

Exhibit No. _____

Issues:

Witness: John R. Idoux

Type of Exhibit: Surrebuttal Testimony

Party: Sprint Missouri, Inc.

Case No. IO-2003-0281

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

In the Matter of the Investigation)
Of the State Of Competition in the)
Exchanges of Sprint Missouri, Inc.)

Case No. IO-2003-0281

SURREBUTTAL TESTIMONY

OF

JOHN R. IDOUX III

**ON BEHALF OF
SPRINT MISSOURI, INC.**

FILED

AUG 06 2003

**Missouri Public
Service Commission**

July 7, 2003

Exhibit No. 2
Case No(s). IO-2003-0281
Date 7-14-03 Rptr TR

1 **Q. Please state your name, title and business address.**

2 **A. My name is John R. Idoux III. I am Senior Manager - External Affairs, for Sprint**
3 **Corporation. My business address is 6450 Sprint Parkway, Overland Park, KS**
4 **66251.**

5
6 **Q. Are you the same John R. Idoux III that filed Direct Testimony in this case**
7 **on April 25, 2003?**

8 **A. Yes I am.**

9
10 **Q. What is the purpose of your Surrebuttal Testimony in this Case?**

11 **A. In my Direct Testimony, I outline Sprint's request for competitive classification**
12 **for the Norborne, Kearney, Platte City, Rolla, and St. Robert exchanges for the**
13 **following services from Sprint's General Exchange Tariff:**

- 14 1. Directory Listings;
- 15 2. Extension Service (Teen Pak);
- 16 3. Local Exchange Service;
- 17 4. EAS Additives;
- 18 5. Local Measured Service;
- 19 6. Extension and Tie Line Mileage (PBX);
- 20 7. ISDN BRI;
- 21 8. ISDN PRI;
- 22 9. ISDN PRI II;
- 23 10. Payphone;
- 24 11. Direct Inward Dialing (PBX);
- 25 12. Digital Trunking Service (PBX);
- 26 13. Sprint Solutions;
- 27 14. Busy Verification Service;
- 28 15. Custom Calling Services;
- 29 16. Express Touch;
- 30 17. Network Services Packages;
- 31 18. Forwarded Message Service (PBX); and
- 32 19. Metropolitan Calling Area (MCA).

1 The purpose of my Surrebuttal Testimony is to respond to the Rebuttal Testimony
2 of (1) Staff witness Mr. Adam McKinnie, (2) OPC witness Ms. Barbara
3 Meisenheimer, (3) ExOp of Missouri ("ExOp") witness Mr. Dennis Devoy, and
4 (4) Fidelity Communications I ("Fidelity") witness Mr. Richard Taylor. I will not
5 address each and every argument made by these witnesses; however, this is no
6 way means that Sprint agrees with aspects not specifically rebutted.

7
8 **Q. Are there are preliminary matters you wish to address?**

9 **A.** Yes. My Direct Testimony included Schedule JRI-1 which listed each product
10 offered by Sprint. The schedule specifically identified which services Sprint was
11 seeking competitive classification. Sprint has made a few modifications to its
12 request and Schedule JRI-17 reflects the updated matrix. The following changes
13 were made:

- 14 • **General Exchange Tariff: EAS Additive/Fort Leonard Wood** – Sprint is
15 not seeking competitive classification for this service. The prior schedule was
16 incorrect as discussed below.
- 17 • **General Exchange Tariff: ISDN/BRI** – Sprint is no longer seeking
18 competitive classification for ISDN/BRI in the Norborne exchange. This
19 reflects a change to Sprint's Direct Testimony as discussed below.
- 20 • **Access Tariff: Special Access** – Sprint is no longer seeking competitive
21 classification for any special access service. The only services Sprint seeks
22 competitive classification from its Access Tariff are (1) LIDB transport and

1 (2) LIDB query. This reflects a change to Sprint's Direct Testimony as
2 discussed in the Surrebuttal Testimony of Sprint witness Mr. Mark Harper.
3

4 **General Issues**

5 **Q. Please summarize the various positions in this case.**

6 **A.** Rebuttal Testimony was submitted by (a) Staff, (b) Office of Public Counsel,
7 (c) AT&T, (d) ExOp of Missouri, and (e) Fidelity. Staff was the only party to
8 address all aspects of Sprint's request. Overall, Staff supported a substantial
9 portion of Sprint's request for competitive classification. The remaining parties
10 address only a sub-set of Sprint's request. OPC opposes competitive designation
11 for (a) all aspects of Sprint's exchange-specific request and (b) statewide
12 Directory/Operator Assistance. OPC supports, on a limited basis, Sprint's request
13 for toll and has no position on all other statewide services. AT&T primarily
14 addresses special services (please refer to Sprint witness Mark Harper's
15 Surrebuttal Testimony). ExOp opposes Sprint's exchange-specific request for re-
16 classification of its services in the Kearney exchange and especially in the Platte
17 City exchange but is silent on the remaining exchanges and statewide services.
18 Fidelity also opposes Sprint's exchange specific request for competitive
19 designation but for the Rolla and St. Robert exchanges. Fidelity also opposes
20 Sprint's statewide competitive designation request for Directory Assistance and
21 Centex only and supports the remaining statewide request.
22

23 **Q. Are there any common arguments amongst the various parties?**

1 A. Yes. There are two common themes raised by the various parties submitting
2 Rebuttal Testimony. In the first common argument, OPC, Fidelity and ExOp all
3 argue that Sprint faces competition from just one primary competitor. In the
4 second, OPC, ExOp and Fidelity all argue that Sprint has not displayed any
5 characteristics of a competitive company. I'll address each issue on a generic
6 basis but will also provide substantial discussion on the arguments of each party.

7
8 **Q. Please comment of the common argument that Sprint faces only one**
9 **competitor.**

10 A. OPC, ExOp and Fidelity all argue that because Sprint faces only one facility-
11 based competitor in the five exchanges it seeks competitive designation, Sprint's
12 request should be denied. I'll address the specific arguments of each party below
13 but provide two general comments at this time.

14
15 Sprint does not deny the fact that there is only one primary competitor in each of
16 the exchanges under review; however, this is only one of the many factors that
17 this Commission must take into consideration. As the Commission previously
18 stated, it must include all relevant factors in its review. The number of CLEC-
19 owned, facility-based competitors is absolutely a factor but it is not the sole factor
20 for this Commission to consider. My Direct and Surrebuttal Testimony provide
21 many other relevant factors for the Commission's determination.

1 In the SBC Competition Case (Issue 6), the Commission noted the presence of up
2 to 31 CLECs in the St. Charles and Harvester exchanges in its determination that
3 these two exchanges face effective residential competition. These two exchanges,
4 as well as the SBC exchanges of Kansas City and St. Louis where the
5 Commission determined effective business competition exists, are highly urban
6 areas. Sprint does not operate in highly urban areas and it is extremely unlikely
7 that a large number of alternative providers in the urban area will ever reach rural
8 areas. The fact that the number of competitive carriers will differ greatly from
9 rural areas and urban areas does not mean that effective competition is limited to
10 the big cities in Missouri. As my testimony has demonstrated, there are areas
11 within Sprint's territory that face immense competition with fewer providers than
12 31. Further, while I was not privy to the highly confidential information of the
13 SBC Competition Case that discussed the specific market loss, I would believe
14 that it is highly unlikely that SBC faced the level of market loss experienced by
15 Sprint in certain exchanges.

16
17 Sprint also urges the Commission to dismiss any discussion about "doomsday"
18 consequences in the event the primary competitor becomes an ineffective
19 competitor. This Commission not only has the ability to review the state of
20 competition for exchanges it previously deemed competitive at any time of its
21 choosing, but the Price Cap statutes also mandate that the Commission make this
22 review at least every five years. In essence, Section 392.245 5 provides the
23 Commission with an effective check and balance:

1 The commission shall from time to time, but no less than every five years,
2 review the state of competition in those exchanges where it has previously
3 found the existence of effective competition, and if the commission
4 determines, after hearing, that effective competition no longer exists for
5 the incumbent local exchange telecommunications company in such
6 exchange, it shall reimpose upon the incumbent local exchange
7 telecommunications company, in such exchange, the provisions of
8 paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the
9 maximum allowable prices established by the provisions of subsections 4
10 and 11 of this section, and, in any such case, the maximum allowable
11 prices established for the telecommunications services of such incumbent
12 local exchange telecommunications company shall reflect all index
13 adjustments which were or could have been filed from all preceding years
14 since the company's maximum allowable prices were first adjusted
15 pursuant to subsection 4 or 11 of this section.
16

17 **Q. Please comment of the common argument that Sprint has not displayed any**
18 **characteristics of a competitive company.**

19 **A.** OPC, ExOp and Fidelity all argue that because Sprint has not displayed any
20 characteristics of a competitive company, Sprint's request should be denied. I'll
21 address the specific arguments of each party below but provide general comments
22 at this time. First and foremost, Sprint is a price cap-regulated company and
23 cannot display many of the characteristics that competitive companies enjoy. Any
24 effort by Sprint to react to the substantial competition it faces in the Kearney,
25 Rolla, Norborne, St. Robert, and Platte City exchanges would require Sprint to
26 react on a statewide basis for all its similar rate groups or to seek exchange-
27 specific pricing capability from the Commission. To illustrate the dramatic
28 impact of the first option, assume that Sprint wanted to react to competitive
29 pressure in its Kearney exchange by offering its customers a five percent
30 discount. As Schedule JRI-24 illustrates, Sprint would experience a \$60,000
31 annual impact for the Kearney exchange. However, because this five percent

1 discount would have to be offered in Sprint's remaining 16 Rate Group III
2 exchanges, the total financial impact would exceed \$2 million annually. This \$2
3 million inadvertent impact is more than twice the total revenue of Sprint's
4 competitor in Kearney for that exchange assuming my simple illustration in
5 Schedule JRI-24. Under the second option, Sprint could seek exchange specific
6 pricing capability from the Commission under separate statutory authority;
7 however, this is not true pricing flexibility and the many advantages enjoyed by
8 competitive carriers would not be available to Sprint. This avenue would still
9 require Sprint to comply with different filing requirements and potentially even
10 additional hearings. Clearly, either option does not provide Sprint with the same
11 playing field as competitive companies.

12
13 And even if Sprint did reduce rates in Kearney by five percent, Sprint's
14 competitor's residential rates would still be substantially lower than Sprint's.
15 Furthermore, Sprint's competitors enjoy other benefits of being declared a
16 competitive company that price cap-regulated carriers do not enjoy such as the
17 ability to adjust rates on shorter notice and removal of requirements associated
18 with providing cost studies. Finally, displaying competitive characteristics is not
19 a statutory requirement. In fact, this very issue was addressed by the Circuit
20 Court of Cole County in Case No. 02CV323762 (SBC Competition Case Appeal).
21 In the Appeal, the Court summarized the OPC's and Interveners arguments:

22 Despite this laundry list of claimed deficiencies in the Commission's
23 determination, OPC relies primarily on a single factor never mentioned in
24 any applicable statute – its claim that the uncontroverted and substantial
25 competitive activity has not exerted any influence on [the ILEC's] prices --

1 to challenge the lawfulness and reasonableness of the Commission's
2 determination. NuVox/Worldcom also complain that [the ILEC] did not
3 present any evidence that competition has had "any specific impact" on
4 [the ILEC's] prices.
5

6 The Court rejected the above arguments and affirmed the portion of the
7 Commission's decision in the SBC Competition Case dealing with effective
8 competition.
9

10 **Q. Has Sprint met the criteria of effective competition as established in Statute**
11 **for its exchange-specific competitive classification request?**

12 **A.** Yes. Section 386.020(13), lists the factors that the Commission should consider
13 in determining effective competition. I summarize each factor below

14 **(a) The extent to which services are available from alternative**
15 **providers in the relevant market;**
16

17 It is undisputed that CLECs are providing local services – both basic
18 and non-basic – to customers in the five exchanges via a combination
19 of (a) resale of Sprint's services, (b) the use of unbundled network
20 elements, and (c) the use of the CLEC's own facilities. Sprint fully
21 acknowledges the fact that CLECs are not providing services equally
22 throughout its 80 exchanges. As a result, Sprint defined the "relevant
23 market" for this Case as the five exchanges of (1) Norborne, (2)
24 Kearney, (3) Platte City, (4) Rolla, and (5) St. Robert. My Direct
25 Testimony provides data and charts comparing Sprint's services and
26 rates to that of its primary competitors. In addition, numerous resellers
27 currently operate in Sprint's service area although the Commission has

1 deemed this factor to have a somewhat lesser weight. My Direct
2 Testimony provides substantial evidence as to the estimated minimum
3 number of lines served by alternative carriers in Sprint's exchanges.

4
5 **(b) The extent to which the services of alternative providers are**
6 **functionally equivalent or substitutable at comparable rates, terms**
7 **and conditions;**

8
9 As mentioned above, my Direct Testimony provides charts comparing
10 Sprint's services and rates to that of its primary competitors. In most
11 cases, the product or service offered by Sprint's competitors is exactly
12 the same as the product or service offered by Sprint. No party to this
13 case challenged the fact that CLECs are providing functional
14 equivalent or substitutable service although there is some disagreement
15 as to whether wireless and/or cable providers are providing equivalent
16 or substitutable service. Nonetheless, as my Direct Testimony
17 demonstrates, the alternative carriers are providing functionally
18 equivalent or substitutable services at comparable rates.

19
20
21 **(c) The extent to which the purposes and policies of Chapter 392,**
22 **RSMo, including the reasonableness of rates, as set out in Section**
23 **392.185, RSMo, are being advanced;**

24
25
26 As the Commission noted in the SBC Competition Case, the purpose
27 of this criteria is the ensuring that customers pay only reasonable
28 charges for the telecommunication service. My Direct Testimony
29 clearly demonstrates that the rates charged by Sprint's competitors are

1 substantially lower than Sprint's. Green Hills offers its Norborne
2 residential and business customers with savings of 44 percent and 25
3 percent, respectively, from basic Sprint rates for access line service. In
4 addition, Green Hills offers its customers with savings of up to 80
5 percent on other product offerings when compared to Sprint's rates.
6 ExOp also offers its Kearney and Platte City customers with
7 substantial savings when compared to Sprint's rates. ExOp is offering
8 a single residential access line with metropolitan calling area service
9 for \$21.99 per month. This compares to Sprint's rate of \$25.27. Rates
10 for most line related services are 20 percent to 30 percent lower than
11 Sprint's. Finally, in the Rolla and St. Robert exchanges, Fidelity
12 provides its customers with substantial savings when compared to
13 Sprint's rates by not assessing federal subscriber line charges and a
14 local number portability surcharges resulting in savings of up to 31
15 percent when compared to Sprint's rates.

