

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of October, 2008.

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| In the Matter of CenturyTel of Missouri, LLC's Request) | |
| for Competitive Classification of Business Services in) | |
| Certain Exchanges Pursuant to Section 392.245.5,) | <u>Case No. IO-2009-0124</u> |
| RSMo, as Amended by H.B. 1779.) | Tariff No. YI-2009-0240 |

**ORDER GRANTING COMPETITIVE CLASSIFICATION
AND APPROVING TARIFF SHEETS**

Issue Date: October 23, 2008

Effective Date: November 2, 2008

Syllabus: In this Order, the Missouri Public Service Commission grants CenturyTel of Missouri, LLC's request, pursuant to Section 392.245.5, RSMo,¹ for competitive classification of the business services, other than exchange access service, in its Ava, Cabool, Cassville, Crane, Exeter, Forsyth, Kimberling City, Mansfield, Marshfield, Rockaway Beach, and Seymour exchanges. In addition, the Commission approves the tariff sheets filed to implement the competitive classifications.

Procedural History

On October 3, 2008, CenturyTel of Missouri, LLC, filed its verified Application for Competitive Classification. In its application, CenturyTel requested that the Commission classify the business services it offers in its Ava, Cabool, Cassville, Crane, Exeter, Forsyth,

¹ As amended by H.B. 1779, effective August 28, 2008.

Kimberling City, Mansfield, Marshfield, Rockaway Beach, and Seymour exchanges, other than exchange access services, as competitive.

Concurrent with the filing of its application, CenturyTel filed proposed tariff sheets which reflected the requested competitive classifications and had an effective date of November 2, 2008.

On October 7, 2008, the Commission entered its Order Directing Notice and Directing Filing, in which the Commission provided notice of CenturyTel's application to all certificated competitive local exchange carriers and incumbent local exchange carriers in Missouri, as well as to the General Assembly and the news media. The Commission also ordered that any party wishing to object to the application or to request a hearing must do so no later than October 14, 2008. This order also established a date for the Staff of the Missouri Public Service Commission to file its recommendation. No objections or requests for a hearing were filed.

As part of its application, CenturyTel requested that the Commission take official notice of its own records in Case No. IO-2008-0096, in which the Commission investigated the continuing status of competition in CenturyTel's exchanges previously designated as competitive. CenturyTel also requested that the Commission take official notice of Case No. IO-2008-0243, in which the Commission granted competitive classification for residential services, other than exchange access service, in the Branson, Exeter, and Rockaway Beach exchanges. The Commission takes official notice of its records in Case Nos. IO-2008-0096 and IO-2008-0243.

On October 20, 2008, Staff filed a verified pleading recommending that the Commission approve CenturyTel's application with regard to the requests for competitive classification. Staff also recommended that the Commission approve the tariff sheets.

The Office of the Public Counsel filed a statement on October 21, 2008, indicating that under the current statutory standard for competition, Public Counsel had no objection to the recommendations of Staff.

Findings of Fact

The Missouri Public Service Commission, having reviewed CenturyTel's pending tariff, the verified application, and Staff's verified recommendation and memorandum, makes the following findings of fact:

1. CenturyTel is a "local exchange telecommunications company" (ILEC) and a "public utility," and is authorized to provide "telecommunications service" within the state of Missouri.²
2. CenturyTel is a large ILEC subject to price cap regulation.³
3. The Commission determined in its investigation of continued competitive status of residential services, other than exchange access service, in CenturyTel's exchanges "that competition as defined by Section 392.245.5, RSMo Supp 2006"⁴ continued to exist in the Ava, Cabool, Cassville, Crane, Forsyth, Kimberling City, Mansfield, Marshfield, and Seymour exchanges.

² *CenturyTel of Missouri, LLC's Application for Competitive Classification (Application)*, para. 1.

³ *Id.*

⁴ *Order Approving Stipulation and Agreement and Finding Continued Competition in Certain Exchanges of CenturyTel of Missouri, LLC*, Case No. IO-2008-0096 (effective January 25, 2008).

