?

A. Yes, I am.

Q. What is the purpose of your Rebuttal Testimony?

A. My testimony will rebut positions taken by Core witness Timothy J. Gates in his Direct Testimony specific to Core's use of telephone numbers and claims that its Virtual NXX ("VNXX") services are the same as Foreign Exchange ("FX") services provided by other carriers such as Embarq PA. Specifically, I will show that Core is wrong in its assertions that the service it provides is the same as FX services and that its use of telephone numbers is consistent with industry standards.

SECTION II – REBUTTAL TESTIMONY

Virtual NXX and FX Service Comparison

Q. Mr. Gates claims that the Virtual NXX ("VNXX") service that Core provides is the same as ILEC Foreign Exchange or "FX" service (Gates Direct, page 33 at lines 784-788; and 794-796). What is Foreign Exchange Service?

A. The industry standard FX arrangement involves the purchase of transport by the end user who requests the FX from the local exchange where the number is assigned to the local exchange where that end user resides. The local exchange where the number is assigned is "foreign" to the exchange where the end user requesting FX service resides. As other Embarq PA witnesses have testified, Core has not purchased this transport on behalf of its end user for VNXX service and, in fact, is routing calls over toll trunks without paying for the transport. Following is a definition of FX service taken from an FCC order.

> 71. Foreign Exchange (FX) service connects a subscriber ordinarily served by a local (or "home") end office to a distant (or "foreign") end office through a dedicated line from the subscriber's premises to the home end office, and then to the distant end office. The "home" end is known as the closed end, while the "foreign" end is known as the open end. In effect, this gives the subscriber a dial tone presence in the distant exchange without additional toll charges. In interLATA FX service, which is offered by AT&T but not MCI, the

home and foreign end offices are in different LATAs, connected by the IXC's interstate private lines. In intraLATA FX service, which is offered by the LECs, the home and foreign end offices are in the same LATA, connected by the LEC's intraLATA, interoffice lines. **(FCC 98-321, Memorandum Opinion and Order, Released December 9, 1998)**

Q. ***Would you provide an example of FX service involving two carriers?***

A. Yes, I will. Please refer to the diagram below.

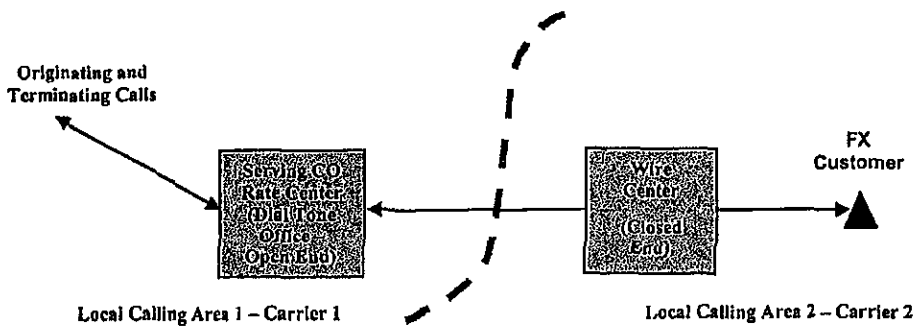

Figure 1 – FX Example

The example above shows two carriers that serve adjoining rate centers. Calls between customers of the two carriers are long distance. A customer of Carrier 2 in Local Calling Area 2 wants to make and receive local calls from Local Calling Area 1. Carrier 2 orders FX service on behalf of the customer from Carrier 1 to accomplish the customer's request. The FX customer pays for switching and transport from Carrier 1's central office in Local Calling Area 1 to their premises in Local Calling Area 2. Calls to and

from this FX line are switched at the serving central office in Local Calling Area 1 and routed to the FX customer's location in Local Calling Area 2 over the facilities leased by the FX customer. The FX customer therefore pays any toll charges for calls originated from the FX based on the local calling scope of the serving central office rate center (where they receive dial tone and where it is switched). Similarly, Carrier 1 bills originating and terminating access for interlata and intralata toll calls to and from the serving central office rate center placed over the FX, not the physical location of the subscriber.

Q. ***Does Embarq PA provide FX service?***

A. Yes it does. A copy of Embarq PA's FX tariff is attached to this Rebuttal Testimony as Exhibit JMM-1.

Q. ***What does Embarq PA charge the FX purchaser?***

A. Embarq PA charges the end user buying FX service for the interexchange mileage at the rate of $5.00 per mile and also charges $0.60 per quarter mile for line mileage outside of the base rate area. The end user also pays for the actual service being purchased (such as a business 1 party line) and a channel termination charge of $24.00 for each central office that the FX is routed through. In addition, there is a supplemental charge of $6.00 for a partial toll replacement. This supplemental charge is applied for each 5 cent multiple of the day station-to-station initial period message toll rate between the normal exchange and the foreign exchange for a partial toll replacement. This means that if the toll rate is $.25, the supplemental charge is 5 times the $6.00 per month or $30.00 per month.

