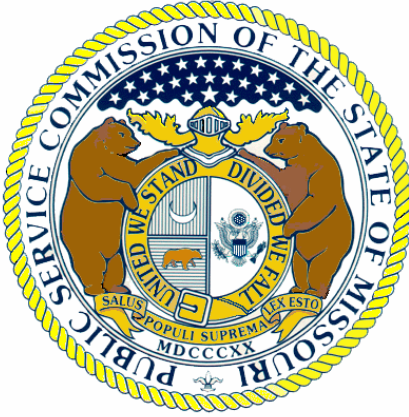


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Sprint Missouri, Inc.,)
for Competitive Classification Under Section 392.245.5,)
RSMo (2005).)

Case No. IO-2006-0092

REPORT AND ORDER

Issue Date: September 22, 2005

Effective Date: September 29, 2005

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Sprint Missouri, Inc.,)
for Competitive Classification Under Section 392.245.5,) **Case No. IO-2006-0092**
RSMo (2005).)

Table of Contents

Appearances.....	1
Procedural History	2
Discussion	4
Findings of Fact.....	5
Conclusions of Law	8
Ordered Paragraphs.....	9

Appearances

Brett D. Leopold, Attorney at Law, Sprint Missouri, Inc., d/b/a Sprint, 6450 Sprint Parkway, KSOPHN0212-2A353, Overland Park, Kansas 66251, for Sprint Missouri, Inc., d/b/a Sprint.

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

William K. Haas, Deputy 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: **Nancy Dippell, Senior Regulatory Law Judge.**

REPORT AND ORDER

Syllabus: In this Report and Order, the Missouri Public Service Commission grants Sprint Missouri, Inc.'s request for competitive classification pursuant to Section 392.245.5, RSMo (2005), for residential services, other than exchange access service, for the Ferrelview, Platte City, and Weston exchanges. The Commission also grants competitive classification for business services, other than exchange access service, in the Ferrelview, Platte City, St. Robert, and Waynesville exchanges. In addition, the Commission approves the tariff revisions filed to implement these classifications.

Procedural History

On August 30, 2005, Sprint filed its Application for Competitive Classification pursuant to Section 392.245.5, RSMo. In its Application, Sprint requested that the Commission classify as competitive its residential services, other than exchange access service, in the Ferrelview, Platte City, and Weston exchanges. Sprint also requested competitive classification for its business services, other than exchange access service, in the Ferrelview, Platte City, St. Robert, Fort Leonard Wood, and Waynesville exchanges. Concurrent with the filing of its Application, Sprint filed proposed tariffs to become effective on September 29, 2005, reflecting the requested competitive classifications.

By notice issued September 2, 2005, 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 7, 2005. The Commission also ordered the Staff of the Missouri Public Service Commission to file a recommendation and ordered that any objections to the application be

filed no later than September 9, 2005. In addition, the Commission adopted a Protective Order.

On September 7, 2005, Fidelity Communication Services I, Inc., filed an Application to Intervene. The Commission granted Fidelity's intervention request on September 8, 2005. No other requests for intervention were filed.

On September 9, 2005, Sprint filed a Motion to Amend Application. In its motion, Sprint withdrew its request to include the Fort Leonard Wood exchange in its Application. Also on September 9, Fidelity filed a timely objection to the Application based on the inclusion of the Fort Leonard Wood exchange. Fidelity stated that it did not object if the motion to amend the Application was granted. The Commission granted Sprint's motion to amend its Application on September 13, 2005. No other objections to the Application were filed.

Also filed on September 9, 2005, was Staff's recommendation. Staff recommended that Sprint's amended application be granted. Public Counsel filed a request for a formal public comment period, but did not file an objection to the Application.

On September 14, 2005, the parties filed a unanimous stipulation in which they stated that no party opposes Staff's recommendation and its attached schedules and no party opposes Sprint's amended application.

The Commission held a hearing on September 15, 2005. Staff, Sprint, and Public Counsel were represented at the hearing. The parties were given the opportunity to give closing arguments at the hearing in lieu of briefs. The Commission heard testimony from Sprint's witness, John Idoux, and from Staff's witness, John Van Eschen.

Discussion

On July 14, 2005, Senate Bill No. 237¹ (S.B. 237) was signed into law and became effective August 28, 2005. S.B. 237 changed the process under the price cap statute² for determining whether the business and residential services of a price cap regulated incumbent local exchange company (ILEC) should be classified as competitive in an exchange.

Before S.B. 237, the Commission was required to determine whether or not “effective competition” existed for the requested services in the designated exchanges. Under this “effective competition” standard, the Commission reviewed, among other things, the extent of competition in the exchange, 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.

S.B. 237 focuses solely on the number of carriers providing “basic local telecommunications service” within an exchange. The Commission must classify the ILEC’s services (business, residential, or both), as competitive in any exchange in which at least two other carriers are also providing basic local telecommunications services within an exchange.³

¹ 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.)

² Section 392.245, RSMo 2000.

³ Section 392.245.5, RSMo.

For the purpose of this case, one commercial mobile radio service (CMRS) provider is to be considered an entity providing “basic local telecommunications services.”⁴ 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.⁵

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.

Sprint 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 are defined in Section 386.020. Sprint is a large incumbent local exchange carrier which became subject to price cap regulation under Section 392.245.

