

Exhibit No.: _____
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ETC Designation*
Witness: *Robert C.
Schoonmaker*
Type of Exhibit: *Rebuttal Testimony*
Sponsoring Parties: *Mark Twain Rural
Telephone Co. and
Northeast Missouri
Rural Telephone Co.*
Case No.: *TO-2006-0172*
Date: *March 1, 2006*

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

In the Matter of the Third Application of)
Missouri RSA No. 5 Partnership,)
d/b/a Chariton Valley Wireless,) **Case No. TO-2006-0172**
for Designation as a Telecommunications)
Company Carrier Eligible for Federal Universal)
Service Support pursuant to §254 of the)
Telecommunications Act of 1996.)

REBUTTAL TESTIMONY OF ROBERT C. SCHOONMAKER

**ON BEHALF OF MARK TWAIN RURAL TELEPHONE COMPANY
AND NORTHEAST MISSOURI RURAL TELEPHONE COMPANY**

MARCH 1, 2006

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REBUTTAL TESTIMONY OF ROBERT C. SCHOONMAKER

I. BACKGROUND OF WITNESS

Q. Please state your name and address.

A. My name is Robert C. Schoonmaker. My business address is 2270 La Montana Way, Colorado Springs, Colorado 80918.

Q. By whom are you employed and in what capacity?

A. I am President and CEO of GVNW Consulting, Inc., a consulting firm specializing in working with small telephone companies.

Q. Would you please outline your educational background and business experience?

A. I obtained my Masters of Accountancy degree from Brigham Young University in 1973 and joined GTE Corporation in June of that year. After serving in several positions in the revenue and accounting areas of GTE Service Corporation and General Telephone Company of Illinois, I was appointed Director of Revenue and Earnings of General Telephone Company of Illinois in May, 1977 and continued in that position until March, 1981. In September, 1980, I also assumed the same responsibilities for General Telephone Company of Wisconsin. In March, 1981, I was appointed Director of General Telephone Company of Michigan and in August, 1981 was elected Controller of that company and General Telephone Company of Indiana, Inc. In May, 1982, I was elected Vice President-Revenue

1 Requirements of General Telephone Company of the Midwest. In July, 1984, I
2 assumed the position of Regional Manager of GVNW Inc./Management (the
3 predecessor company to GVNW Consulting, Inc.) and was later promoted to the
4 position of Vice President. I served in that position until October 1, 2003 except
5 for the period between December 1988 and November, 1989 when I left GVNW
6 to serve as Vice President-Finance of Fidelity and Bourbeuse Telephone
7 Companies. I was elected to the position of President and Chief Executive
8 Officer effective October 1, 2003. In summary, I have had over 30 years of
9 experience in the telecommunications industry working with incumbent local
10 exchange carrier companies.

11

12 Q. What are your responsibilities in your present position?

13 A. In my current position I have overall responsibility for the management and
14 direction of GVNW Consulting, Inc. In addition, I consult with independent
15 telephone companies and provide financial analysis and management advice in
16 areas of concern to these companies. Specific activities which I perform for client
17 companies include regulatory analysis, consultation on regulatory policy,
18 financial analysis, business planning, rate design and tariff matters,
19 interconnection agreement analysis, and general management consulting.

20

21 Q. Have you previously testified in regulatory proceedings?

22 A. Yes. I have submitted testimony and/or testified on regulatory policy, local
23 competition, rate design, accounting, compensation, tariff, rate of return,

1 interconnection agreements, and separations related issues before the Illinois
2 Commerce Commission, the Public Service Commission of Wisconsin, the
3 Michigan Public Service Commission, the Iowa Utilities Board, the Tennessee
4 Public Service Commission, the New Mexico Public Regulation Commission, the
5 Public Utilities Commission of the state of South Dakota, the Public Service
6 Commission of West Virginia, and the Missouri Public Service Commission. In
7 addition, I have filed written comments on behalf of our firm on a number of
8 issues with the Federal Communications Commission and have testified before
9 the Federal-State Joint Board in CC Docket #96-45 on Universal Service issues.

10

11 Q. On whose behalf are you testifying in this case?

12 A. I am presenting testimony on behalf of Mark Twain Rural Telephone Company
13 (“Mark Twain”) and Northeast Missouri Rural Telephone Company
14 (“Northeast”)(collectively “The Small ILECs” or “the Companies”). Each of the
15 Companies are rural telephone companies as defined in the Telecommunications
16 Act of 1996 (“the Act”), each has its own unique study area and each has been
17 designated an Eligible Telecommunications Carrier (“ETC”) within its respective
18 study area.

19

20 **II. PURPOSES AND CONCLUSIONS OF TESTIMONY**

21

22 Q. What is the purpose of your testimony?

23 A. The purpose of my testimony is to respond to the Application (“Application”) of
24 Missouri RSA No. 5 Partnership (“MO 5”) to be designated as an ETC for receipt
25 of federal Universal Service Funds (“USF”) in the rural high-cost areas served by

1 the Companies. I will present the legal framework and regulatory guidelines and
2 factors to assist the Missouri Public Service Commission (the “Commission”) in
3 its determination of this matter. I will also respond to the testimony presented by
4 MO 5 supporting that Application and will describe why I do not believe that MO
5 5 has demonstrated that such a designation is in the public interest.

6

7 Q. Does it appear that MO 5’s usage of anticipated USF support is focused primarily
8 on fulfilling the intent of maintaining local service rates at lower and more
9 affordable levels and preserving and advancing universal service?

10 A. No. While it does appear that the granting of ETC status to MO 5 will cause it to
11 introduce three new local service plans with lower rates, I do not believe that it
12 will increase competition or will bring significant additional benefits that the
13 communities do not already possess. Based upon its Application and testimony, it
14 appears that MO 5’s primary anticipated usage of USF support is to complete
15 further extension of the overlay of its present time division multiple access
16 (TDMA) network with Global System for Mobile Communications (GSM)
17 technology. I question whether MO 5 has met its evidentiary burden that ETC
18 status is in the public interest and that such would preserve and advance universal
19 service.

20 Q. As an overview, do you believe that MO 5’s Application and testimony meets the
21 requirements for being granted ETC status?

22 A. I do not believe so. While MO 5 has offered some positive aspects of its
23 application such as its Lifeline plans, the planned offering of a local plan with

1 unlimited minutes, and the presentation of detailed future construction plans, the
2 Commission should review carefully the testimony presented by all the Parties in
3 this case to determine whether MO 5 provides substantial and sufficient evidence
4 that granting them ETC status would be in the public interest. The Commission
5 must also consider that the Federal Communications Commission (“FCC”) has
6 adopted new rules for the Commission’s consideration that recommend a more
7 stringent and rigorous ETC designation process. I would encourage the
8 Commission to carefully weigh the testimony presented to see whether granting
9 such ETC status is in the public interest. Based on the record to date, I do not
10 believe a grant of ETC status in the areas served by the Companies is in the public
11 interest.

12

13 **III. THE FEDERAL TELECOMMUNICATIONS ACT AND THE**
14 **FCC’S CORRESPONDING REGULATIONS AND DECISIONS**
15 **PROVIDE THE BASIC FOUNDATION.**
16

17 Q. What are the key sections of Federal law and FCC rules, pertaining to ETC
18 designations and Universal Service, which the Commission should focus on?

19 A. The key or primary sections of focus should be:

- 20 • Section 214(e) of the Telecommunications Act of 1934, as amended by the
21 Telecommunications Act of 1996 (hereinafter “the Act”) which pertains to the
22 designation of ETCs.
- 23 • FCC Rule 54.201 (47 C.F.R. § 54.201) which contains the implementing
24 regulations.
- 25 • FCC Rule 54.101(a) (47 C.F.R. § 54.101(a)) which lists the nine services
26 supported by the federal Universal Service Fund and which are required for
27 ETC status.
28
29
30

- 1 • FCC Rule 54.202 (47 C.F.R. § 54.202) which is a recent amendment to
2 Part 54 of the FCC’s rules and includes additional requirements for ETC
3 designations approved by the FCC.¹
4
- 5 • Section 254(b) of the Act (47 C.F.R. § 254(b)) which defines the
6 “Universal Service Principles” to guide regulatory bodies such as the
7 Commission in preserving and advancing universal service.
8
9

10 Q. What responsibility does the Act give to state commissions in the ETC
11 designation process?

12 A. Section 214(e)(2) of the Act states in relevant part:

13 Upon request and consistent with the public interest, convenience, and
14 necessity, the State commission *may, in the case of an area served by*
15 *a rural telephone company*, and shall, in the case of all other areas,
16 designate more than one common carrier as an eligible
17 telecommunications carrier for a service area designated by the State
18 commission, so long as each additional requesting carrier meets the
19 requirements of paragraph (1). Before designating an additional
20 eligible telecommunications carrier for an area served by a rural
21 telephone company, the *State commission shall find that the*
22 *designation is in the public interest.* (emphasis added)
23

24 In regard to *rural areas*, the Commission *may* designate more than one carrier
25 *only if* the commission finds that the designation is in the public interest.
26 Additionally, the requirements of Section 214(e)(1) must be met under the Act;
27 namely, whether MO 5 offers the nine required services listed in 47 C.F.R. §
28 54.101(a) and advertises such. Finally, the principles of universal service, found
29 in Section 254(b), provide a clear description of the purpose of Universal Service
30 Funds which MO 5 is seeking to receive, and provide guidelines to assist the

¹ Rules 54.202, and the additional FCC ETC designation requirements, were ordered in the FCC’s most recent Report and Order 05-46. *Federal-State Joint Board on Universal Service*; Report and Order, CC Docket No. 96-45 (rel. March 17, 2005) (*Report and Order*).

1 Commission in determining whether the designation of MO 5 as an ETC would
2 be in the public interest.

3

4 Q. Has the FCC issued rules that the Commission can use as guidance in making a
5 public interest finding for competitive ETC designations in areas served by rural
6 telephone companies in Missouri?