4. In Case No. IO-2008-0243 the Commission found that with regard to residential services, other than exchange access service, CenturyTel's Branson, Exeter, and Rockaway Beach exchanges had sufficient competition to be designated as competitive.⁵

5. At least one nonaffiliated commercial mobile service provider (aka, "wireless carrier") is providing basic local telecommunications service to business and/or residential customers in the exchanges that are the subject of this application.⁶

6. The most recent annual reports filed with the Commission show the presence of at least one nonaffiliated entity providing residential and/or business basic local telecommunications service to customers in the Ava, Cabool, Cassville, Crane, Exeter, Forsyth, Kimberling City, Mansfield, Marshfield, and Seymour exchanges.

7. In the Rockaway Beach exchange, facilities-based local voice service is provided by Suddenlink.⁷

8. Staff recommends that the Commission approve the tariff sheets.⁸

9. The facts as submitted in the verified application and the verified Staff recommendation and supporting memorandum are reliable and support the grant of competitive classification in the requested exchanges.

⁵ *Order Granting Competitive Classification and Approving Tariff Sheets*, Case No. IO-2008-0243 (effective February 24, 2008).

⁶ Case No. IO-2008-0096, *Staff Report*, Schedule C, pp. 1-3; Case No. IO-2008-0243, *Order Granting Competitive Classification and Approving Tariff Sheets*, (effective February 24, 2008) pp. 7-8; *Staff Recommendation* (filed October 20, 2008), Appendix A, p. 1.

⁷ Case No. IO-2008-0243, *Order Granting Competitive Classification and Approving Tariff Sheets*, (effective February 24, 2008) p. 7.

⁸ *Staff Recommendation*, Appendix A, p. 1.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

1. The Commission has jurisdiction over this matter pursuant to Section 392.245.5, which provides, in part, as follows:

Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business or residential customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange.

* * *

(6) Upon request of an incumbent local exchange telecommunications company seeking competitive classification of its services under this subsection, the commission shall, within thirty days of the request, determine whether there are at least two entities providing basic local telecommunications service in an exchange and if so shall approve tariffs designating all such services other than exchange access service, as competitive within such exchange

2. Because the opportunity for an evidentiary hearing was provided and no proper party requested such a hearing, the Commission may rely on the verified pleadings filed by CenturyTel and Staff in making its decision in this case.⁹

3. CenturyTel is an incumbent local exchange telecommunications company regulated under Section 392.245, RSMo, and has requested competitive classification of its

⁹ See, e.g., *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989); n. 3 *supra*.

business services, other than exchange access service, in its Ava, Cabool, Cassville, Crane, Exeter, Forsyth, Kimberling City, Mansfield, Marshfield, Rockaway Beach, and Seymour exchanges.

4. Section 392.245.5(3), defines “local voice service” as meaning “[r]egardless of the technology utilized . . . two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo 2000.”

5. Section 392.245.5(4) excludes prepaid telecommunications service and resold telecommunications service from being considered as providing “local voice service.”

6. For the purpose of determining whether competitive status is appropriate in an exchange, one commercial mobile service provider can be considered an entity providing “basic local telecommunications service.”¹⁰

7. At least one nonaffiliated commercial mobile service provider is providing local voice service to residential and/or business customers in each of the exchanges that are the subject of the application.

8. In addition to the commercial mobile service providers, there is at least one additional nonaffiliated entity providing basic local voice service to residential customers in each of the exchanges that are the subject of this application.

9. The residential services, except exchange access service, in each of the requested exchanges have previously been designated as competitive.¹¹

¹⁰ Section 392.245.5(1), RSMo.

¹¹ See Commission Case Nos. IO-2008-0096 and IO-2008-0243.

10. Section 392.245.5 mandates the designation of business services in an exchange as competitive if “at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business **or residential** customers within the exchange.”¹²

11. Two or more nonaffiliated entities are providing basic local telecommunications service to residential customers within the exchanges that are the subject of this application.

