

Memorandum

To: Official Case File
Case No. IO-2006-0092

From: John Van Eschen
Telecommunications Department

Date: September 9, 2005

Subject: Response to Sprint's Request for Competitive Status

Summary

The Commission Staff (Staff) has evaluated Sprint's Application for Competitive Classification. Based on this evaluation Staff recommends the Commission grant competitive status to all of the exchanges requested by Sprint. Specifically, competitive status should be granted for all of Sprint's residential services, other than exchange access service, in the exchanges of Ferrelview, Platte City, and Weston. Competitive status should be granted for all of Sprint's business services, other than exchange access service, in the exchanges of Ferrelview, Platte City, St. Robert and Waynesville. The remainder of this memorandum will attempt to explain Staff's evaluation and the criteria for granting competitive status. In addition, this memorandum will attempt to explain the significance of what it means to grant competitive status to an exchange.

Sprint's Application

On August 30, 2005, Sprint Missouri, Inc. filed an application to request competitive classification for certain exchanges. Schedule 1 identifies the specific exchanges and whether competitive status is being requested only for residential customers, business customers, or both residential and business customers. In addition, Schedule 1 identifies the entity or entities providing local voice service within the exchange as asserted by the company. Schedule 1 also provides some additional information reflecting Staff's analysis which will be described later in this memo.

Competitive Status: What's It Mean?

Competitive status, if granted, to an exchange will allow an incumbent local exchange telecommunications company greater pricing flexibility than under price cap regulation or rate of return regulation. Depending upon whether competitive status is granted to residential services, business services or both the company will gain the ability to raise the applicable tariffed rate for all such services, except exchange access service, upon ten days notice to the Commission and to potentially affected customers. In this

respect, an incumbent local exchange telecommunications company will essentially have the same pricing flexibility within the exchange as a competitively classified company.

SB 237 further expands a company's pricing flexibility for business services depending upon whether competitive status has been granted. For example the new law allows an incumbent local exchange telecommunications company to price all business services offered within the exchange on a customer specific basis if competitive status has been granted in the exchange for business services. Competitively classified companies will also be able to price all business services in the exchange on a customer specific basis if the incumbent's business services have been declared competitive in the exchange.

Competitive status should not impact a company's ability to price bundles or packages of telecommunications services. SB 237 provides new pricing flexibility that previously was unavailable to telecommunications carriers. The new law essentially states that rates associated with bundles of telecommunications will not be regulated by the Commission, regardless of competitive classification, as long as each telecommunications service included in the package is available apart from the package of services. In other words, a telecommunications company may set whatever rates it sees fit for bundles or packages of telecommunications services. For example, if an incumbent local telephone company bundles its basic local telecommunications service with other regulated or non-regulated telecommunications services (or non-telecommunications services) then the company is free to charge whatever rate it sees fit for the bundle. Staff still believes the bundles need to be tariffed; however, the Commission would not have the ability to establish the prices for these bundles. Pricing flexibility for bundled telecommunications services is available to all telecommunications carriers throughout their service territory regardless of whether competitive status is granted or not. The only criterion appears to be that the services contained in the bundle must be available on a stand alone basis; hence, the distinction between the company's ability to raise the price for stand alone services pursuant to competitive status versus pricing for bundles under SB 237. Conceptually the rates associated with stand alone services will act as a price ceiling until competitive status has been granted. When the Commission grants competitive status to an exchange then this price ceiling is essentially removed for services offered on a stand alone basis because the company will gain the ability to increase the price for each stand alone service based on its competitive status.

Competitive status, if granted, should also not affect the Commission's ability to control or regulate various aspects of a company's telecommunications offerings. For example, competitive status will not affect the Commission's ability to control the rates for exchange access service. The relevant statutes outlining the process for obtaining competitive status excludes exchange access service as part of a company's request for competitive status. In this respect, if the Commission ultimately grants competitive status to an exchange, it should not impact the Commission's current ability to control or set the rates for exchange access service. Likewise, competitive status, if granted, should not affect the Commission's ability to maintain standards for quality of service, service

termination for nonpayment, billing and other requirements. These standards will continue to apply regardless of whether an exchange has received competitive status.

