

ORIGINAL

Jorothy Menasco

From: Mike Twomey [miketwomey@talstar.com]  
 Sent: Friday, December 29, 2006 4:52 PM  
 Cc: Filings@psc.state.fl.us  
 Subject: Re: Electronic Filing in Docket No. 060644-TL  
 Attachments: AARP petition to intervene in Embarq storm case.doc

Mike Twomey wrote:

A. Person responsible for this electronic filing:

Michael B. Twomey  
 Post Office Box 5256  
 Tallahassee, FL 32314-5256  
 850-421-9530  
[miketwomey@talstar.com](mailto:miketwomey@talstar.com)

B. Docket No. 060644-TL. Petition by Embarq Florida, Inc. to recover 2005 tropical system related costs and expenses.

C. Document being filed on behalf of AARP/

D. There are a total of 6 pages.

E. The document attached for electronic filing is AARP Petition to Intervene.

The parties/individuals indicated on the certificate of service are being served both electronically and by U.S. Mail today.

Thank you for your attention and assistance in this matter.

Mike Twomey

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DOCUMENT NUMBER-DATE

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FDSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by Embarq Florida Inc.  
to Recover 2005 Tropical System  
Related Costs and Expenses.

DOCKET NO. 060644-TL

FILED: December 29, 2006

**AARP PETITION TO INTERVENE**

Pursuant to Section 120.57(1), Florida Statutes and Rule 25-22.039, Florida Administrative Code, AARP, through its undersigned attorney, files its Petition to Intervene, and in support thereof, states as follows:

1. The name and address of the affected agency is:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

2. The name and address of the petitioner is:

AARP  
200 West College Street  
Tallahassee, Florida 32301

3. All pleadings, motions, orders and other documents directed

to the petitioner should be served on:

Michael B. Twomey  
Post Office Box 5256  
Tallahassee, Florida 32314-5256  
Phone: (850) 421-9530  
Email: [miketwomey@talstar.com](mailto:miketwomey@talstar.com)

4. Embarq Florida, Inc. ("Embarq") is an incumbent local telecommunications exchange company ("ILEC") regulated by the Florida Public Service Commission ("Commission") for certain purposes. Embarq, in the docket cited above, despite the fact that it is a price-regulated, incumbent local exchange company, not subject to rate of return regulation

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FLORIDA PUBLIC SERVICE COMMISSION CLERK

or the public examination of its profits, expenses or revenues, seeks to recover from its retail basic service customers approximately \$10,000,000 it alleges it has incurred in connection with repairs resulting from the 2005 hurricane season. Embarq proposes that it should be allowed to charge its retail basic service customers a surcharge of 50 cents per access line, per month, for a period of 12 months, which totals to \$6.00 per customer line, not counting applicable taxes and fees.

5. AARP is a nonprofit membership organization dedicated to addressing the needs and interests of persons 50 and older. AARP has staffed offices in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. AARP represents more than 35 million members in total, approximately 2.8 million of whom reside in the State of Florida. AARP's Florida members reside throughout the state and a significant number of them are retail residential customers of Embarq.

**AARP Florida Members' Substantial Interests Affected**

6. As stated above, AARP has approximately 2.8 million members in the State of Florida, a significant number of whom reside in Embarq's service territory and take their basic local telephone service from Embarq. Therefore, many of AARP's members will be substantially affected by any action the Commission takes in this docket, which will necessarily include surcharges of \$6.00 per year, not counting associated taxes and fees.

7. AARP is aware that Embarq purports to be a competitive telecommunications company, a reason advanced by Embarq, among others, to support the recent "rebalancing" basic local service rate increases approved by this Commission. AARP is also aware that Embarq is not profit-regulated by this Commission and that it is requesting that it be reimbursed for its alleged storm damage repairs without regard for the level of its current earned return on equity,

which profit return is not available to the general public, including its customers. AARP is not desirous of its members being compelled to pay for Embarq's 2005 storm repair costs, unless it can be shown that Embarq's profits will fall below a reasonable level for a firm of comparable risk, absent the recovery of the storm damages being sought here. Additionally, AARP is especially desirous of not having its members taking basic service from Embarq being compelled to pay a second hurricane surcharge on top of the current surcharge of \$0.83 per month previously approved by this Commission, which surcharge will not cease being collected until approximately October, 2007. If a second surcharge is compelled by law, or otherwise granted by this Commission, AARP would urge the Commission to not allow the second surcharge to begin until after collection of the current surcharge is at an end.

