

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

In the Matter of the Investigation of the     )  
State of Competition in the Exchanges of    )  
Sprint Missouri, Inc.                            ) Case No. IO-2003-0281

**SPRINT'S REPLY BRIEF**

**INTRODUCTION**

The parties' initial briefs present opposing arguments to only a few of the specific requests for which Sprint has demonstrated effective competition.<sup>1</sup> Specifically, there were arguments made that oppose Sprint's requests for a finding of effective competition on residential and business core access line and access line related services in Kearney, Platte City, Rolla and St. Roberts. (Issues 1-4). Notably, no one specifically challenged Sprint's requests for a finding of effective competition on residential and business core access line and access line related services in Norborne. There were also challenges made to Sprint's request for a finding of effective competition for CENTREX, Directory Assistance and Operator Services. Sprint will address each of the specific challenges.

However, prior to addressing the specific challenges to some of Sprint's requests, Sprint will address three general points that were raised by the Office of Public Counsel ("OPC"), ExOp of Missouri, Inc. d/b/a Unite ("ExOp") and Fidelity Communication Services I, Inc. ("Fidelity"). First, each of these parties argue that, as Sprint has not demonstrate that it has responded to competition through its past pricing policies, effective competition cannot be found. This argument is not supported by the law. First, nothing in the definition of "effective competition"

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<sup>1</sup> Sprint acknowledges that OPC raises a general argument to deny all requests, but OPC did not provide any detailed argument as to why all of the requests should be denied. Therefore, it is not possible to respond to the argument.

found in Section 386.020 (13) RSMo (2000) requires that the Commission must make a finding that the presence of the effective competition has already served as a discipline on price. The Commission followed the statute in its earlier *SBC Competition Case* when it did not consider whether effective competition served as a discipline on price prior to it finding effective competition in some of SBC's exchanges. Further, the Circuit Court of Cole County strongly reinforced this point when it rejected this very same argument made by OPC in its appeal of the *SBC Competition Case* stating, "it is not until competitive status is found that a price cap company even has the full ability to change its rates as directed by the competitive environment."<sup>2</sup>

The Commission and the Court's determinations are correct. This proceeding is evaluating whether a price cap company faces effective competition. A price cap company's rates are set consistent with the price cap statute. Further, these rates are set across a price cap company's service territory – not on an exchange basis. Therefore, any response to a competitive threat in Norborne would require similar adjustments in exchanges across Sprint's territories that do not face competition.<sup>3</sup> While several parties casually suggest that Sprint may be able to secure exchange specific pricing under the Missouri statutes – what they do not discuss is that no company has attempted such a process and that any proceeding would likely be contested and be conducted under similar time frames as this case. Further, any relief that may be available in other portions of the statutes does not preempt or somehow negate Sprint's ability to request competitive status under this section of the Price Cap Statute. Therefore, as the Commission has done before, it should reject this argument.

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<sup>2</sup> *SBC Competition Case*, See Exhibit 15, at p. 37.

<sup>3</sup> Sprint further points out, contrary to allegations contained in OPC's initial brief, that it has responded to competitive pressures throughout its territory in Missouri through its service pricing. During the hearings in this docket, Sprint filed documentation showing, among other things, that a number of its services had not increased in price, some had decreased, plus there have been a number of promotional offerings designed to be competitive on a statewide basis. (See Tr. (Vol. 3) at p. 189, Exhibit 16.)

Next, OPC, Fidelity and ExOp all contend that effective competition can not be based on the presence of only one facilities based provider. This argument is also without merit. As Sprint stated in its Initial Brief, the Missouri Price Cap Statute expressly permits effective competition to be found based on the presence of one alternative provider. Indeed, the statute *requires a finding of effective competition after one provider has been providing service in an exchange for a five year period* unless there is evidence in the record refuting the presence of effective competition. Section 392.245.5 RSMo; *see also SBC Competition Case* (the statute establishes a presumption of effective competition based on the presence of one provider in the exchange for a period of five years.)<sup>4</sup> Therefore, this argument should not be a consideration in the Commission's determination in this case.

Finally, OPC spends much of its brief making the argument that Sprint cannot rely on the reclassification of SBC's services in TO-2001-467 to justify a finding of effective competition. However, Sprint does not rely on the reclassification of SBC's service to argue for a finding of effective competition. No where does Sprint state or argue that merely because SBC's service were found transitionally competitive, Sprint services should also be given that status. OPC's statements are a straw man argument intended to distract the Commission from the evidence actually in the record.