One area that Staff is unsure of the implications of granting competitive status concerns the Commission's desire to entertain expanded local calling requests as shown by the Commission's recent approval of a rulemaking in Case No. TX-2005-0194. If the Commission grants competitive status to an exchange and the Commission entertains a request to establish a new calling scope plan or change an existing calling scope plan then competitive status may make it more difficult for the Commission to require a company to provide any service at a specified rate in the exchange.

Competitive Status Criteria

Section 392.245.5 describes the general process for achieving competitive status for an exchange. Specifically two non-affiliated entities in addition to the incumbent local exchange company must be providing basic local telecommunications service within the exchange. One of the entities can be a commercial mobile service provider as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24. The second entity can be 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. This portion of the statutes directs the Commission to make a determination within thirty days of the request as to whether the requisite numbers of entities are providing basic local telecommunications service to business or residential customers, or both, in the exchange. The statute lists specific instances whereby the provider of local voice service should not allow the exchange to qualify for competitive status at least under the thirty day process. For example, companies only offering prepaid telecommunications service or only reselling telecommunications service shall not be considered entities providing basic telecommunications service. Likewise, 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.

Staff's Analysis

The company's application for competitive status provides significant information regarding the presence of wireless providers in the exchanges where competitive status is sought. Staff finds the company's evidence convincing and does not dispute the presence of at least one wireless provider in the exchanges where competitive status is sought.

Section 392.245.5(6) directs the Commission to maintain records of regulated providers of local voice service, including those regulated providers who provide local voice service over their own facilities, or through the use of facilities of another provider of local voice service. Staff's response to this directive has been to rely on the annual reports submitted by telecommunications companies to the Commission. Specifically, all local exchange carriers are required to report the number of access lines served on an exchange-specific basis as of December 31st of the proceeding year. Companies are

expected to identify the number of voice grade equivalent lines based on the following categories: pure resale, UNE-L, UNE-P, and full facility based. Attached in Schedule 2 is a blank copy of the Commission's annual report form which attempts to describe most of the access line-related terms used in the annual report form.

The annual reports due on April 15, 2005, are the reports focused upon by Staff for this proceeding. Staff has attempted to follow up with many competitively classified companies providing local voice service to ensure their respective annual report information is correct. For example, in some situations a company may have identified an unknown exchange(s) or alternatively simply identified the total number of lines served without identifying lines served on an exchange-specific basis. In all known instances where there may have been an issue, we believe we have attempted to ensure a company's annual report was compiled accurately and completely. Some companies reported serving "0" lines in their annual report but show a positive revenue in the company's annual statement of revenue. In such circumstances, Staff followed up with the telecommunications company to inquire how the revenue was generated and specifically if the company was providing local voice service. When appropriate, companies re-submitted their annual report information.

In general, the access line information gleaned from the annual reports submitted to the Commission can serve as an initial starting point to determine if competitive status criteria have been met. Admittedly, the annual report information had some initial flaws which Staff has attempted to correct in follow-up contacts with officials of the competing companies. The timing of the annual reports may be an issue in some instances since access line data may be considered somewhat dated in the sense that it captures access lines as of December 31, 2004. A company's annual report will not capture access lines implemented during 2005. In addition, the annual report information may be deficient if the competitive company is providing service but has failed to obtain proper certification. In such situations, Staff attempted to contact the competing company and verify if it was providing local voice service. Cross-checks were also conducted on the competing company's tariff and web site for additional verification as to whether the competing company offers local voice service in the exchange. In general, Staff does not rely on a company's tariff and web site as a sole indicator the company is providing service in the exchange. Staff views such information as an additional source to verify that the company may offer service in the exchange. Corroborating evidence from other sources was needed to ensure the competing company is actually providing service in the exchange.

In anticipation of receiving competitive requests, Staff contacted companies who reflect providing local voice service on either a full facility based basis or on a UNE-L basis. Full facility based lines involve lines owned by the company. A company providing voice service on a full facility based 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 incumbent local telephone company but may own the switching facilities. 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. Staff's contact with facility based and UNE-L providers attempted to ensure these companies properly categorized lines served.