Decision

CenturyTel is an incumbent local exchange carrier (ILEC) that is subject to price cap regulation under Section 392.245, RSMo. Under price cap regulation, maximum allowable rates are established and other restrictions are placed on the ability of the regulated company to raise its rates. The statute that created price cap regulation includes provisions that allow a price cap regulated company to escape regulation when competition develops in the exchanges served by that company. If a carrier obtains competitive status in an exchange it will gain greater pricing flexibility and will be able to raise, or lower, the applicable tariffed rate for its services, except exchange access service, by giving notice to the Commission and affected customers. An ILEC with competitive status in an exchange will have essentially the same pricing flexibility in that exchange as a competitive local exchange carrier (CLEC).

The Commission *must* grant a petition to classify the ILEC’s business services as competitive in any exchange in which at least two other nonaffiliated carriers are providing basic local telecommunications services to either business or residential customers within

¹² Emphasis added.

an exchange.¹³ The statute provides that one commercial mobile radio service provider can be counted as an entity providing basic local telecommunications services.¹⁴ The other entity that can be counted as providing basic local telecommunications services is any entity, other than prepaid providers or resellers, providing local voice service using its own facilities or the facilities of a third party, including the ILEC or an unaffiliated third-party Internet service.¹⁵

In Commission Case Nos. IO-2008-0096 and IO-2008-0243 the Commission found that the required competition with regard to residential customers was present in the requested exchanges. Staff verified this information¹⁶ using the most recent annual reports filed at the Commission. The undisputed evidence establishes that for residential customers in the exchanges that are the subject of this application, there is at least one entity providing local voice service meeting the requirements of Section 392.345.5. Furthermore, the undisputed evidence establishes that there is at least one nonaffiliated commercial mobile service provider providing basic local telecommunications service within the meaning of Section 392.245.5(1) to customers in the requested exchanges.

Section 392.245.5 requires that the Commission grant competitive classification for business services where the criteria are met for either business or residential customers. Therefore, the Commission concludes that CenturyTel's application for

¹³ Section 392.245.5(6), RSMo.

¹⁴ Section 392.245.5(1), RSMo.

¹⁵ Section 392.245.5(2), (3), and (4), RSMo.

¹⁶ With the exception of the Rockaway Beach exchange for which the cable provider, Suddenlink, does not file an annual report.

competitive classification of its business services, other than exchange access services, in the requested exchanges must be granted.

CenturyTel also submitted tariff changes to implement the competitive classification of its services. Those tariff sheets carry an effective date of November 2, 2008. Since the submitted tariff sheets correspond with the Commission's decision, the Commission shall approve them.

THE COMMISSION ORDERS THAT:

1. CenturyTel of Missouri, LLC's business services, other than exchange access service, are classified as competitive in the following exchanges: Ava, Cabool, Cassville, Crane, Exeter, Forsyth, Kimberling City, Mansfield, Marshfield, Rockaway Beach, and Seymour.

2. CenturyTel of Missouri, LLC's proposed tariff revision (Tariff No. YI-2009-0240) is approved to become effective for service on and after November 2, 2008. The tariff sheets approved are:

PSC MO. NO. 1, Section 4

**4th Revised Sheet 1, Cancels 3rd Revised Sheet 1
1st Revised Sheet 17.1.1, Cancels Original Sheet 17.1.1
3rd Revised Sheet 17.4, Cancels 2nd Revised Sheet 17.4
3rd Revised Sheet 17.5, Cancels 2nd Revised Sheet 17.5
1st Revised Sheet 17.5.2, Cancels Original Sheet 17.5.2
2nd Revised Sheet 17.6.2, Cancels 1st Revised Sheet 17.6.2
3rd Revised Sheet 17.7, Cancels 2nd Revised Sheet 17.7
3rd Revised Sheet 17.8, Cancels 2nd Revised Sheet 17.8
3rd Revised Sheet 17.9, Cancels 2nd Revised Sheet 17.9
1st Revised Sheet 17.9.1, Cancels Original Sheet 17.9.1
2nd Revised Sheet 17.10.1, Cancels 1st Revised Sheet 17.10.1
1st Revised Sheet 17.10.2, Cancels Original Sheet 17.10.2**

3. This order shall become effective on November 2, 2008.
4. This case may close on November 3, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Jarrett, and Gunn, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge