

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Sprint)	
Missouri, Inc., for Competitive Classification)	Case No. IO-2006-0092
Under Section 393.245.5 RSMo (2005))	Tariff File No. YL-2006-0174

Dissenting Opinion of Commissioner Steve Gaw

This case is one of first impression for the Commission since the enactment of SB 237. This legislation, which became effective August 28, 2005, is the first major alteration of Missouri telecommunications law since the 1996 Telecom Act. As such the decisions in the first group of competitive classification cases will set the tone for the requisite quantity and quality of evidence necessary and legal standards employed to withdraw Public Service Commission (PSC) oversight of pricing by incumbent carriers.

In this case the parties entered into a Stipulation which adopted Staff's recommendations. It is not clear whether this Stipulation was intended to satisfy the requirements established in §392.245 RSMo. 2005 which would allow the Commission to dispense with the need for a specific finding of fact. This is important in this case because the evidence as submitted does not provide the basis for the necessary findings to grant competitive status.

Section 392.245.5 RSMo.2005 states that the named competitors must be "providing basic local telecommunications service to business customers within the exchange". (Emphasis added). Two things are evident from this language. First, the competitor must be "providing" the service to customers. In other words, simply offering the service is not enough. Second, the

service must be provided to "customers". One customer is apparently not enough to satisfy the requirement.¹

The evidence submitted in this case is contrary to a finding that the Weston exchange is competitive. In that exchange there has been no evidence that a competitor is actually "providing" service. While the number of access lines does not necessarily reflect the number of customers, particularly with business accounts, the presence of zero access lines is clear evidence that no customers are being provided service.

The other significant question in this case involves wireless competition. I agree with the analysis done by Commissioner Clayton in his concurring opinion. Section 386.020(4) defines basic local telecommunications service as a "two-way" switched voice service within a local calling scope." More importantly, this section clearly contemplates that this basic local telecommunications service should be provided without the incurrence of a toll charge. Section 392.234.5 provides that a wireless entity may be considered as a competitor so long as that wireless entity is "providing basic local telecommunications service within an exchange." As such, if a wireline customer in the exchange is not able to complete a call to a customer of the wireless carrier with a billing address in that exchange without incurring a toll charge, then the wireless provider should not be considered to be providing basic local telecommunications service within the exchange. Since the parties stipulated that such service exists in the exchanges in question, no further analysis is required in this case. However, this is arguably an important

¹ This statutory section similarly requires that competitors be providing service to residential "customers" prior to a finding that there is competition in the residential market. As such, evidence must exist that more than a single residential customer is being provided service by a competitor. Still later in the same statutory section, the requirement for more than a single customer is repeated. "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."

element under the statute. Another question which arises under this new law is what it means for a wireless carrier to provide service to customers in an exchange. Is it sufficient to merely have tower coverage in some portion of the exchange? Probably not, since tower service alone would not give any indication that the wireless carrier provided their service to a customer having a residence or business within that exchange. Having the capability of providing service is as previously stated, not sufficient. With wireless systems the tower in the area could simply be for the use of customers passing through the area. A more reasonable interpretation would be that the carrier can demonstrate that they have customers with a billing address in the exchange. A wireless company that has not or will not sell to customers with an address in the exchange should not be allowed to be used as an alleged competitor to an incumbent local exchange company in that exchange and this interpretation is consistent with the language in the new statute.

The bottom line in Sprint's case then is that the evidence of no access lines in the Weston exchange directly contradicts the parties' stipulation. Other evidence especially regarding wireless services in the case raises my suspicion as to whether the facts exist to meet the requirements of the statute. Because of this doubt and the problems in the Weston exchange I cannot support the Order.

The law passed by the General Assembly this year establishes an extremely low hurdle for the release of price oversight from the Public Service Commission allowing the carrier to have unlimited price increases. Formerly, this Commission examined a multiple of factors prior to granting competitive status to an ILEC. This examination was intended to ensure that sufficient competitive pressures existed to substitute for price oversight. In the 30-day review

process provided by the new law only two carriers operating in the exchange with minimal customers takes away price increase protections. If the elements required by the new law are present the Company should clearly present them to the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steve Gaw", written in a cursive style.

Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 6th day of October, 2005.