

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE 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

**SPRINT'S PROPOSED FINDINGS OF FACTS
AND CONCLUSIONS OF LAW**

Sprint Missouri, Inc. ("Sprint") hereby provides its Proposed Findings of Fact and
Conclusions of Law as Directed by the Commission.

General Findings of Facts

Sprint is a large local exchange company subject to price cap regulation under Section 392.245. ExOp of Missouri, Inc. d/b/a United ("ExOP") was the first alternative Local Exchange company to be certified to provide local exchange services in Sprint Exchanges. ExOP was certified on December 15, 1998. An additional 59 CLECs have been certified and/or have Commission approved Interconnection Agreements in Sprint's territory and at least 25 CLECs have provided some level of service in Sprint's territory. In addition, there are 15 wireless providers that have the ability to offer local services in Sprint's exchanges. However, the first CLEC to actual operate in Sprint's territory, ExOP did not began to offer services in any Sprint exchange until February 1999.

General Conclusions of Law

The Commission has jurisdiction in this case pursuant to its general authority over Sprint as a Price Cap Company pursuant to Section 392.245. Under Section 392.245, a large ILEC becomes subject to price cap regulation when an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service, and is providing

such service in any part of the large ILEC's service area. Sprint has satisfied this requirement and become a Price Cap company.

The Commission has previously determined whether effective competition existed for services offered by Southwestern Bell Telephone Company d/b/a SBC Missouri ("SBC") in *In the Matter of the Investigation of the State of Competition of the State of Competition in the Exchanges of Southwestern Bell Telephone Company* ("SBC Competition Case").¹ In that case, the Commission determined that in connection with the general investigation conducted in this case, the Commission can only make an affirmative finding based on competent and substantial evidence.² Therefore, it ruled that the party asserting the affirmative of the ultimate issue – whether there is effective competition – bears the burden of proof. In this case, Sprint is only requesting a finding of effective competition with respect to core local access lines services in connection with five of its 80 exchanges and for specified non-local service throughout all of its 80 exchange. Sprint carries the burden with respect to its requests.

In the SBC competition case, the Commission also addressed the issue of what constitutes effective competition. In that case, the Commission will generally operate under the guidelines provided in the Statute at Section 386.020 (13) RSMo (2000) that provides:

"Effective Competition" shall be determined by the Commission based on:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) The extent to which the purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in 392.185, RSMo, are being advanced;

¹ Case No T0-2001-467.

² Ex. 20, Report and Order, issued December 7, 2001 at pp. 7-9.

- (d) Existing economic or regulatory barriers to entry; and
- (e) Any other factors deemed relevant by the commission and necessary to implement the purposes and policies of Chapter 392, RSMo.

In applying these guidelines, the Commission ruled that its analyses must include all relevant factors, including the extent to which non-regulated companies offer relevant alternatives.

ISSUES PRESENTED BY THE PARTIES

Issue 1: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its residence core access line services (*i.e.*, local exchange service, local operating service, directory listing, extension service, extended area service, local measured service and PBX service) offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's residence core access line services be classified as competitive?

Findings of Fact

Sprint's Core access line service include local exchange service, local operating services, directory listing, extension service, extended area service, local measured service and PBX service. Sprint seeks a finding of effective competition for these services in five of its eighty exchanges. The five exchanges are Kearney, Norborne, Rolla, Platte City and St. Robert. The Commission finds that in each exchange, Sprint faces a formidable facilities-based alternative provider who offers the same services at lower prices, faces no barriers to entry, and serves to ensure that full and fair competition will bring benefits to the consumers.

In each exchange, Sprint presented evidence that an alternative or alternative providers were present offering the same residential core access line services at a lower price. Further, Sprint presented evidence of market share loss in each exchange. While in some of the five exchanges the market share loss was very high and others it was not, Sprint presented further

evidence of the obligation of the alternative provider to serve the entire exchange and/or evidence of the ability of the alternative provider to attract business based on its known reputation and past history of success.

The record reflects that there is an absence of economic or regulatory barriers. In each exchange, at least one provider has built their own facilities to serve the entire or a portion of the exchange. To the extent that only a portion of the exchange is served over the alternative providers own facilities, the alternative provider can provide service throughout the exchange pursuant to interconnection agreements with Sprint. Further, the evidence reflects that at least 25 traditional land line competitors have the certificates and/or agreements necessary to enter the exchanges. Therefore, there are no economic or regulatory barriers in the five exchanges.