For purposes of responding to requests for competitive status, Staff attempted to verify the accuracy of the supporting information provided by the carrier requesting competitive status. For example if the incumbent carrier is requesting competitive status for a certain exchange based on the existence of competition from another carrier, Staff checked the carrier's annual report information to see if the identified carrier is actually showing lines served in the exchange. If a competing company's annual report fails to show that it is serving a particular exchange, Staff has attempted to obtain verification from the competing company as to whether it indeed is providing local voice service to the identified exchange and if so, under what conditions (UNE-L or full facility basis).

If the identified carrier is shown as serving lines in the exchange, Staff considers lines served on a full facility basis or UNE-L basis as the minimum threshold to meet for competitive status in a thirty day proceeding. The provisioning of service on a full facility basis or UNE-L basis has been selected by the Staff as the minimum threshold to meet for competitive status in a thirty day proceeding because it reflects a situation where the company, or its affiliate, owns certain facilities in the provisioning of service. Although a company providing service on a UNE-L basis generally only has ownership interest in a switch, a switch can probably be included as qualifying as telecommunications facilities as defined by 386.020(52) if a switch can be considered a receiver, machine, apparatus or device. This statutory definition specifically defines "telecommunications facilities" as "...includes lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service." A strict application of this definition may lead to questionable results from the perspective that a company may not own a switch or lines but rather simply some real estate that may be used to facilitate the provision of telecommunications service. For instance a company may own some office space for taking orders for telecommunications service and meet the definition of telecommunications facilities. Regardless, Staff is considering the provisioning of service on a full facility basis or UNE-L basis as the minimum threshold to meet for competitive status in a thirty day proceeding.

The Commission's annual report instructions attempt to capture all access lines used to provide local voice telephone service. The Commission's annual report instructions attempt to define voice telephone service as "...local exchange or exchange access services that allow end users to originate and terminate local telephone calls on the public switched telephone network, whether used by the end user for telephone calls or for other types of calls carried over the public switched network (for example, lines used for facsimile equipment and "dial-up" internet lines)." This instruction indicates that lines solely used for data purposes should be reported in a company's annual report. However, it should be pointed out that some companies may have reported lines solely used for data purposes while other companies may not have.

At this time, Staff has not attempted to correct such an inconsistency between companies because Section 392.245.5(3) defines local voice service as 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. Under the 30-day track, Missouri law specifically excludes certain types of providers of local voice service. For example, Section 392.245.5(2) does not consider a provider of local voice service as providing basic local telecommunications service for determining competitive classification under the 30-day track if the provider requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service. SB 237 also indicates other types of services that should not be considered as providing basic local telecommunications service for purposes of determining competitive criteria, such as companies only offering prepaid service or only reselling telecommunications service shall not be considered entities providing basic telecommunications service. In any event, Staff did not attempt to ensure that a company's lines solely used for data purposes are identified in a company's annual report.

Staff did contact companies to see if there are any situations where a company is solely serving an internet service provider in the exchange. In such instances where the company is serving only an internet service provider in the exchange we footnoted the lines served by the company in that particular exchange. Nevertheless, applicants for competitive status may attempt to claim a competing company is providing local voice service because the applicant is porting telephone numbers to the competing company. In Staff's opinion, competition within an exchange from a competing company who solely provides service to an internet service provider should not allow the exchange to qualify for competitive status under the thirty day process. Such a provider would not be providing local voice service pursuant to Section 392.245.5(2).

