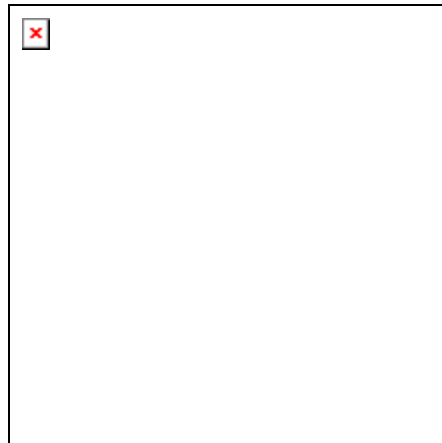


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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

Case No. IO-2003-0281

REPORT AND ORDER

Issue Date: December 4, 2003

Effective Date: December 14, 2003

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Competition in the Exchanges of Sprint Missouri, Inc.) Case No. IO-2003-0281

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REGULATORY LAW JUDGE: **Morris L. Woodruff**

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REPORT AND ORDER

SUMMARY

In this report and order, the Commission finds that many of the services that Sprint offers in its Kearney, Rolla, and Norborne exchanges are subject to effective competition and may be classified as competitive and no longer subject to price cap regulation. The Commission also finds that some of the non-local services that Sprint offers throughout its Missouri exchanges are subject to effective statewide competition and may be classified as competitive and no longer subject to price cap regulation.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

This case was opened on February 10, 2003, when the Staff of the Commission filed a Motion to Open Case. Staff's motion indicated that ExOp of Missouri, Inc., an alternative local exchange telecommunications company, was authorized to begin providing services in an exchange of Sprint Missouri, Inc., an incumbent local exchange telecommunications company, on December 15, 1998. Staff's motion indicated that the fifth-year anniversary of that authorization would trigger the statutory requirement that the Commission investigate the state

of competition in the exchanges served by Sprint to determine whether effective competition exists in those exchanges. Staff asked the Commission to open a case to conduct the investigation mandated by statute.

On February 14, the Commission issued an order establishing this case and, at the request of Sprint, joining three competitive local exchange companies as parties. The parties joined at that time were: Fidelity Communications Services, Inc.; Green Hills Telecommunications Services; and ExOp of Missouri, Inc. The Commission also indicated that any other interested party wishing to intervene would need to file an application to intervene on or before March 6.

After timely applications to intervene were received, the Commission, on March 17, issued an order that allowed the following companies to intervene: Southwestern Bell Telephone, L.P. d/b/a SBC Missouri; AT&T Communications of the Southwest, Inc.; MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri,

Inc., and MCI WorldCom Communications, Inc.; and the National ALEC Association/Prepaid Communications Association.^[1]

On March 26, the Commission adopted a procedural schedule leading to a hearing set for July 14 through 18, 2003. Sprint filed direct testimony on April 25. Staff, the Office of the Public Counsel, Fidelity, AT&T, and ExOp filed rebuttal testimony on June 10. Sprint, Staff, and Public Counsel filed surrebuttal testimony on July 7.

The hearing commenced on July 14. Counsel for Sprint, Staff, Public Counsel, Green Hills, Southwestern Bell, Fidelity, ExOp, and AT&T appeared at the hearing. Counsel for the MCI WorldCom group of companies was excused from appearing at the hearing and the companies thereby waived their rights to participate in the hearing. AT&T's motion to withdraw as a party was sustained at the beginning of the hearing and AT&T did not participate further in the hearing. Counsel for Green Hills and Southwestern Bell offered opening statements but then withdrew from further participation in the hearing. The hearing concluded on July 15. Sprint, Staff, Public Counsel, ExOp, and Fidelity submitted initial briefs on September 3 and reply briefs on September 24.

The State of Competition

This case was opened for the purpose of investigating the state of competition in the areas served by Sprint. If the Commission finds that Sprint faces effective competition in a particular exchange or in the provisioning of a particular statewide service, then Sprint will be freed from the constraints imposed by price cap regulation for those exchanges or services. In other words, Sprint will be able to establish prices for those exchanges and services based on market conditions.

Sprint operates in 80, mostly rural, exchanges throughout Missouri but contends that it faces effective competition in only five specific exchanges. Sprint also contends that it faces effective competition for several non-local services that it offers statewide. The Commission will first address the question of competition in each of the five exchanges.

The State of Competition in Specific Exchanges

Kearney

Kearney is a small suburban community at the northern edge of the Kansas City metropolitan area. Sprint's records indicate that in 2001, it served 3,394 residential access lines and 696 nonresidential access lines, for a total of 4,090 access lines in the Kearney exchange.^[2] In addition to Sprint, the incumbent local exchange carrier, Kearney is served by five competitive carriers that offer local exchange service.

Those five carriers are: 1) 877-RingAgain; 2) EZtalk; 3) Max-Tel; 4) State Telephone; and 5) ExOp of Missouri d/b/a Unite.^[3] The first four companies on that list offer only resold service. Resellers offer service to their customers by repackaging and repricing the services offered by the incumbent local exchange carrier. The Commission has previously found that "the mere presence of resellers is not substantial evidence for the Commission to determine that effective competition exists."^[4] Sprint indicates that it agrees with that finding and does not rely on the presence of the resellers as the basis for its request for competitive classification.^[5]

The fifth carrier offering competitive services in the Kearney exchange is ExOp. Unlike the others, ExOp offers 100 percent facilities-based service. ExOp also owns a cable television franchise in Kearney^[6] and has been able to use its cable facilities to offer telephone service to its customers. ExOp indicates that its business plan is predicated on customers subscribing to a bundle of local telephone service with cable television service and DSL Internet service.^[7] In addition, ExOp has been able to offer its services at prices somewhat lower than those charged by Sprint.^[8] Using this business plan, ExOp has been able to gain a substantial share of the local exchange market in Kearney.

ExOp's precise share of the market in Kearney is not easily determined. However, measured by the number of access lines served by the two companies, ExOp has been able to gain a significant portion of the market since it began offering services in the exchange in February 1999. The exact number of lines currently served by the competing companies is a proprietary number and for that reason will not be set out in this report and order.^[9] However, line counts for December 2001 are not proprietary and indicate that at that time Sprint served 3,394 residential lines and 696 business lines in the Kearney exchange. At the same time,

ExOp served 1,110 residential lines and 476 business lines in that exchange.^[10] Since that time the number of lines served by ExOp has increased while the number of lines served by Sprint has continued to decrease.

Although ExOp has secured a substantial share of the market, there are still areas within the exchange for which it has not constructed facilities and for which it does not anticipate constructing facilities in the near future.^[11] ExOp indicated that it was hesitant to construct new facilities because its parent corporation, Aquila, Inc., was experiencing financial difficulties and was not willing to invest additional capital in ExOp's expansion plans.^[12] However, ExOp announced at the hearing that an agreement had been reached for ExOp to be sold by Aquila to a former general manager of ExOp. There is no evidence in the record to indicate how this sale would affect ExOp's ability to compete in the Kearney exchange.

While ExOp currently does not have facilities available to serve every potential customer in the Kearney exchange, it has been designated by the Commission as a telecommunications carrier eligible to receive universal service support – an ETC – in that exchange.^[13] As an ETC, ExOp is required to offer its services to customers throughout the exchange.^[14] It need not have facilities in place to immediately serve all customers, but it is required to “extend its network to serve new customers upon reasonable request.”^[15] ExOp has not, however, received any universal service funding for the Kearney exchange.^[16]

Platte City

Like Kearney, Platte City is a small suburban community at the northern edge of the Kansas City metropolitan area. In 2001, Sprint served 2,852 residential access lines and 1,384 nonresidential access lines, for a total of 4,236 access lines in the Platte City exchange. Platte City is served by the same five competitive carriers that offer service in Kearney. Again, ExOp is the only competitive carrier that is offering facilities-based service.

