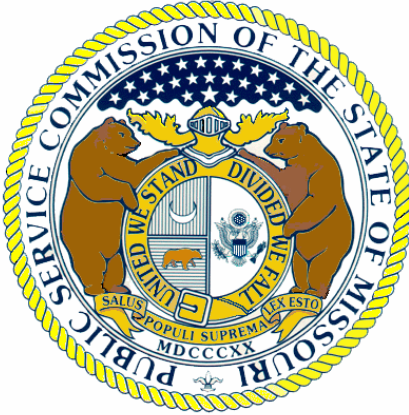


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of CenturyTel of Missouri, LLC's
Request for Competitive Classification Pursuant to
Section 392.245.5, RSMo (2005)

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Case No. IO-2006-0109

REPORT AND ORDER

Issue Date: October 4, 2005

Effective Date: October 9, 2005

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OF THE STATE OF MISSOURI

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Request for Competitive Classification Pursuant to) **Case No. IO-2006-0109**
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Appearances

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Jason L. Ross, Greensfelder, Hemker & Gale, P.C., 10 South Broadway, Suite 2000, St. Louis, Missouri 63102, for Fidelity Communication Services II, Inc.

Leland B. Curtis, Curtis, Heinz, Garrett & O’Keefe, P.C., 130 S. Bemiston, Suite 200, Clayton, Missouri 63105, for Socket Telecom, LLC.

William D. Steinmeier, William D. Steinmeier, P.C., 2031 Tower Drive, Post Office Box 104595, Jefferson City, Missouri 65110-4595, for Alltel Communications, Inc.

Michael F. Dandino, Deputy Public Counsel, Office of the Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

David A. Meyer, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Morris L. Woodruff, Senior Regulatory Law Judge.**

REPORT AND ORDER

Syllabus: In this Report and Order, the Missouri Public Service Commission grants CenturyTel of Missouri, LLC’s request for competitive classification pursuant to Section 392.245.5, RSMo (2005), for residential services, other than exchange access service, for the Dardenne, O’Fallon, St. Peters, and Wentzville exchanges. The Commission also grants competitive classification for business services, other than exchange access service, in the Bourbon, Columbia, Cuba, O’Fallon, St. James, St. Peters, and Wentzville exchanges. In addition, the Commission approves the tariff revisions filed to implement these classifications.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in

making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On September 9, 2005, CenturyTel of Missouri, LLC filed its Application for Competitive Classification pursuant to Section 392.245.5, RSMo. In its application, CenturyTel requested that the Commission classify as competitive its residential services, other than exchange access service, in the Bourbon, Branson, Columbia, Dardenne, O'Fallon, St. Peters, and Wentzville exchanges. CenturyTel also requested competitive classification for its business services, other than exchange access service, in the Bourbon, Columbia, Cuba, Dardenne, O'Fallon, St. James, St. Peters, and Wentzville exchanges. Concurrent with the filing of its application, CenturyTel filed proposed tariffs to become effective on October 9, reflecting the requested competitive classifications.

In an order issued September 12, the Commission notified the parties and all certificated competitive local exchange carriers and incumbent local exchange carriers that any party wishing to intervene in the proceeding must file an application no later than September 16. The Commission also ordered the Staff of the Commission to file a recommendation and ordered that any objections to CenturyTel's application be filed no later than September 20. In addition, the Commission scheduled an evidentiary hearing for September 27.

On September 14, Fidelity Communication Services II, Inc., filed an Application to Intervene. The Commission granted Fidelity's intervention request on September 19. No other requests for intervention were filed.

On September 20, Fidelity filed an objection to the portion of CenturyTel's application seeking competitive classification of residential and business services in the Bourbon exchange. On the same date, the Office of the Public Counsel filed a general objection to CenturyTel's application and requested that CenturyTel be required to prove that it has met the requirements of the controlling statute before it is granted competitive classification in any of its exchanges.

Staff also filed its recommendation on September 20. Staff indicated that it had not yet completed its investigation but at that time could not confirm the existence of a wireline competitor providing local voice service to residential customers in the Bourbon, Branson, or Columbia exchanges. Similarly, Staff was unable to confirm the existence of a wireline competitor providing local voice service to business customers in the Dardenne exchange. Staff recommended that CenturyTel's application be denied for those exchanges in which Staff could not confirm the presence of a wireline competitor but recommended that CenturyTel's application be granted for the other requested exchanges.

