

Exhibit No.:

Issues: Geographic Market
Definitions

Witness: Mark D. Harper

Sponsoring Party: Sprint

Type of Exhibit: Rebuttal Testimony

Case No.: TO-2004-0207

Date Testimony Prepared: January 16, 2004

**SPRINT MISSOURI, INC.
AND
SPRINT COMMUNICATIONS COMPANY, L.P.**

REBUTTAL TESTIMONY

OF

MARK D. HARPER

**IN THE MATTER OF A COMMISSION INQUIRY INTO
THE POSSIBILITY OF IMPAIRMENT WITHOUT
UNBUNDLED LOCAL CIRCUIT SWITCHING WHEN
SERVING THE MASS MARKET**

CASE NO. TO-2004-0207

Jefferson City, Missouri
January 2004

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

In the Matter of a Commission Inquiry)
into the Possibility of Impairment without)
Unbundled Local Circuit Switching When)
Serving the Mass Market)

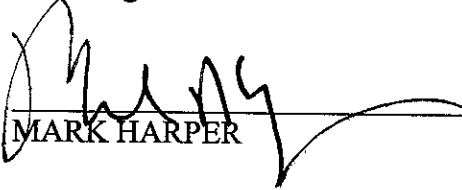
Case No. TO-2004-0207

AFFIDAVIT OF MARK HARPER

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

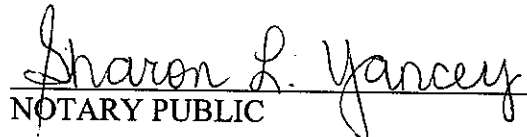
I, Mark Harper, being of lawful age and duly sworn, dispose and state on my oath the following:

1. I am presently Director, State Regulatory Affairs External Affairs for Sprint Missouri, Inc.
2. I have participated in the preparation of the attached Rebuttal Testimony in question and answer form to be presented in the above entitled case;
3. The answers in the attached Rebuttal Testimony were given by me; and,
4. I have knowledge of the matters set forth in such answers and that such matters are true and correct to the best of my knowledge and belief.



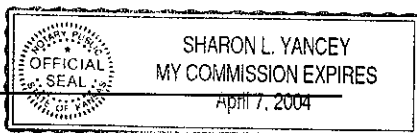
MARK HARPER

Subscribed and sworn to before me on this 15th day of January, 2004.



NOTARY PUBLIC

My Appointment Expires:



1 **BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **Mark D. Harper**

5
6 **BACKGROUND/PURPOSE**

7
8 **Q. Please state your name, title, business address and current duties.**

9 A. My name is Mark D. Harper. I am employed by Sprint Corporation as Director –
10 State Regulatory in the Department of Law and External Affairs. My business
11 address is 6450 Sprint Parkway, Overland Park, Kansas 66251. In this position, I
12 am responsible for the development and implementation of state regulatory policy
13 and strategy as it pertains to Sprint's operations in fourteen Midwest states
14 including Kansas.

15
16 **Q. Are you the same Mark D. Harper that filed Direct Testimony in this case on**
17 **December 18, 2003?**

18 A. Yes.

19
20 **Q. What is the purpose of your rebuttal testimony?**

21 A. In my rebuttal testimony I respond to the testimony of Staff witnesses Walter
22 Cecil and Christopher C. Thomas regarding their recommendation of the proper
23 geographic market definition for use in Phase II of this proceeding. I will show
24 that when the Commission takes additional factors into account in determining the

1 market definition to be used in the analysis to be conducted in this proceeding, it
2 will agree that the MSA is appropriate.

3

4 **Q. On whose behalf are you testifying?**

5 A. I am representing Sprint Missouri, Inc. and Sprint Communications Company
6 L.P. (Sprint). Both companies are providers of basic telephone service, Sprint
7 Missouri, Inc. as an ILEC and Sprint Communications Company, L.P. as a CLEC.