7 A. Yes. In March, 2005 the FCC released a *Report and Order* which adopted
8 additional requirements for ETC proceedings before the FCC. The *Report and*
9 *Order* is a statement of the minimum public interest requirements that the FCC
10 will follow in such cases and, though not binding on state commissions, provides
11 guidance to state commissions in their ETC designations. These additional
12 minimum requirements became effective in April, 2005.²

13

14 Q. What is the FCC's recommendation regarding states using these guidelines in
15 their individual ETC proceedings?

16 A. The FCC strongly encourages the state commissions to adopt these minimum
17 recommendations. In the context of preserving the federal USF and reducing
18 fund growth attributable to lax ETC designations, the FCC urged the states to
19 adopt much more rigorous guidelines for ETC designation than have been used in
20 the past.³ I wish to emphasize that these are *minimum* recommended guidelines
21 for the states. The Commission need not be constrained by the FCC in

² The amendments to Part 54 became effective on or about April 1, 2005, or 30 days after the March 2 Federal Register publication. See *Report and Order*, Section VIII Ordering Clauses, ¶ 109.

³ *Id.* at ¶ 2 (“We also believe that because these requirements create a more rigorous ETC designation process, their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund.”) and ¶ 5.

1 establishing ETC criteria that the Commission believes better defines the public
2 interest. Indeed, the Commission may deviate from the FCC's recommended
3 ETC guidelines and adopt criteria different from and more restrictive than the
4 criteria used by the FCC.

5
6 Q. Would you recommend that the Commission consider the FCC's rules in its
7 public interest evaluation of MO 5's application for ETC status?

8 A. Yes, the Commission should use the FCC's recommended guidelines as a starting
9 point and build upon that foundation, along with other public interest
10 considerations to reach a conclusion regarding MO 5's application

11
12 Q. What specific measures did the FCC adopt in its recent *Report and Order*?

13 A. The FCC first stated that competition, by itself, is not sufficient to satisfy the
14 public interest test, and the FCC recommended that numerous other factors be
15 considered and weighed. The new FCC criteria, for initial ETC designation,
16 include the following:

17 (1) **Eligibility Requirements** – An ETC applicant, in addition to the Act's
18 requirements, must now, throughout the service area for which it seeks
19 designation:

- 20
21 • Provide a five-year plan demonstrating how high-cost universal service
22 support will be used to improve its coverage, service quality or capacity;
23 • Demonstrate its ability to remain functional in emergency situations;
24 • Demonstrate that it will satisfy consumer protection and service quality
25 standards;
26 • Offer local usage plans comparable to those offered by the incumbent
27 local exchange carrier (LEC); and

- 1 • Acknowledge that it may be required to provide equal access if all other
2 ETCs in the designated service area relinquish their designations.⁴
3

4 (2) **Public Interest Determinations** –The FCC clarified that its public
5 interest examination will review many of the same factors for ETC
6 designations in areas served by non-rural and rural incumbent LECs. In
7 addition, as part of its public interest analysis, the FCC will examine the
8 potential for cream-skimming effects where an ETC applicant seeks
9 designation below the study area level of a rural incumbent LEC.⁵
10

11 I will discuss each of these criteria later in my testimony.

12
13 Q. On the federal level, what else could assist the Commission in determining ETC
14 designation?

15 A. Given that it is Federal Universal Service funds for which MO 5 would be eligible
16 after ETC designation, it is appropriate that the principles of universal service, in
17 the Federal Act, should guide the Commission. The Act defines the following
18 Universal Service Principles in Section 254(b):

19 (b) UNIVERSAL SERVICE PRINCIPLES.--The Joint Board and the
20 Commission shall base policies for the preservation and advancement of
21 universal service on the following principles:

22
23 (1) QUALITY AND RATES.--Quality services should be
24 available at just, reasonable, and affordable rates.

25 (2) ACCESS TO ADVANCED SERVICES.--Access to advanced
26 telecommunications and information services should be provided
27 in all regions of the Nation.

28 (3) ACCESS IN RURAL AND HIGH COST AREAS.--Consumers
29 in all regions of the Nation, including low-income consumers and
30 those in rural, insular, and high cost areas, should have access to
31 telecommunications and information services, including
32 interexchange services and advanced telecommunications and
33 information services, that are reasonably comparable to those
34 services provided in urban areas and that are available at rates that

⁴ See *Report and Order* at ¶ 2. (emphasis added).

⁵ *Id.* at ¶ 3.

1 are reasonably comparable to rates charged for similar services in
2 urban areas.

3 (4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.-
4 -All providers of telecommunications services should make an
5 equitable and nondiscriminatory contribution to the preservation
6 and advancement of universal service.

7 (5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.--
8 There should be specific, predictable and sufficient Federal and
9 State mechanisms to preserve and advance universal service.

10 (6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES
11 FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.--Elementary and
12 secondary schools and classrooms, health care providers, and
13 libraries should have access to advanced telecommunications
14 services as described in subsection (h).

15 (7) ADDITIONAL PRINCIPLES.--Such other principles as the
16 Joint Board and the Commission determine are necessary and
17 appropriate for the protection of the public interest, convenience,
18 and necessity and are consistent with this Act.
19

20 Q. Did the FCC adopt any additional principles under 254(b)(7)?

21 A. Yes. It adopted the following additional principle in its Report and Order in CC
22 Docket No. 96-45, FCC 97-157 Issued May 8, 1997 (¶ 47):

23 COMPETITIVE NEUTRALITY -- Universal service support
24 mechanisms and rules should be competitively neutral. In this
25 context, competitive neutrality means that universal service
26 support mechanisms and rules neither unfairly advantage nor
27 disadvantage one provider over another, and neither unfairly favor
28 nor disfavor one technology over another.
29
30

31 Q. What is the relevance of these principles as adopted by Congress and the FCC in
32 relationship to the Application of MO 5 for ETC status?

33 A. In evaluating MO 5's Application for ETC status in the Companies rural study
34 areas, the Commission should utilize this set of universal service principles as a
35 guide in evaluating the public interest benefits of granting that status. Also, as
36 reflected in its *Report and Order*, the FCC is increasingly concerned about the

1 impact of multiple ETC designations on the high-cost universal service fund and
2 the resultant effect in rural areas. It is not simply the extra burden on the
3 universal service fund that is at issue in this case, but also the implications for the
4 overarching public policy goal of universal service, starting in the 1930's, to
5 provide affordable phone service to all.

6

7 **IV. THE MISSOURI COMMISSION'S APPROACH AND**
8 **RESPONSIBILITY TO DEVELOP ITS OWN ETC CRITERIA.**
9

10 Q. Can the Commission impose additional obligations on carriers seeking ETC
11 status?

12 A. Yes, the Act allows that “States may adopt regulations not inconsistent with the
13 Commission’s [FCC’s] rules *to preserve* and advance universal service.”⁶ A
14 Federal Court has upheld a state commission’s right to impose additional
15 requirements when designating carriers as eligible for federal USF.⁷ In addition,
16 in the *Report and Order*, the FCC repeatedly stated that a state can add additional
17 requirements,⁸ and indeed appears to encourage the states to do so.⁹ It is
18 important for the Commission to note that in the very first sentence of the *Report*
19 *and Order*, the FCC stated that that they were adopting additional measures
20 addressing “the *minimum* requirements” for a carrier’s ETC designation.¹⁰

⁶ 47 U.S.C. § 254(f). (emphasis added)

⁷ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999). The Fifth Circuit overturned a portion of the FCC’s universal service order that attempted to prohibit a state commission’s imposition of additional ETC requirements.

⁸ Report and Order at ¶ 25 (geographically-specific factors for emergency functionality); ¶ 30 (consumer protection); ¶ 34 (“there is nothing ... that would limit state commissions from prescribing some amount of local usage as a condition of ETC status”).

⁹ See generally, *Id.* at ¶ 61.

¹⁰ *Id.* at ¶ 1.

1

2 Q. Have other state commissions imposed additional obligations?

3 A. Yes. As one example, the Oklahoma Corporation Commission, on January 12,
4 2005, adopted additional requirements for ETC designation including a
5 requirement of unlimited local calling for Lifeline subscribers.¹¹

6

7 Q. MO 5 cites to FCC ETC designations of Western Wireless Corporation in
8 Wyoming and Guam Cellular and Paging in Guam as examples of the FCC's pro-
9 competitive policies.¹² How significant are these precedents to the Commission?

10 A. In my mind they are not terribly significant as a precedent. Those FCC ETC
11 designations generally predate the *Virginia Cellular* Order, released on January
12 22, 2004, and were primarily based on criteria related solely to the existence of
13 competition, a criteria the FCC has now found inadequate.¹³ They certainly
14 predate the current FCC rules that are even more fully developed.

15

16 Q. Does MO 5 have the burden of proof on all aspects of its Application?

17 A. Yes. MO 5 has the burden to demonstrate that it meets the requirements of the
18 statute and the FCC rules, and that its application is in the public interest. MO
19 5's obligation in this proceeding is to produce sufficient evidence that its ETC
20 designation and subsequent receipt of USF support will cause sufficient benefits

¹¹ See, Agency Rule Report, Oklahoma Corporation Commission, Permanent Rulemaking, Cause No. RM 200400014 at: <http://www.occ.state.ok.us/Divisions/GC/OCCRULES/Proprules/ARR%202004-14.pdf>
See also, News Release, "A Win for Consumers, Industry", January 12, 2005 at:
http://www.occ.state.ok.us/Divisions/NEWS/nrp_publicfullarticle.htm.

¹² Application at pp. 16 - 17.

¹³ The more recent of the two FCC Designations cited by MO 5, Guamcell, was released on January 25, 2002.

1 to occur, such as lower prices to consumers and availability of service throughout
2 its designated service area, to make such designation “in the public interest.”

3

4 Q. Does this burden of proof relate in broad terms to its application throughout the
5 portion of the state as a whole that it serves, or does it extend to each individual
6 study area?