On September 20, witnesses on behalf of CenturyTel, Fidelity, and Staff prefiled direct testimony supporting the positions of those parties. Those same parties submitted prehearing briefs on September 23.

As a result of the information exchanged in the testimony and briefs, CenturyTel, Staff and Public Counsel were able to offer a joint recommendation on September 23 in which they indicated their agreement on the exchanges for which competitive status was

appropriate under the controlling statute. Those three parties agreed that CenturyTel's residential services, other than exchange access services, should be classified as competitive in the Dardenne, O'Fallon, St. Peters, and Wentzville exchanges. They also agreed that CenturyTel's business services, other than exchange access services, should be classified as competitive in the Bourbon, Columbia, Cuba, O'Fallon, St. James, St. Peters, and Wentzville exchanges. In joining in that joint recommendation, CenturyTel indicated its agreement to withdraw its request for competitive status for residential service in the Bourbon, Branson, and Columbia exchanges and for business services in the Dardenne exchange. Fidelity did not join in the joint recommendation of CenturyTel, Staff, and Public Counsel, differing from those three parties only in opposing competitive classification for CenturyTel's business services in the Bourbon exchange.

In an effort to obtain more information, on September 22, the Commission issued an order joining several additional wireless and competitive local exchange telephone companies as parties to this case.¹ Those additional parties and Fidelity, which were the competitors that CenturyTel had identified as operating in the exchanges for which it requested competitive classification, were ordered to file a verified pleading by September 26, indicating for each exchange under consideration whether it has at least two residential customers and two business customers whose addresses are located within that exchange. Responsive pleadings were filed by T-Mobile USA, Inc.; Verizon Wireless; Sprint Spectrum L.P., d/b/a Sprint PCS and Nextel West Corp.; Charter Fiberlink-Missouri,

¹ The following parties were joined: Charter Fiberlink – Missouri, LLC; Socket Telecom, LLC; CD Telecommunications, LLC; Cingular; Verizon; T-Mobile; Alltel; US Cellular; Nextel; and Sprint PCS.

LLC; United States Cellular Corporation; CD Telecommunications, LLC, Socket Telecom, LLC; and Alltel Communications, Inc.

The pleading from Verizon was admitted into evidence without objection at the hearing.² In addition, the presiding officer announced at the hearing that the Commission would take administrative notice of the pleadings filed by CD Telecommunications, LLC and Alltel Communications, Inc.³ The other responses were filed after the conclusion of the hearing. On September 30, CenturyTel filed a pleading indicating that it did not object to the Commission's consideration of those post-hearing pleadings. On the same date, Fidelity filed an objection to the Commission's consideration of those pleadings.

The Commission held an evidentiary hearing on September 27. Staff, CenturyTel Fidelity, and Public Counsel were represented at the hearing. In addition, Socket Telecom, LLC; and Alltel Communications, Inc. participated in the hearing. Staff submitted a post-hearing exhibit that was marked as number 9. Fidelity submitted post-hearing exhibit number 11. The other parties were directed to file any objections they might have to the admission of those exhibits by September 30. No objections were filed and those exhibits are admitted into evidence. The parties were allowed to give closing arguments in lieu of post-hearing briefs.

Overview

CenturyTel is a "local exchange telecommunications company" and a "public utility," and is authorized to provide "telecommunications service" within the state of

² Transcript, page 65, lines 17-23. After completion of the hearing, Verizon submitted an amended affidavit providing additional information about the customers it serves in the exchanges at issue. Fidelity objected to the admission of that amended document in a pleading filed September 30.

³ Transcript, page 97, lines 2-10.

Missouri as each of those phrases is defined in Section 386.020. CenturyTel is a large incumbent local exchange carrier (ILEC) that became subject to price cap regulation under Section 392.245.

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 ten-day 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 CLEC.⁴

On July 14, 2005, Senate Bill No. 237⁵ (S.B. 237) was signed into law and became effective August 28, 2005. S.B. 237 changed the process under the price cap statute⁶ for determining whether the business and residential services of a price cap regulated ILEC should be classified as competitive in an exchange.

Before S.B. 237, the Commission was required to determine that “effective competition” existed for the requested services in the designated exchanges before classifying those services as competitive. Under this “effective competition” standard, the Commission reviewed, among other things, the extent of competition in the exchange,

⁴ Van Eschen Direct, Exhibit 7, page 3, lines 10-18.

