

1.3. What investigation did Staff perform to determine if competitors of Southwestern Bell Telephone Company (SWBT), Sprint Missouri, Inc. (Sprint), Verizon Midwest (Verizon) and Spectra Communications, LLC (Spectra) (collectively "large ILECs") were providing basic local telecommunications service (as that term is defined by Staff in its testimony in this case) at the time each of those large ILECs sought and obtained a determination from the Commission that they were subject to price cap regulation. Please describe in detail the nature and substance of Staff's investigation and the results thereof. If there is written documentation of Staff's investigation, please provide copies of same.

Answer: Southwestern Bell Telephone Company – The competitor upon which SWBT based its price cap status was Dial US. The analysis conducted by Staff is a matter of public record and can be obtained in the testimony of William Voight and other court documents such as the transcripts in Case No. TO-97-397. Essentially, a site visit to Dial US's facilities in Springfield was conducted by Voight to substantiate SWBT's claim of price cap status, including the claim that Dial US was providing basic local service. Moreover, Dial US's then approved tariff, also a matter of public record, indicates that Dial US was a provider of basic local exchange telecommunications service. If BPS requires assistance in researching Commission documents in Case No TO-97-397, the Staff is willing to expeditiously assist in that process. Additionally, a copy of Voight's testimony can be provided if BPS desires.

Sprint filed for price cap status on February 23, 1999 and its petition was docketed as Case No. TO-99-359. Sprint based its petition for price cap status on the existence of ExOp of Missouri. The Staff was aware of ExOp's facility based competition occurring in Kearney through extensive discussions with ExOp, although Voight did not personally visit ExOp's facilities until November 3, 1999. ExOp's then approved tariff indicates that ExOp was a provider of basic local exchange telecommunications service.

On March 25, 1999, the Commission ordered Staff to:

"...investigate the facts alleged by Sprint regarding ExOp and file a verified pleading with the results of Staff's investigation. The only issues upon which Staff needs to report would be to confirm: (1) whether or not ExOp continues to have an approved certificate, interconnection agreement, and the appropriate tariffs in place; and (2) whether or not ExOp has one or more customers."

A copy of the Staff's one-page Report, written by Staff economist George Gruenewald and filed on April 8, 1999, has been researched for BPS from publicly available documents and is attached to this response. The Commission granted Sprint price cap status on August 19, 1999.

GTE filed its petition for price cap status on January 7, 1999 and was granted price cap status by order of the Commission on January 26, 1999. GTE based its petition for price cap status on the existence of Mark Twain Communications Corporation, who was

claimed by GTE to be providing basic local exchange telephone service in GTE's Lewiston and LaBelle exchanges. No Staff investigation in these matters was ever conducted. However, in Case No IO-2002-0132 (Spectra's petition for price cap status based on these same Mark Twain exchanges), the Staff sent a formal Data Request to Mark Twain which verified the existence of facility based competition in the Spectra exchanges of Lewiston, LaBelle, and Ewing. Mark Twain's publicly available annual report reveals the results of Staff's data request to Mark Twain and demonstrates the existence of facility based competition in the Ewing, Lewistown, and LaBelle exchange areas. Staff's recommendation, dated November 1, 2002, in Case No. IO-2003-0132 reveals the results of our investigation and is attached.

MEMORANDUM

FILED

APR 8 1999

Missouri Public
Service Commission

TO: Missouri Public Service Commission Official Case File
Case No. TO-99-359; Sprint Missouri, Inc.

FROM: ^{HZA} George Gruenewald, Telecommunications Department ^{WJ}

W. J. Headen 4-7-99 James G. Baker 4/8/99
Utility Operations Division/Date General Counsel Office/Date

SUBJECT: Staff Investigation of Competition in Sprint Exchanges

DATE: April 6, 1999

Pursuant to the Commission's order in Case No. TO-99-359, the Telecommunications Department Staff (Staff) has investigated competition in the exchanges of Sprint Missouri, Inc. d/b/a Sprint (Sprint). Staff notes that ExOp of Missouri, Inc. (ExOp) and Green Hills Area Cellular Telephone Company, Inc. d/b/a Green Hills Telecommunications Services (Green Hills) are both certificated to provide basic local exchange service within the exchanges of Sprint. Both ExOp and Sprint possess the appropriate interconnection agreements and tariffs to provide such service. ExOp has customers subscribing to basic local exchange service within Sprint's Kearney exchange. Green Hills has customers subscribing to basic local exchange service within Sprint's Norborne exchange.