Q. Are these charges the same if another company is involved?

A. If an Embarq PA end user wants to purchase an FX from another ILEC, Embarq PA will rent a terminal from the other ILEC and establish the FX line between the two wire centers. Embarq PA then charges the end user buying the FX for the service provided by the other ILEC at the other ILEC's tariffed rates as well as additional mileage charges.

Q. Does Embarq PA try to bill the other ILEC or the other ILEC's end users for any portion of the FX service?

A. No. The cost is borne by the end user purchasing the FX service.

Q. How does the end user buying the FX service recover the cost of paying for it?

A. If the end user buying the FX service is a business customer the cost of the FX service is a business expense that it would recover from the revenues it derives from whatever product it is selling. So, if an ISP buys FX service it recovers the expense from its Internet customers.

Q. Does Embarq PA provide other services to end user customers such as ISPs to provide toll free calling to the ISPs customers?

A. Yes. Embarq PA provides services such as remote call forwarding, which is the service that some of the ISPs were purchasing from Embarq PA prior to transferring their service to Core.

Q. ***Please describe the remote call forwarding arrangement.***

A. In the remote call forwarding arrangement all calls destined for the local telephone number are routed to the serving central office where the number is assigned and then forwarded to a distant location via a second phone number. This is essentially a two call scenario. The second call can be directed to an 800 toll free number or a number assigned to the distant rate center. In that case toll charges would apply to the second call and be paid for by the end user purchasing the remote call forwarding arrangement, not the end user originating the call. This is consistent with an FX arrangement.

Q. ***What is virtual NXX ("VNXX")?***

A. Embarq PA witness Fox provides the following definition on page 32 of his Direct Testimony.

> Virtual NXX, or VNXX, refers to telephone numbers assigned to a customer in a local calling area different from the one where the customer is physically located in circumstances where the telephone company assigning the number is not using facilities of its own to transport the call from the calling area associated with the telephone number to the area where the customer is actually located. (*Global NAPS, Inc. v. Verizon New England, Inc. et al*, No. 04-4685-cv (2nd Circuit July 5, 2006)).

In essence, a carrier assigns a telephone number for one rate center to an end user customer in another rate center and then seeks to get calls routed between the two rate centers over existing facilities without paying for the transport.

Q. ***Would you provide an example of a VNXX arrangement?***

A. Yes, I will. Please refer to the following diagram.

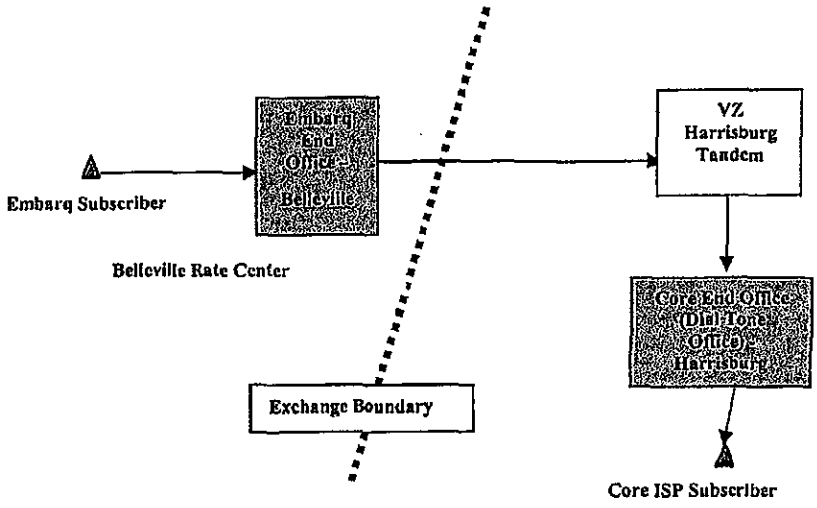

Figure 2 – Wireline VNXX, Indirect Connection

The example above is an actual VNXX arrangement deployed by Core. The telephone number **[BEGIN PROPRITARY]** **[END PROPRIETARY]** is assigned to the Belleville rate center by Embarq PA and was assigned to an ISP by Embarq PA for providing dial up Internet service to Embarq PA's end users in the Belleville exchange.

