

**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 POST HEARING BRIEF

INTRODUCTION

In this case, the Commission should find that effective competition exists for Sprint Missouri Inc ("Sprint") core local access line residential and business services in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges as well as access line-related services. Further, the Commission should find that effective competition exists across all Sprint's exchanges for CENTREX services, IntraLATA Private Line services, ATM and Frame Relay services, IntraLATA MTS services, IntraLATA WATS services and 800 services, Line Information Database Access Services and Speed Dial. Substantial evidence of effective competition exists in the record for each one of the exchanges and each one of the services.

PROCEDURAL BACKGROUND

This case was established on February 14, 2003 in response to the Staff of the Missouri Public Service Commission's ("Staff's") Motion to Open Case. In its motion, Staff asked the Commission to investigate the status of competition in Sprint's exchanges pursuant to Section 392.245.5. Under that section, the Commission must determine whether effective competition exists for Sprint's services within Sprint's exchanges in which an alternative local exchange company has been certified. The Commission is required to make this determination no later than five years after the certification of the alternative provider.

Sprint, ExOp of Missouri, Inc. d/b/a/ Unite ("ExOp") Fidelity Communications Services 1, Inc. ("Fidelity"), Green Hills Telecommunications Services ("Green Hills"), AT&T Communications of the Southwest, Inc. ("AT&T"), MCI WorldCom Communications, Inc. ("Worldcom"), Staff, the Office the Public Counsel ("OPC"), Southwestern Bell Telephone Company d/b/a/ SBC Missouri ("SBC") were made parties to the case. The Commission held an evidentiary hearing beginning on July 7, 2003.

FACTUAL BACKGROUND

Sprint is a large local exchange company subject to price cap regulation under Section 392.245. 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, 1998.¹ An additional 59 CLECs have been certified and/or have approved interconnection agreements in Sprint's territory and at least 25 CLECs have provided some level of service in Sprint's territory since December 1998.² In addition, there are 15 wireless providers that have interconnection agreements with Sprint and thus 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 1999.³ Therefore, no alternative local exchange company has actually provided basic local service in any Sprint exchange for a period of five years.

In this case, Sprint seeks a finding of effective competition for residential and business core access line and access line related services in five of its 80 exchanges. These exchanges are: Norborne, Kearney, Rolla, Platte City and St. Robert. Core access line and line related

¹ Idoux, Direct at p. 4, l. 129

² Idoux, Direct at p. 11, l. 14 – p. 13, ll.

³ Idoux, Direct, p. 4, footnote 1.

services cover 19 service categories from Sprint's General Exchange Tariff. Listed in the order they are contained in the tariff, the services are as follows:

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

Of these services, local exchange service, local measured service, extension service, extended area service and PBX services are considered core access line service and will be addressed under Issues 1 and 3 on the Issues list filed by the parties. Sprint Solutions, busy line verification service, customer calling services, express touch and network packages are considered access line-related service and addressed under Issues 2 and 4. Payphone services, directory assistance, operator services, ISDN services and MCA services are addressed separately under Issues 14, 15, 16, 17 and 18 respectively.

Sprint is also seeking a finding that several of its services offered across its 80 exchanges are subject to effective competition. These services include:

General Exchange Tariff

- Asynchronous Transfer Mode (ATM);
- Frame Relay Service;
- Private Line Mileage;
- Directory Assistance;

- National Directory Assistance;
- Directory Assistance Call Completion;
- Local Operator Assistance;
- Custom Calling Service: Speed Calling 8 and Speed Calling 30;
- Custom Calling Service: Repeat Dialing (unlimited) and Repeat Dial per Activation; and
- CENTREX – All services.

Message Toll Service (MTS) Tariff

All services

- Two Point Service;
- Service Charges;
- Conference Service;
- Special Reserved Charge;
- Outside Calling Area;
- Sprint Sense Local Toll™;
- Business Sense Local Toll™; and
- 800-210 Local Toll Calling Plan.

Private Line Tariff

All services

- IntraLATA Interexchange Type 102;
- Sub-Voice Grade Service Series 200;
- Voice Grade Service Series 300 and 400;
- Private Line Service;
- Signaling; and
- Foreign Exchange Service.

Wide Area Telephone Service (WATS) Tariff

All services

- 800 IntraLATA Access Line;
- 800 IntraLATA Usage;
- Outward WATS;
- Installation; and
- Opportunity 800™.

Access Tariff

- Common Channel Signaling/SS7 – LIBD services.

LEGAL BACKGROUND

The Commission has previously determined whether effective competition existed for services offered by 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").⁴ 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.⁵ 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. With respect to Sprint's requests, Sprint has come forth with substantial evidence of effective competition. There is no evidence in this case as to the presence or the lack of effective competition with respect to services not subject to Sprint's requests. Therefore, the only finding the Commission can make for services outside of Sprint's requests is that the record does not contain evidence of the presence or the absence of effective competition.

In the SBC competition case, the Commission also addressed the issue of what constitutes effective competition. In that case, the Commission held that it will 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;

⁴ Case No T0-2001-467.

⁵ Ex. 20, Report and Order, issued December 7, 2001 at pp. 7-9.

- (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;
- (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. Further, the Commission found that core access line and access line related services were subject to effective competition in several of SBC's exchanges. Finally, the Commission found that SBC's LIBD services were subject to effective competition across SBC's exchanges and that intraLATA private line/dedicated services, intraLATA Toll services, WATS and 800 service were competitive based on an earlier grant of transitional competitive status prior to SBC entering price cap.

ISSUES PRESENTED BY THE PARTIES

On June 27, 2003, the parties filed an Issues List. The Issues List contained 20 Issues.

Each issue will be addressed in this brief.

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?

The Commission should find that Sprint's core access line services offered in Kearney, Norborne, Rolla, Platte City and St. Robert exchange are subject to effective competition and therefore should be classified as competitive. 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. While this is true of each exchange, Sprint will address each exchange separately.

(A) **THE NORBORNE EXCHANGE**

In the Norborne exchange, there are a little under 600 land based access lines. Of the approximately 600 lines, Sprint serves approximately 191 of them. Since 1998, Sprint has experienced over a 60 percent reduction in the lines served.⁶

There are nine competitors offering local exchange companies in Norborne. They are:

1. EZtalk;
2. Green Hills Telecommunication Services ("Green Hills");
3. Southwest Teleconnect;
4. 1-800-Reconnex;
5. 877 Ring Again;
6. Max-Tel Communications;
7. Metro Teleconnect;
8. State Discount Telephone; and
9. Universal Telecom⁷

Of these nine (9) carriers, Green Hills operates as a 100 percent facilities based provider⁸ Of all the carriers operating in Norborne, Sprint included, Green Hills is by far the provider who serves the majority of the customers in Norborne.⁹ Green Hills is an Eligible Telecommunications Carrier ("ETC") under the Federal telecommunications Act. As such, Green Hill must be able to serve any customer who requests services within the Norborne exchange.

