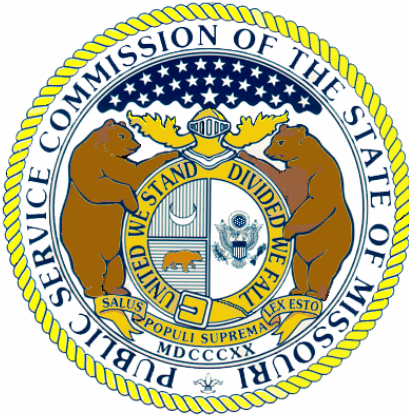


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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-2006-0317

REPORT AND ORDER

Issue Date: February 28, 2006

Effective Date: March 3, 2006

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In the Matter of Spectra Communications Group,)
LLC d/b/a CenturyTel's Request for Competitive) **Case No. IO-2006-0317**
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Appearances

Larry W. Dority, Fischer & Dority, P.C., 101 Madison, Suite 400, Jefferson City, Missouri 65101, for Spectra Communications Group, LLC, d/b/a CenturyTel.

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, and **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: Nancy Dippell, Deputy Chief Regulatory Law Judge

REPORT AND ORDER

Syllabus: In this Report and Order, the Missouri Public Service Commission grants Spectra Communications Group, LLC, d/b/a CenturyTel's request for competitive classification pursuant to Section 392.245.5, RSMo 2005, for residential services, other than exchange access service, for the Everton and Mt. Vernon exchanges. In addition, the Commission approves the tariff revisions filed to implement these classifications.

Procedural History

On February 1, 2006, Spectra Communications Group, LLC, d/b/a CenturyTel, filed its Application for Competitive Classification pursuant to Section 392.245.5, RSMo. In its application, Spectra requested that the Commission classify as competitive its residential services, other than exchange access service, in the Everton and Mt. Vernon exchanges. Concurrent with the filing of its application, Spectra filed proposed tariffs to become effective on March 3, 2006, reflecting the requested competitive classifications.

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 February 7, 2006. No request for intervention was received and no party filed an objection to the application.

Staff filed its recommendation on February 9, 2006. As part of its recommendation, Staff filed affidavits from various wireless carriers and a facilities-based carrier. Those affidavits provided information about customers being served in the relevant exchanges. Staff recommended that Spectra's application be granted.

The Commission held a hearing on February 22, 2006.¹ Staff, Spectra, 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 Staff's witness, Adam McKinnie, and from Spectra's witness, Arthur Martinez.

On February 27, 2006, Spectra filed a letter with additional information as requested by the Commission. That exhibit is marked as Exhibit 3 and admitted into the record.

¹ The hearing was held simultaneously with the companion case for CenturyTel of Missouri, LLC, Case No. IO-2006-0316.

Overview

Spectra 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-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.

On July 14, 2005, Senate Bill No. 237² (S.B. 237) was signed into law and became effective August 28, 2005. S.B. 237 changed the process under the price cap statute³ 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, whether pricing was reasonably comparable, and whether competitors were offering functionally equivalent or similar services.

² S.B. 237, 93rd Gen. Assem., 1st Reg. Sess. (Mo. 2005), codified at Section 392.245, RSMo Cum. Supp. 2005.

³ Section 392.245, RSMo.

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.⁴

The statute provides that one commercial mobile radio service provider can be counted as an entity providing basic local telecommunications services.⁵ 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.”⁶ 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.

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

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

⁴ Section 392.245.5, RSMo.

⁵ Section 392.245.5(1), RSMo.

⁶ Section 392.245.5(2), RSMo.

relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

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. Spectra is a large incumbent local exchange carrier subject to price cap regulation under Section 392.245.

In its application, Spectra requested that the Commission classify the residential services, except for exchange access, in the Everton and Mt. Vernon exchanges as competitive.

In support of this request, Spectra filed its verified application including maps of the service territory of wireless carriers in the relevant exchanges⁷ and the advertisements of MCC Telephony of Missouri, Inc., a/k/a Mediacom.⁸ Spectra also submitted a list of telephone numbers which had been ported from Spectra to wireless and wireline companies in the exchanges.⁹ In addition, Spectra filed proposed tariff sheets.¹⁰

Spectra's Director of Governmental Relations, Arthur Martinez, 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 wireless and wireline service to the exchanges. Adam McKinnie of the Commission's Telecommunications Department testified in support of the application at the hearing. According to Staff's recommendation, all of the

⁷ Exhibit A.

⁸ Exhibit B.

⁹ Exhibit C.

¹⁰ Exhibit D.

exchanges for which Spectra requests competitive status have at least one non-affiliated wireless provider and at least one non-affiliated facilities based wireline carrier providing local voice service to at least two customers with addresses within the exchange.

