

Exhibit No. _____
Issues: Kearney and Platte City Exchanges
Witness: Dennis Devoy
Type of Exhibit: Rebuttal Testimony
Party: ExOp of Missouri, Inc. d/b/a Unite
Case No. IO-2003-0281

BEFORE THE PUBLIC SERVICE COMMISSION

FILED

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STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of the Investigation	)	
Of the State of Competition	)	Case No. IO-2003-0281
In the Exchanges of	)	
Sprint Missouri, Inc.	)	

NON-PROPRIETARY VERSION

REBUTTAL TESTIMONY

OF

DENNIS DEVOY

ON BEHALF OF

EXOP OF MISSOURI, INC. D/B/A UNITE

Kearney, Missouri

June 10, 2003

Exhibit No. 11 NP
Case No(s). IO 2003-0281
Date 7-14-03 Rptr TU

1 **Q. Please state your name, title and business address:**

2 A. My name is Dennis Devoy. I am General Manager of ExOp of Missouri, Inc. doing
3 business as Unite. My business address is 303 N. Jefferson, Kearney, MO 64060.

4 **Q. Please summarize your educational and professional background.**

5 A. I hold a Bachelor of Arts degree in accounting from Benedictine College in Atchison,
6 Kansas. I have over 20 years of accounting and business management experience. I have
7 been employed by ExOp of Missouri Inc., since September 2000 and am responsible for
8 management of all aspects of the business. I am specifically responsible for all
9 accounting, customer service, end user billing and access billing functions. From
10 September 1993 to September 2000 I was employed as Controller of Chariton Valley
11 Telephone Corporation, an independent cooperative telephone company operating in 18
12 exchanges in north central Missouri. With Chariton Valley I was responsible for all
13 accounting and computer information services for the telephone and its subsidiaries
14 operations. From 1981 to 1993 I worked for several companies not involved in the
15 telecommunications industry where I performed various account, management and
16 operational functions.

17 **Q. Is this your first time to testify before a state regulatory commission?**

18 A. Yes, it is.

19 **Q.—Please state the purpose of your rebuttal testimony in this case.**

20 A. The purpose of my testimony is to address on behalf of ExOp of Missouri certain
21 allegations made in Sprint's direct testimony relating to the state of competition in the
22 Kearney and Platte City exchanges. Simply put, ExOp opposes Sprint's exchange-

specific request for re-classification of its services in the Kearney exchange and especially in the Platte City exchange.

Q. What basic standard should the Commission apply in evaluating Sprint's application with regard to the Kearney and Platte City exchanges?

A. In order for the Commission to simply presume that effective competition exists in a particular exchange, the Commission would have to find that Sprint actually faced competition for a minimum of five years in the exchange in question as opposed to merely finding that an alternative competitive company was authorized to do business within that exchange. Section 392.245.5 of the Missouri Revised statutes provide:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been certified under section 392.455 **and** has provided basic local telecommunications service for at least five years, **unless** the commission determine, after notice and a hearing that effective competition does not exist in the exchange for such service.

Q. Has ExOp actually been providing service in the Kearney exchange for five years?

A. Although ExOp may have provided service in the Kearney exchange to a very few test customers in December 1998, ExOp did not begin actually providing service to the public at large within the Kearney exchange until February 1999. Hence, presuming that effective competition truly has existed for five years in the Kearney exchange due to ExOp's activities would not reflect reality.

Q. What about Platte City?

A. ExOp has only been offering service to the public at large within Platte City since August 2002, and to date has not achieved any significant customer penetration.

1 **Q. Aside from the possible application of the five-year test, what other standards**
2 **should the commission apply in determining whether there is effective competition**
3 **in the Kearney and Platte City exchanges?**

4 A. The statutes do not define effective competition, but rather Section 386.020(13) lists
5 the following factors that the Commission should consider in determining whether
6 effective competition exists:

- 7 (a) The extent to which services are available from alternative providers in the
- 8 relevant market;
- 9 (b) The extent to which the services of alternative providers are functionally
- 10 equivalent or substitutable at comparable rates, terms and conditions;
- 11 (c) The extent to which the purposes and policies of Chapter 392, RS Mo,
- 12 including the reasonableness of rates, as set out in Section 392.185 RS
- 13 Mo, are being advanced;
- 14 (d) Existing economic or regulatory barriers to entry; and
- 15 (e) Any other factors deemed relevant by the Commission and necessary to
- 16 implement the purposes and policies of Chapter 392 RSMo.
- 17

