



April 16, 2008

Cully Dale
Secretary of the Commission
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102

Re: EMBARQ's Comments in Case No. AX-2008-0201

Dear Ms. Dale:

EMBARQ Missouri, Inc. (hereafter "EMBARQ"), respectfully submits the following Comments to the Missouri Public Service Commission ("Commission") regarding proposed changes to Commission rule 4 CSR 240-4.020 addressing Conduct of Participants in Commission Proceedings.

Introduction

The existing rule 4 CSR 240-4.020 is sufficient to ensure public confidence in the fairness of Commission proceedings; however, to the extent the Commission concludes that revisions are needed then the proposed changes provide added clarity. The Commission's proposed draft rule, date April 9, 2008, clearly states the standard of conduct, using plain-English, for all participants and should eliminate any uncertainty or misunderstanding that may exist within the current rule. The proposed changes will still allow interested parties to communicate appropriately with the Commission and the Commission Staff while explicitly stating what is inappropriate communications.

Response to Commission Questions

In its April 10, 2008 Notice of Opportunity to Comment, the Commission asked interested parties to comment on three specific questions. EMBARQ provides comments on each question below.

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Should the draft rule include a definition of “ex parte communication”? If so, how should it be defined?

EMBARQ submits that the Commissions proposed language dealing with Unlimited Communications, Limited Communications, and Prohibited Communications are more than adequate to define appropriate and inappropriate communications and a specific definition of ex parte is unwarranted.

Do you have specific suggestions for changes to the language of the draft rule?

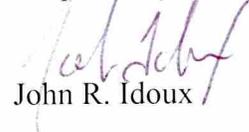
Yes. Embarq has only one comment of concern regarding the draft rule. Subsection (3)(H) classifies as an “unlimited communication” a communication between the commission and *any* other governmental entity, although the rule also requires the commission to disclose the information that was communicated if it was relied on in the Commission’s decision. The Commission can make this disclosure either on the record of the case, or in some other manner when the decision is issued. Embarq is concerned that Subsection (3)(H) may deprive parties of their due process right to challenge information that is relied on for a Commission decision.

The intent of Subsection (3)(H) may be benign, with an objective of allowing the Commission to use public data obtained from other governmental entities. However, on its face Subsection (3)(H) would permit any governmental entity that could be a party to a contested case, including for example a municipality, a federal agency, or the Office of the Attorney General, to provide extra-record evidence to the Commission, outside the normal rules of procedure and evidence that govern other parties’ behavior. To the extent that the intent of Subsection (3)(H) is to allow the Commission to use information that it could otherwise take official notice of, Embarq submits that it is problematic that Subsection (3)(H) contemplates non-parties (or governmental parties) providing information to the Commission, rather than the Commission taking official notice of facts on its own initiative. Beyond that concern, Subsection (3)(H) appears to be unnecessary, as the Commission has statutory authority to take official notice of technical and scientific facts, as well as of judicially cognizable facts, and that statutory provision more clearly spells out the requirements for an opportunity to be heard on facts to be noticed. Section 536.070(6) RSMo. (2007). Consequently, Embarq recommends that Subsection (3)(H) be deleted or, at a minimum, be clarified so as to comport with the statutory requirements for official notice.

Does the draft rule adequately address the issues surrounding *ex parte* communications at the PSC?

Yes, with the one exception noted above regarding Subsection (3)(H). As previously stated, the current rule is sufficient to ensure public confidence in the fairness of Commission proceedings and, with one exception, the proposed modifications will eliminate any uncertainty or misunderstanding that may exist within the current rule.

Respectfully submitted,


John R. Idoux