

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

In the Matter of Embarq Missouri, Inc.'s)	
Application for Competitive Classification Under)	Case No. IO-2006-0551
Section 392.245.5, RSMo (2005))	

STAFF RECOMMENDATION

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

1. This case involves an application by Embarq Missouri, Inc. for competitive classification of its residential services in certain exchanges under the 30-day track of Section 392.245.5 RSMo, as amended by Senate Bill 237.

2. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant competitive status for residential services other than exchange access service to Embarq's exchanges of Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill. Staff has conducted the investigation as directed by the Commission and has been able to confirm that Embarq's *Application* complies with the requirements of Section 392.245.5 RSMo. (Supp. 2005). Specifically, Staff has verified the existence of a facilities-based wireline carrier other than Embarq with at least two residential customers with addresses in each exchange. Staff has also verified the existence of a wireless carrier with at least two residential customers whose addresses are located in each exchange.

WHEREFORE, Staff recommends that the Commission permit the tariffs associated with Embarq Missouri, Inc.'s petition to go into effect.

Respectfully submitted,

/s/ David A. Meyer

David A. Meyer
Senior Counsel
Missouri Bar No. 46620

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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 10th day of July 2006.

/s/ David A. Meyer

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Tariff File No. YI-2007-0002 Case No. IO-2006-0551

From: Walt Cecil,
Telecommunications Department

Natelle Dietrich/ 7-10-2006 David A. Meyer/ 7-10-2006
Utility Operations Division/Date General Counsel Office/Date

Subject: Staff Recommendation to approve Embarq Missouri, Inc.'s request for competitive classification of residential services in certain exchanges and approval of the associated proposed tariff sheets.

Date: July 10, 2006

Summary:

The Telecommunications Department Staff (Staff) recommends the Commission grant competitive status for residential services other than exchange access service to Embarq Missouri, Inc., (Embarq) in its Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill exchanges. In Staff's opinion, evidence exists supporting the criteria set forth in Section 392.245.5, RSMo (Supp. 2005) that at least two non-affiliated carriers are providing basic local telecommunications services within each of requested exchanges. Staff also recommends the proposed tariff filing be allowed to take effect on July 31, 2006.

Background:

On June 29, 2006, Embarq, an incumbent local exchange carrier (ILEC), filed an *Application For Competitive Classification* (Application) before the Commission under Section 392.245.5, RSMo (Supp. 2005) seeking competitive classification for all residential services other than exchange access in the exchanges of Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill. As part of the Application, Embarq filed proposed tariff sheets, effective July 31, 2006, classifying residential services in the aforementioned exchanges as competitive and contemplating future competitive rate changes. The tariff sheets were reformatted to make pricing of different services in competitively classified exchanges obvious to someone reading the tariff. No rates have been changed in this filing.

Embarq requests 30-day competitive classification based upon Section 392.245.5, RSMo (Supp. 2005) which in relevant part states, (with emphasis added):

5. Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two

nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. **Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange.** For purposes of this subsection:

(1) **Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such nonaffiliated provider shall be considered as providing basic local telecommunications service within an exchange;**

(2) **Any entity providing local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the commission.** A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider. For purposes of this subsection only, a "broadband network" is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(3) Regardless of the technology utilized, local voice service shall mean two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo;

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service as defined in subdivision (46) of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service; and

(5) "Prepaid telecommunications service" shall mean a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(6) Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so shall approve tariffs designating all such business or residential services other than exchange access service, as competitive within such exchange. Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or the telecommunications facilities or other facilities of a third party, including those of the incumbent local exchange company as well as providers that rely on an unaffiliated third-party Internet service. The commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest. 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. If the services of an incumbent local exchange telecommunications company are classified as competitive under this subsection, the local exchange telecommunications company may thereafter adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment, upon filing tariffs which shall become effective within the time lines identified in section 392.500. The commission shall, at least every two years, or where an incumbent local exchange telecommunications company increases rates for basic local telecommunications services in an exchange classified as competitive, review those exchanges where an incumbent local exchange carrier's services have been classified as competitive, to determine if the conditions of this subsection for competitive classification continue to exist in the exchange and if the commission determines, after hearing, that such conditions no longer exist for the incumbent local exchange telecommunications company in such exchange, it shall reimpose upon the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the

provisions of subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices established for the telecommunications services of such incumbent local exchange telecommunications company shall reflect all index adjustments which were or could have been filed from all preceding years since the company's maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.