Belleville is south of State College, Pennsylvania. The ISP purchased the remote call forwarding service described above to provide toll free service to its Internet customers. Core ported the telephone number to its central office in Harrisburg, which is located outside of the Belleville rate center. Dial tone for the number is now generated from Harrisburg, Pennsylvania, and is no longer within the Belleville rate center. When an Embarq PA end user dials **[BEGIN PROPRIETARY] [END PROPRIETARY]**, Embarq PA's Belleville switch determines that the number has been ported and routes it to the Verizon Harrisburg tandem over the existing interexchange long distance facilities. The call transits the Verizon tandem and is then handed off to Core. Core receives the call in its switch in Harrisburg and routes it to the ISP. Given the fact that the ISP's original arrangement with Embarq PA involved the forwarding of terminating calls outside the Belleville rate center, it is highly likely that the ISP does not have a presence in the Embarq PA Belleville rate center. Core does not buy any service from Embarq PA, nor does Core compensate Embarq PA in any fashion for switching or transport.

Q. Is Core's VNXX product the same as Embarq PA's FX product or FX as historically deployed?

A. No, not even close.

Q. Please explain.

A. There are several differences that can be grouped into two main categories: compensation and technical configuration. With respect to compensation the very obvious distinction is

that with FX service the FX subscriber, not the originating carrier or the end user calling the FX number, bears the cost of transporting the calls from the rate center where the number is assigned to the geographic location of the FX customer. In situations where multiple carriers are involved, the carrier serving the FX customer buys services from the carrier serving the foreign rate center, including transport, and then passes those costs on to the FX customer. In the VNXX example above, Core forces Embarq PA to bear all costs.

As to the technical configuration, FX service calls are actually routed through the switch that physically serves the rate center where the telephone number is assigned. In other words, if Core purchased an FX from Embarq PA's Belleville office dial tone would be provided by Embarq PA and calls would be routed through the Belleville office, maintaining appropriate rating and routing. With Core's VNXX configuration, the telephone number does not reside in the Belleville rate center but resides instead in Harrisburg. Calls to and from the VNXX (assuming that a call would ever be originated from the VNXX) are routed through Core's Harrisburg switch and not the Belleville switch. VNXX service is technically more like 800 toll free service rather than FX service. Thus, I disagree from a technical standpoint that the VNXX service that Core provides is the same as FX service.

Q. How is VNXX service technically more like 800 toll free service rather than FX service?

A. The intent of 800 toll free service is to provide toll free calling utilizing the interexchange long distance network. That is exactly how Core has configured its VNXX product. The only difference between the 800 toll free service and Core's VNXX product is the telephone number that customers dial, which does not offer any justification for calling the traffic in question "local exchange" traffic. Nor does it provide sufficient justification for requiring the originating carrier to provide all the transport for free as well as pay terminating compensation. As discussed in my Direct Testimony on page 17 at line 7, the FCC pointed out that users wanting location portability, that is, end users like Core's ISP customer that want to use a number that is outside of the rate center that they are physically located in, can use non-geographic numbers such as toll free numbers.

Q. Does Core's VNXX service provide Core with an unfair competitive advantage over FX services such as those offered by Embarq PA?

A. Absolutely. By refusing to reimburse Embarq PA for the costs it incurs (such as interexchange transport), Core can pass that savings on to the end user buying the VNXX service and thereby increase Core's profits. Core adds insult to injury by demanding that Embarq PA pay Core terminating compensation. Core's proposal establishes an implicit subsidy that enables Core to avoid charges for interexchange transport costs and by having Embarq PA's end users, including those end users that do not even use the VNXX service in question to access the ISP, absorb these costs.

Q. Why hasn't Embarq PA started offering VNXX services like Core?

A. The immediate response is that Embarq PA does not believe that it is right or appropriate. Unlike Core, Embarq PA has incurred the cost of building facilities within and between its rate centers and will use those facilities to provide toll free services such as FX. Even if there were an alternate network, Embarq PA would not attempt to utilize it without compensating the network owner. The costs of providing the service should be paid for by the end user buying the FX service. Parity demands that Core's VNXX customer pays for the cost of providing the service and ceases trying to extract payment from end users that don't even subscribe to their service. In addition, Embarq PA does not port telephone numbers out of the appropriate rate center. Embarq PA runs into this situation with some frequency where CLECs are telling businesses that they can relocate to other cities, take their telephone numbers with them, and not have to pay for the cost of transport.

Q. Do you agree with Mr. Gates that ISPs do not expect to receive long distance calls from customers seeking to connect to the Internet (Gates Direct, page 32 at line 773)?

