

**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 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**

**ORDER REDEFINING THE SERVICE AREA SERVED BY A RURAL  
TELEPHONE COMPANY FOR PURPOSES OF UNIVERSAL SERVICE  
SUPPORT**

Issue Date: January 19, 2006

Effective Date: January 29, 2006

Syllabus: This order redefines the service area of Spectra Communications Group, LLC, a rural telephone company, for purposes of the eligibility of Mark Twain Communications Company to receive universal service support.

On August 31, 2005 Mark Twain Communications Company (Mark Twain) filed an application seeking a nunc pro tunc order for purposes of correcting an order entered by the Commission on June 15, 2000, in case number TA-2000-591. Mark Twain requests, first, that the order specify the service area of Mark Twain, and, second, that the service area of Spectra Communications Group, LLC, be redefined. That June 2000 order 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.”<sup>1</sup> 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. In addition, Spectra does not object to designating Mark Twain an eligible telecommunications carrier in the service area consisting of Ewing, Labelle, and Lewistown. The Commission will consider the stipulation and agreement unanimous and dispositive of the case.

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<sup>1</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 Section 254 of the Telecommunications Act of 1996*, TA-2000-591 (June 15, 2000).

The Commission resolved Mark Twain's request for nunc pro tunc relief specifying its service area in case number TA-2000-591 by issuing an order correcting the order entered on June 15, 2000. The remaining issue for resolution in this case is the redefinition of Spectra's service area for purposes of designating Mark Twain an ETC in the service area of Spectra, a rural telephone company. The Commission finds that Spectra, by acquiescing to the stipulation and agreement, does not oppose the redefinition of its service area for these purposes.

Mark Twain is a competitive telecommunications local exchange carrier and has provided basic telecommunications services in the Ewing, LaBelle, and Lewistown exchanges in Missouri since 1997. According to the Commission's order entered on June 15, 2000, it is currently a carrier eligible to receive universal service support under Section 254 of the Telecommunications Act of 1996.

The question before the Commission is whether the service area of Spectra will be redefined for purposes of Mark Twain's ETC designation. Spectra is a rural telephone company, as defined in 47 CFR 51.5, and the incumbent local exchange carrier in the exchanges of Ewing, LaBelle, and Lewistown, as well as 104 other wire centers. The service area of a rural telephone company means the "company's 'study area' unless and until the [FCC] and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company."<sup>2</sup>

If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the [FCC] will consider that proposed definition in accordance with...(i) the definition proposed by the state commission; and (ii) the state commission's ruling...presenting the state commission's reasons for

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<sup>2</sup> 47 CFR 54.207(b).

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.<sup>3</sup>

Because Mark Twain seeks eligible telecommunications carrier status in an area served by a rural telephone company, and seeks that status for an area other than the rural carrier's entire study area, 47 CFR 54.207 requires that the service area of Spectra be redefined in order for Mark Twain to be eligible to receive federal universal service support.

The parties to the stipulation and agreement have addressed these requirements and offered an analysis of the service area redefinition under the requirements of 47 USC section 214(e), 47 CFR 54.207, as well as recommendations of the Federal-State Joint Board convened with respect to the definition of service areas served by rural telephone companies.

Section 214(e) requires that, before a state commission designates an additional eligible telecommunications carrier for an area served by a rural telephone company, the designation must be in the public interest. The public interest analysis for ETC status is clarified in *In the Matter of Federal-State Joint Board on Universal Service*<sup>4</sup> which includes an examination of (1) the benefits of increase consumer choice, (2) the impact of the designation on the universal service fund, (3) the unique advantages and disadvantages of the competitor's service offering, and (4) the potential for cream-skimming in instances where the competitive ETC applicant seeks designation below the study area level of a rural incumbent carrier.<sup>5</sup>

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<sup>3</sup> 47 CFR 54.207(c).

<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 20 FCC Rcd 6371, (2005).

<sup>5</sup> *Id.* at 6379.

The parties' stipulation and agreement maintains that the provision of service by Mark Twain in the exchanges of Ewing, LaBelle, and Lewistown has, and continues to provide, increased choice of competitive providers and services to customers. The stipulation also asserts that the impact on the federal universal service fund will be minimal because the maximum amount of support Mark Twain could receive, assuming it captured all access lines in the three exchanges, would be about \$12,640 per month – an amount less than one-fifteenth of the amount that the FCC found in *Virginia Cellular*<sup>6</sup> would not overburden the fund. The parties did not address the unique advantages and disadvantages of Mark Twain's service offerings, but the Commission does not find that issue dispositive in these particular circumstances.

Finally, the redefinition of a rural telephone company's service area shall not result in opportunities for cream-skimming. Cream-skimming occurs when competitors seek to serve only the low-cost, high-revenue customers in a rural telephone company's study area.<sup>7</sup> The Ewing, LaBelle, and Lewistown exchanges are not high-density, low-cost exchanges within Spectra's study area. In addition, Spectra has disaggregated its universal service support to target high-cost portions of its service area under 47 CFR 54.315. The FCC has determined that "cream-skimming concerns may be lessened when a rural incumbent LEC has disaggregated support to the higher-cost portions of [its] service area."<sup>8</sup> Redefining Spectra's service area for purposes of Mark Twain's ETC status does not result in rural cream-skimming.

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<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 and Opinion Order, 19 FCC Rcd 1563 (2004).

<sup>7</sup> *Id.* at 1578.

<sup>8</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 20 FCC Rcd 6371, (2005).

The Commission finds that the redefinition's effect on the rural carrier, Spectra, under the cream-skimming analysis will be minimal and, as indicated above, Spectra does not oppose the redefinition of its service area for purposes of Mark Twain's ETC designation. Further, the Commission finds that Spectra's receipt of universal service funds will not be reduced. Spectra will not be adversely affected by the redefinition of its service area for purposes of designating Mark Twain's ETC service area in the exchanges of Ewing, LaBelle, and Lewistown.

The Commission notes that the FCC, in its most recent Federal-State Joint Board decision on the requirements for competitive ETCs, has said, "we make these additional requirements applicable on a prospective basis to all ETCs previously designated by the [FCC], and we require these ETCs to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006, at the same time they submit their annual certification filing."<sup>9</sup> This opinion of the Missouri Public Service Commission does not reach those additional requirements except as they relate specifically to the redefinition of Spectra's service area for purposes of Mark Twain's ETC designation. Mark Twain is directed to submit to the FCC such evidence as it deems appropriate to comply with any and all Federal-State Joint Board decisions which may impact its ETC designation in the future.

**IT IS THEREFORE ORDERED:**

1. That the service area of Spectra Communications Group, LLC, is redefined so that the wire centers of Ewing, LaBelle, and Lewistown are separate service areas and

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<sup>9</sup> Id. at 6372.

set apart from Spectra's study area for purposes of Mark Twain's eligible telecommunications carrier service area.

2. That Mark Twain Communications Company is authorized by the Commission to file this order with the FCC in order to seek its approval of this redefinition.

3. 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 over a horizontal line.

Colleen M. Dale  
Secretary

(S E A L)

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

Reed, Regulatory Law Judge