

**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 Spectra Communications Group, LLC       )  
d/b/a CenturyTel's Request for Competitive Classification ) **Case No. IO-2007-0439**  
Pursuant to Section 392.245.5, RSMo.                               ) **Tariff No. JI-2007-0840**

**ORDER GRANTING COMPETITIVE CLASSIFICATION**

Issue Date: June 14, 2007

Effective Date: June 16, 2007

**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. 2005, for competitive classification of the residential services Spectra offers in its Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie exchanges, other than exchange access services. In addition, the Commission approves the substitute tariff sheets Spectra filed to implement that classification.

**Procedural History**

On May 17, 2007,<sup>1</sup> Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra") filed its verified Application for Competitive Classification pursuant to Section 392.245.5, RSMo Cum. Supp. 2005. In its application, Spectra requested that the Commission classify the business services it offers in its Mount Vernon exchange, other than exchange access services, as competitive. Spectra also requested that the

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<sup>1</sup> Unless otherwise specified, all dates refer to the year 2007.

Commission classify the residential services Spectra offers in its Brunswick, Cameron, Golden City, Greenfield, Lawson, Mountain Grove, and Sarcoxie exchanges, other than exchange access services, as competitive. Concurrent with the filing of its application, Spectra filed proposed tariff sheets which reflected the requested competitive classifications and had an effective date of June 16.<sup>2</sup>

On May 22, 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 May 29. This order also established a full procedural schedule and reserved Thursday, June 7, for an evidentiary hearing on Spectra'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 March 7 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"), Spectra amended its application to withdraw its original request for competitive classification of the business services in its Mount Vernon 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 Spectra's application, which at that time

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

concerned the residential services Spectra offers in its Brunswick, Cameron, Golden City, Greenfield, Lawson, Mountain Grove, and Sarcoxie 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 Spectra's amended application, with the exception of its request for competitive classification of the residential services Spectra offers in its Mountain Grove 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 Spectra but provide basic local phone service to residential customers in that exchange. On June 4, after more discussions with Staff and OPC, Spectra further amended its application to withdraw its original request for competitive classification of the residential services in its Mountain Grove 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 Spectra, 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 Spectra'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.<sup>3</sup>

On June 7, Spectra withdrew the tariff sheets it had previously submitted, which had been assigned Tariff Tracking No. JI-2007-0840, 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 Spectra the previous day, with an effective date of June 16.

### **Overview**

Spectra 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 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

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<sup>3</sup> 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).

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.<sup>4</sup> The statute provides that one commercial mobile radio service provider can be counted as an entity providing basic local telecommunications services.<sup>5</sup> 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.”<sup>6</sup> 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.

Spectra’s application indicates that it faces competition from at least one wireless carrier and one facilities-based wireline carrier for residential services in its Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie 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

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<sup>4</sup> Section 392.245.5(6), RSMo Cum. Supp. 2005.

<sup>5</sup> Section 392.245.5(1), RSMo Cum. Supp. 2005.

<sup>6</sup> Section 392.245.5(2), RSMo Cum. Supp. 2005.

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.

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.<sup>7</sup> Spectra is a large ILEC subject to price cap regulation.<sup>8</sup>

In its second amended application, Spectra requested that the Commission classify its residential services, except for exchange access service, in its Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie exchanges as competitive, and filed substitute tariff sheets reflecting those classifications.<sup>9</sup> In support of this request, Spectra'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.<sup>10</sup> 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.<sup>11</sup>

Staff also provided its verified recommendation in which it discussed its own investigation into the companies providing wireless and wireline service to the relevant

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<sup>7</sup> Application at 1-2.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> Second Amended Application at 1-2; Staff Recommendation for Approval of Tariff Sheets at 1.

<sup>10</sup> Application at 4; Exhibits A, B, C, D, E, F, and I to Application.

<sup>11</sup> Application at 4-6; Exhibits A, B, C, D, E, F, and I to Application.

exchanges. According to Staff's recommendation, the exchanges for which Spectra requests competitive status all have at least one non-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.<sup>12</sup> Furthermore, Staff advised that "the competing carriers have local numbers available for use by residential customers in those exchanges."<sup>13</sup>

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.<sup>14</sup> 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 providers<sup>15</sup> and a chart summarizing the evidence he reviewed.<sup>16</sup>

Mr. Scheperle testified that at least one wireless carrier unaffiliated with Spectra is providing local voice service to two or more residential customers within the Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie exchanges.<sup>17</sup> He also testified that an unaffiliated wireline carrier is providing local voice service to two or more residential

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<sup>12</sup> Staff Recommendation at 1-2.

<sup>13</sup> Staff Recommendation at 2.

<sup>14</sup> Scheperle testimony at 1-2.

<sup>15</sup> Schedules 3-1 through 3-6, 4HC, 5-4 through 5-5, and 5-6HC to Scheperle testimony.

<sup>16</sup> Schedule 2 to Scheperle testimony.

<sup>17</sup> Scheperle testimony at 5-6. For the Brunswick exchange the carriers are Cingular and US Cellular; for the Cameron exchange they are T-Mobile, Cingular, Sprint PCS, and Alltel; for the Golden City and Greenfield exchanges it is Cingular; for the Lawson exchange the carriers are T-Mobile (ported numbers only), Cingular, and Sprint PCS; and for the Sarcoxie exchange the carriers are 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.

customers located within those exchanges using facilities it owns in whole or in part.<sup>18</sup> Therefore, Mr. Scheperle testified, Staff's recommendation was that Spectra's application for competitive classification of the residential services provided in its Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie exchanges, other than exchange access services, be approved by the Commission.<sup>19</sup>

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 the grant of competitive classification in the Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie 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 Spectra's Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie 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:

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<sup>18</sup> Scheperle testimony at 7-8. That carrier is Mediacom. *Id.*; Schedule 2 to Scheperle testimony.

<sup>19</sup> Scheperle testimony at 9.

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 in the Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie 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.”<sup>20</sup> 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.”<sup>21</sup>

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<sup>20</sup> Section 392.245.5(1), RSMo Cum. Supp. 2005.

<sup>21</sup> Section 392.245.5(2), RSMo Cum. Supp. 2005.

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.”

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.”<sup>22</sup>

Spectra is asserting that its residential services in the Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie exchanges should be classified as competitive. As the party asserting the positive of a proposition, Spectra has the burden of proving that proposition.<sup>23</sup>

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, as well as the pre-filed testimony Staff submitted, in making its decision in this case.<sup>24</sup>

### **Decision**

The undisputed evidence establishes that for residential customers in the Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie exchanges there is at least one

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<sup>22</sup> Section 386.020(52), RSMo 2000.

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

<sup>24</sup> 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*.

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 the Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie 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 Spectra's application for competitive classification of its residential services, other than exchange access services, in the Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie exchanges should be granted.

As required by the statute, Spectra 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. Spectra Communications Group, LLC d/b/a CenturyTel's residential services, other than exchange access service, are classified as competitive in the Brunswick, Cameron, Golden City, Greenfield, Lawson, and Sarcoxie exchanges.
2. Spectra Communications Group, LLC d/b/a CenturyTel's proposed tariff revisions (Tariff No. JI-2007-0840) 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**

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**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**

3. 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