Finally, as the services offered by the alternative provider are available throughout the exchanges and the alternative providers have demonstrated success in competing in the telecommunications field, finding effective competition within the exchanges will unquestionably serve the goals of Chapter 392 in that full and fair competition will ensure that customers receive reasonable rates. Therefore, all the statutory guidelines for finding effective competition provided in Section 386.020(13) are met in the exchanges.

Conclusions of Law

The record contains substantial evidence of effective competition in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges and the Commission, after considering the relevant factors, finds effective competition exists and designate Sprint's residential core access line services in those exchanges as competitive.

Issue 2: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its residence access line-related services (*i.e.*, Sprint Solutions, busy line verification service, customer calling services, express touch, network

service packages) offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's residence access line-related services be classified as competitive?

Findings of Fact

Access line related services include Sprint Solutions, busy line verification, custom calling features, express touch, network packages. These services are offered by each of the facilities-based providers identified in the five exchanges, as well as can be provided by at least 25 other CLECs who could enter the market. The Commission previously found in the SBC case found that these services that same facts with regard to Southwestern Bell's residential access line services are applicable to the access line related services. The Commission makes the same finding here. Therefore, as with the residential core access line service, when all the factors of effective competition are considered, the presence of alternative providers in each exchange, including a facilities based provider in each exchange, the success of the alternative providers, the number of carriers certified to do business in the exchanges, the ability of the alternative providers to offer services throughout the exchanges, and the definite impact of the alternative providers on Sprint's ability to operate as a competitive provider, the Commission determines that effective competition exists for residential access-line related services in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges.

Conclusions of Law

The record contains substantial evidence of effective competition in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges and the Commission, after considering the relevant factors, finds effective competition exists and designate Sprint's residential core access line related services in those exchanges as competitive.

Issue 3: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its business core access line services (*i.e.*, local exchange service, local operating service, directory listing, extension service, extended area service, local measured service and PBX service) offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's business core access line services be classified as competitive?

Findings of Fact

Sprint's business core access line service include Local exchange service, local operating service, directory listing, extension service, extended area service, local measured service and PBX service. Sprint seeks a finding of effective competition for these services in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges. The same type of evidence discussed under Issue 1 was presented by Sprint under this issue. In each exchange, Sprint presented evidence that an alternative or alternative providers were present offering the same business core access line services at lower prices. Further, Sprint presented evidence of market share loss in each exchange. While in some of the five exchanges the market share loss was very high and others it was not, Sprint presented further evidence of the obligation of the alternative provider to serve the entire exchange or evidence of the ability of the alternative provider to attract business based on its known reputation and past history of success. The Commission will note that the fact that an alternative provider's announced plans are to "cherry pick" or to only pursue lucrative business customers, does not diminish the ability of the alternative provider to satisfy the requirements for effective competition.

The record reflects that there is an absence of economic or regulatory barriers. In each exchange, at least one provider has built their own facilities to serve the entire or a portion of the exchange. To the extent that only a portion of the exchange is served over the alternative providers own facilities, the alternative provider can provide service throughout the exchange

pursuant to interconnection agreements with Sprint. Further, the evidence reflects that at least 25 traditional land line competitors have the certificates and/or agreements necessary to enter the exchanges. Therefore, there are no economic or regulatory barriers in the five exchanges.

Finally, as the services offered by the alternative provider are available throughout the exchanges and the alternative providers have demonstrated success in competing in the telecommunications field, finding effective competition within the exchanges will unquestionably serve the goals of Chapter 392 in that full and fair competition will ensure that customers receive reasonable rates. Therefore, all the statutory guidelines for finding effective competition provided in Section 386.020(13) are met in the exchanges.

Conclusions of Law

The record contains substantial evidence of effective competition in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges and the Commission, after considering the relevant factors, finds effective competition exists and designate Sprint's residential core access line services in those exchanges as competitive.

Issue 4: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its business access line-related services (*i.e.*, Sprint Solutions, busy line verification service, customer calling services, express touch, network service packages) offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's business access line-related services be classified as competitive?

Findings of Fact

Sprint's business access line related services include Sprint Solutions, busy line verifications, customer calling features, express touch, network packages. Sprint seeks a finding of effective competition for these services in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges. These services are offered by each of the facilities-based providers identified

in the five exchanges, as well as can be provided by at least 25 other CLECs who could enter the market. The Commission previously found in the *SBC Competition Case*³ found that theses services that same facts with regard to Southwestern Bell's business access line services are applicable to the access line related services. The Commission makes the same finding here. Therefore, as with the business core access line service, when all the factors of effective competition are considered, the presence of alternative providers in each exchange, including a facilities based provider in each exchange, the success of the alternative providers, the number of carriers certified to do business in the exchanges, the ability of the alternative providers to offer services throughout the exchanges, and the definite impact of the alternative providers on Sprint's ability to operate as a competitive provider, the Commission determines that effective competition exists for residential access-line related services in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges.