A. While I agree with Mr. Gates that end users seeking to connect to their dial up Internet provider as a matter of course are not willing to pay per minute of use long distance charges, that does not mean that the customer is in fact not making a long-distance call. It only means that the end user calling the ISP does not pay for the cost of transporting the call outside of the local calling area. Instead, the ISP pays, or should pay, for the cost of the long-distance call. For example, ISPs have maintained 1-800 toll free service to allow customers to access their service toll-free from anywhere in the United States.

Such calls are in fact long distance calls. In addition, the whole concept of per minute of use charging for long distance calls is rapidly going away.

Q. Do you agree with Core that the VNXX service it provides is "in essence identical to the FX service offered by Embarq PA, at least from an end user customer perspective" (Gates Direct, page 33 at line 787)?

A. No, I do not. As I pointed out above, Core's ISP "end user" customer purchasing the VNXX service receives a reduction in costs at the expense of Embarq PA's end user, which in essence, is a form of an implicit subsidy. The ISP is certainly aware of the benefits that it is receiving and the costs that it is avoiding when it made its choice of service. Furthermore, if you were to ask an Embarq PA customer with high speed Internet access if they wanted to pay higher rates so that others could get cheaper dial-up Internet access, I doubt if they would answer in the affirmative. VNXX is certainly not the same from Embarq PA's perspective.

Q. What do you mean by the last statement?

A. When one carrier secures FX service from another carrier on behalf of one of its customers it reimburses the other carrier. In this case Core, securing FX service on behalf of its end user customer from one of Embarq PA's rate centers, would buy service from Embarq PA. Core's VNXX service does not contemplate paying Embarq PA for any services or for the costs that Embarq PA incurs in the provision of the service to Core's end user customer.

Q. Do you agree with Mr. Gates that in the provision of VNXX service calls "are routed from the ILEC to Core in exactly the same manner as other local calls" (Gates Direct, page 35 at line 827 and line 842)?

A. Certainly not. Any such claim is absurd. When one Embarq PA end user in a rate center calls another Embarq PA end user in the same rate center it is generally a line to line connection not involving any trunking at all.

Q. Isn't Mr. Gates talking about local calls handed off between carriers, between Embarq PA and Core?

A. Mr. Gates comments could be interpreted that way. I viewed the phrase "as other local calls" to encompass all local calls, even those between two Embarq PA end users within the rate center. That is the context of my response above. However, in the context of "local calls" between two separate carriers, the VNXX calls that Core is describing are switched from an Embarq PA end user's line to an interexchange long distance trunk to Verizon's tandem. The call is then switched again and linked to trunks that are interconnected with Core's switch and finally terminated to Core's ISP customer, both of which are located in a rate center that is a toll point. In no way does that switch call path, the route, look like a local call, nor are the costs incurred the same, especially when Core is demanding that Embarq PA incur all the costs to transport the calls to the foreign point and then pay terminating compensation. Core's VNXX calls involve line to trunk routing and utilize interexchange toll trunks, miles of toll transport, and do not terminate within the local rate center. Core's claims totally dismiss the interexchange transport aspect that is part of the routing of VNXX traffic. The only difference between this call that Core

calls "local" and a long distance call to Core's ISP customer is the telephone number dialed.

Q. Do you agree with Mr. Gate's contention that Core is the entity providing the Core ISP customer with FX-like functionality (Gates Direct, page 36 at line 864)?

A. Not at all. FX service utilizing two carriers' networks is provided by both carriers. The mere fact that Core is terminating this information services traffic does not amount to provisioning by Core of an FX-like functionality for its end users. Mr. Gate's testimony gives the misleading impression that Core is incurring the transport costs that are at the heart of providing an FX or FX-like service. At most, Core "provides" an FX-functionality to its ISP customers by abusing the number porting requirements, as I discuss below. The essence of FX service, which allows an end user to receive the calling scope and call rating of a rate center other than the local rate center the end user is physically located in, is the end user's willingness to pay the costs of the interexchange transport facilities required. However, Core is utilizing Embarq PA's network, without providing compensation, in order to provide a sham FX service.

Q. Please describe what you mean by a "sham FX service"?

A. As I have pointed out, FX service recognizes that there are interexchange transport costs incurred to route a call from its originating rate center to an end user outside of that rate center. Core refuses to compensate Embarq PA for the functionality that Embarq PA provides consistent with the FX principles I described above, effectively demanding that Embarq PA subsidize Core's ISP customers.

Q. Is this good for consumers (Gates Direct, page 37, at line 887)?

A. The detailed comparison of FX and VNXX services above show that Embarq PA is simply seeking to have Core provide fair compensation to Embarq PA for the services that it provides, consistent with how carriers interact to provide FX service. In addition, as I detailed above, Core's proposal imposes an implicit subsidy on Embarq PA's end users that do not use the ISP service in question. Embarq PA's position is certainly in their best interests.