Attached to Staff's recommendation were the affidavits of Calvin Craib, President of MCC Telephony of Missouri,¹¹ Kenneth A. Schiffman, Director, State Regulatory, Sprint Spectrum, L.P.,¹² Jeffrey D. Sorensen, United States Cellular Corporation,¹³ Vickie Johnson, Senior Tax Manager, and Eric Pue, Senior Contract Manager, on behalf of Cingular Wireless,¹⁴ Michele K. Thomas, Senior Corporate Counsel, on behalf of T-Mobile Central, LLC,¹⁵ and Lawrence J. Krajci, Staff Manager of External Affairs of Alltel Communications, Inc.¹⁶

Staff's witness, Mr. McKinnie, also presented additional information at the hearing about whether wireless and wireline carriers were serving customers in the exchanges.¹⁷ Mr. McKinnie's Exhibit 1 HC compared information gathered by Staff from five different sources which could indicate the presence or lack of the presence of wireless or wireline customers with local telephone numbers within the exchanges.

The first source of data was the affidavits of the wireless carriers which indicated that there were at least two wireless residential customers in each exchange.¹⁸ The second

¹¹ Schedule 2 HC.

¹² Schedule 3.

¹³ Schedule 4.

¹⁴ Schedule 5.

¹⁵ Schedule 6.

¹⁶ Schedule 7.

¹⁷ Exhibit 1 HC.

¹⁸ Alltel, Cingular, and T-Mobile each indicated that although they had at least two customers within some of the exchanges, they do not distinguish between residential and business customers.

source was Spectra's information showing that it has ported telephone numbers to wireless carriers for at least two residential customers in the Mt. Vernon exchange. The third data source was the Local Exchange Routing Guide (LERG) showing local numbers assigned to wireless carriers in the Mt. Vernon exchange.

The fourth source is Type 1 wireless numbers obtained by the wireless carriers from Spectra. And the final data source is data from the Numbering Resource Utilization/Forecast (NRUF) obtained from the North American Numbering Plan Administrator (NANPA), Neustar. The data obtained from the fourth and fifth sources is considered highly confidential so it will not be included specifically in this order.

When comparing all the various sources, the data seemed contradictory for the Everton exchange. According to Spectra's data, no numbers have been ported by it to wireless carriers in the exchange and the LERG data showed no local numbers assigned to the wireless carriers. This information seems contradictory to the affidavits from the wireless carriers. The data for Type 1 wireless numbers and from the NRUF data did not provide certain clarification. Mr. McKinnie testified, however, that he did not know if the NRUF or LERG information was current or when that data had been provided.

One possible way to reconcile the contradiction was explained during Mr. Martinez's testimony. Mr. Martinez explained that it is possible that Spectra could have a provision in its interconnection agreement to provide reverse toll billing for certain telephone numbers. After inquiring further, CenturyTel filed a letter on February 26, 2006, which indicated that it did not have any reverse billing arrangements in place in the Everton exchange.

The Commission finds that the facts as submitted in the verified application, the verified Staff Recommendation, including the affidavits of competing carriers and the

hearing testimony are reliable and support the grant of competitive classification in the requested exchanges. Even though some information gathered by Staff seemed contradictory to the affidavits of the competing companies, the Commission finds that the affidavits are more reliable evidence because the Commission knows that the information is current. Based on that information, the Commission finds that Mediacom is providing facilities-based local voice service to residential customers in the Everton and Mt. Vernon exchanges. In addition, the Commission finds that there is at least one non-affiliated commercial mobile radio services (CMRS) carrier providing service to residential customers in the Everton and Mt. Vernon exchanges.

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 S.B. 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.

Spectra 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

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.”¹⁹ 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.²⁰

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.”²¹

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.”²²

¹⁹ Section 392.245.5(1).

²⁰ Section 392.245.5(2).

²¹ Section 392.245.5(3).

²² Section 386.020(52).

Spectra is asserting that its services in various exchanges should be classified as competitive. As the party asserting the positive of a proposition, Spectra has the burden of proving that proposition.²³

DECISION

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 Spectra’s application for competitive classification of its residential services, other than exchange access services, in the Everton and Mt. Vernon exchanges should be granted.

As required by the statute, Spectra submitted tariff changes to implement the competitive classification of its services. Those tariff sheets carry an effective date of March 3, 2006. Since the submitted tariff corresponds with the Commission’s decision, that tariff will be approved.

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 Everton and Mt. Vernon exchanges.

²³ *Dycus v. Cross*, 869 S.W.2d 745, 749 (Mo. banc 1994).

2. Spectra Communications Group, LLC, d/b/a CenturyTel's proposed tariff revisions (Tracking Nos. JI-2006-0604, JI-2006-0605, JI-2006-0606, JI-2006-0607, JI-2006-0608, and JI-2006-0609) filed on February 1, 2006, are approved to become effective for service on or after March 3, 2006.

3. All other motions not specifically ruled upon by the Commission are denied and that any objections not specifically ruled upon are overruled.

4. This Report and Order shall become effective March 3, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling, CC., concur;
Gaw and Clayton, CC., dissent in part, with separate
opinions to follow;
all certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 28th day of February, 2006.