

**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 Percent of Embarq Missouri, Inc.'s )	Case No. TO-2009-0160
Total Subscriber Access Lines are in )	Tariff File No. YI-2009-0300
Exchanges where Its Services Have )	
Previously Been Declared Competitive )	

**STAFF RECOMMENDATION**

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation states:

1. On October 28, 2008, Embarq Missouri, Inc., filed its Application for Declaration of Competitive Status pursuant to Section 392.245.5 RSMo, as amended by H.B. 1779. Embarq Missouri also filed proposed tariff sheets, bearing an effective date of November 28, 2008, designed to implement its application.

2. New subdivision (7) of Section 392.245.5 states:

(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 service 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[.]

3. In the attached Memorandum, labeled Appendix A, the Staff states that Embarq Missouri meets the 55% criterion for classification as a competitive company. Exhibits A and B,

attached to the Memorandum, contain protected information and have been filed as Highly Confidential. No public versions of these exhibits have been produced.

WHEREFORE, the Staff recommends that the Commission grant Embark Missouri status as a competitive company pursuant to Section 392.245.5(7) RSMo and approve its proposed tariff filing.

Respectfully submitted,

/s/ William K. Haas

William K. Haas

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Missouri Public Service Commission

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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 13<sup>th</sup> day of November 2008.

/s/ William K. Haas

## **Memorandum**

To:           Official Case File  
              Case No. TO-2009-0160

From:       John Van Eschen  
              Telecommunications Department

Date:        November 12, 2008

Subject:     Embarq Missouri, Inc.'s Application for Declaration of Competitive Status

Embarq Missouri, Inc.(Embarq or Company) has filed an Application for Declaration of Competitive Status. The Company has made the filing pursuant to Section 392.245.5(7) RSMo, as amended by House Bill 1779. The Commission Staff (Staff) has reviewed the Company's filing and has no objections to granting Embarq status as a competitively classified company. Embarq surpasses the criteria that 55% or more of its access lines are in exchanges where its services have been declared competitive. Embarq's application also contains a tariff filing with a November 28, 2008 effective date reflecting Embarq as a competitively classified company. Staff has no objections to the proposed tariff filing. The remainder of this memorandum further explains Staff's recommendation.

Section 392.245.5(7) RSMo allows an incumbent local exchange telecommunications company to be declared a competitively classified company upon a finding that 55% or more of the company's access lines are in exchanges where the company's services have been declared competitive. Classifying 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.<sup>1</sup> Nevertheless, an incumbent classified as a competitive company will still be under some pricing restrictions for basic local residential service in non-competitive exchanges.<sup>2</sup> 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.

Embarq meets the new law's criteria for classification as a competitive company as shown in Exhibit A. Exhibit A lists all of Embarq exchanges and provides the company's number of access lines within each exchange. This information is segregated between residential and business services and then further separated on the basis of

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<sup>1</sup> Regardless of competitive classification, the rates for all business services have unlimited pricing flexibility as allowed by Section 392.200.8(3) RSMo. Likewise, Section 392.245.11 RSMo allows unlimited pricing flexibility for all nonbasic telecommunications services for an incumbent subject to price cap regulation.

<sup>2</sup> For example, the company will be limited to increasing such rates in non-competitive exchanges to be no higher than the company's statewide average rate in competitive exchanges. In addition, the company will be limited to increasing such rates no more than \$2.00 per line per month for the next four years.

whether such services have been previously classified as competitive or remain non-competitively classified. The access line totals are based on line quantities contained in Embarq's most recent annual report. Technically this report quantifies the number of access lines served as of December 31, 2007. For comparison purposes Embarq's filing uses the same line quantities and consequently concurs in the percentage of Embarq lines with competitive classification.

Exhibit B shows each Embarq exchange along with the name of any competitive local exchange carrier (CLEC) operating within the exchange and its respective number of lines served within the exchange depending on residential versus business service based on CLEC 2007 annual reports. These CLEC lines are further segregated based on whether the CLEC is providing service on a full-facility basis, partial facility basis, other resale and pure resale. Full-facility refers to arrangements where the CLEC is providing service using its own or an affiliate's switch and loops. Partial facility refers to an arrangement where the CLEC is providing service using its own or an affiliate's switch but is using the incumbent's loops. Other resale arrangements refer to arrangements where the CLEC leases facilities from the incumbent at a negotiated or arbitrated rate that is not simply a discount from the incumbent's tariffed rate. Pure resale arrangements refer to arrangements where the CLEC leases facilities/services from the incumbent at a discount from the incumbent's tariffed rate. The Commission has previously recognized competition based on all of these service arrangements in prior Embarq competitive classification proceedings. Exhibit B indicates competition continues to exist in all Embarq exchanges with competitive classification, except for residential service in three Embarq competitively classified exchanges.<sup>3</sup>

In summary, Staff finds Embarq meets the criteria of Section 392.245.5(7) for classification as a competitively classified company. The Commission should grant Embarq status as a competitively classified company and approve the company's proposed tariff filing. Embarq is current in paying the Commission assessment, paying into the Relay Missouri and Missouri Universal Service funds and has a current annual report on file with the Commission.

Attachments:

Exhibit A: Embarq's exchange-specific access line quantities (highly confidential)

Exhibit B: CLEC exchange-specific access line quantities in Embarq exchanges (highly confidential)

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<sup>3</sup> The three exchanges are Buckner, Lake Lotowana and Odessa. In Case No. IO-2006-0551 the Commission determined Comcast Digital Voice (Comcast) is providing residential service in these exchanges. Comcast has not submitted line quantities to the Commission and is expected to submit its first annual report to the Commission in April 2009 which Staff expects will show the company continues to provide service to these exchanges.

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Application For a Commission Finding that     )  
55% of Embarq Missouri, Inc.'s Total         )  
Subscriber Access Lines are In Exchanges  
where Its Services have been Declared  
Competitive

Case No. TO-2009-0160

**AFFIDAVIT OF John Van Eschen**


STATE OF MISSOURI     )  
                                   ) ss:  
COUNTY OF COLE         )

John Van Eschen, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing the accompanying memorandum and exhibits and that the facts therein are true and correct to the best of his knowledge and belief.

  
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John Van Eschen



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

  
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NOTARY PUBLIC