

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

STATE CORPORATION COMMISSION---

In the Matter of the 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 )

JUN 11 2008

 Docket Room

Docket No. 08-GIMT-1023-GIT

**EMBARQ'S MOTION TO DISMISS**

United Telephone Company of Kansas d/b/a Embarq, United Telephone of Eastern Kansas d/b/a Embarq, United Telephone of Southcentral Kansas d/b/a Embarq and Embarq Missouri, Inc. d/b/a Embarq (hereinafter referred to collectively as "Embarq") respectfully move the State Corporation Commission of the State of Kansas ("Commission") to dismiss the Petition ("Petition") of Sprint Communications Company L.P. ("Sprint Communications"), Sprint Spectrum L.P., and Nextel West Corp. (hereinafter referred to collectively as "Sprint").

On May 16, 2008, Sprint filed a petition asking the Commission to reduce immediately Embarq's intrastate carrier access rates to be in parity with its interstate access charges. Sprint alleges that such action is "required" by K.S.A. 66-2005(c).<sup>1</sup> Sprint's Petition is wholly unsubstantiated and runs afoul of a fundamental tenet of Kansas telecommunications law -- to "ensure that every Kansan will have access to first class telecommunications infrastructure that provides excellent services *at an affordable price.*"<sup>2</sup>

The Commission action requested by Sprint (a reduction in intrastate access rates) has already been taken as part of Docket No. 01-GIMT-082-GIT (hereinafter referred to as the "082

<sup>1</sup> Sprint Petition, paragraph 1.

<sup>2</sup> K.S.A. 66-2001(a). (Emphasis added).

Docket”), and Sprint has presented no evidence that such rates should be revisited. As a result of the 082 Docket, the Commission reduced Embarq’s intrastate access rates by approximately \$8.5 million dollars annually. The Commission recognized that such reduction “approaches but does not reach parity.”<sup>3</sup> As part of the 082 Order, the Commission found that the approved rates in the 082 Docket reflected the appropriate balance between a reduction in intrastate access rates and the resulting impact on Embarq’s customers.<sup>4</sup> Other than the passage of time, Sprint has provided *no* evidence that there has been any change of circumstances requiring a further reduction in Embarq’s intrastate access charges.

In a lackluster attempt to prove its allegation of high switched access rates, Sprint offers meaningless comparisons of Embarq’s intrastate access rates with Embarq’s interstate access rates. Armed with such incorrect and inapplicable alleged measures of “proof,” Sprint wrongly concludes that intrastate switched access rates are high and should be reduced. Most notably, the very rates that Sprint challenges were *approved* by the Commission as part of the 082 Docket. The Commission could not have approved those rates if they were not just and reasonable. Embarq’s intrastate switched access rates are not only just and reasonable, but these rates undeniably protect the affordability and availability of basic local exchange service for Embarq’s customers.

Sprint wrongly asserts that Embarq’s switched intrastate access rates are “inflated,”<sup>5</sup> “harm consumers,”<sup>6</sup> and permit Embarq to undercut competitors in the provisioning of

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<sup>3</sup> Order Approving Stipulation and Agreement, Docket No. 01-GIMT-082-GIT, paragraph 7 (September 25, 2001) (hereinafter referred to as the “082 Order”).

<sup>4</sup> *Id.* The United Telephone Companies of Kansas previously did business as Sprint. References to Embarq as part of the 082 Docket relate to the United Telephone Companies of Kansas that now do business as Embarq.

<sup>5</sup> Sprint Petition, paragraph 3.

<sup>6</sup> *Id.*

competitive services.<sup>7</sup> Embarq denies all such assertions, and encourages the Commission to dismiss Sprint's meritless Petition.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

**A. *Embarq's Intrastate Access Rates Are Just and Reasonable, and a Further Reduction Would Result In Harm to Consumers***

The 082 Docket was initiated in response to K.S.A. 66-2005(c). This statute was recognition by the legislature that "parity of intrastate access rates with interstate rates was a vehicle to *reduce or eliminate* implicit subsidies with the existing rate structure."<sup>8</sup> Specifically, K.S.A. 66-2005(c) states in relevant 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 intrastate 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. Each rural telephone company shall adjust its intrastate switched access rates on March 1 of each odd-numbered year to match its interstate switched access rates...*

K.S.A. 66-2005(c) (Emphasis added).

