

**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) Case No. IO-2008-0227
Reports Pursuant to 4 CSR 240-3.540 (5))

EMBARQ'S RESPONSE
TO CHARTER'S APPLICATION TO INTERVENE
AND STAFF'S RECOMMENDATION

COMES NOW Embarq Missouri, Inc. ("Embarq") pursuant to 4 CSR 240-2.080 and submits this Response to Charter's Application to Intervene and Staff's Recommendation in the aforementioned case. Embarq respectfully disagrees with Staff's conclusion that Embarq failed to demonstrate why the public interest is served by disclosing where CLECs are providing service and urges the Commission to approve Embarq's Application to Declassify. In support of its Response, Embarq states as follows:

1. Embarq filed its Application to Declassify certain portions of Local Exchange Carriers ("LECs") Annual Reports on January 10, 2008 pursuant to 4 CSR 240-3.540(5) which included serving notice to 156 LECs. In determining the service list, Embarq followed the instructions of the Commission Staff and utilized the Commission's Electronic Filing and Information System ("EFIS") to identify all CLECs for April, 2007 which was the month 2007 Annual Reports were due. While not instructed by Staff to serve notice on ILECs, Embarq nonetheless included ILECs in its service list. Additionally, on January 10, 2008, EFIS issued a standard New Case Notification to all carriers subscribing to its list serve.

2. On January 28, 2008, three days past the 15-day deadline for responding to Embarq's Application pursuant to rule 240-3.540(5), Big River Telephone Company, LLC, Socket Telecom, LLC, and XO Communications Services filed an Application to Intervene. Also on January 28, Embarq filed its Response urging the Commission to deny the interveners request because their Motion was (1) untimely and (2) failed to provide a substantive response as required by Commission rule 240-3.540(5). The interveners have not responded to Embarq's January 28, Response.

3. Charter Fiber Link-Missouri, LLC ("Charter") filed a Motion to Intervene on January 30, 2008. In its Motion, Charter contends, among other things, that (1) Embarq seeks to circumvent the notice and intervention process set fourth in 4 CSR 240-2.075 and (2) Charter was not served notice of Embarq's Application to Declassify. Contrary to Charter's assertion that Embarq circumvented 4 CSR 240-2.075, Embarq filed its Application to Declassify certain portions of LEC Annual Reports specifically pursuant to 4 CSR 240-3.540(5), and as suggested by the Commission's general counsel in a letter dated December 11, 2007 (in connection with Embarq's open records request, as discussed in Embarq's Application herein), and pursuant to the relevant Commission rule regarding declassification of LEC Annual Reports. Embarq submits that Charter's request to intervene is a moot issue since this style of case does not require intervention and any potentially impacted carrier may file a response within 15 days. Unlike the pleading of Big River Telephone Company, LLC, Socket Telecom, LLC, and XO Communications Services, the Charter filing does contain a substantive response as called for in Section 240-3.540(5). Embarq does not object to the Commission taking into consideration the responsive arguments made by Charter in light of the fact it was not served with formal notice.

4. In its response opposing declassification of certain portions of LEC Annual Reports, Charter submits that Embarq's Application should be denied because Charter does not provide a comprehensive publicly available listing of where it is currently providing service to its customers. This is an unpersuasive argument because Commission Rule 4 CSR 240-3.540 (4) states that utilities can only classify information as confidential within Annual Reports if none of the information is "available to the public in any format" (emphasis added). Embarq acknowledges that Charter may not make a comprehensive listing of its exchanges where it is providing service available publicly; however, as discussed in Embarq's Application, every component of the information sought by Embarq's request is publicly available. Charter's argument is tantamount to arguing that information that is not confidential in isolation magically becomes confidential when collected into a comprehensive listing.

5. Moreover, both Charter and Staff appear to ignore that the provisions of 240-3.540(5) should require a balancing of the requirement of subsection (4)(C) for a threshold justification for treating information as confidential. Every carrier that files an Annual Report, including Charter, makes broad claims of confidentiality for the information in Schedule 10 based on broad claims of competitive sensitivity. Such broad claims are fine, until they are challenged, as Embarq has done pursuant to subsection (5). Implicit in subsection (4)(C) is a requirement that, as attested to, the information provided under seal actually merits confidential treatment. A carrier could contend that the page numbers on its Annual Report should be confidential, and surely there would not be much of a "public interest" justification required to declassify that information. Similarly, as Embarq explained in its Application, the information it is seeking to declassify simply does not merit competitive classification. Embarq's Application did provide an explanation of why the public interest would be served by providing the requested

information, and asserted that such information is not competitively sensitive, and no party has provided a response that explains why the specific information requested truly merits the confidential treatment that is alleged by the parties' typically broad and general justifications provided with their Annual Reports. Contrary to Charter's contention, Embarq does not have to explain why it wants the information or what it may be used for. On balance, there is no justification for not declassifying the information sought by Embarq's Application.