However, the situation in Platte City differs from that in Kearney in that ExOp does not have a franchise to offer cable television service in Platte City and, due to build out

requirements imposed by the City of Platte City, ExOp does not anticipate obtaining a cable television franchise in that city.^[17] As a result, ExOp is not able to offer the bundles of services in Platte City that it is able to offer in Kearney. Furthermore, ExOp only began offering service in the Platte City exchange in August 2002.^[18]

Not surprisingly, given these differences, ExOp's share of the market in Platte City is much smaller than its share of the market in Kearney. At the end of 2002, ExOp served 55 residential lines and 148 business access lines in Platte City.^[19] That compares to 4,236 lines served by Sprint in that exchange in 2001. No evidence was presented to indicate how many lines ExOp was serving in 2003. However, during the first six months of 2003, Sprint lost 116 access lines in the Platte City exchange. That represents a six percent annualized decrease in access lines for that exchange.^[20] Sprint expects that rate of line loss to accelerate as ExOp serves more customers in the exchange.^[21]

ExOp is an ETC in the Platte City exchange, as it is in Kearney.^[22] ExOp does not currently have facilities in place to serve most of the Platte City exchange. But, in the areas that it does serve, ExOp offers rates that are comparable to the rates offered by Sprint.^[23] ExOp has recently signed a contract to replace Sprint as the provider of telephone service to the City of Platte City.^[24]

Rolla

Rolla has a population of approximately 14,000, and is located in East-Central Missouri. It is not associated with any metropolitan area. Sprint's records indicate that in 2001, it served 10,465 residential access lines and 8,111 nonresidential access lines, for a total of 18,576 access lines in the Rolla exchange.^[25] In addition to Sprint, which is the incumbent local exchange carrier, nine competitive carriers offer local exchange service in Rolla.

The nine competitive carriers that offer local exchange service in Rolla are as follows:

- 1) Buy-Tel Communications;
- 2) 877-RingAgain;
- 3) eztalk;
- 4) Fidelity Communications Services I;
- 5) Max-Tel Communications;
- 6) Metro Teleconnect Companies;

- 7) 1-800 RECONEX;
- 8) State Discount Telephone; and
- 9) Universal Telecom.^[26]

Of those nine companies, only Fidelity is operating as a facilities-based carrier.^[27] The other eight carriers operate only as pre-paid resellers.^[28]

Fidelity is a competitive local exchange carrier certified to provide basic local telecommunications services in Sprint's exchanges. Fidelity is a subsidiary of Fidelity Communications Co., which also owns Fidelity Telephone Company, an incumbent local exchange carrier headquartered in Sullivan, Missouri.^[29] Importantly, Fidelity Communications Co. also owns Fidelity Cablevision, Inc., which provides cable television service in Rolla.^[30]

Fidelity has been able to use its affiliated cable television system to provide telecommunication services to customers in Rolla at rates that are comparable to those offered by Sprint.^[31] Fidelity started providing telecommunications services in Rolla in July 2000.^[32] However, Fidelity Cablevision has been providing cable television services in Rolla for approximately eight years. Fidelity's witness indicated that this gave Fidelity an advantage in entering the telecommunications market in that it had name recognition and a positive reputation for quality of service within the Rolla community, as well as an existing local business office and other synergies.^[33]

Fidelity has been able to use the advantages afforded by its affiliation with a cable television system to claim a substantial portion of the market in the Rolla exchange. The exact number of lines currently served by the competing companies is a proprietary number and for that reason will not be set out in this report and order.^[34] However, line counts for December 2001 are not proprietary and indicate that at that time Sprint served 10,465 residential lines and 8,111 business lines in the Rolla exchange. At the same time, Fidelity served 1,066 residential lines and 1,129 lines. Since December 2001, Fidelity's share of the market has increased substantially.^[35] At the time of the hearing, Fidelity served over 25 percent of the access lines in Rolla.^[36] As was the case with ExOp in the Kearney and Platte City

exchanges, Fidelity has been designated as an ETC in the Rolla exchange.^[37]

St. Robert

St. Robert is a small town located 25 miles west of Rolla. It is not associated with any metropolitan area. Sprint's records indicate that in 2001 it served 3,466 residential access lines and 2,461 nonresidential access lines, for a total of 5,927 access lines in the St. Robert exchange.^[38] In addition to Sprint, which is the incumbent local exchange carrier, St. Robert is served by the same nine competitive carriers that offer local exchange service in Rolla.^[39] Once again, Fidelity is the only competitive carrier offering facilities-based services in St. Robert.

Fidelity began offering service in St. Robert in February 2003, utilizing the switch it owns in Rolla.^[40] Since it has only started to compete in that exchange, Fidelity has not yet gained a significant share of the market in St. Robert. As of June 30, 2003, Fidelity was serving only 69 access lines in St. Robert. Forty-nine of those lines are being provided to the City of St. Robert, with the remainder divided between two other business customers.^[41] That is about one percent of the total market.^[42]

While Fidelity intends to continue to compete in St. Robert, it does not have all the advantages in that exchange that it has in Rolla. Most importantly, Fidelity does not operate a cable television system in St. Robert. As a result, Fidelity indicates that its business plan in St. Robert is to provide services only to selected business customers that it can easily reach with its existing facilities. Fidelity estimates that with its current facilities it could reach about three to five percent of the business market in St. Robert.^[43] Fidelity does not intend, in the foreseeable future, to completely overbuild Sprint's network in St. Robert as it has attempted to do in Rolla.^[44] No evidence was offered indicating that Fidelity is an ETC in the St. Robert exchange.

Norborne

Norborne is a rural exchange located 60 miles northeast of Kansas City. It is not

associated with any metropolitan area. There are only about 600 access lines in the exchange.^[45] In addition to Sprint, which is the incumbent local exchange carrier, nine competitive carriers offer local exchange service in Norborne.

The nine competitive carriers that offer local exchange service in Norborne are as follows:

- 1) Buy-Tel Communications;
- 2) 877-RingAgain;
- 3) eztalk;
- 4) Green Hills Telecommunication Services;
- 5) Max-Tel Communications;
- 6) Metro Teleconnect Companies;
- 7) 1-800 Reconnex;
- 8) State Discount Telephone; and
- 9) Universal Telecom.^[46]

Of those nine companies, only Green Hills is operating as a facilities-based carrier.^[47]

Green Hills began offering services in the Norborne exchange in November 1999.^[48]

By offering rates substantially below those offered by Sprint for essentially identical products,^[49] Green Hills has quickly gained nearly two-thirds of the market in the Norborne exchange.

^[50] Green Hills has been granted ETC status in the Norborne exchange.^[51]

Other Issues Affecting the State of Competition in Local Exchanges

Wireless telecommunication exists as a competitor to Sprint's landline service throughout all of its exchanges in Missouri. Sixteen wireless carriers have interconnection agreements with Sprint.^[52] Sprint indicates that it may have lost some access lines to wireless competition but indicates that it has no way of determining exactly how many lines it may have lost.^[53] No specific evidence was offered by any party regarding how much competition wireless carriers offer Sprint in any of its exchanges. Moreover, Sprint acknowledges that it does not rely on competition from wireless providers in its argument for competitive classification for specific exchanges. Under the circumstances, the Commission can make no findings of fact regarding the impact of wireless telecommunications on competition in Sprint's exchanges.

Competition for Specific Non-local Statewide Services

Sprint has requested competitive classification for several services that it offers statewide. These requests are not limited to any specific exchanges and would, instead, apply in all exchanges served by Sprint. Each service for which Sprint seeks competitive classification will be addressed separately.

Centrex Services

Sprint's Centrex service is described as "a central office based system that allows business customers to use Sprint's central office technology instead of purchasing their own switching equipment."^[54] Other competitive local exchange companies can offer this service in competition with Sprint, but much of Sprint's competition comes from companies that sell switching equipment, such as PBX (Primary Branch Exchange) and key system hardware, to individual customers.^[55] Such customer owned equipment manages calls between stations on the customer's premises without utilizing the central office switch, and handles calls to and from the public switched network.^[56] The availability of such equipment allows a business customer to choose to pay Sprint to provide a Centrex service for its switching needs; or it can choose to satisfy its need for that function by purchasing the necessary equipment from any one of several companies willing to sell that equipment. Among the companies that sell such equipment are SBC, Verizon, Intertel, Siemens, Avaya, and Towner Communications.^[57]

The competition offered by customer premise equipment is apparently effective competition. Since June of 2001, Sprint has lost over 7,000 Centrex lines, 20 percent of its business.^[58] The Missouri legislature recognized the potential effectiveness of this form of competition in 1996 when it authorized customer-specific pricing for central office-based services that substitute for PBX services.^[59] Sprint currently uses customer specific pricing for its Centrex service offerings.^[60]

Because Sprint's competition for its Centrex service is coming from equipment sellers rather than competing service providers, that competition is not limited to specific exchanges. For that reason, Sprint is seeking statewide competitive classification for its Centrex service.

