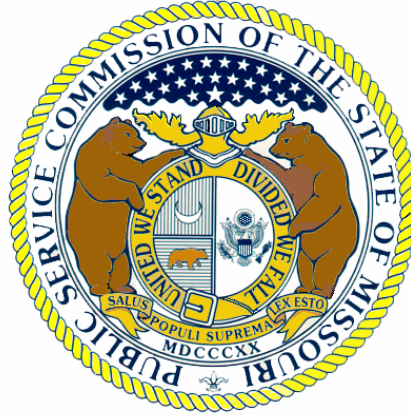


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of Spectra Communications Group, )  
LLC, d/b/a CenturyTel's Request for Competitive )  
Classification Pursuant to Section 392.245.5, )  
RSMo (2005). )

**Case No. IO-2006-0108**

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**REPORT AND ORDER**

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**Issue Date:** October 4, 2005

**Effective Date:** October 9, 2005

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

**APPEARANCES**

**LARRY W. DORITY**, Attorney at Law, Fischer & DORITY, 101 Madison Street, Suite 400, Jefferson City, Missouri 65101, for Spectra Communications Group, L.L.C. doing business as CenturyTel.

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**THOMAS E. PULLIAM**, Attorney at Law, Ottsen, Mauzé, Leggat & Belz, 112 South Hanley Road, St. Louis, Missouri 63105, for Verizon Wireless (VAW), L.L.C., Cellco Partnership, doing business as Verizon Wireless, Cybertel Cellular Telephone Company, doing business as Verizon Wireless, and CMT Partners, doing business as Verizon Wireless.

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**MICHAEL F. DANDINO**, Senior 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**, Associate General 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:**   Kevin A. Thompson, Deputy Chief.

## **REPORT AND ORDER**

### **Procedural History and Positions of the Parties**

On September 9, 2005, Spectra Communications Group, L.L.C., doing business as CenturyTel, filed its Request for Competitive Classification pursuant to Section 392.245.5, RSMo Supp. 2005, supported by five exhibits. Therein, Spectra seeks competitive classification for its residential basic local telecommunications services in five exchanges: Ewing, LaBelle, Lewistown, Macon, and Savannah. Spectra also seeks competitive classification for its business basic local telecommunications services in four exchanges: Ewing, LaBelle, Lewistown, and Macon. Competitive classification will permit Spectra greater flexibility in pricing its services in recognition that at least two unaffiliated competitors are operating in each of those exchanges. Spectra simultaneously filed its Motion for Protective Order in order to safeguard certain proprietary and highly confidential business information that it expected would be implicated in these proceedings. Together with its Request, Spectra also filed tariffs with a 30-day effective date, that is, October 9, 2005.

The Commission issued its Order and Notice on September 12, 2005, directing parties wishing to intervene in the case to do so by September 16. Because the statute authorizing Spectra's application set a time limit of only 30 days for the Commission's proceedings, the Commission also set a procedural schedule and set a hearing for September 23. On the same day, the Commission adopted its standard protective order. On September 16, NPG Cable, Inc., doing business as St. Joseph Cablevision, Inc., moved to intervene. No other applications for intervention were received.

On September 19, as called for in the procedural schedule, NPG Cable, the Office of the Public Counsel, and the Commission's Staff filed objections. NPG Cable asserted that Spectra, who relied on it as one of its competitors in the Savannah Exchange, both misnamed it and mischaracterized its services. The Public Counsel, citing the possible consequences to consumers, called on the Commission to require Spectra to strictly meet its evidentiary burden in each exchange for which it requested competitive classification. The Commission's Staff stated that it agreed that Spectra met the statutory requirements for both business and residential services in the exchanges of Ewing, LaBelle, Lewistown, and Macon. However, Staff asserted that it could not corroborate Spectra's allegations as to the Savannah Exchange and so objected. Staff also filed the prepared Direct Testimony of John Van Eschen on September 19.

