

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

Before Commissioners: Thomas E. Wright, Chairman
Michael C. Moffet
Joseph F. Harkins

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.

Docket No. 08-GIMT-1023-GIT

Order Opening General Investigation and Denying Motion to Dismiss

The above captioned matter comes before the State Corporation
Commission of the State of Kansas (Commission) for consideration and decision.
Having examined its files and records, and being duly advised in the premises, the
Commission makes the following findings:

Background

1. On May 16, 2008, Sprint Communications Company L.P., Sprint
Spectrum L.P., and Nextel West Corp., d/b/a/ Sprint (Sprint) filed a petition
requesting that the Commission review 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 (Embarq).

2. On June 11, 2008, Embarq filed a Motion to Dismiss.

3. On June 24, 2008, Sprint filed an Opposition to Motion to Dismiss.

4. On July 3, 2008, Southwestern Bell Telephone Company, AT&T Communications of the Southwest, Inc., and TCG Kansas City, Inc., (collectively AT&T) filed Comments in Support of Sprint's Petition and Petition for Intervention.

5. On September 2, 2008, Staff filed Comments.

6. On September 15, 2008, Sprint filed a Reply to Staff Comments.

7. On September 23, 2008, MCI Communications Services, Inc. d/b/a Verizon Business Services and MCIMetro Access Transmission Services LLC d/b/a/ Verizon Access Transmission Services (collectively, Verizon Business) filed a petition for intervention.

8. In its petition to open a general investigation, Sprint argued the Commission should examine the issue of Embarq's intrastate access rates in comparison with Embarq's interstate access rates in light of K.S.A. 66-2005(c) and the Commission's Order Approving Stipulation and Agreement, filed September 25, 2001, in the Commission's prior investigation into reformation of intrastate access charges in Docket No. 01-GIMT-082-GIT (01-082 Order). Sprint asserted Embarq's intrastate access rates are higher than Embarq's interstate access rates. Sprint's Petition, 3, 4. Sprint asserted these high rates involve implicit subsidies within the rate structure, and that the Commission had recognized in its 01-082 Order that replacing implicit subsidies with explicit

subsidies is important to stimulating competition. Sprint argued that the Kansas legislature had recognized parity between intrastate and interstate access rates promotes competition in telecommunications services, and that the Commission had also recognized parity is important to a competitive infrastructure in its 01-082 Order. Sprint's Petition, 1-2.

9. Sprint contended high intrastate access rates harm consumers by increasing the retail price of competing telecommunications services. Sprint's Petition, 3 – 5. Sprint further argued Embarq's rates are a detriment to Embarq's retail competitors because they are paying Embarq a subsidy that Embarq can use to undercut them in providing competitive services. Sprint's Petition, 5.

10. Sprint argued the Commission should "immediately" reduce Embarq's intrastate access rates to be in parity with its interstate rates under the authority of K.S.A. 66-2005(c). Sprint's Petition 6. Sprint argues the statute provided for a three-year time frame, which has long expired. Sprint's Petition, 3.

11. Sprint respectfully requested that the Commission conduct a general investigation into the intrastate switched access rates of Embarq in accordance with K.S.A. 66-2005(c) or, alternatively, docket Sprint's request as a complaint pursuant to the Commission's general complaint jurisdiction under K.S.A. 66-1,188 and 66-1,192.

12. In Embarq's Motion to Dismiss, Embarq argued the Commission action requested by Sprint has already been taken in 01-GIMT-082-GIT (01-082 Docket). Embarq contended the Commission had examined the matter, and

determined that the reduction in Embarq's intrastate access rates ordered in that docket had been balanced against the effect of further reductions on increased local exchange rates to Embarq's customers. Embarq asserted circumstances and the relationship between its intrastate and interstate rates have not changed. Embarq's Motion to Dismiss, 1-4, 6. Embarq argued its local rates are already the highest of any incumbent ILEC in Kansas. Embarq's Motion to Dismiss, 5.

13. Embarq asserted K.S.A. 66-2005(c) does not require the Commission to order parity, but recognizes parity is an objective within the discretion of the Commission. Embarq's Motion to Dismiss, 4.

