

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

In The Matter of Spectra Communications)
Group, LLC d/b/a CenturyTel's Request) Case No. IO-2006-0108
for Competitive Classification Pursuant to)
Section 392.245.5, RSMo. (2005).)

**SPECTRA COMMUNICATIONS GROUP, LLC D/B/A CENTURYTEL'S
PRETRIAL BRIEF, LIST OF WITNESSES, AND
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra"), pursuant to the Commission's Order¹ issued in this matter on September 12, 2005, and respectfully submits its Pretrial Brief, List of Witnesses, and Proposed Findings of Fact and Conclusions of Law.

Pretrial Brief

Paragraph (C) of the Commission's September 12, 2005 Order places the parties on notice that "the Commission will require pretrial briefs that address all the issues in dispute and all the relevant prefiled testimony."² (Emphasis added.) As the evidence submitted in the Application and the prefiled testimony of Spectra and the Staff of the Commission reveal, there is only one substantive issue in dispute at this time, and that issue involves Spectra's request for competitive classification for all its residential services, other than exchange access service, for its Savannah exchange.³ Reflected in Schedule 1 to Staff Witness John Van Eschen's Direct Testimony, Staff recommends that competitive status be granted to Spectra for both residential and business services in the

¹ Order Directing Notice, Establishing Procedural Schedule, and Reserving Hearing Date, Case No. IO-2006-0108, September 12, 2005, at pp. 2-4.

² *Id.*, p. 2.

³ While NPG Cable, Inc. d/b/a St. Joseph Cablevision, Inc. ("NPG Cable") filed a Recommendation and Objection in this proceeding, its objection focused solely on the Savannah exchange. NPG Cable's Motion to Intervene as a party in this proceeding has not been granted.

Ewing, LaBelle, Lewistown and Macon exchanges. And while Staff has not come forward at this time with a positive recommendation regarding the grant of competitive status for residential services in the Savannah exchange, Staff has characterized its position as “still in the process of confirming certain information” from the provider identified by Spectra as providing local voice service in the Savannah exchange.⁴ As Mr. Van Eschen explained, “Staff hopes to gain additional information by the time of the hearing to provide a more definitive recommendation for the Savannah exchange.”⁵ There is no issue in this 30-day proceeding regarding the granting of competitive status to the following Spectra exchanges, for both residential and business services: Ewing, LaBelle, Lewistown, and Macon. (Martinez Direct Testimony, pp. 12-13, Van Eschen Direct Testimony, p. 10).

Spectra filed its Application for Competitive Classification on September 9, 2005, pursuant to Section 392.245.5 RSMo. (2005), requesting that the Commission conduct a 30-day competitive classification review pursuant to Section 392.245.5(6) RSMo. and approve Spectra’s Application for Competitive Classification for all its residential services, other than exchange access service, for the following exchanges: (a) Ewing (b) LaBelle, (c) Lewistown, (d) Macon and (e) Savannah; and for all of its business services, other than exchange access services, in the following exchanges: (a) Ewing (b) LaBelle, (c) Lewistown and (d) Macon. Concurrent with the filing of the Application, Spectra filed proposed tariffs, with thirty-day effective dates, reflecting grants of the requested competitive classification. Copies of illustrative tariffs were attached to the Application as Exhibit E.

⁴ Direct Testimony of John Van Eschen, p. 11.

⁵ *Id.*

Missouri statute Section 392.245.5 RSMo. (2005) allows carriers subject to Price Cap Regulation to seek competitive classification for each telecommunications service offered to business and residential customers, other than exchange access service, in any exchange in which at least two non-affiliated entities are providing basic local telecommunications service to customers within the exchange. Section 392.245.5 RSMo. (2005) states as follows:

5. 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 an 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 purposes of this subsection:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange;

(2) Any entity providing 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 shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the commission. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider. For purposes of this subsection only, a broadband network is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(3) Regardless of the technology utilized, local voice service shall mean 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;

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service as defined in subdivision (46) of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service; and

(5) Prepaid telecommunications service shall mean a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(6) 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 service, as competitive within such exchange.

