

REBUTTAL TESTIMONY
OF
BARABARA A. MEISENHEIMER

SPRINT MISSOURI, INC.
CASE NO. IO-2003-0281

INTRODUCTION

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Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. Barbara A. Meisenheimer, Public Utility Economist, Office of the Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102. I am also employed as an adjunct Economics Instructor for William Woods University.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.

A. I hold a Bachelor of Science degree in Mathematics from the University of Missouri-Columbia (UMC) and have completed the comprehensive exams for a Ph.D. in Economics from the same institution. My two fields of study are Quantitative Economics and Industrial Organization. My outside field of study is Statistics. I have taught Economics courses for the following institutions: University of Missouri-Columbia, William Woods University, and Lincoln University. I have taught courses at both the undergraduate and graduate levels.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. To present Public Counsel's comments and positions regarding the current state of competition in Sprint Missouri, Inc (Sprint) exchanges and to respond to Sprint's petition to have the Public

1 Service Commission approve a competitive classification for Sprint services pursuant to Section
2 392.245.5, RSMo 2000.

3 Public Counsel wants to primarily address the issue of effective competition for residential and
4 small business customers. While large business customers or customers with high usage are prime
5 targets for competition, competitors have not actively sought the small business customer or
6 residential customer to the same extent. The goal of the Federal Telecom Act of 1996 and SB507 is
7 for competition to benefit the broad range of consumers and not just the upper end business
8 customers.

9 **Q. IN PREPARATION OF YOUR TESTIMONY, WHAT MATERIALS DID YOU**
10 **REVIEW?**

11 A. I have reviewed the direct testimony of Sprint witnesses John Idoux and Mark Harper. I have also
12 reviewed information from the Commission, including, but not limited to, portions of the tariffs and
13 annual reports filed with the Commission by local exchange companies, information regarding
14 certifications of service authority, interconnection agreements and tariff filings maintained by the
15 Staff as well as responses to data requests issued by Public Counsel, the Staff of the Missouri
16 Public Service Commission and parties to the case.

17 **Q. WHAT IS THE PURPOSE OF THIS PROCEEDING?**

18 A. The Commission established this proceeding for the purpose of investigating the state of
19 competition in Sprint exchanges for Sprint telecommunications service in accordance with the
20 "Price Cap Statute," Section 392.245, RSMo 2000.

21 **Q. WHAT PORTION OF SECTION 392.245 IS AT ISSUE IN THIS CASE?**

1 A. The full text of the Subsection 5 of Section 392.245 is the focus of this case. Section 392.245.5
2 states:

3 **“Each telecommunications service of an incumbent local exchange**
4 **telecommunications company shall be classified as competitive in any**
5 **exchange in which at least one alternative local exchange telecommunications**
6 **company has been certified under section 392.455 and has provided basic**
7 **local telecommunications service in that exchange for at least five years,**
8 **unless the commission determines, after notice and a hearing, that effective**
9 **competition does not exist in the exchange for such service.** The commission
10 shall, from time to time, on its own motion or motion by an incumbent local
11 exchange telecommunications company, investigate the state of competition in
12 each exchange where an alternative local exchange telecommunication company
13 has been certified to provide local exchange telecommunications service and **shall**
14 **determine, no later than five years following the first certification of an**
15 **alternative local exchange telecommunication company in such exchange,**
16 **whether effective competition exists in the exchange for the various services of**
17 **the incumbent local exchange telecommunications company.** If the commission
18 determines that effective competition exists in the exchange, the local exchange
19 telecommunications company may thereafter adjust its rates for such competitive
20 services upward or downward as it determines appropriate in its competitive
21 environment. If the commission determines that effective competition does not
22 exist in the exchange, the provisions of paragraph (c) of subdivision (2) of
23 subsection 4 of section 392.200 and the maximum allowable prices established by
24 the provisions of subsections 4 and 11 of this section shall continue to apply. The
25 commission shall from time to time, but no less than every five years, review the
26 state of competition in those exchanges where it has previously found the existence
27 of effective competition, and if the commission determines, after hearing, that
28 effective competition no longer exists for the incumbent local exchange
29 telecommunications company in such exchange, it shall re-impose upon the
30 incumbent local exchange telecommunications company, in such exchange, the
31 provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200
32 and the maximum allowable prices established by the provisions of subsections 4
33 and 11 of this section, and, in any such case, the maximum allowable prices
34 established for the telecommunications services of such incumbent local exchange
35 telecommunications company shall reflect all index adjustments which were or
36 could have been filed from all preceding years since the company's maximum
37 allowable prices were first adjusted pursuant to subsection 4 or 11 of this section. “
38 (emphasis supplied.)

