

**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 June, 2007.

In the Matter of CenturyTel of Missouri, LLC's Request)
for Competitive Classification Pursuant to) **Case No. IO-2007-0440**
Section 392.245.5, RSMo) Tariff No. JI-2007-0839

ORDER GRANTING COMPETITIVE CLASSIFICATION

Issue Date: June 14, 2007

Effective Date: June 16, 2007

Syllabus: In this Order, the Missouri Public Service Commission grants CenturyTel of Missouri, LLC's request, pursuant to Section 392.245.5, RSMo Cum. Supp. 2005, for competitive classification of the business services CenturyTel offers in its Branson, Ozark, and Troy exchanges, other than exchange access services. The Commission also grants CenturyTel's request that the Commission classify the residential services CenturyTel offers in its Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges, other than exchange access services, as competitive. In addition, the Commission approves the substitute tariff sheets CenturyTel filed to implement those classifications.

Procedural History

On May 17, 2007,¹ CenturyTel of Missouri, LLC ("CenturyTel") filed its verified Application for Competitive Classification pursuant to Section 392.245.5, RSMo Cum.

¹ Unless otherwise specified, all dates refer to the year 2007.

Supp. 2005. In its application, CenturyTel requested that the Commission classify the business services it offers in its Branson, Crane, Marshfield, Ozark, and Troy exchanges, other than exchange access services, as competitive. CenturyTel also requested that the Commission classify the residential services CenturyTel offers in its Bourbon, Branson, Cabool, Cassville, Cuba, Forsyth, Kimberling City, Mansfield, and Troy exchanges, other than exchange access services, as competitive. Concurrent with the filing of its application, CenturyTel filed proposed tariff sheets which reflected the requested competitive classifications and had an effective date of June 16.²

On May 22, the Commission entered its Order Directing Notice, Establishing Procedural Schedule, and Reserving Hearing Date, in which the Commission provided notice of CenturyTel'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 May 29. This order also established a full procedural schedule and reserved Friday, June 8, for an evidentiary hearing on CenturyTel's application should the Commission receive an objection to the application by any party. According to the procedural schedule, the parties' pre-filed testimony was due June 4; pretrial briefs, witness lists, and proposed findings of fact were due June 6; and the hearing itself was to be conducted on June 8 beginning at 9:00 a.m. in Room 310. There were no requests for intervention.

On June 1, after discussions with Staff and the Office of the Public Counsel ("OPC"), CenturyTel amended its application to withdraw its original requests for competitive

² Substitute sheets with the same effective date were filed on June 7. The tariff sheets do not adjust CenturyTel's rates but simply reflect the requested competitive classifications in the relevant exchanges.

classification of the business services in its Crane and Marshfield exchanges, and for competitive classification of the residential services in its Branson exchange. On the same day, OPC filed a pleading asking the Commission to require strict compliance with the statutory requirements relating to the remainder of CenturyTel's application, which at that time concerned the business services CenturyTel offers in its Branson, Ozark, and Troy exchanges, as well as the residential services CenturyTel offers in its Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, Mansfield, and Troy exchanges, other than exchange access services. OPC's pleading further indicated that although OPC 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 June 1, Staff filed a verified pleading recommending that the Commission approve CenturyTel's amended application, with the exception of its request for competitive classification of the residential services CenturyTel offers in its Troy exchange, other than exchange access services. This was because, after conducting its investigation, Staff was unable to independently confirm that there are at least two qualifying carriers serving that exchange who are not affiliated with CenturyTel but provide basic local phone service to residential customers in that exchange. On June 4, after more discussions with Staff and OPC, CenturyTel further amended its application to withdraw its original request for competitive classification of the residential services in its Troy exchange, thereby bringing its application in line with Staff's recommendation. Staff also submitted the verified pre-filed testimony of Staff witness Michael S. Scheperle on June 4.