14. Embarq argued Sprint had ignored the jurisdictional difference between per-minute intrastate and per-minute interstate access rates. This jurisdictional difference, asserted Embarq, results from the FCC's policy of removing implicit subsidies for basic local service embedded in interstate switched access rates, and that Embarq's current interstate switched access rates are a result of the FCC's CALLS Order released in May 2000.¹ Embarq argued the CALLS Order replaced implicit support with explicit support from the subscriber line charge and the federal universal service fund, funding mechanisms not replicated in per-minute intrastate access rates in Kansas. Embarq's Motion to Dismiss, 6.

¹ Embarq cites *In re Access Charge Reform, Sixth Report and Order* in CC Docket No. 96-262, 15 FCC Rcd 12962 (FCC 2000). Embarq's Motion to Dismiss, fn 13.

15. Embarq argued that competition has significantly increased in Kansas over the past few years, and that the primary purpose of K.S.A. 66-2005(c) -- to create a vehicle to increase the level of competition -- has been achieved. Embarq cites to the Commission's Report to the 2008 legislature and argues the report indicates competition has increased. Embarq's Motion to Dismiss, 7-8.

16. Embarq also argues Sprint has not offered evidence that reducing Embarq's access rates will benefit the public. Embarq charges that Sprint has failed to offer any assurance that it, or other providers, would pass through any reduced costs to their customers. Embarq's Motion to Dismiss, 8.

17. Embarq pointed to Sprint's unsuccessful attempt during the recent 2008 Kansas legislative session to obtain legislation (amendment to HB 2637) that would have required parity between Embarq's intrastate and interstate access rates as an indication that discretion on this issue remains with the Commission and that Sprint's request is not consistent with legislative will. Embarq's Motion to Dismiss, 9-10.

18. Embarq asked the Commission to dismiss Sprint's Petition. Embarq's Motion to Dismiss, 11.

19. Sprint responded, in Sprint's Opposition to Motion to Dismiss, that it had pled sufficient facts to state a claim for relief -- that the Commission open a general investigation -- and that Embarq was attempting to avoid scrutiny without the benefit of a proceeding to create a record. Sprint argued the Commission should not decline to examine the potential public policy and pro-competitive

benefits of reducing implicit subsidies built into Embarq's intrastate access rates. Sprint's Opposition, 2. Sprint asserted that it is simply common sense that the lower the costs to carriers like Sprint, the more likely such competitive telecomm service providers will be able to set prices that are competitive.

20. Sprint pointed to the 01-082 Order, where the Commission referred to the Telecommunications Strategic Planning Committee (TPSC) report that Sprint states the legislature relied upon in enacting the Kansas Telecommunications Act in 1996, as supportive of its position that the legislature and the Commission have recognized reduction of intrastate access charges will promote competition.

21. Sprint asserted that the Commission indicated in the 08-082 Order it would continue to evaluate intrastate access charges and that the Commission had recognized the issue would require further review. Sprint's Opposition, 4.

22. Sprint disagreed with Embarq's assertion that circumstances had not changed since the 08-082 Order. On the contrary, Sprint argued Embarq has expanded its non-regulated service offerings, including high-speed internet access and bundled offerings, and has significantly increased revenues from these non-regulated services. Sprint's Opposition, 5. Sprint asserts Embarq has also obtained competitive classification, and thus freedom from price caps, for several of its exchanges. Sprint's Opposition, 5. Sprint argues Embarq has successfully obtained Commission approval for an agreement in Docket 07-GIMT-782-MIS to raise its price levels. Sprint's Opposition, 5. Sprint also pointed to new

legislation, effective July 1, 2008, which will permit Embarq to raise prices for basic residential local service in exchanges deemed competitive.

23. Sprint asserted an economic cost study should be utilized to review Embarq's costs to provide service in high-cost areas of Kansas. The Commission should evaluate whether Embarq's claim that it would have to significantly increase prices to consumers to make up for decreased intrastate switched access fees in light of Embarq's increased revenue. Sprint argued that to the extent rate rebalancing would be insufficient to satisfy the revenue-neutrality requirement in Kansas law, Embarq could seek recovery of the deficiency from the Kansas Universal Service Fund (KUSF). Sprint's Opposition, 6.

