

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Spectra Communications Group, LLC)
d/b/a CenturyTel's Request for Competitive Classification) Case No. IO-2006-0317
Pursuant to Section 392.245.5, RSMo. (2005).)

**OPINION OF COMMISSIONERS ROBERT M. CLAYTON III AND STEVE
GAW, DISSENTING, IN PART, AND CONCURRING, IN PART**

These Commissioners dissent from the majority's Report and Order regarding competitive status for residential service in one of the applicant's exchanges, Everton, pursuant to §392.245, RSMo., 2005. The majority concluded that the statute was satisfied for both of the exchanges, Everton and Mt. Vernon, included in Spectra's application for competitive classification. The parties submitted evidence at hearing to establish that MCC Telephony of Missouri a/k/a Mediacom provides residential phone service to more than one customer in each exchange using facilities it owns in whole or in part. In addition, evidence was presented attempting to establish that a wireless provider had, not only coverage in the areas involved, but also offered local telephone numbers and local service. These Commissioners have concerns with the availability of competition in the Everton exchange due to the absence of evidence of local calling to wireless providers in that exchange. The remaining provisions regarding the Mt. Vernon exchange in the Report and Order warrant support.

Contradictory evidence was presented in the Everton exchange regarding the ability of wireline customers in the exchange to dial Cingular wireless customers. Cingular was submitted as the wireless carrier meeting the statutory requirements of §392.245, RSMo., 2005. As previously stated by these Commissioners in other cases it is an important requirement under the 30-day competitive classification test that the wireless carrier submitted be accessible by the local wireline carrier toll-free.

An affidavit submitted by Cingular did indicate that such toll-free dialing could be accomplished. However, highly confidential material submitted into the record by Staff contradicted this affidavit. No adequate explanation has been given for this discrepancy.

The only alternative for a wireless customer to be called "locally" or toll-free from an Everton wireline phone would require customers to obtain a local number by signing up for local service from Spectra or Mediacom and then transferring the number to a wireless provider to procure phone service with local, toll-free service using the option of Local Number Portability. It is unlikely the average consumer would understand the telecommunications industry well enough to execute this strategy. And as a result, the average consumer would not have a choice in local service demonstrating that competition may not exist in Everton.

In addition, there was no evidence presented to show the existence of an Extended Area Service (EAS) route or other means of offering unlimited toll-free in-bound and out-bound calling in a local service area. In four prior Opinions¹, one of these Commissioners has emphasized the letter and the spirit of SB 237 in establishing the existence of basic local service offered by a wireless provider. Both Commissioners Clayton and Gaw have consistently argued in previous cases that a wireless provider must have local phone numbers, or its equivalent, and local service available in an exchange for that provider to be considered as "local" in the competitive analysis.

These Commissioners are also concerned that some of the customers in both the Everton and Mt. Vernon exchanges may not have access to Mediacom service. While the statute does not specifically require that the service be available to everyone in an exchange, these

¹ See, *In Re Sprint*, Case No. IO-2006-0092, Opinion of Commissioner Clayton; *In Re SBC*, Case No. TO-2006-0093, Opinion of Commissioner Clayton; *In Re CenturyTel*, Case No. IO-2006-0109, Opinion of Commissioner Clayton; *In Re Centurytel*, Case No. IO-2006-0316, Opinion of Commissioner Clayton.

Commissioners believe that requirement is part of the spirit of the statute. As a result, some customers will have a choice in local phone service, while others will not and will be without the protections of a truly competitive marketplace.

These Commissioners believe that the residents of the Everton exchange may be vulnerable to significant price increases without sufficient price discipline from a robust competitive market and without any price oversight from the Commission. The Commission must be vigilant in its review of these 30-day competitive classification cases and ensure that the telecommunications company unequivocally satisfies all of the statutory requirements. This is particularly important in deciding whether it is appropriate in situations, like the present case, where the market share of the wireless providers competing with the incumbent is small. The evidence presented in this case did not meet requirements of the law for the Everton exchange to be declared competitive.

For the foregoing reasons, these Commissioners respectfully dissent.

Respectfully submitted,



Robert M. Clayton III
Commissioner



Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 17th day of March, 2006.