Later on the afternoon of June 4, the Regulatory Law Judge assigned to this case conducted a conference with attorneys from CenturyTel, Staff, and OPC, all of whom indicated that they did not plan to request an evidentiary hearing. All of the parties also agreed to the submission into evidence of the pre-filed testimony from Mr. Scheperle without the necessity of him taking the stand or being cross-examined, and that the Commission should decide this matter on the basis of CenturyTel's verified second amended application, Staff's favorable recommendation, and the pre-filed testimony, which would further explain the basis for Staff's recommendation. The parties were also amenable to conducting an on-the-record conference with the Commissioners on the afternoon of June 7 if the Commission so desired, but at an agenda meeting on June 5, the Commission decided that no such conference was necessary.³

On June 7, CenturyTel withdrew the tariff sheets it had previously submitted, which had been assigned Tariff Tracking No. JI-2007-0839, and replaced them with a revised tariff reflecting the various amendments it had made to its original application. Finally, on June 8, Staff filed its verified recommendation in favor of approving the substitute tariff sheets filed by CenturyTel the previous day, with an effective date of June 16.

Overview

CenturyTel is a large incumbent local exchange carrier ("ILEC") that is subject to price cap regulation under Section 392.245, RSMo Cum. Supp. 2005. Under price cap regulation, maximum allowable rates are established and other restrictions are placed on

³ This is consistent with past Commission practice in adjudicating uncontested applications for competitive classification under Section 392.245.5, RSMo Cum. Supp. 2005 where there has been no request for a hearing by any party. See, e.g., Order Granting Competitive Classification, *In the Matter of Sprint Missouri Inc.'s Application for Competitive Classification Under Section 392.245.5 RSMo (2005)*, Case No. TO-2006-0375 (Apr. 20, 2006) (application granted based on verified application and verified Staff Recommendation without evidentiary hearing or on-the-record conference with the Commissioners where there were no objections to the application by any party).

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 competitive local exchange carrier (“CLEC”).

Upon proper request, 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 to customers.

CenturyTel’s application indicates that it faces competition from at least one wireless carrier and one facilities-based wireline carrier for business services in its Branson, Ozark,

⁴ Section 392.245.5(6), RSMo Cum. Supp. 2005.

⁵ Section 392.245.5(1), RSMo Cum. Supp. 2005.

⁶ Section 392.245.5(2), RSMo Cum. Supp. 2005.

and Troy exchanges, and for residential services in its Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges, other than exchange access services.

Findings of Fact

The Missouri Public Service Commission, having considered all of the verified pleadings and pre-filed testimony (including attachments), which are admitted into evidence, 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.

CenturyTel 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 2000.⁷ CenturyTel is a large ILEC subject to price cap regulation.⁸

In its second amended application, CenturyTel requested that the Commission classify its business services, except for exchange access service, in its Branson, Ozark, and Troy exchanges as competitive.⁹ CenturyTel also requested that the Commission classify the residential services CenturyTel offers in its Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges, other than exchange access services,

⁷ Application at 1-2.

⁸ *Id.* at 2.

⁹ Second Amended Application at 1-2.

as competitive.¹⁰ In addition, CenturyTel filed substitute tariff sheets reflecting those classifications.¹¹

In support of these requests, CenturyTel's verified application included a chart and other evidence indicating that at least one non-affiliated wireless carrier is currently providing service in all the relevant exchanges.¹² The application also included evidence that there are also wireline competitors in each of those exchanges that are facilities-based CLECs or cable operators who are currently providing local phone service via their own facilities to residential customers geographically located within the exchanges.¹³

Staff also provided its verified recommendation in which it discussed its own investigation into the companies providing wireless and wireline service to the relevant exchanges. According to Staff's recommendation, the three exchanges for which CenturyTel requests competitive status of its business services (*i.e.*, Branson, Ozark, and Troy) all have at least one non-affiliated wireless provider and at least one non-affiliated facilities-based wireline carrier providing local voice service to business customers located within the exchanges.¹⁴ Furthermore, Staff advised that "the competing carriers have local numbers available for use by business customers in those exchanges."¹⁵

Likewise, Staff's verified recommendation also indicates that the exchanges for which CenturyTel requests competitive status of its residential services (*i.e.*, Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield) all have at least one non-

¹⁰ *Id.*

¹¹ Staff Recommendation for Approval of Tariff Sheets at 1.

¹² Application at 4; Exhibits A, B, C2, D, E, G, H, I, J, L, and M2 to Application.

