

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Embarq Missouri, Inc.'s)	
Application For a Commission Finding that)	
55% of Embarq Missouri, Inc.'s Total)	<u>Case No. TO-2009-0160</u>
Subscriber Access Lines are In Exchanges)	Tariff File No. YI-2009-0300
Where Its Services have been Declared)	
Competitive.)	

DECLARATION OF COMPETITIVE STATUS

Issue Date: December 11, 2008

Effective Date: December 11, 2008

On August 28, 2008, House Bill 1779 became effective, modifying §392.245.5 RSMo 2000, so that it now provides, in pertinent part:

(7) Upon a finding that fifty-five percent or more of an incumbent local exchange telecommunications company's total subscriber access lines are in exchanges where such company's services have been declared competitive, the incumbent local exchange telecommunications company shall be deemed competitive and shall no longer be subject to price-cap regulation, except that rates charged for basic local telecommunications service in exchanges that were noncompetitive immediately prior to this finding can be increased to a rate that is no higher than the statewide average rate for basic local telecommunications service in the incumbent local exchange company's competitively classified exchanges for a period of four years. During the four year period, any annual increase in rates for residential basic local telecommunications service shall not exceed two dollars per line per month. Rates charged for exchange access service by an incumbent local exchange telecommunications company deemed competitive shall not exceed the rates charged at the time the company was deemed competitive;

On October 28, 2008, Embarq Missouri, Inc. ("the Company") filed an Application for Declaration of Competitive Status with the Missouri Public Service Commission ("Commission") in which it seeks to have the Company's status as a telecommunications

carrier declared to be “competitive,” as 55% or more of its access lines are in exchanges where its services have been declared competitive.

On November 13, 2008, the Commission Staff submitted its memorandum concerning the notice. It noted that:

1. The Company is an incumbent local exchange telecommunications company as that term is used in Section 392.420.

2. Based on the Staff’s analysis in its highly confidential attachments, the Company meets the criteria for competitive status, to wit: 55% or more of its access lines are in exchanges where its services have been declared competitive.

3. The Staff notes that “[c]lassifying an incumbent as a competitive company means the incumbent will have greater pricing flexibility for residential basic local service in non-competitively classified exchanges and no longer be limited by price cap regulation. Nevertheless, an incumbent classified as a competitive company will still be under some pricing restrictions for basic local residential service in non-competitive exchanges. Pricing restrictions will also remain on the incumbent’s exchange access rates (a/k/a switched access rates) in that the incumbent’s exchange access rates are limited to the rates charged at the time the company is deemed competitive.”

4. The Staff states that it does not object to the Company’s classification as a competitive company.

On November 18, the Commission issued an Order to Show Cause Why an Order Granting Competitive Classification Should Not be Issued. No responses to that Order were filed.

THE COMMISSION ORDERS THAT:

1. Embark Missouri, Inc. is classified as a competitive telecommunications company.
2. The Staff shall send a public notice to news outlets in the Company's service area and the State Legislators whose districts are in the service area, notifying the news outlets and State Legislators that the Company has been deemed competitive. The notice shall also inform the news outlets and State Legislators that the Commission will monitor the rates charged for basic local residential service, compliance with the limitations on rate increases set forth in §392.245.5(7), and the extent to which prices may deter subscription to the Company's service.
3. The Commission's Staff shall monitor the Company's rates and the percentage of residences and businesses that subscribe to the Company's services. If the Staff determines that the Company has not complied with the limitations on rate increases set forth in §392.245.5(7), or that the Company's rates have become so high that they serve as a deterrent to receiving telecommunications service from the Company, it shall notify the Commission by filing a written report.

4. This order is effective upon issuance.
5. This case may be closed.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a faint rectangular stamp.

Colleen M. Dale
Secretary

(S E A L)

Colleen M. Dale, Chief Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
On this 11th day of December, 2008.