

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) **Case No. TO-2008-0380**
RSMo. (2005))

ORDER DIRECTING NOTICE, ESTABLISHING **PROCEDURAL SCHEDULE, AND RESERVING HEARING DATE**

Issue Date: June 4, 2008

Effective Date: June 4, 2008

On June 3, 2008, Embarq Missouri, Inc. (“Embarq”) filed its verified Application for Competitive Classification pursuant to Section 392.245.5, RSMo Cum. Supp. 2007. In its Application, which includes a revised tariff sheet with an effective date of July 3, 2008,¹ Embarq requests that the Commission classify the business services Embarq offers in its Buckner, Odessa, Oak Grove, Pleasant Hill and Salem exchanges, other than exchange access services, as competitive. Embarq also requests that the Commission classify the residential services Embarq offers in its Salem exchange, other than exchange access services, as competitive.

Section 392.245.5(6), RSMo Cum. Supp. 2007, provides that when an incumbent local exchange telecommunications company requests competitive classification of its business or residential 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 or residential customers, or both, in an

¹ Notwithstanding this, Embarq’s Application does not request any rate changes.

exchange and if so shall approve tariffs designating all such business or residential 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. 2007, 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 Embark's Buckner, Odessa, Oak Grove, Pleasant Hill and Salem exchanges² who are not affiliated with Embark but provide basic local phone service to business customers located within the exchange. In addition, Staff shall state whether the competing carriers have local numbers available for use by business customers in the Buckner, Odessa, Oak Grove, Pleasant Hill and Salem exchanges.

Likewise, Section 392.245.5, RSMo Cum. Supp. 2007, further provides, in pertinent part:

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.

² See Sections 392.245.5(1) and (2), RSMo Cum. Supp. 2007.

Accordingly, the Commission will also direct its Staff to investigate this matter and to file a verified pleading stating whether there are at least two carriers serving Embarq's Salem 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 Salem 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.

(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 by a proper party, the Commission may make its determination based on the verified pleadings and recommendation of its Staff.³

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.

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 representing the affected exchanges.

3. Any party wishing to intervene in this matter must file an application no later than June 9, 2008 with:

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

³ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).

with a copy served on:

Craig T. Smith
5454 West 110th Street
KSOPKJ0701
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 June 12, 2008.

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 June 13, 2008.

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 June 13, 2008.

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

Testimony – all parties June 19, 2008

Pretrial Briefs, List of Witnesses, June 20, 2008
List of Issues, and Proposed Findings of Fact

The parties are hereby notified that if any party opposes Embarras Missouri, Inc.'s Application, a hearing will be set for Monday, June 23, 2008, beginning at 9:00 a.m., in Room 305 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 June 4, 2008.

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 4th day of June, 2008.