

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

In the Matter of the Application of Mark)
Twain Communications Company for a)
Nunc Pro Tunc Order Specifying the Service)
Area of Mark Twain Communications and)
Redefining the Service Area of Spectra) Case No. TO-2006-0100
Communications for Purposes of Mark)
Twain's ETC Service Area and Federal)
Universal Service Support Pursuant to)
Section 254 of the Telecommunications)
Act of 1996.)

MOTION FOR HEARING

COMES NOW Spectra Communications Group, LLC d/b/a CenturyTel
("Spectra"), by and through counsel, and for its Motion For Hearing, respectfully states
as follows:

1. On August 31, 2005 Mark Twain Communications Company ("Mark Twain")
filed its Application requesting that the Commission, through a *Nunc Pro Tunc* order and
without a hearing, modify its original Order issued in Case No. TA-2000-0591--issued
some five years ago--to among other things "redefine Spectra's study area for purposes of
Mark Twain's ETC designated service area" [sic].¹ Mark Twain then apparently intends
to file this "corrected" Commission Order with the Federal Communications Commission
pursuant to 47 U.S.C. 214(e)(5) and 47 C.F.R. 54.207.

2. In its *Order Directing Notice and Adding A Party* issued on September 2,
2005, the Commission correctly recognized that Mark Twain's request directly affects
Spectra, and accordingly, made Spectra a party to this proceeding. The Commission also

¹ Under the Federal Telecommunications Act of 1996 and 47 C.F.R. 54.207, state commissions and the FCC do not redefine the "study area" of a rural telephone company (such as Spectra) but rather the company's "service area", and only then after making findings that such redefinition is in the public interest.

found that other interested parties should be given the right to request intervention in this proceeding and file a motion for hearing.

3. Much has transpired with respect to eligible telecommunications carrier (“ETC”) applications before this Commission and before the Federal Communications Commission (“FCC”) since the Commission issued its original 2000 Order in Case No. TA-2000-0591. For example, the FCC in its most recent ETC decision found that:

“As part of the public interest analysis for ETC applicants that seek designation below the service area level of a rural incumbent LEC, we will perform an examination to detect the potential for creamskimming effects that is similar to the analysis employed in the *Virginia Cellular ETC Designation Order* and the *Highland Cellular ETC Designation Order*. As discussed below, the state commissions that apply a creamskimming analysis similar to the Commission’s will facilitate the Commission’s review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to Section 214(e)(5) of the Act.”

In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, Adopted February 25, 2005, Released March 17, 2005, paragraph 48 (“*ETC Designation Order*”). (Footnotes omitted).

Section 214(e)(5) of the Act provides:

“The term “service area” means a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, “service area” means such company’s “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company”.

Among other things, the Federal-State Joint Board has recommended that the state commissions and the FCC consider and protect against the potential for creamskimming when contemplating a request to redefine a rural telephone company’s service area pursuant to a competitive ETC application request. *ETC Designation Order*, footnote 134, page 22.

Federal rule 47 C.F.R. 54.207, cited by Mark Twain in its request, further provides in relevant part:

“(c) If a state commission proposes to define a service area served by a rural telephone company to other than such company’s study area, the Commission will consider that proposed definition in accordance with the procedures set for in this paragraph.

(1) A state commission or other party seeking the Commission’s agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission. The petition shall contain:

(i) The definition proposed by the state commission; and

(ii) The state commission’s ruling or other official statement *presenting the state commission’s reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board* convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.” (Emphasis supplied).

4. Mark Twain would have this Commission issue a *Nunc Pro Tunc* Order based on a bare-bones record in what was then an uncontested case² now some five years old; a record which clearly does not provide the Commission with the necessary evidentiary factual basis to conduct an analysis and forward to the FCC the reasoning for whatever decision the Commission might reach in compliance with federal law.

5. Even assuming, *arguendo*, that the Commission’s original decision granting Mark Twain ETC status should stand, and that Spectra’s service area ultimately should be redefined for that purpose under today’s more stringent, still evolving ETC review standards, the Commission and its Staff should at least take the time to conduct a meaningful review and allow the parties to make the necessary evidentiary record upon which the Commission can issue a decision.

² Mark Twain correctly notes that Spectra was not a party to Case No. TA-2000-0591.

6. According to Mark Twain, the Universal Service Administrative Company in July 2003 apparently found that the Commission's original June 15, 2000 Order issued in Case No. TA-2000-0591 was deficient and has discontinued payments to Mark Twain pending action by this Commission and further action by the FCC. For whatever reason, Mark Twain has waited until now to ask this Commission to address the deficiency and should not, therefore, be heard to complain about the need for expedited action by this Commission.

7. For all the reasons stated above, Spectra submits that an evidentiary hearing is necessary in this proceeding and hereby moves the Commission to establish a procedural schedule in this case.

WHEREFORE, Spectra Communications Group, LLC d/b/a CenturyTel moves the Commission to set a procedural schedule and evidentiary hearing in this proceeding.

Respectfully submitted,

/s/ Charles Brent Stewart

Charles Brent Stewart, MoBar#34885
STEWART & KEEVIL, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, Missouri 65203
(573) 499-0635
(573) 499-0638 (fax)
Stewart499@aol.com

ATTORNEY FOR
SPECTRA COMMUNICATIONS
GROUP, LLC d/b/a CENTURYTEL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was sent via electronic transmission to counsel for all parties of record this 16th day of September, 2005.

/s/ Charles Brent Stewart