Subsequent Review and Analysis

In granting competitive status, it may be important for the Commission to explicitly identify the conditions that exist in order to qualify for competitive status. Section 392.245.5(6) describes a subsequent process where the Commission completes a review to determine if the conditions continue to exist for the exchange. In this section, the Commission shall at least every two years or where an incumbent local exchange telecommunications company increases rates for basic local telecommunications services in an exchange classified as competitive, review those exchanges where an incumbent's services have been classified as competitive, to determine if the conditions continue to exist. Staff's understanding of this process is that if the Commission determines that Exchange X should be classified as competitive because Competitor Y is serving lines in the exchange then the Commission can only revoke competitive status in the exchange if competitors provisioning service in the same manner as Competitor Y cease to provide service within the exchange. Stated differently, the Commission cannot simply revoke competitive status on the basis that it doesn't like the fact that the incumbent has raised rates within the exchange. The evidence or condition the Commission has identified for

granting competitive status to the exchange must no longer exist in order for the Commission to revoke competitive status for an exchange. In other words, for competitive status granted under the 30-day track Staff would view this as an expectation that the Commission would determine that UNE-L and/or full facility based competition from any competitor no longer exists within the exchange.

Staff Recommendation

As previously discussed, Schedule 1 provides a table identifying the applicant's request in terms of identifying the requested exchanges for competitive status, whether the applicant is requesting competitive status for residential and/or business service, and the competing local exchange company the applicant has identified as meeting criteria for competitive status. Schedule 1 also identifies Staff's analysis in terms of Staff's review of CLEC annual reports. In order to provide the Commission with a better understanding of the CLECs identified in the company's application for competitive status, highly confidential Schedule 3 provides a brief explanation of Staff's understanding of how the identified competing local voice provider is providing service.

As explained in Schedule 1 and below, Staff has no objections to Sprint's request for competitive classification in any of the requested exchanges. For the record, Staff did not find any additional competing companies operating in any of the six exchanges other than the companies identified in Sprint's application.

Based on Staff's previously described criteria and analysis, Staff recommends the Commission grant competitive status to the following exchanges. All of these exchanges have at least one non-affiliated wireless provider and at least one non-affiliated entity providing local voice service on a full facility basis. Staff further recommends the Commission order specifically state the evidence or condition for granting competitive status:

Ferrelview exchange (residential and business) based on evidence that ExOp of Missouri, Inc. d/b/a Unite and Time Warner Cable are providing local voice service to both residential and business customers on a full facility basis.

Schedule 1 shows that Time Warner's annual report fails to identify any lines served within the Ferrelview exchange. Subsequent follow-up contacts by Staff with Time Warner officials reveal Time Warner has recently begun providing local voice service to customers in the Ferrelview exchange. At this time Staff has been unable to quantify the number of lines actually served by Time Warner in the Ferrelview exchange. Time Warner's provisioning of service should be considered to be on a full facility basis. Staff concurs with Sprint that Ferrelview should receive competitive classification for residential service.

Platte City exchange (residential and business) based on evidence that Time Warner Cable is providing local voice service to residential customers on a full facility basis and

ExOp of Missouri, Inc. d/b/a Unite providing local voice service to residential and business customers on a full facility basis.

Weston exchange (residential only) based on evidence that Time Warner Cable is providing local voice service to residential customers on a full facility basis.

Schedule 1 shows that Time Warner's annual report fails to identify any lines served within the Weston exchange. Subsequent follow-up contacts by Staff with Time Warner officials reveal Time Warner has recently begun providing local voice service to customers in the Weston exchange. At this time Staff has been unable to quantify the number of lines actually served by Time Warner in the Weston exchange. Time Warner's provisioning of service should be considered to be on a full facility basis. Staff concurs with Sprint that Weston should receive competitive classification for residential service.

St. Roberts exchange (business only) based on evidence that Fidelity Communications is providing local voice service to business customers on a full facility basis.

Waynesville exchange (business only) based on evidence that Fidelity Communications is providing local voice service to business customers on a full facility basis.

In summary, Staff recommends the Commission grant competitive status to the five Sprint exchanges identified above. The Commission's Report and Order should attempt to explain the conditions for granting competitive status within each exchange. The Commission should also state that the Commission will only consider revoking competitive status for these exchanges if competition from entities providing basic local telecommunications service on either a UNE-L basis and/or a full facility basis fails to exist in the exchange. If the Commission concurs with Staff's recommendation, the Commission should allow Sprint's proposed tariff filing to go into effect which identifies that competitive status has been granted to these exchanges.