On September 21, the Commission issued its Order Directing Filing, directing "both Staff and Spectra [to] file pleadings stating, for each CMRS carrier in each exchange for which competitive classification is sought, whether or not a call from a Spectra Basic Local service subscriber in that exchange to a subscriber of the CMRS carrier resident in the same exchange would be rated and billed as a local call." The verified responses were due on September 22, later extended to September 26. Staff's Response, received on September 23, stated that such a call would only be a local call in the Macon Exchange. Spectra's Response, received on September 26, stated that Spectra did not contest the findings reported by Staff in its filing of September 23. Spectra further stated that the requested information was irrelevant in view of the statutory standard governing its application.

On September 22, Spectra filed its Pretrial Brief, List of Witnesses, and Proposed Findings of Fact and Conclusions of Law. Spectra had filed the prepared Direct Testimony

of its witness, Arthur Martinez, on September 21. On September 23, Staff filed its Pretrial Brief, List of Witnesses, and Proposed Findings of Fact and Conclusions of Law. Staff also filed the prepared Supplemental Direct Testimony of John Van Eschen on September 23. In these filings, Staff changed its position. It withdrew its previous objection with respect to the competitive classification of Spectra's residential basic local telecommunications services in the Savannah Exchange.

On September 22, the Commission took up this case for discussion at its regularly scheduled Agenda session. The Commission directed that all of the purported competitors named by Spectra in its application be made parties so that they would be available at the hearing to answer questions. Consequently, it was necessary to reset the hearing from September 23 to September 28. The Commission accordingly issued its Order Granting Intervention, Resetting Hearing, Adding Parties, and Directing Filing. The intervention granted was that of NPG Cable.<sup>1</sup> The parties added were the carriers identified by Spectra as its competitors, other than NPG:

Mark Twain Communications Company, Chariton Valley Telecom Corporation, ALLTEL Communications, Inc., United States Cellular Corporation, Sprint Spectrum L.P., doing business as Sprint PCS, Southwestern Bell Wireless L.L.C., doing business as Cingular, Nextel West Corporation, T-Mobile USA, Inc., and those entities that do business as Verizon Wireless, including Verizon Wireless, Cybertel Cellular Telephone Company, CMT Partners, CELLCO Partnership, Ameritech Cellular, and Ameritech Mobile Communications.

The order also sought additional material information from the parties prior to the hearing:

That the carriers listed . . . above . . . shall each file a verified pleading, on or before 5:00 p.m. on Tuesday, September 27, 2005, stating, for each exchange under consideration in this proceeding, whether or not it has at least two residential customers and two business customers whose addresses are located within that

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<sup>1</sup> NPG filed a pleading seeking to withdraw its Application to Intervene on September 22; the Commission denied that request.

exchange. The exchanges under consideration are: Ewing, LaBelle, Lewistown, Macon, and Savannah.

Also on September 23, Spectra, Staff and the Public Counsel filed their Joint Recommendation. Therein, these parties urge the Commission to grant Spectra's application on the grounds that the evidence already available shows that the statutory standard has been met. Public Counsel, in this pleading, changed his position and abandoned his request that Spectra be required to strictly prove its case.<sup>2</sup>

ALLTEL filed its verified response on September 26, stating that while it provides wireless, two-way voice communications services to customers in the Ewing, LaBelle and Lewistown Exchanges, it does not categorize them as either "residential" or "business" customers and so cannot respond further.

Mark Twain Communications Company filed its verified response on September 27, stating that it is a Competitive Local Exchange Company ("CLEC"), that it is certificated to provide basic local telecommunications services in the Ewing, Labelle and Lewistown Exchanges, and that it currently provides such services to at least two residential and two business customers in each of those exchanges.

Chariton Valley Telecom Corporation also filed its verified response on September 27, stating that it is a CLEC, that it is certificated to provide basic local telecommunications services in the Macon Exchange, and that it currently provides such services to at least two residential and two business customers in that exchange.

The entities that do business as Verizon Wireless also filed their verified response on September 27, stating that they have both "coverage" and "network facilities" in the Savannah Exchange. On September 29, the Verizon Wireless entities amended

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<sup>2</sup> Tr. 11-12: Mr. Dandino: "We are satisfied."

their response and stated that they could not confirm that they have either two business or two residential customers in any of the five exchanges under consideration in this case.