Q. Mr. Gates implies that Embarq PA's proposal might harm its ISP customers (Gates Direct, page 38 at line 890). At page 41 (lines 958 to 962), Mr. Gates also claims that the economic effect of adopting Embarq PA's proposal to charge Core access would be counter to the public interest and that requiring access would "eliminate an efficient and technologically advanced means of providing dial-up Internet access" in Pennsylvania. Do you agree with these assertions?

A. No. While Mr. Gates alludes to the elimination of the dial-up business, he has not proven that access charges will cause dial-up Internet access providers to go out of business. I do not accept that conclusion as the only one possible if the Commission requires Core to pay access for its non-local traffic. Similarly, I do not accept Mr. Gates' assertions as a foregone, proven conclusion if the Commission requires bill and keep compensation as a result of this proceeding, as Embarq PA witness Fox has testified. Core has not demonstrated that it is unable to pass on the costs of Core's doing business onto the ISPs it serves. Mr. Gates' claims are speculative. The ISPs were providing service before Core came along. They were buying service from Embarq PA and other carriers. Core's

advent did not necessarily provide additional or new services to the customers of ISPs, rather Core simply developed a business model that allows it, and its ISP customers, to avoid costs and shift those costs to Embarq PA. Thus, it is certain that the ISPs transferred their service to Core for financial reasons, be it reduced costs or the potential for sharing reciprocal compensation revenues. No company has an unqualified right to make a profit and remain in business, particularly if that company cannot pay the legitimate costs associated with other providers' facilities that it uses. While Core and Mr. Gates allege public interest and claim efficiencies may be eliminated, what they are essentially saying is that the Commission should order Embarq PA and the other ILECs in the state of Pennsylvania to subsidize these ISPs because Core's chosen business model cannot be profitable without a competitively advantageous subsidy. Indeed, Mr. Gates describes dial-up Internet access as "the universal service equivalent of a primary line for voice service" (Gates Direct, page 41, at line 965), which further support's Embarq PA's characterization of Core's compensation scheme as an implicit subsidy for the ISP's utilizing Core's VNXX service and the ISP dial-up Internet customers. Mr. Gates' speculative assertion of potential elimination of "an efficient and technologically advanced means of providing dial-up Internet access" is simply not proven and is not correct. And, as I've described in detail, the technology that is employed with Core's VNXX service for call routing is nothing new under the sun, but is in fact the same as making a long distance call.

Q. Mr. Gates makes a case for the continued provision of dial-up Internet access in his Direct Testimony on pages 41 through 43 (lines 963 through 1016). Is Embarq PA's position contrary to that goal?

A. No. There is no question that some consumers continue to use dial-up Internet access for a variety of reasons, especially where broadband access is not available. Embarq PA is aware of that and is committed to providing broadband access to every Embarq PA consumer. In fact, counsel advises me that Embarq PA has a statutory obligation ultimately to accelerate broadband availability to 100% of Embarq PA by December 31, 2013. However, nowhere in Act 183 or in Embarq PA's alternative regulation plan is it required – let alone envisioned – that Embarq PA would not only meet Embarq PA's broadband availability commitments, but also support and subsidize Core's business operations and maximize Core's profit-seeking potential. Embarq PA's commitments are to its customers, the General Assembly, and the Commission. Those commitments do not include subsidizing Core's business. If public policy is the benchmark, as Mr. Gates suggests, then clearly from a public policy standpoint Core's prediction of doom and gloom are not only speculative and unfounded, but are unsupported by any statutory framework in Pennsylvania.

Q. Do you know how many dial-up Internet customers in Embarq PA's territory are subscribing to the ISP's that use Core's VNXX service?

A. We can estimate the number of customers by reviewing the traffic study presented by Mr. Hart in his Direct Testimony. According to Mr. Hart's study, calls were made from approximately **[BEGIN PROPRIETARY] [END PROPRIETARY]** separate