6. The Staff of the Missouri Public Service Commission, through its general counsel, issued its Recommendation on January 30, 2008. In its Recommendation, Staff recommends Embarq's Application be denied because "Embarq has not demonstrated sufficient facts why the public interest is better served by the disclosure of this information as the public interest is served by keeping this information under seal". No other explanation was provided by Staff.

7. Embarq respectfully disagrees with Staff's conclusion that Embarq failed to provide sufficient facts why the public interest is served by providing a listing of CLECs providing service in Missouri, on an exchange basis.¹ Embarq's Application fully explained that (1) it is good public policy to release the requested information, e.g., consumers will know where service is actually available rather than purportedly available pursuant to tariff, and that (2) the requested information is already publicly available in some format. Embarq will not reiterate those same arguments in this Response but urges the Commission to carefully consider if there is any need for any carrier to operate covertly. Staff's single sentence dismissal of Embarq's Application on the grounds that Embarq provided insufficient public policy justification is not

¹ Embarq did not request the number of CLEC customers – simply a listing, by exchange, showing where CLECs are providing residential and business service. Embarq did not request that the Commission Staff create a new report; rather, Embarq simply requested a copy of a listing the Commission already has developed and is required to develop by Section 392.245.5.(6) RSMo..

sufficient to deny Embarq's request without any substantive explanation by Staff, especially in light of the fact that only one carrier, Charter, provided any noteworthy response in opposition. Furthermore, Staff's response does not address the second component identified by Embarq that the requested information is already publicly available in some format.

8. Staff's recommendation is also inconsistent with its recent practices. Embarq's request for a listing of CLECs providing service in Missouri, on an exchange basis, has previously been publicly provided by Staff for 13 Embarq exchanges in Case No. IO-2008-0092 and 33 CenturyTel exchanges in Case No. IO-2008-0096 and IO-2008-0097 (Spectra). Embarq's request is consistent with Staff's practice of not treating information about which exchanges a carrier is providing service in as confidential. Embarq is simply seeking a complete listing of the type of information that Staff has previously released.

9. Embarq also submits that Staff's suggested alternative of hearings with live testimony is not only unnecessary but unjustified. Commission rule 240-3.540(5) contemplates a fairly expedited process and a drawn-out contested case would be inconsistent. Furthermore, only one carrier, Charter, has filed a substantive response and Embarq is not opposed to the Commission taking Charter's comments into consideration. Absent any meaningful objections by Staff, and with objections by only one carrier that have been fully addressed above, Embarq recommends the Commission grant its Application to Declassify. If an alternative is needed, then without waiving its position as to any other carrier affected by its request, Embarq submits that the Commission can grant Embarq's Application to Declassify and instruct Staff to first remove Charter from the listing as it was the only carrier that provided substantive objections. However, because Charter's objections are without merit, Embarq urges the Commission to grant its Application without modification.

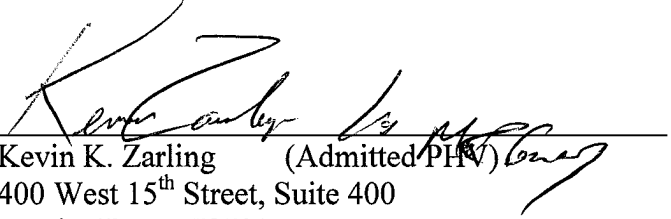
10. In enacting Senate Bill 237 in 2005, the Legislature made it abundantly clear that the public interest is best served when price cap carriers are allowed pricing flexibility when customers have competitive alternatives. That information about the presence of competitors was not intended to be something the Commission should safeguard is reflected by the statutory requirement Section 392.245.5.(6) RSMo.² for the Commission to proactively maintain and use records of where CLECs provide service in order to further the legislative mandate for pricing flexibility where it is appropriate. It is no secret, however, that some CLECs have not been cooperative with the Commission Staff's attempts to determine where competitors actually provide service, and Embarq believes this has frustrated the statutory scheme. Granting Embarq's Application allows Embarq to fully exercise the options granted it by Senate Bill 237 and is in the public interest. Consequently, denying Embarq's Application would harm the public interest by allowing certain carriers – CLECs but not ILECs -- to operate in secret.

WHEREFORE, Embarq respectfully requests that the Commission declassify the exchange-level information from Schedule 10 of the Annual Report as described in Embarq's Application and as compiled in Staff's CLEC Listing report.

² (6)The commission shall maintain records of regulated providers of local voice service, including those regulated providers who provide local voice service over their own facilities, or through the use of facilities of another provider of local voice service. In reviewing an incumbent local exchange telephone company's request for competitive status in an exchange, the commission shall consider their own records concerning ownership of facilities and shall make all inquiries as are necessary and appropriate from regulated providers of local voice service to determine the extent and presence of regulated local voice providers in an exchange

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served on the parties listed by electronic mail, this 8th day of February 2008.

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