In its Application, Embarq identified Alltel Communications, Inc. (Alltel Wireless), Cingular Wireless, Inc. (Cingular), Sprint Nextel Corporation (Sprint), T-Mobile USA, Inc. (T-Mobile), U.S. Cellular Corporation, and Verizon Wireless (Verizon) as commercial mobile wireless services providers competing in the instant exchanges. Embarq further identified Comcast Phone of Missouri, L.L.C (Comcast) as a facilities-based competitive local exchange carrier (CLEC) providing competitive telecommunications services in the instant exchanges. In support of its Application, Embarq provided, in Exhibit A to its Application, service area coverage maps from each of the above wireless carriers' websites, and description of services and bundles of services and rates charged by those carriers for their various bundles of services. In Exhibit B of the Application, Embarq provided the proposed tariff sheets classifying as competitive, residential services, other than exchange access, in the aforementioned exchanges. The instant tariff filing does not contain any rate increases.

In its *Order Directing Notice, Establishing Procedural Schedule, And Reserving Hearing Date*, the Commission wrote:

Accordingly, the Commission will direct its Staff to investigate this matter and to file a verified pleading stating for each exchange under consideration in this proceeding, whether the wireless and the facilities-based carrier has at least two residential customers whose addresses are located within that exchange. In addition, the staff shall state whether Embarq has local numbers available to those customers in the various exchanges.

Staff Investigation

On June 26, 2006, the Staff contacted counsel for or representatives of Comcast and various wireless carriers and requested line or customer counts, affirmed by affidavit, for each of the instant exchanges. Specifically, the wireless carriers were asked to state in the affidavit whether or not they had at least two residential customers in each of the following exchanges and that each of those customers had an address in that respective exchange: Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill. The facilities based wireline carrier, Comcast, was asked to provide customer counts and residential line counts in those exchanges.

Staff received affidavits from Comcast, Alltel, Sprint, T-Mobile and US Cellular.

Comcast

Comcast Phone of Missouri, L.L.C. (Comcast Phone), Comcast's certificated competitive local exchange telecommunications provider in Missouri, provided an affidavit in which it indicated it is not providing service to customers in the instant exchanges but that Comcast Digital Voice (Digital Voice), a non-certificated entity, an affiliate of Comcast Phone of Missouri, L.L.C., is providing, in its words, VoIP calling services to two or more residential customers in each of the following exchanges: Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill. Staff contacted Comcast for more information.

According to information ascertained in Staff's follow up, Digital Voice provides "all distance" service using Digital Voice's local facilities from the customer premise to the head-end (similar to a LEC central office). Digital Voice bills the end user for voice service and provides discounts to those customers that also take video or ISP services.

Comcast Phone provides Digital Voice with telephone numbers, collects and pays access and collects and pays USF and relay surcharges on behalf of Digital Voice. A Comcast entity owns an IP-based switch with all the functionality of a traditional Class 5 switch, but it was not clear which Comcast entity owns the switch.

The service provided by Digital Voice is similar to the local voice service provided by News Press and Gazette d/b/a St. Joseph Cable Vision in the exchanges of Agency, St. Joseph and Savannah. (See the Supplemental Direct Testimony of John Van Eschen, filed on September 23, 2005, in Case No. TO-2006-0093 for a description of the St. Joseph Cable Vision digital voice offering.)

The service provided by Digital Voice is also similar to the local voice service arrangement between Big River Telephone Company and SEMO in southeast Missouri exchanges. (See the Amended Direct Testimony of John Van Eschen beginning on page 15, filed on September 22, 2005, in Case No. TO-2006-0093 for a description of this voice service offering.)

