

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 20th day  
of April, 2006.

In the Matter of Sprint Missouri, Inc.,	)	
Application for Competitive Classification	)	<b><u>Case No. TO-2006-0375</u></b>
under Section 392.245.5, RSMo (2005)	)	Tariff No. YI-2006-0761

**ORDER GRANTING COMPETITIVE CLASSIFICATION**

Issue Date: April 20, 2006

Effective Date: May 1, 2006

Syllabus: In this Order, the Missouri Public Service Commission grants Sprint Missouri, Inc.'s request for competitive classification pursuant to Section 392.245.5, RSMo Cum. Supp. 2005, for residential and business services, other than exchange access service, for the Jefferson City exchange. In addition, the Commission approves the tariff revisions filed to implement these classifications.

**Procedural History**

On March 31, 2006, Sprint Missouri, Inc., filed its Application for Competitive Classification pursuant to Section 392.245.5, RSMo Cum. Supp. 2005. In its application, Sprint requested that the Commission classify as competitive its residential and business services, other than exchange access service, in the Jefferson City exchange. Concurrent with the filing of its application, Sprint filed proposed tariffs to become effective on May 1, 2006, reflecting the requested competitive classifications.

The Commission notified the parties and all certificated competitive local exchange carriers and incumbent local exchange carriers that any party wishing to intervene in the

proceeding must file an application no later than April 5, 2006. No request for intervention was received and no party filed an objection to the application.

Staff filed its verified recommendation on April 10, 2006. As part of its recommendation, Staff filed affidavits from two facility-based competitive local exchange carriers (CLECs) and one wireless carrier. Those affidavits provided information about customers being served in the relevant exchanges. Staff recommended that Sprint's application be granted.

### **Overview**

Sprint is a large incumbent local exchange carrier (ILEC) that became subject to price cap regulation under Section 392.245, RSMo Cum. Supp. 2005. Under price cap regulation, maximum allowable rates are established and other restrictions are placed on the ability of the regulated company to raise its rates. The statute that created price cap regulation includes provisions that allow a price cap regulated company to escape regulation when competition develops in the exchanges served by that company. If a carrier obtains competitive status in an exchange, it will gain greater pricing flexibility and will be able to raise, or lower, the applicable tariffed rate for its services, except exchange access service, by giving ten-days notice to the Commission and affected customers. An ILEC with competitive status in an exchange will have essentially the same pricing flexibility in that exchange as a CLEC.

The Commission must classify the ILEC's services as competitive in any exchange in which at least two other non-affiliated carriers are providing basic local telecommunications services within an exchange.<sup>1</sup>

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<sup>1</sup> Section 392.245.5(6), RSMo Cum. Supp. 2005.

The statute provides that one commercial mobile radio service provider can be counted as an entity providing basic local telecommunications services.<sup>2</sup> The other entity that can be counted as providing basic local telecommunications services is one that provides "local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest."<sup>3</sup> Therefore, an exchange would be competitive in which two or more facilities-based wireline carriers are providing services to customers, or in which one facilities-based wireline carrier and one wireless carrier are providing services.

Sprint's application indicates that it faces competition from at least one wireless carrier and one facilities-based wireline carrier for both residential and business services in the Jefferson City exchange.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the verified pleadings, which are admitted into evidence, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Sprint is a "local exchange telecommunications company" and a "public utility," and is authorized to provide "telecommunications service" within the state of Missouri as each

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<sup>2</sup> Section 392.245.5(1), RSMo Cum. Supp. 2005.

<sup>3</sup> Section 392.245.5(2), RSMo Cum. Supp. 2005.

of those phrases is defined in Section 386.020, RSMo 2000. Sprint is a large ILEC subject to price cap regulation.

In its application, Sprint requested that the Commission classify the residential and business services, except for exchange access, in the Jefferson City exchange as competitive. In support of this request, Sprint filed its verified application including maps of the service territory of wireless carriers in the relevant exchanges.<sup>4</sup> In addition, Sprint filed proposed tariff sheets.<sup>5</sup>

Staff also provided its verified recommendation in which it discussed its own investigation into the companies providing wireless and wireline service to the exchanges. According to Staff's recommendation, the Jefferson City exchange for which Sprint requests competitive status has at least one non-affiliated wireless provider and at least one non-affiliated facilities-based wireline carrier providing local voice service to at least two residential customers and two business customers with addresses within the exchange.