7 A. While MO 5’s ETC Application involves several companies and study areas, the
8 Commission should take an individualized, analytical approach regarding each
9 affected study area.

10

11 Section 214(e)(2) of the Act directs that a State commission, before it designates
12 an additional ETC for an area served by a rural telephone company, “shall find
13 that the designation is in the public interest.” Thus, the State commissions have
14 the responsibility to analyze the public interest for each individual rural telephone
15 study area. The FCC, in its recent Order, endorsed such an approach. The FCC
16 stated that:

17 [A]lthough we adopt one set of criteria for evaluating the public interest
18 for ETC designations in rural and non-rural areas, *in performing the public*
19 *interest analysis, the Commission and state commissions may conduct the*
20 *analysis differently, or reach a different outcome, depending upon the*
21 *area served.* For example, the Commission and state commissions may
22 give more weight to certain factors in the rural context than in the non-
23 rural context and *the same or similar factors could result in divergent*
24 *public interest determinations, depending on the specific characteristics of*
25 *the proposed service area, or whether the area is served by a rural or a*
26 *non-rural carrier.*¹⁴
27

¹⁴ *Report and Order* at ¶ 43. (emphasis added)

1 In his concurring comments, FCC Commissioner Adelstein noted that the ETC
2 designation criteria should not be applied in a rote or mechanical fashion but the
3 FCC should carefully consider “the unique nature of individual circumstances” to
4 satisfy the FCC’s obligation as stewards of the USF.¹⁵

5
6 Q. You mention that the Commission’s approach should be on an individualized
7 analysis; what do you mean by that?

8 A. In other words, the Commission must analyze the fact-specific circumstances and
9 make a determination for each individual LEC’s study area or areas separately, on
10 an individual basis, and not under a global or blanket approach. In making its
11 determination for each study area, the Commission should consider such factors
12 as comparisons to the telco local service offerings, the extent of competition in
13 each area, MO 5’s existing service coverage, MO 5’s plans for future
14 enhancements, and others on an individual study area basis, rather than focusing
15 on MO 5’s total regional plans.

16

17 **V. ETC DESIGNATION PROCESS – THE ELIGIBILITY**
18 **REQUIREMENTS. A DISCUSSION OF MO 5’s APPLICATION.**

19

20 Q. Can you give a brief recap of the ETC designation requirements for the
21 Commission?

22 A. Yes. ETC applicants have to meet statutorily prescribed requirements in order to
23 become eligible as an ETC including showing that such designation is in the

¹⁵ *Id. Statement of Commissioner Jonathan S. Adelstein*, attached to FCC’s Memorandum Opinion and Order.

1 public interest. The statutory requirements under Section 214(e) are: (1) Offer
2 the nine supported services; and (2) Advertise those services and charges
3 (including the Lifeline and Link-up programs). The recent FCC Order provides
4 guidelines in five specific areas for determining whether the public interest is
5 being served by such an application.

6

7 Q. One of the requirements for ETC eligibility status is providing the nine services
8 required by the FCC in 47 C.F.R. § 54.101(a). What are your comments
9 regarding the provision of these services?

10 A. The nine services supported by the federal universal service are:

- 11 (1) Voice grade access to the public switched network
- 12 (2) Local usage
- 13 (3) Dual tone multi-frequency signaling or its functional equivalent
- 14 (4) Single-party service or its functional equivalent
- 15 (5) Access to emergency services
- 16 (6) Access to operator services
- 17 (7) Access to interexchange service
- 18 (8) Access to directory assistance
- 19 (9) Toll limitation for qualifying low-income consumers

20

21 MO 5, in its application and Mr. Simon's testimony, discusses each of these
22 services and asserts that it is providing them, or will provide them in the future.¹⁶

23

24 Q. Can you comment on the services that MO 5 is currently not providing?

25 A. Yes. First, Mr. Simon indicates that MO 5 is currently not providing Toll
26 Limitation for qualifying low-income customers since it has no current offering of
27 Lifeline and Link-Up service. This is understandable and MO 5's commitment to
28 do so if it is granted ETC status should be sufficient. However, Mr. Simon also

¹⁶ Testimony of James A. Simon at pp. 3 - 5. ("Simon Testimony")

1 states that MO 5 is not currently providing Access to Operator Services.¹⁷ Thus,
2 MO 5 does not currently provide all the required supported services. While Mr.
3 Simon indicates that MO 5 would provide such services if granted ETC status, he
4 provides no indication as to how this would be done, the time it would take to
5 implement this required service, and why MO 5 does not currently offer this
6 service.

7

8 Q. Does Mr. Simon's testimony raise questions in your mind as to whether MO 5 is
9 offering Access to Interexchange Service?

10 A. Yes. Mr. Simon's testimony on lines 18-22 of Page 4 states that MO 5 has direct
11 connections to certain Missouri tandem switches and access to the exchanges
12 behind those switches. That would cover a very limited area. He then discusses
13 "indirect connections to one or more interexchange carriers" leaving some
14 uncertainty whether a customer could access any interexchange carrier or not.

15

16 Q. Does MO 5 witness Ms. Zentgraf define Access to Interexchange Service?

17 A. Yes, she does on Page 9, Lines 3-8 of her direct testimony as follows:

18 "An ETC providing universal service must offer consumers access to
19 interexchange service to make or receive toll or interexchange calls.
20 Interexchange service access entails access to live or automatic operator
21 assistance for the placement and billing of telephone calls, including collect calls,
22 calling card calls, credit card calls, person-to-person calls, and third party calls, as
23 well as obtaining related information."
24

¹⁷ Simon Testimony, p. 4, lines 14-16.

1 Based on her definition and Mr. Simon's description of access to interexchange
2 services and the lack of access to operator services, it would not appear that MO 5
3 can provide Access to Interexchange Services as their own witness has defined it.
4

5 Q. In regard to the remaining services do the Companies challenge whether MO 5
6 offers the other six services?

7 A. In general, the Companies do not, at least at this time, question that MO 5 is
8 providing these six services in most of the area for which it is requesting ETC
9 designation. However, I do take exception to their providing these services in all
10 the area for which they have requested ETC designation to the extent that portions
11 of their requested ETC area fall outside their licensed operating area. Specifically
12 for the Companies, MO 5 admits that parts of Mark Twain's Bethel and
13 Northeast's Winigan wire centers do not lie within its FCC-licensed study area.¹⁸
14 MO 5's lack of provision of service in these areas, in comparison to the offerings
15 by the affected rural Local Exchange Carriers (RLECs) and Incumbent Local
16 Exchange Carriers (ILECs) generally, raise issues regarding how well the public
17 interest will be served by granting ETC status to MO 5. There are also issues
18 raised regarding the competitive neutrality principle established by the FCC.

19
20 Q. Did MO 5 sufficiently establish how it would provide service to the wire centers
21 that do not lie within its licensed area?

22 A. I do not believe that it has presented sufficient evidence. Given that MO 5 does
23 not provide service to these wire centers in their entirety and apparently does not

¹⁸ Application at p 11 and Appendix C.

1 intend to use anticipated USF support there,¹⁹ the only way that MO 5 can meet
2 its ETC obligation to provide service is by resale agreements. MO 5 correctly
3 states that the FCC permits service to be provided by other carriers through resale
4 agreements.²⁰ In Mr. Simon's testimony of how MO 5 will provide service to a
5 potential customer requesting service, there is no discussion of how a potential
6 customer outside of MO 5's licensed serving area but within its ETC serving area
7 will obtain service.²¹ Neither is there any specific evidence presented as to
8 whether and how service to these wire centers will be advertised or whether there
9 are any resale or roaming agreements currently in place.

10

11 Q. Do the FCC rules for the nine required services discuss a specific price at which
12 such services are offered?

13 A. No, they do not. However, the first principle in the Act related to Universal
14 Service which I previously quoted states "...quality service should be available at
15 just, reasonable and affordable rates." If one reviews the history of Universal
16 Service, a prime intent of providing USF support is to maintain rates for local
17 service at lower, more affordable levels. In other words, the purpose of the fund
18 is to preserve and advance universal service.

19

¹⁹ Simon's Testimony at p. 16 (MO 5 plans to expand its network only within its FCC-licensed area.). *Also see*, Application at p. 20 ("... MO 5 envisions implementing capacity expansions that, in conjunction with the deployment of the additional GSM cell sites, would result in network enhancements in virtually all of the wire centers located in MO 5's FCC-licensed service area, that are included in the proposed MO 5 ETC service area.")

²⁰ Application at pp. 10 - 11 (Service "may be provided by other carriers through roaming and/or resale agreements."). Pursuant to Section 214 (e), an ETC may offer services throughout the designated ETC service area by using a combination of its own facilities and resale of another carrier's services.

²¹ Simon's Testimony at pp. 14 - 15.

1 Q. What regulatory oversight does the Commission have to assure that the rates of
2 rural incumbent LECs (ILECs) are maintained at just and reasonable levels?

3 A. The Commission, by state statute, has the authority to review and establish the
4 rates of these Companies, along with other rate-of-return regulated companies in
5 the state, to assure that they are “just, reasonable, and affordable.”
6

7 Q. Does the Commission have any authority to regulate the rates of MO 5?

8 A. No, the Commission does not have authority to regulate MO 5’s rates either under
9 federal or state statute.
10

11 Q. What are the rates that the Companies you represent charge for local service?

12 A. The local tariffed rates for basic monthly residential service are as follows
13 (inclusive of the mandatory federal subscriber line charge (SLC)):²²
14

	<u>Local Rate</u>	<u>SLC</u>	<u>Total</u>
16 Mark Twain Rural Tel.	\$ 9.00	\$ 6.50	\$ 15.50
17			
18 NE Missouri Rural Tel.	\$10.00	\$ 6.50	\$ 16.50
19			

20 Q. What plans does MO 5 offer for “local” service?

21 A. The plans currently offered are presented in Mr. Simon’s testimony, Appendix J,
22 and are in the range from \$ 29.95 to \$ 129.95 per month for varying minutes of

²² Obtained from the Companies’ current tariffs.

