

OF THE STATE OF MISSOURI

In the Matter of CenturyTel of Missouri, LLC's Request)
For Competitive Classification Pursuant to Section) **Case No. IO-2006-0316**
392.245.5, RSMo. (2005).)

**OPINION OF COMMISSIONER ROBERT M. CLAYTON III
CONCURRING, IN PART, AND DISSENTING, IN PART**

This Commissioner concurs with the majority's Report and Order regarding competitive status for residential service in certain of the applicant's exchanges pursuant to §392.245, RSMo. 2005. With the exception of the Crane and Seymour exchanges, this Commissioner agrees that the statute was satisfied for the exchanges included in Centurytel's application for competitive classification. The parties submitted evidence at hearing which established 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, the evidence clearly established that a wireless provider offered, not only coverage in the areas involved, but also local telephone numbers and local service in Ava, Columbia and Marshfield. While this Commissioner has concerns with the availability of competition in Crane and Seymour due to the absence of local calling to wireless providers in those exchanges, the remaining provisions of the Report and Order warrant support.

Regarding Crane and Seymour, Staff testified that there is an agreement between Centurytel and U.S. Cellular that permits local dialing from a Centurytel wireline phone to a

wireless U.S. Cellular phone in those exchanges. Local dialing is permitted even if the N-X-X of the wireless phone is from another exchange. Had this fact been firmly established, this Commissioner may have been satisfied. However, there was some confusion as to the existence of the agreement as well as concern that Mediacom customers lacked the ability to make and receive toll-free, local calls with wireless phones in the Crane and Seymour exchanges. The only alternative for a wireless customer to be called "locally" or toll free from a Crane or Seymour wireline phone would require consumers to obtain a local number by signing up for local service from Centurytel 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 Crane and Seymour.

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 three prior Opinions¹, this Commissioner has emphasized the letter and the spirit of SB 237 in establishing the existence of basic local service offered by a wireless provider. This Commissioner has consistently argued 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.

This Commissioner is also concerned that some of the customers in the five exchanges


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 CentruyTel*, Case No. IO-2006-0109, Opinion of Commissioner Clayton.

may not have access to Mediacom service. While the statute does not specifically require that the service be available to everyone in an exchange, this Commissioner believes 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.

This Commissioner believes that the residents of the Crane and Seymour exchanges may be vulnerable to significant price increases without any price discipline from a competitive market, and additionally, without the protections of the Commission, which formerly stood in the place of competition. For the above reasons, this Commissioner would have denied the applicant's request for competitive classification for residential services in the Crane and Seymour exchanges.

For all other portions of the majority Report and Order, this Commissioner concurs.

Respectfully submitted,


Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 8th day of March, 2006.