The services offered by Green Hills are the same as the services offered by Sprint at generally lower prices. The record contains the following comparison:¹⁰

⁶ Idoux, Proprietary Direct at p. 23, l. 9- 11. Sprint did not specify the exact percent as that information is proprietary. However, if the Commission reviews the record citation, an exact percentage is available.

⁷ Idoux, Direct at p. 22, l. 1-19 and JRI-8

⁸ Idoux, Direct at p. 24, l. 9-16.

⁹ For a precise number of access lines served by Green hills, see Idoux Direct, p. 24, l. 9- p. 25, l. 1.

¹⁰ Idoux, Direct at p. 25, l. 11- p.26, l.1

Service	Sprint Resident	Green Hills Resident	Diff.	Sprint Business	Green Hills Business	Diff.
Local Phone Service	\$11.53	\$6.50	44%	\$17.31	\$13.00	25%
Call Waiting	\$4.30	\$2.25	48%	\$3.95	\$2.25	43%
Call Forwarding	\$2.70	\$1.00	63%	\$5.00	\$1.00	80%
Three Way Calling	\$1.95	\$1.00	49%	\$2.00	\$1.00	50%
Speed Calling 8	\$1.95	\$1.00	49%	\$2.40	\$1.00	58%
Speed Calling 30	\$5.70	\$2.25	61%	\$6.00	\$2.25	63%
Hot Line/Warm Line	\$3.50	\$2.25	36%	\$4.60	\$2.25	51%
Call Forward – Busy	\$1.00	\$1.00	0%	\$1.00	\$1.00	0%
Call Forward No Answer	\$1.50	\$1.00	33%	\$1.50	\$1.00	33%
Automatic Callback	\$4.00	\$2.25	44%	\$4.00	\$2.25	44%
Automatic Recall	\$4.00	\$2.25	44%	\$4.50	\$2.25	50%
Caller ID Calling Number	\$8.00	\$4.00	50%	\$8.00	\$4.00	50%
Call ID Name/Number	\$8.00	\$6.00	25%	\$9.50	\$6.00	37%
Distinctive Ringing	\$4.00	\$2.25	44%	\$5.35	\$2.25	58%
Selective Call Acceptance	\$5.00	\$2.25	55%	\$6.00	\$2.25	63%
Selective Call Rejection	\$4.65	\$2.25	52%	\$5.00	\$2.25	55%
Directory: Addl. Listing	\$1.95	\$1.00	49%	\$2.50	\$1.00	60%
Directory: Alt. Listing	\$1.95	\$1.00	49%	\$2.50	\$1.00	60%
Directory: Non-published	\$1.90	\$1.00	47%	\$1.90	\$1.00	47%

As Green Hills provides service, over its own facilities, throughout the Norborne exchange, there are no regulatory or economic barriers. Further, given that 25 other traditional land line competitors have the certificates and/or agreements necessary to enter the market tomorrow if they wish, there are no regulatory barriers. Finally, as Green Hill's services are available throughout the Norborne exchange and used by the overwhelming majority of consumers in the exchange, finding effective competition within the Norborne exchange 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 Norborne exchange.

The record contains substantial evidence of effective competition in the Norborne exchange and the Commission should find effective competition exists and designate Sprint's services as competitive.

(B) THE KEARNEY EXCHANGE

In Kearney, there are a little over 6000 land based access lines. Of the approximately 6000 lines, Sprint served less than 4000 in 2002.¹¹ Sprint's main competitor in Kearney, ExOp, claims to have successfully attracted 60% of all residential customers and 85% of business customers in Kearney.¹²

There are five competitors offering local exchange carriers in Kearney. They are:

1. EZtalk;
2. 877 Ring Again;
3. Max-Tel Communications;
4. State Telephone; and
5. ExOp¹³

Of these five (5) carriers, ExOp is a 100 percent facilities based¹⁴ ExOp is also an ETC under the Federal Telecommunications Act. As such, ExOp must be able to serve any customer who request services within the Kearney exchange.

The services offered by ExOp are the same services offered by Sprint. The record contains the following comparison:¹⁵

Service	Sprint Residential Rate	Unite Residential Rate	Difference
Local Phone Service with Metro Calling	\$25.27	\$21.99	13%
Additional Line with Metro Calling	\$25.27	\$20.34	20%
Value Pack	N/A	\$11.00	6%
Caller ID / Name & Number	\$8.00	\$7.50	19%
Caller ID / Number Only	\$8.00	\$6.50	-11%

¹¹ Idoux, Proprietary Direct at p. 29, l. 12-13. The cite also reflects the exact number for 2002 which is proprietary.

¹² Idoux, Direct at p. 29, l.69- 13. Sprint did not specify the exact percent in the brief as that information is proprietary. However, the cite in the record provides an exact percentage is available.

¹³ Idoux, Direct at p. 28, l. 14- p. 29, l.4.

¹⁴ Idoux, Direct at p. 28, l. 14-23.

¹⁵ Idoux, Direct at p. 33, l 7 - p. 34 l. 1.

Service	Sprint Residential Rate	Unite Residential Rate	Difference
Call Forwarding	\$2.70	\$3.00	
Call Waiting	\$4.30	\$3.00	30%
3-Way Calling	\$1.95	\$1.50	23%
Speed Dial	\$1.95	\$1.50	23%
Call Return	\$4.00	\$3.00	25%
Auto Redial	\$4.00	\$3.00	25%
Teen Ring	\$4.30	\$3.25	24%
Non-Published Number	\$1.90	\$1.60	16%

The record also reflects that ExOp offers four bundled packages containing services not currently offered by Sprint. ExOp's bundled packages include:

- (1) Bronze -- \$49.95 includes local telephone service and digital cable,
- (2) Silver -- \$79.95 includes local phone service with features, digital cable, 256k DSL internet connection,
- (3) Gold -- \$99.95 includes local phone service with five features, digital cable with movie channels, and 384k DSL internet connection; and
- (4) Platinum -- \$129.95 includes local phone service with ten features and voicemail, digital cable with movie channels, and 512k internet connection.¹⁶

As ExOp provides service, over its own facilities, throughout the Kearney exchange, there are no regulatory or economic barriers. Further, given that 25 other traditional land line competitors have the certificates and/or agreement necessary to enter the market tomorrow if they wish, there clearly are no regulatory barriers. Finally, as ExOp's services are available throughout the Kearney exchange and offer the same services in addition to enhanced additional services, finding effective competition within the Kearney exchange 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 Kearney exchange.

¹⁶ Idoux, Direct at p. 33, 2-12.

Clearly the record contains substantial evidence of effective competition in the Kearney exchange and the Commission should find effective competition exists and designate Sprint's services as competitive.