¹³ Application at 4-13; Exhibits A, B, C2, D, E, G, H, I, J, L, and M2 to Application.

¹⁴ Staff Recommendation at 1.

¹⁵ *Id.* at 1-2.

affiliated wireless provider and at least one non-affiliated facilities-based wireline carrier providing local voice service to residential customers with addresses within the exchanges,¹⁶ and that “the competing carriers have local numbers available for use by residential customers in those exchanges.”¹⁷

In addition to these verified pleadings, the record also contains the pre-filed direct testimony of Michael S. Scheperle, a regulatory economist for the Telecommunications Department Staff of the Commission who began his employment with the Commission in June 2000.¹⁸ Attached to his testimony is a variety of documentary materials upon which he relied in reaching his conclusions, including, but not limited to: affidavits and letters from representatives of various wireless and wireline providers¹⁹ and a chart summarizing the evidence he reviewed.²⁰

Mr. Scheperle testified that at least one wireless carrier unaffiliated with CenturyTel is providing local voice service to two or more business customers within the Branson, Ozark, and Troy exchanges.²¹ He also testified that a non-affiliated wireline carrier is providing local voice service to two or more business customers located within those exchanges using facilities it owns in whole or in part.²² Accordingly, Mr. Scheperle stated, Staff’s recommendation was that CenturyTel’s application for competitive classification of

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ Scheperle testimony at 1-2.

¹⁹ Schedules 3-1 through 3-6, 4HC, 5-1 through 5-2, and 5-3P to Scheperle testimony.

²⁰ Schedule 2 to Scheperle testimony.

²¹ Scheperle testimony at 5-6. For the Branson exchange the carriers are Alltel, Cingular, Sprint PCS, and US Cellular; for the Ozark exchange, they are T-Mobile (ported numbers only), Cingular, and Sprint PCS; and for the Troy exchange the carriers are Cingular, Sprint PCS, and T-Mobile. *Id.*; Schedule 2 to Scheperle testimony. The Commission further notes there was also evidence that these wireless providers permit local dialing to and from numbers within the relevant exchanges.

²² Scheperle testimony at 8. For the Branson and Ozark exchanges the carrier is NuVox; and for the Troy exchange it is Socket. Schedule 2 to Scheperle testimony.

the business services provided in its Branson, Ozark, and Troy exchanges, other than exchange access services, be approved by the Commission.²³

Mr. Scheperle further testified that at least one wireless carrier unaffiliated with CenturyTel is providing local voice service to two or more residential customers within the Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges.²⁴ He also testified that a non-affiliated wireline carrier is providing local voice service to two or more residential customers located within those exchanges using facilities it owns in whole or in part.²⁵ Therefore, Mr. Scheperle stated, Staff's recommendation was that CenturyTel's application for competitive classification of the residential services it provides in its Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges, other than exchange access services, also be approved by the Commission.²⁶

The Commission finds that the facts as submitted in the verified second amended application, the verified Staff Recommendation, and the pre-filed testimony and related attached materials are reliable and support competitive classification of the business services CenturyTel offers in its Branson, Ozark, and Troy exchanges. The Commission finds that in each of those exchanges, facilities-based local voice service is being provided to at least two business customers by an unaffiliated wireline carrier. In addition, the

²³ Scheperle testimony at 9.

²⁴ *Id.* at 5-7. For the Bourbon and Kimberling City exchanges the carriers are Cingular and Sprint PCS; for the Cabool and Mansfield exchanges they are Cingular, Sprint PCS, and US Cellular; for the Cassville exchange they are T-Mobile (ported numbers only), Alltel, and Cingular; for the Cuba exchange they are T-Mobile (ported numbers only), Cingular, and Sprint PCS; and for the Forsyth exchange the carriers are Alltel, Cingular, Sprint PCS, and US Cellular. *Id.*; Schedule 2 to Scheperle testimony. The Commission further notes there was also evidence that these wireless providers permit local dialing to and from numbers within the relevant exchanges.

²⁵ Scheperle testimony at 7-9. For the Bourbon and Cuba exchanges the carrier is Charter; while for the Cabool, Cassville, Forsyth, Kimberling City, and Mansfield exchanges it is Mediacom. *Id.*; Schedule 2 to Scheperle testimony.