1 use of any significance.²³ They also offer a very limited plan (30 minutes per
2 month plus \$0.55 per minute above that) for \$11.95.

3 Q. Does MO 5 intend that all of its plans qualify for federal USF?

4 A. Based on MO 5's testimony, it is my understanding that they intend for all of their
5 service offerings to be eligible for universal service support.²⁴

6

7 Q. Has MO 5 given any indication that it would reduce any of its rates if it is
8 designated an ETC?

9 A. Putting aside the proposed Lifeline plan, Mr. Simon testified to the introduction of
10 a reduced rate plan called the "ILEC Equivalent" Plan - "The ILEC-Equivalent
11 Plan would offer the same features and services as their first Lifeline Plan but
12 would be available to all MO 5 subscribers at the price of \$15.00 per month."²⁵

13 The proposed Lifeline Plan would offer unlimited local calling in an MO 5
14 customer's home cell site area (defined to include all of the ILEC local exchange
15 area) along with certain other features as described by Mr. Simon.²⁶

16 Q. What would you recommend for the Commission's analysis of MO 5's ILEC-
17 Equivalent Plan?

18 A. I would urge the Commission to inquire into certain aspects of the plan that are
19 not clear from Mr. Simon's explanation. For example, to fully evaluate the plan,
20 there needs to be an understanding of the availability to customers outside MO 5's

²³ Simon's Testimony at p. 6 and Appendix J.

²⁴ Simon's Testimony at p. 6 ("lifeline customers would be able to pick any existing MO 5 service plan...") and at p. 9 ("...MO 5 will make available multiple local usage plans that prospective customers can select from as part of its universal service offering.") and Missouri RSA Mo. 5 Partnership Responses to Intervenor First Set of Data Responses, DR 1.20.

²⁵ *Id.* at p. 8.

²⁶ Simon Testimony, pp. 6-7.

1 FCC-licensed service area but within its ETC service area; and MO 5's ongoing
2 commitment to this plan once ETC designation is granted.

3

4 Q. If MO 5's rates are approximately the same as the rates in the Companies'
5 requested study areas and MO 5 does not indicate that it will reduce its other rates
6 if granted ETC status and USF support, what is your assessment of the public
7 interest determination as it relates to the rates that MO 5 charges?

8 A. It does not seem like the public will gain much benefit by granting ETC status to
9 MO 5 in any of these study areas from a rate standpoint. The Commission will
10 need to make a determination if any public benefit gained from an additional ETC
11 will outweigh the cost of such.

12

13 Q. Is Lifeline service one of the nine supported services?

14 A. No. But the FCC rules require that ETCs offer Lifeline Service.²⁷

15

16 Q. What is the purpose of the Lifeline program?

17 A. The purpose of the low-income programs, of which the Lifeline program is a
18 component, is to help low-income customers establish and maintain local service.
19 Thus, the purpose of the program is to provide affordable telephone service to low
20 income individuals.

²⁷ 47 CFR 54.405.

1 Q. What information does MO 5 provide regarding its Lifeline and Linkup offerings?

2 A. Mr. Simon states that a Lifeline customer would be able to pick any existing MO
3 5 service plan and have the Lifeline discounts apply. He also discusses MO 5's
4 two proposed Lifeline-only plans.²⁸

5
6 Q. How does the cost of MO 5's Lifeline plan based on any existing MO 5 plan
7 compare to ILEC plans?

8 A. The Lifeline discount of \$ 8.25 (\$ 1.75 + \$ 6.50) applied to MO 5's lowest-priced
9 plan of \$ 11.95 computes to \$ 3.70 for 30 minutes. The cost, assuming that the 30
10 minute allowance is not exceeded, is lower than the Companies' rates for Lifeline
11 service, and the MO 5 plan has a wider local calling area. However, if the
12 customer exceeds the 30 minute allowance (either originating or terminating
13 minutes), the cost escalates very quickly. With an additional 10 minutes the cost
14 would increase by \$5.50, and if the customer exceeded this limit by 100 minutes,
15 the service would cost \$55.00 more for a total of \$58.70. Applying the Lifeline
16 discount to MO 5's other plans would provide costs considerably higher than the
17 Companies' local rates, though MO 5's plans would have wider calling areas and
18 more features.

19
20 Q. Could you discuss MO 5's Lifeline-only plans?

21 A. Under the first Lifeline Plan presented by Mr. Simon, a customer would pay a
22 fixed monthly price of \$ 6.75 per month for unlimited local calling to any

²⁸ Simon's Testimony at pp. 6 – 8.

1 numbers within that customer's present ILEC exchange.²⁹ Under the second
2 Lifeline Plan, the potential customer pays a flat \$11.75 per month for unlimited
3 local calling throughout MO 5's proposed ETC service area. Mr. Simon's
4 descriptions of both plans do not discuss whether calls can be made outside the
5 unlimited calling area and what the charge would be for such calls.

6

7 Q. How do MO 5's Lifeline-only plans compare to the ILEC plans?

8 A. The two specific plans proposed just for Lifeline subscribers are attractively
9 priced and both allow for unlimited local calling within their specific calling
10 areas. Both plans compare quite favorably to the ILECs' Lifeline plans. The
11 "first plan's" calling area matches that of the ILEC's local calling area. While the
12 charge for calls outside the local calling areas is undefined, to the extent the
13 charge was \$ 0.55 per minute as in the Back to Basics Plan, for example, a
14 handful of out-of-area calls could quickly increase the price of this plan. Finally,
15 to initiate service a new Lifeline customer would need to pay a \$25 activation fee
16 (discounted from \$50 for Link Up eligible subscribers) and the cost of a
17 subscriber handset. These costs could be deferred for a period not to exceed one
18 year.³⁰

19

²⁹ Simon's Testimony at p. 7. This is the price after applying Lifeline discounts for local exchange service and the federal subscriber line charge.

³⁰ *Id.* at p. 8.

1 **VI. FCC RECOMMENDED PUBLIC INTEREST**
2 **CONSIDERATIONS.**
3

4 Q. What are the FCC’s five recommendations for the Commission to consider in
5 evaluating the public interest that the FCC enunciated in its *Report and Order* and
6 rules?

7 A. The recommendations are:

8 (1) Offer local usage plans comparable to those offered by the incumbent
9 LEC in the areas for which it seeks designation;

10
11 (2) Demonstrate its ability to remain functional in emergency situations;

12
13 (3) Acknowledge that it may be required to provide equal access if all
14 other ETCs in the designated service area relinquish their carrier of last
15 resort obligations;

16
17 (4) A demonstration that it will satisfy consumer protection and service
18 quality standards; and

19
20 (5) Provide a five-year plan demonstrating how high-cost support will be
21 used to improve its coverage, service quality or capacity in every wire
22 center.³¹
23
24

25 **A. THE RECOMMENDATION THAT LOCAL USAGE**
26 **PLANS BE COMPARABLE.**
27

28 Q. What is the “local usage” recommendation?

29 A. In addition to the requirement that MO 5 offer a local usage component as one of
30 the nine supported services, the FCC has recommended in its *Report and Order*
31 that a comparison of the ETC petitioner’s local usage plan should be made as to
32 the plans offered by the specific incumbent LEC in the area; a “[c]ase-by-case

³¹ See *Report and Order* at ¶¶ 2, 17 and 20.

1 consideration of these factors is necessary”³² to determine if the plan is
2 comparable.

3

4 Q. Can the Commission formulate its own local usage requirement?

5 A. Yes. The FCC clearly recognized that a state commission, such as the
6 Commission, could prescribe a minimum amount of local usage as a prerequisite
7 condition to ETC status.³³

8

9 Q. How does MO 5’s “local usage” offerings compare to those of the Companies?

10 A. In the wireline industry, the vast majority of the rural carriers in the nation,
11 including the Companies, offer unlimited local usage, both originating and
12 terminating, for a flat monthly rate. In addition they offer unlimited terminating
13 usage from anywhere in the world. As I have previously discussed, MO 5 intends
14 to offer an “ILEC-Equivalent” plan for unlimited local usage for \$15.00.³⁴ This
15 plan would offer unlimited local calling in an MO 5’s customer’s home cell site
16 area, unlimited terminating usage, and certain other features.

17

18 Q. How should the Commission evaluate local prices and usage plans in its public
19 interest evaluation?

20 A. In comparing MO 5’s rate plans, I believe that the Commission should carefully
21 consider the lower rates charged by, and the unlimited calling plans of, the

³² *Id.* at ¶ 33.

³³ *Id.* at ¶ 34. (“[T]here is nothing in the Act, Commission’s rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.”)

³⁴ Simon’s Testimony at p. 8. The ILEC-Equivalent plan is the same as the “first” Lifeline Plan discussed on pp. 6 - 7 of Mr. Simon’s testimony, except for the price.

1 Companies in conjunction with the purposes of USF funds to provide universal
2 network connectivity.

3

4 **B. THE EMERGENCY FUNCTIONALITY**
5 **RECOMMENDATION.**

6

7 Q. What is the FCC's emergency functionality recommendation?

8 A. The FCC's recommendation is for an ETC applicant to demonstrate its ability to
9 remain functional in emergency situations. Specifically, the FCC requires a
10 demonstration of reasonable back-up power, ability to re-route traffic and
11 capability of managing traffic spikes.³⁵ The FCC also invited state commissions
12 to adopt geographically specific factors for their own emergency functionality
13 requirements.³⁶

14

15 Q. Has the Commission established emergency operations requirements for LECs
16 operating in Missouri?

17 A. Yes, such requirements are contained in 4 CSR 240-32.060(5) of the Code of
18 State Regulations. In order to be competitively neutral and to provide adequate
19 service support in emergency situations, the Commission should require MO 5 to
20 adhere to similar emergency operation requirements. Failure to do so would
21 create a framework which could unfairly advantage MO 5 over the incumbents
22 affected by this requirement and which could leave customers without adequate
23 safeguards.