As set forth above, the 30-day track under this new statutory provision establishes a competitive “trigger” that focuses solely on whether the requisite number of carriers are providing “basic local telecommunications service” within an exchange. For the purpose of the 30-day investigation, the statute provides that one commercial mobile radio service (“CMRS” or “wireless”) provider is to be considered an entity providing “basic local telecommunications services” in an exchange. It also requires the Commission to consider as a “basic local telecommunications service provider” any entity providing “local voice”⁶ service “in whole or in part” over facilities which it or one of its affiliates has an ownership interest.

The statute defines “telecommunications facilities” very broadly to include, among other items, “lines, conduits, ducts, poles, wires, cables, crossarms, receivers,

⁶ Section 392.245.5(3) RSMo (2005) defines “local voice service” as meaning “[r]egardless of the technology used . . . 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.”

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.”⁷

Spectra respectfully submits that all the exchanges listed above meet the requisite criteria set out in Section 392.245.5 RSMo. Specifically, at least one non-affiliated wireless carrier is providing service in all the exchanges. In addition, Spectra’s primary wireline competitors in these exchanges are CLECs or cable operators that are providing local phone service in whole or in part over facilities they own.

Section 392.245.5(1) RSMo. (2005) states that commercial mobile service providers shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange. Spectra has numerous non-affiliated wireless providers operating in its exchanges providing local service. Exhibit A of Spectra’s Application identifies wireless carriers, including (a) Cingular, (b) Verizon, (c) T-Mobile, (d) Alltel, (e) US Cellular, (f) Nextel and (g) Sprint providing local service in the above Spectra exchanges. (Martinez Direct Testimony, p. 7). As discussed in the Direct Testimony of Staff Witness John Van Eschen at Page 6, the Staff agrees that Spectra has met the criteria regarding the presence of wireless providers in the exchanges where competitive status is sought.

Section 392.245.5(2) RSMo. (2005) allows any wireline carrier providing local phone service in whole or in part over telecommunications facilities it owns to be considered as entities providing basic local telecommunications service, including cable

⁷ Section 386.020(52), RSMo.

operators that are also providing local phone service. As specifically set forth in Spectra's Application, Mark Twain Communications Company is providing both residential and business phone service, using facilities it owns in part or whole, in the following Spectra exchanges: (a) Ewing (b) LaBelle and (c) Lewistown. (Exhibit B to Application). (Martinez Direct Testimony, pp. 8-10). *See also*, Commission Report and Order in Case No. TA-98-305; Verified Application filed August 31, 2005 in Case No. TO-2006-0100; Order Approving Price Cap Regulation for Spectra in Case No. IO-2003-0132; Mark Twain Communications Company 2004 MoPSC Annual Report. Staff has confirmed that Mark Twain Communications Company is a wireline company providing residential and business local voice service on a full facility basis in the Spectra exchanges of Ewing, Labelle and Lewistown. (Van Eschen Direct Testimony, pp. 9-10, Schedule 1).

Chariton Valley Telecom Corporation is providing both residential and business phone service, using facilities it owns in part or whole, in the Spectra exchange of Macon. (Exhibit C to Application). (Martinez Direct Testimony, pp. 10-11). *See also*, Chariton Valley Telecom Corporation 2004 Annual Report; Direct Testimony of James Simon in Case No. TO-2005-0423. (Van Eschen Direct Testimony, pp. 9-10, Schedule 1).

As discussed above, the only issue in dispute is Spectra's request for competitive classification of residential service in the Savannah exchange, wherein NPG Cable, Inc. d/b/a St. Joseph Cablevision, Inc.⁸ (a/k/a Savannah Cablevision) is providing residential

⁸ In its original Application for Competitive Classification, Spectra identified NPG as "News-Press and Gazette Company d/b/a St. Joseph Cablevision (a/k/a Savannah Cablevision)." However, the Motion to Intervene in this proceeding was filed by NPG Cable, Inc. d/b/a St. Joseph Cablevision, Inc. ("St. Joseph

phone service, using facilities it owns in part or whole. Staff has withheld a positive recommendation pending confirmation of certain information from that provider, and “hopes to gain additional information by the time of the hearing to provide a more definitive recommendation for the Savannah exchange.” (*Supra*, page 2). However, that position provides no basis for denial of the requested competitive classification⁹. Staff has presented no information showing that Spectra’s evidence concerning that exchange is inaccurate or that competitive classification should be denied. As depicted on Exhibit D to Spectra’s Application, NPG’s advertisement for “New Residential Phone Service, Digital Phone” explains that the service “merges the traditional technology of standard phone service with the digital capabilities of cable broadband. Your phone service is channeled through our cable network and to the public telephone system.” Further, upon direct inquiry on behalf of Spectra, the offering of residential facility-based phone service in the Savannah exchange was confirmed by an NPG representative.