8

9 **Q. Have you reviewed the geographic market definition proposals of the**
10 **parties?**

11 A. Yes. The proposals range from as small as the individual wire centers up to
12 potentially the entire LATA as the geographic market in which to evaluate
13 impairment. Between these extremes several parties, including Sprint, supported
14 the MSA, while Staff's direct testimony introduced the notion of exchanges.

15

16 **Q. What is your conclusion regarding these proposals?**

17 A. Sprint continues to support MSAs as the being the appropriate market area within
18 which to evaluate impairment and the area that will allow the most realistic
19 assessment of "the technical and economic feasibility of an entrant serving the
20 mass market with its own switch."¹

21

¹ TRO paragraph 501.

1 **Q. Why does your testimony only respond to Staff's proposal?**

2 A. I addressed in my direct testimony why defining markets at a wire center or a
3 larger level such as a LATA do not best meet the objectives of the analysis
4 required by the Commission and do not better match the guidelines for market
5 definition set forth by the TRO than the MSA.

6

7 Staff has proposed the exchange as the proper market for conducting the
8 impairment analysis. While, for large portions of the state, ILEC exchange and
9 wire center are synonymous terms, there is a difference in the more urban areas of
10 the MSA.

11

12 While many ideas and concepts beyond market definition were discussed by the
13 other parties, I will remain in this testimony focused on the issue of market
14 definition which has been identified by the Commission as one of the two issues
15 (the other being the proper DS0 crossover) to be addressed in this phase. Issues
16 regarding trigger application, in my understanding will be addressed in Phase II of
17 this proceeding.

18

19 Finally, SWBT witness Fleming produced various types of data and measures
20 supporting his conclusion that the MSA is the proper market definition. Due to
21 protections afforded much of the data, I cannot directly see it, however, the
22 summary statistics in his direct testimony are available to me. While I would
23 agree that actual competitive entry as one of the considerations that supports the
24 conclusion that the MSA is the best measure of the market, any statements made

1 or implications drawn concerning the use of the specific data in application of
2 triggers is premature.

3

4 **Q. In the testimony of Walter Cecil, Staff attempts to explain why a party would**
5 **support the MSA as the market definition (page 6 – 7), do you agree with his**
6 **conclusion?**

7 A. No. At the top of page 7 he states "those parties favoring the metropolitan
8 statistical area definition seek to ensure the self-provisioning and wholesale
9 triggers are satisfied. By using the metropolitan statistical area, the geographic
10 'circle' defining the market becomes so large that it is likely that competitive
11 switching will be found and unlikely that a finding of impairment could be made."

12

13 I cannot speak to the motive of the other parties supporting MSA as the market
14 but it is certainly not Sprint's desire to "ensure" that the triggers are satisfied.
15 Sprint does not believe that the selection of the MSA in any particular market
16 definition in any way ensures that the triggers would be satisfied or not satisfied.
17 This implies that trigger application is a mere counting exercise and if you can
18 find three competitors' switches somewhere in the market, non-impairment is
19 automatic. This is most certainly not the case, as discussed below.

20

21 **Q. Do you think that defining the market as the MSA will make "unlikely that a**
22 **finding of impairment could be made" by the Commission?**

23 A. No. Staff has highlighted in their position the same clear relationship between
24 market definition and the importance of properly conducting the trigger analysis
25 which I also highlighted in my direct testimony. When defining the market for

1 this purpose the Commission is defining the boundaries of the geography within
2 which it will decide whether the evidence of actual deployment demonstrates "the
3 technical and economic feasibility of an entrant serving the mass market with its
4 own switch."² It cannot be a simple matter of whether there are three or more
5 switches in the defined market to demonstrate this feasibility but an evaluation
6 which includes: how many mass market customers are actually being served and
7 how much of the market is being served.

8 The Commission's determinations in this case are far greater than a simple
9 exercise of finding three competitor's switches somewhere in the market. The
10 FCC, in discussing the role of the states in the TRO, notes that they are in the best
11 position "to gather and assess the necessary information" and that states are in the
12 "best position to judge whether the Act's extraordinary unbundling remedies
13 should be applied."³ In the voluminous record before the FCC it had data
14 showing CLEC market share of somewhat less than 3% nationwide and evidence
15 of approximately 1300 circuit switches including more than 3 in Kansas City, yet
16 it determined that CLECs were impaired nationally without access to unbundled
17 circuit switching.⁴ Clearly, the trigger application requires an analysis greater
18 than finding switches.