Conclusions of Law

The record contains substantial evidence of effective competition in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges and the Commission, after considering the relevant factors, finds effective competition exists and designate Sprint's business core access line related services in those exchanges as competitive.

Issue 5: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its high capacity exchange access line services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's high capacity exchange access line services be classified as competitive?

Findings of Fact/Conclusions of Law

The Commission finds that Sprint withdrew its request to have its high capacity exchange line access services designated competitive.

³ *SBC Competition Case*, See Exhibit 15, at p. 37.

Issue 6: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its CENTREX services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's CENTREX services be classified as competitive?

Findings of Fact

CENTREX is a call management business service that provides call processing capabilities as well as many optional features. Sprint offers its CENTREX services as a central office based system, but the same capabilities can be delivered by placing equipment, such as a PBX or key system hardware, on the customer's premises. This equipment provides premised based switch features that replicate what is available from Sprint's CENTREX service. Sprint seeks a finding of effective competition for CENTREX service throughout its 80 exchanges.

The Commission finds that Sprint has presented evidence of the presence of alternative providers offering a service that is functionally equivalent and/or substitutable throughout Sprint's exchanges. The alternative providers include SBC, Verizon, InterTel, Siemens, Avaya and Towner Communications, as well as smaller companies such as the facilities based providers discussed under Issues 1-4.. Indeed, in the Warrensburg exchange alone, Sprint has lost 4,000 access lines to Verizon.⁴ The functionally equivalent and /or substitutable service is the PBX or Key system hardware provided by these providers. While Fidelity Communications Services 1, Inc. ("Fidelity") maintained that the services offered by the alternative providers are not functionally equivalent, the Commission does not agree. As previously found by the Commission in the SBC Competition Case, to be substitutable, the services have to have the ability to take away significant business from each other. In other words, the services must

⁴ Harper, Direct at p. 22, l. 8-16.

satisfy the same demand.⁵ With respect to CENTREX, the demand being satisfied is the ability to manage calls. This same demand is satisfied by the competitive PBX and key system hardware offers. Further, the Commission finds that there are no economic or regulatory barriers to entering the market offering call management services. Finally, as the alternative providers in these market are well known and established players both inside and outside of the telecommunications market, the Commission finds that finding effective competition will be in the public interest.

Conclusions of Law

The record contains substantial evidence of effective competition throughout Sprint's exchanges for Sprint's CENTREX services.

Issue 7: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its intraLATA private line services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's intraLATA private line services be classified as competitive?

Findings of Fact

IntraLATA private line services are dedicated services in the sense that they provide services originating from a specific location over a specific technology. Sprint presented evidence that it faces competition from IXCs such as AT&T Communications of the Southwest, Inc. ("AT&T"), MCI WorldCom Communications, Inc. ("WorldCom") and Qwest, and CLECs such as SBC's affiliate ASI, Fidelity and ExOp in the provision of intraLATA private line services. Further, Sprint presented evidence of network interconnectors, such as IBM and Fiber providers such as DTI (now owned by CenturyTel), Cooperative Broadband Networks and

⁵ Exhibit 21, In the Matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, Case no. TO-93-116, December 21, 1992 at p. 8.

Show-Me Power have placed fiber throughout Sprint's territory and lease circuits on these networks directly to customer.⁶

The Commission has previously found that intraLATA private liens service offered by IXC are equivalent services to those offered by the local exchange company, such as Sprint.⁷ The record reflects that 586 IXCs are authorized in Missouri and at least 52 of them were providing services to Sprint's local customers.⁸ These numbers suggest robust competition as only a portion of the competition comes from the numerous IXCs.

Conclusions of Law

The record contains substantial evidence of effective competition for Sprint's intraLATA private line services and the Commission, after considering the relevant factors, finds effective competition exists for these services.

Issue 8: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its ATM and Frame Relay services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's ATM and Frame Relay services be classified as competitive?

Findings of Fact

As with IntraLATA private line services, Sprint's ATM and Frame Relay services are dedicated services in the sense that they provide services originating from a specific location over a specific technology.⁹ Sprint presented evidence that within its exchanges, Sprint faces competition from IXCs such as AT&T, MCI and Qwest, CLECs such as , SBC's affiliate, ASI, Fidelity and ExOp.¹⁰ Further, network intergretors, such as IBM and Fiber providers such as DTI (now owned by CenturyTel), Cooperative Broadband Networks and Show-Me Power have

⁶ Harper, Direct at p. 24, l. 15- p. 25, l. 5.

