

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

In the Matter of the Application of Comcast IP Phone)	
of Missouri, LLC for Certificate of Service Authority to)	
Provide Local Exchange and Interexchange)	Case No. LO-2008-0217
Telecommunications Service Throughout the State of)	
Missouri and to Classify the Company as Competitive)	

EMBARQ RESPONSE TO STAFF RECOMMENDATION

COMES NOW EMBARQ Missouri, Inc. ("Embarq") and submits its Response to Staff's Recommendation in the above-captioned case. In support, Embarq states as follows:

Executive Overview

The Staff's primary recommendation was that the Commission stay action on Comcast's application for local exchange and interexchange service until Comcast files an application for basic local telecommunication service. Embarq takes no position on this primary recommendation of Staff.

Staff's secondary recommendation was for the Commission to grant Comcast a certificate to provide local exchange and interexchange service in Embarq, SBC, CenturyTel and Spectra's service areas conditioned upon certain provisions regarding Comcast requested waivers. Staff recommended that the Commission grant all standard waivers requested by Comcast and Embarq has no objection to this recommendation.

Staff also recommended that the Commission grant four and reject 11 of the 15 additional waiver requests sought by Comcast; however, Embarq submits that two of the four waivers supported by Staff would place Embarq at an unfair competitive disadvantage and Comcast has failed to provide the Commission with good cause for these two waivers. As such, in addition to the 11 waiver requests that Staff recommends rejecting, the Commission should also reject

Comcast's two waiver requests associated with its "soft disconnect" policy. The four additional waiver requests made by Comcast that Staff recommended granting are: (1) certain electrical specifications for outside plant, (2) certain electrical characteristics of copper loops, (3) service discontinuance exception for medical emergencies, and (4) service discontinuance during normal business hours. Embarq submits that granting Comcast's waiver request for the two discontinuation of local telecommunication services rules would place Embarq at a substantial unfair competitive disadvantage. Therefore, Embarq respectfully disagrees with Staff on these two waiver requests and urges the Commission to reject the Comcast waivers request dealing with the "soft disconnect" process. Embarq does not object to the Commission granting Comcast waivers for the two additional waiver requests recommended by Staff dealing with certain electrical requirements.

Discussion

1. On December 31, 2007, Comcast IP Phone of Missouri, LLC, d/b/a Comcast Digital Voice ("Comcast") filed its application for a certificate of service authority to provide local exchange and interexchange telecommunications service and for competitive classification in the service areas of Embarq, SBC, CenturyTel and Spectra.

2. On January 7, 2008, the Commission issued a notice of Comcast's application for intrastate certificate of service authority and opportunity to intervene, indicating that parties wishing to intervene should do so by January 22, 2008. Moreover, the Commission's notice indicated that Comcast would be seeking the standard waivers as well as a request for certain *additional* waivers. On January 22, 2008, Embarq filed its Application to Intervene pursuant to Commission Rule 4 CSR 240-2.075 which governs intervention and on February 14, 2008, the Commission granted the Embarq Application.

3. On April 22, 2008, Staff issued its Recommendation regarding the Comcast Application. Staff's primary recommendation was for the Commission to stay action on Comcast's application for local exchange and interexchange service until Comcast files an application for basic local telecommunication service. Embarq takes no position on this primary recommendation of Staff. Staff's secondary recommendation, in the event the Commission chose not to stay action, was to approve the Comcast Application subject to certain conditions regarding the waiver requests. Specifically, Staff recommended the Commission grant Comcast's request for the standard CLEC waivers and Embarq has no objections. However, Comcast also requested 15 additional waivers for which Staff recommended approving four and rejecting eleven. Embarq concurs with Staff in its recommendation to reject 11 of the waiver requests, however, Embarq objects to the Commission approving two of the waiver requests that Staff recommends approving. Specifically, Embarq submits it would be at a substantial competitive disadvantage if the Commission grants waivers of **4 CSR 240-33.070 (6) (H)** (Item #13 on Staff's list of waiver requests), which requires notices of disconnection to inform customers of an exception for medical emergencies, and **4 CSR 240-33.070 (4)** (Item #14 on Staff's list), which requires written notice in first class mail to be sent prior to disconnection and prohibits disconnection from occurring during non-business hours and on the day before the LEC's business office is closed. Comcast has provided no justification for obtaining a waiver of these requirements, other than a suggestion that its current "soft disconnect" policy provides an adequate alternative to the safeguards in the rule. Embarq disagrees that Comcast has provided sufficient justification and good cause for these waivers, Embarq encourages the Commission to reject the waiver requests for **4 CSR 240-33.070 (6) (H)** and **4 CSR 240-33.070 (4)** because Comcast's "soft disconnect" policy is not a competitively neutral alternative.