39 **Q. PLEASE EXPLAIN WHY YOU EMPHASIZED PORTIONS OF THE STATUTE IN**
40 **YOUR TESTIMONY IN BOLD TEXT.**

1 A. I wanted to clearly show to the Commission the full text of the relevant statute because I believe the
2 scope of this case should include a determination of the status of effective competition beyond just
3 the reclassifications that Sprint seeks for specific services in specific exchanges.

4 **Q. PLEASE EXPLAIN WHY THE COMMISSION SHOULD ADDRESS THE STATUS OF**
5 **EFFECTIVE COMPETITION FOR SERVICES AND IN EXCHANGES FOR WHICH**
6 **SPRINT DOES NOT SEEK RECLASSIFICATION.**

7 A. It appears that the timing is right under the price cap statute for the Commission to consider any
8 evidence of effective competition in Sprint exchanges. If no such evidence is presented, the
9 Commission should declare that effective competition does not exist for any other Sprint services in
10 any other Sprint exchanges based upon the lack of evidence of effective competition to support
11 reclassification.

12 On page 3 of his direct testimony, Mr. Idoux describes Sprint's view of the purpose of this
13 case: "The Missouri Public Service Commission ("Commission") opened this investigation to
14 examine the state of competition within the Sprint Missouri exchanges." He cites the portion of
15 Subsection 392.245.5 RSMo 2000 which states that the Commission "shall, from time to time, on
16 its own motion or motion by an incumbent local exchange telecommunications company,
17 investigate the state of competition in each exchange where an alternative local exchange provider
18 ["ALEC" or "CLEC"] has been certified to provide local exchange telecommunications service and
19 shall determine, no later than five years following the first certification of an alternative local
20 exchange telecommunication company in such exchange, whether effective competition exists in
21 the exchange for the various services of the incumbent local exchange telecommunications
22 company."

1 While I agree that the later portion of the price cap statute that Mr. Idoux quotes is relevant,
2 Sprint is seeking competitive classification for only a subset of its services and for some services it
3 is seeking competitive classification for the service in only a subset of its exchanges. Sprint has
4 limited its request for reclassification to only some of its services and only in some of its exchanges.
5 Obviously, Sprint sincerely believes that it can support a showing of effective competition and
6 grounds for reclassifications in this limited, but specific manner, rather than taking a broader sweep
7 for reclassification of all services in all exchanges similar to that attempted by SBC.

8 However, in addition to considering the specific services in the exchanges Sprint has
9 identified, the Commission should consider taking this opportunity to determine that effective
10 competition does not exist for those services and in those exchanges that Sprint does not seek
11 competitive classification at this time.

12 **Q. WHY MIGHT THE COMMISSION WANT TO MAKE A FINDING THAT**
13 **EFFECTIVE COMPETITION DOES NOT EXIST FOR THOSE SERVICES AND**
14 **IN THOSE EXCHANGES THAT SPRINT DOES NOT SEEK COMPETITIVE**
15 **CLASSIFICATION?**

16 A. Although I am not an attorney, it appears that the statute requires a finding, after notice and hearing,
17 that effective competition does not exist in the exchange for a service not to be classified as
18 competitive in an exchange in which at least one alternative basic local exchange
19 telecommunications company has been certified under section 392.455 and has provided basic local
20 telecommunications service in that exchange for at least five years as stated at the beginning of
21 392.245.5 RSMo 2000. That portion of the statute reads:

1 “Each telecommunications service of an incumbent local exchange
2 telecommunications company shall be classified as competitive in any exchange in
3 which at least one alternative local exchange telecommunications company has
4 been certified under section 392.455 and has provided basic local
5 telecommunications service in that exchange for at least five years, unless the
6 commission determines, after notice and a hearing, that effective competition does
7 not exist in the exchange for such service.”