IntraLATA Private Line Services

Private line services allow a customer to transport data, voice, or video between specific points using a dedicated line.^[61] Sprint's competition for this service comes from facilities based competitive local exchange carriers, such as ExOp and Fidelity; but also from interexchange carriers and fiber network providers.^[62] The legislature has recognized the existence of competition for this service by allowing for customer-specific pricing for private line services.^[63]

Because Sprint's competition for intraLATA private line services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for that service.

ATM and Frame Relay Services

ATM (Asynchronous Transfer Mode) and Frame Relay services allow a customer to transport data, voice, or video between specific points using a dedicated line.^[64] Sprint's competition for this service comes from facilities based competitive local exchange carriers, such as ExOp and Fidelity; but also from interexchange carriers and fiber network providers.^[65] The legislature has recognized the existence of competition for this service by allowing for customer-specific pricing.^[66]

Because Sprint's competition for intraLATA private line services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for that service.

IntraLATA MTS

IntraLATA MTS (message toll services) is essentially Sprint's intraLATA toll service.^[67] In other words, it is the service used by a residential or business customer when that customer dials a number in another exchange located within the LATA. Sprint faces a great deal of competition for the provisioning of this service. There are at least 586 interexchange carriers certified in Missouri that can offer this service in competition with Sprint.^[68] In December 2002, 52 different carriers were actually providing intrastate toll services to Sprint's local customers.^[69] As a result of intraLATA presubscription, which Sprint instituted in August 1997, Sprint's local customers can utilize the interexchange carrier of their choice without

dialing any extra numbers.^[70] Not surprisingly, given this level of competition, Sprint's intraLATA toll minutes and revenues have declined by three-fourths since 1999.^[71]

Because Sprint's competition for intraLATA MTS is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for that service.

IntraLATA WATS and 800 Services

IntraLATA WATS (Wide Area Telecommunications Services) includes both 800 service and outward WATS (OUTWATS). 800 service allows incoming calls to be toll-free for the calling party. OUTWATS allows for outgoing calls to be billed on a usage sensitive basis.^[72] These services are essentially intraLATA toll services billed in a different way. As such they are subject to competition from the same competitors as intraLATA toll services. Because Sprint's competition for intraLATA WATS and 800 services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for those services.

Line Information Data Base (LIDB) Access

This issue concerns SS7 (signaling system 7) service and Line Information Data Base services. These are technical services for which the customers are other telecommunications carriers.^[73] SS7 service provides a dedicated two-way signaling path between a customer and Sprint's Signal Transfer Point. SS7 signaling is used to carry the signals and associated information for switched access calls in a path that is separate from the voice call. SS7 is also utilized to access call processing databases such as LIDB (Line Information Data Base).^[74] As its name indicates, LIDB is a database. Access to that database allows a customer to query a database before completion of an alternate billed call, such as calling card, collect and third number billing calls, to determine that the call is authorized and billed to the proper party.^[75]

Sprint faces competition for these services from several carriers possessing their own nationwide SS7 network and LIDB databases.^[76] Specifically, Sprint faces nationwide competition from SNET, an SBC subsidiary; Illuminet (now called Verisign); and TSI

Telecommunications Services, each of which can offer these services to any carrier. [77] Because Sprint's competition for SS7 and LIDB services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for those services.

Speed Dial Services

Sprint's speed dial services allow a customer to create a speed-dialing list utilizing storage in the company's central office. [78] The existence of such a list allows a customer to dial one of the preset numbers by pushing only two or three buttons. [79] A customer can attain exactly the same result using the function built into many telephones. Telephone sets including this function are only slightly more expensive than sets that do not include this function. [80] As a result, Sprint faces competition for speed dial service from every retail store in Missouri that sells telephone sets. Because Sprint's competition for speed dial services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for those services.

Directory Assistance Services

Sprint is seeking statewide competitive classification for three categories of directory assistance services: 1) directory assistance, which is assistance in finding a local number; 2) national directory assistance, which is assistance in finding a number outside the customer's local service area; and 3) directory assistance call completion, which is an optional service by which a customer can have their call to the requested number completed automatically by the operator. [81] A basic local customer of Sprint can access directory assistance from Sprint by dialing 1-411. Dialing that number will allow the Sprint customer to obtain telephone numbers anywhere in the United States. [82]

A Sprint customer does have alternatives to obtaining directory assistance services from Sprint. By dialing 1-area code-555-1212, or 00, the customer can access directory assistance service from his or her pre-subscribed long distance toll provider. [83] However, if the Sprint customer simply dials 555-1212, without including the area code, they will reach the Sprint operator. [84] A Sprint customer may also access directory assistance services by using

his or her wireless phone or by looking up the number by using an Internet search engine.^[85]

Sprint indicates that since 1998 the volume of directory assistance calls handled by Sprint has declined by 36 percent, and ascribes this decline to competition from alternative sources for assistance.^[86] However, Sprint has not lowered its directory assistance rates to meet that competition.^[87] In fact, Sprint's rate for directory assistance for a non-coin call has increased by 14.6 percent since 1999.^[88]

Local Operator Services

Operator services refer to those services, using live operators or automated systems, that provide customers with various call completion options.^[89] Sprint is seeking statewide competitive classification for three specific local operator services. Those three services are: 1) station-to-station calls with automatic recording equipment; 2) station-to-station calls with operator assistance; and 3) person-to-person calls.^[90] These services would include calls using a calling card, collect calls, calls billed to a third number, sent-paid calls, and person-to-person calls using an operator.^[91] A customer can utilize these services by dialing 0 or 0+ from any telephone.^[92]

Sprint is not the only source for operator services in the exchanges in which it operates. Those services are offered statewide by interexchange service providers, wireless carriers, pay telephone providers, and prepaid calling card providers.^[93] In addition, competitive local exchange carriers offer such services in the exchanges in which they operate.

While customers do have the ability to access operator services from other sources, when a Sprint customer dials 0 or 411, the most familiar way to reach an operator, the customer will be connected to a Sprint operator unless the customer has chosen a different intraLATA toll carrier.^[94] Furthermore, the statewide competition that Sprint faces for operator services, has not held down Sprint's rates for those services. Instead, Sprint's rate for a station-to-station operator assisted call has increased by 13.6 percent since 1999.^[95] For a person-to-person call the rate has increased by 15.7 percent.^[96]

Competition for Other Services:

Payphone Services

A provider of payphone service must have three things in order to provide payphone service: 1) an access line; 2) coin control; and 3) answer supervision.^[97] The first requirement, an access line, can be obtained either from the incumbent local exchange carrier, such as Sprint, or from a competing facilities-based competitive local exchange carrier in those exchanges where a facilities-based competitive local exchange carrier is operating.^[98] The payphone service provider also has a choice on how to obtain the other two requirements, coin control and answer supervision. Those functions can be purchased from the incumbent local exchange carrier or from a competitive local exchange carrier. Alternatively, they may be obtained by purchasing what is referred to as a “smart phone.” A “smart phone” includes coin control and answer supervision as a function built into the phone.^[99] Therefore, in an exchange where competition exists, Sprint faces competition from both the competing competitive local exchange carriers, and from customer premises equipment sold by many vendors.

ISDN Services

ISDN stands for Integrated Services Digital Network and is a means for simultaneously transmitting integrated voice and data over a single exchange access line.^[100] Sprint initially sought competitive classification for this service in the Norborne, Kearney, Platte City, Rolla, and St. Robert exchanges, the exchanges for which it is seeking competitive classification. Green Hills does not offer ISDN service in the Norborne exchange. Fidelity and ExOp offer that service in the exchanges they serve at rates that are lower than those offered by Sprint.^[101] In response to the testimony filed by Staff, Sprint agreed that ISDN is not competitive in the Norborne exchange and withdrew its request for competitive classification in that exchange.^[102]

Optional MCA Services

MCA is an optional interexchange plan that allows a basic local customer to have expanded calling scopes in the three major metropolitan areas in Missouri: St. Louis, Kansas City, and Springfield. Of the five exchanges for which Sprint is seeking competitive

classification, MCA is available only in the Kearney and Platte City exchanges.^[103] Therefore, Sprint is seeking competitive classification for these services only in those two exchanges.