telephone numbers. That represents [**BEGIN PROPRIETARY**] [**END PROPRIETARY**] of the 338,544 end users (access lines) that receive local exchange service from Embarq PA within these rate centers. In addition, the usage characteristics of several of the telephone numbers are suspicious. Some were connected for the entire 24 hour period with as many as 60 calls. It is questionable to me that someone would sit at a computer 24 hours a day making a dial up Internet call, staying on line, logging off, and then logging back on approximately three times an hour. If it is in the public interest to ensure that ISP's such as Earthlink (Gates Direct, page 42 at line 997) and Core's profit are maximized – and that this Commission deem dial-up Internet access as part of the universal service mandate for these customers – then the Commission should consider it in that context, not this arbitration proceeding. Such a proceeding would show that the level of subsidy demanded by Core is extreme. For example, if Embarq PA were to agree to Core's terms and incur the expense estimated by Mr. Hart (*see* Hart Proprietary Direct, page 27 at line 20), that equates to over $1,000 in annual expense for each of the [**BEGIN PROPRIETARY**] [**END PROPRIETARY**] dial up Internet customers. It would be cheaper for Embarq PA to pay the "high" monthly recurring rate for dial up Internet access of $24.95 ($299.40 annually) for each of these customers and receive proper compensation from ISPs and connecting carriers than to agree to Core's terms. Core's terms result in an annual expense that is over 3 times that of just paying the ISP monthly payment for each end user subscribing to dial up Internet access.

Q. ***Is Mr. Gates correct in his assessment of whether or not Embarq PA charges access charges for its FX service (Gates Direct, page 40 at line 953)?***

A. No, he is not. Embarq PA does not oppose the use of numbers for real FX services when carriers interconnect appropriately and compensate Embarq PA for the joint provision of those FX services. Embarq PA's FX service essentially operates as if the end user purchasing the FX service resided in the rate center. When the end user makes a long distance call it is routed to their picked Interexchange Carrier and Embarq PA bills access charges. Likewise, when a long distance call is terminated to the FX it is routed just like other calls destined for that rate center and Embarq PA bills the IXC terminating access charges. The rating is correct because the routing is the same. The additional rates in Embarq PA's tariff are for the additional transport and central office terminals that are needed to connect the end user buying the FX service. That is not the case of VNXX services. The application of access charges and any other rate based on V&H coordinates utilizing the assigned rate center would be incorrect in the case of VNXX service because the actual routing is not the same. That is one of the reasons why the FCC prohibits porting telephone numbers outside of the rate center to which they are assigned.

Local Number Portability ("LNP")

Q. ***Has Embarq PA ever taken the position that carriers cannot use telephone numbers to provide FX services (Gates Direct, page 43 at line 1018)?***

A. No, not at all.

Q. ***Does Mr. Gates quote from the Numbering Guidelines support Core's use of telephone numbers (Gates Direct, page 43 at line 1021)?***

A. No. The Numbering Guidelines referred to by Mr. Gates simply state that FX is the exception where the end user is not geographically located inside of the rate center to which the telephone number is assigned. The Guidelines do not pre-empt the FCC rules that explicitly prohibit porting telephone numbers outside of the rate center (Maples Direct, page 16 at line 16) and as shown above the provisioning of FX service does not involve porting outside of the rate center. Nor do the Guidelines carry the same weight as FCC rules because a violation of FCC rules is subject to penalties. Furthermore, there are also other guidelines clearly prohibiting porting numbers outside of the rate center. For example, the Telecordia Local Exchange Routing Guide ("LERG"), which Telecordia Technologies will not allow any carrier to use in a proceeding without its expressed permission, clearly states that service provider portability does not equate to location/geographic portability.

Q. ***When an ILEC provides FX service as you have described, does the ILEC port the number outside of the rate center?***

A. No. Dial tone for the FX service is provided via the same switch that provides service to end users that are geographically located in the rate center. ILECs have a local presence in each rate center. The customer buying the FX services pays for the cost of the connection between the two rate centers. As I stated in my Direct Testimony, Core actually ports the telephone number to a switch located outside of the rate center, does not establish a "presence" in the rate center (as in the case of FX service), and does not

pay for the transport between the two rate centers (as in the case of FX), which changes how calls are routed to and from the telephone number.

Q. What is the significance and import of Core's practice of porting numbers without establishing a presence within the rate center to Core's claims as made in this arbitration case?

A. Core calls the traffic in question "local" simply because it uses a local number. While other witnesses address various components of this issue, I question Core's practices with using number resources as further demonstration that Core has no local presence. The actual mechanics of Core's use of ported numbers further shows the non-local nature of Core's traffic and further proves as unfounded the fiction that Core spins in order to get compensation "as if" local. For example, Embarq PA has ported 97 numbers to Core switches located in four foreign rate centers: Wilkes-Barre, Harrisburg, Pittsburgh, and Altoona; however, Embarq PA does not provide local exchange service to end users in these four locations. *See*, Embarq PA's response to Core Interrogatories (Set III-27 and 28). The Core switches are not within any Embarq PA rate center. If Core does not have any physical presence within the Embarq PA rate center, unlike FX service, calls to and from these numbers will not be routed through the rate centers to which they are assigned. In addition, Core has ported 60 numbers from Embarq PA rate centers that Core has not mirrored in any way. Thus, Core's misuse of Local Number Portability ("LNP") further shows that Core's attempt to qualify its traffic as local for intercarrier compensation purposes is flawed and suspect.