The information obtained suggests that the elements of Section 392.245 RSMo which provides for price cap status have been satisfied. Namely, (1) an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service, and (2) that it is providing such service in any part of the Sprint service area.

Copies: Director - Utility Operations Division
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Director - Utility Services Division
General Counsel
Linda K. Gardner, Attorney for Sprint
Office of the Public Counsel

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Petition of Spectra)
Communications Group, L.L.C. d/b/a)
CenturyTel Regarding Price Cap Regulation)
under Section 392.245 RSMo 2000)

Case No. IO-2003-0132

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its Recommendation, states:

1. On October 4, 2002, Spectra Communications Group, L.L.C. d/b/a CenturyTel ("Spectra") filed a petition seeking a determination from the Commission that it is subject to price cap regulation under Section 392.245 RSMo. 2000. The Commission directed any party desiring to respond to the petition to file a response by October 29, 2002. On October 28, 2002, the Office of the Public Counsel filed a *Request for an Evidentiary Hearing*.

2. In its *Response to Spectra Petition and Office of Public Counsel Request for an Evidentiary Hearing*, Staff sought additional time to complete its investigation of the nature of the service provided by Mark Twain in the Spectra service area, and the Commission granted that request in its Order of October 30, 2002.

3. Staff has now completed its investigation, and recommends that the Commission grant Spectra price cap status. Staff believes that Spectra has demonstrated that it meets the criteria set forth in Section 392.245.2: specifically, that "an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area."

4. In its initial filing in this case, Staff indicated it did not dispute that Spectra now serves as a "large incumbent local exchange telecommunications company," as that term is used

in Section 392.245.2, in providing service to these former GTE Midwest Incorporated exchanges, and that Mark Twain Communications Company ("Mark Twain") is acting as an "alternative local exchange telecommunications company" as that term is defined in Section 386.020(1) and used in Section 392.245.2, and has the authority to provide service in Spectra's service area.

5. Staff has investigated the nature of the service provided by Mark Twain in the Spectra service area. As a result, Staff believes that Mark Twain has not only the authority to provide service in Spectra's service area, but is also in fact doing so. Mark Twain has responded to Staff's Data Request that as of October 2002, it serves 784 full facility-based residential voice grade equivalent lines and 250 full facility-based business voice grade equivalent lines in the Spectra service area. Staff recommends that the Commission determine that this service is of the nature anticipated by the legislature in Section 392.245.2 to give rise to price cap status, and grant Spectra price cap status.

6. In its *Response to Spectra Petition and Office of Public Counsel Request for an Evidentiary Hearing*, Staff noted that the Commission need not grant a hearing to a party in a *noncontested* case merely because a party requests a hearing. On October 28, 2002, the Office of the Public Counsel filed a *Request for an Evidentiary Hearing*. The Cole County Circuit Court has found that Section 392.245.2 does not give rise to a Section 536.010(2) "contested case" scenario and does not require notice and hearing before the Commission makes its determinations in response to a large incumbent local exchange telecommunications company's price cap application.¹ As notice and hearing are not mandatory, and as Staff believes the facts supporting the petition are straightforward and are not in dispute, Staff thus suggests that there is

¹ *State of Missouri, ex rel. Public Counsel Martha S. Hogerty v. The Public Serv. Comm'n of the State of Mo., et al.*, Cause No. CV199-282CC (Cole Co. Cir. Ct., July 27, 1999) (attached as Appendix A to Staff's *Response to Spectra Petition and Office of Public Counsel Request for an Evidentiary Hearing*).

no need for an evidentiary hearing, and that the Commission should deny the Office of Public Counsel's request.

WHEREFORE, Staff respectfully recommends that the Commission determine pursuant to Section 392.245.2 that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service within part of Spectra's service area, deny the *Office of the Public Counsel's Request for an Evidentiary Hearing*, and grant its approval of Spectra's petition.

Respectfully submitted,

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/s/ **David A. Meyer**

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 1st day of November 2002.

/s/ **David A. Meyer**