24. Sprint pointed to the Commission's investigation into reduction of intrastate switched access rates of rural local exchange carriers to interstate levels, in accordance with K.S.A. 2007 Supp. 66-2005(c), as further support for its position.

25. Sprint respectfully requested the Commission deny Embarq's Motion to Dismiss, and to conduct a general investigation into the intrastate switched access rates of Embarq in accordance with K.S.A. 2007 Supp. 66-2005(c). Sprint's Opposition, 7.

26. As noted AT&T has filed comments in support of Sprint's Petition and a request to intervene in this docket. AT&T stated it provides switched local exchange and interexchange services within Kansas. AT&T's Petition, 1. AT&T noted it pays intrastate switched carrier access charges to Embarq and is the

largest contributor to the Kansas Universal Service Fund (KUSF). AT&T's Petition, 2, 4. AT&T asserted its legal rights, duties, and other legal interests would be substantially affected by a proceeding addressing these issues, and no other party would be able to effectively protect the rights and interests of AT&T in a proceeding that the Commission might conduct as a result of Sprint's petition. AT&T's Petition, 4. AT&T respectfully requested it be permitted to intervene. AT&T's Petition, 4.

27. As to the issues, AT&T argued Embarq's intrastate switched access rates are significantly higher than Embarq's corresponding interstate switched carrier access rates. Therefore, AT&T suggested that it would appear the intrastate rates involve an implicit subsidy and interexchange carriers (IXCs) that purchase intrastate switched carrier access from Embarq are paying artificially high rates. AT&T echoed Sprint's argument that subsidies should be explicit and implicit subsidies harm competition. AT&T pointed to K.S.A. 2007 Supp. 66-2005(c), and Commission orders in Docket No. 07-GIMT-107-GIT, for the proposition that parity in interstate and intrastate access is a major concern of the legislature. AT&T's Petition, 2.

28. AT&T also argued that switched carrier access revenues are declining as a result of consumers moving from traditional long distance services to wireless, VoIP, email, and text messaging. Therefore, AT&T asserted, support of universal service objectives via switched access revenue streams is no longer viable and a transition to alternative recovery methods is necessary. AT&T

argued that wireline interexchange carriers (IXCs) are at a competitive disadvantage compared to providers of these alternative services, because the alternative service providers do not have to pay access charges. AT&T contended that the reduction of intrastate access rates would be a step towards leveling the competitive playing field and consumers would benefit. AT&T's Petition, 3.

29. AT&T respectfully requested that the Commission grant Sprint's petition and open a proceeding to address the issues raised, require Embarq to reduce its intrastate switched access rates to parity with interstate rates, and provide Embarq with an alternative, revenue neutral recovery mechanism in the form of rate rebalancing and access to funds from the Kansas Universal Service Fund. AT&T's Petition, 3, 4.

30. Staff noted in its Comments that the FCC is developing a unified intercarrier compensation scheme, and may comprehensively address intercarrier compensation by November 5, 2008. Staff's Comments, 2. Staff favors at minimum a review by the Commission, but suggests the Commission delay until after November 5, 2008, which would permit the parties to tailor comments to any FCC scheme. Staff suggested the Commission set the matter for a prehearing conference in December 2008 to discuss outstanding issues and the status of Sprint's Petition in light of any FCC determinations. Staff's Comments, 2.

31. Staff also suggested that the Commission review the requests for access charge reductions in light of changed circumstances and historically important public interest issues. Staff stated that in 01-GIMT-082-GIT, the

Commission had decided parity between interstate and intrastate access charges was reasonable because it accomplished goals of promoting fair competition between incumbent and new providers, protected universal service, and could be achieved while maintaining local rates and an affordable level. Staff's Comments, 3. However, Staff asserted that the Commission had also acknowledged that parity may not always be a primary goal, noting the Commission had cited the Telecommunications Strategic Planning Committee's report acknowledging the difficulty of resolving transitional issues and the need to address competing objectives in an interrelated manner. Staff's Comments, 3. Staff suggested that while the Commission may have found parity a priority in 2001, the balance of competing objectives may have shifted and that policy may no longer be appropriate in 2008. As an example, Staff cited the move in industry pricing methodologies toward nationwide pricing, with the potential result that an access charge reduction in Kansas may not lead to significant rate reductions in either wireless or long distance charges in Kansas because of the dilution inherent in a nationwide pricing scheme. Staff's comments, 3-4.