⁷ Exhibit 21, Case no TO-99-116 at p. 14.

⁸ Harper, Direct at p. 7, l. 16-20. and p. 9, l. 8-15 and MDH-1.

⁹ Harper, Direct at p. 24, l. 1-13.

¹⁰ Harper, Direct at p. 24, l. 15- p. 25, l. 5.

placed fiber through Sprint's territory and lease circuits on these networks directly to customer.¹¹

In addition, as mentioned under Issue 7, the Commission has previously found equivalent services are being offered by IXC's in Missouri.¹² As the record reflects, there are 586 IXC's authorized in Missouri and at least 52 of them were providing services to Sprint's local customers.¹³ These numbers suggest robust competition as only a portion of the competition comes from the numerous IXC's.

Conclusions of Law

The record contains substantial evidence of effective competition for Sprint's ATM and Frame Relay services and the Commission, after considering the relevant factors, finds effective competition exists for these services.

Issue 9: Section 392.245.5 RSMo allows the Commission to classify services of Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its special access services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's special access services be classified as competitive?

Findings of Fact/Conclusions of Law

The Commission finds that Sprint withdrew its request to have its special access services designated competitive.

Issue 10: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its intraLATA MTS services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's intraLATA MTS services be classified as competitive?

Findings of Fact

Sprint's intraLATA MTS services are in essence Sprint's intraLATA toll services. These services furnish interexchange telecommunications on a dial basis between points in different

¹¹ Harper, Direct at p. 24, l. 15- p. 25, l. 5.

¹² Exhibit 21, Case no TO-99-116 at p. 14.

¹³ Harper, Direct at p. 7, l. 16-20. and p. 9, l. 8-15 and MDH-1.

local service area within the same LATA.¹⁴ These services are offered to both residential and business customers.¹⁵

The Commission finds that Sprint presented evidence that demonstrates that effective competition exists on a statewide basis for its IntraLATA MTS service. The evidence establishes the presence of numerous providers effectively offering the same or a substitutable service. The record reflects that there are least 586 IXCs that have the authority to offer competitive intraLATA MTS services. Fifty-two of them are actually offering service in Sprint's territories and that access to each of the 52 is provided on the same basis as it is provided to Sprint.¹⁶ The services offered by the IXCs are advertised throughout Sprint's exchanges.¹⁷ Further, many non-traditional forms of competition contribute to the effective competition, including wireless, prepaid telephone cards and internet telephony. The record contains the competitive offerings available from wireless carriers in Sprint's territories in Missouri as well as offers available from prepaid calling cards.¹⁸ In the face of this effective competition, Sprint's intraLATA Toll minutes and revenues have declined 75% and 76% respectively since 1999.¹⁹ Finally, the Commission notes that not only is there current evidence of effective competition, but in addition, the Commission has deemed this service competitive for many years. In SBC's competition case, the Commission stated that "competition has existed in the intraLATA toll market since 1986, when the Commission authorized intraLATA toll competition" on a state-wide basis.²⁰

¹⁴ Harper, Direct at p. 6, l. 16-21.

¹⁵ Harper, Direct at p. 6, l. 16-21.

¹⁶ Harper, Direct at p. 7, l. 1-12 and p. 9, l. 8-15 and MDH-1.

¹⁷ Harper, Direct at p. 7, l. 16- p. 8, l. 8 and MDH-2.

¹⁸ Harper Direct at MDH-1 and MDH-2.

¹⁹ Harper Direct at p. 9, l. 8-16.

²⁰ Harper, Direct at p. 9, 17-21.

Conclusions of Law

The record contains substantial evidence of effective competition for Sprint's intraLATA MTS services and the Commission, after considering the relevant factors, finds effective competition exists for these services.

Issue 11: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its intraLATA WATS services and 800 services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's intraLATA WATS services and 800 services be classified as competitive?

Findings of Fact

Wide Area Telecommunications (WATS) services include both 800 Services and Outward WATS, or OUTWATS. 800 service provides for incoming calls to be toll-free. OUTWATS provides for outgoing calls to be billed on a usage sensitive basis.²¹ While these services differ from MTS in the method and type of billing, they are both in the end, methods of calling between local areas.²² As such, the evidence reflects that WATS and 800 services are also subject to competition from the same interexchange carriers offering MTS service.²³

The record establishes that there are least 586 IXC's that have the authority to offer competitive intraLATA MTS services. Fifty-two of them are actually offering service in Sprint's territories and that access to each of the 52 is provided on the same basis as it is provided to Sprint.²⁴ The services offered by the IXC's are the same and are advertised throughout Sprint's exchanges.²⁵ Finally, the Commission notes that not only is there current evidence of effective competition, but in addition, the Commission has deemed these services competitive for many

²¹ Harper, Direct at p. 10, l. 24-28.

