

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

In the Matter of CenturyTel of Missouri, LLC's)
Request for Competitive Classification Pursuant to) Case No. IO-2006-0109
Section 392.245.5, RSMo (2005))

**STAFF'S PRETRIAL BRIEF, LIST OF WITNESSES, AND
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW the Staff of the Missouri Public Service Commission and for its pretrial filing states:

Pretrial Brief

On September 9, 2005, CenturyTel of Missouri, LLC filed its Petition for Competitive Classification pursuant to Section 392.245.5 RSMo, as amended by Senate Bill 237.

Under this thirty-day track, each telecommunications service offered to business customers, other than exchange access, of a price cap regulated incumbent local exchange telecommunications company (ILEC) shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the ILEC are providing basic local telecommunications service to business customers within the exchange. One of the entities may be a wireless company. At least one entity shall be providing local voice service in whole or in part over telecommunication facilities or other facilities in which it or one of its affiliates have an ownership interest. This track has an identical provision for services provided to residential customers.

CenturyTel of Missouri, LLC has 96 exchanges. Its petition asks for competitive classification for seven exchanges for residential services and eight exchanges for business services. In testimony filed on September 22, 2005, CenturyTel withdrew its request for residential services in the Bourbon, Branson and Columbia exchanges. CenturyTel has indicated

that in its Pretrial Brief it will withdraw its request pertaining to the Dardenne exchange for business services.

The Missouri Supreme Court has stated that “[t]he law in this state as to the burden of proof is clear and designed to assure that hearings on contested matters provide the parties with predictable rules of procedure. The party asserting the positive of a proposition bears the burden of proving that proposition.” *Dycus v. Cross*, 869 S.W. 2d 745, 749 (Mo.banc 1994), citing *Anchor Centre Partners Ltd. v. Mercantile Bank, N.A.*, 803 S.W.2d 23, 30 (Mo.banc 1991); see also *Kennedy v. Fournie*, 898 S.W.2d 672, 680 (Mo.App. E.D. 1995) (“the longstanding principle in Missouri and other jurisdictions [is] that the burden of proof, of establishing the truth of a given proposition of fact essential to a cause of action, rests with the party who asserts the affirmative of the issue, unless the facts are peculiarly within the knowledge of the opposing party”).

CenturyTel asserts that the requisite number of entities are providing basic local service to business or residential customers, or both, in each exchange where the company seeks competitive classification. Therefore, CenturyTel has the burden of proof.

The Staff agrees that a non-affiliated wireless company is providing basic local telecommunications service to residential customers in each of the exchanges where CenturyTel still seeks competitive classification of residential services and to business customers in each of the exchanges where CenturyTel still seeks competitive classification of business services. (Direct Testimony of Martinez, at 7-8).

The Staff considers lines served on a full facility basis or lines served by a provider who owns only the switch or the local loop, as the minimum basis for a non-affiliated wireline company to qualify an ILEC’s exchange for competitive status in the 30-day proceeding. Full

facility based lines involve lines owned by the company. A company providing voice service on a full facility basis also generally owns the switching facilities used to switch calls. UNE-L basis refers to “unbundled network element loops,” a situation where the company leases a local line or loop from an ILEC but may own the switching facilities. Alternatively, a company may own the switching facilities to provide local voice service but lease a local line or loop from an unaffiliated company. In most UNE-L situations, a company may own one switch but serve several exchanges from the switch. The switch may be the only equipment owned by the company. A company may also own only a local loop, and ownership of a local loop qualifies under the statutory standard (“Any entity providing local voice service in whole or in part over *telecommunications facilities* or other facilities in which it or one of its affiliates have an ownership interest shall be considered as a basic local telecommunications service provider...”)

Section 392.245.5(2) RSMo. (2000 as amended by SB 237)(emphasis supplied). (See the Direct Testimony of Van Eschen, pp. 7-8).

The Staff confirmed the presence of a wireline company providing local voice service to the designated customer class on either a full facility basis or on lines served by a provider who owns only the switch or the local loop in the following exchanges:

Residential: Dardenne, O’Fallon, St. Peters, Wentzville.

Business: Bourbon, Columbia, Cuba, O’Fallon, St. James, St. Peters, Wentzville.

(Direct Testimony of Van Eschen, pp. 10-11 and Schedule 1)

List of Witnesses

The Staff will call John Van Eschen.

Proposed Findings of Fact

1. CenturyTel is an ILEC that is regulated under Section 392.245 RSMo, the Price Cap Statute.

2. An unaffiliated commercial mobile service provider as identified in 47 U.S.C. Section 332 (d) (1) and 47 C.F.R. Parts 22 or 24 is providing service in each exchange where CenturyTel still maintains a request for competitive classification. (Direct Testimony of Martinez, at 7).

3. An unaffiliated wireline company is providing local voice service on either a full facility basis or on lines served by a provider who owns the switch or the local loop, in the following exchanges:

Residential: Dardenne, O'Fallon, St. Peters, Wentzville.

Business: Bourbon, Columbia, Cuba, O'Fallon, St. James, St. Peters, Wentzville.

(Direct Testimony of Van Eschen, pp. 10-11 and Schedule 1)

Proposed Conclusions of Law

1. This case involves CenturyTel's request for competitive classification of certain exchanges under the 30-day track of Section 392.245.5 RSMo, as amended by Senate Bill 237.

The relevant part of that statute provides:

5. 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 non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business 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 non-affiliated entities in addition to the incumbent local exchange company are

providing basic local telecommunications service to residential customers within the exchange. For purposes of this subsection:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange;

(2) Any entity providing local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the commission. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider. For purposes of this subsection only, a broadband network is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(3) Regardless of the technology utilized, local voice service shall mean 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;

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service as defined in subdivision (46) of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service; and

(5) Prepaid telecommunications service shall mean a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(6) Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential

service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access service, as competitive within such exchange.

2. The Missouri Supreme Court has stated that “[t]he law in this state as to the burden of proof is clear and designed to assure that hearings on contested matters provide the parties with predictable rules of procedure. The party asserting the positive of a proposition bears the burden of proving that proposition.” *Dycus v. Cross*, 869 S.W. 2d 745, 749 (Mo.banc 1994). CenturyTel asserts the requisite number of entities are providing basic local service to business or residential customers, or both, in an exchange. Therefore, CenturyTel has the burden of proof.

3. “The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. When constructing a statute, the Court considers the object the legislature seeks to accomplish and aims to resolve the problems addressed therein.” *State ex rel. Nixon v. Quiktrip Corp.*, 133 S.W. 3d 33, 37 (Mo.banc 2004). (internal citations omitted). “The plain and ordinary meaning of a word is derived from the dictionary.” *Id.*

4. As noted, subdivision (2) of 392.245.5 requires the wireline entity to provide local voice service in whole or in part “over” telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest. The *American Heritage College Dictionary, Third Edition*, provides the following applicable definition of “over”: “Through the medium of.”

The Commission concludes that a wireline entity providing local voice service on a full facility basis or on lines by a provider who owns the switch or the local loop, meets the standard. Where the wireline entity and its affiliates own neither the loops nor the switch, the wireline entity is not providing local voice service “over,” i.e., through the medium of, facilities in which it or its affiliates have an ownership interest.

Conclusion

WHEREFORE, the Staff requests the Commission to grant CenturyTel’s Application for Competitive Classification under the 30-day track of Section 392.245.5 RSMo. (2000 as amended by SB 237), as amended by the testimony of Arthur Martinez filed on September 22, 2005 and by CenturyTel’s *Pretrial Brief*.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 23rd day of September 2005.

/s/ David A. Meyer