On August 30, 2005, Sprint filed its Application for Competitive Classification pursuant to Section 392.245.5. The Commission authorized the amendment of that application on September 13, 2005. In its amended application, Sprint requested that the

⁴ Section 392.245.5(1), RSMo.

⁵ Section 392.245.5(2), RSMo.

Commission classify the business services in four exchanges, and the residential services in three exchanges, as competitive.

In support of this request, Sprint, filed its verified application including maps of the service territory of wireless carriers in the Sprint exchanges⁶ and the 2004 Annual Reports of Time Warner Cable Information Services (Missouri) LLC,⁷ Fidelity Communication Services I,⁸ and ExOp of Missouri, Inc.⁹ In addition, Sprint filed proposed tariff sheets.¹⁰

Sprint's regulatory affairs manager for Missouri and Kansas, John Idoux, also appeared and testified at the hearing in support of the amended application.

Staff also provided its verified recommendation in which it discussed its own investigation into the companies providing local voice service on a full facility or unbundled network element loop (UNE-L) basis. John Van Eschen, Utility Regulatory Manager of the Commission's Telecommunications Department, testified in support of the application at the hearing. According to Staff's recommendation, all of the exchanges for which Sprint requests competitive status "have at least one non-affiliated wireless provider and at least one non-affiliated entity providing local voice service on a full facility basis."¹¹

The parties unanimously stipulated that no party opposes Sprint's amended application or the Staff Recommendation and that the Commission should adopt Staff's

⁶ Exhibit A.

⁷ Exhibit B.

⁸ Exhibit C.

⁹ Exhibit D.

¹⁰ Exhibit E.

¹¹ Staff Memorandum attached to Staff Recommendation (filed Sept. 9, 2005), p. 7.

recommendation. The parties further waived their rights to an evidentiary hearing in this matter. Therefore, the Commission finds that the facts as submitted in the verified amended application and the verified Staff Recommendation are reliable and support the grant of competitive classification in the requested exchanges.

Based on the Stipulation, verified pleadings, and the testimony, the Commission finds the following:

- (A) ExOp and Time Warner are providing local voice service to residential and business customers on a full-facility basis in the Ferrelview exchange.
- (B) ExOp is providing local voice service to residential and business customers on a full-facility basis in the Platte City exchange. And, Time Warner is providing local voice service to business customers on a full-facility basis in the Platte City exchange.
- (C) Fidelity is providing local voice service to business customers on a full-facility basis in the St. Roberts exchange.
- (D) Fidelity is providing local voice service to business customers on a full-facility basis in the Waynesville exchange.
- (E) Time Warner is providing local voice service to residential customers on a full-facility basis in the Weston exchange.

In addition, based on the stipulation of the parties, the Commission finds that there is at least one non-affiliated CMRS carrier providing service to each customer class in each exchange for which Sprint seeks competitive classification.

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.

This statutory provision requires the Commission:

within thirty days of the request, [to] 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.

For the purpose of competitive status, one CMRS provider can be considered an entity providing “basic local telecommunications services.”¹² 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.¹³

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.”¹⁴

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,

¹² Section 392.245.5(1).

¹³ Section 392.245.5(2).

¹⁴ Section 392.245.5(3).

operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service.”¹⁵

The Commission concludes that the evidence as stipulated to by the parties satisfies the criteria in the statute. The evidence shows, for each of the four exchanges for business services and for each of the three exchanges for residential services, that 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).

In addition, based on the stipulation of the parties, the Commission concludes that 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 Sprint’s request for competitive classification of certain exchanges shall be granted and its tariffs shall be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation filed by the parties is accepted.
2. That the business services, other than exchange access, in the Sprint Missouri, Inc., Ferrelview, Platte City, St. Roberts, and Waynesville exchanges shall be classified as competitive.
3. That the residential services, other than exchange access, in the Sprint Missouri, Inc., Ferrelview, Platte City, and Weston exchanges shall be classified as competitive.

¹⁵ Section 386.020(52).

4. That Sprint Missouri, Inc.'s proposed tariff revisions (Tracking No. YI-2006-0174) filed on August 30, 2005, as substituted on September 9, 2005, are approved to become effective for service on or after September 29, 2005. The tariff pages approved are:

P.S.C. MO.-No. 22 Section 51

First Revised Page 1, Cancels original Page 1

Original Page 1.1

First Revised Page 2, Cancels Original Page 2

Original Page 2.1

Original Page 2.2

First Revised Page 3, Cancels Original Page 3

Original Page 3.1

First Revised Page 4, Cancels Original Page 4

Original Page 4.1

First Revised Page 5, Cancels Original Page 5

Original Page 5.1

First Revised Page 6, Cancels Original Page 6

Original Page 6.1

Original Page 6.2

First Revised Page 7, Cancels Original Page 7

Original Page 7.1

First Revised Page 8, Cancels Original Page 8

Original Page 8.1

First Revised Page 9, Cancels Original Page 9

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

6. That this Report and Order shall become effective September 29, 2005.
7. That this case may be closed on September 30, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling, CC., concur;
Clayton, C., concurs, with separate opinion
to follow;
Gaw, C., dissents in part, with separate opinion
to follow;
and certify compliance with Section 536.080,
RSMo 2000.

Dated at Jefferson City, Missouri,
on this 22nd day of September, 2005.