

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

In the Matter of Embarq Missouri, Inc.)
Application for Competitive Classification)
Under Section 392.245.5 RSMo (2005))

Case No. TO-2008-0147

**CONCURRING OPINION OF COMMISSIONER
ROBERT M. CLAYTON III**

This Commissioner concurs in the Order authorizing competitive classification for a number of exchanges in Embarq's service territory. Embarq's request for reclassification includes three exchanges in which residential service is at issue and one exchange involving business service. This Commissioner concurs in the Order with regard to the residential service as the minimal statutory criteria have been firmly established in the record for Fort Wood, St. Robert and Waynesville. While this Commissioner may have a concern about the real presence of competition in the exchange and the potential that the market will not adequately discipline prices, the statute mandates reclassification and the application should be approved.

However, this Commissioner must express concern about the business customers located in Warrensburg. The statute authorizing reclassification reads that,

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. (emphasis added) Section 392.245.5, RSMo. 2007.

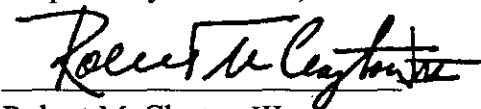
The statute further reads that,

Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the required number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access, as competitive within such exchange. (emphasis added) Section 392.245.5(6), RSMo. 2007.

The evidence establishes that wireless service is offered with local number availability or dialing to more than one customer in the exchange. However, the evidence shows that only one customer is served by a competitive wireline provider in the exchange. The statutes cited above mandate that providers must be offering service to customers, meaning more than one customer. Both statutes require the presence of more than a single customer receiving competitive business service. In this case, the evidence presented identifies a single business customer. Because the evidence does not firmly establish this minimal element in the grant of competitive classification, business customers of Warrensburg should continue to receive the benefits of some degree of price regulation. Without the presence of providers offering a sufficient level of competition, business customers may be subject to the abuses of an undisciplined and underserved market.

For the foregoing reasons, this Commissioner concurs in part and dissents in part.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Clayton III", written over a horizontal line.

Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 18th day of December, 2007.