**Petitioners' Substantial Interests Affected**

8. Embarq proposes to charge all its basic service customers, regardless of their age, income or other status, a monthly surcharge of 50 cents in order to recover expenses it alleges it incurred as a result of damages incurred during the 2005 hurricane season. Embarq does not allege, nor demonstrate factually, that it is not earning, or will not earn, a fair and reasonable rate of return on its used and useful investment necessary to provide service to its basic service customers if it is denied the revenues sought in this case. If Embarq's petition is approved by this Commission, as filed, then AARP members taking local service from Embarq will be compelled to pay to Embarq an additional \$6.00, plus the associated taxes and fees. The threat of payment of these amounts is unquestionably a "substantial interest" that qualifies AARP for party status in this proceeding.

### **Disputed Issues of Fact and Law**

9. The following issues have been preliminarily identified by AARP as disputed issues of material fact or law:

- a. Whether Embarq actually incurred the storm damages alleged in its petition?
- b. Whether the storm damages alleged by Embarq, even if true, would warrant the storm damage surcharge requested by it?
- c. Whether the alleged storm damages would cause Embarq to earn what would be considered less than a fair and reasonable return on equity in today's market?
- d. Whether Embarq, a telecommunications company purporting to be a competitive company operating in competitive markets is entitled to collect storm damage surcharges from its captive basic service customers?  
and
- e. Whether a surcharge, if any, approved by this Commission pursuant to Embarq's instant petition should be allowed to be collected concurrently with the \$0.83 per month surcharge being collected now or only consecutively after the current surcharge expires in October, 2007?

### **Intervention Is Timely**

10. Rule 25-22.039, Florida Administrative Code, provides, in relevant part:

Persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing . . . and must include allegations sufficient to demonstrate . . . that the substantial interests of the intervener are subject to determination or will be affected through the proceeding.

The final hearing in this docket is scheduled to begin January 4, 2007 and this petition to intervene is being filed December 29, 2006, more than five days prior to the final hearing. Furthermore, the allegations that AARP's members will be required to pay at least \$6 more per year in local service charges, not counting additional applicable taxes and fees, if Embarq is granted its requested relief, is a per se statement that AARP's substantial interests "are subject to determination or will be affected through the proceeding" and that they are, therefore, entitled to participate as parties.

WHEREFORE, AARP requests that this Commission grant it intervenor status in this docket as a full party and compel Embarq to prove through testimony and other competent, substantial evidence in a Section 120.57(1), Florida Statutes, proceeding that it is factually and legally entitled to the approximately \$10 plus million of its customers' money that it claims it is due.

Respectfully submitted,

/s/ Michael B. Twomey  
Michael B. Twomey  
Attorney for AARP  
Post Office Box 5256  
Tallahassee, Florida 32314-5256  
Telephone: 850-421-9530  
miketwomey@talstar.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of this petition has been served by

U.S. Mail and electronic messaging this 29<sup>th</sup> day of December, 2006 on the following:

Jason Fudge, Esquire  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Harold McLean, Esquire  
Charles J. Beck, Esquire  
Office of the Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Tallahassee, Florida 32399-1400

Susan S. Masterton, Esquire  
Embarq Florida, Inc.  
1313 Blairstone Road  
Tallahassee, Florida 32301

Charles J. Rehwinkel, Esquire  
State Vice President – Florida  
Embarq Corporation  
LFTHZ0601  
315 S. Calhoun Street, Suite 500  
Tallahassee, Florida 32301

Vickie Gordon Kaufman, Esquire  
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118 North Gadsden Street  
Tallahassee, Florida 32301

Matthew Feil, Esquire  
Allison Hicks, Esquire  
FDN Communications  
2301 Lucien Way, Suite 200  
Maitland, Florida 32751

/s/ Michael B. Twomey  
Attorney