18 **Q. Does Sprint face effective competition in Kearney?**

19 A. ExOP does not deny that it has achieved significant market share in the Kearney
20 exchange. However, the Commission has found in Case No. TO-2001-467 that even in
21 exchanges where market share is substantial, market share alone is not sufficient for the
22 Commission to find that effective competition exists. There are areas of the city of
23 Kearney where ExOp has not constructed facilities, nor does it anticipate constructing
24 facilities in the near future, due to the possibility that ExOP may soon be sold and
25 ExOp's parent company, Aquila, will not be providing any further funding or support for
26 ExOp's expansion in the Kearney exchange or elsewhere. It also is doubtful that ExOp,
27 with its current business plan as a facilities-based carrier, would be willing to employ
28 resale or UNEs to serve customers it cannot reach with its own plant.

1 **Q. What about customers outside of the city limits of Kearney?**

2 A. In addition, potential customers located outside the City of Kearney, but within the
3 Kearney exchange, currently do not have ExOp's services available to them. Thus, a
4 substantial portion of business and residential customers within the Kearney exchange at
5 this time do not have ExOp as a competitive alternative to Sprint for telephone services.
6 If Sprint is deregulated in the Kearney exchange, it is doubtful that customers who do not
7 currently have ExOp as a competitive alternative will see the benefit of lower prices.
8 Instead, it is likely that any discounts Sprint offers will be targeted at only ExOp's
9 existing Kearney exchange customers to the clear competitive detriment of ExOp.

10 **Q. How does ExOP's current market share in the Platte City exchange compare**
11 **with ExOP's current market share in the Kearney exchange?**

12 A. Even Sprint's own evidence shows that ExOp has significantly less market share and
13 overall competitive presence in the Platte City exchange as compared to the Kearney
14 exchange. As I explain in more detail later in my testimony, effective competition
15 definitely does not exist in Platte City.

16 **Q. Has Sprint's pricing behavior in Missouri since 1999 been consistent with a**
17 **company that faces competition?**

18 A. No, it has not. Both Kearney and Platte City are considered part of Sprint's Rate
19 Group III in its Tariff No. 22. Sprint's rate for basic residential service for customers in
20 Group III exchanges has increased 89.4 percent or \$6.10 from \$6.82 to \$12.92 from
21 \$6.82 during that time period.

22 **Q. Has Sprint's rate for basic business service increased?**

1 A. Yes. The rate for basic business service has increased \$6.45 or 48 percent since 1999.

2 The current rate for basic business service is \$19.90.

3 **Q. Are such price increases consistent with a competitive environment?**

4 A. No they are not. These price increases may have been the result of the public policy
5 goals of bringing rates for local exchange service more in line with costs, while at the
6 same time making access charge reductions in a zero sum game environment. However,
7 if Sprint is deregulated, they will likely lower rates in the exchanges where they face
8 competition while keeping rates at their current levels or continuing to increase local
9 rates up to the price cap in exchanges where they continue to experience little or no
10 competition. In my opinion, the whole concept of revenue neutrality has no place in a
11 competitive environment.

12 **Q. Please elaborate.**

13 A. Revenue neutrality is a concept promoted by incumbent telecommunications carriers
14 to enable them to maintain their revenue streams regardless of the source. It is
15 noteworthy that Sprint provides service in 82 exchanges in Missouri, but is seeking
16 deregulation of its services in only 5 of its exchanges. As a matter of sound regulatory
17 policy, Sprint should not be permitted to increase rates in the exchanges where it faces
18 little or no competition to fund the discounts it is likely offer to win back or retain
19 customers in the exchanges where it purportedly does face competition.

20 **Q. To your knowledge what steps has Sprint taken to date in an effort to respond to**
21 **competition within the Kearney and Platte City exchanges.**

22 A. In response to a data request, Sprint indicated that the only promotion in effect from
23 July 30, 2001 through September 15, 2001 was an offer to waive the nonrecurring service

1 connection charge for customers returning to Sprint for local service. The data request
2 responses make no mention of new products or service offerings, promotional pricing or
3 short term discounts for basic or non-basic services, presumably because to do so, Sprint
4 would have had to make such an offer statewide to customers in all exchanges in Group
5 III.