8 The Commission's Order establishing this case did not specifically limit the investigation to
9 these subsets of services and exchanges for which Sprint requests reclassification.¹ In the
10 Commission's investigation into the state of competition in Southwestern Bell's exchanges, the
11 Commission concluded that its investigation was to cover all exchanges and that it is required to
12 conduct a review of the existence of effective competition for each exchange within that initial 5
13 years. Based upon that case, I recommend that the Commission make a definitive finding for
14 Sprint's other services in all the Company's local exchanges. In the Commission's Report and
15 Order in Case No. TO-2001-467, the Commission found that no alternative basic local exchange
16 carrier had actually been providing service in SWBT's exchanges for 5 years and, therefore, SWBT
17 had the burden of proof to affirmatively demonstrate that effective competition exists under the
18 applicable portion of the statute. As a result, it found that effective competition did not exist in
19 basic residential and business line services and other related services. Since the application of the
20 price cap statute is similar in this case, I recommend that, even though Sprint has not specifically
21 requested competitive classification for all services and all exchanges, the Commission find that
22 Sprint has not affirmatively demonstrated the existence of effective competition upon conclusion of
23 the review in this case.

¹ Order Case No. IO-2003-0281, Issued February 14, 2003, Effective February 24, 2003.

1 | **Q. DO YOU BELIEVE THAT THE COMMISSION MUST DECIDE THIS CASE BY**
2 | **DECEMBER 15, 2003?**

3 | A. No, I do not. Based on my investigation, I agree with Mr. Idoux’s statement that ExOp of Missouri
4 | d/b/a Unite was the first CLEC to be granted a certificate to provide basic local telecommunication
5 | service in a Sprint Missouri exchange. However, the statutory standard requires an exchange-by-
6 | exchange, not company-wide analysis and further requires that the ALEC must have been actually
7 | providing service in the exchange for 5 years. In Case No. TO-2001-467, the Commission said that
8 | although an ALEC was certified for 5 years, no ALEC had actually been providing service in any
9 | SWBT exchanges for 5 years. Whether “providing” means simply offering service or the actual
10 | initiation and delivery of service to a customer need not be determined in this case. In response to
11 | Public Counsel Data Request No. 7, ** _____

12 | _____ ** Based on similar responses, ** _____
13 | _____ * This would place the ** _____
14 | _____ *

15 | **Q. FROM AN ECONOMIC AND PUBLIC POLICY PERSPECTIVE, HOW SHOULD**
16 | **THE COMMISSION INTERPRET SECTION 392.245.5?**

17 | A. In my opinion, the statute sets forth reasonable requirements and consumer protections that allows
18 | an incumbent local exchange carrier greater flexibility in an effectively competitive environment
19 | that also minimize the use of unnecessary resources. While the statute serves to accommodate
20 | effective competition for services, it also clearly envisions that effective competition may not
21 | develop within all exchanges or for all services. It also recognizes that there is no certainty of
22 | effective competition on an ongoing basis. It protects the development of competition and protects
23 | consumers by requiring that within the first five of existence of a certified alternative basic local

1 exchange company (ABLEC) in the exchange a service may not be automatically granted
2 competitive status. Instead, the Commission must first conduct a proceeding to investigate and
3 make a determination of whether or not effective competition exists for the service. If the
4 Commission determines that effective competition exists, then the incumbent company gains
5 competitive status for the relevant service. However, periodic reviews are then conducted to ensure
6 that competition is still effective thereby warranting continued fully flexible pricing status for the
7 incumbent. After the first five years during which an ABLEC has provided service in an exchange,
8 the incumbent can petition for competitive service status. Under that circumstance, the petition may
9 be granted without a mandatory review if unchallenged. This aspect of the statute works to
10 eliminate unnecessary reviews thus conserving regulatory and carrier resources.