United States Cellular Corporation also filed its verified response on September 27, stating that it has at least two residential customers in each of the Ewing, LaBelle, Lewistown, Macon, and Savannah Exchanges and at least two business customers in each of the Ewing, LaBelle, Lewistown, and Macon Exchanges.

T-Mobile USA, Inc., also filed its verified response on September 27, stating that it is a Commercial Mobile Radio Service ("CMRS") telecommunications provider, that it provides such services through several entities in Missouri, all doing business as T-Mobile, and that it has no customers in the exchanges under consideration in this proceeding. T-Mobile also challenges the Commission's jurisdiction to make it a party to this case and asserts that the services that it does provide do not constitute "basic local telecommunications services" for the purposes of this case.

Sprint Spectrum L.P., doing business as Sprint PCS, and Nextel West Corporation jointly filed their response on September 27, stating that they currently have at least two residential customers and two business customers in the Macon and Savannah Exchanges.

NPG also filed its response on September 27, stating that it provides voice-over-internet protocol ("VoIP") services to at least two residential, but no business, customers in the Savannah Exchange.

The Commission held an evidentiary hearing on September 28, 2005. Certain parties appeared by counsel: Spectra, ALLTEL Communications, the Verizon Wireless entities, Mark Twain, Chariton Valley, Staff, and the Office of the Public Counsel. The

remaining parties did not appear and were not excused. The Commission heard testimony from three witnesses and received 16 exhibits.

The parties were offered an opportunity for closing arguments at the close of the evidence; all but Spectra declined. No post-hearing briefs were permitted.

After the hearing, in addition to the amended response filed by the Verizon Wireless entities and referred to earlier, Staff filed Late-filed Exhibit 17 on September 30. That exhibit contains, as requested by the Commission at the hearing, "a discussion of potential issues regarding intermodal (wireline/wireless) local number portability that could be viewed as barriers to customers obtaining local numbers in the exchanges in question."

The transcript of the hearing was filed on September 30.

On October 3, the Verizon Wireless entities filed a verified pleading responding to certain questions asked from the bench during the hearing. In brief, they stated that the local incumbent had full control as to whether or not a call by one of its wireline basic local subscribers to a wireless subscriber resident in the same exchange would be a non-toll call. Also on October 3, the various entities that do business as Cingular Wireless filed a pleading in Case No. IO-2006-0109 that was intended, in part, to provide information requested from that carrier in this case. Cingular stated that it has at least two customers in the LaBelle, Lewistown, Macon, and Savannah Exchanges, but does not distinguish between "business" customers and "residential" customers.<sup>3</sup> Cingular also challenged the Commission's authority to join it as a party in this case.<sup>4</sup>

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<sup>3</sup> Cingular's verified Response, filed October 3, 2005.

<sup>4</sup> *Id.*



## **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.

In making its Findings of Fact and Conclusions of Law, the Commission is mindful that it is required, after a hearing, to "make a report in writing in respect thereto, which shall state the conclusion of the commission, together with its decision, order or requirement in the premises."<sup>5</sup> Because Section 386.420 does not explain what constitutes adequate findings of fact, Missouri courts have turned to Section 536.090, which applies to "every decision and order in a contested case," to fill in the gaps of Section 386.420.<sup>6</sup> Section 536.090 provides, in pertinent part:

Every decision and order in a contested case shall be in writing, and . . . the decision . . . shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order.

Missouri courts have not adopted a bright-line standard for determining the adequacy of findings of fact.<sup>7</sup> Nonetheless, the following formulation is often cited:

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<sup>5</sup> Section 386.420.2, RSMo 2000. All further statutory references, unless otherwise specified, are to the Revised Statutes of Missouri ("RSMo"), revision of 2000.

<sup>6</sup> *St. ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of Mo.*, 103 S.W.3d 813, 816 (Mo. App., W.D. 2003); *St. ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Comm'n*, 24 S.W.3d 243, 245 (Mo. App., W.D. 2000).

<sup>7</sup> *Glasnapp v. State Banking Bd.*, 545 S.W.2d 382, 387 (Mo. App. 1976).

