

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. TO-2008-0028 Tariff Filing: YI-2008-0080

From: Mike Scheperle /s/ 8-2-07
Telecommunications Department

Natelle Dietrich /s/ 8-2-07 William K Haas /s/ 8-2-07
Utility Operations Division/Date General Counsel's Office/Date

Subject: Recommendation to approve Embarq Missouri, Inc, (Embarq) 30-day competitive classification filing and corresponding tariff filing.

Date: 8-2-07

Summary:

Staff recommends granting the Application of Embarq Missouri, Inc. (Embarq) requesting competitive classification of its residential services (other than exchange access service) in the Lebanon exchange. At this time, Staff concludes Embarq meets the requirements of Section 392.245.5 RSMo (2005): there exists at least one nonaffiliated wireless carrier providing facilities-based service with customers within the Lebanon exchange with telephone numbers assigned to the exchange, and one nonaffiliated wireline carrier with customers within the Lebanon exchange with telephone numbers assigned to the exchange.

Background:

On July 25, 2007, Embarq, an incumbent local exchange carrier (ILEC), filed an application requesting competitive classification for residential services, other than exchange access service, in the Lebanon exchange.

Along with the application, Embarq submitted a tariff page (Exhibit C) to classify residential services, other than exchange access service, in the Lebanon exchange as competitive. However, there was no issue date or effective date on the tariff page. Subsequently, Embarq submitted tariff filing YI-2008-0080 in conjunction with Embarq's filing for competitive classification for residential services, other than exchange access services, in the Lebanon exchange effective August 30, 2007.

Embarq requested that competitive classification be granted pursuant to the thirty day section of Section 392.245.5, RSMo (Supp. 2005). The relevant portion of the statute reads as follows:

5. 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. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. For purposes of this subsection:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such nonaffiliated provider shall be considered as providing basic local telecommunications service within an exchange;

(2) Any entity providing local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the commission. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider. For purposes of this subsection only, a "broadband network" is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(6) 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 requisite 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 service, as competitive within such exchange.

...

The commission shall maintain records of regulated providers of local voice service, including those regulated providers who provide local voice service over their own facilities, or through the use of facilities of another provider of local voice service. In reviewing an incumbent local exchange telephone company's request for competitive status in an exchange, the commission shall consider their own records concerning ownership of facilities and shall make all inquiries as are necessary and appropriate from regulated providers of local voice service to determine the extent and presence of regulated local voice providers in an exchange.

Embarq's Application

In its application for competitive status on the thirty-day track, Embarq named Fidelity Communications Services, I, Inc. (Fidelity) as an entity offering local phone service in whole or in part to residential customers in direct competition with Embarq in Embarq's Lebanon exchange. In support of this claim, Embarq states that it "has experienced residential customer loss to Fidelity in its Lebanon exchange." Embarq states that "Fidelity is now offering residential service to more than twenty customers."

In further support of its application, Embarq stated that it "has numerous non-affiliated wireless providers operating in its Lebanon exchange providing local service". In Embarq's application, Embarq listed the following wireless carriers providing local service to customers in Embarq's Lebanon exchange: Sprint Nextel, Cingular, Verizon, Alltel, T-Mobile, and US Cellular. Exhibit A of Embarq's application includes coverage maps of the wireless carriers' websites as evidence of the wireless carriers providing service in the Lebanon exchange.

Exhibit C of the application contains Embarq's proposed tariff page reflecting the residential competitive classification for the Lebanon exchange. Embarq's application for residential competitive classification does not request any price changes for the Lebanon exchange. However, Embarq's tariff page did not include an issue or effective date. Subsequently, Embarq filed a proposed tariff page in Tariff Filing YI-2008-0080 effective August 30, 2007.

Staff Investigation

In its *Order Directing Notice, Establishing Procedural Schedule, and Reserving Hearing Date*, the Commission wrote:

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 who are not affiliated with Embarq but provide basic local phone service to residential customers located within that exchange. In addition, Staff shall state whether the competing carriers have local numbers available for use by residential customers in the Lebanon exchange.

The Telecommunications Department Staff (Staff) contacted carriers cited by Embarq as qualifying the Lebanon exchange for competitive status for residential services other than exchange access service. Carriers were asked to provide an affidavit stating whether the carrier has at least two residential customers with addresses located within the Lebanon exchange. Also, Staff reviewed Local Exchange Routing Guide (LERG) information for the Lebanon exchange.

Fidelity (a CLEC) submitted to Staff an affidavit on August 1, 2007 stating its residential customer line counts as of July 25, 2007 for the Lebanon exchange. The affidavit submitted by a Fidelity official affirming the company serves at least two residential customers with addresses located in the Lebanon exchange. A Fidelity official affirmed that it was providing facility-based service to residential customers in the Lebanon exchange. Attachment A is Fidelity's affidavit response.

Staff also contacted wireless carriers cited by Embarq in its application. Staff asked each wireless carrier to provide an affidavit stating whether the carrier has at least two residential customers with addresses located within the Lebanon exchange. Attachment B are affidavit responses from wireless carriers. Staff received these affidavit responses:

- An Alltel representative affirmed that Alltel has two or more customers who have addresses within the Lebanon telephone exchange.
- A US Cellular representative affirmed that US Cellular has two or more residential customers who have addresses within the Lebanon telephone exchange. For the Lebanon exchange, wireline customers can place local calls to US Cellular subscribers residing within that exchange.