(C) THE ROLLA EXCHANGE

In the Rolla exchange, there are a little over 20,000 land based access lines. Of the approximately 20,000 lines, Sprint served 18,576 in 2001 and a substantially lower number in 2002.¹⁷ Since 1998, Sprint has experienced over a 20 percent reduction in the lines served.¹⁸

There are nine competitors offering local exchange carriers in Rolla. They are:

1. EZtalk;
2. Fidelity;
3. Buy-Tel Communications;
4. 1-800-Reconnex;
5. 877 Ring Again;
6. Max-Tel Communications;
7. Metro Teleconnect;
8. State Discount Telephone; and
9. Universal Telecom¹⁹

Of these nine (9) carriers, Fidelity operates as a near-100 percent facilities based provider²⁰ Fidelity is an ETC under the Federal Telecommunications Act. As such, Fidelity must be able to serve any customer who requests services within the Rolla exchange

The services offered by Fidelity are the same as the service offered by Sprint. The record contains the following comparison:²¹

¹⁷ Idoux, Direct at p. 41, l. 1-2. The cite also reflects the exact number for 2002 which is proprietary.
¹⁸ Idoux, Proprietary Direct at p. 41, l.9- 12. Sprint did not specify the exact percent in the brief as that information is proprietary. However, the record cite provides an exact percentage is available.
¹⁹ Idoux, Direct at p. 40, l. 4-19 and JRI-12
²⁰ Idoux, Direct at p. 42, l. 8-12.
²¹ Idoux, Direct at p. 43, l. 11 - p. 44, l. 1.

Service	Sprint Resident	Fidelity Resident	Diff.	Sprint Business	Fidelity Business	Diff.
Local Phone Service:	\$13.72	\$14.00		\$21.70	\$23.00	
SLC & LNP Surcharge	\$6.48	N/A	31%	\$9.68	N/A	27%
Call Waiting	\$4.30	\$3.50	19%	\$3.95	\$3.50	11%
Call Forwarding	\$2.70	\$2.00	26%	\$5.00	\$5.25	5%
Three Way Calling	\$1.95	\$2.00	-3%	\$2.00	\$2.00	0%
Speed Calling 8	\$1.95	\$1.50	23%	\$2.40	\$2.10	12%
Speed Calling 30	\$5.70	\$5.70	0%	\$6.00	\$7.90	-32%
Hot Line/Warm Line	\$3.50	\$3.25	7%	\$4.60	\$4.60	0%
Call Forward – Busy	\$1.00	\$1.00	0%	\$1.00	\$1.00	0%
Call Forward No Answer	\$1.50	\$1.50	0%	\$1.50	\$1.50	0%
Automatic Callback	\$4.00	\$3.25	19%	\$4.00	\$3.75	6%
Automatic Recall	\$4.00	\$3.50	12%	\$4.50	\$4.50	0%
Caller ID Calling Number	\$8.00	\$6.50	19%	\$8.00	\$7.95	1%
Call ID Name/Number	\$8.00	\$8.00	0%	\$9.50	\$9.95	-5%
Distinctive Ringing	\$4.00	\$3.25	19%	\$5.35	\$4.50	16%
Selective Call Acceptance	\$5.00	\$3.25	35%	\$6.00	\$4.50	25%
Selective Call Rejection	\$4.65	\$3.25	30%	\$5.00	\$4.50	10%
Directory: Addl. Listing	\$1.95	\$1.50	23%	\$2.50	\$2.10	16%
Directory: Alt. Listing	\$1.95	\$1.60	18%	\$2.50	\$2.10	16%
Directory: Non-published	\$1.90	\$1.45	24%	\$1.90	\$1.45	24%

Further, Fidelity has six bundled offerings that include local, long distance, cable and data services. These bundled packages include:

1. Bare Essentials -- \$29.95 per month, includes local phone service, reduced long distance rate and cable,
2. Economy -- \$53.70 per month, includes local phone service with features, reduced long distance rate and extended basic cable.
3. Nearly Perfect -- \$75.15 includes local phone service with four features, reduce long distance rate, unlimited dial up services and digital cable with movie channels.
4. Just Perfect – \$93.15 per month, includes local phone service with four features, reduced long distance rates, digital cable with movie channels and 384k cable modem internet connection.
5. Fast Track -- \$72.95 per month, includes local phone service with eight features and voicemail, second telephone line, reduced long distance rates and 384K Cable Modem internet connection.
6. Easy living -- \$30.00 per month, includes local telephone service with six features, second telephone line and reduced long distance rates.²²

²² Idoux Direct at JRI 13.

As Fidelity provides service, over its own facilities, throughout the Rolla exchange, there are no regulatory or economic barriers. Further, given that 25 other traditional land line competitors have the certificates and/or agreements necessary to enter the market tomorrow if they wish, there clearly are no regulatory barriers. Finally, as Fidelity's services are available throughout the Rolla exchange and Fidelity's products include not only the same services, but additional enhanced service offerings, finding effective competition within the Rolla exchange 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 Rolla exchange.

Clearly the record contains substantial evidence of effective competition in the Rolla exchange and the Commission should find effective competition exists and designate Sprint's services as competitive.

(D) THE PLATTE CITY EXCHANGE

In the Platte City exchange, there are five competitors offering local exchange services in Platte City. They are:

1. EZtalk
2. 877 Ring Again;
3. Max-Tel Communications;
4. State Telephone; and
5. ExOp²³

Of these five (5) carriers, ExOp is an 100 percent facilities based landline alternative provider. While ExOp just recently enter the exchange, during the first six months of 2003, Sprint lost 116 access lines.²⁴ This represents a six percent annualized decrease in access lines

²³ Idoux, Direct at p. 28, l. 14- p. 29, l.4.

²⁴ Idoux Surrebuttal at 17, l. 1-7.

for Sprint.²⁵ As in Kearney, ExOp is an ETC and therefore, advertises and offers its services throughout the Platte City exchange.²⁶ Further, ExOp recently won away from Sprint the right to serve the City of Platte City.²⁷

ExOp offers the same services at comparable, and in most cases lower rates. The record provides the following comparison:²⁸

Service	Sprint Residential Rate	Unite Residential Rate	Difference
Local Phone Service with Metro Calling	\$25.27	\$21.99	13%
Additional Line with Metro Calling	\$25.27	\$20.34	20%
Value Pack	N/A	\$11.00	6%
Caller ID / Name & Number	\$8.00	\$7.50	19%
Caller ID / Number Only	\$8.00	\$6.50	-11%
Call Forwarding	\$2.70	\$3.00	
Call Waiting	\$4.30	\$3.00	30%
3-Way Calling	\$1.95	\$1.50	23%
Speed Dial	\$1.95	\$1.50	23%
Call Return	\$4.00	\$3.00	25%
Auto Redial	\$4.00	\$3.00	25%
Teen Ring	\$4.30	\$3.25	24%
Non-Published Number	\$1.90	\$1.60	16%

As ExOp offers service throughout the exchange, there are no regulatory or economic barriers to entry. Further, given that 25 other traditional land line competitors have the certificates and/or agreements necessary to enter the market tomorrow if they wish, there clearly are no regulatory barriers. Finally, given that ExOp's services are available throughout the Platte City exchange, are offered at attractive prices, have shown substantial growth over a short period of time and ExOp has demonstrated its ability to be a formidable competitor in an adjoining

²⁵ Idoux Surrebuttal at 17, l. 1-7.