The Commission granted SBC's request for competitive classification under the 30-day criteria in several exchanges based on the services provided by St. Joseph Cable Vision and the arrangement between Big River Telephone Company and SEMO in its Report and Order issued September 26, 2005 in Case No. TO-2006-0093.

Wireless Carriers

Sprint indicates it has at least two residential customers in each of the instant exchanges and Alltel (wireless) indicates it has two customers in each of the following: Oak Grove, Odessa and Pleasant Hill. (Alltel cannot identify these customers as either business or residential.) T-Mobile indicates it has two or more end users in each of the following: Oak Grove and Odessa. (T-Mobile does not identify them as business or residential customers.) U.S. Cellular indicates it does not have customers in any of the instant exchanges.

Affidavits from Comcast, Alltel, Sprint, T-Mobile, and U.S. Cellular are attached.

The Commission also directed, "... Staff shall state whether Embarq has local numbers available to those customers in the various exchanges." All of the exchanges in this case are in the Kansas City Metropolitan Calling Area (MCA). Specifically, Buckner and Lake Lotawana are in MCA Tier 3, Oak Grove and Pleasant Hill are in MCA Tier 4, and Odessa is in MCA Tier 5. Due to the nature of the MCA plan, subscribers to the MCA may call other MCA residents or subscribers, depending upon the MCA tier, at no additional charge. Consequently, should a land-line customer port her number when she changes service providers callers should still be able to make local calls to the customer without incurring toll charges. In addition, Embarq provided local exchange routing guide (LERG) information indicating local numbering resources are available in Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill. Furthermore, the LERG data indicates numbering assignments have been made to the certificated Comcast entity and to at least one wireless entity in each of the above identified exchanges.

Conclusion:

As a result of Staff's investigation, Staff finds an affiliate of Comcast is providing local voice service to at least two residential customers in the Embarq exchanges of Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill using in whole or in part, its own facilities consistent with Section 392.245.5(2), RSMo (Supp. 2005). Staff also found at least one wireless provider providing local voice service to at least two residential customers in each of the instant exchanges pursuant to Section 392.245.5(1), RSMo (Supp. 2005).

Recommendation:

Based on its investigation, Staff recommends the Commission approve Embarq's application for competitive classification of all residential services, except for exchange access, in Embarq's exchanges of Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill. Staff also recommends the Commission allow the associated tariff to take effect.


☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.

☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.

(☐ No annual report ☐ Unpaid PSC assessment. Amount owed:)

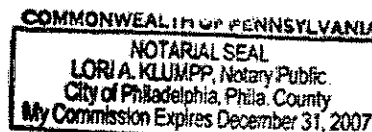
**AFFIDAVIT OF COMCAST PHONE OF MISSOURI, LLC
DBA COMCAST DIGITAL PHONE**

John G. Sullivan, of lawful age, on his oath states to the best of his knowledge and belief that: (1) Comcast Phone of Missouri, LLC dba Comcast Digital Phone is not currently providing end-user basic local telecommunications service to residential customers in the Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill exchanges, (2) an affiliate of Comcast Phone of Missouri, LLC, Comcast Digital Voice, which is a VoIP service provider, furnishes all-distance VoIP calling services to two or more residential customers in each of the Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill exchanges, and (3) a description of Comcast Digital Voice service, which is among VoIP service not yet classified by the FCC, is currently available at <http://www.comcast.com/Benefits/VoiceBenefits.aspx?LinkID=59>.


John G. Sullivan, Vice President

Lori A. Klinge
Notary Public

My commission expires December 31, 2007



ATTACHMENT 1

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

AFFIDAVIT OF KENNETH A. SCHIFMAN

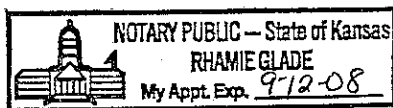
STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

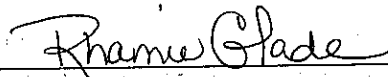
Kenneth A. Schifman, of lawful age, on his oath states: that (1) Sprint Spectrum L.P. and/ or Nextel West Corp. (collectively "Sprint") has two or more wireless residential customers who have addresses within the following Missouri telephone exchanges to the best of his knowledge and belief: Buckner, Lake Lotawana, Lone Jack, Oak Grove, Odessa, Pleasant Hill, St. Robert, Waynesville, and Lebanon.