### **Sprint's Response to Specific Argument**

**Issues 1-4:** Sprint Missouri, Inc.'s residence and business core access line services and access line related services in the Norborne, Kearney, Rolla, Platte City and St Robert exchanges.

Three parties made specific arguments against portions Sprint's requests for a finding of effective competition for Sprint's residence and business core access line services and access line services offered in Kearney, Norborne, Rolla, Platte City and St. Robert exchanges. Not

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<sup>4</sup> Exhibit 20 mat p. 8.

surprisingly, both ExOp and Fidelity argue against the finding for the very exchanges in which they are free to compete (Kearney, Platte City, Rolla and St. Robert). Staff, while agreeing that effective competition exists in Sprint's Norborne, Kearney and Rolla exchanges, argued against such a finding in Sprint's Platte City and St. Robert exchanges. Sprint will address these arguments by exchange:

#### **Kearney Exchange**

ExOp spent much of its brief arguing that it may not be qualified to actually hold its designations as on Eligible Telecommunications Company ("ETC") under the Federal Telecommunications Act. Therefore, the fact that it has an ETC status for the Kearney and Platte City exchanges which requires it to serve any customer within those exchanges upon requests, should not be considered by the Commission. This argument is contrary to the applicable statutes. The presence of a facilities based provider with a requirement to serve anyone in the exchange upon request, is exactly what the Commission should be considering under the statutory definition of "effective competition." Section 392.020(13)(a) contains the definition and provides that the first factor the Commission must consider is the "extent to which services are available from alternative providers in the relevant market." The fact that ExOp must serve any customer who requests service in both relevant markets – the Kearney and Platte City exchanges – answers this inquiry. Services are available for an alternative provider throughout the relevant market. Further, ExOp's citation to the FCC's August 10, 2000 Order does nothing to diminish this fact. The citation relied on by ExOp merely states that a provider does not have to have its own facilities in the ground throughout the relevant market on the first day it becomes an ETC. The FCC then goes on to state " [a] new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable

request."<sup>5</sup> Therefore, as long as ExOp is an ETC in Kearney and Platte City, the fact that it must serve anyone in the exchange upon request is a relevant consideration in this case.

With respect to the Kearney exchange, ExOp admits that it has secured a substantial market share – indeed the record reflects that it has publicly claimed to have successfully attracted 60% of all residential customers and 85% of business customers in Kearney.<sup>6</sup> ExOp's only argument against finding effective competition in Kearney is that market share alone should not be the only consideration. This argument ignores the fact that the record contains a multitude of other factors demonstrating effective competition. For example: (1) ExOp's services are available throughout the exchange to anyone who requests them; (2) ExOp offers the same services as Sprint at lower prices; (3) ExOp offers service that customers cannot get from Sprint; (4) ExOp's presence establishes that there are no economic or regulatory barriers and (5) ExOp's presence will allow full and fair competition to serve as a substitute for regulation and will impact Sprint's pricing decisions. Clearly, market share alone is not what makes or breaks the Commission's determination that Kearney faces effective competition. There is substantial evidence in the record that every guideline provided by statute has been clearly met and the Kearney exchange demonstrates effective competition.

### **The Platte City Exchange**

With respect to Platte City, ExOp makes the opposite argument – that the Commission can rely on market share alone to find no effective competition. However, this argument again ignores the evidence in the record. For example: (1) ExOp's services are available throughout the Platte City exchange to anyone who request; (2) ExOp offers the same services as Sprint at lower prices; (3) ExOp's presence as a facilities based provider establishes that there are no economic or regulatory barriers (4) ExOp has proven success and recognition in the adjoining

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<sup>5</sup> Exhibit 13 at p. 8.

<sup>6</sup> Idoux, Direct at p. 35, L.16-20.

Kearney exchange and (5) ExOp's presence will allow full and fair competition to serve as a substitute for regulation and will impact Sprint's pricing decisions.