16
17 **(d) Existing economic or regulatory barriers to entry;**
18

19 As mentioned in my Direct Testimony, Sprint has identified 59
20 CLECS that have (a) certificates of service authority, (b)
21 interconnection agreements, and/or (c) tariffs allowing them to offer
22 local services in Sprint exchanges. Additionally, Sprint has identified
23 16 wireless providers that it has approved interconnection agreements.
24 Furthermore, Sprint enters into numerous amendments and/or re-
25 negotiations on a monthly basis. To date, all of these agreements have

1 been negotiated within the standard timeframes as allowed by the
2 Telecommunications Act of 1996 and none of these agreements have
3 required arbitration before this Commission. In approving these
4 agreements, the Commission generally notes that:

5 The Commission concludes that the Agreement meets the
6 requirements of the Act in that it does not discriminate against a
7 nonparty carrier and implementation of the Agreement is not
8 inconsistent with the public interest, convenience and necessity.¹
9

10
11 Sprint has not introduced any barrier to entry or regulatory hurdle and
12 has consistently worked with other carriers to mutually agree to
13 interconnection terms. Further, the testimony clearly reflects there are
14 facility-based competitors in Sprint's exchanges.

15
16 **(e) Any other factors deemed relevant by the Commission and**
17 **necessary to implement the purposes and policies of Chapter 392,**
18 **RSMo.**

19
20 In the SBC Competition Case, the Commission defined what other factors it
21 will consider when implementing the purpose and policies of Chapter 392.

22 Specifically, in the SBC Competition Case, the Commission noted that under
23 that statutory criteria, it will consider "alternative communications that are not
24 regulated by the Commission, such as e-mail, cable broadband, and mobile
25 phones" as other relevant factors. Sprint addresses these alternative carriers
26 where appropriate with the full knowledge that the Commission places less
27 weight on these factors.
28

1 **Surrebuttal of Staff Witness Mr. Adam McKinnie**

2 **Q. Please summarize the issues raised by Staff witness Mr. McKinnie?**

3 A. As I stated above, overall Staff supported a substantial portion of Sprint's request
4 for competitive classification. Specifically, Staff's witness Mr. McKinnie
5 supported competitive designation for the following exchange-specific requests:

- 6 1. Local Exchange Service – Norborne, Kearney, and Rolla exchanges;
- 7 2. Local Operator Service – Norborne, Kearney, and Rolla exchanges;
- 8 3. Directory Listings – Norborne, Kearney, and Rolla exchanges;
- 9 4. Extension Service (Teen Pak) – Norborne, Kearney, and Rolla exchanges;
- 10 5. Extended Local Service Additives– Norborne, Kearney, and Rolla
11 exchanges;
- 12 6. Local Measured Service– Norborne, Kearney, and Rolla exchanges;
- 13 7. PBX Service (Extension and Tie Line Mileage; Direct Inward Dialing;
14 Digital Trunking Service; and Forwarded Message Service – Norborne,
15 Kearney, and Rolla exchanges
- 16 8. Sprint Solutions;– Norborne, Kearney, and Rolla exchanges;
- 17 9. Busy Line Verification – Norborne, Kearney, and Rolla exchanges;
- 18 10. Custom Calling Services – Norborne, Kearney, and Rolla exchanges;
- 19 11. Express Touch – Norborne, Kearney, and Rolla exchanges;
- 20 12. Network Service Packages – Norborne, Kearney, and Rolla exchanges;
- 21 13. MCA 4 Service – Kearney exchange; and
- 22 14. ISDN – Kearney and Rolla exchanges

¹ Findings of Fact, Case No. TK-2003-0444.

1

2 **Q. Did Staff support all of Sprint's request?**

3 A. No. Staff did not support Sprint's request for competitive designation for the
4 following exchange-specific requests:

- 5 1. ISDN Service – Norborne;
- 6 2. Payphone Service – all exchanges;
- 7 3. MCA Optional Service – exchanges other than Kearney;
- 8 4. EAS Additive – Fort Leonard Wood;
- 9 5. St. Robert exchange services (see list above); and
- 10 6. Platte City exchange services (see list above).

11 I will specifically address each of the five services.

12

13 **Q. Starting on page 19, Line 20 of his Rebuttal Testimony, Staff witness Mr.**
14 **McKinnie states that Sprint is seeking competitive classification for its**
15 **Optional MCA service. Is Sprint seeking competitive classification for its**
16 **Optional MCA service?**

17 A. Yes; however, Sprint is only seeking competitive classification for its optional
18 MCA service for those exchanges where the Commission has deemed the overall
19 exchange to be competitive. Sprint believes its position is consistent with Mr.
20 McKinnie's rebuttal testimony. To further clarify, Sprint seeks competitive
21 classification for the exchanges of (1) Kearney, (2) Platte City, (3) Rolla, (4) St.
22 Robert, and (5) Norborne exchanges; however, Sprint only offers its optional
23 MCA service in Kearney and Platte City exchanges. Thus, Sprint only seeks

1 competitive classification for optional MCA service in the Kearney and Platte
2 City exchange. Sprint is not seeking competitive classification for optional MCA
3 service in any other exchange. This is consistent with the Commission's ruling in
4 the SBC Competition Case.

5
6 **Q. Starting on page 19, line 13, Staff witness Mr. McKinnie discusses why Staff**
7 **does not support Sprint's request for competitive classification for payphone**
8 **services. Do you agree with Mr. McKinnie's assessment?**

9 A. No. Generally speaking, three things are needed to provide payphone service: (1)
10 an access line, (2) coin control and (3) answer supervision. A payphone operator
11 may obtain the access line from the ILEC or any CLEC providing access lines.
12 The other two items needed for payphone service (coin control and answer
13 supervision) are available from the ILEC or can be made available via customer
14 premises equipment (CPE). Many vendors sell payphones which include the
15 coin control and answer supervision functionality. These phones are generically
16 referred to as a "smart phone". Thus, a payphone provider has multiple options.
17 First, the payphone provider can bypass the ILEC completely by purchasing an
18 access line from a CLEC and purchasing the appropriate CPE. A second option
19 for the payphone provider is to purchase an access line from the ILEC as well as
20 the monthly service for coin control and answer supervision. If this option is
21 chosen, the payphone provider would still be required to purchase a payphone
22 although it would be somewhat cheaper than a smart phone. A third option would
23 be a combination of the two – depending upon the CLEC's business plans –

1 whereas the payphone provider purchases an access line with coin control and
2 answer supervision from the CLEC and the CLEC uses resale and/or UNE based
3 offerings from the ILEC. ILECs are required to make coin control and answer
4 supervision available to CLECs.

5
6 Mr. McKinnie did support Sprint's request for Speed Dial 8 and Speed Dial 30 on
7 the basis that these functions faced effective competition from CPE-based
8 features. This is a similar situation with payphone service.

9
10 **Q. Starting on page 19, line 3 of his rebuttal testimony, Staff witness Mr.**
11 **McKinnie discusses why ISDN should not be deemed competitive for the**
12 **Norborne exchange. Do you agree?**

13 A. Yes. Sprint agrees with Mr. McKinnie's analysis that ISDN is not available as a
14 competitive offering in Norborne and therefore modifies its request. This change
15 has been reflected in JRI-17.