A customer cannot receive MCA services unless the customer also subscribes to basic local service from either Sprint or a competitive local exchange carrier. ExOp also offers Optional MCA services in the Kearney and Platte City exchanges and does so at a rate that is lower than the rate offered by Sprint.^[104]

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law.

Sprint is a public utility, and a telecommunications company, as those terms are defined in Section 386.020(42) and (51), RSMo 2000.^[105] As such, Sprint is subject to the Commission's jurisdiction pursuant to Chapters 386 and 392.

Section 392.245.1 provides that "[t]he commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation." Sprint is a large incumbent local exchange telecommunications company and is subject to Price Cap Regulation under Section 392.245. Under Price Cap Regulation, the maximum rates that Sprint may charge its customers are capped and can be changed only through compliance with the limitations and procedures found in Section 392.245.4.

If the Commission determines that effective competition exists in an exchange or for a particular service offered in an exchange, then the rates charged by the incumbent local exchange telecommunications company may no longer be subject to the price cap. The company may thereafter "adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment."^[106]

The Missouri legislature has established standards for when services are to be considered competitive. Section 392.245.5 provides as follows:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one alternative local exchange telecommunications 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.

The legislature has also obligated the Commission to periodically investigate the state of competition in the exchanges served by incumbent local exchange companies. Section 392.245.5 provides as follows:

The commission shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange telecommunications company has been certified to provide local exchange telecommunications service and shall determine, no later than five years following the first certification of an alternative local exchange telecommunication company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.

It is under this provision that the Commission has undertaken a review of the status of competition in the exchanges served by Sprint.

If the Commission determines that effective competition does exist in certain exchanges or for certain services, Sprint will then be able to adjust its rates upward or downward in response to the competitive market. If the Commission determines that an exchange or a particular service is not subject to effective competition, then Sprint's rates for those exchanges or services will remain subject to price cap regulation. [\[107\]](#)

The Commission's determination regarding the existence of competition is not permanent and immutable. The legislature has also required the Commission to review, at least once every five years, the state of competition in those exchanges and for those services that it has found to be competitive, to determine whether effective competition continues to exist. If there is no longer effective competition, the exchange or service will once again be subject to price cap regulation. [\[108\]](#)

The legislature has provided some guidance for the Commission in determining whether effective competition exists. Section 386.020(13) requires the Commission to determine whether effective competition exists based on the following considerations:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) The extent to which the purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in section 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 making its determination if whether effective competition exists, the Commission is also guided by Section 392.185, which indicates that the provisions of chapter 392 are to be construed to:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
- (7) Promote parity of urban and rural telecommunications services;
- (8) Promote economic, educational, health care and cultural enhancements; and
- (9) Protect consumer privacy.

As a carrier subject to price cap regulation, Sprint's rates are not established on an exchange-by-exchange basis. It cannot reduce the rates in one exchange to meet competition in that exchange without reducing rates in other exchanges where it may not be facing competition, unless it applies to the Commission for a waiver.^[109] The Commission cannot allow such pricing unless it finds by clear and convincing evidence that such pricing is reasonably necessary to promote the public interest and the purposes and policies of Chapter 392.^[110]

As the party asserting that there is effective competition in its exchanges, Sprint bears the burden of proof. That allocation of the burden of proof is consistent with the Commission's decision on that issue in a recent case regarding competition in the exchanges of Southwestern Bell Telephone Company.^[111] Sprint accepts that burden of proof and it is not an issue in this case.^[112]

DECISION

After applying the facts as it has found them to its conclusions of law, the Commission

has reached the following decisions regarding the issues identified by the parties.

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

Sprint asserts that effective competition exists in only 5 of its 80 exchanges in Missouri.

The Commission will consider the state of competition in each of those five exchanges in turn.

But first, the Commission will address several general arguments that apply to each of the exchanges in question.

First, in each of these five exchanges, Sprint is facing only one facilities-based competitor: ExOp in Kearney and Platte City; Fidelity in Rolla and St. Robert; and Green Hills in Norborne. That means that the basic local service market in those exchanges is still highly concentrated. In discussing that concentration, Public Counsel's witness, Barbara Meisenheimer, referred to the Herfindahl-Hirschman Index (HHI), which is used by the Department of Justice in evaluating how concentrated a market is when it is evaluating a proposed merger.^[113] Ms. Meisenheimer argued that with only a single competitor, each of the exchanges in question would have an unacceptable level of market concentration, resulting in a potential exercise of market power between the two firms.^[114] From this, Public Counsel

argues that the Commission cannot find effective competition in an exchange that has only two facilities-based competitors.

Clearly, with only two effective competitors, the market in these five exchanges is highly concentrated. Perhaps, if the Department of Justice were relying on the Herfindahl-Hirschman Index, it would not approve a merger between competitors in those markets. However, this case is not before the Department of Justice and this Commission has not been asked to approve a merger. The Herfindahl-Hirschman Index is perhaps a good tool for measuring market concentration; but it does not control the Commission's decision in this case.

Instead, this Commission must rely on the guidance offered by the Missouri legislature when it enacted the controlling statutes. Those statutes do not preclude a finding of effective competition where there is only one competitor challenging the incumbent local exchange carrier. Indeed, Section 392.245.5 creates a presumption that effective competition exists in an exchange when at least one alternative local exchange telecommunications company has been providing service in that exchange for at least five years. The fact that the basic local service market in these five exchanges is highly concentrated is a factor for the Commission to consider. That single factor is not, however, conclusive.

A second general argument raised by Public Counsel and Fidelity concerns an alleged lack of price discipline imposed on Sprint's rates by the existence of competition in these five exchanges. Public Counsel points out that Sprint's statewide basic local rates have continued

to rise within the confines of price cap regulation. From this Public Counsel argues that since prices have continued to rise, Sprint has not had to respond to competitive pressures by decreasing its prices, and therefore, effective competition must not exist.

This argument is not persuasive for two reasons. First, although falling rates are often touted as an argument for establishing a competitive market, there is no economic, or logical reason why prices must always fall in a competitive market. Sometime prices do rise in markets that are clearly competitive. Any motorist that observes the price fluctuations in the competitive retail gasoline market is aware that competition does not always result in falling prices. In fact, it is possible that the competitive market rates for telephone service are higher than the rates imposed on that market under rate of return regulation and carried through under price cap regulation. If that is the case, then rates will rise in a competitive market. This means that the fact that rates may not have fallen is not conclusive proof that effective competition does not exist.

Second, when the legislature established, in Section 386.020(13), the factors that the Commission should consider when determining whether effective competition exists in a specific exchange or for a specific service, it did not include a requirement that the competition must have been effective in imposing price discipline on the market. Indeed, as a company subject to price cap regulation, Sprint's ability to change its prices in specific exchanges in response to localized competition is restricted by statute.^[115] Therefore, the Commission

cannot expect competition to have imposed price discipline in specific

exchanges until after Sprint, as the incumbent provider, has been freed to make a competitive pricing response in those exchanges.

The third general argument, this time raised by Sprint, as well as by those parties opposing competitive classification, concerns the existence of wireless communications as a form of competition in Sprint's exchanges. The parties offered arguments, but very little evidence, about the weight that the Commission should give to the presence of wireless competitors as a factor in whether effective competition exists in any particular exchange.

Clearly, there are wireless service providers operating in all of the exchanges served by Sprint. But Sprint did not offer any evidence that would establish exactly how effective that wireless competition was in any specific exchange. However, there is no need for the Commission to reach a conclusion about the effectiveness of that competition. Sprint made it clear that it was not relying on the existence of wireless competitors as the basis for its claim that effective competition exists in 5 of its 80 exchanges. Whatever wireless competition may exist, its effects are not restricted to only five exchanges. Rather, wireless competition is a sort of background effect in all of Sprint's exchanges. In deciding whether effective competition exists in the five exchanges named by Sprint, the Commission must examine the factors that make, or do not make, those five exchanges different from Sprint's other exchanges. The Commission will do so for each of the five exchanges in turn.