³⁵ *Report and Order* at ¶ 25.

³⁶ *Id.*

1 Q. Does MO 5's application address the FCC's recommendations?

2 A. Not completely. While there is testimony regarding MO 5's battery back-up
3 capabilities and redundancy in certain network components,³⁷ the Commission
4 will need to determine if such is adequate and reasonable. However, there is no
5 discussion of re-routing and traffic spike capabilities.

6

7 Q. Is there anything that you find unique about MO 5's network components that
8 might raise specific issues regarding emergency capabilities?

9 A. Yes. Mr. Simon discusses the fact that one of MO 5's switches is located in
10 Richardson, Texas, a considerable distance from north central Missouri.³⁸ The
11 Commission may want to be informed as to how MO 5 can assure that the
12 transport links between central Missouri and Texas will be maintained in
13 emergency situations.

14

15 **C. THE EQUAL ACCESS RECOMMENDATION.**

16

17 Q. You discussed dialing parity and "equal access" in relationship to the requirement
18 to provide "access to interexchange carriers." Can you briefly summarize your
19 conclusions in that section?

20 A. Yes. Congress in the Act and the FCC in its rules implementing the Act placed
21 requirements on Local Exchange Carriers (LECs) to provide dialing parity to
22 interexchange carriers, indicating a strong public interest need to have such
23 service. As I described, MO 5 provides substantially less access to interexchange

³⁷ Simon's Testimony at pp. 20 - 21.

³⁸ Simon Testimony, p. 20.

1 carriers than do LECs, including each of the Companies. I recommend that the
2 Commission consider this in making its public interest determination regarding
3 MO 5's ETC application.

4
5 Q. What additional criteria did the FCC recommend in its rules?

6 A. In its recent Order, the FCC indicated the need for ETC applicants to
7 acknowledge that they may be required to provide equal access in the future, if
8 there is no other certified ETC in the area.

9
10 Q. Has MO 5 made such an acknowledgement?

11 A. MO 5 has acknowledged that it would provide equal access to any customer
12 where the underlying LEC relinquishes its ETC designation.

13

14 **D. THE RECOMMENDATION THAT AN ETC MUST**
15 **DEMONSTRATE ITS COMMITMENT AND ABILITY TO**
16 **PROVIDE THE SUPPORTED SERVICES.**

17

18

19 Q. What does this FCC recommendation consist of and how can you measure it?

20 A. The recommendation, simply stated, is that an ETC applicant must demonstrate
21 its commitment and its ability to provide the nine supported services, upon a
22 reasonable request, throughout the designated service area. This demonstration is
23 made through specific commitments to provide service,³⁹ and through the
24 submission of a formal five-year network improvement plan with specific details
25 of "how universal service funds will be used to improve coverage, signal strength,

³⁹ These specific commitments are delineated at *Report and Order* at ¶ 22.

1 or capacity that would not otherwise occur *absent the receipt of high-cost*
2 *support*”.⁴⁰

3

4 Q. You mentioned “reasonable request.” Who decides what is “reasonable”?

5 A. The FCC recommends that the state commissions, pursuant to their state law,
6 determine what constitutes a “reasonable request” for service.⁴¹ MO 5 has
7 described a process it proposes for responding to requests.⁴² I believe the
8 Commission should further examine how well these procedures might work in
9 practice on a day-to-day basis, particularly with regards to providing service in a
10 timely manner.. Also, as I previously discussed, MO 5 has not presented
11 evidence of the process it will utilize to provide service to a requesting customer
12 residing outside its FCC-licensed area but within its proposed ETC service area.

13

14 Q. In evaluating the commitment to provide the supported services, do you believe
15 that the Commission should take into consideration whether MO 5 is currently
16 offering services in these areas?

17 A. Yes, I believe that is a factor that clearly should be considered. As I discussed
18 earlier, it appears that MO 5 may not currently be providing all the supported
19 services. While there may need to be consideration given to the extension of
20 service to portions of exchanges that are not served as MO 5 improves its service,
21 I believe that the Commission should closely consider denying ETC status in
22 areas where MO 5 does not currently provide service or plan to provide service.

⁴⁰ *Id.* at ¶ 22. (emphasis added)

⁴¹ *Id.* at ¶ 21.

⁴² Simon’s Testimony at pp. 14 - 15.

1 Q. What rationale has the FCC given in describing its service commitment
2 recommendation?

3 A. In its *Report and Order* the FCC stated, “In addition, we encourage states to
4 follow the Joint Board’s proposal that any build-out commitments adopted by
5 states be harmonized with any existing policies regarding line extensions and
6 carrier of last resort obligations.”⁴³ FCC Commissioner and Joint Board Chair
7 Kathleen Abernathy put it more bluntly in discussing the purpose of a more
8 rigorous designation process to ensure that all ETCs are prepared to serve
9 throughout the designated service area, “In other words, competitive carriers
10 seeking ETC status must serve as carriers of last resort, just as incumbents
11 must.”⁴⁴

12
13 Q. What guidance did the FCC give to customize or individualize this
14 recommendation for each affected incumbent LEC study area?

15 A. Generally, the FCC suggested that the 5-year network improvement plan
16 specifically describe proposed improvements or upgrades “on a wire center-by-
17 wire center basis throughout its designated service area.”⁴⁵ Also, the FCC
18 implicitly invited state commissions to develop their own approach when the FCC
19 rejected suggestions for uniformity and instead stated that its approach accounts
20 for “unique circumstances” and “allows consideration of fact-specific

⁴³ *Report and Order* at ¶ 21. (quoting *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, 4268, para. 27 (2004) (*Recommended Decision*)).

⁴⁴ *Report and Order*, Statement of Commissioner Kathleen Q. Abernathy, attached to FCC’s Memorandum Opinion and Order.

⁴⁵ *Report and Order*, at ¶ 23.

1 circumstances of the carrier and the designated service area.”⁴⁶ Thus, the
2 Commission’s approach should be to analyze MO 5’s demonstration of its
3 commitment and ability to provide the nine supported services throughout the
4 designated service area for each affected study area.

5
6 Q. Did MO 5’s Application provide information to address the FCC’s
7 recommendation to determine whether ETC applicants were committed to
8 providing service throughout the designated ETC service area?

9 A. Yes. The Application contained an Appendix showing future cell sites, many of
10 which MO 5 would plan to build over the next five years. The primary thrust of
11 this plan, as I understand it, would be to complete deployment of MO 5’s GSM
12 overlay in its FCC-licensed service area along with some capacity increases
13 throughout its system.⁴⁷

14
15 Q. Could you explain how, and to what extent ETC designation would affect MO 5’s
16 deployment of additional planned cell sites?

17 A. Yes. The deployment plan I just described is for additional cell sites which MO
18 5 states would not be constructed and operated without USF support. Based on
19 MO 5’s representation, it would not expand its network coverage or capacity at all
20 without gaining ETC status.⁴⁸

21

⁴⁶ *Id.* at ¶ 24.

⁴⁷ See Application at pp. 6 and 19, and Appendix F.

⁴⁸ Simon’s Testimony at p. 10 and p. 15. Zentgraf Testimony at p. 16.

1 Q. Did MO 5 provide sufficient evidence to meet the FCC's recommendations for
2 their proposed deployment of additional cell sites?

3 A. It appears that they do in large measure. The FCC recommended that an ETC
4 applicant submit a formal five-year plan specifically describing, in detail, on a
5 wire center basis: (1) how signal quality, coverage or capacity will improve; (2)
6 the projected start and completion dates for each improvement and the estimated
7 amount for each project; (3) the specific geographic areas where the
8 improvements will be made; and (4) the estimated population that will be
9 served.⁴⁹ MO 5 provides such information though its Appendices though the
10 information displayed for future signal coverage and improvements include all
11 proposed cell sites even though its five-year plan contemplates building less than
12 all of them.

13
14 Q. What level of federal USF support are the Companies currently receiving?

15 A. There are three different types of federal USF support that the Companies
16 currently receive. These are high cost loop support (HCL), local switching
17 support (LSS), and interstate common line support, (ICLS). Based on USF
18 projections by the Universal Service Administration Corporation (USAC) for the
19 second quarter of 2006, the Companies would receive levels of support per month
20 per line (based on study area averages) as follows:

⁴⁹ *Report and Order* at ¶ 23.

1

Support Category	Mark Twain	NE Missouri
	Residence/ Single Line Business	Residence/ Single Line Business
HCL	\$30.35	\$21.00
LSS	\$2.40	\$4.54
ICLS	\$17.41	\$11.84
Total	\$50.16	\$37.38

2

3 These amounts would be portable to any competitive ETC that serves customers
4 in the areas served by these Companies.

5

6 Q. What are your observations about MO 5’s usage of anticipated USF support?

7 A. MO 5 has presented plans for using the anticipated USF support including plans
8 for use of increased funds, should they occur. The Commission should review
9 these plans, satisfy itself that the plans are adequate, and assure that if MO 5 is
10 granted ETC status the plans are carried out. As FCC Commissioner and Joint
11 Board Chair Kathleen Abernathy put it: “This requirement [formal build-out
12 requirements] is critical, because universal service support is designed to fund
13 investments in network; it should not be used to pad the bottom line.”⁵⁰

14

15 **E. THE RECOMMENDATION FOR A CONSUMER**
16 **PROTECTION AND SERVICE QUALITY STANDARDS**
17 **DEMONSTRATION.**

18

19 Q. What does the FCC recommend in regard to consumer protection and service
20 quality?

⁵⁰ *Ensuring the Sustainability of Universal Service*, Remarks by FCC Commissioner Kathleen Q. Abernathy, OPASTCO Winter Meeting, January 21, 2004.

1 A. The recommendation is that an ETC applicant demonstrate its commitment to
2 meet consumer protection and service quality standards in its application.