With respect to the Staff's opposition, it should be noted that Staff does not deny that all the specified criteria for finding effective competition contained in Section 386.020 (13) are met in Platte City – there is an alternative facilities based provider offering the same service at a lower price facing no economic or regulatory barriers.<sup>7</sup> Staff's opposition appears to be based on the fact that ExOp has not yet secured a substantial market share. Again, as stated above the decision pertaining to effective competition is not made based solely on market share. This is just one factor. Further, as the Commission has explained, a market share consideration is only used as one means to measure the extent to which services of the alternative provider are available in the exchange.<sup>8</sup> In this case, ExOp is an ETC with a legal requirement to provide its services upon request anywhere in the exchange. Therefore, the Commission does not need to rely on market share to identify the extent to which the services are available as the federal law applicable to ETCs answers this question. As reflected in the record, in connection with securing its ETC status, ExOp stated: "ExOp currently provides basic local telecommunications service exclusively through the use of its own facilities in the Kearney and Platte City, Missouri exchanges" and "ExOp now currently offers and advertises local exchange service in the Platte city exchange."<sup>9</sup> Therefore given the fact the statutory guidelines have been satisfied by a presence of a proven and known facilities-based competitor who is obligated to serve the entire exchange upon request, a market share consideration alone should not prevent a finding of effective competition.

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<sup>7</sup> Tr. (Vol. 5). At p. 300, l. 8 – p. 301, l. 6.

<sup>8</sup> Ex. 20 at p. 11-12.

<sup>9</sup> Idoux, Surrebuttal at p. 17, l. 8-18.

For reason stated in Sprint's Initial Brief and stated above, the Commission should find effective competition in the Platte City Exchange.

### **The Rolla Exchange**

Fidelity argues that the Rolla exchange is not subject to effective competition because the 26% market share held by Fidelity is not substantial.<sup>10</sup> However, again, Fidelity ignores the fact that the other relevant criteria has been satisfied. Further, Fidelity ignores the fact that it is an ETC in the Rolla Exchange and therefore, has a legal obligation to serve the entire exchange upon request. As such, its services are available throughout the exchange and the market share of 26%, while a consideration, does not in itself answer the relevant question of the extent to which Fidelity services are available throughout the Rolla exchange. The answer to that question is that Fidelity's services are available throughout the Rolla exchange. Therefore, the Commission should make the decision supported by the record -- there is effective competition.

### **The St. Robert Exchange**

Both Fidelity and Staff oppose Sprint's requests for a finding of effective competition in St. Robert. Sprint admits that of the exchanges in which it seeks a finding of effective competition, St. Robert presents the most difficult decision for the Commission. Both Fidelity and Staff oppose Sprint's requests because Fidelity does not have substantial market share in Rolla. In St. Robert, unlike the other four exchange, the Fidelity is not certified as an ETC. Therefore, market share can be a relevant consideration in identifying the extent to which Fidelity's services are available throughout St. Robert. However, what makes this decision difficult for the Commission is that St. Robert presents a situation where on one hand, the evidence suggest the presence of effective competition in a known facilities based competitor,

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<sup>10</sup> Fidelity also argues that effective competition cannot be based on one competitor and that as Sprint has failed to respond with competitive pricing, no effective competition exist. Sprint responded to these arguments in the introductions.

who has been extremely successful in an adjoining exchange and who has several established affiliates with whom it markets services in the St. Robert exchange. On the other hand, this competitor has decided that it will only market the most lucrative customers in the exchanges. Therefore, it is not an ETC and its market share will only be as big as the most profitable customers represent. The question for the Commission is, does it assist the competitor in keeping regulatory restraints on Sprint so that it cannot respond to the competition or does it find that a competitor who left unchallenged will secure the exchanges most profitable customers represents effective competition even with a low market share.

For reasons stated in its Initial Brief, Sprint believes that there is effective competition in the St. Robert exchange for all its residential and business lines core access line and access line related services. Further, Sprint requests that the Commission closely evaluate the evidence, particularly as it relates to Sprint's business services, as the Commission should not set a precedence that a competitor's decision to concentrate solely on profitable customers will prevent a finding of effective competition.

**Issue 6:      CENTREX**

Fidelity is the only party who specifically opposes a finding of effective competition for Sprint's CENTREX services throughout each of Sprint's exchanges. Fidelity's opposition is based on two arguments. First, Fidelity argues that as Sprint's Centrex service includes a dial tone, it is not the same as the competitors' PBX or Key System hardware service. Second, Fidelity contends that Sprint has not demonstrated that nationally known providers of PBX and Key System hardware systems are present in every one of Sprint's exchanges. Neither argument is correct.

First, as explained in Sprint's Initial Brief, the statute does not require that the service be identical, but "functionally equivalent or substitutable." As testified by Sprint, and previously



ruled by the Commission, to be substitutable, the services have to have the ability to take away significant business from each other. In other words, the services must satisfy the same demand.<sup>11</sup> With respect to CENTREX and PBX, the demand is the ability to manage calls. It is the equipment, not the dial tone that gives the customer the ability to manage calls. As established in Sprint's Initial Brief, CENTREX and PBX or Key System Hardware satisfy the same demand – the demand for call management services.

