

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

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| In the Matter of a Notice of Election of |) | |
| Embarq Missouri, Inc. for Waiver of |) | <u>Case No. TO-2009-0062</u> |
| Commission Rules and Statutes Pursuant to |) | Tariff File No. YI-2009-0175 |
| Section 392.420 RSMo. (2008) |) | |

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), and for its recommendation respectfully states as follows:

1. On August 28, 2008, Embarq Missouri, Inc. (“Embarq” or “Company”) filed notification with the Missouri Public Service Commission (“Commission”) that Embarq had elected to waive certain Commission rules and statutory provisions pursuant to Section 392.420 RSMo. Embarq also submitted a tariff filing to identify these waivers in the Company’s tariff. That tariff filing as been assigned Tariff File No. YI-2009-0175 and bears a proposed effective date of September 28, 2008.

2. Embarq’s reference to RSMo Section 392.420 refers to the statute as revised by the passage of House Bill 1779, which became effective August 28, 2008.

3. Section 392.420, as amended by House Bill 1779, states in relevant part:

In the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340. Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company's authorized service area, the incumbent local exchange telecommunications company may opt into all

or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected.

(Emphasis added).

4. Embarq is an incumbent local exchange telecommunications company as that term is used in Section 392.420. Furthermore, in the attached Memorandum, labeled as Appendix A, the Staff states its position that prior Commission cases, along with the most recent annual reports submitted by companies, adequately demonstrate that alternative local exchange telecommunications companies provide service in the Company's territory. The Staff also notes that Embarq is currently compliant in obligations relating to Commission assessment, Missouri Universal Service Fund, Relay Missouri, and the submission of an annual report.

WHEREFORE, the Staff recommends that the Commission acknowledge Embarq's election to opt into the waivers listed in its August 28, 2008 Notice Of Election To Waive Rules And Statutes, and either approve the Embarq's accompanying tariff filing (Tariff File No. YI-2009-0175) or allow the tariff to become effective by operation of law.

Respectfully submitted,

/s/ Dennis L. Frey

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 26th day of September 2008.

/s/ Dennis L. Frey