16
17 **Q. Starting on page 18, line 18, Staff witness Mr. McKinnie indicates that Staff**
18 **does not support competitive classification for the Fort Leonard Wood EAS**
19 **additive. Does Sprint agree?**

20 A. Yes. Sprint did not seek competitive classification for the Fort Leonard Wood
21 EAS additive in its Direct Testimony although there was one inadvertent
22 reference to that affect in Schedule JRI-1. The inadvertent reference has been
23 properly reflected in Schedule JRI-17.

1

2 **Q. Starting on page 23, line 13, Staff witness Mr. McKinnie indicates that Staff**
3 **does not support competitive classification for the Platte City exchange. Does**
4 **Sprint agree?**

5 A. No. Mr. McKinnie makes two arguments against Sprint's request for competitive
6 classification for the Platte City exchange. First, Mr. McKinnie argues that Sprint
7 has not yet lost enough market share. Second, Mr. McKinnie states that ExOP's
8 parent company faces a tight capital market. I will address both arguments.

9

10 **Q. Does Sprint agree that because it has not lost substantial market share in**
11 **Platte City that it does not face effective competition?**

12 A. No. The Commission must review all relevant factors. The Commission may
13 determine how much weight it gives a particular relevant factor over other factors
14 but it nonetheless must consider all relevant factors and cannot rely solely on one
15 element. The Commission may also vary its weight of one particular factor from
16 issue to issue but once again, all relevant factors must be considered. As Sprint
17 stated in its Direct Testimony, it is not yet facing the access line loss in Platte City
18 that it faces in Kearney; however, Sprint also offers the Commission the
19 following additional relevant factors for consideration:

20 (1) The Direct Testimony of ExOp witness Mr. Dennis Devoy confirms that
21 ExOp of Missouri is providing service in Platte City and a review of
22 ExOp's annual reports also confirms that ExOp of Missouri is providing
23 service in Platte City;

1 (2) During the first six months of 2003, Sprint lost an additional 116 access
2 lines in the Platte City exchange. This represents a six percent annualized
3 decrease in access lines for that exchange – three times the annualized
4 access line decrease of the nearby Sprint exchanges which only had a two
5 percent annual access line decrease (Sprint exchanges of Dearborn,
6 Weston, Missouri City, Buckner, Camden Point, Edgerton, Orrick, and
7 Holt). Sprint fully anticipates its decrease to accelerate.

8 (3) ExOp stated in Case No. CO-2003-0252 that “ExOp currently provides
9 basic local telecommunications service exclusively through the use of its
10 own facilities in the Kearney and Platte City, Missouri exchanges”
11 (emphasis added).

12 (4) ExOp also states in Case No. CO-2003-0252 that “ExOp now currently
13 offers and advertises local exchange service in the Platte City exchange.
14 As a fully facilities-based competitive local exchange company (“CLEC”),
15 ExOp embodies the main goal of the universal service provisions of the
16 Act by providing advanced telecommunications services to customers
17 through the exclusive use of its own lines and equipment.” (emphasis
18 added).

19 (5) Again in Case No. CO-2003-0252 ExOp states that “through its own
20 facilities, offers in the Platte City, Missouri exchange all of the services
21 supported by federal universal support....” “Specifically, ExOp offers the
22 following services:

23 a. Voice grade access to the public switched network;

- b. Local usage;
- c. Dual tone multi-frequency signaling or its functional equivalent;
- d. Single-party service or its functional equivalent;
- e. Access to emergency services;
- f. Access to operator services;
- g. Access to interexchange service;
- h. Access to directory assistance; and
- i. Toll limitation for qualifying low-income consumers;

(6) ExOp recently won a contract with the City of Platte City to provide basic service (See Schedule JRI-21);

(7) ExOp is eligible for federal high cost support;

(8) ExOp's prices are substantially below Sprint's. This was demonstrated in my Direct Testimony under the Kearney discussion. (Platte City and Kearney are in the same rate group; therefore, the Sprint rates are the same for both exchanges. According to ExOp's tariff, its rates for Kearney and Platte City are the same.)

Q. Does Sprint agree that because Everest Connections faces a tight capital market that Sprint does not face effective competition in Platte City?

A. No. Sprint has multiple concerns with this argument. First, Mr. McKinnie's conclusion was reached after reviewing only one article from the Kansas City Star. The fact of the matter is that Sprint, along with the entire telecom industry, faces a tight capital market. Second, Mr. McKinnie states that Everest

1 Connections controls Unite. According to the annual report filed by ExOp with
2 the Commission, however, "Utilicorp Communications Services now controls
3 100% of [ExOp]. Finally, Mr. McKinnie makes an enormous jump to conclude
4 that because Everest faces a tight capital market, Unite cannot expand its Platte
5 City network to provide effective competition. There is absolutely no showing by
6 Staff that ExOp faces a funding issue nor that ExOp has not already built out its
7 network. As demonstrated above, ExOp's own admissions indicate that it
8 currently has its own facilities to provide service throughout the Platte City
9 exchange. Furthermore, as recently as April, 2003, ExOp was using its financial
10 strength to win over customers in Platte City. In winning a contract to provide
11 basic local service with the City of Platte City, ExOp alleviated all the concerns
12 the City had with potential financial difficulties. ExOp explained how it operated
13 independently of Aquila and that it no longer receives any funding from Aquila.
14 (See Schedule JRI-21).

15
16 **Q. On page 3 of his Rebuttal Testimony, Mr. McKinnie lists four criteria for a**
17 **competitor's service to be considered "substitutable" for a service provided**
18 **by an ILEC. Has ExOp's service in Platte City met these four criteria?**

19 **A.** Yes. Without commenting on the appropriateness of Mr. McKinnie's four part
20 test, ExOp absolutely meets all four criteria. Mr. McKinnie's first criteria states
21 that a service must be easily found by an average telephone customer. ExOp
22 demonstrated this criteria in its Application for ETC status in Case No. CO-2003-
23 0252 where it included phone book references as well as advertisements placed in

1 the local newspaper. I have included copy of ExOp's Application as Exhibit JRI -
2 19. Mr. McKinnie's second criteria states that the service must produce the same
3 outcome as the ILEC's service. A review of the tariff as well as the statements
4 made by ExOp in the ETC Case clearly demonstrate that the services are
5 compatible. Mr. McKinnie's third criteria is that the service must be well-known
6 by the average telephone customer. Once again, through the use of phone book
7 and newspaper advertisements, as well as the fact that Unite won the City of
8 Platte City, awareness has been demonstrated. And finally, Mr. McKinnie's
9 fourth criteria is that the competitive service be comparatively prices with the
10 ILEC's service. As mentioned above, this fact was demonstrated in my Direct
11 Testimony where ExOp's basic access line rate is 13 percent less than Sprint's
12 and some custom calling features are 25 percent or more cheaper.