⁵ S.B. 237, 93rd Gen. Assem., 1st Reg. Sess. (Mo. 2005). (The relevant portions of the law will be codified at Section 392.245, RSMo 2005. All further references to the statute will be to the statute as amended by S.B. 237, unless otherwise noted.)

⁶ Section 392.245, RSMo 2000.

whether pricing was reasonably comparable, and whether competitors were offering functionally equivalent or similar services.

Under S.B. 237, however, the Commission no longer determines whether “effective competition” exists. Rather, S.B. 237 focuses on the number of carriers providing “basic local telecommunications service” within an exchange. The Commission must classify the ILEC’s services as competitive in any exchange in which at least two other non-affiliated carriers are providing basic local telecommunications services within an exchange.⁷ Separate determinations are made concerning business and residential services. Thus an exchange could be competitive for residential services but not for business, or for business but not residential services.

The statute provides that one commercial mobile radio service provider can be counted as an entity providing basic local telecommunications services.⁸ The other entity that can be counted as providing basic local telecommunications services is one that provides “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.”⁹ Therefore, an exchange would be competitive in which two or more facilities-based wireline carriers are providing services to customers, or in which one facilities-based wireline carrier and one wireless carrier are providing services.

CenturyTel’s application indicates that it faces competition from at least one wireless carrier and one facilities-based wireline carrier for residential services in seven exchanges.

⁷ Section 392.245.5, RSMo.

⁸ Section 392.245.5(1), RSMo.

⁹ Section 392.245.5(2), RSMo.

The application alleges that CenturyTel faces competition from one wireless and one facilities-based wireline carrier for business services in eight exchanges. Subsequently, CenturyTel withdrew its request for competitive classification for residential services in three exchanges and for business services in one exchange. That means that CenturyTel is still seeking competitive classification for residential services in four exchanges and for business services in seven exchanges. The Commission will consider each exchange in turn.

Residential Services

Dardenne, O'Fallon, St. Peters, and Wentzville Exchanges

The statute provides that one of the competing carriers in an exchange can be a wireless carrier. Arthur Martinez, Director of Government Relations for CenturyTel, testified that one or more of six wireless carriers provide local service to residential customers in each of the exchanges for which CenturyTel is seeking competitive classification for residential services.¹⁰ Staff's witness, John Van Eschen, manager of the Commission's telecommunications department, testified that an FCC report shows that all areas of Missouri are served by at least one commercial mobile service provider.¹¹ At the hearing, Van Eschen testified that for these four exchanges, at least one wireless provider has local numbers assigned to them, or is providing service through an EAS route.¹² That is important because it means that a call from a wireline phone to a wireless number would be

¹⁰ The wireless carriers identified by CenturyTel are: Cingular, Verizon, T-Mobile, Alltel, US Cellular, Nextel, and Sprint.

¹¹ Van Eschen Direct, Exhibit 7, page 6, lines 20-22.

¹² Transcript, page 20, lines 1-21.

made as a local call for the wireline customer. No party disputed CenturyTel's assertion that at least one wireless carrier was competing in each of these exchanges.

The other competing carrier must be a facilities-based wireline carrier. For these four exchanges, CenturyTel identified Charter Fiberlink-Missouri as the competing carrier.¹³ Staff confirmed that Charter Fiberlink-Missouri provides service over more than 1,200 lines in each of those exchanges.¹⁴ Again, no party disputed CenturyTel's assertion that it faced competition for residential services from a facilities-based wireline carrier in those exchanges.

Business Services

Columbia, Cuba, O'Fallon, St. James, St. Peters, and Wentzville Exchanges

The requirements for a finding of a competitive presence in an exchange are the same for business services as they are for residential services. Again, CenturyTel asserts that at least one wireless carrier is providing services to business customers in each of these exchanges. At the hearing, Staff confirmed that for these exchanges, at least one wireless provider has local numbers assigned to it.¹⁵ No party disputed CenturyTel's assertion that it faced competition for business services from at least one wireless carrier in each of these exchanges.

CenturyTel asserts that it faces wireline competition for business services in these exchanges from several companies. For the O'Fallon, St. Peters, and Wentzville exchanges, CenturyTel claims that competition is provided by AT&T. Staff confirms that

¹³ Martinez Direct, Exhibit 1, page 8, lines 12-14.

¹⁴ Transcript, page 14, lines 4-6.

¹⁵ Transcript, page 20, lines 1-21.