11 **Q. IF THE COMMISSION FINDS THAT EFFECTIVE COMPETITION DOES NOT**
12 **EXIST FOR THE SERVICES IN AN EXCHANGE AT THIS TIME, HOW CAN**
13 **SPRINT ATTEMPT TO GAIN COMPETITIVE STATUS FOR SERVICES IN THE**
14 **FUTURE?**

15 A. Sprint will have two alternatives. If an ALEC has not been providing basic local service in the
16 exchange for at least five years, Sprint can petition the Commission for competitive classification of
17 the service in the exchange. The Commission must then conduct an investigation regarding the
18 competitive status. A second process is available if an ALEC has been providing basic local service
19 in the exchange for at least five years. Sprint can petition for competitive service status in the
20 exchange and then the reclassification can be granted if the petition goes unchallenged or if
21 opposing parties fail to demonstrate that effective competition still does not exist.

1 **Q. THIS PROCESS FOR SPRINT TO ACHIEVE COMPETITIVE STATUS FOR ITS**
2 **SERVICES APPEARS TO BE ONGOING AND CAN RESULT IN A NUMBER OF**
3 **CONTESTED PROCEEDINGS. IS THIS NECESSARY?**

4 A. Yes, it is both under the price cap statute and under the public policy aspects of the price cap
5 statute. If Sprint is granted competitive status absent effective competition for services in its
6 exchanges, Sprint will be free to raise prices above the levels currently allowed by the price cap
7 formula and customers would not have adequate protection against unreasonable price increases.
8 Under resale, the ALEC's wholesale cost are tied to Sprint's and would rise along with increases in
9 Sprint retail prices. If basic local rates increase, customers will be forced to pay the higher prices or
10 lose access to a service that is essential in ensuring safety, health, and meaningful participation in
11 society. Increases in basic local rates could also negatively impact the welfare of small businesses.
12 If residential basic local rates increase, lifeline rates also rise, which is contrary to the specific intent
13 of providing a more affordable discounted rate to low-income customers. If Sprint increases access
14 rates, IXC's will be forced to absorb the loss or attempt to pass through the increases to all of their
15 customers. Given the links that exist between Sprint's rates and CLEC wholesale rates and
16 charges, it is paramount to protect ratepayers to ensure that effective competition actually exists
17 prior to granting competitive service status.

18 **Q. IF THE ULTIMATE OUTCOME OF THIS PROCEEDING IS A DETERMINATION**
19 **THAT ANY OF SPRINT'S SERVICES ARE SUBJECT TO EFFECTIVE**
20 **COMPETITION IN AN EXCHANGE, SHOULD ANY ADDITIONAL PRICING**
21 **RESTRICTIONS BE IMPOSED ON SPRINT PRIOR TO ALLOWING IT**
22 **FLEXIBILITY FOR THE SERVICE IN THE RELEVANT EXCHANGE?**

23 A. None beyond those restrictions imposed on its competitors.

1 **Q. WHAT TYPES OF EVIDENCE WOULD YOU FIND PERSUASIVE IN**
2 **DEMONSTRATING THAT AN ABLEC IS "PROVIDING" SERVICE IN AN**
3 **EXCHANGE.**

4 A. Based on my investigation, the official Commission approval of a tariff does not in itself
5 demonstrate that an ALEC is providing basic local service. Services are not always provided
6 throughout the area for which the tariff applies and tariffs are not always withdrawn when a carrier
7 cancels its service offerings in an area or goes out of business entirely. Additionally, the existence
8 of alternative facilities in the exchange, such as switching equipment or fiber networks, alone does
9 not ensure that the facilities are actually being used to provide an alternative basic local service. I
10 believe that acknowledgement by the competing carrier that it serves customers in an exchange is
11 the surest method for demonstrating that the "providing" requirement is met. Other evidence of
12 "providing service" would be verifiable information that the incumbent provides more than an
13 insignificant number of resold lines or unbundled network elements in the relevant exchange.

14 **Q. WHY IS THERE DIFFERENT TREATMENT FOR SPRINT THAN ITS**
15 **COMPETITORS?**

16 A. A potential need for different treatment of competitors and incumbents on an ongoing basis was
17 codified in the price cap statute as a necessary requirement until effective competition can be relied
18 upon to ensure that consumers would not be harmed by the elimination of regulatory protections for
19 the sustained availability and affordability of basic local telecommunications services. The high
20 standard for the ongoing existence "effective competition" established by statute is completely
21 reasonable given the history and characteristics of the local telecommunications industry in
22 Missouri.