²² Harper Direct at p. 10, l. 30- p. 11, l. 6.

²³ Harper, Direct at p. 10, l. 30- p. 11, l. 6.

²⁴ Harper, Direct at p. 7, l. 1-12 and p. 9, l. 8-15 and MDH-1.

²⁵ Harper, Direct at p. 7, l. 16- p. 8, l. 8 and MDH-2.

years. In 1992, the Commission found that the same service for SBC were substitutable for IXCs and in 1993 granted SBC transitionally competitive status for these services.²⁶

Conclusions of Law

The record contains substantial evidence of effective competition for Sprint's WATS and 800 services and the Commission, after considering the relevant factors, finds effective competition exists for these services.

Issue 12: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Common Channel Signaling/Signaling System 7 (LIBD) services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's Common Channel Signaling/Signaling System 7 (LIBD) services be classified as competitive?

Findings of Fact

Line Information Data Base Access (LIBD) services provide a dedicated two-way signaling path between a customer and Sprint's Transfer Signaling point and provides access to Sprint's SS7 network.²⁷ In other words, LIBD is a database query service. The customers for these services are other carriers that need to query a database prior to the completion of call to assure that a call is authorized and properly billed.²⁸

Sprint presented evidence that demonstrates that effective competition exists on a statewide basis for its LIBD services and therefore Sprint should receive competitive classification for all its exchanges. The record reflects that the same services are offered throughout Sprint's testimony from prominent companies with nationwide networks and databases. The providers include the SBC subsidiary, SNET, Illuminet (now called Verisign)

²⁶ Harper, Direct at p. 10, l. 30 – p. 11, l. 6 and Exhibit 21.

²⁷ Harper, Direct at p. 25, l. 19-p. 26, l. 5.

²⁸ Harper, Direct at p. 25, l. 19-p. 26, l. 5.

and TSI Telecommunications Services.²⁹ Each of these carriers has their own nationwide SS7 Network and databases and can provide service to any carrier.³⁰ The record contains the offering from the companies evidencing that the exact same services are offered to providers in Sprint's territories.³¹

Conclusions of Law

The record contains substantial evidence of effective competition for Sprint's LIBD services and the Commission, after considering the relevant factors, finds effective competition exists for these services.

Issue 13: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Speed Dial services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's Speed Dial services be classified as competitive?

Findings of Fact

This category is made up of Custom Calling services that are completely replicated by widely available customer premises equipment (CPE).³² Speed Calling 8 and Speed Calling 30 allow customer to load a speed dialing list utilizing storage in the company's central office.³³ Sprint presented evidence that effective competition exists on a statewide basis for its Speed Dial services. The record reflects that alternative products, CPEs, are widely available from retail outlets throughout the state, which contain features that are functionally equivalent to and substitutable for Sprint's service.³⁴ Customers are able to purchase phones, such as a CPE phone,

²⁹ Harper, Direct at p. 25, l. 19-p. 26, l. 5.

³⁰ Harper, Direct at p. 25, l. 19-p. 26, l. 5.

³¹ Harper, Direct at MDH-7.

³² Harper, Direct at p. 26, l. 18- p. 27, l. 6.

³³ Harper, Direct at p. 26, l. 18- p. 27, l. 6.

³⁴ Harper, Direct at p. 26, l. 18- p. 27, l. 6.

that will allow them to pre-load numbers that can be accessed by pressing a button.³⁵ Further, these options are offered at substantially lower prices

Conclusions of Law

The record contains substantial evidence of effective competition for Sprint's Speed Dial services and the Commission, after considering the relevant factors, finds effective competition exists for these services.

Issue 14: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Payphone services offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's Payphone services be classified as competitive?

Findings of Fact

This Issue, as with Issues Nos. 1-4, is limited to evaluating effective competition for a given class of service in five of Sprint's exchanges, the Kearney, Norborne, Rolla, Platte City, and St. Robert exchanges. Sprint presented testimony that establishes effective competition for its payphone services in those exchanges.