In response to this statute, the Commission opened the 082 Docket. As part of the 082 Docket, the Commission approved a Stipulation and Agreement ("Stipulation") that reduced Embarq's intrastate access rates by approximately \$8.5 million annually.<sup>9</sup> In the 082 Order, and after thorough investigation and hearings, the Commission recognized and approved the fact that the reduction did not bring Embarq's intrastate access rates in parity with its interstate rates, and stated that by doing so "would have a significantly greater effect on [Embarq's] customers than

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<sup>7</sup> *Id.* at paragraph 11.

<sup>8</sup> The 082 Order, paragraph 2. (Emphasis added).

<sup>9</sup> *Id.* at paragraph 7.

SWBT's..."<sup>10</sup> This was clearly an acknowledgment by the Commission that K.S.A. 66-2005(c) did not mandate parity, and instead recognizes that parity was an "objective" as specifically set forth in the statute, and the Commission was left with the discretion to approve the appropriate reduction and resulting increases to rates and/or the Kansas Universal Service Fund ("KUSF"). In considering the "objective," the Commission appropriately balanced the move towards parity in Embarq's intrastate versus interstate access rates and the impact on consumers and the KUSF.

The 082 Order approved the Stipulation which provided that revenue lost from the intrastate access rate reductions were recovered from increased local rates for residential and single line business services (Basket 1) and miscellaneous or competitive services (Basket 3). If Embarq were required to have parity (at that time) there would have been an additional \$3 million dollar decrease in access revenues that would have increased the rates in Baskets 1 and 3, or resulted in the need to increase the KUSF. Such additional decrease in access rates and the resulting increase in rates for Baskets 1 and 3 would have placed Embarq's rates above the target rates set forth in the 082 Order.<sup>11</sup>

The Commission, unlike Sprint in its current Petition, was, and is, extremely concerned about ensuring "affordable prices" for telecommunications services as set forth in K.S.A 66-2001. In 2001, the Commission recognized that a further reduction in Embarq's access rates would result in rates that were above the target the Commission desired (i.e. rates that are unaffordable). Other than the passage of time, nothing has changed that would warrant a further reduction in intrastate access rates, and a subsequent increase in the rates in Baskets 1 and 3, or an increase in the KUSF as would be required by law.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at paragraph 8.

Embarq already is at, or near, the highest residential rates of any incumbent ILEC in the state. The terms of the approved Stipulation required Embarq to rebalance approximately \$8.5 million in state access reductions to local rates in phases, over a three year transition. The first rebalance occurred June 1, 2002 and the final, third rebalance occurred June 1, 2004. This three year transition took local residential rates for Embarq up to a range of \$16.75 to \$20.00, depending on the exchange rate group. Currently, Embarq's local residential access line rate statewide is \$17.73. This rate is higher than AT&T's statewide local rate of \$15.70,<sup>12</sup> and higher than the statewide affordable "target" rate of \$15.00 that the Commission set in place for rural ILECs in Docket No. 07-GIMT-276-GIT. The Commission did not require parity for Embarq's intrastate and interstate access rates in the 082 Docket because of the impact it would have on Embarq's customers. The same negative impact would exist today if Embarq were forced to have parity between interstate and intrastate access rates, and would result in even higher rates to Embarq's customers or an increase in the KUSF that would impact all consumers required to pay into the KUSF.

**B. *Sprint Ignores The Jurisdictional Differences Between Intrastate and Interstate Access Rates***

By approving the 082 Order, the Commission met the objective of moving towards parity as set forth in K.S.A. 66-2005(c). Circumstances have not changed to warrant additional action at the present time. Moreover, a further reduction fails to recognize the jurisdictional differences between per-minute intrastate and per-minute interstate access rates. Once again, Sprint ignores these issues as its Petition relies significantly on broad principles of the FCC's interstate switched access regime as the "parity" model for Embarq's state access rates.

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<sup>12</sup> Except for AT&T's Basehor Exchange.

Embarq's per-minute intrastate switched access rates are higher than its per-minute interstate access rates. However, this jurisdictional difference results from the FCC's public policy of removing the implicit subsidies for basic local service that were long embedded in interstate switched access rates. But, the FCC did not do so with the quick, scorched-earth strategy embraced by Sprint. It wisely created explicit recovery mechanisms as part of its holistic reform policy.

Embarq's current per-minute interstate switched access rates were produced by the FCC's CALLS Order released in May 2000.<sup>13</sup> The CALLS Order reduced per-minute interstate switched access rates by removing additional implicit support for basic local service. Significantly however, the CALLS Order also replaced the implicit support with explicit support from other funding mechanisms, specifically the subscriber line charge and the federal universal service fund,<sup>14</sup> which are not currently replicated in Embarq's Kansas per-minute intrastate access rates.