3

4 Q. Can a state regulate CMRS providers in regard to service quality?

5 A. Yes, the FCC stated that Section 332(c)(3) specifically allows states to regulate
6 CMRS terms and conditions, not dealing with rates and entry, in order to preserve
7 and advance universal service.⁵¹ Further, the FCC encouraged states to consider
8 consumer protection in the wireless context as a prerequisite for obtaining ETC
9 designation from the state.⁵² The FCC invited state commissions either to use the
10 FCC's framework or to impose their own requirements that ensure consumer
11 protection and service quality.⁵³

12

13 Q. Are the Companies that you represent required to adhere to the service standards
14 of the Commission's rules in Chapter 32 and the service and billing standards in
15 Chapter 33?

16 A. Yes. The Companies are required to follow these rules.

17

18 Q. Can you describe the types of standards that are in these rules?

19 A. Yes. These rules, which have been developed over a period of years and are
20 modified periodically, contain provisions which the Commission has felt are
21 necessary to protect the public interest by establishing standards for such services.

22

⁵¹ *Report and Order* at ¶ 31.

⁵² *Id.* at ¶ 30.

⁵³ *Id.*

1 Chapter 32 contains rules related to the provision of service to customers. These
2 rules include the requirements to provide directories and directory listings,
3 technical standards for the provision of service, requirements for installing service
4 consistent with company commitments to customers, standards for responding to
5 customer inquiries, and standards for completion of calls on the network.

6

7 Chapter 33 contains rules regarding billing practices. These rules include
8 requirements for the content of bills, customer deposit practices, and practices for
9 the discontinuance of service and resolving disputes and complaints. They also
10 contain specific provisions regarding the provision of operator services, pre-
11 subscription for long-distance service, and pre-paid calling services.

12

13 Q. Are CMRS providers, such as MO 5, subject to these rules?

14 A. Under the current provisions of the Missouri statutes, it would appear they are not
15 since CMRS providers are excluded from the definition of “telecommunications
16 carrier” in the state statute. Also, MO 5 admits that it is not subject to the same
17 quality of service standards established for the Companies.⁵⁴

18

19 Q. If these standards were important enough to incorporate into formal rules for
20 ILECs, should they also be required for CMRS providers that receive USF
21 support?

22 A. I would think so. The imposition of these service and billing requirements in
23 many cases imposes additional financial and administrative burdens on the ILECs

⁵⁴ Simon’s Testimony at p. 17.

1 which the Commission believes are justified in order to give greater protection
2 and choice to consumers. Wireless carriers, who do not have to meet these
3 requirements, will likely not conform to these requirements found necessary for
4 the provision of telecommunications service unless the Commission imposes
5 these standards.

6

7 Q. Does the imposition of tariffs, service standards, and other regulatory
8 requirements on ILECs to meet service and billing standards, while allowing
9 CMRS providers to avoid such requirements, lead to a USF system that is
10 “competitively neutral” as described by the USF principle adopted by the FCC?

11 A. I do not believe that it does and would recommend that the Commission consider
12 this in its deliberation and analysis of the public interest standard. Imposing
13 requirements such as providing directory listing and directories, specific deposit
14 and disconnection procedures, service installation criteria, call completion
15 standards and other required measures create specific, additional costs on ILECs.
16 It is not competitively neutral to provide CMRS providers the benefits of USF
17 when they are not required to meet the same, or at least similar, service standards
18 as the ILECs nor incur the same costs to meet these service standards. This
19 creates an unfair disparity between MO 5 and the ILECs affected by this
20 application.

21

22 Q. Are the terms of service provision for MO 5 similar to those that ILECs are
23 required to provide through the tariff approval process?

1 A. No. There are differences that are not necessarily to the subscribers' benefit. For
2 example, according to its website, MO 5 requires a service contract of two years
3 on all plans, and according to item 8 in that contract, a termination fee applies
4 before the end of that service period.⁵⁵ MO 5's response to MoPSC DR 0011
5 further states that MO 5 does not charge "cancellation" fees, but discounts and
6 waived fees will be charged for early termination of a contract.⁵⁶ On the other
7 hand, the Commission requires ILECs to provide service on a monthly basis with
8 no termination fee or penalty.

9

10 Q. If the Commission decides to grant MO 5 ETC status in some study areas should
11 it impose service conditions upon MO 5 as a condition of granting that status?

12 A. Yes. Such conditions should be similar to those imposed on ILECs, although
13 there may need to be some differences to recognize the different technologies in
14 the two networks.

15

16 Q. MO 5 has stated that it will comply with the CTIA's Consumer Code.⁵⁷ Is that
17 sufficient?

18 A. No. Because the CTIA Code is a voluntary code, a major problem is a lack of
19 enforceability; there is no body to hold MO 5 accountable for implementation of
20 the Code. I disagree with MO 5's claim that its adoption of the CTIA Code

⁵⁵ Attachment 1.21 in Missouri RSA No. 5 Partnership's Response to Intervenor's Data Requests

⁵⁶ Response to MPSC staff DR No. 0011.

⁵⁷ Simon's Testimony at p. 17.

1 should alleviate any concerns regarding its commitment to meet quality of service
2 standards.⁵⁸

3

4 Q. Could you provide an example specific to MO 5 of how lack of enforceability
5 may be a problem?

6 A. Yes. For example, MO 5 promises, under Section One of the CTIA Code which
7 MO 5 included as Appendix L to Mr. Simon's testimony, to disclose rates and
8 terms of service of each rate plan on its web site. More specifically, MO 5
9 promises to disclose information on its web site about any early termination fees.
10 I viewed the "Calling Plans and Features" and "Products" sections of its web site
11 just prior to filing this testimony. Though virtually all plans require a two year
12 contract, there were no disclosures of the impact of terminating the contract early
13 or any recovery provisions for discounts or waived fees. The web site also did not
14 include any information on the pricing of wireless handsets.⁵⁹ However, from
15 reading the response to a data request, while MO 5 claims they have no
16 "cancellation fees" they admit that, "...where discounted prices were offered for
17 equipment, or initial fees waived in return for a term usage contract, those
18 discounts and/or waived fees are recovered."⁶⁰ Such recovery is not referenced
19 on their web site. Thus, it appears that MO 5 is currently in violation of the CTIA
20 Code. The point is that there is no regulatory body to enforce this or any violation
21 of the Code. In contrast, the wireline companies are subjected to mandatory
22 Commission regulation and enforcement. Thus, MO 5's voluntary compliance

⁵⁸ Application at p. 22.

⁵⁹ See MO 5's web site for these plans at <http://www.cvalley.net/CVWS/plans.htm>.

⁶⁰ Response to MPSC staff DR No. 0011.

1 does not mitigate the concerns about competitive neutrality. A
2 telecommunications attorney sums the problems with the Code well: “The
3 bottom line is that this 10-point manifesto is both hollow and unenforceable. So
4 despite the great advance publicity, wireless customers still, as always, need
5 follow the famous Latin phrase *caveat emptor*.”⁶¹

6

7 **VII. ADDITIONAL PUBLIC INTEREST CONSIDERATIONS**

8

9 Q. What additional public interest analysis did the FCC recommend in considering
10 ETC designations?

11 A. The *Report and Order* contained additional public interest concerns that a state
12 commission should consider in reviewing ETC designation requests. These
13 concerns include an examination of (1) the benefits of increased consumer choice,
14 (2) the unique advantages and disadvantages of the ETC applicant’s service
15 offerings, and (3) the impact on the federal USF. The FCC further stated that, for
16 ETC designations in rural carrier areas, there should be a more rigorous public
17 interest analysis than for non-rural areas and for a redefinition of an RLEC’s
18 study area, there will be an examination for cream-skimming potential.

19

20 Q. What advice or recommendations did the FCC have for state commissions such as
21 this Commission?

22 A. The FCC strongly encouraged state commissions to use the FCC’s framework in a
23 manner to be consistent with the universal service principles – preserving and

⁶¹ Martha Buyer, *Consumer Code for Wireless – Help or Hindrance?* The Daily Record (Sept. 15, 2003).
Link at: <http://www.marthabuyer.com/Tele915.pdf>

1 advancing universal service and competitive neutrality⁶² - and to be consistent
2 among the states with an eye to improving the long-term sustainability of the
3 USF. The FCC is, undoubtedly, concerned about the national implications of
4 individual state commission's ETC decisions and their collective effects on the
5 federal USF.⁶³ The FCC acknowledged that state commissions can and have used
6 additional factors in their public interest analysis.⁶⁴ Finally, the FCC stressed the
7 customized approach that state commissions should use in their public interest
8 analysis.⁶⁵

9

10 Q. What further suggestions would you have for the Commission's public interest
11 analysis?

12 A. As I have stated throughout this testimony, the FCC requirements and
13 recommendations should be the minimum foundation upon which the
14 Commission should build its own public interest analysis. The FCC, as stated
15 above, acknowledges and even encourages the state commissions to develop their
16 own framework. Further, the FCC encourages an individualized analytical
17 approach whereby the Commission is to examine the public interest on a study
18 area level using cost-benefit balancing. For example, the FCC suggests that the
19 state commission may consider limiting the number of ETCs due to the strain on
20 the USF by examining per-line USF support received by the individual LEC,⁶⁶ on

⁶² *Report and Order* at ¶¶ 18-19.

⁶³ *Id.* at ¶¶ 57 and 60.

⁶⁴ *Id.* at ¶ 40.

⁶⁵ *Id.* at ¶ 60. (“We believe that section 214(e)(2) demonstrates Congress’s intent that state commissions evaluate local factual situations in ETC cases” “[N]othing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described”)

⁶⁶ *Id.* at ¶ 55.

1 a case-by-case approach.⁶⁷ I would encourage the Commission to do likewise for
2 MO 5's application.

3

4 Q. What are some of the benefits, or effects, that one would expect to be caused from
5 MO 5's designation as an ETC and receipt of USF support?

