

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. TO-2009-0061
Tariff File No. YI-2009-0174
Embarq Missouri, Inc.

From: William Voight
Telecommunications Department

Subject: Staff Recommendation to Approve Tariff Sheets Designating Certain Telephone Exchange Areas Competitive

Date: October 15, 2008

On August 28, 2008, Embarq Missouri, Inc. (Embarq) filed an application to receive competitive classification for residential telephone service in the Lone Jack exchange. Additionally, Embarq requested competitive classification for all of its business services (except exchange access service) in 43 exchanges listed in its Application. On October 7, Embarq amended its Application by deleting Chilhowee, Clarksburg, Craig, Deep Water, and Syracuse from its request, and on October 14, Embarq filed a second amendment in which it deleted Hardin, Hopkins, and Ionia from its request. On October 15, Embarq filed a substitute tariff sheet deleting the eight above referenced exchange areas from the list of exchanges for which it is seeking competitive status. With the deletions, Embarq requests that business telephone service in 35 of its exchange areas (including Lone Jack) be classified as competitive and that one exchange area, Lone Jack, be declared competitive for residential purposes.

In support of its Application, Embarq provided customer line counts from one or more providers of competitive local exchange service in each exchange. This information was verified and supplemented by competitive local exchange company annual report filings maintained by the Commission. Staff wishes to note that the Ft. Leonard Wood, Lake Lotawana, and Weston exchanges were deemed competitive for residential services in previous cases and that with passage of H.B. 1779, these areas may now be deemed competitive for business services. In addition to the presence of one landline carrier, the revised Application also relies on the presence of at least one wireless carrier for the Eugene, Missouri City, Pickering, Russellville and Wellington exchanges. These exchange areas have optional or mandatory extended area service dialing arrangements which enable landline subscribers to dial wireless carriers without the necessity of making a toll call. Lastly, cable TV telephony information from highly classified annual reports submitted to the Commission was used by the Staff to supplement Embarq's data for the Newburg and Lone Jack exchange areas. In summary, Embarq's Application and Staff's supplemental data confirm the presence of at least two providers of local voice service in the requested exchange areas.

Staff also notes that to a large extent Embarq is relying on a particular form of resale, denoted “pure” resale, in support of its Application. Resale arrangements are sometimes labeled slightly differently depending on the rate structure applied to the competitor for use of the incumbent’s facilities. For example, the rate structure for a pure resale arrangement is based on a percentage discount from the incumbent’s retail rates. In contrast, another resale arrangement, commonly referred to as an unbundled network element platform (UNE-P) arrangement, is based on specific rates for various network elements (such as the loop and port) used to provide the resold service. From the Staff’s perspective, when measuring the extent of competition, there is little or no practical difference. In either case, the end result involves a complete reliance on the incumbent’s facilities to provide telephone service.

An extensive reliance on “pure” resale to gain competitive status is a matter which has not previously been presented to the Commission. However, in response to Southwestern Bell’s 60-day competitive request in Case No. TO-2006-0102, the Commission granted competitive status to exchanges based on competition from carriers leasing unbundled network elements (i.e. UNE-P). As stated:

Thus, under a 60-day track, the Commission counts as competitors those using the facilities of other companies, including those using the I-LEC’s facilities, and those providers (such as VoIP) that use an unaffiliated company’s broadband network (Report and Order, page 13).

Thus, while the Commission has previously included “other” resale (meaning UNE-P) as permissible under a 60-day track, use of “pure” resale under a 60-day track is a case of first impression before the Commission.

Lastly, the Staff calls attention to changes contained within House Bill 1779 that appear to limit the Commission’s discretion to evaluate and apply a public interest standard to 60-day applications for competitive status. Specifically, the following bracketed words were removed from Subsection 5 (6) of Section 392.245. “The commission shall approve such petition within sixty days [unless it finds that such competitive classification is contrary to the public interest].”

Given the Commission’s previous reliance on UNE-P as a qualification for the 60-day track, and given that HB 1779 appears to have removed any public interest standard from the Commission’s consideration, the Staff recommends approval of Embarq’s request for competitive classification. The specific tariff sheets recommended for approval are:

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

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

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Case No. TO-2009-0061

AFFIDAVIT OF William Voight

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

William Voight, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he/she has participated in preparing the accompanying Staff Recommendation, and that the facts therein are true and correct to the best of his/her knowledge and belief.

Bill Voight

WILLIAM VOIGHT

Subscribed and affirmed before me this 15th day of October 2008.



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

Susan L. Sundermeyer

NOTARY PUBLIC