1 Sprint has for decades built and controlled vast local exchange and interexchange networks
2 in Missouri. Network facilities include switches and other central office equipment, trunking lines
3 that link local switching offices and the “loop” which is comprised of the outside plant facilities,
4 including outside terminals, conduit, copper and fiber cables all of which complete the end to end
5 connection from the central offices to customer’s homes and businesses. Over time, technological
6 improvements in existing systems and the development of alternative technologies have reduced the
7 economies of scale and scope inherent in the provisioning of some services once characterized as
8 natural monopolies. Such advances tend to diminish the past economic justification for operation
9 of regulated monopolies since a competitive paradigm becomes both more feasible in terms of cost
10 and more attractive in terms of customer choice.

11 Unfortunately, there are still significant barriers to achieving effectively competitive
12 markets. For example, in many areas “bottle neck” facilities controlled by incumbents are still the
13 norm and portions of the network are still subject to scale and scope economies that are exacerbated
14 in geographic areas with low population densities. In addition, incumbent providers have
15 developed name recognition and customer loyalty which reduces the effective operation of a
16 competitive market.

17 For decades, Sprint has enjoyed an exclusive service territory in the State of Missouri,
18 developing longstanding relationships with customers and, albeit under regulatory oversight,
19 generally becoming known for ubiquitous basic local service offerings, affordable prices, reliable
20 services, and timely installations and repairs. Reasonably, these attributes constitute a significant
21 competitive advantage over lesser-known competitors. I believe dissatisfaction with slamming,
22 cramming, and a continuous stream of sales calls during the dinner hour have also made less

1 sophisticated telecommunications users wary (and weary) of changing providers. This also
2 obviously works to the advantage of an incumbent monopoly when its market is opened to
3 alternative providers. It is also imperative to consider issues of market dominance and the potential
4 for Sprint, either alone or in concert with other carriers, to successfully exert market power once
5 Sprint is released from price caps.

6 It is important to keep in mind that simply because an incumbent faces a single or a few
7 competitors who are effective in winning customers away does not mean that the market is
8 effectively competitive. The primary economic benefit of truly effective competition is that no
9 single firm or group of firms has the ability to profitably sustain price increases to any significant
10 degree above cost. I believe this is a relevant factor for the Commission to consider in its
11 deliberations.

12 **Q. WHAT ARE THE STATUTORY CRITERIA FOR EVALUATING "EFFECTIVE**
13 **COMPETITION?"**

14 A. Section 386.020.13, RSMo 2000 provides the following direction:

15 (13) "Effective competition" shall be determined by the commission based on:

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

18 (b) The extent to which the services of alternative providers are functionally
19 equivalent or substitutable at comparable rates, terms and conditions;

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

23 (d) Existing economic or regulatory barriers to entry; and

1 (e) Any other factors deemed relevant by the commission and necessary to
2 implement the purposes and policies of chapter 392, RSMo.

3 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS ON THE STATUS OF**
4 **COMPETITION IN SPRINT EXCHANGES IN TERMS OF THE CRITERIA FOR**
5 **"EFFECTIVE COMPETITION" LISTED IN SECTION 386.020(13), RSMO.**

6 A. With respect to basic local service, Sprint faces a single competitor in Kearney and another single
7 competitor in Norborne that have been effective in winning customers by deploying alternative
8 facilities. However, I would not consider either market to be effectively competitive because with
9 only two firms controlling the lion's share of the market, it is still highly concentrated and does not
10 provide sufficient assurance against the exercise of market power. In the other exchanges for which
11 Sprint seeks competitive classification of basic local and associated services, the Company still
12 controls the local loop and customers are still captive to the Company or a CLEC that purchases
13 resold services or unbundled network elements from Sprint.

14 Vertical services, service packages, local operator, local directory, directory listings and
15 flat-rate or discounted local services established by the Commission to satisfy local calling needs
16 are all services which are closely associated with the basic local service. As the Commission said
17 in Case No. TO-2001-467,

18 "The Commission finds that vertical services and custom calling features are
19 inseparable from the underlying basic local service because vertical services and
20 custom calling features are not available to the customer without that customer
21 being provided the basic local service."

