

# **BEFORE THE PUBLIC SERVICE COMMISSION**

## **OF THE STATE OF MISSOURI**

In the Matter of Embarq Missouri, Inc.'s Application for     )  
Competitive Classification under Section 392.245.5     ) **Case No. TO-2007-0301**  
RSMo (2005)     )

### **ORDER DIRECTING NOTICE, ESTABLISHING**

### **PROCEDURAL SCHEDULE, AND RESERVING HEARING DATE**

Issue Date: February 14, 2007

Effective Date: February 14, 2007

On February 8, 2007, Embarq Missouri, Inc. ("Embarq") filed its verified Application for Competitive Classification pursuant to Section 392.245.5, RSMo Cum. Supp. 2005. In its Application, which includes a revised tariff sheet with an effective date of March 10, 2007, Embarq requests that the Commission classify the business services Embarq offers in its Lebanon exchange, other than exchange access services, as competitive.

Section 392.245.5(6), RSMo Cum. Supp. 2005, provides that when an incumbent local exchange telecommunications company requests competitive classification of its business services, the Commission must determine, within thirty days of the request, "whether the requisite number of entities are providing basic local telecommunications service to business . . . in an exchange and if so shall approve tariffs designating all such business . . . services other than exchange access service, as competitive within such exchange." Because of the need to proceed expeditiously, the

Commission will issue notice, set a procedural schedule, and reserve a date for a hearing if one should become necessary, as set out below.

Section 392.245.5, RSMo Cum. Supp. 2005, also provides, in pertinent 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 customers within the exchange.

Accordingly, the Commission will direct its Staff to investigate this matter and to file a verified pleading stating whether there are at least two carriers serving Embarq's Lebanon exchange<sup>1</sup> who are not affiliated with Embarq but provide basic local phone service to business customers located within that exchange. In addition, Staff shall state whether the competing carriers have local numbers available for use by business customers in the Lebanon exchange.

If a hearing becomes necessary, the following procedures will apply:

(A) The Commission will require all parties to prefile testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing. The parties will be allowed to present rebuttal witnesses at the hearing.

(B) The Commission will direct that the transcript be expedited and submitted within **one business day** of the hearing.

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<sup>1</sup> See Sections 392.245.5(1) and (2), RSMo Cum. Supp. 2005.

(C) Because much of the evidence will have been filed before the hearing, the Commission will require pretrial briefs that address all the issues in dispute and all the relevant prefiled testimony. Because of the expedited nature of the hearing, no post-trial briefs will be allowed. The Commission will allow the opportunity for closing arguments at the end of the hearing.

(D) Each party shall file with its brief a list of the witnesses it expects to call and the order in which they will be called.

(E) Each party is required to bring an adequate number of copies of exhibits that it intends to offer into evidence at the hearing. If an exhibit has been prefiled, and served on the other parties, only one copy of the exhibit is necessary for the court reporter. If an exhibit has not been prefiled, the party offering it shall bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Presiding Judge, and all counsel.

(F) Each party must file proposed findings of fact and conclusions of law, including citations to prefiled testimony and other evidence.

If no hearing is requested, the Commission may make its determination based on the verified pleadings and recommendation of its Staff.<sup>2</sup>

**IT IS ORDERED THAT:**

1. The Data Center of the Missouri Public Service Commission shall send notice of this Application to all certificated competitive local exchange carriers and to all incumbent local exchange carriers in the state of Missouri.

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<sup>2</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).

2. The Public Information Officer of the Missouri Public Service Commission shall provide notice of this Application to the members of the General Assembly and to the news media.

3. Any party wishing to intervene in this matter must file an application no later than February 20, 2007, with:

Colleen M. Dale, Secretary  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102-0360

with a copy served on:

Linda K. Gardner  
5454 West 110th Street  
KSOPKJ0401  
Overland Park, Kansas 66211

Attorney for Embarras Missouri, Inc.

and:

Office of the Public Counsel  
Post Office Box 2230  
Jefferson City, Missouri 65102-2230

4. Any responses by any party to requests for intervention shall be filed no later than February 23, 2007.

5. The Staff of the Missouri Public Service Commission shall, after promptly investigating this matter, file any objections to and a verified recommendation regarding Embarras Missouri, Inc.'s Application no later than February 23, 2007.

6. The Office of the Public Counsel and any other interested party shall file any objections to Embarras Missouri, Inc.'s Application no later than February 23, 2007.

7. If an objection is filed, the following additional procedural dates will apply:

Testimony – all parties

February 27, 2007

Pretrial Briefs, List of Witnesses,  
and Proposed Findings of Fact

March 2, 2007

The parties are hereby notified that if any party opposes Embark Missouri, Inc.'s Application, a hearing will be set for Monday, March 5, 2007, beginning at 9:00 a.m., in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, which meets accessibility standards required by the Americans with Disabilities Act. Any party needing additional accommodations to participate in this hearing should call the Missouri Public Service Commission's Hotline at 800-392-4211 or dial Relay Missouri at 711 at least 48 hours in advance of the hearing.

8. If a hearing is held, the transcript will be expedited to be filed within **one business day** following the hearing.

9. Each party shall comply with the procedural requirements set out in the body of this order.

10. This order shall become effective on February 14, 2007.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Benjamin H. Lane, Regulatory  
Law Judge, by delegation of authority  
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 14th day of February, 2007.