**C. *Embarq's Intrastate Access Rates Have Remained Unchanged***

Sprint makes the inflammatory statement that "Embarq's intrastate rates are more than three times its interstate switched access rates."<sup>15</sup> Once again, Sprint ignores the jurisdictional differences between the rates. Further, Sprint fails to point out that this is essentially what the rate relationship was when the Commission issued its Order in the 082 Docket, and at that time the Commission must have found that such rates were just and reasonable; otherwise it could not have approved the Stipulation. Nothing has changed, except the continued proliferation of competition, which was the primary objective of the legislature.

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<sup>13</sup> *In re Access Charge Reform, Sixth Report and Order* in CC Docket No. 96-262, 15 FCC Rcd 12962 (FCC 2000).

<sup>14</sup> Interstate Access Support for price cap carriers.

<sup>15</sup> Sprint Petition, paragraph 7.

Embarq's intrastate access rates (Basket 2) have remained unchanged since the 082 Docket. K.S.A. 66-2005(i) states:

The price cap for the switched access service basket (basket 2) shall be based upon the local exchange carrier's intrastate access tariffs as of January 1, 1997, except for any revenue neutral rate rebalancing authorized in accordance with subsection (c). Thereafter, the cap for this basket shall not change except in connection with any subsequent revenue neutral rebalancing authorized by the Commission under subsection (c).

K.S.A. 66-2005(i).

As part of the 082 Order, the Commission has already taken necessary action in accordance with K.S.A. 66-2005(c), thus reducing access rates and making it revenue neutral by increasing the rates in Baskets 1 and 3. The rates in Basket 2 have remained frozen as a result of K.S.A. 66-2005(i). Moreover, Sprint has provided no evidence that the interstate rates have changed in any significant way to justify any additional rebalancing.

**D. *Sprint Disregards The Growth Of Competition In Kansas***

Sprint neglects to mention the significant increase in competition that has occurred in Kansas over the past several years. A primary purpose of the enactment of K.S.A. 66-2005(c) was to create a vehicle to further increase the level of competition in the Kansas telecommunications market. It is obvious that this objective has been achieved. In the Commission's Report to the 2008 Legislature ("Annual Legislative Report") it states the following:

The evolution of competition in providing local and toll (long distance) telecommunications has, in some instances, resulted in greater choice of available services at a variety of rates, with a wider array of providers, packages and bundles from which to choose.<sup>16</sup>

The Annual Legislative Report indicates that as of November 5, 2007, the Commission has authorized 122 competitive local exchange carriers (CLECs) to provide local telephone

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<sup>16</sup> Kansas Corporation Commission Report to the 2008 Kansas Legislature, page 77.

service in exchanges of AT&T and Embarq, and “*the number of interexchange service providers authorized by the KCC to offer intrastate (long distance or toll) service in Kansas was 315 as of November 5, 2007.*”<sup>17</sup>

In the same report the Commission discussed “Access Rate Reductions.”<sup>18</sup> Thus, the Commission clearly recognizes K.S.A. 66-2005(c). However, it is critical to note that the Commission makes no indication to the legislature that it believes it is necessary to examine further intrastate access reductions for non-rural LECs, such as Embarq.

Sprint ignores all of the above facts, and without any support or reason wants to investigate Embarq’s access rates. The facts do not demonstrate any need to reexamine Embarq’s access rates (Basket 2).

**E. *Sprint Offers No Credible Support For Its Mistaken Assertion That Reducing Embarq’s Intrastate Switched Access Rates Will Benefit The Public***

Sprint offers no credible evidence that reducing Embarq’s access rates will benefit the public. Sprint’s Petition makes the general statement that “[h]igh switched access rates harm consumers by inflating the retail price of competing telecommunications services.”<sup>19</sup> Nowhere in the Petition does Sprint offer an iota of evidence that Sprint’s rates are inflated because of the level of Embarq’s access rates. Further, its Petition fails to offer any assurance that it or other providers will pass through reduced costs to their customers in the form of lower prices.<sup>20</sup>

Sprint further alleges that “[w]hen 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

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<sup>17</sup> *Id.* (Emphasis added).

<sup>18</sup> *Id.* at page 80.

<sup>19</sup> Sprint Petition, paragraph 5.

