



March 12, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

EX PARTE PRESENTATION

*Re: Schools and Libraries Universal Service Support Mechanism,
CC Docket No. 02-6.*

Dear Ms. Dortch:

On February 3, 2004, Sprint Corporation requested the Commission to waive Section 54.502 of its rules, to the extent that the rule prohibited the granting of Priority 1 E-Rate funding for private branch exchanges (PBXs) and Key Systems as part of an existing end-to-end telecommunications service arrangement (the waiver request is referred to in this document as the "PBX/Key System Waiver Request"). This waiver would apply to those customers that were and/or still are receiving service pursuant to multi-year contracts for end-to-end telecommunications arrangements. Embarq Corporation and its affiliates (collectively, Embarq) are the successor to the local exchange carrier affiliates and operations of Sprint, which were the relevant entities with respect to the PBX/Key System Waiver Request (accordingly, Sprint and its local exchange carrier affiliates are referred to as Embarq for ease of understanding).

In this filing, Embarq clarifies and reiterates its request for a waiver. In particular, Embarq is asking for a waiver of Section 54.502 to the extent that it denied Priority 1 E-Rate funding for PBX and/or Key System customers that had been receiving such funding pursuant to the Commission's decision in the *1999 Tennessee Order*¹ so that those customers are not denied the benefit of service agreements into which they entered in good faith and consistent with the Commission's rules.

A question has arisen this year regarding Embarq's use of the term "Key System" in the PBX/Key System Waiver Request. Embarq used the term "Key System" consistently with the meaning given in the Eligible Services List, which is:

A Key System, also known as Com Key System or a KSU, is a type of phone system that permits more than one telephone line,

¹ *Request for Review by the Dept. of Education for the State of Tennessee of the Decisions of the Universal Service Administrator*, Application No. 18132, Order, 14 FCC Rcd 13734 (1999) ("*1999 Tennessee Order*").

PBX extension, private line, or intercom line to appear on a single telephone.²

To be more specific, Embarq uses the term “Key System” in the way that it is defined in Newton’s Telecom Dictionary, which is:

the equipment utilized to provide features associated with key sets, including keysets, multipair cable . . . , key service unit, distribution blocks, and miscellaneous devices.³

Further, a “Key Set” is defined as

a telephone set having several buttons which can be used for call holding, line pick up, auto-dialing, intercom and other features.⁴

And, a “Key Service Unit (KSU)” is defined as

a small electrical cabinet which contains all of the electronics of a business key telephone system. The KSU fits between the lines coming from the central office and the lines going to the individual phones.⁵

Finally, a Key Telephone System (KTS)” is defined as

a system in which the telephones have buttons permitting (requiring) the user to directly select central office phone lines and intercom lines.⁶

From these definitions, it can be seen that Embarq’s use of the term Key System is consistent with the definition that appears in the Eligible Services List.

It is apparent that both the Key Systems and the PBXs deployed by Embarq met the Commission’s standard for Priority 1 support⁷ between 1999 and 2003, and that they still would qualify for such support had the Universal Service Administration Company (USAC) not changed its interpretation and had the Commission not changed its policy. In particular:

1. Embarq has provided and is providing the local service to this customer. The contract or lease does not transfer ownership to the customer or anticipate that transfer in the future.
2. The contract or lease does not include an option to purchase the equipment by the school or library.
3. The school or library has no contractual right to exclusive use of the equipment.

² Universal Service Administrative Company, *Schools and Libraries’ Eligible Services List for Funding Year 2007*

³ Harry Newton, *Newton’s Telecom Dictionary* 390 (2001).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *1999 Tennessee Order*, 14 FCC Rcd 13734 (1999).

4. The up-front, non-recurring charges have been and are less than 67% of the total charges.
5. The equipment has not been and will not be used by the school or library for any purpose other than receipt of the eligible Telecommunications Service of which it is a part.
6. The Local Area Network for data communications of the school or library is functional without dependence on the equipment.
7. Embarq provides maintenance of the equipment listed in the contract/lease.

On the basis of the *1999 Tennessee Order*, Embarq approved Priority 1 funding requests for PBXs and key systems as part of end-to-end telecommunications service arrangements. This was consistent with guidance from the Schools and Libraries Division (SLD) of the Universal Service Administration Company (USAC). On December 1, 2003, however, SLD posted a revision to its "On-premise Priority 1 Equipment" document in which it stated that Priority 1 funding would not be available for PBXs "because they are utilized to route calls within the premises of a school or library." PBXs continued to be eligible, and still are eligible, or funding as Priority 2 Internal Connections. Embarq determined that the Key Systems it had deployed offered many of the same capabilities as PBXs so, out of caution, Embarq concluded that Key Systems also were no longer eligible for Priority 1 funding.

In the *Third Report and Order* in CC Docket No. 02-6, the Commission affirmed that PBXs would no longer be eligible for Priority 1 funding as part of an end-to-end configuration because "the PBX is necessary to maintain the internal communications network, but not its end-to-end access to telecommunications services."⁸ The Commission did not mention Key Systems in that decision, however. Accordingly, Embarq continued to treat Key Systems the same as PBXs for the purpose of eligibility for Priority 1 funding. At this time, the Key Systems that Embarq has deployed in connection with end-to-end telecommunications services to schools and libraries eligible for E-rate funding offer many of the same capabilities as PBXs. Consequently, Embarq continues to treat Key Systems the same as PBXs with respect to eligibility for Priority 1 funding.

The public interest would be best served if Embarq were granted a waiver so as to receive continued E-rate funding for those contracts entered into before SLD revised Priority 1 funding, which was confirmed by the Commission in the *Third Report and Order*. This waiver request applies only to E-rate applicants who previously (between August 11, 1999 and December 1, 2003) received Priority 1 funding for such arrangements provisioned under multi-year contracts, and it would only apply for the remaining term of such contracts. The waiver would not apply to applicants who agreed to subscribe to new end-to-end telecommunications service arrangements after December 1, 2003 or who agree to such arrangements in the future.

The public interest is best served by granting a waiver because Embarq and its customers entered into multi-year agreements in good faith reliance on the policy of providing Priority 1 funding for PBX and Key System equipment provided as part of end-to-end telecommunications in accordance with the *1999 Tennessee Order*. When the Commission changed its policy, these customers suffered, and many continue to suffer to this day, through no fault of their own. In these circumstances, the Commission ought to waive the application of its rules so that Embarq

⁸ *Third Report and Order*, 18 FCC Rcd 26,912 ¶ 47.

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and its customers are not adversely affected by the Commission's policy change. Accordingly, Embarq respectfully asks the Commission to waive Section 54.502 of its rules to the extent it denied and continues to deny Priority 1 E-Rate funding for PBX and Key Systems as part of existing end-to-end telecommunications arrangements entered into between August 11, 1999 and December 1, 2003.

Pursuant to Section 1.1206(b) of the Commission's rules, one copy of this presentation is being filed in the above-referenced docket. Please call me if you have any questions.

Sincerely,



Jeffrey S Lanning
Director – Federal Regulatory

cc: Jeremy Marcus
Mark Nadel