Kearney: The factor that leads Sprint to argue that effective competition exists in the

Kearney exchange, as well as in the other four exchanges in question, is the presence of a competitor offering facilities-based competition. In other words, a competitor is offering services through the use of its own facilities, thus avoiding the bottleneck represented by

Sprint's ownership of the loop bringing service into the customers home or business.

ExOp is a facilities-based competitor for Sprint in the Kearney exchange.

The controlling statute requires the Commission to consider five factors in determining whether effective competition exists. The first factor is the extent to which services are available from alternative providers in the relevant market. Sprint's facilities based competitor, ExOp, operates a cable television system in Kearney. By bundling local phone service with cable TV service and high-speed Internet access, ExOp has been able to take about one-third of the local telephone market. ExOp has been providing services in Kearney for nearly five years and its market share has continued to increase. ExOp does not have facilities in place to serve every customer in the Kearney exchange, but it has been designated by the Commission as an ETC – an eligible telecommunications carrier – and is eligible to receive universal service support in that exchange. ExOp currently serves a substantial portion of the available market in the Kearney exchange and there is no reason to believe that it will not be able to maintain and perhaps increase that market share in the future. The Commission concludes that services are available from an alternative provider in the Kearney exchange and that the first factor favors a finding of effective competition.

The second factor is the extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions. ExOp offers essentially the same services to its customers that are offered by Sprint and it does so at prices that are

generally lower than those charged by Sprint. The Commission concludes that the second factor favors a finding of effective competition.

The third factor is the extent to which the purpose and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in Section 392.185, RSMo, are being advanced. As previously indicated, the rates charged by ExOp in the Kearney exchange are lower than the rates charged by Sprint. Sprint is not currently able to lower its rates on an exchange-by-exchange basis to meet that competition. But it will be able to do so once the exchange is declared to be competitive. At that point, Sprint, as well as ExOp, will be pressured to lower rates by the forces of competition, thus benefiting consumers and ensuring that rates remain reasonable. The Commission concludes that the third factor favors a finding of effective competition.

The fourth factor is whether there are any existing economic or regulatory barriers to entry. The parties have identified no regulatory barriers to the entry of competing companies into the Kearney exchange. Kearney is not located in a dense urban area and for that reason it may be economically more difficult for competitors to enter the market. However, the fact that ExOp is offering services in the exchange and has gained a substantial share of the market indicates that whatever economic barriers to competition may exist are not insurmountable. In successfully entering the market, ExOp was substantially aided by the fact that it operates a cable television system in the exchange and can use those existing facilities to help establish its market position. The Commission concludes that the fourth factor favors a finding of effective competition.

The fifth factor is whether there are any other factors deemed relevant by the Commission and necessary to implement the purposes and policies of Chapter 392, RSMo. The Commission is not aware of any relevant factors that it has not already considered.

After considering each of the factors set out in the controlling statute, the Commission concludes that effective competition exists in the Kearney exchange.

Platte City: As with Kearney, Platte City is served by a facilities-based competitor, ExOp. However, a consideration of the five factors leads to a different conclusion with regard to the state of competition in this exchange. Unlike the Kearney exchange, ExOp has only recently begun offering service in the Platte City exchange and has not yet gained a substantial share of the market. Importantly, ExOp does not operate a cable television system in Platte City and cannot use that system to enable it to overcome any economic barriers to the provisioning of facilities-based service to a non-urban area. For the customers that it does serve in Platte City, ExOp is able to offer lower rates than Sprint. However, it currently does not have facilities in place to serve more than a few customers in the Platte City exchange. Although ExOp is an ETC in Platte City, and may someday be able to serve a larger proportion of the customers in that exchange, its status as an ETC does not immediately make it an effective competitor for Sprint. The Commission must decide whether there is effective competition now, not whether there will be competition someday. The Commission concludes that effective competition does not exist in the Platte City exchange.

Rolla: Fidelity is a facilities-based competitor for Sprint in the Rolla exchange. Like ExOp in Kearney, Fidelity operates a cable television system in Rolla and has used its ability to offer bundled services to obtain about one fourth of the market. Fidelity has been offering

telephone service in Rolla for approximately three years and has been offering cable television service for about eight years. As an affiliate of an established incumbent local exchange carrier in a nearby service area, Fidelity is a firmly established competitor. Fidelity is an ETC in Rolla and it should be able to maintain, if not increase, its market share in the future. The Commission concludes that services are available from an alternative provider in the Rolla market.

Fidelity offers essentially the same services to its customers that are offered by Sprint at prices that are competitive with those charged by Sprint. The Commission concludes that the services offered by the alternative provider are functionally equivalent and are offered at comparable rates, terms, and conditions.

As the Commission found in the Kearney exchange, once the Rolla exchange is declared to be competitive, Sprint and Fidelity will be under pressure to reduce rates to meet the challenges of competition, thus benefiting consumers and ensuring that rates remain reasonable. Therefore, the Commission concludes that the purposes and policies of Chapter 392 will be advanced.

The parties have not identified any regulatory barriers to the entry of competitors into the Rolla exchange. The fact that Fidelity, aided by its operation of a cable television system, has been able to gain a substantial share of the market indicates that any existing economic barriers to competition are not insurmountable.

The Commission is not aware of any other relevant factors that it has not already considered and concludes that effective competition exists in the Rolla exchange.

St. Robert: Fidelity also competes with Sprint in the St. Robert exchange using its own facilities. However, Fidelity only began offering service in that exchange in February 2003. As a result, it does not yet have a significant market share, although it is winning some business customers away from Sprint. Fidelity is not an ETC in St. Robert and instead its market plan in St. Robert is simply to cherry-pick a few profitable business customers that it can easily serve with its existing facilities. Fidelity does not have a cable TV franchise in St. Robert and as a result does not have facilities available to serve a significant proportion of the potential customers in that exchange. Fidelity does offer competitively priced service to those customers that it chooses to serve in the St. Robert exchange, but those services simply are not available to most potential customers. The Commission concludes that effective competition does not exist in the St. Robert exchange.

Norborne: Green Hills is a facilities-based competitor for Sprint in the Norborne exchange. Green Hills began offering services in the Norborne exchange approximately four years ago. By offering the same services offered by Sprint at substantially lower rates, Green Hills has taken approximately two-thirds of the market in that small, rural exchange. Green Hills has been granted ETC status in the Norborne exchange and has not opposed Sprint's request for competitive status in that exchange. The Commission concludes that effective

competition exists in the Norborne exchange.

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 positions and arguments of the parties for this issue are the same as for issue 1.

The Commission will reach the same result as for issue 1. The Commission concludes that effective competition exists in the Kearney, Rolla, and Norborne exchanges. The Commission concludes that effective competition does not exist in the Platte City and St. Robert exchanges.

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 positions and arguments of the parties for this issue are the same as for issue 1.

The Commission will reach the same result as for issue 1. The Commission concludes that effective competition exists in the Kearney, Rolla, and Norborne exchanges. The Commission concludes that effective competition does not exist in the Platte City and St. Robert exchanges.

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 positions and arguments of the parties for this issue are the same as for issue 1. The Commission will reach the same result as for issue 1. The Commission concludes that effective competition exists in the Kearney, Rolla, and Norborne exchanges. The Commission concludes that effective competition does not exist in the Platte City and St. Robert exchanges.

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 these services classified as competitive. ^[116] As a

result, the Commission does not need to decide this issue.

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's CENTREX services allow a business customer to use Sprint's central office technology to provide switching services to meet the customer's needs. Similar services are offered by competing local exchange companies but a customer can also meet its switching needs by buying the necessary hardware and installing the switching equipment on its own premises. The customer can obtain the necessary switching hardware from several unregulated suppliers. Sprint contends, and Staff agrees, that the ready availability of the necessary hardware provides effective competition for Sprint's CENTREX services. Since the suppliers of switching hardware can install their equipment for a customer in any of Sprint's exchanges, Sprint asks that the Commission find that there is effective competition for CENTREX services in all of its exchanges in Missouri.