AT&T offers business services over multiple lines in each of those exchanges.¹⁶ For the Columbia exchange, CenturyTel claims that competition is provided by Socket Telecom.¹⁷ Staff confirmed that Socket, as well as AT&T, provide business services over multiple lines in Columbia.¹⁸ Socket's presence in Columbia was confirmed by Socket's witness Matt Kohly.¹⁹ For the Cuba and St. James exchanges, CenturyTel asserts that wireline competition is offered by Fidelity.²⁰ Staff confirmed that Fidelity is offering business services on multiple lines, to multiple customers in those two exchanges.²¹ Fidelity also confirmed that it is offering business services in those two exchanges.²² No party disputed CenturyTel's assertion that it faces competition for business services from at least one wireline carrier in each of these exchanges.

Bourbon Exchange

This is the only exchange in which there is a dispute between the parties. CenturyTel asserts that it faces wireline competition in the Bourbon exchange from Fidelity for business services.²³ Staff confirmed that Fidelity is providing business services in Bourbon over 32 lines.²⁴ Fidelity does not disagree that it is providing business services in

¹⁶ Exhibit 9HC.

¹⁷ Martinez Direct, Exhibit 1, page 11, lines 19-20.

¹⁸ Transcript, page 11, lines 12-17.

¹⁹ Transcript, page 49, lines 6-12.

²⁰ Martinez Direct, Exhibit 1, page 10, lines 6-8.

²¹ Transcript, page 16, lines 16-18, page 17, lines 11-14.

²² Transcript, pages 90-91, lines 19-25, 1-14.

²³ Martinez Direct, Exhibit 1, page 10, lines 6-8.

²⁴ Transcript, page 15, lines 7-8.

Bourbon over 32 lines. It does, however, argue that the services it is offering to a limited number of customers do not constitute real competition for CenturyTel.

Fidelity explains that it provides business services to only two customers in the Bourbon exchange. It provides those services over a fiber loop owned by an unaffiliated broadband provider, using a switch owned by one of its affiliates. To serve additional customers in the Bourbon exchange, Fidelity would have to either, build its own facilities in Bourbon, lease facilities from CenturyTel, ask the provider of the fiber loop that it is currently leasing to extend its facilities, or lease additional facilities, if any exist, from a different third party.²⁵ Fidelity does not advertise for new business customers in Bourbon.²⁶ Fidelity contends that this minimal level of competition does not constitute providing service within the meaning of the controlling statute.

Aside from the business services offered by Fidelity, CenturyTel contends that it faces competition in the Bourbon exchange from wireless service providers. Staff reported that Cingular, Sprint, T-Mobile, and Verizon are authorized to provide wireless service in the Bourbon exchange.²⁷ In particular, Verizon Wireless confirmed that it has both coverage and network facilities in the Bourbon exchange.²⁸ However, unlike the other exchanges that it examined, Staff's review of wireless carriers in the Bourbon exchange did not reveal the presence of at least one wireless provider having a local number assigned within the Bourbon exchange.²⁹

²⁵ Beier Direct, Exhibit 10, pages 3-4, lines 64-78.

²⁶ Transcript, page 29, lines 6-13.

²⁷ Transcript, page 21, lines 5-8. See *a/so*, Exhibit 2.

²⁸ Exhibit 6.

²⁹ Transcript, page 21, lines 2-15.

Assignment of a local number is not the only means by which a wireless carrier could provide a local number for a customer in an exchange. A CenturyTel customer in the Bourbon exchange, or any other exchange, could port their number to a wireless provider and in that way, calls to or from that customer would be rated as local calls.³⁰ However, CenturyTel was not aware of any CenturyTel numbers being ported to a wireless carrier for a customer located in the Bourbon exchange.³¹

CONCLUSIONS OF LAW

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

The Commission has jurisdiction over this matter pursuant to Section 392.245.5(6), RSMo, as amended in 2005 by SB 237, which provides as follows:

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, as competitive within such exchange.

CenturyTel is an incumbent local exchange telecommunications company and has requested competitive classification of its business or residential services in several exchanges.

Section 392.245.5, RSMo, as amended in 2005 by SB 237, provides 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 non-affiliated entities in

³⁰ Transcript, page 59, lines 20-23.

³¹ Transcript, page 61, lines 21-25.

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 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 residential customers within the exchange.

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 services.”³² The statute also requires the Commission to consider as a “basic local telecommunications service provider” any entity providing “local voice” service “in whole or in part” over facilities in which it or one of its affiliates has an ownership interest.³³

S.B. 237 defines “local voice service” as meaning “[r]egardless of the technology used . . . 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.”³⁴

The statute defines “telecommunications facilities” to include, among other items, “lines, conduits, ducts, poles, wires, cables, 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.”³⁵

³² Section 392.245.5(1).