The most reasonable and practical standard is to require that the findings of fact be sufficiently definite and certain or specific under the circumstances of the particular case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence.<sup>8</sup>

Findings of fact are inadequate when they "leave the reviewing court to speculate as to what part of the evidence the [Commission] believed and found to be true and what part it rejected."<sup>9</sup> Findings of fact are also inadequate that "provide no insight into how controlling issues were resolved" or that are "completely conclusory."<sup>10</sup>

With these points in mind, the Commission renders the following Findings of Fact.

***The Parties:***

Spectra Communications Group L.L.C., doing business as CenturyTel, is a Delaware limited liability corporation and is certificated to provide, and does provide, basic local telecommunications services in 107 Missouri exchanges, including the five exchanges at issue in this case: Ewing, LaBelle, Lewistown, Macon, and Savannah.<sup>11</sup> Pursuant to an order of the Commission, Spectra is a large incumbent local exchange carrier ("ILEC") subject to Price Cap Regulation under Section 392.245, RSMo.<sup>12</sup>

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<sup>8</sup> *Id.* (quoting 2 Am.Jur.2d *Administrative Law* § 455, at 268).

<sup>9</sup> *St. ex rel. Int'l. Telecharge, Inc. v. Mo. Pub. Serv. Comm'n*, 806 S.W.2d 680, 684 (Mo. App., W.D. 1991) (quoting *St. ex rel. Am. Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 701 S.W.2d 745, 754 (Mo. App., W.D. 1985)).

<sup>10</sup> *St. ex rel. Monsanto Co. v. Pub. Serv. Comm'n*, 716 S.W.2d 791, 795 (Mo. banc 1986) (relying on *St. ex rel. Rice v. Pub. Serv. Comm'n*, 359 Mo. 109, 220 S.W.2d 61 (1949)).

<sup>11</sup> *In the Matter of the Joint Application of GTE Midwest Incorporated and Spectra Communications Group, L.L.C.*, Case No. TM-2000-182 (*Report and Order*, issued on April 4, 2000), p. 2; Spectra's verified Request for Competitive Classification, filed in this case on September 9, 2005.

<sup>12</sup> *In the Matter of the Petition of Spectra Communications Group, L.L.C., doing business as CenturyTel*, Case No. IO-2003-0132 (*Order Approving Price Cap Regulation*, issued on December 17, 2002).

The Public Counsel is appointed by the Director of the Missouri Department of Economic Development and is authorized to “represent and protect the interests of the public in any proceeding before or appeal from the public service commission[.]”<sup>13</sup>

The Staff of the Commission traditionally appears as a party in Commission proceedings and is represented by the Commission’s General Counsel, an employee of the Commission authorized by statute to “represent and appear for the Commission in all actions and proceedings involving this or any other law [involving the Commission.]”<sup>14</sup>

***The Telecommunication Carrier Parties and their Services:***

Mark Twain Communications Company is a CLEC that it is certificated to provide basic local telecommunications services in the Ewing, Labelle and Lewistown Exchanges. Mark Twain currently provides such services to at least two residential and two business customers in each of those exchanges.<sup>15</sup>

Chariton Valley Telecom Corporation is a CLEC that it is certificated to provide basic local telecommunications services in the Macon Exchange and currently does provide such services to at least two residential and two business customers in that exchange.<sup>16</sup> Chariton Valley's General Manager recently offered testimony in another case that Chariton Valley "constructed an underground fiber-to-the-premise network using passive optical network (PON) technology. The network consists of four (4) fiber nodes within the city limits of Macon with fiber buried to most business and residential locations."<sup>17</sup>

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<sup>13</sup> Sections 386.700 and 386.710.

<sup>14</sup> Section 386.071.

<sup>15</sup> Mark Twain's verified pleading filed on September 27, 2005; Tr. 69.

<sup>16</sup> Chariton Valley's verified pleading filed on September 27, 2005; Tr. 70.

<sup>17</sup> James Simon, Direct Testimony, filed on September 2, 2005, in Case No. TO-2005-0423; *quoted by* Martinez, *supra*, at p. 11.