32. Staff also pointed out that if the Commission elects to evaluate further access charge reductions it must consider if and how lost revenue will be recovered by Embarq. Staff asserted that recovery of lost revenue will result in Kansas consumers alone bearing the cost through higher local rates or higher KUSF assessments. Staff's Comments, 3.

33. Staff suggested the Commission set the matter for a prehearing conference and request that parties be prepared to discuss the issues to be addressed, the procedure to be utilized, and a schedule for the docket. Staff's Comments, 4.

34. In Sprint's Reply to Staff Comments, Sprint asserted that it had filed its Petition with the Commission because members of the Kansas legislature had agreed with Embarq's position that the Commission should address the issue of whether or not Embarq should be required to lower its intrastate access charges. Sprint's Reply, 1.

35. Sprint expressed doubt that the FCC would reform intercarrier compensation to a degree that issues raised by Sprint's Petition would be mooted. Sprint also disagreed with Staff that the factors that drove a policy of parity between intrastate and interstate access charges as a priority 7 years ago may have changed. Sprint asserted consumers will benefit from intrastate access rate reduction because that would be pro-competitive. Sprint's Reply, 2-3.

36. Sprint also argued that parity is a mandatory, not a discretionary, policy objective set by the legislature. Sprint argued K.S.A. 2007 Supp. 66-2005(c) requires the Commission to equalize interstate and intrastate rates and merely assigned the Commission the authority to oversee and approve the reductions. Sprint's Reply, 3.

37. Sprint also disagreed with Staff's suggestion that access charge reductions in Kansas may not lead to significant rate changes in wireless or long

distance charges for Kansas customers. Sprint argued such a conclusion is premature without an evidentiary record, and disregards statements of Sprint and AT&T regarding benefits of reduced access charges. Sprint's Reply, 3-4.

38. Sprint requested the Commission proceed with a prehearing conference as soon as possible, but in no event later than the end of November 2008. Sprint's Reply, 2, 4.

39. In Verizon Business's Petition for Intervention, Verizon Business stated it provides switched local exchange and interexchange services in Kansas. Verizon Business stated it pays intrastate switched access rates to Embarq and is a contributor to the KUSF. Verizon Business asserted its legal rights, duties, privileges, and other legal interests will be substantially affected by these proceedings, and that no other party is able to adequately protect its rights. Verizon Business stated the interest of justice and the prompt and orderly conduct of the proceedings would not be impaired by allowing it to intervene, and observed no hearing has yet been scheduled. Verizon Business respectfully requested it be permitted to intervene and participate in this proceeding and that its counsel be provided notice of all filings in the matter.

Findings and Conclusions

40. Embarq is a telecommunications public utility as defined by K.S.A. 66-104 that is certificated to provide local telephone services within Kansas.

41. Pursuant to K.S.A. 2007 Supp. 66-104, 66-1,191, 66-2005, and 66-2008, the Commission has jurisdiction to initiate an investigation into intrastate access rates and policy implications. See Order Initiating Investigation, filed November 21, 2000, p. 2, Docket 01-GIMT-082-GIT. The Commission has determined, as Staff has observed, that it has the authority to require additional access reductions for companies that have elected price cap regulation. Order filed May 18, 2001, ¶ 15, Docket No. 01-GIMT-082-GIT.

Motion to Dismiss

42. In the Commission's 01-082 Order, the Commission recognized several legislative goals with regard to regulation of telecommunications services: universal service (described in the 01-082 Order as the maximum number of customers connected to the network); and providing Kansans with access to a first class telecommunications network offering excellent services while maintaining affordable prices. 01-082 Order, 2. The Commission observed that the Kansas legislature had selected competition as the vehicle to most effectively meet the objective of the best possible network at an affordable price over the long term. 01-082 Order, 2. See K.S.A. 2007 Supp. 66-2005(b). The legislature recognized that removing implicit subsidies for local service inherent in the price structure under the prior regulatory scheme was a means of encouraging competition. 01-082 Order, 2, 6. Parity of intrastate access rates with interstate rates provides a

vehicle to reduce or eliminate these implicit subsidies. 01-082 Order, 2. Parity moves access rates closer to economic costs. 01-082 Order, 15.