<sup>20</sup> As part of the Stipulation in the 082 Docket, the long distance carriers agreed to make reductions to their rates not otherwise required. No such assurances have been provided by Sprint, or other providers, in this docket.



provisions of competitive services.”<sup>21</sup> Once more, Sprint has provided no specific facts to support such allegations, and ignores history and public policy. Sprint ignores the fact that the rate it is challenging was approved by the Commission in the 082 Docket. Sprint ignores the fact that a decrease in access rates has to be offset by an increase in other rates or the KUSF (which occurred as a result of Docket 082). Sprint ignores the fact that Embarq already has high basic rates (the result of the 082 Docket), and public policy mandates the protection of affordable prices. Sprint ignores the fact that competition has increased, despite its claims that competition is harmed as a result of Embarq’s intrastate access rates. And, Sprint ignores the jurisdictional differences between intrastate and interstate access rates. Sprint’s Petition simply provides unfounded and meaningless allegations that Embarq’s access rates impede competition and hurt consumers. Sprint makes no guarantee that any access rate reductions it may receive would be flowed through to its end users in a meaningful manner.

Sprint is simply acting to reduce its own IXC expense levels at the expense of Embarq and its end-users through higher local rates (or the general body of rate payers if through the KUSF). The fact is that Sprint has provided zero evidence to even warrant an investigation or complaint.

**F. *Sprint’s Failed Attempt At the Legislature To Force Parity In Access Rates***

During the recent 2008 Kansas legislative session Sprint proposed an amendment to HB 2637 to force Embarq to have parity between intrastate and interstate access rates. Despite Sprint’s push to get the legislature to take action they did not do so. Sprint’s failed amendment included specific language stating that in order to get the benefits of price deregulation in the bill, “a local exchange carrier must reduce its intrastate access rates and rate elements to the

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<sup>21</sup> Sprint Petition, paragrpah 9.

same levels as its interstate access rates and rate elements.”<sup>22</sup> Sprint’s Petition states that “the Kansas legislature has recognized that parity between intrastate and interstate access rates is an effective way to promote competition in telecommunications services.”<sup>23</sup> Actually, the Kansas legislature as part of K.S.A 66-2005(c) stated that parity was an “objective,” and left it to the Commission to approve a reduction in intrastate access rates in a manner that balanced competition and the need to protect affordable rates. The Commission took appropriate action in its Order approving the Stipulation as part of the 082 Docket, and is not required to take further action. In the 2008 legislative session Sprint was asking the legislature to go beyond the language in K.S.A. 66-2005(c), and take the discretion away from the Commission and mandate that companies such as Embarq have parity between their intrastate and interstate access rates, regardless of the impact it would have on companies like Embarq, its customers, rates, and the KUSF. The legislature refused to take such action, and Sprint is simply “shopping” another forum to once again try and get something it failed to achieve at the legislature.

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<sup>22</sup> Sprint’s proposed amendment to HB 2637 (2008 Kansas Legislature).  
<sup>23</sup> Sprint Petition, paragraph 3.

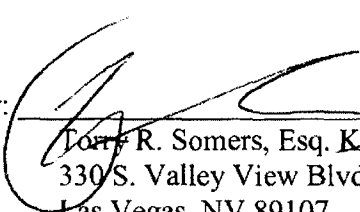
**CONCLUSION**

The Commission should dismiss Sprint's Petition. Embarq's intrastate switched access rates are just and reasonable. Sprint has provided no credible support to the contrary, as addressed above.

Respectfully submitted this 11 day of June, 2008.

EMBARQ

By: \_\_\_\_\_

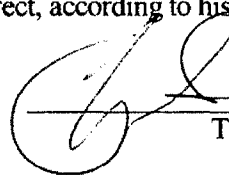
  
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**VERIFICATION**

STATE OF NEVADA            )  
  )ss.  
COUNTY OF Clark        )

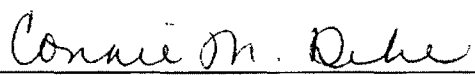
Torry R Somers, of lawful age, being first duly sworn, on oath deposes and states:

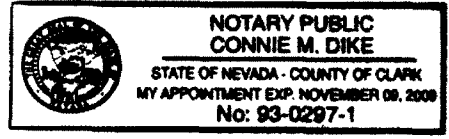
That he is an attorney for Embarq in the above-referenced matter; that he has read the above and foregoing document, knows and understands the contents thereof and states that the statements and allegations contained therein are true and correct, according to his knowledge, information and belief.

  
\_\_\_\_\_  
Torry R. Somers

Subscribed and sworn to before me this 11<sup>th</sup> day of June 2008.

My Appointment Expires:

  
\_\_\_\_\_  
Notary Public in and for said  
County and State



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 11<sup>th</sup> day of June 2008, a copy of the above and foregoing was served via U.S. Mail, postage paid to each of the following:

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Kansas Corporation Commission  
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Robert Lehr  
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