13
14 **Q. Starting on page 26, line 1, Staff witness Mr. McKinnie indicates that Staff**
15 **does not support competitive classification for the St. Robert exchange. Does**
16 **Sprint agree?**

17 **A.** No. Mr. McKinnie makes the same argument as with his discussion on Platte
18 City regarding that Sprint has not demonstrated a sufficient market share
19 decrease. Given the presence of other relevant factors, however, Sprint believes
20 effective competition does exist in the St. Robert exchange. As Sprint stated in its
21 Direct Testimony, it is not yet facing the access line loss in St. Robert that it faces
22 in Rolla; however, Sprint also offers the Commission the following additional
23 relevant factors for consideration:

- 1 1. During the first six months of 2003, Sprint experienced an additional access
2 line decrease of 186 lines in the St. Robert exchange which represents an
3 annualized decrease of six percent. For the nearby Sprint exchanges, the
4 annualized access line decrease was only four percent.
- 5 2. Fidelity has substantial experience in the state of Missouri as a telecom
6 provider and an overall competitor. Fidelity Telephone Company, Inc., an
7 ILEC affiliate, has been providing local telephone service in Missouri since at
8 least 1957. Fidelity Cablevision, Inc. has been providing service in Rolla for
9 approximately eight years. Fidelity Communications Co holds cellular
10 partnerships, operates a long distance company (Fidelity Long Distance) and
11 an internet access service (Fidelity Networks).
- 12 3. Fidelity has broad name recognition in the Rolla area which includes St.
13 Robert.
- 14 4. It is Sprint's understanding that Fidelity has won the contract to provide local
15 telephone service to the City of St. Roberts.

16
17 **Q. Regarding Mr. McKinnie's four part test discussed on page 3 of his Rebuttal**
18 **Testimony, how does Fidelity fare?**

19 **A. Once again, without commenting on the appropriateness of Mr. McKinnie's four-**
20 **part test, Fidelity absolutely meets all four criteria.**

1 **Q. Are there any other aspects of Mr. McKinnie's Rebuttal Testimony that you**
2 **wish to address?**

3 **A.** Yes. Mr. McKinnie suggests that the Commission should disregard any
4 competition or competitive affects associated with companies that are not
5 regulated by the Commission – specifically services provided by wireless
6 providers. Mr. McKinnie makes the same recommendation regarding resellers. I
7 will address each separately below.

8
9 **Q. What are Sprint's concerns regarding how Mr. McKinnie characterized**
10 **wireless service?**

11 **A.** The Commission has previously ruled that all relevant factors must be used in its
12 consideration to determine if an exchange faces effective competition, including
13 services provides by non-regulated providers. Starting on page 5 of his testimony,
14 Mr. A. McKinnie argues that wireless telephone service "is complementary to, not
15 substitutable for, wireline telephone service" and should not be used as a factor in
16 the Commission's review. Staff states that because wireless customers must
17 sacrifice quality, it is not substitutable with wireline service. Staff offered no
18 evidence on wireless quality and if wireless quality was a significant issue, there
19 would not be the massive use of wireless phones that this country is currently
20 experiencing. Staff also states that the Missouri-specific information provided by
21 Sprint in its Direct Testimony would not cause Staff to change its mind; however,
22 as Sprint's evidence demonstrates, Mr. McKinnie's four part test for
23 substitutability has been met.

1

2 No reasonable individual can argue the fact that certain consumers use wireless
3 service(s) provided by wireless carriers instead of an ILEC's wireline service.

4 Nor can any reasonable individual argue that certain consumers use cable-
5 modems provided by a cable operator instead of wireline service. The only
6 arguable point is how these two facts play a role in the overall level of
7 competition faced by an ILEC. As I stated in my direct testimony, the level of
8 weight the Commission should give non-traditional forms of competition is left
9 up to the Commission to decide and should be made on a case-by-case basis.

10

11 **Q. What are Sprint's concerns regarding how Mr. McKinnie characterized**
12 **resellers?**

13 **A.** On page 15 of his Rebuttal Testimony, Mr. McKinnie states that he disagrees
14 with the inclusion of resellers in the discussion of effective competition. Sprint is
15 not relying upon the presence of resellers as justification for its competitive
16 classification request for any exchange or service. Sprint submits that the
17 evidence provided in Direct Testimony for its competitive designation stands on
18 its own merit. The Commission opened this investigation to examine the state of
19 competition within the Sprint Missouri exchanges and this information was
20 provided for those purposes.

21

22 **Surrebuttal of OPC Witness Ms. Barbara Meisenheimer**

23 **Q. Please summarize the issues raised by OPC witness Ms. Meisenheimer?**

1 **A.** The OPC first raises several general questions related to this type of proceeding.
2 Specifically, the OPC argues that this case should include a determination by the
3 Commission regarding the status of effective competition beyond Sprint's request
4 (e.g. for the remaining 75 exchanges). OPC also argues that February, 2004 is the
5 operation of law date for Sprint's five year not December 15, 2003. After
6 addressing its generic concerns with this type of proceeding, OPC raises concerns
7 regarding some of the data presented in my Direct Testimony. Finally, OPC
8 makes several arguments regarding Sprint's competitive designation request.
9 Specifically, OPC argues that Sprint should not receive competitive classification
10 for the Norborne, Kearney, Platte City, Rolla, and St. Robert exchanges or any
11 line-related services for those exchanges. OPC provides qualified support for
12 Sprint's competitive designation request for toll products and specifically stated
13 it takes no position regarding any other request for Sprint as it relates to state-
14 wide services.

15
16 **Q.** Please comment on OPC's general concerns regarding this type of
17 proceeding.

18 **A.** Regarding Ms. Meisenheimer arguments that (1) the Commission should make a
19 determination of the status of effective competition beyond Sprint's request² and
20 (2) December 15, 2003 is not the correct operation of law date for this case³, I
21 believe both of these issues were raised and addressed in the SBC Competition

² Rebuttal Testimony, Page 4

³ Rebuttal Testimony, Page 7

1 Case. To the extent that unresolved or new issues remain, I will defer any legal
2 discussions to the brief and reply brief phase of this case.
3

4 Ms. Meisenheimer also raises concerns regarding potential action by Sprint in
5 seeking competitive classification for additional services and/or exchanges in the
6 future. I must admit that I do not have a full understanding of OPC's concerns in
7 this area but I will address the best I can. Sprint fully anticipates that it will seek
8 additional competitive designation for other services and exchanges in the future;
9 however, I have absolutely no way to gauge the timeframe for such request.

10 Irrespective of the eventual date, Sprint does not deem competitive classification
11 to be "automatic" at the five-year window. Sprint anticipates that any future
12 request would require Sprint to make a filing with the Commission. At that time,
13 any party wishing to oppose Sprint's request would be able to petition the
14 Commission for intervention. Sprint's request would require Commission action.
15

16 **Q. Please comment of OPC's concerns regarding the data Sprint provided in**
17 **Direct Testimony.**

18 **A.** Ms. Meisenheimer raises concerns regarding the accuracy of data I presented in
19 Direct Testimony. Specifically, OPC challenges a claim that 25 carriers are
20 providing, or have provided, service in Sprint's area⁴. Obviously, I have concerns
21 when a direct challenge to seemingly simply data is made so I re-verified the
22 statements made in my Direct Testimony. In my Direct Testimony, I made the

⁴ Rebuttal Testimony, page 20 and BAM Rebuttal Schedule 4

1 statement that Sprint was aware of 25 CLECs providing some level of service in
2 Sprint's exchanges. After a re-verification, I would make no changes to that
3 statement.