First, Sprint explained the components needed to offer payphone services and identified alternative providers for each component. These alternative providers include the facilities based providers present in each exchange as well as the 25 other CLECs who have the regulatory approvals necessary to enter the exchanges. Further, the Commission in the SBC Competition Case found that the same ruling made with regard to SBC's residential access line services was applicable to SBC's payphone services. We reaffirm that finding in this case.

³⁵ McKinnie Rebuttal at p. 9, l. 6- p. 10, l. 5.

Conclusions of Law

The record contains substantial evidence of effective competition in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges and the Commission, after considering the relevant factors, finds effective competition exists and designate Sprint's payphone services in those exchanges as competitive.

Issue 15: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Directory Assistance services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's Directory Assistance services be classified as competitive?

Findings of Fact

In this case, Sprint seeks competitive classification for three groups of its directory services: Local Directory Assistance, National Directory Assistance and Directory Assistance call completion.³⁶ The Local Directory Assistance provides a service that assists a customer in locating a number in the same local calling area.³⁷ Sprint seeks competitive classification for this service in all of its 80 exchanges, including the five in which Sprint has made a request to classify most of its local service offering as competitive. The next service, National Directory Assistance provides a service that assists a customer in locating numbers outside the customer's local Directory Assistance local calling service area.³⁸ The final service, Directory Assistance Call Completion is an optional service that allows customers to have their calls to the requested directory number completed automatically by the Company's Operator Services System.³⁹ Sprint's testimony demonstrates that effective competition exists on a statewide basis for all the

³⁶ Harper, Direct at p. 12, l. 1 – p. 13, l. 14.

³⁷ Harper, Direct at p. 12, l. 1 – p. 13, l. 14.

³⁸ Harper, Direct at p. 12, l. 1 – p. 13, l. 14.

³⁹ Harper, Direct at p. 12, l. 1 – p. 13, l. 14.

Directory Assistance services and therefore Sprint should receive competitive classification for all its exchanges.

The record reflects that directory assist services are accessed from Sprint when a local customer dials "411." The same Sprint local customer may also dial "00" or "1-area code-555-1212" and reach its toll provider (which could be any one of the 586 certified toll providers) and receive the same service.⁴⁰ While one of these alternatives requires a few more digits to be dialed, the Commission has ruled that dialing disparities between IXCs' services and that of the local provider do not preclude a finding that the services are substitutable.⁴¹ That very same Sprint local customer could also turn on his or her computer and access directory assistance for free over the internet. As the record reflects 53% of people living in rural houses use the internet, this option is clearly a viable one in Missouri and more specifically, in Sprint's territories.⁴² Further, the record clearly reflects a wealth of internet sources for retail and residential end-user directory assistance.⁴³ Finally, that very same local Sprint customer could pick up his or her wireless phone and dial 411 to reach the very same directory assistance as what is available from Sprint.⁴⁴ The evidence presented by Sprint reflects that there are a variety of wireless plans available to Sprint's customers.⁴⁵ Further, the evidence presented by Sprint reflects that the Commission can conclude that wireless penetration in Missouri is similar to the national average of 15.5% of telephone users who would opt for wireless alternatives to replace their wireline phones.⁴⁶ Undoubtedly, the number who chose to retain the landline and use the

⁴⁰ Harper, Direct at p. 15, l. 3-21 and MDH-5.

⁴¹ Ex. 21, Case No TO-93-116 at p. 13.

⁴² Harper, Surrebuttal, p. 9, l. 2-4.

⁴³ Harper, Direct at p. 16, l. 6-16 and MDH-5.

⁴⁴ Harper, Direct at p. 16, l. 1-5.

⁴⁵ Idoux, Direct at JRI-15, and Harper Direct at MDH-3.

⁴⁶ Tr. (Vol. 3) at p. 183, l. 12 – p. 184, l. 15.

wireless phone is substantially higher.⁴⁷ As an indicator of the effectiveness of the substantial competition, Sprint's volume of Directory Assistance calls handled has declined by 36% since 1998.⁴⁸

While the Commission acknowledges that it reached a different decision with respect to the existence of effective competition for Directory Assistance outside of exchanges demonstrating effective competition for core local services in the SBC Competition Case, The Commission notes that the record before in this case is different. The record in front of the Commission in this case demonstrates that every single alternative identified by Sprint is available to Sprint's local customer. Therefore, based on the record in front of the Commission in this case, the contention that directory assistance is so tied to local service that customers have no other options is not supported by the record. Further, the argument that as a rule, regardless of the facts, that directory services are so tied to local service that the classification of both must be the same has been rejected by the FCC, as well as a number of states, including Kansas, Iowa and Pennsylvania.⁴⁹

Conclusions of Law

Based on the evidence presented in this case, it is clear that there are a multitude of alternative providers successfully offering the functional equivalent or substitutable directory assistance service and facing no economic or regulatory barriers in delivering competitive options to Missouri consumers. Further, the evidences demonstrates that the competition is

⁴⁷ See *e.g.*, Harper Surrebuttal, at p. 6, Fnt 10: Meisenheimer Rebuttal at p. 14, l. 18-19 ("consumers primarily rely on cellular as a mobile connection to the network and a means to avoid toll charges for placing calls outside the landline local calling scope.

