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February 18, 2008

VIA ELECTRONIC FILING

Secretary of the Commission
Missouri Public Service Commission
Governor Office Building
P.O. Box 360
Jefferson City, Missouri 65102

Re: In the Matter of a Request to Declassify Certain Portions of Local Exchange Carriers
Annual Reports to 4 CSR 240-3.540(5); Case No. IO-2008-0227

Dear Mr. Dale:

Enclosed is an electronic copy of Charter Fiberlink - Missouri, LLC's Reply to Response of Embarq to Application to Intervene in connection with the above-referenced docket. Please file the reply in your usual fashion.

If you have any questions or comments, please call the undersigned.

Sincerely,



Kennard B. Woods

Counsel for Charter Fiberlink - Missouri, LLC

KBW/jh

Enc.

cc: Charter Fiberlink - Missouri, LLC
(with enclosure)

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Request to Declassify Certain Portions of Local Exchange Carriers Annual Reports to 4 CSR 240- 3.540(5)	Case No. IO-2008-0227
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**Charter Fiberlink-Missouri, LLC's Reply
to Response of Embarq to Application to Intervene**

Charter Fiberlink-Missouri, LLC ("Charter"), pursuant to 4 CSR 240-2.080 and other applicable law, hereby respectfully states to the Missouri Public Service Commission (the "Commission") as follows:

1. On or about January 10, 2008, Embarq Missouri, Inc. ("Embarq") filed an Application to Declassify. Embarq seeks to obtain nonpublic information from all annual reports submitted by all CLECs to the Commission.

2. On or about January 30, 2008, Charter filed an Application to Intervene, and for Denial of Embarq's Application to Declassify.

3. On or about February 8, 2008, Embarq filed a Response to Charter's Application to Intervene. Embarq concedes that Charter "was not served with formal notice" of the Application to Declassify.¹ Response, p. 2. In substance, Embarq in its Response contends that:

a. The Application to Declassify "does not require intervention and any potentially impacted carrier may file a response [to the Application to Declassify] within 15 days [thereof]" (p. 2); and

¹ Moreover, as is evident from the lack of service on Charter, as well as from the assertions in Staff's Recommendation filed on January 30, 2008, Embarq did not serve a copy of its request on CLECs, *i.e.*, the carriers which are "affected by the request" (assuming *arguendo* (and without any admission thereto in this Reply) that 4 CSR 240-3.540(5) controls this proceeding).

b. “[E]very component” of the information Embarq seeks to declassify is publicly available (p. 3).

4. Each of the foregoing assertions is incorrect, for the following reasons:

a. 4 CSR 240-3.540(5) states that an entity seeking to make “information contained in the nonpublic version of *the* annual report . . . available to the public” (emphasis added) must file a pleading with the Commission requesting an order to make the information available. Thus, 4 CSR 240-3.540(5) is framed in terms of a single request for release of nonpublic information from a single annual report of a single CLEC. The rule does not address the context or subject of Embarq’s request, which is for declassification of multiple annual reports of an *entire class* of companies, *i.e.*, all CLECs.

b. The information sought by Embarq is a comprehensive listing, on an exchange-by-exchange basis, of the service areas in which each CLEC is actually providing services and the customer counts associated with those areas.² Not only does Charter *not* comprehensively and publicly list the exchanges (and customer counts) in which Charter currently provides services in Missouri, Charter does not publish, in any form, *on an exchange-by-exchange basis*, where it currently provides services to customers and the customer counts associated with each such exchange. Nor has Charter published such information in the past. Therefore, the information that Embarq seeks from Charter is not “available to the public in any format.” 4 CSR 240-3.540(4)(C).

² Embarq insists that it is not requesting information on the numbers of CLEC customers. However, Embarq seeks disclosure of the “CLEC Listing report” that Commission Staff compiles from the Schedule 10 forms that are part of the CLECs’ annual reports. The “CLEC Listing report” contains the customer counts associated with the exchanges in which CLECs provide service.

5. Embarq's sole assertion in its Response as to why it is good public policy to declassify the CLECs' annual report filings is so that "consumers will know where service is actually available" rather than where such service is "purportedly available pursuant to tariff[s]" filed with the Commission (p. 4). *However, tariffs – including Charter's – filed with the Commission do set forth the exchanges where service is "actually available" to consumers.* Embarq apparently misapprehends the purpose and effect of tariffing. Contrary to Embarq's assertion that tariffs merely "purport" to indicate where service is available, carriers are bound by the terms of their filed and effective tariffs to provide service in the exchanges described therein. 4 CSR 240-3.545(8)(H) states the following:

For competitive and incumbent local exchange telecommunications carrier, a tariff shall contain an alphabetical list of the exchange area service by rate group if applicable, including state name if other than Missouri. Competitive local exchange carrier shall be permitted to provide an alphabetical list of the exchange area by incumbent local exchange carrier. Areas served with basic local exchange service must follow exchange boundaries of the incumbent local exchange telecommunications company and also must be no smaller than an exchange absent a ruling by the [C]ommission under 392.200.2(b) RSMo, 2000.

See 392.200.4, RSMo 2007; 4 CSR 240-32.050 (1) & (3). In accordance with law, Charter's tariff publicly sets forth the exchanges in which Charter offers service. Embarq has failed to "explain how the public interest is better served by disclosure of the information than the reason provided by the utility justifying why the information should be kept under seal". Accordingly, the Application to Declassify is deficient under 4 CSR 240-3.540(5).

Request For Relief

For the foregoing reasons, Charter respectfully renews its request that the Commission: (a) grant Charter's request for intervention; (b) find and declare that Embarq's Application to Declassify is deficient, and deny Embarq's Application because Embarq did not meet the standards for such filing and for notice to affected entities; and (c) direct such other and further relief as may be appropriate.

Respectfully submitted this 18 day of February, 2008.



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CERTIFICATE OF SERVICE

I hereby certify that, this 18 day of February, 2008, copies of the foregoing have been (a) mailed, postage prepaid, to each of the persons listed below, and (b) emailed to the persons whose email addresses are set forth below,

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