Q. ***Are you saying that Core is porting numbers out of the Embarq PA rate center even when it assigns the Embarq PA rate center to one of the four switches listed above?***

A. Yes. While Core may argue that it is in compliance by assigning Embarq PA rate centers to these switches, the reality demonstrates otherwise. For example, let's use the VNXX scenario depicted above (*see* Figure 2). If a Verizon end user in Harrisburg were to call the ported number (717-935-5035) it would be dialed as a long distance call since Belleville is a toll point and the call would be handed off to the end user's interexchange carrier. As the N-1 carrier[1], the interexchange carrier would do the LNP look up and based on the routing information contained in the LERG, direct the call to the Verizon Harrisburg tandem and on to Core, not going through the Belleville rate center or the toll tandem for the Belleville rate center (Carlisle). Core would bill terminating access charges based on the V&H (vertical and horizontal) location of the rate center it designated in the LERG (Belleville) when the call was actually routed to the Harrisburg rate center. This practice will either over or under recover the mileage sensitive aspects of the access rates. It is also difficult for interexchange carriers to validate access billing.

Q. ***Isn't Core's misuse of LNP better addressed before the FCC?***

A. Not with respect to the compensation issues now before the Pennsylvania Public Utility Commission. That is, the Commission is tasked with the obligation in this case of making a determination as to Core's request for intercarrier compensation based upon the contention that its traffic is local in nature, and thus Core should be entitled to reciprocal compensation. My testimony demonstrates that Core's practices regarding ported

[1] In LNP regulations the N-1 carrier is the one responsible for doing the LNP look up to determine the proper routing. In the case of long distance calls the interexchange carrier is always the N-1 carrier.

numbers do not support Core's contention that the traffic routed to those numbers is local in nature.

SECTION III - CONCLUSION

Q. Please summarize your Rebuttal Testimony.

A. My Rebuttal Testimony has conclusively shown that Core's VNXX product is not FX or FX-like with respect to actual provisioning and compensation. Core's scheme is an attempt to get Embarq PA and its end users to subsidize Core and Core's end user customers. Core is not providing telecommunications service to any Embarq PA customer via VNXX, but is in fact providing toll free service to Core's end user customers located outside of Embarq PA rate centers. Core should compensate Embarq PA for the cost of transporting the calls from Embarq PA customers outside of the rate center to the location of the Core VNXX customer. This is consistent with how FX services are provisioned today. Core has accomplished this charade by manipulating the LNP process and inappropriately porting telephone numbers outside of the rate centers, introducing rating and routing errors. Core should be ordered to establish interconnection as testified to by Embarq PA's witness Fox.

Q. Do you have anything to add?

A. Yes, I would like to note that Core's witness did not address the VoIP compensation issue in his Direct Testimony. To the extent that Core has substantively addressed the VoIP compensation issue and that testimony remains in the record, I would like to opportunity

to provide a response and to complete the record on this issue and the language proposed by Embarq PA.

Q. Does this conclude your Rebuttal Testimony?

A. Yes.

ATTACHMENT JMM-1

The United Telephone
Company of Pennsylvania

Section 6
Fifth Revised Sheet 1
Canceling Fourth Revised Sheet 1

FOREIGN EXCHANGE SERVICE

Foreign exchange service is exchange service furnished from a central office of an exchange other than that normally serving the area in which the customer is located. Foreign Exchange Service, as stated in this tariff, is offered on an intraLATA basis only. (C)

Foreign exchange service does not come within the Company's general undertaking The Company does not obligate itself to furnish foreign exchange service generally, but will do so where facilities of such a character are available as will permit satisfactory telephone transmission. In cases where facilities are available in connection with which additional equipment is required, in order to provide satisfactory transmission or signaling equipment, and it is practicable to make use of the additional equipment in connection with the available facilities, and additional charge is made to cover the cost of providing the necessary additional equipment. Pay Telephone Line Service is not furnished on a foreign exchange basis.

When foreign exchange service is furnished by means of a private branch exchange trunk line, connections to the trunk at the customer-provided private branch exchange switchboard are restricted to the customer-provided stations connected with and in the immediate vicinity of the customer-provided private branch exchange switchboard.

The local service and toll rates applicable to foreign exchange service are the same as apply to other stations served from the same foreign central office.

Foreign exchange service is provided only upon contract for a minimum period of six months.