²⁶ Scheperle testimony at 9.

Commission finds that there is at least one non-affiliated commercial mobile radio services carrier providing service to business customers in CenturyTel's Branson, Ozark, and Troy exchanges. The Commission further finds that the competing carriers have local numbers available for use by business customers in those exchanges.

Moreover, the Commission finds that the facts as submitted in the record before it also support competitive classification of the residential services CenturyTel offers in its Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges. The Commission finds that in each of those exchanges, facilities-based local voice service is being provided to at least two residential customers by an unaffiliated wireline carrier. In addition, the Commission finds that there is at least one non-affiliated commercial mobile radio services carrier providing service to residential customers in CenturyTel's Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges. The Commission further finds that the competing carriers have local numbers available for use by residential customers in those 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 Cum. Supp. 2005, 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.

CenturyTel is an incumbent local exchange telecommunications company and has requested competitive classification of its business services in the Branson, Ozark, and Troy exchanges and its residential services in the Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges.

Section 392.245.5, RSMo Cum. Supp. 2005, 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.”²⁷ 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.”²⁸

Section 392.245.5(3), RSMo Cum. Supp. 2005, 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.”

²⁷ Section 392.245.5(1), RSMo Cum. Supp. 2005.

²⁸ Section 392.245.5(2), RSMo Cum. Supp. 2005.

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.”²⁹

CenturyTel is asserting that its business and/or residential services in the relevant exchanges should be classified as competitive. As the party asserting the positive of a proposition, CenturyTel has the burden of proving that proposition.³⁰

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 CenturyTel and Staff, as well as the pre-filed testimony Staff submitted, in making its decision in this case.³¹

Decision

The undisputed evidence establishes that for business customers in CenturyTel’s Branson, Ozark, and Troy 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), RSMo Cum. Supp. 2005. Furthermore, the undisputed evidence establishes that for business customers in those exchanges there is at least one non-affiliated wireless carrier providing basic local telecommunications service

²⁹ Section 386.020(52), RSMo 2000.

³⁰ *Dycus v. Cross*, 869 S.W.2d 745, 749 (Mo. banc 1994).

³¹ 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*.

within the meaning of Section 392.245.5(1), RSMo Cum. Supp. 2005. Therefore, the Commission concludes that CenturyTel's application for competitive classification of its business services, other than exchange access services, in the Branson, Ozark, and Troy exchanges should be granted.

Likewise, the undisputed evidence establishes that for residential customers in CenturyTel's Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield 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), RSMo Cum. Supp. 2005. Furthermore, the undisputed evidence establishes that for residential customers in those exchanges there is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1), RSMo Cum. Supp. 2005. Therefore, the Commission concludes that CenturyTel's application for competitive classification of its residential services, other than exchange access services, in the Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges should also be granted.

As required by the statute, CenturyTel submitted tariff changes to implement the competitive classification of its services. Those tariff sheets, which Staff recommended be approved, carry an effective date of June 16. Since the submitted tariff corresponds with the Commission's decision, that tariff will be approved.

IT IS ORDERED THAT:

1. CenturyTel of Missouri, LLC's business services, other than exchange access service, are classified as competitive in the Branson, Ozark, and Troy exchanges.

2. CenturyTel of Missouri, LLC's residential services, other than exchange access service, are classified as competitive in the Bourbon, Cabool, Cassville, Cuba, Forsyth, Kimberling City, and Mansfield exchanges.

3. CenturyTel of Missouri, LLC's proposed tariff revisions (Tariff No. JI-2007-0839) are approved to become effective for service on or after June 16, 2007. The tariff approved is:

P.S.C. Mo. No. 1 Section 4

2nd Revised Sheet 1, Replacing 1st Revised Sheet 1

- Original Sheet 17.2**
- Original Sheet 17.3**
- Original Sheet 17.4**
- Original Sheet 17.5**
- Original Sheet 17.6**
- Original Sheet 17.7**
- Original Sheet 17.8**
- Original Sheet 17.9**
- Original Sheet 17.10**
- Original Sheet 17.11**
- Original Sheet 17.12**

4. This order shall become effective on June 16, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Lane, Regulatory Law Judge