Second, as demonstrated in Sprint's testimony there are numerous vendors of customer premise equipment competing throughout the State of Missouri including Sprint's exchanges. In order for competition to exist each vendor is not required to have an outlet in each and every exchange, instead, as is true for many products and services, competitors reach their existing and potential customers through a number of methods. Direct sales forces, catalogs, websites, outbound telemarketing and booths at industry meetings are only a few examples of how these competitors make contact with Sprint's customers. Further, the national providers operating in Sprint's territories include well-known and established business entities success, such as SBC, Verizon, Intertel, Siemens, Avaya, and Towner Communications. Therefore, there is substantial evidence in the record that will support a finding of effective competition.

**Issue 15 and 16:      Directory Assistance and Operator Services.**

Staff, Fidelity and OPC oppose Sprint's request for a finding of effective competition for its Directory Assistance and Operator Services in Sprint's exchanges.<sup>12</sup> These parties make two arguments in opposition to Sprint's requests. First, these parties argue that there is no reason to believe that Missouri consumers are aware of the multitude of alternative providers identified by Sprint. Second, these parties argue that directory services and operator services are so closely

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<sup>11</sup> Exhibit 21, In the Matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, Case no. TO-93-116, December 21, 1992 at p. 8.

<sup>12</sup> It should be noted that Staff does not oppose a finding of effective competition for these services in the exchanges where Sprint's core access lines are subject to effective competition.

related to Sprint basic core access line services that one can not be subject to effective competition unless the other one is. Neither of these arguments are correct.

The alternative providers identified by Sprint included IXC's, wireless carriers, and internet service providers. Without question, Missouri consumers know these providers exist. Indeed, the record establishes a long presence of IXC's, who are easy available to Sprint's local customers. In addition, the record establishes that 53% of people living in Sprint's territories use the internet and have available to them the wealth of internet alternatives.<sup>13</sup> The record also reflects, there are a variety of wireless plans available to Sprint's customers<sup>14</sup> and wireless penetration in Missouri is substantial.<sup>15</sup> Finally, the record reflects that Sprint has lost substantial volumes of use.<sup>16</sup> While neither Sprint nor the Commission is in position to compel discovery from the majority of the alternative providers, as they are outside of the Commission's jurisdiction, to ascertain if that volume went to the alternative providers given the wealth of alternatives, it is reasonable to assume that the loss in volume results from this competition.

With respect to the second argument, that Directory and Operator Assistance is so closely tied to basic services that it cannot be separated, Sprint addressed this in its Initial Brief. As it stated in its brief, the record in front of the Commission in this case demonstrates that *every single alternative is available to Sprint's local customer*. Further, the argument that as a rule, regardless of the facts, that directory services are so tied to local service that the classification of both must be the same has been rejected by the FCC, as well as a number of states, including Kansas, Iowa and Pennsylvania.<sup>17</sup>

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<sup>13</sup> Harper, Surrebuttal, p. 9, l. 2-4.

<sup>14</sup> Idoux, Direct at JRI-15, and Harper Direct at MDH-3.

<sup>15</sup> Tr. (Vol. 3) at p. 183, l. 12 – p. 184, l. 15.

<sup>16</sup> Harper Direct at p. 17, l. 1-6.

<sup>17</sup> Harper, Surrebuttal at p. 6, 7- p. 7, l. 4. See also, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, FCC 99-238, 15 FCC Rcd 3696 ¶¶ 438-464, November 5, 1999; Kansas Directory Services were found to be competitive in Docket No. 01-

Based on the record in this case, there is effective competition for Sprint's Directory Assistance Service and Operator Services in Sprint's exchanges in Missouri and, therefore, the service should be designated competitive.

### CONCLUSION

For the reason stated herein and in Sprint's Initial Brief, the Commission should find that effective competition exists for Sprint Missouri Inc ("Sprint") core local access line residential and business services in the Norborne, Kearney, Rolla Platte City and St. Robert exchanges, as well as access line related services. Further, the Commission should find that effective competition exists across Sprint's exchanges for CENTREX services, IntraLATA Private Line services, ATM and Frame Relay services, IntraLATA MTS services, IntraLATA WATS services and 800 services, Line Information Database Access Services and Speed Dial.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served on each of the following parties by first-class/electronic/facsimile mail, this 23rd day of September, 2003.

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