- 4 • Three of the 25 carries are facility based CLECs operating in Sprint's
5 territory: (1) Fidelity, (2) Green Hills and (3) ExOp. This is an undisputed
6 fact in this case.
- 7 • Two of the 25 carriers appeared to have halted operations within the Sprint
8 exchanges in late 2000: (1) National Phone which operated in one Sprint
9 exchange and (2) Texas Teleconnect which operated in 19 Sprint exchanges.

10 As a point of clarification, I included all carriers that have provided some
11 level of service since December 15, 1998, which is the start date of the five
12 year review for this case.

- 13 • The remaining 20 carriers were all purchasing loops and/or unbundled
14 network elements from Sprint as of May, 2003.

15
16 The following chart lists all 25 carriers and includes a reference to the PSC Case
17 that approved the interconnection agreement between Sprint and the carrier as
18 well as the PSC Case approving the carrier's certificate of service.

Carrier	PSC Case Approving IAC	Certificate Reference
1. Buy-Tel Communications Inc	TO-98-586	13 – JRI 3
2. Delta Phones Inc	TO-2002-382	21 – JRI 3
3. DPI Teleconnect	TO-99-585	23 – JRI 3
4. EZ Talk Telecommunications	TO-99-213	27 – JRI 3
5. Fidelity Communications Svcs	TO-2000-351	29 – JRI 3
6. Local Line America	TO-2002-221	41 – JRI 3
7. Max-Tel Communications	TO-2002-413	45 – JRI 3
8. Metro Teleconnect Companies	TO-2002-417	49 – JRI 3
9. Missouri Comm So.	TO-2000-620	50 – JRI 3

10. Navigator Telecommunications	TO-99-311	53 – JRI 3
11. Payroll Advance Inc	TO-2001-190	58 – JRI 3
12. Phone-Link	IK-2003-0146	60 – JRI 3
13. Reitz Rentals	TO-2000-621	Cancelled
14. Snappy Phone of Texas Inc	TO-2001-526	69 – JRI 3
15. Missouri State Discount Telephone	TO-2001-552	51 – JRI 3
16. Sterling International Funding	TO-98-476	1 – JRI 3
17. Tel-Link LLC	TO-2001-185	77 – JRI 3
18. Texas Homotel Inc	TO-2002-410	TA-2001-380
19. Universal Telecom	TO-2001-188	80
20. Missouri Network Alliance	TO-2001-632	TA-2001-348
21. New Edge Network Inn	TO-2001-189	TA-2000-311
22. Green Hills	TO-2001-253	33
23. ExOp	TO-98-382	26
24. National Phone (appears to have merged with Incomnet who merged with Ciera Network). Operated in one Sprint exchange.		
25. Texas Teleconnect (appears to have merged with Reitz Rentals) Operated in 19 Sprint exchanges.		

1
2 On page 21 of her Direct Testimony, Ms. Meisenheimer explains how she had
3 difficulty confirming the availability of service by Max-Tel and Metro
4 Teleconnect specific to the Norborne exchange. On June 26, 2003, I again
5 contacted both carriers via their published toll free number -- I actually made two
6 contacts to both carriers. As in the case above, I make no changes to statements
7 in my Direct Testimony regarding this issue. In all four cases, the CLEC
8 representative first asked who the major telephone company was for the area.
9 When I responded "Sprint", the representative indicated that yes their company
10 services the area; however, when I responded "Green Hills", since Green Hills is
11 the major phone company for Norborne, the representative indicated that their
12 company did not service the area. There have been no resale agreements filed
13 with the Commission between these two carriers and Green Hills.
14

1 Sprint strongly disagrees with Ms. Meisenheimer's statement that Sprint relied
2 upon these two prepaid resellers – Max-Tel and Metro Teleconnect -- to seek
3 classification in each of the five exchanges. Ms. Meisenheimer's testimony
4 indicates she only had difficulty with the Norborne exchange and not the other
5 four exchanges. But more importantly, Sprint is not relying on the presence of
6 these two prepaid resellers, or any other prepaid reseller for that matter, in its
7 request for competitive designation. From a policy perspective, Sprint does not
8 consider the presence of prepaid resellers to constitute effective competition.
9 However, they are present in Sprint's area and the Commission is free to give
10 their presence the consideration it is due. The more important fact for the
11 Commission's analysis is the presence of facility-based providers. No where in
12 my Direct Testimony did I state, or even suggest, that Sprint is relying on prepaid
13 resellers to constitute an effective competitor.
14
15 Irrespective of any concerns OPC may have regarding the exact number of
16 resellers, the fact of the matter is Sprint has yet to experience any serious
17 competitive threat from resellers. As I stated clearly above, Sprint is not relying
18 upon the presence of resellers as justification for its competitive classification
19 request for any exchange or service. Had Sprint intended for this Commission to
20 take into account as a relevant fact the market share of resellers and other UNE-
21 based carriers, Sprint would have included that data in its direct testimony.
22 Furthermore, Sprint would have sought to join additional carriers as parties to this
23 case. As stated in its Motion of Joinder of Parties dated February 11, 2003, Sprint

1 identified 75 carriers that have certificates of service authority, interconnection
2 agreements, and/or tariffs allowing them to offer local services in Sprint
3 exchanges. However, Sprint sought only to join three parties – the three facility
4 based CLECs. Clearly Sprint is not relying on the level of service provided by
5 resellers as justification for its competitive classification request for any exchange
6 or service.

7
8 **Q. Please comment on OPC's specific concerns regarding Sprint's request for**
9 **competitive classification for the Norborne, Kearney, Platte City, Rolla, and**
10 **St. Robert exchanges.**

11 **A.** OPC makes one primary argument against Sprint's competitive designation
12 request for the five exchanges in question -- Sprint faces only a single competitor.
13 OPC provides its version of an overview of a two firm market using the
14 Herfindahl-Hirschman Index (HHI). I am not an economist nor have any
15 knowledge related to the use of the HHI or even if it is appropriate in this
16 proceeding. As a result, I will defer all discussion related to the HHI to Sprint
17 witness Brian Staihr.

18
19 **Surrebuttal of Fidelity Witness Mr. Richard Taylor**

20 **Q. Please summarize the issues raised by Fidelity Witness Mr. Taylor?**

21 **A.** Fidelity opposes Sprint's request for competitive classification for the Rolla and
22 St. Robert exchanges. Fidelity's lone argument against Sprint's request for Rolla
23 is that Sprint faces competition from only one competitor. Fidelity adds two

1 additional arguments for Sprint's St. Robert request. In addition to the single
2 competitor argument, Fidelity also argues that the Commission should deny
3 Sprint's competitive designation request because (a) it has only been competing
4 in St. Robert since February and (b) Fidelity cannot offer cable TV service in St.
5 Robert and therefore does not have the same advantages it enjoys in Rolla. Mr.
6 Taylor also argues against Sprint's competitive designation request for Centrex
7 and Directory Assistance. I will address Mr. Taylor's arguments relating to the
8 local exchanges and Sprint witness Mr. Mark Harper will address the Directory
9 Assistance and Centrex issues.