22 In the interexchange toll market, there are a significant number of competitors and unless
23 the evidence at hearing indicates otherwise, Public Counsel agrees that allowing a competitive
24 classification is appropriate for toll services other than those provided on a flat-rate unlimited usage

1 basis. It is my understanding that Sprint is not seeking competitive classification for access service
2 at this time. I would recommend that the Commission find that access is not effectively competitive
3 for any Sprint exchange.

4 While alternative providers compete with Sprint on a facilities basis, there is a general
5 absence of equivalent or substitutable service available to residential customers and small business
6 customers at comparable rates, terms and conditions. The prepaid service providers constitute the
7 only residential competition. However, prepaid service is designed and marketed to customers
8 with credit problems. Customers pay an exorbitant amount prepaid for local access and do not
9 receive the full range of services as available under Sprint's local service. Mandatory toll blocking
10 and restricted access to +0 and +1 calls do not make the prepaid service a functionally equivalent
11 service.

12 Cellular service is not a functionally equivalent or substitute service as set forth in Section
13 386.020.13, RSMo 2000 since it does not meet the same criteria for 911 service or access to a
14 presubscribed interexchange carrier that wireline service provides. In addition, cellular carriers
15 generally do not recognize the Commission's regulatory authority in the coverage, price, terms or
16 conditions or even reporting of wireless service offerings. Based on my experience, I believe that
17 generally consumers do not use cellular phones as a substitute for landline basic local service to
18 their home. Instead, consumers primarily rely on cellular as a mobile connection to the network and
19 as a means to avoid toll charges for placing calls outside the landline local calling scope. Neither
20 purpose is an attribute of basic local service. For these reasons, I believe it would be inappropriate
21 and contrary to the Commission's charge to give the existence of cellular service much weight in its
22 determination of effective competition for basic local service.

1 Email cannot reasonably be classified as the functional equivalent of voice communication.
2 Voice telephoning over the internet suffers from poor signal quality and is not a functional
3 equivalent.

4 Section 392.185, RSMo. sets out the purposes of Chapter 392, RSMo. The level of
5 competition in the Sprint exchanges has not fulfilled or advanced meaningfully these goals.
6 Sprint's price cap regulatory scheme has as its purpose flexibility for downward pricing to meet
7 competition. This has not occurred to any significant degree. In fact, rates for many services
8 including basic local service have increased under the pricing options available to Sprint under the
9 price cap statute.

10 After consideration of the data presented here about CLECs and their operations in Sprint
11 exchanges, and the other considerations relevant to effective competition, I believe that the
12 Commission should decline to declare Sprint basic local and associated services competitive.

13 **Q. HAVE YOU PERFORMED ANY ANALYSIS THAT CAN ASSIST THE**
14 **COMMISSION DETERMINE WHETHER EFFECTIVE COMPETITION EXISTS IN**
15 **SPRINT'S EXCHANGES?**

16 A. Yes. I considered information from a number of sources, including information regarding access
17 line counts provided by Sprint and CLECs in response to data requests, Annual Reports, and
18 Central Office Code Assignment data available from the NANPA webpage.

19 **Q. PLEASE DESCRIBE YOUR ANALYSIS.**

20 A. Although a few competitive basic local service providers have met with some success in acquiring
21 market share in some exchanges, the local service market remains highly concentrated and Sprint

1 continues to monopolize the market on a statewide basis. In total, an estimate of Sprint's share of
2 statewide access lines is ** _____ ** dwarfing the
3 combined total of its CLEC competitors. For this analysis, competitor totals include prepaid,
4 regular resale, UNE, UNE-P, and CLEC switched service as estimated based on 2002 annual line
5 count information reported by Sprint, Fidelity and Green Hills and information from Sprint's
6 testimony regarding ExOp. On an exchange basis Sprint's market share of total access lines is as
7 follows:

