

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 14th day
of February, 2008.

In the Matter of Spectra Communications Group,)	
LLC, d/b/a CenturyTel's Request for Competitive)	<u>Case No. IO-2008-0244</u>
Classification Pursuant to Section 392.245.5,)	Tariff No. YI-2008-0443
RSMo.)	

**ORDER GRANTING COMPETITIVE CLASSIFICATION
AND APPROVING TARIFF SHEETS**

Issue Date: February 14, 2008

Effective Date: February 24, 2008

Syllabus: In this Order, the Missouri Public Service Commission grants Spectra Communications Group, LLC, d/b/a CenturyTel's request, pursuant to Section 392.245.5, RSMo Cum. Supp. 2007, for competitive classification of the residential services, other than exchange access service, in its Aurora exchange. In addition, the Commission approves the tariff sheets Spectra filed to implement that classification and provide a rate decrease.

Procedural History

On January 25, 2008, Spectra filed its verified Application for Competitive Classification pursuant to Section 392.245.5, RSMo Cum. Supp. 2007. In its application, Spectra requested that the Commission classify the residential services it offers in its Aurora exchange, other than exchange access services, as competitive.

Concurrent with the filing of its application, Spectra filed proposed tariff sheets which reflected the requested competitive classification and had an effective date of February 24, 2008. Although Spectra stated in its application that no price changes were

being made in its tariffs,¹ those tariff sheets contained a price decrease for the subject exchange.

On January 31, 2008, the Commission entered its Order Directing Notice, Establishing Procedural Schedule, and Reserving Hearing Date, in which the Commission provided notice of Spectra's application to all certificated competitive local exchange carriers and incumbent local exchange carriers in Missouri, as well as to the General Assembly and the news media, that any party wishing to intervene in the proceeding must file an application no later than February 8, 2008. This order also established a full procedural schedule and reserved a date for an evidentiary hearing on Spectra's application. There were no requests for intervention.

On February 8, 2008, Public Counsel filed a pleading asking the Commission to require strict compliance with the statutory requirements relating to the remainder of Spectra's application. Public Counsel's pleading further indicated that although Public Counsel would not stipulate that those exchanges exhibit sufficient competition to justify competitive classification, it was *not* requesting an evidentiary hearing and had no objection to the Commission deciding the case on the basis of the existing record before it.

Also on February 8, 2008, the Staff of the Missouri Public Service Commission filed a verified pleading recommending that the Commission approve Spectra's application with regard to the requests for competitive classification. Staff also recommended that the Commission approve the tariff sheets.

On February 13, 2008, Spectra filed substitute tariff sheets designed to remove the rate change. Staff filed a supplemental recommendation on February 14, 2008, recommending approval of the tariff sheets as substituted.

¹ Application, para. 7.

Overview

Spectra is an incumbent local exchange carrier (ILEC) that is 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 days 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.

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.² The statute provides that one commercial mobile radio service provider can be counted as an entity providing basic local telecommunications services.³ 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."⁴ Therefore, an exchange would be competitive in which two or more facilities-based wireline carriers are providing services to customers, or in which

² Section 392.245.5(6), RSMo Cum. Supp. 2007.

³ Section 392.245.5(1), RSMo Cum. Supp. 2007.

⁴ Section 392.245.5(2), RSMo Cum. Supp. 2007.

one facilities-based wireline carrier and one wireless carrier are providing services to customers.

Spectra's application indicates that it faces competition from at least one wireless carrier and one facilities-based wireline carrier providing residential services in the exchange.

Findings of Fact

The Missouri Public Service Commission, having reviewed Spectra's pending tariff, the verified application and supporting documentation, and Staff's verified recommendation, memorandum and supporting documentation, which are admitted into evidence, makes the following findings of fact.

Spectra is a "local exchange telecommunications company" and a "public utility," and is authorized to provide "telecommunications service" within the state of Missouri as each of those phrases is defined in Section 386.020, RSMo 2000.⁵ Spectra is a large ILEC subject to price cap regulation.⁶

In its application, Spectra requested that the Commission classify as competitive its residential services, other than exchange access service, in the Aurora exchange. Spectra also filed proposed tariff sheets to reflect those classifications.⁷ In support of this request, Spectra filed its verified application listing the facilities-based and wireless carriers competing in the exchange. Spectra identified Cebridge Communications, LLC, d/b/a Suddenlink Communications, as providing facilities-based residential phone service in the

⁵ *Spectra of Missouri, LLC's Application for Competitive Classification*, para. 1.