43. The Commission has previously noted that the legislature had entrusted the Commission with broad discretion to oversee the development of competition in the Kansas telecommunications markets and to carry out the legislature's mandates. 01-082 Order, citing K.S.A. 66-101 et seq. and May 18, 2001 and July 5, 2001 Orders. Although the legislature recognized parity of intrastate and interstate access rates as a tool to further competition, the legislature only explicitly mandated parity for non-rural companies over the initial three year period following enactment of the Kansas Act. K.S.A. 2007 Supp. 66-2005(c); 01-082 Order, 15. The legislature also declined to require Embarq to lower its intrastate access rates during the 2008 legislative season. (Sprint's proposed amendment to HB 2637.) The Commission does not believe it is mandated to arrive at any particular conclusion.

44. The Commission's mandate, in light of the legislature's grant of discretion, is to balance the multiple important and potentially conflicting policy concerns and objectives and address them in an interrelated and balanced manner. 01-082 Order, 3. In its Order in 08-082, the Commission recognized a "level playing field," and making implicit subsidies explicit, is of importance to the growth of competition. The Commission also observed the transition to competition from a regulatory scheme would not be easy and that multiple important policy concerns and objectives that may be conflicting must be

addressed in an interrelated and balanced manner. 01-082 Order, 3, citing TSPC Final Report at iv-v. Issues pertaining to universal service (including local rate increases), access rates, and competition are interrelated and must be balanced in the public interest. Order Denying Reconsideration and Granting Clarification filed November 8, 2001, 3, Docket 01-GIMT-082-GIT.

45. The Commission examined several questions in the course of the 08-082 investigation: (a) whether access charges should be reduced; (b) if so, what level of access rate reductions would be appropriate; (c) whether any FCC decision or Commission decision had any bearing on how access rate reductions should be implemented; (d) whether access rate reductions would affect other rates; (e) whether the KUSF would be affected; and, (f) whether and how access rate reductions are flowed through to customers. Order Initiating Investigation, filed November 21, 2000, 3-5, 01-GIMT-082-GIT; Order Denying Reconsideration and Granting Clarification, filed November 8, 2001, 8, 01-GZIMT-082-GIT.

46. In the 01-082 Order, the Commission approved a Stipulation that reduced SWBT's intrastate access rates to match the interstate access rate level, as established by the FCC in its Sixth Report and Order in CC Docket Nos. 96-262 and 94-1 ("Coalition for Affordable Local and Long Distance Service" or "CALLS" Order), issued May 31, 2000. However, the Stipulation did not reduce the intrastate access rates of the United (Embarq) telephone companies all the way to parity with interstate access rates, because Embarq's recovery of that lost

revenue through rate rebalancing to other services would have resulted in an increase to local service rates that was judged to be too high. 01-082 Order, 4-5. In approving the Stipulation, the Commission sought to balance universal service and parity issues. Order Denying Reconsideration, Docket 01-082, 3.

47. The 01-082 Order noted moving toward parity at that time achieved goals of promoting fair competition between incumbent and new carriers in the Kansas market and protecting universal service. 01-082 Order, 15. The Commission observed that at that time local competition had been slow to develop in Kansas and had not had a lowering affect on access charges. 01-082 Order, 15. In addition, in the Stipulation, AT&T and Sprint Long Distance committed to passing through access rate reductions to customers to a greater extent than required by statute or within the Commission's power to compel. The Commission believed approving the Stipulation would, as a result, bring lower long distance rates for other carriers' customers as well due to market forces. 01-082 Order, 18.

48. The 01-082 Order noted that the Stipulation provided a transitional reform plan that would necessitate further review. 01-082 Order, 15.

49. The Commission believes it is prudent to review the Commission's policy on this matter again at this time, as the Commission suggested it might in the 01-082 Order. The Commission believes an investigation will shed light on the various arguments made by the parties and whether and what changes may have occurred since 2001 relevant to these issues. As a matter of policy, it is

appropriate for the Commission to follow-up the investigation in 01-082 and review the relationship between Embarq's intrastate and interstate access charges to determine if, in light of the present circumstances, the legislative and Commission goals described above would be furthered in a balanced manner and the public would be benefited by reducing Embarq's intrastate access charges further. This will also provide an opportunity to review the effect of the 2001 Stipulation on Kansas telecommunication's infrastructure, services, and rates.