8 ** _____
9 _____
10 _____
11 _____
12 _____
13 _____ **

14

1 ICG TELECOM GROUP - MO

2 KMC TELECOM III, INC. - MO

3 KMC TELECOM V, INC.-MO

4 LEVEL 3 COMMUNICATIONS, LLC – MO

5 Of these, ICG currently has a pending interconnection and resale agreement with Sprint. Level 3
6 reported serving no access lines in its 2002 Annual Report. KMC Telecom III's CLEC entities
7 reported 0 revenue and KMC Telecom V reported serving no access lines on a retail basis with all
8 revenue generated from the sale of wholesale data ports in its 2002 Annual Report. This means that
9 Sprint faces only three landline basic local service providers that currently provide fully facilities
10 based service. ExOp has the capability and is serving in Kearney. Green Hills has the capability
11 and is serving in Norborne. Fidelity has the capability to serve in 6 exchanges, but is currently only
12 offering service in Rolla and St. Roberts and actually serves customers in only the Rolla exchange.

13 The extremely limited number of fully facilities landline competitors on a statewide and
14 intraexchange providing basic local service strongly suggests that effective competition does not
15 exist in Sprint's local exchanges.

16 In my investigation and analysis I have also reviewed CLEC data request responses, CLEC
17 tariffs and ALEC annual reports. Comparing this data to Sprint witness John Idoux's list of 25
18 carriers that Sprint claims are actually providing some level of service in Sprint's exchanges
19 provides a different picture than the one presented by Sprint. The data raises concerns about the
20 adequacy of those services as well as the accuracy of Sprint's claim.

1 Attachment 4 presents the results of my investigation into the CLECs offering service. I
2 discovered that in some cases the CLECs identified as providing service in Missouri are not actually
3 providing service. Some CLECs listed are piece parts of larger entities due to mergers or
4 acquisitions. Some “providers” on the list have a canceled certificate of service authority. Others
5 CLECs do not appear to have tariffs that apply for Sprint exchanges.

6 Based on the discrepancies between the providers claimed by Sprint and those that actually
7 provide service, and provide in compliance with tariffs, the Commission should reject the notion
8 that competition is as prevalent as claimed in Sprint’s testimony.

9 Mr. Idoux states in his testimony that he placed calls to carriers listed in local directories to
10 verify that they served certain communities. Based on my research, it appears that either carriers
11 are providing contrary to tariff, the carrier erred in responding to his inquiry or to my data requests
12 or that there was simply a misunderstanding during his contact with the CLECs regarding the
13 carrier that serves in Sprint’s portion of the territory. For example, I contacted Max-Tel and spoke
14 to Marie employee #275, who checked 2 numbers for the Sprint Norborne area and said that
15 although they generally provide in Sprint territory, service is not actually available for those
16 Norborne numbers. I also contacted Metro Teleconnect Companies since the Company’s tariff did
17 not appear to cover Sprint’s Norborne exchange. Natasha, a service rep, told me that such a
18 discrepancy is sometimes possible because service reps have access to only limited information at
19 sign-up; a service order verification occurs at a later stage than the initial contact with the customer.

20 Regardless of the specific cause of the differences, Sprint relies on these two carriers to seek
21 competitive classification in each of the 5 exchanges. I believe there are significant questions
22 remaining about the number of competitors Sprint faces in these exchanges.

1 Attachment 6 also highlights that Sprint faces little competition from resellers of traditional
2 basic local service. In fact, Sprint appears in three of the five exchanges to face a lone facilities-
3 based CLEC with almost, if not all, of the other CLECs providing prepaid service. Prepaid
4 providers offer an inferior service at a substantially higher price than Sprint's basic local service.
5 Prepaid carriers serve a niche market of primarily residential customers and do not provide the
6 equivalent of Sprint's basic local service either in terms of service, price, or other terms and
7 conditions. Prepaid companies generally block toll, access to operator and to directory assistance
8 and do not offer Lifeline service for a discounted rate to low-income consumers. Prepaid offerings
9 cannot be relied upon to provide price discipline for Sprint's basic local service once the Company
10 is no longer constrained by price cap regulation. For this reason prepaid offerings should be
11 rejected as demonstrative of effective competition for basic local and associated services. In
12 response to SWBT's attempts to use prepaid offerings as evidence of effective competition in Case
13 No. TO-2001-467, the Commission stated;

14 The Commission was not persuaded by Southwestern Bell's evidence of prepaid
15 basic local service as effective competition. Prepaid basic local service requires a
16 customer to pay rates that are many times higher than Southwestern Bell's basic
17 local rate. The increased rate is usually attributable to the customers problematic
18 credit history. The evidence showed that Southwestern Bell is not currently
19 providing prepaid service in Missouri.

