

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

In the Matter of the Review of the	)	
Competitive Classification of the Exchanges	)	Case No. IO-2008-0092
of Embarq Missouri, Inc., d/b/a Embarq	)	

**RESPONSE OF THE OFFICE OF THE PUBLIC COUNSEL TO STAFF REPORT**

The Office of the Public Counsel will refrain from detailing its position and its reminder to the Commission that the designation of competitive status under Section 386.245.5, RSMo 2000 (2005 Supp.) does not necessarily equate to economic competition that is robust enough to discipline prices, provide incentives for new options and improve service, all with the overriding goal of protecting the ratepayer and the public interest. Section 386.185 (6), RSMo 2000.

Public Counsel is pleased that the Staff can report that “A review of Embarq's rate increases shows the company has not increased basic local telecommunications service rates in competitively classified exchanges. Rate increases in non-competitively classified exchanges were within the limits of price cap regulation.” (Staff Report, p. 3) A listing of price increases for the company's services during the past two years sufficiently documents the pricing of Embarq’s reviewed services. (Schedule A) Embarq’s behavior at least reflects some measure of real competition.

Public Counsel has not made an independent investigation of the presence or continued presence of a “competitor” providing residential or business local basic service in Embarq’s exchanges. The source of data from PSC records used by the Staff is usually reliable and accurate as it can be under the circumstances of self-reporting without any fear of an audit.

However, Public Counsel is troubled by the Staff's report use of qualifying terms that suggests that certain relevant information was not verified, but "presumed" or "assumed".

“...Staff *presumes* Fidelity Communications I is continuing to provide residential service based on the relatively recent granting of competitive status for the exchange on August 30, 2007. In the other five exchanges (Buckner, Lake Lotawana, Oak Grove, Odessa, and Pleasant Hill) Comcast Digital Voice is identified as the CLEC providing service within the exchange. As noted in footnote 3 of Schedule C, *Staff has been unable to obtain line count information from Comcast Digital Voice*. At this time Staff *assumes* Comcast Digital Voice is continuing to provide residential services within these five exchanges. Staff also *assumes* at least one nonaffiliated wireless company continues to provide service within all competitively classified Embark exchanges. Such an *assumption* is consistent with Staff's analysis in Case No. TO-2007-0053, in the matter of the review of the competitive classification of the exchanges of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri.” (Staff Report, p.3) (*Emphasis added*).

The Commission should expect hard evidence; the existence of competition is not subject to a legal presumption, but its continuation must be demonstrated. If the companies in possession of line count information refuse to supply it to the Staff, the Commission should subpoena that information or seek other means to compel the production of that information so that the Commission can make its determination on facts rather than presumptions and assumptions by the Staff. Companies that hold themselves out as providing a public utility (even via other technology) should not be able to operate in this state, but yet refuse to cooperate with state regulators that are conducting a lawful and mandated investigation into the provision of that public utility service. The issue is the protection of the same pool of ratepayers and customers that these companies seek to serve as does the incumbent and other CLECs.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Michael F. Dandino**

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed or hand delivered this 13th day of November, 2007 to the following:

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**/s/ Michael F. Dandino**

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