

**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)	Case No. IO-2006-0108
Competitive Classification Pursuant to Section)	
392.245.5 RSMo. (2005))	

MOTION TO DISMISS

COMES NOW Sprint Spectrum L.P. d/b/a Sprint PCS and Nextel West Corp. (together "Sprint") and respond to the Order Granting Intervention, Resetting Hearing, Adding Parties, and Directing Filing ("Order") issued by the Commission on September 22, 2005. The Order added Sprint as a party to the case. As Sprint is a CMRS carrier and not regulated by the Commission, Sprint moves to be dismissed as a party to the proceeding. The Order further requests Sprint to file a verified pleading stating whether it has at least two residential and two business customer in the subject exchanges. Although Sprint requests that it be dismissed as a party to the proceeding, Sprint does not object to providing the Commission the requested information. Filed concurrently with this Motion to Dismiss is Sprint's verified response to the Commission's Order requesting information. Sprint requests dismissal from this case and to be excused from appearing at the hearing. In support of its Motion to dismiss, Sprint states the following:

1. Missouri Statutes exempt wireless carriers from regulation by the Commission. The jurisdiction, supervision, powers and duties of the Commission under Section 386.250(2) RSMo are limited to telecommunications facilities, telecommunications services and telecommunications companies. Those terms are all defined in Section 386.020 RSMo. The definitions of "Telecommunications company" and "Telecommunications facilities" both turn on whether an entity is providing

“Telecommunications service.”¹ If a company is not providing “Telecommunications service” then it is not a “Telecommunications company” and its facilities are not “Telecommunications facilities.”

2. Section 386.020(53)(c) RSMo defines the term “telecommunications service” for purposes of Missouri law. The statute declares in pertinent part that “Telecommunications service” does *not* include:

- (c) The offering of radio communication services and facilities when such services and facilities are provide under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;²

Sprint Spectrum L.P. d/b/a Sprint PCS and Nextel West, Inc. both operate under licenses granted by the FCC for commercial mobile radio services. Therefore, the CMRS wireless services provided by Sprint are not included in the definition of telecommunications service in Missouri. Accordingly, Sprint does not provide a telecommunications service, does not operate telecommunications facilities and is not a telecommunications company subject to the Commission’s jurisdiction.

3. The Commission recently acknowledged that it lacks jurisdiction over wireless carriers in a complaint case brought by rural LECs in Missouri. The Commission stated, “Respondents T-Mobile and Western Wireless are cellular or wireless telephone companies. *They are not regulated by this Commission, but by the*

¹ “Telecommunications company” includes telephone corporation as that term is used in the statutes of this state and every corporation ... owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state; Section 386.020(51) RSMo.

“Telecommunications facilities” include 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; Section 386.020(52) RSMo.

² Section 386.020(53)(c).

FCC. They do not file tariffs, either with this Commission or with the FCC.”³ Thus, wireless carriers are not regulated by the Commission.

4. Since wireless carriers are not regulated by the Commission, Sprint objects to the Commission adding Sprint as a party to this case and asks to be dismissed as a party. Sprint, however, does not object to providing the information requested by the Commission in the Order to the extent that it is available. Sprint files concurrently with this Motion to Dismiss a verified pleading responding to the Commission’s information request.

WHEREFORE, since wireless CMRS carriers are not providing telecommunications services as defined by Missouri law and for the other reasons cited herein, Sprint requests that the Commission dismiss it as a party to the above-captioned proceeding. Sprint, however, files a verified response to the Commission’s information request concurrently with this Motion to Dismiss. Sprint further requests to be excused from any hearings in this matter.

Respectfully submitted this 27th day of September, 2005,

SPRINT SPECTRUM L.P. D/B/A SPRINT
PCS AND NEXTEL WEST CORP.



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³ *BPS Telephone Company, et al., vs. Voicestream Wireless Corp., Western Wireless Corp., and Southwestern Bell Telephone Co.*, Case No. TC-2002-1077, Public Service Commission Of The State Of Missouri, 2005 Mo. PSC Lexis 139, (Effective Date, February 6, 2005) (emphasis added).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of September, 2005, a copy of the above and foregoing document was served via electronic mail, to each of the following:

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