50. The Commission agrees with Staff that this investigation should take into account any changes in the intercarrier compensation scheme by the FCC. FCC action may have a significant impact on the course, and perhaps the necessity or scope of this investigation.

51. The Commission will examine this issue, as it did in the 01-082 Docket, with an open mind as to whether Embarq's intrastate rates should be reduced, and if so, how best to balance the goals of a first-rate telecommunications infrastructure and services at low prices for Kansas customers with universal service issues. It may be, as Staff has suggested, that changed circumstances will require a different approach to move forward toward legislative and Commission goals and a different balancing of policy concerns and objectives. It may be that, as Embarq argues, lowering intrastate rates would not benefit the public and would result in an unacceptable affect on local rates. It may be that, as Sprint contends, circumstances have changed such that the time has come to move Embarq's intrastate rates further toward parity which will enhance competition and benefit

ratepayers. An investigation will permit the Commission to properly address the various arguments put forth by the respective parties and review Commission policy in this area. The legislature has vested the Commission with authority and discretion in these matters. To investigate these matters at this time is particularly appropriate in light of the potential FCC action on intercarrier compensation. Dismissing this investigation at this point, without the benefit of a more informed record, would not be consistent with the Commission's responsibilities and duties of oversight as set forth by the legislature.

52. As it did in the 01-082 Docket, the Commission intends to comprehensively explore the access charge issue, including the impact of potential access charge reductions on lowering rates and improving telecommunications infrastructure and services, and the resulting effect on access rates and revenues, cost recovery, and the KUSF. This docket will address the ramifications of all related issues, including such policy principles as universal service, comparability of rates across Kansas, and the reasonableness of local exchange rates. Issues to be addressed will include:

(a) Whether Embarq's access charges should be reduced. The Commission will investigate the points noted by Staff, Sprint, Embarq and interveners that suggest circumstances may or may not support a reduction at this time, keeping in mind the ultimate goals noted above of advancing Kansas telecommunications infrastructure and services at low, affordable prices, promoting competition where

to do so serves those goals, keeping local rates affordable, and maintaining universal service.

(b) If Embarq's access charges should be reduced, what level of reduction would be appropriate.

(c) Whether any FCC decision or Commission decision has any bearing on whether and how access reductions should be implemented. This question, of course, will include the impact of any FCC determinations made with regard to intercarrier compensation in November on these issues and on the scope of this investigation.

(d) Whether access reductions will affect other rates. This issue includes the effect, if any, that a reduction in intrastate access charges would have on lowering wireless or long distance rates and the effect, if any on Embarq's local service rates.

(e) Whether and how the KUSF will be affected.

(f) Staff's concerns regarding how any access rate reductions would be flowed through to customers.

(g) Whether and how any lost revenue will be recovered by Embarq.

53. Because the Commission believes it appropriate to reexamine these policy matters in a general investigation, Embarq's Motion to Dismiss is denied.

54. To the extent Sprint's filings may be interpreted as requesting an immediate reduction in Embarq's intrastate access charges, that request is denied.

The Commission believes it prudent to examine these matters more carefully before making a decision.

Prehearing Procedural Conference

55. The Commission finds the parties should appear for a prehearing conference. At the prehearing conference, the parties should be prepared to discuss the issues to be addressed in light of any FCC action with regard to intercarrier compensation. Parties should also be prepared to discuss the procedure to be utilized, studies that should be performed, and a schedule for this docket.

56. Accordingly, the Commission gives notice that a prehearing conference will be held on **Thursday, November 13, 2008, beginning at 1:30 p.m. in the Third Floor Hearing Room, (or other room to be designated, if necessary) of the Commission's offices, 1500 SW Arrowhead Road, Topeka, KS 66604.** This Prehearing conference will focus on issues noted in the above paragraph and any other matters or issues that will promote the orderly and prompt conduct of this proceeding. K.S.A. 77-517; K.A.R. 82-1-222. Any party who fails to attend or participate in the hearing or in any other stage of this proceeding may be held in default under the Kansas Administrative Procedure Act (KAPA). K.S.A. 77-516(c)(8); K.S.A. 77-520. At the Prehearing conference, this proceeding without further notice may be converted into a conference hearing or a

summary proceeding for disposition of the matter as provided by KAPA. K.S.A. 77-516(c)(7).