6 A. The Commission should expect to see MO 5's ETC designation and receipt of
7 USF to cause such benefits as infrastructure investment to bring wireless services
8 to underserved and unserved areas, lower prices, an increase of the choice of
9 service offerings or an upgrade of such, and improvements in service quality.
10 Further, these benefits would be expected throughout MO 5's prospective ETC
11 service area.

12

13 Q. You used "cause" and "effect" in describing the relationship between expected
14 benefits and MO 5's ETC designation. Could you expand upon that relationship?

15 A. Yes. MO 5 has an obligation in this proceeding to produce sufficient evidence
16 that its ETC designation and subsequent receipt of USF support will cause
17 benefits to occur such as lower prices and greater availability of service
18 throughout its designated service area. If such benefits will not occur, or if the
19 Commission determines that such benefits will occur without ETC designation
20 and USF support, than MO 5 has not met in its evidentiary obligation.

21

22 Q. Is there any evidence to suggest that such benefits will occur regardless of MO 5's
23 anticipated receipt of USF funds?

⁶⁷ *Id.* at ¶ 56.

1 A. Yes. Future benefits such as lower prices, new and improved features and
2 improvements in coverage may very well result from the competitive marketplace
3 and customer demands rather than from ETC designation and resultant USF
4 support. Mr. Simon testified as to the “highly competitive wireless service market
5 of today”, and stated that “for competitive reasons” MO 5 is forced to match the
6 pricing of its wireless competitors.⁶⁸ He also testified that MO 5 has
7 “continuously expanded its coverage footprint” to serve “an increasing
8 geographic area and population” and “Expansions are planned in response to
9 customer requests and comments, potential subscriber growth and MO 5’s desire
10 to fully develop network coverage throughout its FCC-licensed service area.”⁶⁹
11 Thus, it would appear that future planned expansion of MO 5’s network, although
12 less profitable than previous expansions, may be at least partially caused by these
13 factors. The Commission should consider whether the public interest truly
14 benefits from granting ETC status and providing USF support where the
15 competitive wireless market environment and customer demand is already
16 prompting MO 5 to lower prices, improve features and build out its network.

17
18 Q. MO 5’s Application cites as the apparent primary public interest benefit of its
19 application as enhancing consumer welfare by bringing service choices,
20 innovation, quality differentiation and rate competition to the local market.⁷⁰ Has
21 MO 5 adequately demonstrated that such benefits will occur throughout its
22 designated ETC service area as a result of its ETC designation and USF support?

⁶⁸ Simon’s Testimony at pp. 9 - 10.

⁶⁹ *Id.* at p. 15.

⁷⁰ *Id.* at p. 17.

1 A. I do not believe so. As a threshold matter, I question whether the listed benefits,
2 especially as to increased service choices, innovation and rate competition, would
3 occur only if MO 5 receives ETC designation. MO 5 has already implemented a
4 GMS overlay of its TDMS and analog networks to bring those services to its
5 customers, for example. It has been responding to the service offerings and
6 pricing of other wireless competitors.⁷¹ ETC designation has not been necessary
7 to generate the significant market place rivalry already being experienced. MO
8 5's promised benefits are generalized statements and rely heavily on the "benefits
9 of competition". In the subsection directly below I provide testimony, data, and
10 other evidence that will provide the Commission with a fact-intensive analysis to
11 make a determination as to the public interest test. This subsection addresses the
12 purported generic benefits of competition, competitive response and lower prices
13 as well as the costs.

14
15 Q. Has MO 5 presented any evidence to show that that there are underserved or
16 unserved areas in the Companies' service areas affected by this ETC application?

17 A. No. The only substantive mention of unserved areas that I noted in MO 5's
18 Application and testimony was Mr. Reeves' and Ms. Zentgraf's mention of
19 "previously unserved area" in reference to a discussion of MO 5's cellular
20 licenses.⁷² However, I assume that this discussion relates to MO 5's unserved
21 areas and not to the ILEC or competing CMRS providers. Beyond this mention,
22 MO 5 did not present any evidence to show that any residents in the Companies'

⁷¹ See Simon Testimony, p. 10, lines 3-6.

⁷² Reeves' Testimony at p. 3. , Zentgraf Testimony at p. 4.

1 service areas are being denied basic local telecommunications service or access to
2 the public switched network.

3

4 **A. THE ALLEGED BENEFITS OF PRICING AND**
5 **INCREASED CONSUMER CHOICE FROM MO 5'S ETC**
6 **PETITION**
7

8 Q. You previously mentioned pricing. Has MO 5 addressed whether it plans to
9 lower prices as a consumer benefit from its ETC designation?

10 A. Yes. In addition to MO 5's two Lifeline plans, Mr. Simon testified to the
11 introduction of a reduced rate plan called the "ILEC Equivalent" Plan which
12 offers the same features and services as MO 5's first Lifeline Plan and will be
13 offered at the price of \$15.00 per month.⁷³ The referred Lifeline Plans would
14 offer unlimited local calling in an MO 5's customer's home cell site area. There is
15 a brief description of the ILEC-Equivalent Plan on page 26 of the Application and
16 a more detailed description on page 8 of Mr. Simon's testimony.

17

18 Q. In analyzing ETC designations, what weight should the Commission give to the
19 competition factor in rural areas?

20 A. The Commission should give much less weight to the factor of competition than
21 many states did before the *Report and Order*. In the past, i.e., prior to *Virginia*
22 *Cellular*, many wireless ETC designations, rested primarily, or even solely, on the
23 benefits of competition. MO 5 cites from such orders in its application regarding

⁷³ Simon's Testimony at p. 8.

1 prior FCC findings regarding the public interest.⁷⁴ Now, under the FCC’s more
2 rigorous and thorough public interest analysis, competition will simply be one
3 factor (and in my mind a relatively small one) when considering whether an ETC
4 designation is consistent with the public interest, convenience and necessity under
5 section 214 of the Act and whether it serves the public interest under section 254.

6

7 Q. Do you agree with MO 5’s statements that imply that its ETC designation is in the
8 public interest because it will stimulate or promote competition and the
9 facilitation of wireless services to rural Missouri customers?

10 A. No. The underlying premises in MO 5’s statements,⁷⁵ i.e. that increased
11 competition will result from its ETC designation and that the benefits outweigh
12 the harms are: (1) Competition through a USF-supported competitor has either
13 negligible costs or no cost, (2) There is insufficient competition in the targeted
14 area, and (3) MO 5 needs USF support in order to enter and compete. I believe
15 each of these underlying premises to be faulty or uncertain, at best. In regard to
16 the third premise above, MO 5 does not need USF support to enter and compete in
17 the market since it is already doing so. I will discuss the remainder below.
18 Finally, given that MO 5 is already providing service throughout the Companies’
19 area and most of its own license area, the question should be what *additional*
20 competition, if any, will be caused by MO 5’s ETC designation.

21

⁷⁴ Application, pp. 16-17.

⁷⁵ See generally, Application at p. 16 (ETC designation will result in “marketplace rivalry”), 18 (“Without competition ... the consumer has no alternative from which to select ...”); and Simon’s Testimony at p. 18 (“The lack of competition [among traditional wireline carriers] creates an environment where quality of service is appropriately regulated.”).

1 **i. Whether USF Support is Necessary to Promote**
2 **Competition in the Rural Areas.**
3

4 Q. Is there a lack of competition in rural areas in general?

5 A. It would appear not. According to the President of the wireless association,
6 CTIA, the results of a Rural Cellular Association survey in 2004 found that “an
7 average of 5.1 competitors provides service in any given rural area.”⁷⁶

8
9 Q. Is there a lack of competition in the rural areas affected by MO 5’s ETC
10 application?

11 A. No. In fact, using the CTIA’s 5.1 average, these affected rural areas have
12 competition at least at the national average level. MO 5 admits to a level of
13 wireless competition.⁷⁷ While in data request responses it did not identify its
14 competitors, a review I made of major wireless providers’ web sites indicates that
15 Alltel, Cingular, Verizon, and U.S. Cellular have significant coverage in the MO
16 5 operating area in addition to MO 5. MO 5 implies that it needs USF to compete
17 with these other wireless carriers.⁷⁸

18 Q. Do you have any additional evidence of wireless competition in the rural LEC
19 areas affected by this Application?

20 A. Yes. A review of these providers’ web sites demonstrate that there is a great deal
21 of competition including a wide variety of pricing plans and. A more detailed
22 review of these plans shows: 1) variations in the packages of minutes, and the

⁷⁶ Testimony of Steve Largent before the Congressional Rural Caucus Task Force on Telecommunications, February 2, 2005. See link at:

http://www.house.gov/johnpeterson/ruralcaucus/telecomtaskforce/largenttest_020205.pdf.

⁷⁷ Simon Testimony, p. 9, lines 20-23.

⁷⁸ Simon Testimony at p. 9, line 15 through p. 10, line 6.

1 times of the day various services are offered; 2) a wide variety of additional
2 features; and 3) new services such as Blackberry, PDA services, data and text
3 services, and picture services. It is important to note that all of these services are
4 being offered to Missouri consumers without the provision of universal service
5 support.

6

7 Q. What does MO 5 state regarding actual wireless competition in the rural LEC
8 areas affected by this Application?

9 A. As noted above, MO 5 admits to numerous wireless competitors. Further, MO 5
10 readily acknowledges the “highly competitive wireless service market” and how
11 MO 5 must match its pricing to competitors for “competitive reasons”.⁷⁹

12

13 **ii. MO 5’s ETC Application and the Costs of Competition.**

14

15 Q. Generally, what effect does competition have on telecommunication costs and
16 service?

17 A. The introduction of a competitor into a rural environment does not necessarily
18 lead to lower costs or higher quality service for consumers. A high-cost market,
19 by definition, is still a high-cost market even after the introduction of competition.
20 The primary reason the ILECs are eligible to receive funding from the federal
21 USF is that they are providing service in geographic areas where it is not
22 economically feasible to serve at reasonable rates. MO 5 seemingly supports this
23 rationale when it states that Federal USF “is necessary if MO 5 is to establish the

⁷⁹ Simon’s Testimony at p. 10.