As set forth in the Direct Testimony of Mr. Martinez, four primary areas were addressed in support of Spectra’s position regarding the Savannah exchange:

1. NPG meets the specific criteria in Section 392.245.5 RSMo, 2005, for residential service;¹⁰

Cablevision”), and its Recommendation and Objection filed on September 19, 2005, states that “News-Press & Gazette Company, an affiliate of NPG Cable, does not provide any form of telecommunications service in Missouri.” Accordingly, Spectra is amending its Application by interlineation, substituting NPG Cable, Inc. d/b/a St. Joseph Cablevision, Inc. for News-Press and Gazette Company d/b/a St. Joseph Cablevision.

⁹ Although the Office of the Public Counsel has filed “Objections and Recommendation” urging the Commission to make an evidentiary record and requiring the applicant to fully disclose the facts supporting the application, it has presented no evidence that would support denial of the requested competitive classification.

¹⁰ Spectra has identified an instance where a business line has been ported to NPG although NPG’s marketing materials suggest that it only provides service to residential customers at this time.

2. NPG owns and operates the most costly and least accessible portion of a telecommunications network, the loop;
3. NPG is engaging in a complete bypass of Spectra's network through the use of its own network and that of another carrier; and
4. NPG is actively operating as a provider of local voice service as evidenced by its local advertising, its willingness to take orders for local voice service, and its porting of telephone numbers from Spectra to Sprint on behalf of NPG.

(See Direct Testimony of Arthur P. Martinez, pp. 11-18, and Highly Confidential Schedule 1, attached to said testimony).

Spectra has demonstrated, and the Commission Staff's independent verification supports, that at least two non-affiliated entities are providing residential and business basic local telecommunications service to customers within the Spectra exchanges of Ewing, LaBelle, Lewistown and Macon. In addition, Spectra has demonstrated and the record evidence supports that at least two non-affiliated entities are providing residential basic local telecommunications service to customers within Spectra's Savannah exchange. Spectra's Application and tariffs meet the statutory requirements for competitive classification and should become effective in no more than 30 days from the date of filing.

List of Witnesses

Spectra intends to call Mr. Arthur P. Martinez as its witness in this proceeding.

Proposed Findings of Fact

1. Spectra Communications Group, LLC d/b/a CenturyTel is a Delaware Limited Liability Company authorized to do business in Missouri. Spectra is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those terms are defined in Section 386.020, RSMo. 2000. Pursuant to the Commission’s *Order Approving Price Cap Regulation* issued in Case No. IO-2003-0132, Spectra is a large incumbent local exchange carrier subject to Price Cap Regulation under Section 392.245 RSMo.

2. Spectra filed its Application for Competitive Classification on September 9, 2005, pursuant to Section 392.245.5 RSMo. (2005), requesting that the Commission conduct a 30-day competitive classification review pursuant to Section 392.245.5(6) RSMo. and approve Spectra’s Application for Competitive Classification for all its residential services, other than exchange access service, for the following exchanges: (a) Ewing (b) LaBelle, (c) Lewistown, (d) Macon and (e) Savannah; and for all of its business services, other than exchange access services, in the following exchanges: (a) Ewing (b) LaBelle, (c) Lewistown and (d) Macon. Concurrent with the filing of the Application, Spectra filed proposed tariffs, with thirty-day effective dates, reflecting grants of the requested competitive classification.

3. In support of its request, Spectra filed five Exhibits with its verified Application, which were incorporated by reference therein. Spectra’s Director of Government Relations Arthur P. Martinez filed Direct Testimony on September 21, 2005,

further supporting Spectra's Application for Competitive Classification. Attached to Mr. Martinez' Direct Testimony were Highly Confidential Schedule 1 and Schedule 2, incorporated by reference therein.