Fidelity and Public Counsel oppose competitive classification for CENTREX services. They contend that customer premise equipment systems are not functionally equivalent to CENTREX because they still require purchase of dial tone from the local phone service provider. They also claim that Sprint failed to present evidence showing the existence of

customer premise equipment systems competitors on an exchange-by-exchange basis.

The five considerations that the legislature directed the Commission to consider when deciding whether there is effective competition in an exchange also apply when the Commission is deciding whether a particular service is effectively competitive. The evidence establishes that switching services are available to customers through either purchase of service from Sprint or a competitive local exchange carrier, or by purchasing equipment from a non-regulated supplier. Therefore, the first consideration is satisfied.

The second consideration is whether the services of alternative providers are functionally equivalent or substitutable for the services of Sprint. Sprint's witness, Brian Staihr, testified that goods or services are substitutable when they satisfy the same demand. In other words, they are substitutable if they have the actual or potential ability to take away significant amounts of business from each other.^[117] The evidence indicates that Sprint has lost 20 percent of its CENTREX business since June of 2001. It is reasonable to attribute most of this business loss to competition from customer-owned equipment. Although there are differences between Sprint's CENTREX services and switching services provided through customer-owned equipment, for example, a purchaser of customer-owned equipment must still purchase dial tone service from Sprint or some other local service provider, potential customers realize that they can use either alternative to satisfy their demand for switching services. As a result,

customer-owned equipment is substitutable for Sprint's CENTREX service and satisfies the second consideration.

Customer-owned switching equipment is sold by unregulated competitors in an unregulated market. Therefore, the market determines the price charged for that equipment. If Sprint wishes to compete for that business, the prices it can charge for its services will be determined by that market as well. The third consideration is therefore satisfied.

Since the competition for Sprint's CENTREX service is coming from the unregulated market for equipment, there are no economic or regulatory barriers to entry and the fourth consideration is satisfied.

Sprint has not provided any exchange-by-exchange analysis of the competition for CENTREX service. But since its competitors are not limited to any single exchange – a supplier of customer-owned switching equipment can sell its hardware in one exchange as well as the next – there is no need for any such exchange-by-exchange analysis.

The Commission concludes that effective competition for Sprint's CENTREX services exists in each of 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's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers and fiber network providers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA private line services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

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's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers and fiber network providers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of ATM and Frame Relay services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint

to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

Issue 9: 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 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 these services classified as competitive.^[118] As a result, the Commission does not need to decide this issue.

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 competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA MTS services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective

competition exists for these services in each of Sprint's exchanges.

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?

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA WATS services and 800 services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

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 Line Information Data Base Access (LIDB) services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's LIDB services be classified as competitive?

Sprint's competition for these services comes from several nation-wide carriers that own their own SS7 network and LIDB databases. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for

these services. Again, the other suppliers of SS7 and LIDB services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

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 competition for its speed dial services comes from every retail store in Missouri that sells telephone sets. Speed dial services can be duplicated by inexpensive telephone sets that are fully substitutable for the services offered by Sprint. The competition from customer owned equipment controls the rates that Sprint can charge for these services. Clearly telephone sets can be sold and used in any exchange in Missouri. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

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?

The payphone service that is at issue is the provision of an access line and related services to a payphone provider that will provide a phone for use by the public. Sprint's competition for payphone service can come either from a competitive local exchange company able to sell services to the payphone provider, or from sellers of equipment that the payphone provider can use to duplicate the service provided by Sprint or a competing telephone carrier. Sprint has requested that its payphone service be classified as competitive in those five exchanges in which it contends effective competition exists. Staff agrees that payphone services are competitive in those exchanges where basic local services are otherwise competitive. The Commission agrees that payphone services are competitive in those exchanges that are otherwise competitive. Therefore, the Commission concludes that payphone services are competitive in the Kearney, Rolla, and Norborne exchanges. Since it has found that effective competition does not exist in the Platte City and St. Robert exchanges, the Commission concludes that effective competition for payphone services does not exist in the Platte City and St. Robert exchanges.

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?

Facilities-based providers of basic local service compete with Sprint in providing directory assistance services in those exchanges where they provide service. However, Sprint contends that it faces effective competition for this service in all of its exchanges from interexchange carriers, which also provide directory assistance services and are not restricted to providing services within a particular exchange.

A Sprint local service customer can access directory assistance services from his or her pre-subscribed long distance carrier by dialing 1 plus the desired area code plus 555-1212, or by dialing 00. However, that same Sprint customer, by dialing 1-411 or 555-1212 without the desired area code, will automatically be connected with Sprint. This does provide a distinct advantage to Sprint in those exchanges where it does not face effective competition for basic local service. A competitive local exchange company that offers facilities-based basic local service would enjoy the same advantage as Sprint with regard to directory assistance calls from its basic local customers. In other words, directory assistance services are closely tied to basic local services. Where there is effective competition for basic local services, there will also be effective competition for directory assistance calls.

Sprint also argues that it faces competition for directory assistance services from wholly non-regulated directory assistance search engines on the Internet. While such search engines certainly exist and can be used to look up phone numbers from around the country, Sprint

failed to produce sufficient evidence to show what impact such non-regulated competition may have on the service it provides, and the Commission is not willing to speculate on such matters.

While Sprint's witness did testify that the volume of directory assistance calls that Sprint handles has decreased since 1998, Sprint was not able to establish the reason for that decline. It is clear, however, that the rates Sprint charges for directory assistance services have not declined in the face of competition, but rather have increased by 14.6 percent since 1999. The Commission earlier in this report and order indicated that rising rates do not necessarily preclude a finding of effective competition. In part that holding was based on the fact that Sprint could not easily reduce rates for those few exchanges where it faced competition without reducing rates in those exchanges where it has no competitors. For this service, however, Sprint is alleging that it is facing competition across all of its exchanges. Therefore, it should have no difficulty in decreasing its statewide rates for directory assistance services if it believes that it must do so to meet competition. That Sprint has not been compelled to do so indicates that what competition does exist is not yet sufficient to discipline Sprint's rates.

The Commission finds that effective competition for Sprint's directory assistance services does not exist; except in those three exchanges where effective competition for other basic local services has been found to exist. Therefore, the Commission concludes that

effective competition for Sprint's directory assistance services exists in the Kearney, Rolla, and Norborne exchanges but does not exist in any other Sprint exchange.

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?

Sprint is seeking statewide competitive classification for three specific local operator services: 1) station-to-station calls with automatic recording equipment; 2) station-to-station calls with operator assistance; and 3) person-to-person calls. Sprint contends that it faces effective competition for these services in all of its exchanges from interexchange carriers that offer their own operator services.

Operator services are closely tied to basic local service in the same way that directory assistance services are closely tied to that service. Operator services can be obtained from interexchange carriers but if a basic local customer uses the most familiar means of reaching an operator, dialing 0 or 411, the customer will be connected to his or her basic local service provider, unless the customer has chosen a different intraLATA toll carrier. Similarly, whatever competition does exist has not disciplined Sprint's rates for operator services. Instead, Sprint's rates for those services have increased since 1999.

As it did for directory assistance services, the Commission finds that operator services

are closely tied to basic local service and can be competitive only in those exchanges where effective competition for basic local service exists. Therefore, the Commission concludes that effective competition for operator services exists in the Kearney, Rolla, and Norborne exchanges, and that effective competition for operator services does not exist in any other Sprint exchange.

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's request assumes that ISDN services are closely tied to basic local service and can only be competitive in those exchanges where effective competition for basic local service exists. As a result, Sprint is seeking competitive classification for those services only in the exchanges that are otherwise competitive. Fidelity offers ISDN services in Rolla and St. Robert, and ExOp offers those services in Kearney and Platte City. Both offer that service at rates that are lower than those offered by Sprint. However, Green Hills does not offer that service in Norborne. Sprint conceded that it does not face competition for ISDN service in the Norborne exchange and withdrew its request for competitive classification of ISDN service in that exchange. The Commission has found that the Rolla and Kearney exchanges are subject to effective competition and therefore concludes that there is effective competition for ISDN

service in the Rolla and Kearney exchanges. The Commission has found that the St. Robert and Platte City exchanges are not subject to effective competition and therefore concludes that there is no effective competition for ISDN service in the St. Robert and Platte City exchanges.