²⁶ Idoux, Surrebuttal at 17, l 8- p. 18, l. 8.

²⁷ Idoux, Surrebuttal, at JRI-21.

²⁸ Idoux Surrebuttal at p. 18, 12-16.,

exchange, finding effective competition within the Platte City exchange 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 Platte City exchange.

Clearly the record contains substantial evidence of effective competition in the Platte City exchange and the Commission should find effective competition exists and designate Sprint's services as competitive.

(E) THE ST. ROBERT EXCHANGE

In the St. Robert exchange, there are nine carriers offering local exchange services. They are:

1. EZtalk;
2. Fidelity;
3. Buy-Tel Communications;
4. 1-800-Reconnex;
5. 877 Ring Again;
6. Max-Tel Communications;
7. Metro Teleconnect;
8. State Discount Telephone; and
9. Universal Telecom²⁹

Of the nine (9) carriers, Fidelity is a facilities-based landline alternative provider. Since Fidelity has entered the St. Robert exchange, Sprint has experienced a line decrease of 186 lines which represents a annualized decrease of six percent.³⁰ In the St. Robert exchange, Fidelity operates in connection with two affiliates, Fidelity Systems Plus, a customer premise equipment provider, and Fidelity Networks, and internet service provider.³¹ Fidelity is a well know name in the St. Robert exchange, which is part of the greater Rolla community, based on its affiliates,

²⁹ Idoux, Direct at p. 46, l. 5-6.

³⁰ Idoux Surrebuttal, at p. 21, l. 1-5.

³¹ Tr. (Vol. 5) at 373, l. 25- p. 374, l. 11.

including its incumbent cable franchise in Rolla, as well as its telecommunications success in Rolla.³²

Fidelity offers the same telecommunications services in St. Robert as it as offers in Rolla.³³ The services are:

Service	Sprint Resident	Fidelity Resident	Diff.	Sprint Business	Fidelity Business	Diff.
Local Phone Service:	\$13.72	\$14.00		\$21.70	\$23.00	
SLC & LNP Surcharge	\$6.48	N/A	31%	\$9.68	N/A	27%
Call Waiting	\$4.30	\$3.50	19%	\$3.95	\$3.50	11%
Call Forwarding	\$2.70	\$2.00	26%	\$5.00	\$5.25	5%
Three Way Calling	\$1.95	\$2.00	-3%	\$2.00	\$2.00	0%
Speed Calling 8	\$1.95	\$1.50	23%	\$2.40	\$2.10	12%
Speed Calling 30	\$5.70	\$5.70	0%	\$6.00	\$7.90	-32%
Hot Line/Warm Line	\$3.50	\$3.25	7%	\$4.60	\$4.60	0%
Call Forward – Busy	\$1.00	\$1.00	0%	\$1.00	\$1.00	0%
Call Forward No Answer	\$1.50	\$1.50	0%	\$1.50	\$1.50	0%
Automatic Callback	\$4.00	\$3.25	19%	\$4.00	\$3.75	6%
Automatic Recall	\$4.00	\$3.50	12%	\$4.50	\$4.50	0%
Caller ID Calling Number	\$8.00	\$6.50	19%	\$8.00	\$7.95	1%
Call ID Name/Number	\$8.00	\$8.00	0%	\$9.50	\$9.95	-5%
Distinctive Ringing	\$4.00	\$3.25	19%	\$5.35	\$4.50	16%
Selective Call Acceptance	\$5.00	\$3.25	35%	\$6.00	\$4.50	25%
Selective Call Rejection	\$4.65	\$3.25	30%	\$5.00	\$4.50	10%
Directory: Addl. Listing	\$1.95	\$1.50	23%	\$2.50	\$2.10	16%
Directory: Alt. Listing	\$1.95	\$1.60	18%	\$2.50	\$2.10	16%
Directory: Non-published	\$1.90	\$1.45	24%	\$1.90	\$1.45	24%

Through a combination of its own facilities and unbundled network elements or resale, Fidelity has access to under its interconnection agreement with Sprint, Fidelity can offer service throughout the exchange.³⁴ Therefore, Fidelity faces no regulatory or economic barriers to entry. Further, given that 25 other traditional land line competitors have the certificates and/or agreements necessary to enter the market tomorrow if they wish, there clearly are no regulatory barriers. Finally, as Fidelity can deliver its services throughout the exchange, has a well known

³² Idoux Surrebuttal, at p. 21, l. 5-15.

³³ Idoux Surrebuttal at p. 47, l. 6-8.

³⁴ Tr. (Vol. 5) at p. 372, l. 18 – p. 373 l. 2.

reputation, markets in connection with several affiliates and has proven to be a formidable competitor in an adjoining exchange, finding effective competition within the St. Robert exchange 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 St. Robert exchange.

Clearly the record contains substantial evidence of effective competition in the St. Robert exchange and the Commission should find effective competition exists and designate Sprint's evidence.

(F) OTHER FACTORS

The presence of wireless providers

Some parties argued that the services offered by wireless providers should not be considered by the Commission. While Sprint clearly has not directly relied on the presence of multiple wireless providers in each exchange subject to Sprint's requests, their presence is a relevant consideration. Wireless providers offer substitutable services. Therefore, they fit within the consideration guidelines established in the definition of effective competition in Section 386.020 (13) RSMo. Substitutable services are services that have the ability, actual or potential, to take away significant amounts of business from each other.³⁵ To be substitutable, the services do not need to be functional equivalent or identical.³⁶ They merely have to satisfy the same demand. There is no question that a portion of the market perceives wireless and wireline services to be substitutable.³⁷ Indeed, the record in this case reflects that approximately 15.5% of telephone users would opt for wireless alternatives to replace their wireline phones.³⁸ Further,

³⁵ Dr. Staihr, Surrebuttal at p. 17, l. 20 – p. 18, l. 2.

³⁶ Dr. Staihr, Surrebuttal, at p. 18, l. 4-17.

³⁷ Dr. Staihr, Surrebuttal at p. 21, l. 9-18.

