

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 GRANTING EMBARQ MISSOURI, INC.'S MOTION TO CANCEL REMAINDER OF PROCEDURAL SCHEDULE

Issue Date: March 1, 2007

Effective Date: March 1, 2007

On February 8, 2007,¹ Embarq Missouri, Inc. ("Embarq") filed its verified Application for Competitive Classification pursuant to Sections 392.245.5 and 392.245.5(6), RSMo Cum. Supp. 2005, in which it requested that the Commission classify the business services Embarq offers in its Lebanon exchange, other than exchange access services, as competitive.

On February 14, the Commission entered its Order Directing Notice, Establishing Procedural Schedule, and Reserving Hearing Date. Among other things, this order established a full procedural schedule and reserved Monday, March 5, for an evidentiary hearing on Embarq's application should the Commission receive an objection to the application by any party. According to the procedural schedule, the parties' pre-filed testimony was due February 27; pretrial briefs, witness lists, and proposed findings of fact were due Friday, March 2; and the hearing itself was to be conducted on Monday, March 5.

¹ Unless otherwise specified, all dates refer to the year 2007.

On February 20, Fidelity Communication Services I, Inc. (“Fidelity”) filed an Application to Intervene pursuant to Commission Rule 4 CSR 240-2.075 and requested an evidentiary hearing on the merits of Embarq’s application. There were no other requests for intervention, or for a hearing. On February 23, Fidelity filed its formal written objections to Embarq’s application, in which it renewed its request for a hearing. The same day, Staff filed its verified recommendation in favor of approving Embarq’s application.

The Commission granted Fidelity’s request to participate fully in this matter as an intervening party in an order dated February 26. Later that day, Fidelity filed a pleading withdrawing its objections to Embarq’s application. On February 27, Staff and Embarq pre-filed direct testimony from their witnesses in this matter.

Also on February 27, Embarq filed a Motion to Cancel Remainder of Procedural Schedule originally established in the Commission’s order of February 14 in light of the facts that no party now objects to Embarq’s application and no party is now requesting a hearing. The motion suggests that the pre-filed testimony already submitted by Staff and Embarq be admitted into evidence without the necessity of the witnesses taking the stand or being cross-examined,² and that the Commission decide this matter on the basis of Embarq’s verified application, Staff’s verified recommendation, and the pre-filed testimony. Embarq further suggests that, should the Commission desire, it would be amenable to participating in an on-the-record conference with the Commissioners on March 5, a mechanism which has been used in the past when there are Commissioner questions but no opposition between or among the parties. Embarq advises that Staff supports Embarq’s motion, and that Fidelity does not oppose it.

² Indeed, the motion avers that both Staff and Embarq “waive cross-examination of each other’s witnesses.”

After carefully considering Embarq's motion, which is consistent with past Commission practice in adjudicating uncontested applications for competitive classification under Section 392.245.5, RSMo Cum. Supp. 2005,³ the Commission shall grant it. The Commission also advises the parties that no on-the-record conference is necessary.

IT IS ORDERED THAT:

1. Embarq Missouri, Inc.'s February 27, 2007 Motion to Cancel Remainder of Procedural Schedule is granted. Accordingly:

(a) The parties are not required to submit pretrial briefs, witness lists, and proposed findings of fact by Friday, March 2, 2007.

(b) No evidentiary hearing will be conducted on Monday, March 5, 2007.

(c) The Commission shall decide this case on the basis of Embarq Missouri, Inc.'s verified application, Staff's verified recommendation, and the pre-filed testimony submitted on February 27, 2007.

³ See, e.g., Order Granting Competitive Classification, *In the Matter of Sprint Missouri Inc.'s Application for Competitive Classification Under Section 392.245.5 RSMo (2005)*, Case No. TO-2006-0375 (Apr. 20, 2006) (application granted based on verified application and verified Staff Recommendation without evidentiary hearing or on-the-record conference with the Commissioners where there were no objections to the application by any party).

2. This order shall become effective on March 1, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

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 1st day of March, 2007.