Attached to Staff's recommendation were the affidavits of Calvin Craib, President of MCC Telephony of Missouri (Mediacom),<sup>6</sup> Matt Kohly, Director of Socket Telecom LLC,<sup>7</sup> and Jeff Sorensen, Regulatory Accounting Lead of United States Cellular Corporation.

The Commission finds that the facts as submitted in the verified application and the verified Staff Recommendation, including the affidavits of competing service providers, are reliable and support the grant of competitive classification in the requested exchange. The Commission finds that in the Jefferson City exchange facilities-based local voice service is

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<sup>4</sup> Exhibit A.

<sup>5</sup> Exhibit B.

<sup>6</sup> Schedule 1 HC.

<sup>7</sup> Schedule 2HC.

being provided to residential customers by Mediacom and to business customers by Socket. In addition, the Commission finds that there is at least one non-affiliated commercial mobile radio services carrier, United States Cellular Corporation, providing service to residential customers and business customers in the Jefferson City exchange.

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has jurisdiction over this matter pursuant to Section 392.245.5(6), RSMo Cum. Supp. 2005, which provides as follows:

Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access, as competitive within such exchange.

Sprint is an incumbent local exchange telecommunications company and has requested competitive classification of its business and residential services in the Jefferson City exchange.

Section 392.245.5, RSMo Cum. Supp. 2005, provides as follows:

Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the

incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange.

For the purpose of determining whether competitive status is appropriate in an exchange, one commercial mobile service provider can be considered an entity providing “basic local telecommunications services.”<sup>8</sup> The statute also requires the Commission to consider as a “basic local telecommunications service provider” any entity providing “local voice service in whole or in part over facilities in which it or one of its affiliates has an ownership interest.”<sup>9</sup>

Section 392.245.5(3), RSMo Cum. Supp. 2005, defines “local voice service” as meaning “[r]egardless of the technology utilized . . . two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo 2000.”

The statute defines “telecommunications facilities” to include, among other items, “lines, conduits, ducts, poles, wires, cables, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service.”<sup>10</sup>

Sprint is asserting that its services in the Jefferson City exchange should be classified as competitive. As the party asserting the positive of a proposition, Sprint has the burden of proving that proposition.<sup>11</sup>

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<sup>8</sup> Section 392.245.5(1), RSMo Cum. Supp. 2005.

<sup>9</sup> Section 392.245.5(2), RSMo Cum. Supp. 2005.

<sup>10</sup> Section 386.020(52), RSMo 2000.

<sup>11</sup> *Dycus v. Cross*, 869 S.W.2d 745, 749 (Mo. banc 1994).

Because the opportunity for a hearing was provided and no proper party requested to present evidence, the Commission may rely on the verified pleadings filed by Sprint and the Staff in making its decision in this case.<sup>12</sup>

### **Decision**

The undisputed evidence establishes that for both business and residential customers the Jefferson City exchange there is at least one non-affiliated entity providing local voice service in whole or in part over facilities in which it, or one of its affiliates, has an ownership interest so as to constitute the provision of basic local telecommunications within the meaning of Section 392.245.5(3), RSMo Cum. Supp. 2005. Furthermore, the undisputed evidence establishes that for both business customers and residential customers in the Jefferson City exchange there is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1), RSMo Cum. Supp. 2005. Therefore, the Commission concludes that Sprint's application for competitive classification of its residential and business services, other than exchange access services, in the Jefferson City exchange should be granted.

As required by the statute, Sprint submitted tariff changes to implement the competitive classification of its services. Those tariff sheets carry an effective date of May 1, 2006. Since the submitted tariff corresponds with the Commission's decision, that tariff will be approved.

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<sup>12</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission of the State of Missouri*, 776 S.W.2d 494 (Mo. App. 1989).

**IT IS ORDERED THAT:**

1. Sprint Missouri, Inc.'s residential and business services, other than exchange access service, are classified as competitive in the Jefferson City exchange.
2. Sprint Missouri, Inc.'s proposed tariff revisions (Tracking No. YI-2006-0761) filed on March 31, 2006, are approved to become effective for service on or after May 1, 2006.
3. This order shall become effective May 1, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, and Appling, CC., concur.  
Gaw and Clayton, CC., concur, with separate  
joint concurring opinion attached.

Voss, Regulatory Law Judge