³⁸ Tr. (Vol. 3) at p. 183, l. 12 – p. 184, l. 15.

the record reflects that this statistic applies to Missouri consumers.³⁹ This is a sizable portion of the market. At the same time, there is no question that a portion of the market may not see the services as substitutable.⁴⁰ However, it is not necessary for every potential buyer to see the goods as substitutable.⁴¹ Therefore, it would be wrong for the Commission to dismiss wireless competition as not a factor. Particularly in this case where Sprint established that the wireless providers are offering service in Missouri and that Missourians are using them.

(G) **OTHER ISSUES:**

Through the testimony addressing Sprint's evidence and in the course of the hearing, parties (1) challenged the conclusion that the statutory guidelines can be satisfied by the presence of one provider, and (2) asserted that a Herfindal-Hirshman Index ("HHI") market analysis must be done. Sprint responds to these issues:

(i) *Sprint's reliance on the presence of one facilities-based provider*

The statute unquestionably allows effective competition to be found based on the strength of one competitor. The first sentence of 392.245.5 provides:

Each telecommunications service of an incumbent local telecommunications company **shall** be classified as competitive in any exchange in which at least **one alternative local exchange company** has been certified under section 392.455 and has provided basic local telecommunications service in that exchange for at least five years, unless the Commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such service. (Emphasis Added)

As the above sentence reflects, and as this Commission has previously ruled, the Commission is required to find effective competition based on the presence of one alternative provider unless some party comes forth and demonstrates that effective competition does not

³⁹ Tr. (Vol. 3) at p. 183, l. 12 – p. 184, l. 15.

⁴⁰ Dr Staihr, Surrebuttal at p. 21, l. 9-18

⁴¹ Dr Staihr, Surrebuttal at p. 21, l. 9-18

exist.⁴² While this case is not governed by the second sentence in Section 392.455, addressing an investigation prior to an alternative provider operating for five years, it is clear the statute does not require the presence of multiple providers before effective competition can be found.

Further, in this case, it is clear that the facilities based competitors upon which Sprint primarily rely establish effective competition within the exchanges as they serve the entire exchange, or have the capability to, offer the exact same services at lower prices and often with enhanced or additional features, and have proven records of being able to win Sprint customers. Without a doubt, the facilities based providers upon whom Sprint's primarily rely will serve as controlling factors on pricing. Therefore, not only does the statute clearly not require the presence of multiple providers, the facts of this case clearly do not require the presence of multiple providers before the Commission can find effective competition.

(ii) *The HHI market analysis study is not relevant to the Commission's determinations under Section 392.245.5 RSMo*

OPC's witness, Ms Meisenhiemer, testified that because HHI analysis demonstrates that the exchanges subject to Sprint's requests are highly concentrated among few participants, the Commission cannot find effective competition. OPC's position reflects an incorrect understanding of the proper use and interpretations of the HHI analysis and is contrary to the applicable statute. First, it should be noted that the HHI analysis measures market concentration, not competition or market power. The relationship between market concentration and the ability to exercise market power can be established only when there is an ability to restrict output.⁴³ In Missouri, Sprint cannot restrict its output as it is a carrier of last resort offering a tariffed service.⁴⁴ Therefore, there is no value offered by an HHI analysis in this case.

⁴² Ex 20, SBC Decision, at p. 8.

⁴³ Dr. Staihr Surrebuttal at pp 9, l. 8- p. 13, l. 11; p.16, l. 21-22.

⁴⁴ Dr. Staihr Surrebuttal at p. 12, 1-8.

Further, as mentioned above, the statute clearly allows and intends that effective competition can be found based on the presence of one competitor. As the HHI analysis is designed to yield positive results only in the presence of multiple providers each having secured a sizable share of the market, it is not consistent with the applicable Missouri statute. Indeed, as pointed out by Sprint's witness, Dr. Staihr, if one were to apply the HHI analysis as recommended by OPC to the highly competitive long distance market in 1998-99, that market would fall short of being competitive.⁴⁵ Clearly, if the HHI yielded results that reflect lack of competition in the most competitive telecommunications market, the application of the analysis is seriously flawed. Such a flaw would be magnified if the Commission were to hold Sprint to a standard that could not be reached in the competitive long distance market, particularly in the mostly rural exchanges served by Sprint.

(H) CONCLUSION

Based on the evidence discussed under subsection (A)-(G) of this issue, the Commission should find that residential core access lines in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges should be classified 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?

The analysis provided in response to Issue No 1 also applies to the access line related services. The 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

⁴⁵ Dr. Staihr, Surrebuttal, at p. 4, l. 4-22.

facilities-based providers identified in the five exchanges, as well as can be provided by the 25 other CLECs who could enter the market. Further, the Commission in the SBC case found that the same facts with regard to Southwestern Bell's residential access line services are applicable to the access line related services. As with the access line service, the Commission should find that residential core access line related services in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges should be classified 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?

The analysis provided in response to Issue No 1 applies to the business access line services. As reflected in the price charts, the same business access line services offered by Sprint are offered by each of the facilities based providers identified in the five exchanges, as well as can be provided by the 25 other CLECs who could enter the market. Further, the proprietary charts contained in Mr. Idoux's testimony reflect substantial inroads into the business market.⁴⁶ Both ExOp in Platte City and Fidelity in St. Robert have secured major business contracts when they won the respective city contracts. Finally, it is very clear in the record that while Fidelity may have recently entered the telecommunications market in St. Robert, Fidelity intends to, and has made substantial in roads into the business market. As testified by Fidelity's witness Mr. Richard Taylor

Q. (By Ms Creighton Hendricks) Okay. And you indicated that only a small portion of the exchange is covered by their own facilities, is that correct?

A. (By Mr. Taylor): That's correct.

Q. Would it be accurate to say that those facilities reach primarily business customers?

⁴⁶ See Idoux Direct, at p. 25 (Norborne), p. 23 (Kearney), and p. 42 (Rolla).

- A. That is correct. Well, that's who we're serving with them at the current time.
- Q. Such as Hotels?
- A. One.
- Q. City?
- A. One.
- Q. Does Fidelity intend to what is referred to as cherry pick, in essence, identify the most profitable business customers and serve them only?
- A. Well, those doing it call it selective marketing and those having it done to them call it cherry picking, but yes.
- Q. That's what you intend to do?
- A. At least in the foreseeable future.⁴⁷

Undoubtedly, Fidelity would love for this Commission to deny Sprint's requests for competitive designation of its business core access line and access line related services so that Fidelity could continue to "cherry pick" or acquire St. Robert's most profitable business customers while Sprint remains restrained by unequal regulatory requirements.

Based on the evidence discussed in Issue No. 1 and herein, the Commission should find that Sprint's business access line services in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges are subject to effective competition and be classified 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?

