

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Embark Missouri Inc.           )  
Application for Competitive Classification    )  
Under Section 392.245.5, RSMo 2008         )

**Case No. TO-2009-0061**

## OFFICE OF THE PUBLIC COUNSEL'S STATEMENT OF NO OBJECTION TO STAFF RECOMMENDATION

The Office of the Public Counsel states to the Public Service Commission of Missouri that it will not object to or contest Staff's recommendation, and will not request an evidentiary hearing.

Public Counsel recognizes that amendments to Sections 392.200, 392.245, 392.500 and other sections directly related to the regulation of telecommunication companies have reduced the threshold for "competition" that justifies reclassification of price cap regulated exchanges to competitive exchanges. At the beginning of local competition, "effective competition" was the standard for a declaration that sufficient market forces existed to reduce regulation of the monopoly incumbent companies. That standard can still be found in Missouri's telecommunications law, its guideposts for competitive analysis unchanged by later legislation:

Section 386.020 (13) "Effective competition" shall be determined by the commission based on:

(a) The extent to which services are available from alternative providers in the relevant market;

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;

(c) The extent to which the purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in section 392.185, RSMo, are being advanced;

(d) Existing economic or regulatory barriers to entry; and

(e) Any other factors deemed relevant by the commission and necessary to implement the purposes and policies of chapter 392, RSMo;

But the application of “effective competition” was abandoned and replaced by a simple count of entities offering communications services that have a customer in the incumbent’s territory.

In the last legislative session, HB 1779 further lowered the threshold so that any public interest investigation and analysis to ensure that the reclassification was not contrary to the public interest was deleted from the law.

WHEREFORE, Public Counsel will not object to or oppose the Staff’s recommendation.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Michael F. Dandino**

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed, emailed and/or hand delivered this 20th day of October, 2008 to the following attorneys of record:

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**/s/ Michael F. Dandino**

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