Chariton Valley's Annual Report for 2004 states that its full-facilities-based residential lines in Macon number 1,095, while its full-facilities-based business lines number 354.<sup>18</sup>

ALLTEL Communications, Inc., is a CMRS provider and currently provides wireless, two-way voice communications services to customers in the Ewing, LaBelle and Lewistown Exchanges. ALLTEL does not categorize its customers as either "residential" customers or "business" customers.<sup>19</sup>

Southwestern Bell Wireless LLC, doing business as Cingular, is a CMRS provider. Cingular responded late on October 3, stating that it has at least two customers in the LaBelle, Lewistown, Macon, and Savannah Exchanges, but does not distinguish between "business" customers and "residential" customers.<sup>20</sup>

Sprint Spectrum L.P., doing business as Sprint PCS, Sprint Spectrum L.P., doing business as Sprint PCS, and Nextel West Corporation<sup>21</sup> jointly filed their response on September 27, stating that they currently have at least two residential customers and two business customers in the Macon and Savannah Exchanges.<sup>22</sup> Sprint and Nextel are CMRS providers<sup>23</sup>

T-Mobile USA, Inc., is a CMRS telecommunications provider that it provides such services through several entities in Missouri, all doing business as T-Mobile. T-Mobile has no customers in the exchanges under consideration in this proceeding.<sup>24</sup>

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<sup>18</sup> Tr. 38, 70.

<sup>19</sup> ALLTEL's verified response filed on September 26, 2005; Tr. pp. 13, 15-16.

<sup>20</sup> Cingular's verified Response, filed October 3, 2005.

<sup>21</sup> Nextel West Corporation is a CMRS provider recently acquired by Sprint. See Sprint's verified response, filed on September 27, 2005.

<sup>22</sup> Sprint's verified response, filed on September 27, 2005.

<sup>23</sup> Tr. 69.

<sup>24</sup> T-Mobile's verified pleading, filed on September 27, 2005.

United States Cellular Corporation, also known as U.S. Cellular, is a CMRS provider that has at least two residential customers in each of the Ewing, LaBelle, Lewistown, Macon, and Savannah Exchanges and at least two business customers in each of the Ewing, LaBelle, Lewistown, and Macon Exchanges.<sup>25</sup> U.S. Cellular has a block of local numbers in the Macon Exchange.<sup>26</sup>

Verizon Wireless is the trade name under which several entities, including Verizon Wireless, VAW, L.L.C., Cellco Partnership and Cybertel Cellular Telephone Company, provide CMRS services in Missouri. The Verizon Wireless entities have stated that they cannot confirm that they have either two business or two residential customers in any of the five exchanges under consideration in this case.<sup>27</sup>

NPG Cable, Inc., doing business as St. Joseph Cablevision, Inc., provides voice-over-internet protocol ("VoIP") services to at least two residential, but no business, customers in the Savannah Exchange.<sup>28</sup> NPG is not certificated by this Commission.<sup>29</sup> The services offered by NPG include two-way voice service cable of receiving calls from a provider of basic local telecommunications services.<sup>30</sup> NPG's service does not require the use of a third-party, unaffiliated broadband network or dial-up Internet network for the

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<sup>25</sup> U.S. Cellular's verified pleading, filed on September 27, 2005; Tr. 66.

<sup>26</sup> Tr. 86 (Van Eschen).

<sup>27</sup> Verizon Wireless' Amended Response (verified), filed on September 29, 2005; Tr. 96.

<sup>28</sup> NPG's verified Response, filed on September 27, 2005; see Tr. 103.

<sup>29</sup> Van Eschen, Supplemental Direct, p. 4.