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 seeking competitive classification for this service in the Kearney and Platte City exchanges where it offers Optional MCA and it contends its services are otherwise competitive. ExOp also offers Optional MCA service in the Kearney and Platte City exchanges and does so at rates that are lower than the rates offered by Sprint. Sprint does not offer MCA services in the Rolla, St. Robert, or Norborne exchanges so this issue does not apply to those exchanges. Optional MCA service can only be offered to a customer who is already receiving basic local service either from Sprint or from a competitive local exchange carrier. Optional MCA service is, therefore, closely tied to basic local service and can only be effectively competitive where basic local service is effectively competitive. The only exchange in which Sprint offers Optional MCA service and in which the Commission has found that effective competition exists is Kearney. The Commission concludes that effective competition for

Optional MCA service exists in the Kearney exchange. Conversely, the Commission has found that effective competition does not exist in the Platte City exchange so the Commission concludes that effective competition for Optional MCA service does not exist in the Platte City exchange.

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?

In its testimony and arguments before the Commission, Sprint requested that the Commission make a finding that only 5 of its 80 exchanges and only a few of its statewide services were subject to effective competition. This issue concerns what should be done about the other exchanges and services for which Sprint has not requested a finding of effective competition.

Sprint argues that the Commission need not make an affirmative finding that competition does not exist in those exchanges and for those services. Rather, Sprint would have the Commission merely find that there was no evidence presented that would justify a finding that effective competition does, or does not, exist for those exchanges and services. Price Cap regulation would then continue to apply for those exchanges and services. Staff and Public Counsel argue that the Commission should make an affirmative finding that price

cap regulation should continue to apply in exchanges, and for services, where Sprint has not proved that effective competition exists.

This issue exists because of the provision in Section 392.245.5 that requires that the services of an incumbent local exchange telecommunications company are to be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been providing basic local telecommunications services for at least five years. That competitive classification of exchanges and services occurs automatically unless the Commission determines, after notice and hearing, that effective competition does not exist in that exchange for those services.

Staff and Public Counsel would like to be able to use this proceeding to foreclose any argument that exchanges and services not specifically addressed in this proceeding will at some point be automatically deemed effectively competitive without a finding of effective competition by the Commission. Sprint, on the other hand, would like to keep that possibility open.

The Commission indicated in the order creating this case that the case was established to "investigate the state of competition in Sprint's exchanges." That statement indicates that the Commission intended to make a finding about the existence of competition in all of Sprint's exchanges. Sprint chose to argue that effective competition exists only in five exchanges and chose to present evidence about only those five exchanges. The record does not include an

exchange-by-exchange history of activity by competitive carriers in Sprint's exchanges.

But by Sprint's silence on its other 75 exchanges, the Commission would be justified in presuming that there is no evidence to support a finding of effective competition in those exchanges.

In any event, the Commission is not required to make that presumption. Sprint has the burden of proving that effective competition exists in its exchanges. It presented evidence to attempt to meet that burden of proof in only five exchanges. The Commission found that it actually met its burden in only three exchanges. That means that for its other 77 exchanges, Sprint has not met its burden of proving that effective competition exists. Therefore, the Commission will find that effective competition does not exist in those 77 exchanges.

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 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?

All parties agree that December 15, 2003, is the fifth anniversary of ExOp being the first alternative local exchange telecommunications company certified to provide service in Sprint's territory. However, ExOp did not actually start offering services in a Sprint exchange until February 1999. Therefore, the parties agree that the Commission does not have to issue a

decision by December 15.

IT IS THEREFORE ORDERED:

1. That Sprint Missouri, Inc. d/b/a Sprint's residence core access line services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.

2. That Sprint Missouri, Inc. d/b/a Sprint's residence access line-related services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.

3. That Sprint Missouri, Inc. d/b/a Sprint's business core access line services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.

4. That Sprint Missouri, Inc. d/b/a Sprint's business access line-related services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.

5. That Sprint Missouri, Inc. d/b/a Sprint's CENTREX services are classified as competitive in all of Sprint's exchanges.

6. That Sprint Missouri, Inc. d/b/a Sprint's intraLATA private line services are classified as competitive in all of Sprint's exchanges.

7. That Sprint Missouri, Inc. d/b/a Sprint's ATM and Frame Relay services are classified as competitive in all of Sprint's exchanges.

8. That Sprint Missouri, Inc. d/b/a Sprint's intraLATA MTS services are classified as competitive in all of Sprint's exchanges.

9. That Sprint Missouri, Inc. d/b/a Sprint's intraLATA WATS Services and 800 services are classified as competitive in all of Sprint's exchanges.

10. That Sprint Missouri, Inc. d/b/a Sprint's Line Information Data Base Access (LIDB) services are classified as competitive in all of Sprint's exchanges.

11. That Sprint Missouri, Inc. d/b/a Sprint's Speed Dial services are classified as competitive in all of Sprint's exchanges.

12. That Sprint Missouri, Inc. d/b/a Sprint's Payphone services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.

13. That Sprint Missouri, Inc. d/b/a Sprint's Directory Assistance services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.

14. That Sprint Missouri, Inc. d/b/a Sprint's Local Operator services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.

15. That Sprint Missouri, Inc. d/b/a Sprint's ISDN services offered in the Kearney and Rolla exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.

16. That Sprint Missouri, Inc. d/b/a Sprint's Optional MCA services offered in the Kearney exchange are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.

17. That for all other exchanges served by Sprint, the Commission finds that effective competition does not exist and that for those exchanges, Sprint remains subject to price cap regulation.

18. That any pending motions that the Commission has not specifically ruled upon are denied.

19. That this Report and Order shall become effective on December 14, 2003.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Forbis, and Clayton, CC., concur;
Gaw, Ch., concurs in part and dissents in part,
with separate concurring opinion to follow;
Murray, C., concurs, with separate concurring
opinion attached;
all certify compliance with the provisions of
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 4th day of December, 2003.

I agree with the remainder of the opinion.

Respectfully submitted,

Steve Gaw, Chairman

(S E A L)

Dated at Jefferson City, Missouri,
on this 8th day of December, 2003.

- [5] Exhibit 1, Idoux Direct, Page 13, lines 20-24.
- [6] Transcript p. 360, lines 12-14.
- [7] Exhibit 11, Devoy Rebuttal, Page 6, lines 9-14.
- [8] Exhibit 6, McKinnie Rebuttal, Page 22, Lines 18-22. A chart showing a side-by-side comparison of the rates charged by Sprint and ExOp may be found at Exhibit 1, Idoux Direct, Pages 33-34.
- [9] The proprietary numbers for December 2002 are set out in Exhibit 6, McKinnie Rebuttal, Schedule ACM-5.
- [10] Exhibit 6, McKinnie Rebuttal, Schedule ACM-5.
- [11] Exhibit 11, Devoy Rebuttal, Page 3, Lines 22-24.
- [12] Exhibit 11, Devoy Rebuttal, Page 3, Lines 24-25.
- [13] Order Granting Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TA-2001-251, May 15, 2001.
- [14] 47 U.S.C. Section 214(e)(1).
- [15] Exhibit 13, Declaratory Ruling FCC Docket No. 96-45, August 10, 2000, Page 8.
- [16] Transcript, Page 354, Lines 9-12.
- [17] Transcript, Page 360, Lines 15-25.
- [18] Exhibit 11, Devoy Rebuttal, Page 6, Lines 18-21.
- [19] Exhibit 11, Devoy Rebuttal, Page 7, Lines 1-6.
- [20] Exhibit 2, Idoux Surrebuttal, Page 17, Lines 1-7.
- [21] Exhibit 2, Idoux Surrebuttal, Page 17, Lines 1-7.
- [22] Order Granting Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. CO-2003-0252, April 10, 2003.
- [23] Exhibit 2, Idoux Surrebuttal, Page 18, Lines 12-16. Sprint and ExOp both offer the same rates in Platte City as they do in Kearney.
- [24] Exhibit 2, Idoux Surrebuttal, Page 18, Lines 9-10.
- [25] Exhibit 1, Idoux Direct, Schedule JRI-3
- [26] Exhibit 1, Idoux Direct, Page 40, Lines 4-19.
- [27] Exhibit 1, Idoux Direct, Page 42, Lines 8-9. See also Exhibit 12, Taylor Rebuttal, Page 3, Lines 54-58.