Participation; Designation of Prehearing Officer; Agency Attorneys

57. All certificated local exchange carriers, including competitive local exchange carriers, and certificated interexchange carriers are automatic parties to this proceeding and will be served with this order and any order making substantive decisions. All parties that wish to participate actively in the docket and address Commission policy on these issues should have their counsel file an entry of appearance to be included on a restricted service list for receipt of testimony, pleadings, and procedural orders. Staff and the following parties will be included on the restricted service list at this time: Sprint, Embarq, AT&T, and Verizon Business. Entries of appearance should be filed by October 31, 2008. Thereafter, Staff shall prepare a service list and provide it to all parties that have entered appearances for service of testimony, pleadings, and procedural orders.

58. The Commission finds a prehearing officer should be designated for this proceeding. The Commission designates a prehearing officer to conduct any necessary prehearing conferences and to address any matters that may arise that might be appropriately considered in such conferences, including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b), and any matters that may otherwise be addressed by the prehearing officer pursuant to the KAPA. The Commission designates Charles R. Reimer, Advisory Counsel, 1500

SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3361, email address c.reimer@kcc.ks.gov, to act as the prehearing officer in this proceeding. K.S.A. 2007 Supp. 77-514; K.S.A. 77-516; K.S.A. 2007 Supp. 77-551. The Commission, as it deems necessary, may designate other staff members to serve in this capacity.

59. The attorneys designated to appear on behalf of the agency in this proceeding are Bob Lehr and Melissa Walburn, telephone number 785-271-3288, 1500 SW Arrowhead Road, Topeka, KS 66604. K.S.A. 2007 Supp. 77-518(c)(2); K.S.A. 77-516(c)(2).

Petitions to Intervene

60. The Commission has broad discretion to grant a petition for intervention at any time if it is in the interests of justice, if the intervention will not impair the orderly and prompt conduct of the proceedings, and if the petitioning party has stated facts demonstrating its legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding. K.S.A. 77-521; K.A.R. 82-1-225. At any time during a proceeding, the Commission may impose limitations on an intervener's participation. K.A.R. 82-1-225(c). See K.S.A. 77-521(c). This can include limiting an intervener's participation to designated issues in which the intervenor has a particular interest and its use of discovery and other procedures. The Commission also may require two or more interveners to combine their presentation of evidence and argument, cross-

examination, discovery, and other participation in the proceedings. K.A.R. 82-1-225(c)(1) – (3).

61. The Commission finds and concludes that AT&T and Verizon Business have met the requirements for intervention and should be granted intervention.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission will pursue an investigation into the matter of Embark's intrastate and interstate switched access rates as discussed above. All certificated local exchange carriers and interexchange carriers are made parties to this docket. Parties wishing to actively participate and be on a restricted service list should have counsel file an entry of appearance by October 31, 2008.

B. Embark's Motion to Dismiss is accordingly denied.

C. To the extent Sprint has requested an immediate reduction in Embark's intrastate access rates, that request is also accordingly denied.

D. The Petitions for Intervention by AT&T and Verizon Business are granted.

E. A prehearing procedural conference is scheduled for November 13, 2008, at 1:30 pm, in the Third Floor Hearing Room at the Commission's Offices, 1500 S.W. Arrowhead Road, Topeka, Kansas, as discussed above. The Commission designates a prehearing officer for this investigation, as discussed above.

F. A party may file a petition for reconsideration of this order within 15 days of the service of this order. If this order is mailed, service is complete upon mailing and 3 days may be added to the above time frame.

G. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

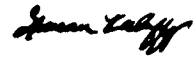
BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Moffet, Com.; Harkins, Com.

Dated: OCT 10 2008

ORDERED MAILED

OCT 13 2008



**EXECUTIVE
DIRECTOR**

Susan K. Duffy
Executive Director

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