The analysis provided in response to Issue No. 1 applies to the business access line related services. The access line related services include Sprint Solutions, busy line verifications, customer calling features, express touch, network packages. As reflected in the price charts, the same business access line related services offered by Sprint are offered by each of the facilities based providers identified in the five exchanges, as well as can be provided by

⁴⁷ Tr. (Vol. 5) at p. 371, l. 4-13.

the 25 other CLECs who could enter the market. Further, the proprietary charts contained in Mr. Idoux testimony reflect substantial inroads into the business market.⁴⁸ Finally, as mentioned under Issue No. 2, both ExOp in Platte City and Fidelity in St. Robert have secured major business contracts and Fidelity's opposition to a competitive designation for business services in the St. Robert exchange is based on its desire to cherry pick the exchange's most profitable customers.

Based on the evidence discussed in Issue No. 1 and Issue No. 2, the Commission should find that Sprint's business access line related services in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges are subject to effective competition and are classified 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?

Sprint withdrew its request to have its high capacity exchange line access services designated competitive.

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?

Sprint faces effective competition for its CENTREX services throughout each of its exchanges. CENTREX is a call management business service that provides call processing capabilities as well as many optional features.⁴⁹ Sprint offers its CENTREX services as a central office based system, but the same capabilities can be delivered by placing equipment, such as a

⁴⁸ See Idoux Direct, at p. 25 (Norborne), p. 23 (Kearney), and p. 42 (Rolla).

⁴⁹ Harper, Direct at p. 21, l. 14-20.

PBX or key system hardware, on the customer's premises.⁵⁰ This equipment provides premised based switch features that replicate what is available from Sprint's CENTREX service. The competitors offering PBXs and/or key system hardware throughout Sprint territory are major player in the telecommunications market such as SBC, Verizon, InterTel, Siemens, Avaya and Towner Communications.⁵¹ Indeed, in the Warrensburg exchange alone, Sprint has lost 4,000 access lines to Verizon.⁵² Finally, even the smaller competitors have been successful as the record reflects that Fidelity Communications recently secured the PBX contract with the City of St. Robert, resulting in 67 lines lost to Sprint.⁵³

Only one party in this case has objected to finding effective competition to CENTREX service. Fidelity has objected based on the fact that the competitive premise based switched equipment needs dial tone in order to deliver the call management features. While this true, it is not a basis upon which to deny effective competition. First, the statute does not require that the service be identical, but "functionally equivalent or substitutable." As testified by Sprint, and previously ruled by the Commission, to be substitutable, the services have to have the ability to take away significant business from each other. In other words, the services must satisfy the same demand.⁵⁴ With respect to CENTREX and PBX, the demand is the ability to manage calls. It is the equipment, not the dial tone that gives the customer the ability to manage calls. If the dial tone is all the customer desires, Sprint offers that as a separate and distinct service.⁵⁵ In connection with PBX, the competitor can arrange to offer dial tone through Sprint or other providers. As the record reflects, Fidelity Communications provides it own dial tone by leasing a connection between it customer in St. Robert and its switch in Rolla from Show-Me

⁵⁰ Harper, Direct at p. 21, l. 14 – p. 22, l. 6.

⁵¹ Harper, Direct at p. 22, l. 8-16.

⁵² Harper, Direct at p. 22, l. 8-16.

⁵³ Exhibit 25.

⁵⁴ 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.

⁵⁵ Harper, Surrebuttal at p. 10, l. 13- p. 11, l. 6.

Technologies. Therefore, while there are numerous options available to arrange for dial tone, the real issue for the Commission is what demand is being satisfied when a customer purchases CENTREX service and is that demand satisfied through the PBX and Key System hardware alternatives. The answer is that CENTREX, as well as PBX and key systems, satisfy the same demand – the demand for call management services.

Based on the above, the Commission should find that Sprint faces effective competition for Sprint's CENTREX services throughout its exchanges.

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?

Sprint should receive competitive classification for all its exchanges for its IntraLATA private line services. IntraLATA private line services are dedicated services in the sense that they provide services originating from a specific location over a specific technology.⁵⁶ In Sprint's exchanges, Sprint faces competition from IXC's such as AT&T, MCI and Qwest, and CLECs such as SBC's affiliate ASI, Fidelity and ExOp.⁵⁷ Further, network intergrators, such as IBM and Fiber providers such as DTI (now owned by CenturyTel), Cooperative Broadband Networks and Show-Me Power have placed fiber throughout Sprint's territory and lease circuits on these networks directly to customer.⁵⁸ The coverage maps for the fiber providers in the record reflect that they extensively cover the state of Missouri, including Sprint's exchanges.⁵⁹

In addition to currently being subject to effective competition, in 1992, the Commission found that these private line services were subject to competition based on the equivalent

⁵⁶ Harper, Direct at p. 24, l. 1-13.

⁵⁷ Harper, Direct at p. 24, l. 15- p. 25, l. 5.

⁵⁸ Harper, Direct at p. 24, l. 15- p. 25, l. 5.

⁵⁹ Harper, Direct at MDH-5.

services being offered by IXCs.⁶⁰ As the record reflects, there are 586 IXCs authorized in Missouri and at least 52 of them were providing services to Sprint's local customers.⁶¹ These numbers suggest robust competition as only a portion of the competition comes from the numerous IXCs.

Based on the above, the Commission should find that Sprint's private lines services are subject to effective competition.

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?

Sprint should receive competitive classification for all its exchanges for its ATM and Frame Relay services. 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.⁶² In Sprint's exchanges, Sprint faces competition from IXCs such as AT&T, MCI and Qwest, CLECs such as , SBC's affiliate, ASI, Fidelity and ExOp.⁶³ Further, network intergretors, such as IBM and Fiber providers such as DTI (now owned by CenturyTel), Cooperative Broadband Networks and Show-Me Power have placed fiber through Sprint's territory and lease circuits on these networks directly to customer.⁶⁴ The coverage maps for the fiber providers in the record reflect that they extensively cover the state of Missouri, including Sprint's exchanges.⁶⁵

In addition to currently being subject to effective competition, in 1992, the Commission found that these private line services were subject to competition based on the equivalent

⁶⁰ Exhibit 21, Case no TO-99-116 at p. 14.

⁶¹ Harper, Direct at p. 7, l. 16-20. and p. 9, l. 8-15 and MDH-1.

⁶² Harper, Direct at p. 24, l. 1-13.

⁶³ Harper, Direct at p. 24, l. 15- p. 25, l. 5.

⁶⁴ Harper, Direct at p. 24, l. 15- p. 25, l. 5.

⁶⁵ Harper, Direct at MDH-5.

services being offered by IXCs.⁶⁶ As the record reflects, there are 586 IXCs authorized in Missouri and at least 52 of them were providing services to Sprint's local customers.⁶⁷ These numbers suggest robust competition as only a portion of the competition comes from the numerous IXCs.