19
20 **Q. Staff appears to be concerned about defining the market as the MSA because**
21 **it would be over inclusive, do you agree?**

22 **A. It appears that the ultimate concern of Staff is that it would be improper to group**
23 **exchanges that have no CLECs serving mass market customers with their own**

² TRO Paragraph 501.

³ TRO Paragraph 188.

⁴ TRO Paragraph 438, BOC UNE Fact Report 2002, Appendix B.

1 switches with exchanges where such CLECs exist. This concern approaches the
2 task of defining the market from the wrong direction. This is not meant to be a
3 process of determining where CLECs are serving mass market customers and then
4 defining the market based on those results. (If that was true the FCC could have
5 skipped the market definition requirement altogether.) That approach relies too
6 heavily upon the locations of the customers being served. This factor should not
7 be viewed on a standalone basis but must be balanced with other factors such as
8 community of interest and economies of scale and scope. Instead, the
9 Commission should first define the market by utilizing all appropriate factors, and
10 then examine the competitive situation within that market. The fact that one or
11 more exchanges within an MSA may not have the required number of CLECs
12 serving mass market customers with their own switches when properly viewed
13 becomes a crucial factor in determining whether the triggers have been met.

14
15 **Q. On Page 9 of his testimony Staff witness Water Cecil raises a concern about**
16 **the presence of other ILECs in the MSA and the application of the**
17 **Commission's impairment findings to these exchanges. Do you agree with**
18 **his concern?**

19 **A.** No, SBC and CenturyTel are the only parties in this proceeding who are
20 challenging the FCC's findings of impairment for unbundled circuit switching in
21 their exchanges within the MSAs requested. While the MSA does include other
22 ILEC exchanges the Commission has the discretion to define the market as well
23 as the obligation to only review where it has received sufficient evidence and for
24 markets submitted by an interested party.⁵

⁵ TRO footnote 1613.

1 **Q. As stated on Page 11 of Mr. Cecil's testimony, do you agree that the exchange**
2 **definition is better than either the wire center or metropolitan statistical area**
3 **definitions?**

4 A. No, outside of the metropolitan exchanges of Kansas City, St. Louis and
5 Springfield Staff witness Thomas states in Page 10 of his direct testimony that
6 "the majority of the exchanges throughout the state consist of a single wire
7 center." Thus for a substantial areas of the state, including areas within the MSA,
8 the exchange and the wire center are the same. Sprint agrees when Mr. Cecil
9 states that "Staff's concern with the wire center definition is that economies of
10 scale and scope will be less available". Whether scale and scope is an issue for
11 the metropolitan exchanges could at least be partially answered by the
12 competitive footprint in the surrounding exchanges. In other words, if most
13 switch based competitors also serve exchanges surrounding the metropolitan
14 exchange it may be strong evidence that the metropolitan exchange alone does not
15 present sufficient economies of scale and scope. Correspondingly, it is unlikely
16 that these surrounding exchanges could be economically served without the scale
17 and scope offered by the metropolitan exchange. Further, with common media
18 and distribution channels throughout the area as well as the underlying economic
19 measures that go into defining an MSA, all of this would suggest that these
20 exchanges together with the metropolitan exchanges form a more meaningful
21 market than an exchange alone.

22
23 **Q. Please summarize your testimony for the Commission.**

24 A. Staff's reasons for supporting the exchange concept as being the appropriate
25 geographic market definition do not take into account all factors that the

1 Commission must consider in this proceeding. Community of interest, media
2 distribution and factors other than simply the location of the customers being
3 served by CLECs must be taken into account. This is why, in Missouri, MSA is
4 the appropriate geographic market to consider.

5

6 **Q. Does this conclude your testimony?**

7 **A. Yes it does.**