

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

MAY 16 2008

In the matter of:)
)
Petition of Sprint Communications)
Company L.P., Sprint Spectrum L.P., and)
Nextel West Corp., d/b/a Sprint, to)
Conduct General Investigation into the)
Intrastate Access Charges of United)
Telephone Company of Kansas, United)
Telephone Company of Eastern Kansas,)
United Telephone Company of South)
Central Kansas, and United Telephone)
Company of Southeastern Kansas, d/b/a)
Embarq)

Susan K. Purdy Docket Room

Docket No. 08-GIMT-123-GIT

PETITION

1. Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp. (collectively, "Sprint") submit this Petition requesting the Commission to conduct a general investigation into the intrastate access charges of United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas (collectively, "Embarq"). Sprint seeks an immediate reduction in the intrastate carrier access rates charged by the Embarq companies to be in parity with its interstate access charges as required by K.S.A. 66-2005(c).

JURISDICTION AND BACKGROUND

2. The Commission has express jurisdiction under K.S.A. 66-2005(c) to require reductions in Embarq's intrastate access rates and rebalance local service rates accordingly.¹ K.S.A. 66-2005(c) provides in pertinent part as follows:

Subject to the commission's approval, all local exchange carriers shall reduce intrastate access charges to interstate levels as provided herein. Rates for

¹ To the extent Embarq's intrastate access rates are unjust and unreasonable, the Commission also has general complaint jurisdiction under K.S.A. 66-1,188 and 66-1,192 to oversee any complaint made against a telecommunications public utility that any of the rates of such utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory, or unduly preferential.

interstate switched access, and the imputed access portion of toll, shall be reduced over a three-year period with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable manner. *The commission is authorized to rebalance local residential and business service rates to offset the intrastate access and toll charge reductions.* Any remaining portion of the reduction in access and toll charges not recovered through local residential and business service rates shall be paid out from the KUSF pursuant to K.S.A. 66-2008, and amendments thereto.²

3. The Kansas legislature has recognized that parity between intrastate and interstate access rates is an effective way to promote competition in telecommunications services.

Likewise, the Commission has recognized in Docket No. 01-GIMT-082-GIT that “[r]emoving implicit subsidies, and replacing them with explicit ones, is critical to a competitive infrastructure.”³ In its Order Approving Stipulation in that docket, the Commission also stated as follows:

When the Kansas legislature mandated that the State move to a competitive telecommunications market, it indicated that competition would most effectively provide Kansans access to a first class telecommunications network that afforded excellent services at affordable prices, in the long run. (citations omitted.) The Kansas legislature recognized that parity of intrastate access rates with interstate rates was a vehicle available to reduce or eliminate implicit subsidies with the existing rate structure. (citations omitted.) While this statutory provision explicitly mandated such parity for non-rural companies (United and SWBT), only over the initial three-year period following enactment of the Kansas Act, the legislature entrusted the Commission with broad discretion to carry out its legislative mandates and oversee the emergence of competition into Kansas telecommunications markets. (citations omitted.) *The Commission recognizes that a competitive infrastructure, as envisioned by the Kansas legislature, will not develop unless there is a “level playing field” among the telecommunications service providers.* The transition will be difficult and require that the multiple important policy concerns and objectives that can be in conflict be addressed in an interrelated and balanced manner.”⁴

² K.S.A. 66-2005(c) (emphasis added).

³ *In the Matter of a General Investigation into the Reformation of Intrastate Access Charges*, Docket No. 01-GIMT-082-GIT, Order Approving Stipulation and Agreement, Sept. 25, 2001 (“Order Approving Stipulation”) at p. 2.

⁴ *Id.* at pp. 2-3 (emphasis added).

4. Embarq's rates are excessive by any measure and, while the Commission has taken action with respect to Embarq's intrastate carrier access rates in the past, it has been almost seven years since the Commission last addressed the appropriate level of Embarq's access rates in Docket No. 01-GIMT-082-GIT. In that docket, Embarq's intrastate access reduction moved toward, but did not reach, parity with interstate rates. Embarq's intrastate access revenues were reduced by approximately \$8.5 million, while parity with the CALLS Order rates would have required an additional reduction of \$3 million.⁵ The Stipulation provided that reduced revenue from the intrastate access rate reductions be recovered by Embarq through increased local rates for residential and single line business services (Basket 1) and miscellaneous or competitive services (Basket 3).⁶

5. High switched access rates harm consumers by inflating the retail price of competing telecommunications services. All service providers competing with Embarq's retail services, including providers of local, long distance, and wireless voice calling services, must purchase access services from Embarq to reach Embarq's customers. While Embarq should be permitted to recover the economic cost of providing this monopoly service, including a reasonable recovery of common costs and return on investment, it is impossible to justify rates as high as Embarq's present rates.

6. Sprint urges the Commission to act immediately to reduce Embarq's intrastate switched access rates to be in parity with its interstate rates, under K.S.A. 66-2005(c). The three-year time frame in K.S.A. 66-2005(c) has long expired. Immediate reductions to interstate levels are warranted.

⁵ Order Approving Stipulation at p. 4.

⁶ *Id.* at pp. 4-5.

RETAIL EFFECTS OF EMBARQ'S INFLATED RATES

7. Embarq's intrastate access rates, standing alone, more than sufficiently establish the need for the Commission to act promptly. When Embarq provides switched access service on both the originating and terminating end of an intrastate toll call, it charges roughly 3.6 cents per minute on average for the call, or roughly 1.8 cents per minute on each end (\$0.017768/min., *See Exhibit A*). To appreciate the degree to which these rates are inflated, one need only look at Embarq's own interstate switched access rates. While performing substantially identical functions to intrastate access, the rates Embarq charges its competitors for providing access to its customers for interstate calls are substantially lower. Embarq's rate for interstate switched access is about half a cent each for originating and terminating functions (\$0.005305/min.; *See Exhibit A*). Thus, Embarq's intrastate rates are more than three times its interstate switched access rates.