10

11 **Q. On page 3 of his Rebuttal Testimony, Mr. Taylor indicates that Fidelity is not**
12 **a 100 percent facilities-based competitor. Please comment.**

13 **A.** I referred to Fidelity as a 100 percent facilities-based carrier in my direct
14 testimony; however, as Mr. Taylor points out, Fidelity does in fact purchase
15 unbundled network elements from Sprint. Based on a data request response from
16 Fidelity which was not marked highly confidential or proprietary, as of December
17 31, 2002, Fidelity indicated it had (a) three access lines that were resold Sprint
18 facilities, (b) six access lines that were Sprint UNE facilities and 4,438 access
19 lines that were full facility based, or CLEC owned access lines. A facilities based
20 CLEC is generally defined as a carrier that uses either its own facilities or an
21 ILEC's UNEs but does not use resale. If this definition is used, Fidelity is a
22 99.9325 percent facilities based CLEC. Another way to view it is that Fidelity is

1 a 99.7976 percent facility-based, CLEC-owned, provider. Either way, I clarify
2 my previous statement to be more precise.

3
4 **Q. Does Fidelity argue that Sprint has not experienced substantial market share**
5 **loss in the Rolla exchange?**

6 **A.** No. Fidelity simply states that the definition of “substantial” loss is up to the
7 Commission to determine. Sprint agrees. Sprint also agrees with Mr. Taylor’s
8 correction if a small math error regarding Sprint’s decrease in access lines;
9 however, this is now irrelevant due to the fact that Sprint continues to lose access
10 lines in Rolla and Fidelity continues to substantially increase its market share. On
11 May 13, 2003, Fidelity announced (a) it had added over 2000 access lines in the
12 last nine months and over 700 access lines in 2003 alone, (b) now has more than
13 5,000 access lines in Rolla, and (c) is adding 70 access lines a week (Please refer
14 to Schedule JRI-23.) This represents an annualized growth rate of over 30
15 percent⁵. In comparison, as of June 30, 2000, Sprint’s annualized access line
16 decrease for the Rolla exchange was 18 percent. At the beginning of May, Sprint
17 had 14,589 access lines in Rolla which represents 74% of the market (when
18 compared with Fidelity’s 5000 access lines).

19
20 **Q. Fidelity recommends the Commission deny Sprint’s request for competitive**
21 **designation in Rolla. Please comment.**

22 **A.** Sprint disagrees with Mr. Taylor’s conclusion. This conclusion is based on one
23 factor alone – that Sprint has only one competitor in Rolla. While Sprint

1 acknowledges it has only one facilities-based competitor, Sprint conclusion that it
2 faces effective competition includes a consideration of all the required and
3 relevant factors. Some of the additional factors ignored by Mr. Taylor but
4 included in Sprint's analysis include the following:

5
6 1. Fidelity gained over 5000 access lines which represents over 25 percent of
7 total access lines in Rolla. Fidelity continues to add access lines and at a
8 faster pace than their own expectations. A May 13, 2003 press release by
9 Fidelity stated (see Schedule JRI-23):

10 Our growth has been exceeding our expectations and continues to do so as
11 we keep reaching milestones ahead of schedule," said John Paul, director
12 of sales. "We've seen exceptional growth and expanding service areas.
13 That allows us to offer a wide variety of services to the residents of the
14 community."

15
16 Fidelity hooked up its first Rolla test customers in 2000, and then became
17 a full service provider for the entire city in July 2001. Last fall, it
18 completed the extension of facilities into the Oak Meadow Country Club
19 area. Its hybrid fiber coax backbone provides telephone, digital cable TV
20 and high-speed Internet access.

21
22 The company currently has nearly 3,300 residential lines and over 1,700
23 business lines. "We added over 700 lines this year already," said Mark
24 Diehl, Rolla installation and repair supervisor. "So it's been a pretty
25 exciting deal. This week alone, we have probably 70 lines going in."

26
27 Fidelity crews have been working some nights and Saturdays to keep pace
28 with the demand. The installation calendar is filled up until the end of the
29 month, he said.

30
31 2. Fidelity has substantial experience in the state of Missouri as a telecom
32 provider and an overall competitor. Fidelity Telephone Company, Inc., an
33 affiliate, has been providing local telephone service in Missouri since at least

⁵ Year-end access line count of 4438 (700/4438 = 15.8% for five months)

1 1957. Fidelity Cablevision, Inc. has been providing service in Rolla for
2 approximately eight years. Fidelity Communications Co holds cellular
3 partnerships, operates a long distance company (Fidelity Long Distance) and
4 an internet access service (Fidelity Networks).

5 3. Fidelity has broad name recognition in Rolla and a local business office.

6 4. Sprint cannot offer all the services provided by Fidelity in that it cannot
7 package cable TV service with any of its offerings.

8 5. Fidelity's prices are substantially lower than Sprint's (see Direct Testimony).

9 6. The Commission has granted Fidelity ETC status for federal USF purposes
10 and Fidelity currently receives federal high cost loop monthly support.⁶
11

12 Fidelity also mentions that "Sprint has provided no evidence of any market place
13 actions it has taken to meet competition in Rolla". Whether or not Sprint has
14 taken any reactive market place actions is irrelevant to the determination that the
15 Commission must make. Does Sprint face effective competition in Rolla? That
16 basic question absolutely can be determined without any competitive response
17 because as a price cap regulated company, Sprint's reactive options are extremely
18 limited. For starters, Fidelity enjoys exchange-specific pricing flexibility whereas
19 Sprint does not.
20

⁶ Source: Universal Service Administrative Company – High Cost Support Projected by Study Area – Third Quarter, 2003.

1 **Q. Fidelity recommends the Commission deny Sprint's request for competitive**
2 **designation for St. Robert. Please comment.**

3 **A.** Fidelity's primary arguments regarding Sprint's request for competitive
4 designation for St. Robert are that (a) it has only recently begun offering service
5 and (b) it does not have a cable offering. I will address both arguments.

6
7 Fidelity does not deny the fact that it is currently offering local exchange
8 telephone service via its owned facilities in St. Robert. As mentioned above in
9 the surrebuttal of Staff witness Mr. McKinnie, Sprint is experiencing a substantial
10 access line decrease during the first six months of 2003 in St. Roberts. Many of
11 the factors identified above for Rolla also apply to St. Robert including the
12 following:

- 13 1. Given the close proximity to Rolla, consumers are well aware of Fidelity
14 and there is substantial advertising overlap between Rolla and St. Robert.
- 15 2. Fidelity's prices are substantially lower than Sprint's.
- 16 3. It is Sprint's understanding that Fidelity has won the contract to provide
17 local telephone service for the City of St. Roberts.
- 18 4. Fidelity has substantial experience in the state of Missouri as a telecom
19 provider and an overall competitor.

20
21 Mr. Taylor also claims that because Fidelity cannot provide cable TV service in
22 St. Robert, Sprint should not receive competitive designation for St. Roberts.