20 **Q. BASED ON YOUR ANALYSIS OF THE STATE OF COMPETITION IN**
21 **MISSOURI, WHAT ARE YOUR CONCLUSIONS REGARDING EFFECTIVE**
22 **COMPETITION FOR BASIC LOCALSERVICE?**

23 **A.** The loop continues to be a bottleneck facility primarily controlled by Sprint. The HHI analysis I
24 conducted on an exchange-by-exchange basis shows that the market for basic local services is
25 highly concentrated and not subject to effective competition.

1 | **Q. WHAT ARE THE IMPLICATIONS OF YOUR STUDY ON SERVICES OTHER**
2 | **THAN BASIC LOCAL SERVICE?**

3 | A. The competitive status of vertical services and class features depends on and is intertwined with the
4 | status of competition for basic local service. A customer must have basic local service to obtain
5 | vertical services; those services are not bought independently, and like basic local, should not be
6 | designated as subject to effective competition.

7 | The data tells me that effective competition does not exist in any Sprint exchange. For
8 | basic local service and the associated services such as custom calling features, operator assistance,
9 | local directory assistance. There is not an exchange in the state where Sprint or Sprint in
10 | conjunction with only 1 other competitor does not enjoy market dominance by virtue of the control
11 | of the loop.

12 | The toll market for per minute and block of time plans is more ripe and subject to effective
13 | competition as evidenced by the number of IXC providers, and the aggressive marketing of that
14 | measured type of toll service.

15 | **Q. SPRINT WITNESS IDOUX HAS DIVIDED THE SERVICES HE DISCUSSES**
16 | **INTO 3 PRIMARY GROUPS. PLEASE SUMMARIZE PUBLIC COUNSEL'S**
17 | **FINDINGS ON THE STATUS OF COMPETITION OR ITS POSITION ON EACH**
18 | **OF THESE CATEGORIES.**

19 | A. Residential/Business Access Line Switched Services

20 | Public Counsel has serious concerns regarding Sprint's characterization of the competitiveness of
21 | basic local residential and business offerings. The statewide and individual basic exchange markets

1 are not subject to effective competition at this time and such services should not receive a
2 competitive designation. Public Counsel opposes a competitive classification for (1) Local
3 Exchange Service, (2) Local Measured Service, (3) EAS, (4) ISDN, PRI and PRI I. Public
4 Counsel does not take a position on (5) Payphone, (6) PBX related services at this time.

5 Line Related Services

6 At this time, Public Counsel opposes a competitive classification for vertical or custom calling
7 features, directory listings and any bundled groups of services or service packages that contain even
8 one noncompetitive component. The classification of these services should be linked to the
9 classification of the “access line service.”

10 MCA and Busy Line Verification

11 At this time, Public Counsel opposes a competitive classification for Busy Line Verification and
12 believes that its classification should be linked to the classification of the “access line service.” At
13 this time, Public Counsel opposes a competitive designation for MCA service regardless of the
14 classification of the “access line service.”

15 **Q. WHAT IS YOUR POSITION REGARDING THE CLASSIFICATION OF**
16 **SERVICES THAT MARK HARPER PRESENTS?**

17 A. Interexchange and Toll Service

18 Public Counsel could support a competitive classification for interexchange services and toll service
19 that do not involve flat-rate unlimited usage, such as MCA and unlimited toll calling plans.

20

1 Local Operator and Local Directory Service

2 These services are not subject to effective competition. Because Sprint still dominates the local
3 service in each exchange, most calls to directory assistance and to the local operator are directed to
4 Sprint or in agreement with Sprint they may be sent to another carrier.

5 Other Services

6 Public Counsel takes no position at this time concerning the existence of effective competition for
7 those remaining services discussed by Mr. Harper. Therefore, Public Counsel takes no position on
8 reclassification under Section 392.245.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 A. Yes, it does.