Based on the above, the Commission should find that Sprint private lines services are subject to effective competition.

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?

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?

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 local service area within the same LATA.⁶⁸ These services are offered to both residential and business customers.⁶⁹

Sprint's testimony demonstrates that effective competition exists on a statewide basis for its IntraLATA MTS service and therefore Sprint should receive competitive classification for all its exchanges. The evidence demonstrates the presence of numerous providers effectively

⁶⁶ Exhibit 21, Case no TO-99-116 at p. 14.

⁶⁷ Harper, Direct at p. 7, l. 16-20. and p. 9, l. 8-15 and MDH-1.

⁶⁸ Harper, Direct at p. 6, l. 16-21.

⁶⁹ Harper, Direct at p. 6, l. 16-21.

offering the same or a substitutable services. Given this, it is not surprising that no party has objected to Sprint's requests to designate its intraLATA MTS services as competitive.

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.⁷⁰ The services offered by the IXCs are the same and are advertised throughout Sprint's exchanges.⁷¹ 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.⁷² In the face of this effective competition, Sprint's intraLATA Toll minutes and revenues have declined 75% and 76% respectively since 1999.⁷³ Finally, not only is the current evidence of effective competition strong, these services have been subject to effective competition 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.⁷⁴

Based on the above, the Commission should find that Sprint's intraLATA MTS services are subject to effective competition.

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?

⁷⁰ Harper, Direct at p. 7, l. 1-12 and p. 9, l. 8-15 and MDH-1.

⁷¹ Harper, Direct at p. 7, l. 16- p. 8, l. 8 and MDH-2.

⁷² Harper Direct at MDH-1 and MDH-2.

⁷³ Harper Direct at p. 9, l. 8-16.

⁷⁴ Harper, Direct at p. 9, 17-21.

Sprint's testimony demonstrates that effective competition exists on a statewide basis for its IntraLATA WATS and 800 services and therefore Sprint should receive competitive classification for all its exchanges. 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.⁷⁵

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.⁷⁶ As such, WATS and 800 services are also subject to competition from the same interexchange carriers offering MTS service.⁷⁷

The record reflects that there are at 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.⁷⁸ The services offered by the IXC's are the same and are advertised throughout Sprint's exchanges.⁷⁹ Further, not only is the current evidence of effective competition strong, these services have been subject to effective competition for many years. In 1992, the Commission found that the same service for SBC were substitutable for IXC's and in 1993 granted SBC transitionally competitive status for these services.⁸⁰ Finally, given the clear presence of effective competition from prominent alternative providers, no one has opposed Sprint's requests to have these services found subject to effective competition.

Based on the above, the Commission should find that Sprint's intraLATA 800 and WATS services are subject to effective competition.

⁷⁵ Harper, Direct at p. 10, l. 24-28.

⁷⁶ Harper Direct at p. 10, l. 30- p. 11, l. 6.

⁷⁷ Harper, Direct at p. 10, l. 30- p. 11, l. 6.

⁷⁸ Harper, Direct at p. 7, l. 1-12 and p. 9, l. 8-15 and MDH-1.

⁷⁹ Harper, Direct at p. 7, l. 16- p. 8, l. 8 and MDH-2.

⁸⁰ Harper, Direct at p. 10, l. 30 – p. 11, l. 6 and Exhibit 21.

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?

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.⁸¹ 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.⁸²

Sprint's testimony 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 same services are offered throughout Sprint's territory from prominent companies with nationwide networks and databases. The providers include the SBC subsidiary, SNET, Illuminet (now called Verisign) and TSI Telecommunications Services.⁸³ Each of these carriers has their own nationwide SS7 Network and databases and can provide service to any carrier.⁸⁴ The record contains the offering from the companies evidencing that the exact same services are offered to providers in Sprint's territories.⁸⁵ Finally, given the clear presence of effective competition from prominent alternative providers, no one has opposed Sprint's requests to have these services found subject to effective competition.

Based on the above, the Commission should find that Sprint's LIBD services are subject to effective competition.

⁸¹ Harper, Direct at p. 25, l. 19-p. 26, l. 5.

⁸² Harper, Direct at p. 25, l. 19-p. 26, l. 5.

⁸³ Harper, Direct at p. 25, l. 19-p. 26, l. 5.

⁸⁴ Harper, Direct at p. 25, l. 19-p. 26, l. 5.

⁸⁵ Harper, Direct at MDH-7.

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?

Sprint's testimony demonstrates that effective competition exists on a statewide basis for its Speed Dial services and therefore Sprint should receive competitive classification in all its exchanges for this service. This category is made up of Custom Calling services that are completely replicated by widely available customer premises equipment (CPE).⁸⁶ Speed Calling 8 and Speed Calling 30 allow customer to load a speed dialing list utilizing storage in the company's central office.⁸⁷ The alternative products, CPEs, is widely available from retail outlets throughout the state, which contain features that are functionally equivalent to and substitutable for Sprint's service.⁸⁸ Customers are able to purchase phones, such as a CPE phone, that will allow them to pre-load numbers that can be accessed by pressing a button.⁸⁹ Further, these options are offered at substantially lower prices.⁹⁰ Given the clear presence of effective competition from basic retail outlets, no one has opposed Sprint's requests to have these services found subject to effective competition.

Based on the above, the Commission should find that Sprint's Speed Dial services are subject to effective competition.

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?

⁸⁶ Harper, Direct at p. 26, l. 18- p. 27, l. 6.

⁸⁷ Harper, Direct at p. 26, l. 18- p. 27, l. 6.

⁸⁸ Harper, Direct at p. 26, l. 18- p. 27, l. 6.

⁸⁹ McKinnie Rebuttal at p. 9, l. 6- p. 10, l. 5.

⁹⁰ McKinnie Rebuttal at p. 9, l. 6- p. 10, l. 5.

Sprint's testimony demonstrates that effective competition exists in Kearney, Norborne, Rolla, Platte City, and St. Robert for payphone services. Sprint should receive competitive classification for its Payphone services in all five exchanges.

There are three things that are needed to provide payphone service: (1) an access line, (2) coin control and (3) answer supervision.⁹¹ A payphone operator may obtain the access line from the ILEC or any CLEC providing access lines.⁹² The other two items needed for payphone service (coin control and answer supervision) are available from the ILEC or can be made available via customer premises equipment (CPE).⁹³ Many vendors sell payphones which include the coin control and answer supervision functionality.⁹⁴ These phones are generically referred to as a "smart phone."⁹⁵ Thus, a payphone provider has multiple options. First, the payphone provider can bypass the ILEC completely by purchasing an access line from a CLEC and purchasing the appropriate CPE.⁹⁶ A second option for the payphone provider is to purchase an access line from the ILEC as well as the monthly service for coin control and answer supervision.⁹⁷ If this option is chosen, the payphone provider would still be required to purchase a payphone although it would be somewhat cheaper than a smart phone.⁹⁸ A third option would be a combination of the two – depending upon the CLEC's business plans – whereas the payphone provider purchases an access line with coin control and answer supervision from the CLEC and the CLEC uses resale and/or UNE based offerings from the ILEC.⁹⁹ ILECs are required to make coin control and answer supervision available to CLECs.¹⁰⁰

⁹¹ Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4

⁹² Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4.