- [28] Exhibit 12, Taylor Rebuttal, Page 4, Lines 75-80.
- [29] Exhibit 12, Taylor Rebuttal, Page 2, Lines 40-47.
- [30] Exhibit 12, Taylor Rebuttal, Page 3, Lines 50-52.
- [31] Exhibit 6, McKinnie Rebuttal, Page 25, Lines 6-10. A chart showing a side-by-side comparison of the rates charged by Sprint and Fidelity I may be found at Exhibit 1, Idoux Direct, Pages 43-44.
- [32] Exhibit 12, Taylor Rebuttal, Page 3, Lines 53-54.
- [33] Exhibit 12, Taylor Rebuttal, Page 8, Lines 176-182.
- [34] The proprietary numbers for December 2002 are set out in Exhibit 6, McKinnie Rebuttal, Schedule ACM-6.
- [35] Exhibit 6, McKinnie Rebuttal, Schedule ACM-6.
- [36] Exhibit 2, Idoux Surrebuttal, Page 32, Lines 6-8.
- [37] Order Granting Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TA-2002-122, November 6, 2001.
- [38] Exhibit 1, Idoux Direct, Schedule JRI-3.
- [39] Exhibit 1, Idoux Direct, Page 46, Lines 7-8.
- [40] Exhibit 1, Idoux Direct, Page 46, Lines 12-19.
- [41] Transcript, Page 379, Lines 1-5.
- [42] Transcript, Page 372, Lines 15-17.
- [43] Transcript, Page 372, Lines 2-15.
- [44] Transcript, Page 371-372, Lines 23-25, 1.
- [45] Exhibit 6, McKinnie Rebuttal, Schedule ACM-4.
- [46] Exhibit 1, Idoux Direct, Page 22, Lines 2-19.
- [47] Exhibit 6, McKinnie Rebuttal, Page 20, Lines 13-14.
- [48] Exhibit 1, Idoux Direct, Page 24, Lines 15-16.
- [49] Exhibit 1, Idoux Direct, Page 25, Lines 4-11.
- [50] Exhibit 6, McKinnie Rebuttal, Schedule ACM-4.
- [51] Order Approving Stipulation and Agreement, Case No. CO-2003-0162, March 4, 2003.
- [52] Exhibit 1, Idoux Direct, Page 14, Lines 2-3.

- [53] Exhibit 1, Idoux Direct, Page 14, Lines 25-26.
- [54] Exhibit 3, Harper Direct, Page 21, Lines 15-17.
- [55] Exhibit 6, McKinnie Rebuttal, Page 7, Lines 18-20.
- [56] Exhibit 3, Harper Direct, Page 22, Lines 20-22.
- [57] Exhibit 3, Harper Direct, Page 22, Lines 11-13.
- [58] Transcript, Page 223, Lines 4-8.
- [59] Section 392.200.8, RSMo 2000.
- [60] Transcript, Page 219, Lines 5-16.
- [61] Exhibit 3, Harper Direct, Page 24, Lines 1-6.
- [62] Exhibit 3, Harper Direct, Pages 24-25, Lines 15-23, 1-6; Exhibit 6, McKinnie Rebuttal, Page 8, Lines 1-15.
- [63] Section 392.200.8, RSMo 2000.
- [64] Exhibit 3, Harper Direct, Page 24, Lines 1-6.
- [65] Exhibit 3, Harper Direct, Pages 24-25, Lines 15-23, 1-6; Exhibit 6, McKinnie Rebuttal, Page 8, Lines 1-15.
- [66] Section 392.200.8, RSMo 2000.
- [67] Exhibit 3, Harper Direct, Page 6, Lines 17-18.
- [68] Exhibit 3, Harper Direct, Page 7, Lines 1-2.
- [69] Exhibit 3, Harper Direct, Page 9, Lines 11-12.
- [70] Exhibit 3, Harper Direct, Page 8, Lines 12-14.
- [71] Exhibit 3, Harper Direct, Page 9, Lines 10-11.
- [72] Exhibit 3, Harper Direct, Page 10, Lines 26-28.
- [73] Exhibit 3, Harper Direct, Page 25, Line 20.
- [74] Exhibit 3, Harper Direct, Pages 25-26, Lines 20-23, 1-2.
- [75] Exhibit 3, Harper Direct, Page 26, Lines 3-6.
- [76] Exhibit 6, McKinnie Rebuttal, Page 8, Line 23.
- [77] Exhibit 3, Harper Direct, Page 26, Lines 9-12.

- [78] Exhibit 3, Harper Direct, Page 26, Lines 20-22.
- [79] Exhibit 6, McKinnie Direct, Page 9, Lines 9-12.
- [80] Exhibit 6, McKinnie Rebuttal, Page 9, Lines 13-21.
- [81] Exhibit 3, Harper Direct, Pages 12-13, Lines 11, 1-15.
- [82] Exhibit 6, McKinnie Rebuttal, Page 13, Lines 10-22.
- [83] Exhibit 3, Harper Direct, Page 15, Lines 14-21.
- [84] Exhibit 6, McKinnie Rebuttal, Page 14, Lines 20-22.
- [85] Exhibit 3, Harper Direct, Page 16, Lines 1-16.
- [86] Exhibit 3, Harper Direct, Page 17, Lines 1-15.
- [87] Transcript, Page 200, Lines 7-12.
- [88] Transcript, Page 227-228, Lines 24-25, 1-2. See *also*, Exhibit 16, Page 3 of 52, Line 40.II.C.1.
- [89] Exhibit 3, Harper Direct, Page 18, Lines 1-2.
- [90] Exhibit 3, Harper Direct, Page 18, Lines 10-13.
- [91] Exhibit 3, Harper Direct, Page 18, Lines 15-17.
- [92] Exhibit 3, Harper Direct, Page 18-19, Lines 17, 1.
- [93] Exhibit 3, Harper Direct, Page 20, Lines 6-8.
- [94] Exhibit 6, McKinnie Rebuttal, Page 10, Lines 11-13.
- [95] Exhibit 16, Page 3 of 52, Line 40.V.B.2.
- [96] Exhibit 16, Page 3 of 52, Line 40.V.B.3.
- [97] Exhibit 2, Idoux Surrebuttal, Page 14, Lines 9-10.
- [98] Exhibit 2, Idoux Surrebuttal, Page 14, Lines 10-11.
- [99] Exhibit 2, Idoux Surrebuttal, Page 14, Lines 14-16.
- [100] Exhibit 1, Idoux Direct, Exhibit JRI-7.
- [101] Exhibit 1, Idoux Direct, Pages 33-34, Line 17 and Pages 43-44, Line 11.
- [102] Exhibit 2, Idoux Surrebuttal, Page 15, Lines 13-15.
- [103] Exhibit 1, Idoux Direct, Exhibit JRI-7.

- [104] Exhibit 1, Idoux Direct, Pages 33-34, Line 17.
- [105] All references to Missouri statutes will be to RSMo 2000, unless otherwise indicated.
- [106] Section 392.245.5.
- [107] Section 392.245.5.
- [108] Section 392.245.5.
- [109] Section 392.200.
- [110] Section 392.200.4(1).
- [111] Exhibit 20, Page 9. In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Report and Order, Case No. TO-2001-467, December 27, 2001.
- [112] Transcript, Page 37, Lines 17-22.
- [113] Exhibit 8, Meisenheimer Rebuttal, Page 17, Lines 10-15.
- [114] Exhibit 8, Meisenheimer Rebuttal, Page 19, Lines 1-12.
- [115] Section 392.200.4.
- [116] Exhibit 2, Idoux Surrebuttal, Page 2, Lines 20-21.
- [117] Exhibit 5, Staihr Surrebuttal, Page 17-18, Lines 22-23, 1-2.
- [118] Exhibit 2, Idoux Surrebuttal, Page 2, Lines 20-21.