⁴⁸ Harper Direct at p. 17, l. 1-6.

⁴⁹ Harper, Surrebuttal at p. 6, 7- p. 7, l. 4. See also, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, FCC 99-238, 15 FCC Rcd 3696 ¶¶ 438-464, November 5, 1999; Kansas Directory Services were found to be competitive in Docket No. 01-SWBT-932-MIS, Order dated June 12, 2001; in Iowa Docket Nos. INU-00-3, WRU-99-8-272, and WRU-00-88-272 dated February 23, 2001; and in Pennsylvania in Docket P-00001850 dated April 3, 2001.

robust. Therefore, the Commission finds that effective competition exists for Sprint's Directory Assistance services throughout its exchanges.

Issue 16: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Local Operator services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's Local Operator services be classified as competitive?

Findings of Fact

Operator Services refer to those services, using live operators or automated systems that provide customers with various call completion options. Sprint's services subject to its requests for competitive designation include Dial Station-to-Station Service (Local Measured and Flat Rate), Operator Station-to-Station Service and Person-to-Person Services.⁵⁰ In general terms, these services include calls for calling card, collect, calls billed to a third number, sent-paid, and person-to-person calling using an operator. Sprint's testimony demonstrates that effective competition exists on a statewide basis for its Operator Services and therefore Sprint should receive competitive classification for all its exchanges.

An end user customer may utilize these services by dialing "0" or "0 + number" from any telephone. Customers generally make these types of calls when they are away from their home and traveling. The majority of providers of Directory Assistance Service discussed in Issue 16 offer Operator Services.⁵¹ Therefore, the evidence of effective competition stated under Issue 16 is equally as applicable to Operator Services. As stated in Issue 16, this includes the operator services available from IXC's.⁵² In 1992, the Commission found that the IXC's' operator services were substitutable for the operator service offered by local companies.⁵³ Further, in that 1992

⁵⁰ Harper Direct at p. 18, l. 1-9.

⁵¹ Harper, Direct at p. 20, l. 1-13.

⁵² See Harper Surrebuttal at MDH-1 for examples of some IXC's' operator service offering in Sprint's territory.

⁵³ Exhibit 21, Case No TO-93-116 at p. 14.

case, the Commission ruled that the Local Operator service offered by SBC were sufficiently subject to competition to allow SBC's Operator Services to be transitionally competitive.⁵⁴ That finding was based on the presence of 31 IXC's and 8 prepaid call providers.⁵⁵ Finally, in the 1992 case, the Commission allowed SBC's Operator Service to be transitionally competitive without finding that the same for local services.

In Sprint's territories, 586 IXC's are authorized to operate and 52 IXC's are currently operating.⁵⁶ Further, the record reflects there are several wireless providers and prepaid providers operating in Sprint's territories.⁵⁷ All these providers offer functionally equivalent or substitutable services.

Conclusions of Law

Based on the evidence presented in this case, it is clear that there are a multitude of alternative providers successfully offering the functional equivalent or substitutable operator Services and facing no economic or regulatory barriers in delivering competitive options to Missouri consumers. Further, the evidence demonstrates that the competition is robust. Therefore, the Commission finds that effective competition exists for Sprint's Operator Services throughout its exchanges.

Issue 17: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its ISDN services offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's ISDN services be classified as competitive?

⁵⁴ Exhibit 21, Case No TO-93-116 at p. 14.

⁵⁵ Exhibit 21, Case No TO-93-116 at p. 14

⁵⁶ Harper, Direct at p. 7, l. 18 and p. 9, l. 10-15.

⁵⁷ Harper, Direct at MDH-3, and MDH-4 and Idoux Direct at JRI-15..

Findings of Fact

This Issue, as with Issues Nos. 1-4, is limited to evaluating effective competition for a given class of service in a limited number of Sprint's exchanges, the Kearney, Rolla, Platte City, and St. Robert exchanges. The Commission finds that Sprint withdrew its request for competitive classification for ISDN in its Norborne exchange. The evidence discussed under Issues 1 and 3 demonstrates that effective competition exists in Kearney, Rolla, Platte City, and St. Robert and Sprint should receive competitive classification for its ISDN services in these four exchanges. The record reflects that each one of the facilities based providers effectively offer ISDN at lower prices than Sprint. As these providers have demonstrated the capacity to be an effective competitor, they will service as an influences on Sprint's ability to compete.