8. All carriers that compete against Embarq in the retail market must purchase intrastate switched access to terminate certain calls to Embarq customers. Wireline retail competitors pay the charge to originate and terminate intrastate long distance calls. Wireless retail competitors pay terminating intrastate switched access on wireless calls to Embarq landline customers that cross Major Trading Area ("MTA") boundaries. (There are several MTAs in Kansas.) Wireless providers therefore pay to subsidize Embarq but receive no compensation themselves for terminating any long distance calls from Embarq customers. In fact, in instances where an Embarq landline customer places a long distance call to a wireless customer, Embarq is paid originating access by its customer's interexchange carrier but is not charged by the wireless provider to terminate the call.

9. Embarq is a strong incumbent local exchange carrier that offers a wide range of retail services, including wireline long distance, and often bundles local exchange service with other non-regulated telecommunications services and advanced services such as broadband Internet access. When competitors pay Embarq switched access rates that are excessive, it is a direct detriment to those retail competitors and to competition because they are paying Embarq a subsidy that Embarq can turn around and use to undercut them in the provision of competitive services. All retail competitors, including wireless competitors of Embarq, that have customers wishing to communicate with Embarq customers will provide Embarq an unjustified source of additional revenue.

10. As such, the subsidy system that historically was meant to lower the price of local service is incompatible with the development and furtherance of competition in the telecommunications market. A retail competitor, including Embarq, must be required to collect the cost of retail services from their own retail customers, not from purchasers of monopoly switched access services who are also direct retail competitors of Embarq. This change is essential to developing a level competitive playing field for all service providers.

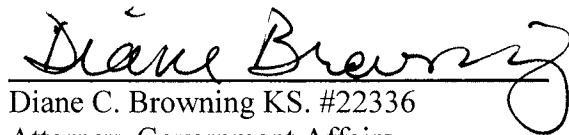
11. When one competitor is subsidized by the others, the effect on the market and consumers is negative and the only sure winner is the recipient of the subsidy, Embarq. Consumers lose because competition may be stymied if Embarq chooses to use the inflated access revenues to undercut its competitors' prices or, if Embarq simply keeps the excess revenues as profit, all consumers, including its own customers, will be paying artificially high retail prices for telecommunications services.

12. Kansas law, specifically K.S.A. 66-2005(c) recognizes that excessive intrastate access rates harm competition. It is time for the Commission to finish the job of reducing access rates as required by Kansas law.

CONCLUSION

13. WHEREFORE, Sprint respectfully requests the Commission to (i) conduct a general investigation into the intrastate switched access rates of Embarq in accordance with K.S.A. 66-2005(c) or, alternatively, docket this request as a complaint pursuant to the Commission's general complaint jurisdiction under K.S.A. 66-1,188 and 66-1,192; and (ii) order an immediate reduction in Embarq's intrastate switched access rates to be in parity with Embarq's interstate switched access rates.

Respectfully submitted,



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NEXTEL WEST CORP.

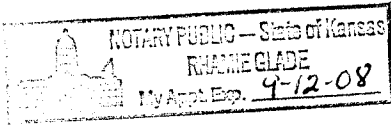
VERIFICATION

I, Diane C. Browning, being of lawful age duly sworn, state that I have read the above and foregoing Petition verify the statements contained herein to be true and correct to the best of my knowledge and belief.

Diane Browning

Subscribed and sworn to before me this 16th day of May, 2008.

Rhame Glade
Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of May, 2008, a copy of the foregoing Sprint Petition was served via U.S. Mail, postage prepaid, on each of the following:

Kevin Zarling
Embarq
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Austin, TX 78701

Janet Buchanan
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

Colleen Harrell
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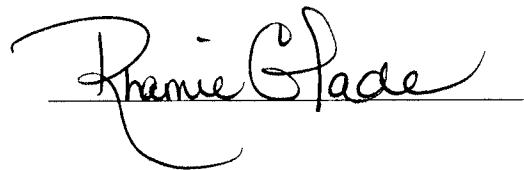


Exhibit A

Comparison of Embarq's Intrastate and Interstate Switched Access Rates in Kansas

<u>ACCESS ELEMENTS</u>	EMBARQ KANSAS <u>INTRASTATE</u>	EMBARQ KANSAS <u>INTERSTATE</u>	PERCENT INTRASTATE > <u>INTERSTATE</u>
Local Transport Termination	\$ 0.000600	\$ 0.000245	
Local Transport Facility	\$ 0.000099	\$ 0.000023	
Tandem Switching	\$ 0.005130	\$ 0.000381	
Common Multiplexing	\$ -	\$ 0.000254	
Total Transport Rate	\$ 0.002873	\$ 0.000824	2156%
Local Switching	\$ 0.014895	\$ 0.003983	
Common Switch Port	\$ -	\$ 0.000498	
Total Switching Rate	\$ 0.014895	\$ 0.004481	397%
Total Aggregate Rate	\$ 0.017768	\$ 0.005305	<u>335%</u>

Notes:

- 1) All rates from Embarq tariffs
- 2) Total Aggregate and total transport rates assumes - ten miles of transport; tandem switch use 25% of the time
- 3) Interstate transport rates reflect rate zone 3 of the 4 zoned rates.