Kenneth A. Schifman
Director, State Regulatory
Sprint Nextel Corporation

Subscribed and sworn to before me this 29th day of June, 2006.




Notary Public

My commission expires 9-12-08

RECEIVED

JUL 03 2006

AFFIDAVIT

STATE OF ARKANSAS)

) SS

COUNTY OF PULASKI)

UTILITY OPERATIONS
DIVISION

I, Lawrence J. Krajci, of lawful age, being first duly sworn upon my oath, state that I am the Staff Manager of External Affairs of Alltel Communications, Inc. ("Alltel"); and that the facts set forth below are true to the best of my knowledge, information and belief.

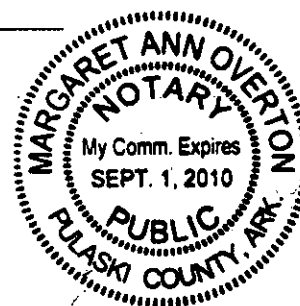
Alltel has two or more customers who have addresses within each of the following Missouri telephone exchanges: Oak Grove, Odessa, and Pleasant Hill. Alltel does not categorize its customers in its customer record system as "residential" or "business" customers and therefore cannot ascertain whether the customers are "residential" or "business" customers. Alltel does not have two or more customers at this time in the Buckner, Lake Lotowana, or Lone Jack exchanges.

Lawrence J. Krajci
Lawrence J. Krajci

Subscribed and sworn to before me this 30th day of June, 2006.

Margaret Ann Overton
Notary Public

My Commission expires: September 1, 2010



AFFIDAVIT OF TERI Y. OHTA

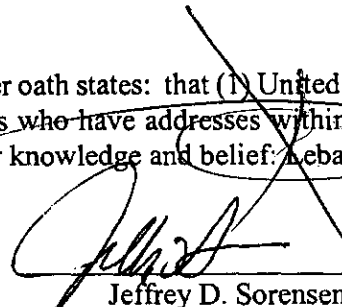


BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

AFFIDAVIT OF JEFFREY D. SORENSEN

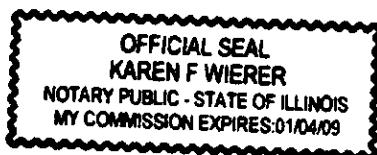
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Jeffrey D. Sorensen, of lawful age, on his/her oath states: that (1) United States Cellular Corporation has two or more residential customers who have addresses within the following Missouri telephone exchanges to the best of his/her knowledge and belief: Lebanon.



Jeffrey D. Sorensen
Regulatory Accounting Lead

Subscribed and sworn to before me this 26th day of June, 2006.





Notary Public

My commission expires January 4, 2009

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


In the Matter of the Application of)
Embarq Missouri, Inc., for Competitive)
Classification under Section 392.245.5,)
RSMo, 2005.)

IO-2006-0651

AFFIDAVIT OF WALT CECIL

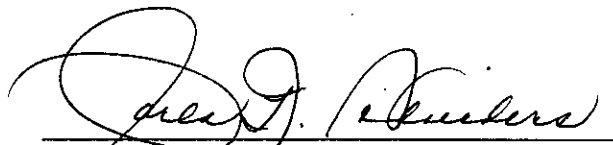
STATE OF MISSOURI)
)ss
COUNTY OF COLE)

Walt Cecil, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in the preparation of the accompanying memorandum and that the facts therein are true and correct to the best of his knowledge and belief.



Walt Cecil

Subscribed and affirmed before me this 10th day of July, 2006. I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on June 7, 2008.



NOTARY PUBLIC