<sup>30</sup> *Id.*, at pp. 4-5.

origination of local voice service.<sup>31</sup> Spectra produced a list of over 60 of its basic local customers whose telephone numbers have been ported to Sprint on behalf of NPG.<sup>32</sup>

More specifically, NPG offers Digital Phone service to residential customers within the exchanges of Agency, St. Joseph and Savannah where it offers cable TV service.<sup>33</sup> It does not offer the same or a similar service to business customers.<sup>34</sup> NPG uses its own cable TV network to connect to the residential customer's premises.<sup>35</sup> NPG supplies a box or adaptor to its subscribers that is placed at the customer's residence.<sup>36</sup> The adaptor interfaces with the customer's existing inside wiring so the customer can use existing telephone equipment and jacks.<sup>37</sup> The adaptor alters the format of a voice call so that it traverses NPG's cable TV network using an Internet protocol.<sup>38</sup> NPG routes all calls to Sprint, which interfaces with the public switched network.<sup>39</sup> Sprint performs all switching functions for NPG.<sup>40</sup> Sprint converts the call's format from the Internet protocol format to the time division multiplex format used by the public switched telephone network, depending on whether the call traverses the public switched telephone network.<sup>41</sup> Sprint obtains telephone numbers for NPG and places the telephone numbers for NPG in the

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<sup>31</sup> *Id.*, at p. 5; Tr. 72.

<sup>32</sup> Martinez, Direct Testimony, at p. 16; Ex. 2 (HC); Tr. 31.

<sup>33</sup> *Id.*, at p. 2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*; Tr. 95.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*, at p. 3.

<sup>41</sup> *Id.*

appropriate 911 data base.<sup>42</sup> Sprint also provides such services as operator services and directory assistance services for NPG.<sup>43</sup> Sprint does not bill NPG's subscribers.<sup>44</sup> Instead, Sprint is reimbursed for the wholesale services it provides to NPG by NPG, based on a private contract between the two entities.<sup>45</sup>

***Other Findings:***

None of the parties that are telecommunications carriers is affiliated in any way with Spectra.<sup>46</sup>

Mark Twain, Chariton Valley and NPG provide services using facilities that they own in whole or in part. Mark Twain provides local voice service in the Ewing, LaBelle and Lewistown Exchanges, and Chariton Valley provides local voice service in the Macon Exchange, using their own loops and switching facilities.<sup>47</sup> NPG provides local voice service in the Savannah Exchange using its own cable TV network.<sup>48</sup>

Spectra is able to port numbers to any wireless provider in its exchanges; it is LNP compliant in every exchange.<sup>49</sup> However, it is not clear on the record whether the wireless carriers implicated in this case have a corresponding capability to receive the ported numbers.<sup>50</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Spectra's verified Request, pp. 2 and 4; Martinez, Direct Testimony, pp. 6-7.

<sup>47</sup> Van Eschen, Direct Testimony, Sch. 3; Tr. 92 ("We considered those service arrangements to be a full-facilities-based arrangement."; 93-94.

<sup>48</sup> Van Eschen, Supplemental Direct Testimony, p. 2.

<sup>49</sup> Tr. 60-63, 73 (Martinez). "LNP" means Local Number Portability.

<sup>50</sup> Tr. 110 (Van Eschen).

The calling scope available to a wireline basic local service subscriber is determined by the Commission-approved tariffs of his or her carrier.<sup>51</sup> Wireless carriers, in contrast, do not structure their offerings in terms of exchanges.<sup>52</sup> The calling scope available to a wireless subscriber is a matter of contract between the carrier and the subscriber.<sup>53</sup>

In only one case – U.S. Cellular in the Macon Exchange – was Staff able to verify that any of the wireless providers implicated in this case has a block of local numbers.<sup>54</sup> Other arrangements can also result in a wireline-to-wireless call being a non-toll call, such as where the wireless number is a local number that has been ported to the wireless provider or where the wireless provider has a Type 1 interconnection with the incumbent in that exchange.<sup>55</sup> Still another method would be the existence of an EAS route between the subject exchange and another exchange where there may be a wireless number that would permit local toll-free calling to that wireless number.<sup>56</sup> However, there is no evidence that Spectra has any such methods in place in any of the five exchanges herein at issue.<sup>57</sup> Based on the record before it, the Commission finds that a call by a Spectra basic local subscriber to a wireless subscriber residing in the same exchange would only be a non-toll call with respect to the block of local numbers held by U.S. Cellular in the Macon Exchange.