When special operating is required, an additional monthly charge may be made to cover the cost of such operating.

Rates and Regulations

A. Intra-Company Foreign Exchange Service

*1. When the exchange area in which the customer is located is adjacent to the foreign exchange area and foreign exchange service is given by direct connection to the foreign central office.

a. Intra-Company foreign exchange service is discontinued as a new offering and is limited to existing customers in the same location. The rates for this service are the established local exchange rates applicable to the foreign exchange plus mileage charges as shown below. The mileage charge for individual line service is based on the route measurement from the boundary of the base rate area of the foreign exchange to the customer's location. The minimum rate is one mile.

Individual Line Mileage ..... †a

* Limited to Existing Customers
Certain material on this sheet formerly appeared on First Revised Sheet 2.
† See Rate Sheet at end of this Section
(C) Indicates Change

FOREIGN EXCHANGE SERVICE (Continued)

A. Intra-Company Foreign Exchange Service (Continued)

(C)

2. Foreign Exchange Service provided from terminating central offices between adjacent or non-adjacent exchange:

When the exchange area in which the customer is located is not adjacent to the foreign exchange area, connections are subject to the condition that during the period foreign exchange service is retained the subscriber is also a subscriber for local exchange service. This is not a requirement where two exchange are adjacent. In either case, the rate for foreign exchange service is the established individual line or private branch exchange trunk line base rate in the foreign exchange, plus a monthly mileage charge of (†a) per mile measured airline from the foreign central office through the local central office. In addition, a customer located outside the base rate area of the local exchange is subject to a mileage charge (†b) per quarter airline measurement. A channel terminal charge of (†c) is applicable for each central office connection.

B. Inter-Company Foreign Exchange Service

Foreign exchange service is limited to private branch exchange trunk lines and individual lines. This service will be provided only where the customer agrees to remain a customer of this company and to limit calls from the foreign exchange station to other stations in the local service area of that foreign exchange. This company will rent a terminal in the foreign exchange and provide it to the subscriber at the private branch exchange trunk line or individual line rate at the foreign exchange. In addition the following monthly charges apply:

1. Within the territory of this company, a mileage charge of (†a) per mile, or fraction thereof applies for each circuit measured airline from the rate center of normal exchange to the boundary line of the adjoining company.

Certain material formerly on this sheet now appears on Fifth Revised Sheet 1.
† See Rate Sheet at end of this Section
(C) Indicates Change

The United Telephone
Company of Pennsylvania

Section 6
Second Revised Sheet 3
Canceling First Revised Sheet 3

FOREIGN EXCHANGE SERVICE (Continued)

B. Inter-Company Foreign Exchange Service (Continued)

2. Outside the territory of this company, such charges apply as are provided by other participating companies. (C)

3. A supplemental charge of (†b) applies for 5¢ multiple of the day station-to-station initial period message toll rate, as filed before January 1, 1975, between the normal exchange and the foreign exchange. Such charge will not apply if the local and foreign exchanges are in the same local service area.

4. When the customer is located outside the base rate area of the local exchange, a line mileage charge of (†c) per quarter applies to the foreign exchange local channel.

5. A channel terminal charge of (†d) is applicable for each central office connection.

When foreign exchange service is requested by a customer of another company to an exchange of this company, there will be a charge for the local loop of $5.00 for a business individual line or $3.50 for a residence individual line plus the charges listed in "1" above. The charges in "3" above apply unless a similar charge is made by the company in whose territory the subscriber is located.

C. Inter-Company Extension Service

See Section 9, Sheet 3.

† See Rate Sheet at end of this Section
(C) Indicates Change

The United Telephone
Company of Pennsylvania

Section 6
Second Revised Sheet 4
Canceling First Revised Sheet 4

FOREIGN EXCHANGE SERVICE

RATE SHEET

Rates and Regulations		Monthly Charge	Section 6, Sheet	
A. Intra-Company Foreign Exchange Service				
* 1. Direct Connection				
Individual Line Mileage	†a	$ .56	1	(D) (C)
2. Adjacent or non-adjacent exchanges				
Interexchange Mileage	†a	$ 5.00	2	
Line Mileage, per quarter	†b	.60	2	
Channel Terminal Charge, each	†c	24.00	2	(D)
B. Inter-Company Foreign Exchange Service				
1. Interexchange Mileage	†a	$ 5.00	2	
3. Supplemental Charge	†b	6.00	3	
4. Line Mileage, per quarter	†c	.60	3	
5. Channel Terminal Charge, each	†d	24.00	3	(D)

* Limited to existing customers
(C) Indicates Change
(D) Indicates Decrease

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