4. Comcast is currently operating in the Embarq exchanges of Buckner, Odessa, Oak Grove, and Pleasant Hill. When discontinuation of service for non-payment is necessary for customers with medical emergencies, Embarq is required per 4 CSR 240-33.070 (6) (H) to allow an additional 21 days of full service for which Embarq is at extreme risk of non-payment and non-recovery. In other words, Embarq would be required to incur additional costs whereas its competitors would be allowed to limit its potential losses. Furthermore, Comcast's argument that its "national billing system lacks functionality" is not a sufficient demonstration of good cause to warrant a rule variance. Embarq operates in 18 states and has had to modify its national billing system a number of times to accommodate state specific requirements. Allowing Comcast to avoid Missouri-specific billing upgrades gives it yet additional cost advantages in a competitive marketplace. This is particularly inappropriate given that Comcast is a facilities-based carrier that now claims to be the nation's 4th largest provider of residential voice service, larger even than Embarq in the residential service market.¹ Specific to non-business hour disconnections, Embarq is required per 4 CSR 240-33.070 (4) to not discontinue service "on a day when the offices of a telecommunications company are not available to facilitate reconnection of basic local telecommunications service or on a day immediately preceding such day". Again, Comcast's alternative of a "soft disconnect" would provide it with an unfair cost advantage if it is allowed to disconnect on weekends, holidays, and after hours.

5. If Comcast's waiver requests are granted, the Commission would be providing Comcast with an unfair competitive advantage over Embarq as well as AT&T, and CenturyTel. In its Order and Report addressing the waiver requests of MediaCom (Case No. TE-2006-0415 -

¹ Comcast press release dated 1/8/08. In the most recent Fortune 500 ranking, Comcast was ranked No. 79, with annual revenues of approximately \$31 billion. In contrast, Embarq ranked No. 381, with annual revenues of approximately \$6 billion. http://money.cnn.com/magazines/fortune/fortune500/2008/full_list/

issued July 24, 2007), the Commission appropriately rejected waiver requests where they could provide an unfair competitive advantage. In its Order, the Commission stated the following:

Finally, because there is a cost involved for any company providing voice service to comply with the Commission's five-day installation standard, granting MCC Telephony's request could give it an unfair competitive advantage over other companies providing voice service (emphasis added)

Other than the standard CLEC waivers, any additional waiver request must take the competitive consequences into consideration. Staff appropriately recommended the Commission reject 11 of the 15 additional waiver requests made by Comcast and Embarq supports Staff as Comcast has failed to sufficiently demonstrate good cause. Embarq agrees with Staff but further submits that Comcast has failed to sufficiently demonstrate good cause for the two additional waiver requests associated with its "soft disconnect" policy.

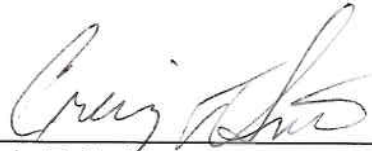
6. Embarq does not necessarily object to a "soft disconnect" per se, not as an alternative means of addressing the concerns embodied in the current rules. Rather, Embarq objects to granting an unfair competitive advantage to a single carrier. If the "soft disconnect" procedure is an acceptable alternative to 4 CSR 240-33.070 (6) (H), 4 CSR 240-33.070 (4) and possibly other Commission rules, the Commission should investigate this new alternative policy and make it available to other interested carriers in Missouri through the normal rulemaking process, which would allow for parity in the application of the Commission rules. Such a process would allow for an appropriate examination of a number of relevant policy questions, including questions that are particularly pertinent in the context of Comcast's specific request, but which so far do not appear to have been addressed. For example, Staff's recommendation notes that the Comcast "soft disconnect" policy stays in effect for "approximately two weeks" (emphasis added), but it is unclear whether Comcast would have the ability to shorten or even eliminate its "soft disconnect" policy, which would provide it with yet additional unfair cost

advantages. A rule of general applicability would provide certainty regarding the duration of any "soft disconnect." Other questions include whether a "soft disconnect" policy with access only to 911 satisfies the policy objectives of the current rule that are met by full phone service for three weeks for persons with medical emergencies, or should those policy objectives be modified? Are customers properly notified that they will be placed in a "soft disconnect" and that they will have access to 911 while in the "soft-disconnect" status? These are critical issues that the Commission should take into consideration. Opening a generic review of the Commission's rules would allow for all interested parties to participate fully and for the Commission to have the benefit of all views, but more importantly it would avoid the competitive disparity of granting relief from the current rules to only one carrier.

WHEREFORE, for the foregoing reasons, Embarq respectfully requests that the Commission reject Comcast's waiver requests as described herein and issue an Order consistent with Embarq's Response.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served on the following parties by first-class mail, this 30th day of April 2008.

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