

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of January, 2006.

In the Matter of the Application of Mark Twain)
Communications Company for Designation as)
A Telecommunications Company Carrier)
Eligible for Federal Universal Service Support)
Pursuant to Section 254 of the Telecommunications)
Act of 1996)

Case No. TA-2000-591

**ORDER CORRECTING AN ORDER ENTERED JUNE 15, 2000,
FOR PURPOSE OF DESIGNATING MARK TWAIN COMMUNICATIONS
COMPANY'S SERVICE AREA FOR UNIVERSAL SERVICE SUPPORT**

Issue Date: January 19, 2006

Effective Date: January 29, 2006

Syllabus: This order corrects an order entered by the Commission on June 15, 2000, that designated Mark Twain Communications Company an eligible telecommunications carrier under Section 254 of the Telecommunications Act of 1996 by specifying the service area of Mark Twain for purposes of universal service support.

On August 31, 2005, Mark Twain Communications Company (Mark Twain) filed an application, under case number TO-2006-0100, seeking, first, a nunc pro tunc order specifying the service area of Mark Twain, and, second, an order redefining the service area of Spectra Communications Group, LLC. Both requests were for purposes of correcting an order entered by the Commission on June 15, 2000, in case number TA-2000-591. That order of June 2000 designated Mark Twain a telecommunications carrier eligible for universal service support under Section 254 of the Telecommunications Act of

1996. Specifically, the Commission found Mark Twain “eligible under the provisions of 47 CFR 54.201(d) to receive federal universal service fund support.”¹ But the order failed to specify the service area, as required by 47 CFR 54.201(b), for which Mark Twain was designated an eligible telecommunications carrier (ETC).

On September 2, 2005, the Commission issued an order joining Spectra Communications Group, LLC, (Spectra) as a party to this case because Mark Twain seeks to redefine Spectra’s ETC service area for purposes of federal universal service support. The Commission also notified all interexchange and local telecommunications companies certificated to operate in Missouri of Mark Twain’s application. There were no intervenors and ultimately, Mark Twain, the Staff of the Commission, and the Office of the Public Counsel entered into a stipulation and agreement proposing a resolution of the matter. Spectra did not join the stipulation and agreement.

Commission rule 4 CSR 240-2.115(2)(C) provides that a nonunanimous stipulation and agreement may be treated as a unanimous stipulation and agreement if no party to the case files a timely objection. Though Spectra did not join the stipulation and agreement, it filed a statement of position advising that it does not request a hearing and does not oppose the Commission issuing an order correcting the June 15, 2000 order in case number TA-2000-591. The Commission will consider the stipulation and agreement unanimous and dispositive of the case.

Mark Twain is a competitive telecommunications local exchange carrier and has provided basic telecommunications services in the Ewing, LaBelle, and Lewistown

¹ *In the Matter of the Application of Mark Twain Communications Company for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support pursuant to Section 254 of the Telecommunications Act of 1996, TA-2000-591 (June 15, 2000).*

exchanges in Missouri since 1997. On March 22, 2000, Mark Twain filed an application, in case number TA-2000-591, seeking designation as a telecommunications carrier eligible for federal universal service support under Section 254 of the Telecommunications Act of 1996. That application specifically sought the ETC designation in the service area consisting of the Ewing, LaBelle, and Lewistown exchanges in Missouri. Upon considering Mark Twain's application, the Commission determined that it would "grant the relief requested in Mark Twain's application"² and in its order on June 15, 2000, designated Mark Twain a telecommunications carrier eligible to receive federal universal service support under 47 CFR 54.201(d). But the Commission's order failed to specify the service area for which the designation was made as required by 47 CFR 54.201(b).

Mark Twain asks the Commission to change an order it entered on June 15, 2000, by specifying its service area for ETC status over five years since the order became effective. It cites the proposition that the common law doctrine of "nunc pro tunc" is applicable. The Commission finds that two principles of law apply to this case. First, the Commission notes that "[e]very order or decision of the Commission...shall continue in force either for a period which may be designated therein or until changed or abrogated by the Commission..."³ Second, the Commission agrees that the power to enter a nunc pro tunc order is a common law power derived from a court's jurisdiction over its records and though a court may lose jurisdiction over a case, it does not lose jurisdiction over its records.⁴ A nunc pro tunc order causes the record to reflect the true judgment of the court and can be exercised at any time.⁵

² *Id.*

³ Section 386.490.3, RSMo (2000).

⁴ *Pirtle v. Pirtle*, 956 S.W.2d 235, 240 (Mo. 1997).

⁵ *Id.* at 241.

The Commission finds that Mark Twain specifically requested eligible telecommunications carrier designation in the exchanges of Ewing, LaBelle, and Lewistown, in its March 22, 2000 application. The Commission further finds that it intended, in its order of June 15, 2000 to “grant the relief requested in [Mark Twain’s] application.”⁶ The true judgment meant to be rendered in TA-2000-591 designated Mark Twain a telecommunications carrier eligible for universal service support in its service area including the Ewing, LaBelle, and Lewistown exchanges. For this reason, the June 15, 2000 order will be corrected under the Commission’s continuing authority over its orders and decisions.

The Commission also finds that changing the June 15, 2000 order in a manner that goes beyond the original record and grants *additional* relief, above and beyond a simple correction of the record, is inappropriate. The additional relief concerns the redefinition of Spectra’s service area based upon changes in ETC requirements since June 15, 2000, in the service area of a rural telephone company. For that reason, the Commission enters this order in case number TA-2000-591 and disposes of Mark Twain’s request for additional relief in the new case, identified as TO-2006-0100.

IT IS THEREFORE ORDERED:

1. That the Commission’s order in case number TA-2000-591 entered on June 15, 2000, is corrected to reflect the true judgment of the Commission in paragraph one of the “ordered” paragraphs: That Mark Twain Communications Company is eligible under the provisions of 47 CFR 54.201(d) to receive federal universal service fund support in the exchanges of Ewing, LaBelle, and Lewistown, in Missouri.

⁶ *Application of Mark Twain*, TA-2000-591 (June 15, 2000).

2. That this order shall become effective on January 29, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

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

Reed, Regulatory Law Judge