⁶ *Id.*

⁷ *Id.* at Exhibit B.

Aurora exchange. Spectra also stated that Verizon, Alltel, US Cellular, and Sprint/Nextel were providing wireless services in the exchange.

Staff provided its verified recommendation, supporting memorandum, and affidavits in which it discussed its own investigation into the companies providing wireless and wireline service to the exchange. According to Staff's recommendation, there is at least one facilities-based wireline carrier and at least one wireless carrier serving Spectra's Aurora exchange who are not affiliated with Spectra but provide basic local phone service to at least two residential customers located within that exchange. Further, Staff states that the competing carriers have local numbers available for use by residential customers in that exchange.⁸

Staff states that it has no objection and recommends competitive classification for Spectra's residential services, other than exchange access service, in the Aurora exchange. Staff also recommends that the Commission approve the tariff sheets.

The Commission finds that the facts as submitted in the verified application, verified Staff recommendation and supporting memorandum, supplemental recommendation, and the related attached materials are reliable and support the grant of competitive classification in the requested exchanges.

The Commission finds that in the Aurora exchange, facilities-based local voice service is being provided to at least two residential customers by Suddenlink.⁹ In addition, the Commission finds that there is at least two non-affiliated wireless services carrier,

⁸ Staff Recommendation, page 1, and Appendix A.

⁹ Suddenlink is a cable television provider offering local voice service using its own or one of its affiliates' facilities.

U.S. Cellular and Sprint/Nextel, providing service to residential customers in the Aurora exchange.

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), 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.

Spectra is an incumbent local exchange telecommunications company and has requested competitive classification of its residential services, other than exchange access service, in its Aurora exchange.

Section 392.245.5, 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 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.”¹⁰ 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.”¹¹

Section 392.245.5(3), defines “local voice service” as meaning “[r]egardless of the technology utilized . . . 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 2000.”

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.”¹²

Spectra asserts that, other than exchange access services, its residential services in the Aurora exchange should be classified as competitive. As the party asserting the positive of a proposition, Spectra has the burden of proving that proposition.¹³

¹⁰ Section 392.245.5(1), RSMo Cum. Supp. 2007.

¹¹ Section 392.245.5(2), RSMo Cum. Supp. 2007.

¹² Section 386.020(52), RSMo 2000.

¹³ *Dycus v. Cross*, 869 S.W.2d 745, 749 (Mo. banc 1994).

Because the opportunity for an evidentiary hearing was provided and no proper party requested such a hearing, the Commission may rely on the verified pleadings filed by Spectra and Staff in making its decision in this case.¹⁴

Decision

The undisputed evidence establishes that for residential customers in the Aurora exchange 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 there is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1) to residential customers in the Aurora exchange. Therefore, the Commission concludes that Spectra's application for competitive classification of its residential services, other than exchange access services, in the Aurora exchange should be granted.

As required by the statute, Spectra submitted tariff changes to implement the competitive classification of its services. That tariff sheet carries an effective date of February 24, 2008. Since the submitted tariff sheets, as substituted, corresponds with the Commission's decision, that tariff will be approved.

In addition, the evidence in this matter suggests that although CenturyTel has a facilities-based competitor in the Aurora exchange, that competitor is providing local voice service without a certificate from the Commission. The Commission shall direct its Staff to

¹⁴ See, e.g., *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989); n.3 supra.

investigate the provisioning of service by Suddenlink in the Aurora exchange and file a complaint or any other appropriate enforcement action with the Commission.

IT IS ORDERED THAT:

1. Spectra Communications Group, LLC, d/b/a CenturyTel's residential services, other than exchange access service, are classified as competitive in the Aurora exchange.

2. Spectra Communications Group, LLC, d/b/a CenturyTel's proposed tariff revision (Tariff No. YI-2008-0443) is approved, as substituted, to become effective for service on or after February 24, 2008. The tariff sheets approved are:

PSC MO. NO. 1, Section 4

**3rd Revised Sheet 1, Cancels 2nd Revised Sheet 1
Original Sheet 17.1.1**

3. The Staff of the Missouri Public Service Commission shall investigate the provisioning of service by Cebridge Communications, LLC, d/b/a Suddenlink Communications, in the Aurora exchange and file a complaint or any other appropriate enforcement action with the Commission.

4. This order shall become effective on February 24, 2008.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

Davis, Chm., Murray, Clayton,
Appling, and Jarrett, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge