

**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 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.     )

Case No. TO-2006-0100

**STAFF SUGGESTIONS IN SUPPORT  
OF THE STIPULATION AND AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Staff Suggestions in Support of the Stipulation and Agreement states:

1. On August 31, 2005, Mark Twain Communications Company ("Mark Twain"), a competitive local exchange carrier ("CLEC"), filed an application requesting: 1) a *nunc pro tunc* order from the Commission specifying the service area for which Mark Twain was designated eligible telecommunications carrier ("ETC") status; and 2) a Commission determination that the study area of Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra") should be redefined for purposes of Mark Twain's ETC service area. Mark Twain also seeks authority to file such order with the Federal Communications Commission ("FCC") in a petition seeking FCC concurrence with the proposed redefinition.

2. On December 5, 2005, Mark Twain, the Staff, and the Office of the Public Counsel ("OPC") (collectively "signatory parties") filed a Stipulation and Agreement in which the signatory parties concur that Mark Twain's Application should be approved by the

Commission subject to the terms of the Stipulation and Agreement. Following is the Staff's rationale for agreeing to the Stipulation and Agreement.

3. Mark Twain first received a certificate of service authority to provide telecommunications services in Missouri on May 19, 1998, in Case No. TA-98-305. The Commission granted Mark Twain a certificate of service to provide basic local telecommunications services in the Missouri exchanges that were served by GTE Midwest Incorporated ("GTE Midwest"). These exchanges included Ewing, La Belle, and Lewistown.<sup>1</sup>

4. On April 4, 2000, the Commission granted GTE Midwest the authority to sell a portion of its Missouri network to Spectra.<sup>2</sup> The sale consisted of 107 Missouri exchanges, and included the Ewing, La Belle, and Lewistown exchanges.

5. Mark Twain first received ETC designation on June 27, 2000, in Case No. TA-2000-591.<sup>3</sup> Mark Twain was the first CLEC designated an ETC in the State of Missouri. The Commission's June 15, 2000 *Order Designating Mark Twain Communications Company an Eligible Carrier* did not specifically list the exchanges for which Mark Twain was designated an ETC, and did not determine that the rural telephone company's service area should be redefined.

6. On August 1, 2005, the Universal Service Administrative Company ("USAC") sent a letter to Mark Twain regarding Mark Twain's receipt of universal service high cost

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<sup>1</sup> *In the Matter of the Application of Mark Twain Communications Company for a Certificate of Service Authority to Provide Basic Local Telecommunications Service in Portions of the State of Missouri and to Classify Said Services and the Company as Competitive*, Case No. TA-98-305, *Order Granting Certificate of Service Authority and Suspending Tariff*, May, 19, 1998, Attachment 2.

<sup>2</sup> *In the Matter of the Joint Application of GTE Midwest Incorporated and Spectra Communications Group LLC for Authority to Transfer and Acquire Part of GTE Midwest Incorporated's Franchise, Facilities or System Located in the State of Missouri and for Issuance of Certificates of Service Authority to Spectra Communications Group, LLC and for Authority for Spectra Communications Group, LLC to Borrow an Amount not to Exceed \$250,000,000 from CenturyTel, Inc., and in Connection Therewith to Execute a Telephone Loan Contract, Promissory Notes, and a Mortgage, Security Agreement and Financing Statement*, Case No. TM-2000-182, *Report and Order*, April 4, 2000.

support. The USAC letter identified two problems with Mark Twain's ETC designation. First, the letter states that the Commission's order did not specify which wire centers were eligible for universal service support. USAC relied upon a notification from Mark Twain identifying the Ewing, La Belle and Lewistown exchanges as wire centers which were eligible for universal service support. Second, the USAC letter states that a required service area redefinition did not occur at the time Mark Twain was designated an ETC. Mark Twain received universal service support for lines in the Ewing, La Belle and Lewistown exchanges until USAC implemented a new payment system in July 2003 that inadvertently stopped high cost loop support to Mark Twain. By the time the mistake was discovered, USAC had determined that Mark Twain was subject to the service area redefinition requirement of 47 C.F.R. § 54.207, which had not been done at the time Mark Twain received its ETC designation.

### **Specifying the Wire Centers Eligible for Support**

7. Mark Twain's Application first requests a *nunc pro tunc* order identifying the Ewing, La Belle and Lewistown exchanges for Mark Twain's ETC designation. The Staff supports this request. It appears from Mark Twain's original application that it was Mark Twain's intention to receive ETC designation for these exchanges alone and the Commission, in its Order designating Mark Twain as an ETC, stated, "The Commission will grant the relief requested in Mark Twain's application". No party has objected to specifying the three exchanges for Mark Twain's ETC designation, and the Staff does not believe the public, the public interest, or any carrier will be harmed by a Commission order clarifying that Mark Twain is designated an ETC for the Ewing, La Belle and Lewistown exchanges.

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<sup>3</sup> *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*

### **Redefining the Service Area**

8. Mark Twain's Application also requests a determination from the Commission that Spectra's service area should be redefined. A *service area* is a term used for universal service fund purposes, and is defined as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). The FCC has determined that in the case of a service area served by a rural telephone company, the service area is *defined* as the rural carriers' study area. A *study area* is a geographic segment of an incumbent local exchange carrier's (ILEC's) telephone operations, and generally refers to an ILEC's entire service territory within a state. Under 47 C.F.R. § 54.207, if the state commission or the FCC wish to grant ETC status to a carrier in an area served by a rural telephone company, and for an area other than the rural carrier's study area, the Act requires consensus between the state commission and the FCC to redefine the service area.

9. Spectra is considered a rural telephone company for USF purposes because it meets the following definition, consistent with 47 C.F.R. § 51.5 and 47 C.F.R. § 54.5:

*Rural telephone company.* A *rural telephone company* is a LEC operating entity to the extent that such entity:

- a. Provides common carrier service to any local exchange carrier study area that does not include either:
  - i. Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
  - ii. Any territory incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

- b. Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- c. Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- d. Has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

Under this definition, Spectra is a rural telephone company under 47 C.F.R. § 51.5(a) because, as of the date of its self-certification to the FCC: 1) Spectra's study area did not include any incorporated place of 10,000 inhabitants or more, or any part thereof; and 2) Spectra's study area did not include an urbanized area. Spectra is also a rural telephone company under 47 C.F.R. § 51.5(d) because Spectra had less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

10. On July 27, 2000, the FCC released an *Order* that permitted Spectra to combine the 107 exchanges into a single new study area for Missouri.<sup>4</sup> Accordingly, Spectra's service area includes its entire Missouri study area, which includes more than the Ewing, La Belle and Lewistown exchanges. Since Mark Twain has requested ETC designation in an area smaller than Spectra's service area, the Act requires consensus between the Commission and the FCC to redefine Spectra's service area for purposes of Mark Twain's receipt of high cost USF support.

11. The FCC's rules outline the steps that a state commission must take if it proposes to define a service area served by a rural telephone company to be other than such company's study area. The FCC requires as follows:

- (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:

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<sup>4</sup> *In the Matter of Spectra Communications Group, LLC and GTE Midwest Incorporated Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules and Section 69.3(e)(9) of the Commission's Rules*, CC Docket No. 96-45, *Order*, July 27, 2000, DA 00-1625.

- (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. 47 C.F.R. § 54.207(c).

The Federal-State Joint Board ("Joint Board") issued its recommendations in 1996, and recommended that the FCC retain rural telephone company study areas as each company's service area for USF purposes.<sup>5</sup> The FCC took the recommendations of the Joint Board into account when it issued its *Virginia Cellular* order, which discussed redefining service areas in some detail.<sup>6</sup> In *Virginia Cellular*, the FCC followed the Joint Board's concerns regarding cream-skimming and considered whether the redefinition would result in opportunities for cream-skimming. Finding no opportunities for cream-skimming in *Virginia Cellular*, the FCC also considered the affect on the underlying rural telephone companies. The FCC found that redefining the rural telephone company service area would not affect the total amount of high-cost support to the rural ILEC and would not require the rural telephone company to determine their costs on a basis other than the study area level. The FCC stated that redefinition "merely enables competitive ETCs to service areas that are smaller than the entire ILEC study areas." The FCC approved the Virginia Cellular service area redefinition by redefining each wire center in the rural telephone company study areas as separate service areas.

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<sup>5</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, paras. 172-174 (1996).

<sup>6</sup> *In the Matter of the Virginia Cellular Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, January 22, 2004, FCC 03-338.

12. The Staff considered Mark Twain's request for service area redefinition following an analysis similar to the analysis the FCC applied in *Virginia Cellular*. First, the redefinition should not result in opportunities for cream-skimming. In the Affidavit of William Rohde, General Manager and Executive Vice President of Mark Twain, Mr. Rohde affirms that Mark Twain selected the Ewing, La Belle and Lewistown exchanges "because they were in close proximity to customers served by Mark Twain's parent company, Mark Twain Rural Telephone Company." Mr. Rohde affirms that "Mark Twain did not decide to provide service in these three exchanges because they were low cost, high USF revenue exchanges from within Spectra's study area." Mr. Rohde's affidavit provides access line count and census population data supporting Mr. Rohde's conclusion that redefining Spectra's existing ETC service area for purposes of Mark Twain's ETC service area does not involve cream-skimming. According to this data, the Ewing, La Belle and Lewistown exchanges do not include high population areas, nor do they include areas with a high population density. This data supports a finding that redefining Spectra's service area as proposed would not result in cream-skimming.

13. The Staff also considered the affect of redefinition on Spectra, the underlying rural telephone carrier. Spectra did not sign the Stipulation and Agreement, and instead filed a Statement of Position on December 12, 2005. Spectra's Statement of Position does not oppose redefining its service area for purposes of Mark Twain's receipt of USF high cost support. Furthermore, as affirmed by the affidavit of Mr. Rohde, Mark Twain's receipt of USF support will not reduce the amount of support Spectra receives. For these reasons, the Staff supports the request in the Stipulation and Agreement that the Commission grant Mark Twain's request for redefinition of Spectra's service area for purpose of Mark Twain's ETC service area, to be the three exchanges of Ewing, La Belle and Lewistown.

WHEREFORE, the Staff respectfully offers these suggestions in support of the Stipulation and Agreement and recommends that the Commission approve Mark Twain's Application subject to the terms of the Stipulation and Agreement.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/ Marc Poston**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16<sup>th</sup> day of December 2005.

**/s/ Marc Poston**