⁹³ Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4.

⁹⁴ Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4.

⁹⁵ Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4.

⁹⁶ Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4.

⁹⁷ Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4.

⁹⁸ Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4.

⁹⁹ Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4.

¹⁰⁰ Idoux, Surrebuttal at p. 14, l. 6-p. 15, l. 4.

As mentioned above, the basic access line is available from each of the facilities-based providers identified in the five exchanges, as well as can be provided by the 25 other CLECs who could enter the market. 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. As with the access line service, the Commission should find that the payphone services in the Norborne, Kearney, Rolla, Platte City and St. Robert exchanges should be classified 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?

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.¹⁰¹ The Local Directory Assistance provides a service that assists a customer in locating a number in the same local calling area.¹⁰² 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.¹⁰³ 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.¹⁰⁴ Sprint's testimony demonstrates that effective competition exists on a statewide basis for all the

¹⁰¹ Harper, Direct at p. 12, l. 1 – p. 13, l. 14.

¹⁰² Harper, Direct at p. 12, l. 1 – p. 13, l. 14.

¹⁰³ Harper, Direct at p. 12, l. 1 – p. 13, l. 14.

¹⁰⁴ 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.

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.¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷ Further, the record clearly reflects a wealth of internet sources for retail and residential end-user directory assistance.¹⁰⁸ 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.¹⁰⁹ As the record reflects, there are a variety of wireless plans available to Sprint's customers¹¹⁰ and wireless penetration in Missouri is substantial. Indeed, up to 15.5% of telephone users would opt for wireless alternatives to replace their wireline phones.¹¹¹ Further, the record reflects that this statistic applies to Missouri consumers. Undoubtedly, the number who chose to retain the landline and use the wireless phone is substantially higher.¹¹² As an

¹⁰⁵ Harper, Direct at p. 15, l. 3-21 and MDH-5.

¹⁰⁶ Ex. 21, Case No TO-93-116 at p. 13.

¹⁰⁷ Harper, Surrebuttal, p. 9, l. 2-4.

¹⁰⁸ Harper, Direct at p. 16, l. 6-16 and MDH-5.

¹⁰⁹ Harper, Direct at p. 16, l. 1-5.

¹¹⁰ Idoux, Direct at JRI-15, and Harper Direct at MDH-3.

¹¹¹ Tr. (Vol. 3) at p. 183, l. 12 – p. 184, l. 15.

¹¹² 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.

indicator of the effectiveness of the substantial competition, Sprint's volume of Directory Assistance calls handled has declined by 36% since 1998.¹¹³

Based on the above, 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. Despite this overwhelming evidence, some parties have opposed Sprint's request because they contend that a Sprint local customer has no option but to use Sprint's Directory Assistance Services. These parties cite to the Commission's decision in the *SBC competition case* as support for their contention. While Sprint acknowledges that the Commission made that ruling with respect to SBC's Directory Assistance, the ruling was based on the record in front of the Commission at that time in that case. The record in front of the Commission in this case demonstrates that *every single alternative 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.¹¹⁴

Based on the record in this case, there is effective competition for Sprint's Directory Assistance Service in Sprint's exchanges in Missouri and, therefore, the service should be designated competitive.

¹¹³ Harper Direct at p. 17, l. 1-6.

¹¹⁴ 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 Red 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.

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?

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.¹¹⁵ 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.¹¹⁶ 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 IXCs.¹¹⁷ In 1992, the Commission found that the IXCs' operator services were substitutable for the operator service offered by local companies.¹¹⁸ Further, in that 1992 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.¹¹⁹ That finding was based on the presence of 31 IXCs and 8 prepaid call

¹¹⁵ Harper Direct at p. 18, l. 1-9.

¹¹⁶ Harper, Direct at p. 20, l. 1-13.

¹¹⁷ See Harper Surrebuttal at MDH-1 for examples of some IXCs' operator service offering in Sprint's territory.

¹¹⁸ Exhibit 21, Case No TO-93-116 at p. 14.

¹¹⁹ Exhibit 21, Case No TO-93-116 at p. 14.

providers.¹²⁰ 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 IXCs are authorized to operate and 52 IXCs are currently operating.¹²¹ Further, the record reflects there are several wireless providers and prepaid providers operating in Sprint's territories.¹²² All these providers offer functionally equivalent or substitutable services. Based on the facts in the record, Sprint faces effective competition for customers of Operator Services. Further, these facts reflect that, as the Commission held in 1992, Operator service are not so tied to local service that they can not be separately designated as competitive. Therefore, the Commission should find that Sprint's Operator Services are subject to effective competition and should be designated competitive.

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?

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 offer ISDN at lower prices than Sprint. Therefore, for the reasons stated in Issue 1 and 3, ISDN in Kearney, Rolla, Platte City and St. Robert should be designated competitive.

¹²⁰ Exhibit 21, Case No TO-93-116 at p. 14

¹²¹ Harper, Direct at p. 7, l. 18 and p. 9, l. 10-15.

¹²² Harper, Direct at MDH-3, and MDH-4 and Idoux Direct at JRI-15..

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?

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 offering MCA at a price lower than Sprint's. Therefore, for the reason discussed under issue 1, MCA service in Kearney and Platte City should be designated 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?

The Commission should not make a finding that effective competition does not exist for any service which is not designated competitive in this case. There is no evidence in this case as to the presence or the lack of effective competition with respect to services not subject to Sprint's requests. Therefore, the only finding the Commission can make for services outside of Sprint's requests is that the record does not contain evidence of the presence or the absence of effective

competition. 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?

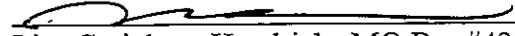
December 15, 2003 is the fifth year anniversary of an alternative provider being certified to provide service in Sprint's territory. It is not the fifth year anniversary of an alternative provider actually providing services in any given exchange in Sprint's territory. Therefore, under the Price Cap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

CONCLUSION

For the reason stated herein, the Commission should find that effective competition exists for Sprint Missouri Inc ("Sprint") core local access line residential and business services in the Norborne, Kearney, Rolla Platte City and St. Robert exchanges, as well as access line related services. Further, the Commission should find that effective competition exists across Sprint's exchanges for CENTREX services, IntraLATA Private Line services, ATM and Frame Relay services, IntraLATA MTS services, IntraLATA WATS services and 800 services, Line Information Database Access Services and Speed Dial.

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 3rd day of September, 2003.

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