Conclusions of Law

The record contains substantial evidence of effective competition in the Kearney, Rolla, Platte City and St. Robert exchanges and the Commission, after considering the relevant factors, finds effective competition exists and designate Sprint's ISDN services in those exchanges as competitive.

Issue 18: Section 392.245.5 RSMo allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Optional MCA services offered in the Kearney exchange be classified as competitive. Should Sprint's Optional MCA services be classified as competitive in that Sprint Missouri, Inc. exchange?

Findings of Fact

Sprint is only seeking competitive classification for its optional MCA service for those exchanges where the Commission has deemed the overall exchange to be competitive. To clarify, Sprint seeks competitive classification for the exchanges of (1) Kearney, (2) Platte City, (3) Rolla, (4) St. Robert, and (5) Norborne exchanges; however, Sprint only offers its optional

MCA service in Kearney and Platte City exchanges. Thus, Sprint only seeks competitive classification for optional MCA service in the Kearney and Platte City exchange. Sprint is not seeking competitive classification for optional MCA service in any other exchange.

Sprint's testimony demonstrates that effective competition exists in the Kearney and Platte City exchanges. The evidence discussed under Issue 1 reflect that there is a facilities based alternative provider, ExOp, offering MCA at a price lower than Sprint's in Kearney and Platte City. The record reflects that each the facilities based provider offers this service, or can offer this services, throughout the Kearney and Platte City exchanges. Further the evidence demonstrates that ExOp has done extremely well in attracting customers away from Sprint. As ExOp has demonstrated the capacity to be an effective competitor, they will service as an influences on Sprint's ability to compete.

Conclusions of Law

The record contains substantial evidence of effective competition in the Kearney and Platte City exchanges and the Commission, after considering the relevant factors, finds effective competition exists and designate Sprint's Optional MCA services in those exchanges as competitive.

Issue 19: In absence of a request by Sprint Missouri, Inc. for the reclassification of a service in an exchange pursuant to Section 392.245.5, RSMo from price cap regulation to competitive status, should the Commission make a finding that effective competition does not exist and order that the current price cap regulation continue to apply?

Findings of Fact/Conclusions of Law

As the Commission stated in its general Conclusions of Law, the party seeking a specific determination bears the burden of providing evidence to support that determination. In this case, as Sprint limited its requests to certain services and/or certain exchanges, evidence relating to the

state of competition in other exchanges or for other services was not put in the record. exchanges he Commission should not make a finding that effective competition does not exist for any service which is not designated competitive in this case. Therefore, the only finding the Commission can make with respect to those services or exchanges not subject to Sprint's request is the record does not the record does not contain evidence of the presence or the absence of effective competition. Based on this, the Commission, can not at this time, find effective competition for those services and/or exchanges.

Further, an order from the Commission that the existing price cap regulations continue to apply for Sprint's remaining services and exchanges is not needed. The Price Cap Statute continues to apply except in those exchanges where an alternative provider has provided service for at least five years. *See* Section 392.245.5. RSMo. Sprint does not have any exchanges in which an alternative provider has provided service for five years. Therefore, Sprint services remain subject to price cap statute.

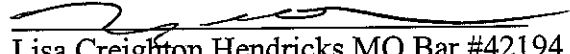
Issue 20: Section 392.245.5, RSMo provides that the Commission shall investigate the state of competition in Sprint's exchanges within five years of an alternative local exchange telecommunications company first being certified. ExOp of Missouri Inc.'s certification was effective on December 15, 1998. If the Commission does not issue a decision in this case by December 15, 2003, will any of Sprint Missouri Inc.'s telecommunications services in any Sprint Missouri, Inc. exchange be automatically reclassified or reclassified by default from price cap regulation to a competitive status?

Findings of Fact/Conclusions of Law

December 15, 2003 is the fifth year anniversary of an alternative provider being certified to provide service in Sprint's territory. It is not the fifth year anniversary of an alternative provider actually providing services in any given exchange in Sprint's territory. Therefore, under the Price Cap Statute, nothing changes on December 16, 2003 unless the Commission makes an affirmative finding of effective competition. *See* Section 392.245.5 RSMo.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served on each of the following parties by first-class/electronic/facsimile mail, this 24th day of September, 2003.

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