Staff also requested information from the Local Exchange Routing Guide, or LERG, from Embarq for the Lebanon exchange, which Embarq provided. The LERG provides a variety of information; however most notably it identifies telephone numbers assigned to specific carriers within an exchange. The LERG pages are attached as Attachment C. Attachment C shows that United States Cellular Corp., Alltel Communications, Nextel Communications, Inc., New Cingular Wireless PCS, Sprint Spectrum L.P., and Fidelity Communications Services I have telephone numbers that are rated as local to the Lebanon exchange.

Conclusion:

As a result of Staff's investigation, Staff concludes there is a wireline carrier other than the ILEC providing facilities-based service serving at least two residential customers (Fidelity) whose addresses are located in the Lebanon exchange with telephone numbers rated as local to the Lebanon exchange. Staff also concludes there are wireless carriers (Alltel, US Cellular) with at least two residential customers whose addresses are located in the Lebanon exchange with telephone numbers rated as local to the Lebanon exchange. In addition, carrier's affidavit verification and LERG information verifies that competing carriers have local numbers available for use by residential customers in the Lebanon exchange.

Staff has no objection to the application and tariff filing. Staff recommends the Commission approve the application. Staff further recommends the Commission approve the tariff filing to be effective August 30, 2007.

Embarq P.S.C. MO. No. 22 Section 16

Fifth Revised Page 23 Cancels Fourth Revised Page 23

- ☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.
☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.
(☐ No annual report ☐ Unpaid PSC assessment. Amount owed:)

Dave Beier,

Embarq has filed Case No. TO-2008-0028 before the Missouri Public Service Commission. In this case Embarq is requesting competitive status for residential service in the Lebanon exchange. Embarq is claiming Fidelity Communications Services I provides local phone service to residential customers in the Lebanon exchange.

I would like to have a written response, along with a signed affidavit, for the following information:

1. For the Lebanon exchange, state whether Fidelity Communications Services I is currently providing service to at least two residential customers within that exchange.
2. Please provide residential customer and line counts for the Lebanon exchange as of July 25, 2007.

Attached is a draft affidavit and excel file for your use so that the Commission's staff can have written support for its conclusions in this case. Please, if possible, complete this affidavit and excel file, editing as necessary, as soon as you can and return it to us. A fax or scanned copy is fine as long as it is followed up with an original. If you need to make substantive edits, please let me know so I can verify that even with the edits, the information is still useful for this case.

In order to meet the Commission's deadline I need the information by Wednesday, August 1st. If you have any questions, let me know. Thank you in advance for your assistance.

Mike Scheperle
Economist, Telecommunications Department
Missouri Public Service Commission
(573) 751-5054
Mike.scheperle@psc.mo.gov

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

AFFIDAVIT OF DAVE BEIER

STATE OF MISSOURI)
) ss
COUNTY OF FRANKLIN)

Dave Beier, of lawful age, on his oath states: that (1) Fidelity Communications Services I, Inc. has two or more residential customers who have addresses within the Lebanon telephone exchange to the best of his knowledge and belief.

Dave Beier

Dave Beier

VP - Regulatory

VP - Regulatory

Subscribed and sworn to before me this 1 day of August, 2007.

Hannah Zelch

Notary Public

My commission expires *Aug. 8, 2009*



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Of Attachment A

Deemed Proprietary

In its entirety

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

AFFIDAVIT

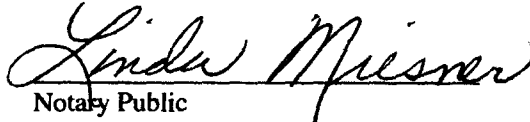
STATE OF ARKANSAS)
) SS
COUNTY OF PULASKI)

I, Lawrence J. Krajci, of lawful age, being first duly sworn upon my oath, state that I am the Staff Manager of State Affairs of Alltel Communications, Inc. ("Alltel"); and that the facts set forth below are true to the best of my knowledge, information and belief.

Alltel has two or more customers who have addresses within the Lebanon, Missouri telephone exchange.


Lawrence J. Krajci

Subscribed and sworn to before me this 30 day of July, 2007.


Notary Public

My Commission expires: 02-18-2010





BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI


AFFIDAVIT OF JEFFREY D. SORENSEN

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Jeffrey D. Sorensen, of lawful age, on his/her oath states: that (1) US Cellular has two or more residential customers who have addresses within the Lebanon telephone exchange to the best of his/her knowledge and belief.


For the Lebanon exchange, wireline customers can place local calls to US Cellular subscribers residing within that exchange.


Jeffrey D. Sorensen


Regulatory Accounting Supervisor

Subscribed and sworn to before me this 27 day of July, 2007.




Notary Public

My commission expires June 6, 2009

SETH W. BROWN, Mayor
Chicago, IL 60601-1150
Tel: 312/554-5903 Fax: 312/554-5905
www.usccell.com

Attachment C

Deemed

Proprietary

In its entirety

**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 RSMo. (2005))

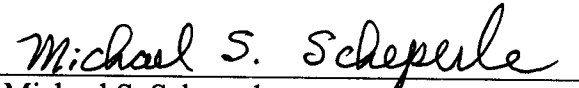
Case No. **TO-2008-0028**

Tariff File **YI-2008-0080**

AFFIDAVIT OF Michael S. Scheperle

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Michael S. Scheperle, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in the preparation of the accompanying document, and that the facts therein are true and correct to the best of his knowledge and belief.



Michael S. Scheperle

Subscribed and affirmed before me this 2nd day of August 2007

I am commissioned as a notary public within the County of Callaway, State of Missouri

and my commission expires on 9-21-10



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



NOTARY PUBLIC