4. The Staff of the Commission filed its Staff Recommendation and Objection on September 19, 2005, and also filed the Direct Testimony of John Van Eschen, Manager of the Telecommunications Department of the Commission, that same date. Mr. Van Eschen's testimony states that, in this 30-day proceeding, Staff recommends the Commission grant competitive status to Spectra in four exchanges for the provisioning of residential and business services. The specific exchanges are Ewing, LaBelle, Lewistown, and Macon, as identified in Schedule 1 to Mr. Van Eschen's direct testimony. Mr. Van Eschen testified that the Staff was currently still evaluating Spectra's request for competitive status in the Savannah exchange for residential services, as the Staff was still in the process of confirming certain information from NPG Cable, Inc. d/b/a St. Joseph Cablevision, Inc., the provider identified by Spectra as providing local voice service in the Savannah exchange. (Direct Testimony of Van Eschen, pp. 2, 11, and Schedule 1).

5. The Commission finds that the evidence presented in this proceeding satisfies the 30-day criteria in the statute, Section 392.245.5, because it shows for both business and residential services in the Spectra exchanges of Ewing, LaBelle, Lewistown and Macon, and for residential services in the Spectra exchange of Savannah, that:

- a. 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); and

- b. There is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1).

6. Specifically regarding the Savannah exchange, the Commission finds that Staff has presented no information showing that Spectra's evidence concerning NPG's provision of residential service in the Savannah exchange is inaccurate and the Commission, as noted above, finds Spectra's evidence to be correct and accurate. (Exhibit D of verified Application; Direct Testimony of Martinez, pp. 11-18, and Highly Confidential Schedule 1, attached to said testimony).

Conclusions of Law

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

5. 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 an 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 purposes of this subsection:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange;

(2) Any entity providing 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 shall be considered as a basic local telecommunications service provider regardless of whether such entity is

subject to regulation by the commission. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider. For purposes of this subsection only, a broadband network is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(3) Regardless of the technology utilized, local voice service shall mean 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;

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service as defined in subdivision (46) of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service; and

(5) Prepaid telecommunications service shall mean a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(6) 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 service, as competitive within such exchange.

2. As set forth above, the 30-day track under this new statutory provision establishes a competitive “trigger” that focuses solely on whether the requisite number of carriers are providing “basic local telecommunications service” within an exchange. For the purpose of the 30-day investigation, the statute provides that one commercial mobile radio service (“CMRS” or “wireless”) provider is to be considered an entity providing “basic local telecommunications services” in an exchange. It also requires the Commission to consider as a “basic local telecommunications service provider” any

entity providing “local voice”¹¹ service “in whole or in part” over facilities which it or one of its affiliates has an ownership interest.

3. In addition, Subsection (6) of the above statutory section required the Commission to maintain and consider its own records concerning the methods carriers whom it regulates use to provide local voice services in an exchange; and that the Commission consider such records in reviewing an ILEC’s request for competitive status. This subsection also requires the Commission to go beyond the data carriers provide it in the ordinary course of business and pro-actively seek other necessary and appropriate data from carriers it regulates as part of its investigation.

4. The Commission concludes that the evidence Spectra presented, discussed in the Findings of Fact above, satisfies the 30-day criteria in the statute because it shows for both business and residential services in the Spectra exchanges of Ewing, LaBelle, Lewistown and Macon, and for residential services in the Spectra exchange of Savannah, that:

- a. 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); and
- b. There is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1).

The evidence presented by Staff in this proceeding only buttresses this conclusion. The Commission concludes that Staff’s inability to obtain additional information from NPG Cable, Inc. d/b/a St. Joseph Cablevision, Inc. provides no basis for denying competitive

¹¹ Section 392.245.5(3) RSMo (2005) defines “local voice service” as meaning “[r]egardless of the technology used . . . 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.”

classification for residential services in the Savannah exchange. Staff has presented no information showing that Spectra's evidence concerning this exchange is inaccurate and the Commission finds that such evidence is accurate and correct and demonstrates that the statutory criteria for competitive classification has been met.

IT IS THEREFORE ORDERED:

1. That the business and residential services, other than exchange access, of Spectra Communications Group, LLC d/b/a CenturyTel are designated competitive in the exchanges of Ewing, LaBelle, Lewistown and Macon.

2. That the residential services, other than exchange access, of Spectra Communications Group, LLC d/b/a CenturyTel are designated competitive in the exchange of Savannah.

3. That the tariffs filed concurrently with the Application for Competitive Classification reflecting these grants of competitive classification are hereby approved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 22nd day of September, 2005, to:

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