³³ Section 392.245.5(2).

³⁴ Section 392.245.5(3).

³⁵ Section 386.020(52).

CenturyTel is asserting that its services in various exchanges should be classified as competitive. As the party asserting the positive of a proposition, CenturyTel has the burden of proving that proposition.³⁶

DECISION

After applying the facts as it has found them to its conclusions of law, the Commission has reached the following decisions.

Residential Services

Dardenne, O'Fallon, St. Peters, and Wentzville Exchanges

The undisputed evidence establishes that for each of these exchanges there is at least one non-affiliated entity providing "local voice" service in whole or in part over facilities in which it or one of its affiliates has an ownership interest so as to constitute the provision of basic local telecommunications within the meaning of Section 392.245.5(3). Furthermore, the undisputed evidence establishes that for each of these exchanges there is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1). Therefore, the Commission concludes that CenturyTel's application for competitive classification of its residential services, other than exchange access services, in these exchanges should be granted.

Business Services

Columbia, Cuba, O'Fallon, St. James, St. Peters, and Wentzville Exchanges

The undisputed evidence establishes that for each of these exchanges there is at least one non-affiliated entity providing "local voice" service in whole or in part over facilities in which it or one of its affiliates has an ownership interest so as to constitute the provision

³⁶ *Dycus v. Cross*, 869 S.W.2d 745, 749 (Mo. banc 1994)

of basic local telecommunications within the meaning of Section 392.245.5(3). Furthermore, the undisputed evidence establishes that for each of these exchanges there is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1). Therefore, the Commission concludes that CenturyTel's application for competitive classification of its business services, other than exchange access services, in these exchanges should be granted.

Bourbon Exchange

The undisputed evidence establishes that Fidelity is providing business services to two customers in the Bourbon exchange over multiple lines, using its own facilities. Furthermore, the evidence establishes that one or more wireless carriers, including Verizon, are offering their services to customers in the Bourbon exchange. Therefore the explicit requirements of the controlling statute are satisfied, and the business services, other than exchange access service, that CenturyTel offers in the Bourbon exchange must be classified as competitive.

Fidelity would find an implicit provision in the statute requiring the Commission to find that there is effective competition in the exchange before classifying CenturyTel's services as competitive. Unfortunately for Fidelity's argument, the statute contains no such provision. Indeed, it is clear that in enacting SB 237, the general assembly intended to make the determination of when there is effective competition in an exchange quite simple. When the explicit requirements of the statute are met, there is competition. There is no room for further interpretation.

CenturyTel has established that the criteria set by the general assembly have been met. CenturyTel's business services, other than exchange access service, must be classified as competitive in the Bourbon exchange.

As required by the statute, CenturyTel submitted tariff changes to implement the competitive classification of its services. Those tariff sheets carry an effective date of October 9. On September 30, CenturyTel submitted substitute sheets to reflect the agreed upon list of exchanges and services that are to be classified as competitive. Since the submitted tariff, as amended, corresponds with the Commission's decision, that tariff will be approved.

IT IS THEREFORE ORDERED:

1. That post-hearing exhibit number 9 is admitted into evidence.
2. That post-hearing exhibit number 11 is admitted into evidence.
3. That CenturyTel of Missouri, LLC's residential services, other than exchange access service, are classified as competitive in the Dardenne, O'Fallon, St. Peters, and Wentzville exchanges.
4. That CenturyTel of Missouri, LLC's business services, other than exchange access services, are classified as competitive in the Columbia, Cuba, O'Fallon, St. James, St. Peters, and Wentzville exchanges.
5. That CenturyTel of Missouri, LLC's business services, other than exchange access services, are classified as competitive in the Bourbon exchange.
6. That CenturyTel of Missouri, LLC's proposed tariff revisions (Tracking Nos. JI-2006-0186, JI-2006-0187, JI-2006-0188, JI-2006-0189, JI-2006-0190 and JI-2006-

0191) filed on September 9, 2005, as substituted on September 30, 2005, are approved to become effective for service on or after October 9, 2005.

7. That all other motions not specifically ruled upon by the Commission are denied and that any objections not specifically ruled upon are overruled.

8. That this Report and Order shall become effective October 9, 2005.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC.,
concur and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 4th day of October, 2005.