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<sup>51</sup> Tr. 116 (Van Eschen).

<sup>52</sup> *Id.*

<sup>53</sup> Tr. 117 (Van Eschen).

<sup>54</sup> Tr. 86-87 (Van Eschen).

<sup>55</sup> Tr. 88, 110 (Van Eschen).

<sup>56</sup> Tr. 109-110 (Van Eschen).

<sup>57</sup> Tr. 89 (Van Eschen).



## **Conclusions of Law**

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

### ***Jurisdiction:***

Spectra is a "local exchange telecommunications company" and a "public utility" within the intendments of Section 386.020, RSMo. The Missouri Public Service Commission therefore has jurisdiction over this case pursuant to Section 392.245.5, RSMo Supp. 2005.

### ***The Controlling Statute:***

In pertinent part, Section 392.245.5, RSMo Supp. 2005, provides:

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.

\* \* \*

The cited section requires the Commission to classify as competitive an ILEC's residential basic local services, other than exchange access, in any exchange in which at least two non-affiliated competitors are providing basic local telecommunications services to residential customers. The rule for business basic local telecommunications services is identical. Thus, for any exchange for which Spectra seeks competitive classification of

either residential or business basic local services, Spectra must show (1) that there are at least two competitors in the exchange, (2) each of which is currently providing basic local services, (3) to at least two customers of the requisite sort.

The statute goes on to provide that one, but only one, of the two required competitors may be a CMRS or wireless provider. The other may be any entity that provides (1) two-way voice service capable of receiving calls from a basic local telecommunications service provider, (2) over facilities that it or its affiliates own, in whole or in part, (3) whether or not it is subject to regulation by the Commission, (4) but not an entity that is a pure reseller of services, or that provides only prepaid services, or whose services require a third party, unaffiliated broadband network or dial-up internet network for the origination of local voice service.

***Discussion:***

Spectra seeks competitive classification for its residential basic local telecommunications services other than exchange access in five exchanges, and competitive classification for its business basic local telecommunications services in four of the same five exchanges. The exchanges in question are Ewing, LaBelle, Lewistown, Macon, and Savannah.

The evidence as to the showings required by the statute may be conveniently set out in chart form, as follows:

	<b>Residential</b>	<b>Business</b>
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<b>Exchange</b>	<b>Competitor 1 (wireless)</b>	<b>Competitor 2 (non-wireless)</b>	<b>Competitor 1 (wireless)</b>	<b>Competitor 2 (non-wireless)</b>
Ewing	U.S. Cellular	Mark Twain	U.S. Cellular	Mark Twain
LaBelle	U.S. Cellular	Mark Twain	U.S. Cellular	Mark Twain
Lewistown	U.S. Cellular	Mark Twain	U.S. Cellular	Mark Twain
Macon	U.S. Cellular Sprint PCS/Nextel	Chariton Valley	U.S. Cellular Sprint PCS/Nextel	Chariton Valley
Savannah	U.S. Cellular Sprint PCS/Nextel	NPG Cable	Sprint PCS/Nextel	--

The record shows, and the Commission finds, that U.S. Cellular serves at least two business and two residential customers in four of the five exchanges at issue and that Sprint PCS/Nextel serves at least two business and two residential customers in two of the five exchanges at issue, including the exchange not served by U.S. Cellular. The record shows, and the Commission finds, that both U.S. Cellular and Sprint PCS/Nextel are CMRS or wireless providers that are not affiliated with Spectra. Thus, the Commission concludes that Spectra has made the required showing for both residential and business services in all five exchanges with respect to one competitor.