6 **Q. Mr. Idoux, in his direct testimony at page 38, states that although ExOp just**
7 **began providing service in Platte City, there is no reason to believe that ExOp will**
8 **not be as successful in Platte City as it has been in Kearney. Do you agree?**

9 A. No. I do not. ExOp's business plan is predicated on customers subscribing to a
10 bundled package of service with local exchange telephone service being just one
11 component of that bundle. As Mr. Idoux states on page 33 of his testimony, ExOp offers
12 several packages of bundled services that consist of local telephone service, digital cable
13 service with various premium channel upgrades and high speed digital subscriber line
14 Internet connections. ExOp has not received a cable franchise in Platte City, nor is it
15 licensed to provide video services via an Open Video System, pursuant to 47 U.S.C. §
16 573. Hence, ExOp is not able to distinguish and market its product offering in Platte City
17 the way it has been able to distinguish and market its product offering in Kearney.

18 **Q. When did ExOp begin providing service in Platte City?**

19 A. ExOp actually began providing service to several Ferrelview numbers within the
20 Platte City exchange in August 2001 but ExOp did not really begin providing service in
21 Platte City proper and to the public at large until August 2002.

22 **Q. How many residential access lines does ExOp have in Platte City?**

A. At year-end 2001, ExOp served 22 residential lines in Platte City, including Ferrelview that are part of the Platte City exchange. At year-end 2002, ExOp served 55 residential lines, in Platte City.

Q. How many business lines does ExOp serve in Platte City?

A. ExOp did not serve any business customers in Platte City as of year-end 2001. By year-end 2002, ExOp served 148 business access lines in Platte City.

Q. How many residential lines does Sprint serve in Platte City?

A. According to the annual reports Sprint has filed with the Commission, Sprint reported the number of residential access lines it serves in Platte City as follows:

<u>Year</u>	<u>No. of Residential Access Lines</u>
1999	2599
2000	2838
2001	2852

*****Start Proprietary*****

2002

*****End Proprietary*****

Q. How many business access lines does Sprint serve in Platte City?

A. According to the annual reports Sprint has filed with the Commission, Sprint reported business access lines it serves in Platte City as follows:

<u>Year</u>	<u>No. of Business Access Lines</u>
1999	1213
2000	1265
2001	1337

*****Start Proprietary*****

2002

*****End Proprietary*****

1 **Q. What conclusions should the Commission draw from access line count statistics**
2 **offered by Sprint in the Platte City exchanges?**

3 A. While Sprint experienced a decrease of ******Proprietary******business access lines in
4 the Platte City exchange from 2001 to 2002, Sprint actually experienced an increase of
5 ******Proprietary******residential access lines between 2001 and 2002.

6 **Q. What is your recommendation to the Commission with regard to Platte City?**

7 A. Any determination that Sprint is subject to effective competition in Platte is
8 premature. Unlike the extensive documentation it has provided for its requests to be
9 deregulated in Rolla, Norborne, St. Robert and even Kearney, Sprint has not put forth any
10 evidence in its testimony concerning the penetration achieved by ExOp in Platte City. In
11 fact the *only* support Sprint offers to support its position is to cite to the fact that ExOp
12 has requested and has received a designation from the Missouri Public Service
13 Commission that it be treated as an eligible telecommunications carrier (ETC) for
14 universal service reimbursement purposes.

15 **Q. Has ExOp received any universal service monies to date as the result of its ETC**
16 **designation either Kearney or Platte City?**

17 A. No, it has not.

18 **Q. Does Sprint receive universal service support payments for access lines in the**
19 **Kearney and Platte City exchanges?**

20 A. In response to a Sprint data request, Sprint proffered that it does not currently receive
21 federal USF interstate access support for the exchanges of Kearney or Platte City.
22 However, Sprint indicated it receives federal high cost loop support for its Missouri

1 Study Area, including the exchanges of Kearney and Platte City. The current monthly
2 high cost loop support received is \$0.26 per access line.

3 **Q. If the Commission were to deny Sprint's request to be deregulated in Platte City,**
4 **is there anything that would prevent Sprint from coming back to the Commission at**
5 **some point in the future to request that it be deregulated in Platte City?**

6 A. No.

7 **Q. Does this conclude your testimony?**

8 A. Yes, it does.

9

[illegible]


Dennis Devoy

Debbie R Mause
Notary Public

DEBBIE R. MORSE
Notary Public - State of Kansas
My Appt. Expires 9/12/05