23 Obviously there are no statutory requirements for competitive alternative

1 providers to provide cable TV service before an ILEC can be deemed
2 competitive. Fidelity is currently competing in the St. Robert exchange based
3 upon other factors such as quality of service, local presence, price and product
4 differences. Fidelity also offers high speed internet access providing yet another
5 avenue for Fidelity to bundle and compete in St. Roberts. In addition, Fidelity has
6 the ability to offer long distance packages with its local offering in St. Roberts.
7 Based upon the Fidelity press release:

8 "Fidelity offers both local and long distance service, including four
9 different long distance plans. About 85 percent of its residential customers
10 use Fidelity as their long-distance carrier."
11

12 Finally, Sprint does not offer cable TV service in any of its exchanges. Therefore,
13 Fidelity's lack of a cable TV offering in St. Robert makes it no less an alternative
14 carrier providing competitive services.
15

16 **Q. Do CLECs, such as Fidelity, have a self-motivating interest to see that ILECs**
17 **do not receive competitive classification?**

18 **A.** Absolutely. Fidelity's defense of the status-quo is not surprising. Fidelity is able
19 to currently offer exchange-specific pricing as a competitive provider without
20 much, if any, scrutiny by the Commission.. Fidelity has had years of regulatory
21 advantages which have allowed them to grow into an effective competitor. If
22 Sprint were to receive competitive classification, it would be able to launch
23 initiatives specifically targeted for the Rolla and St. Robert exchanges –
24 something Fidelity has not had to deal with in the past.
25

1
2 **Surrebuttal Testimony of ExOp Witness Mr. Dennis Devoy**

3 **Q. Please summarize the issues raised by ExOp witness Mr. Devoy?**

4 **A.** “Simply put, ExOp opposes Sprint’s exchange-specific request for re-
5 classification of its services in the Kearney exchange and especially in the Platte
6 City exchange.”⁷ ExOp does not address any other aspect of Sprint’s competitive
7 designation request.

8
9 **Q. What reasons does ExOp provide regarding Sprint’s request for competitive**
10 **designation in the Kearney exchange?**

11 **A.** ExOp provides three basic reasons in its opposition of Sprint’s request. First,
12 ExOp argues that there are portions of the Kearney exchange that it does not
13 serve. Specifically, ExOp argues that “[t]here are areas of the city of Kearney
14 where ExOp has not constructed facilities...”⁸ and “potential customers located
15 outside the City of Kearney, but within the Kearney exchange, currently do not
16 have ExOp’s services available to them.”⁹ Second, Mr. Devoy claims that Sprint
17 will (a) offer lower rates only to those individuals within the city limits of
18 Kearney¹⁰ and (b) raise rates throughout the state to make up for the reduced rates
19 in Kearney¹¹. Finally, Mr. Devoy argues that because Sprint has not taken any
20 steps to respond to competition in the Kearney and Platte City exchanges a

⁷ Mr. Dennis Devoy, Rebuttal Testimony, page 1.

⁸ Mr. Dennis Devoy, Rebuttal Testimony, page 3

⁹ Mr. Dennis Devoy, Rebuttal Testimony, page 4

¹⁰ Mr. Dennis Devoy, Rebuttal Testimony, page 4

¹¹ Mr. Dennis Devoy, Rebuttal Testimony, page 5

1 competitive environment does not exist.¹² I will address each argument
2 separately.
3

4 **Q. ExOp argues that there are portions of the Kearney exchange that it does not**
5 **serve therefore Sprint should not be given competitive designation. Please**
6 **comment.**

7 **A.** ExOp's statement is both troubling and irrelevant. Troubling from the standpoint
8 that ExOp's attorneys and officers have represented to this Commission that it
9 serves all of the Kearney exchange with its own facilities. Repeatedly, in Case
10 No. TA-2001-251 ExOp stated and/or stipulated to the fact that ExOp, through its
11 own facilities, offers the services throughout the Kearney, Missouri exchange. In
12 addition, ExOp repeatedly in Case No. TA-2001-251 ExOp stated and/or
13 stipulated to the fact that ExOp advertises the availability of and charges for its
14 telecommunications services in media of general distribution throughout the
15 Kearney, Missouri exchange. Furthermore, Kevin Anderson, Chairman of the
16 Board of ExOp of Missouri, certified with an affidavit that was filed with this
17 Commission to those facts (see Schedule JRI-20). ExOp defines the Kearney,
18 Missouri exchange in its tariff by "concurring with the exchange boundary maps
19 of Sprint/United's tariff".¹³ In this case, ExOp now claims the opposite in an
20 effort to deny Sprint's competitive designation request.
21

¹² Mr. Dennis Devoy, Rebuttal Testimony, page 4 and 5

¹³ ExOp of Missouri tariff, original sheet 32, section 3 – Exchange Area

1 **Q. ExOp argues that Sprint will not offer reduced rates to customers within the**
2 **Kearney exchange not served by ExOp. ExOp also argues that Sprint will**
3 **raise rates throughout the state to make up for any reduction in rates**
4 **associated with the Kearney exchange. Please comment.**

5 **A.** Not only are these statements made by Mr. Devoy not substantiated but they are
6 flat out wrong. Just because Sprint receives competitive classification for
7 Kearney, or any other exchange for that matter, Sprint would not be able to
8 engage in the type of activities claimed by Mr. D. Devoy. The Price Cap statutes
9 dealing with competitive classification does not provide Sprint the ability to price
10 below the exchange level. Also, the Price Cap Statutes provide ILECs with only
11 limited options to raise rates for basic and non-basic services. Mr. Devoy's claim
12 that Sprint will raise rates in non-competitive exchanges cannot occur under the
13 law.

14
15 **Q. ExOp argues that because Sprint has increased rates and has not taken any**
16 **steps to respond to competition in the Kearney and Platte City exchanges, a**
17 **competitive environment must not exist. Please comment.**

18 **A.** As mentioned above, as a price cap ILEC Sprint can only raise rates as specified
19 by the price cap statutes. As such, Sprint has adjusted prices annually based on
20 the consumer price index. Additionally, Sprint has rebalanced its access rates.
21 All of Sprint's rate adjustments was a direct result of the price cap statute -- and a
22 direct result of regulated actions. Sprint has not acted like a competitive company
23 due to the fact that its rates are highly regulated. As discussed above and

1 confirmed by Mr. Devoy, any effort by Sprint to react to the substantial
2 competition it faces in certain exchanges would require Sprint to react on a
3 statewide basis for all similar rate groups.
4

5 **Q. What reasons does ExOp provide to deny Sprint's request for competitive**
6 **designation in the Platte City exchange?**

7 **A.** ExOp's argument against Sprint's request for competitive classification for Platte
8 City are nearly identical to the arguments raise by Fidelity witness Mr. Taylor in
9 that (a) ExOp has just begun providing service in Platte City and (b) ExOp does
10 not yet have a cable TV franchise for Platte City. Rather than repeat my above
11 Surrebuttal Testimony, I will simply make a reference to the statements made
12 above.
13

14 **Q. Are there other factors the Commission should consider regarding Sprint's**
15 **request for competitive classification for Platte City?**

16 **A.** Yes. As stated above in my surrebuttal of Staff witness Mr. McKinnie, ExOp
17 request and received ETC status for Platte City. In addition, Mr. Devoy makes
18 claims regarding the tight capital structure for Everest Connections. This topic is
19 also thoroughly addressed above in my surrebuttal of Mr. McKinnie. Again, I
20 will not repeat arguments previously made but will simply make reference to the
21 above statements. Finally, Mr. Devoy states that ExOp may soon be sold. This
22 statement is in no way substantiated and the fact of the matter is any company
23 may be sold, acquired, or merged. Irrespective of the potential sale status, ExOp

1 owns its own switch (which is located at 303 N. Jefferson, Kearney, Missouri) as
2 well as the cable needed to provide service to its substantial market share. When
3 companies merge, sell, or are acquired, the strategic assets are not abandoned.
4 Rather, the new entity continues to use those assets. Mr. Devoy's statement is
5 nothing but a red herring.

6

7 **Q. Does this conclude your Surrebuttal Testimony?**

8 **A. Yes.**