Because Spectra has relied on wireless carriers as one of the required competitors in all five exchanges, the second competitor cannot be a wireless carrier. The record shows, and the Commission finds, that Mark Twain serves at least two business and two residential customers in three of the five exchanges at issue and that Chariton Valley serves at least two business and two residential customers in another one of the five exchanges at issue, one that is not served by Mark Twain. The record shows, and the Commission finds, that both Mark Twain and Chariton Valley are full-facilities-based CLECs that are certificated to provide basic local telecommunications services and which are not affiliated with Spectra. As to the last of the five exchanges, the record shows, and the

Commission finds, that NPG serves at least two residential customers, but no business customers, over the cable TV network that it owns, using switching and other services purchased from Sprint, a large ILEC. NPG's services include two-way voice service capable of receiving calls from a basic local telecommunications service provider; NPG does not require either a third-party, unaffiliated broadband network or a dial-up internet network for the origination of its local voice service. Thus, the Commission concludes that Spectra has made the required showing of a second, non-wireless competitor in all five exchanges for residential basic local telecommunications services and in four of the five exchanges for business basic local telecommunications services.

Based on its findings and conclusions recited above, the Commission is required to grant Spectra's application for competitive classification of its residential basic local telecommunications services in the Ewing, LaBelle, Lewistown, Macon, and Savannah Exchanges, and its application for competitive classification of its business basic local telecommunications services in the Ewing, LaBelle, Lewistown, and Macon Exchanges. The Commission is also required to approve Spectra's proposed tariff sheets reflecting these reclassifications.

The Commission notes that, except in the Macon Exchange and only for U.S. Cellular's subscribers, the record shows that calls by Spectra's subscribers to their friends, family members and neighbors with cell phones will be toll calls.

**IT IS THEREFORE ORDERED:**

1. That the Request for Competitive Classification filed on September 9, 2005, by Spectra Communications Group, L.L.C., doing business as CenturyTel, is granted.
2. That the basic local telecommunications services, other than exchange access, provided to residential subscribers by Spectra Communications Group, L.L.C.,

doing business as CenturyTel, in its Ewing, LaBelle, Lewistown, Macon, and Savannah Exchanges shall be classified as competitive.

3. That the basic local telecommunications services, other than exchange access, provided to business subscribers by Spectra Communications Group, L.L.C., doing business as CenturyTel, in its Ewing, LaBelle, Lewistown, and Macon Exchanges shall be classified as competitive.

4. That the proposed tariff sheets filed on September 9, 2005, by Spectra Communications Group, L.L.C., doing business as CenturyTel, and assigned Sprint Tariff Tracking Numbers JI-2006-0180, JI-2006-0181, JI-2006-0182, JI-2006-0183, JI-2006-0184, and JI-2006-0185, are approved for service rendered on and after October 9, 2005. The specific tariff sheets approved are:

**PSC MO. NO. 1 General and Local Exchange Tariff**

**Table of Contents, 2nd Revised Sheet 1, Cancels 1st Revised Sheet 1  
Section 1, 5th Revised Sheet 1, Cancels 4th Revised Sheet 1  
Section 15 Original Sheet 1**

**PSC MO. NO. 2 Facilities for Intrastate Access**

**Table of Contents, 1st Revised Sheet 1, Cancels Original Sheet 1  
Table of Contents, 1st Revised Sheet 19, Cancels Original Sheet 19  
1st Revised Sheet 314, Cancels Original Sheet 314**

**PSC MO. NO. 3 Long Distance Message Telecommunications Service**

**Table of Contents, 1st Revised Sheet 1, Cancels Original Sheet 1  
1st Revised Sheet 31, Cancels Original Sheet 31**

**PSC MO. NO. 4 Wide Area Telecommunications Service**

**Table of Contents, 1st Revised Sheet 2, Cancels Original Sheet 2  
Original Sheet 33**

**PSC MO. NO. 5 Private Line Service**

**Table of Contents, 1st Revised Sheet 3, Cancels Original Sheet 3  
Original Sheet 110**

**PSC MO. NO. 6 Digital Data Transmission Service**

**Table of Contents, 1st Revised Sheet 4, Cancels Original Sheet 4  
Original Sheet 110**

5. That all other motions and objections not specifically ruled upon by the Commission herein are denied or overruled.

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

7. That this case may be closed on October 10, 2005.

**BY THE COMMISSION**

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

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., and Murray, C., concur, with  
separate concurring opinion to follow;  
Appling, C., concurs;  
Gaw and Clayton, dissent, with separate  
dissenting opinion to follow;  
and certify compliance with Section 536.080,  
RSMo 2000.

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