

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

In the Matter of Embarq Missouri Inc. Application )	
for Competitive Classification Under Section )	<u>Case No. TO-2009-0061</u>
392.245.5 RSMo (2008). )	Tariff File No. YI-2009-0174

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”),  
and for its recommendation respectfully states as follows:

1. On August 28, 2008, Embarq Missouri, Inc. (“Embarq” or “Company”) filed, under Section 392.245.5 RSMo,<sup>1</sup> an Application For Competitive Classification with the Missouri Public Service Commission (“Commission”). By its Application, Embarq sought: a) competitive classification for all *residential services*, other than exchange access services, in the Company’s Lone Jack exchange; and b) competitive classification for all *business services*, other than exchange access services, in a total of forty-three (43) exchanges (including Lone Jack). Along with its Application, Embarq filed two proposed tariff sheets bearing an effective date of October 28, 2008.

2. On October 7, 2008, Embarq filed an Amended Application For Competitive Classification (“Amended Application”), in which it reduced the number of exchanges for which it seeks competitive classification of its business services to thirty-eight (38). In a concurrently filed Motion To Amend Application, Embarq explained that it had removed the Chilowee, Clarksburg, Craig, Deep Water, and Syracuse exchanges from its original request, and that the effect of the amendment is to narrow the scope of

---

<sup>1</sup> The statute reflects the enactment of HB 1779, which became effective August 28, 2008.

the relief sought and to reduce the number of issues in the case. Along with its Amended Application, the Company filed one substitute tariff sheet to reflect the changes.

3. On October 14, 2008, the Company filed a Second Amended Application For Competitive Classification (“Second Amended Application”), with an accompanying Motion To Amend Amended Application. The purpose of these October 14 filings was to further reduce the number of exchanges for which Embarq seeks competitive classification of its business services from thirty-eight (38) to thirty-five (35), by removing the Hardin, Hopkins, and Ionia exchanges from the request. On October 15, Embarq filed a substitute tariff sheet consistent with its Second Amended Application.

4. In an order issued October 1, 2008, the Commission, among other things, directed the Staff to file a recommendation concerning this matter no later than October 15, 2008.

5. Section 392.245.5 RSMo (2008) provides, in relevant part:

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 or residential 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

\* \* \*

(6) . . . 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.

6. The Staff notes that, as a result of the enactment of HB1779 (effective on August 28, 2008), the last sentence quoted above no longer includes language authorizing the Commission to reject such an application if it finds the requested competitive classification to be contrary to the public interest.

7. In the attached Memorandum (Appendix A), the Staff recommends Commission approval of Embarq's request, as reflected in its Second Amended Application, as well as approval of the following proposed tariff sheets:

P.S.C. Mo. No 22; Section 16; 10<sup>th</sup> Revised Page 23, Replacing 9<sup>th</sup> Revised Page 23  
P.S.C. Mo. No 22; Section 16; Original Page 24, as substituted on October 15, 2008

**WHEREFORE**, the Staff respectfully recommends that the Commission issue an Order granting Embarq's request for: a) competitive classification for all *residential services*, other than exchange access services, in the Company's Lone Jack exchange; b) competitive classification for all *business services*, other than exchange access services, in a total of thirty-five (35), as set out in the Company's October 14, 2008 Second Amended Application; and c) approval of the two proposed tariff sheets identified in the Staff's Memorandum, to be effective October 28, 2009, as requested by Embarq.

Respectfully submitted,

/s/ Dennis L. Frey

Dennis L. Frey

Senior Counsel

Missouri Bar No. 44697

Attorney for the Staff of the

Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-8700 Telephone)

(573) 751-9285 (Fax)

denny.frey@psc.mo.gov

### **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 15th day of October 2008.

/s/ Dennis L. Frey