1 infrastructure required to bring its wireless service to many remote and difficult-
2 to-reach locales”⁸⁰ Given MO 5’s view - that it is not economical for it to
3 provide wireless telephone service to some of the rural areas in its service area
4 without Federal USF support – one needs to ask why another subsidized
5 competitor should be supported in these same areas. In fact, the introduction of
6 additional competition may increase the cost per line for each of the carriers
7 above the level that would be experienced if there was only one carrier serving the
8 area.

9

10 Q. Why would costs increase for both carriers?

11 A. With the introduction of a competitive ETC, the only difference is that the market
12 and the federal USF will now have to support multiple entrants, but there are
13 limited financial resources in the market and in the USF. Since costs of a
14 telecommunications network are relatively fixed, the splitting of a rural market
15 between two or more providers generally causes the cost of service to increase for
16 each of the providers. The FCC Chairman, Kevin Martin, recognized this
17 problem while voicing his concern about using USF to create “competition” in
18 high-cost areas:

19 I am hesitant to subsidize multiple competitors to serve areas in which
20 costs are prohibitively expensive for even one carrier. This policy may
21 make it difficult for any one carrier to achieve the economies of scale
22 necessary to serve all of the customers in a rural area, leading to inefficient
23 and/or stranded investment and a ballooning universal service fund.⁸¹
24

⁸⁰ Application at p. 24.

⁸¹ 2nd R&O and FNPRM in CC Docket No. 00-256, 15th R&O in CC Docket No. 96-45. and R&O in CC Docket Nos. 98-77 and 98-166, released Nov. 8, 2001, *Separate Statement of Commissioner Kevin J. Martin*.

1 Q. Did MO 5 address the cost or potential harm to ILECs of its ETC designation in
2 Missouri on ILECs?

3 A. No. As I have just stated, the splitting of a rural market in Missouri between the
4 existing ILEC, MO 5 and other carriers may cause the cost of service to increase
5 for all while at the same time potentially reducing the revenues for all.
6 Competition from MO 5 and other CMRS providers has already reduced access
7 minute levels and growth in small Missouri study areas thereby reducing the
8 revenue levels needed to support the network infrastructure. The FCC suggested,
9 in the context of evaluating the USF impact of ETC applications, that the state
10 commission might consider evaluating those areas where the federal high-cost
11 per-line support to be received by a potential ETC applicant is “high enough” and
12 deny multiple ETCs in such high-cost areas.⁸² As the FCC invited, this is a matter
13 where the Commission should carefully evaluate the local factual situation

14
15 Q. Does granting ETC status to a competitor such as MO 5 provide a disincentive for
16 an ILEC to make additional investments?

17 A. Unfortunately, it may. Under the current environment, when there is more than
18 one ETC, an ILEC that makes the decision to make more investment in
19 telecommunications infrastructure must take into consideration that the increased
20 investment it makes, resulting in additional USF support to the ILEC, will result
21 in more USF support to the competitive ETC. The critical difference is that the
22 ILEC will be getting the funding to recover a portion of the actual cost of the
23 investment already made, while the competitor gets the money as a windfall

⁸² FCC's *Report and Order* at ¶ 55.

1 without any tie to additional investment. In addition, given that the ILEC no
2 longer has any assurance that high cost customers will remain with the ILEC long
3 enough for it to recover an investment that typically spans 20-25 years (the
4 average service lives for cable and wire plant), there is a disincentive to invest in
5 these longer-term investments. Therefore, the ILEC faces a conundrum or
6 “Catch-22” situation where its investments yield additional support for its
7 competitor, who does not face the same costs, and the ILEC’s risk associated with
8 recovering the investment is thereby magnified. This does provide the ILEC a
9 disincentive to invest in additional infrastructure.

10

11 **B. THE ALLEGED BENEFITS OF HIGHER QUALITY**
12 **AND WIDER SERVICE THROUGHOUT THE SERVICE**
13 **AREA**
14

15 Q. Is there a statutory requirement that relates to the extent of service that should be
16 provided?

17 A. Yes. Section 214(e) of the Act states that for an ETC applicant to receive
18 designation and support in a rural telephone company’s service area it must
19 provide services, for which it might receive support, “throughout the service area
20 for which the designation is received.” Thus, MO 5’s burden is to demonstrate
21 that it will provide the supported services throughout the service areas for each
22 separate ILEC study area. The Commission should particularly scrutinize
23 whether MO 5 has sufficiently demonstrated how it will provide the supported
24 services to the geographical areas lying outside MO 5’s FCC-licensed service area
25 but within its proposed ETC service area.

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Q. Why should the Commission consider MO 5’s coverage areas and the signal quality that customers experience?

A. Section 254(b)(3) of the Act describes that the purpose of universal service funding is to provide access for all consumers – including those in rural, insular and high-cost areas – telecommunications services that are reasonably comparable to the rates and services available in urban areas. Thus, the Commission should consider the quality of the signal coverage and range of coverage that MO 5’s consumers experience as a key factor in the cost/benefit analysis of the public interest examination. I would specifically refer the Commission to the maps provided by MO 5 as Highly Confidential Appendices E and I of Mr. Reeve’s testimony to see the extent of MO 5’s current and proposed service provisioning. Appendix E shows areas which MO 5 describes as “Areas where GSM Coverage would Benefit from Enhancement”. I interpret that to mean areas where GSM coverage is inadequate. As one can see, this covers a significant part of MO 5’s service area.

Signal coverage that provides adequate coverage of the areas where MO 5 is seeking to be designated an ETC would be a positive factor in the public interest test for receiving such a designation. To the extent that such signal coverage is not adequate, that would clearly be a negative factor in the public interest test for receiving that designation.

1 **C. THE ADVANTAGES AND DISADVANTAGES OF**
2 **MO 5’S SERVICE OFFERINGS**
3

4 Q. What consideration does the FCC recommend the states give to the CMRS
5 providers’ service offerings?

6 A. The FCC recommended in its *Report and Order* that the unique advantages and
7 disadvantages of the ETC applicant’s service offerings should be considered when
8 analyzing the public interest.

9

10 Q. What were the advantages discussed by MO 5 for its service offering?

11 A. MO 5 cites expanded local calling areas and reduced intra-LATA toll charges and
12 mobility as differences in its service offerings in comparison to the offerings of
13 the ILECs operating in MO 5’s proposed ETC area.⁸³

14

15 Q. What weight should MO 5’s stated advantages be given by the Missouri
16 Commission?

17 A. Given that an ETC applicant’s service offering advantages are but one factor in
18 the cost-benefit balancing test, MO 5’s stated advantages are not a very important
19 factor in this balancing test and little weight should be given to them. Neither the
20 expanded local calling area nor the mobility aspects of MO 5’s service offerings
21 are unique. As has previously been discussed, several competitors – as well as
22 MO 5 - are already providing wireless service and its inherent expanded local
23 calling areas and mobility aspects. Also, mobility, which is not one of the nine

⁸³ Simon’s Testimony at p. 8.

1 supported services, could be considered a premium feature for which customers
2 are willing to pay extra and thus would not need to be supported by universal
3 service funds.

4

5 Q. Are there any disadvantages to an expanded calling area in MO 5's service
6 offerings?

7 A. No, but the advantages are overstated when one considers that under MO 5's
8 basic consumer plan for \$11.95 a customer would receive only 30 minutes for
9 both outgoing and incoming calls. Any calling (originating or terminating) over
10 30 minutes carries a \$ 0.55/minute charge.⁸⁴

11

12 Q. What are the disadvantages of MO 5's service offerings as to mobility?

13 A. As suggested by the FCC, dropped calls and poor coverage are disadvantages.
14 MO 5 states that any CMRS carrier "is virtually certain to have 'dead spots'
15 somewhere in the geographic area in which it provides service."⁸⁵ This should be
16 of particular concern for the Commission given that MO 5 is not subject to
17 mandatory service quality standards. Also, for those MO 5 subscribers who
18 receive wireless service from a roof-mounted antenna or other premises-specific
19 device, the mobility advantage is limited to non-existent.

20

21

⁸⁴ Simon's Testimony, Appendix J.

⁸⁵ Zentgraf's Testimony at p. 22.

1 **D. THE IMPACT ON THE USF OF MO 5'S ETC PETITION**
2

3 Q. What did the FCC recommend for state commissions in analyzing the impact
4 upon the federal USF?

5 A. The FCC focused on a case-by-case approach and specifically suggested that a
6 state commission, such as this Commission, could consider the level of federal
7 high-cost per-line support received by the ILEC and whether it would be in the
8 public interest to have an additional ETC. The FCC concluded that if the per-line
9 support is high enough, the state commission may indeed be justified in limiting
10 the area to one ETC because funding multiple ETCs could impose strains on an
11 already burdened federal USF.⁸⁶ I have previously included in this testimony, for
12 the affected Companies that I represent, the federal USF per line being received
13 by each company to assist the Commission in this evaluation.

14
15 Q. Did MO 5 make a per-line USF showing and provide analysis on such?

16 A. No, it did not. If the Commission requires a federal high-cost per-line support
17 showing in order to determine what is in the public interest, then it is MO 5's
18 burden to make such a showing. Further, such a showing and the subsequent
19 analysis should be done on an individualized LEC service area basis, due to the
20 many factors affecting the level of high-cost support.⁸⁷

21

⁸⁶ *Report and Order*. at ¶ 55.

⁸⁷ *Id.* at ¶ 56. Factors such as topography, population density, line density, distance between wire centers, loop lengths and investment levels.

1 Q. If MO 5 is granted ETC status, what will be the basis of its support?

2 A. Under current FCC rules, MO 5 will receive federal USF support based on the
3 identical amount per line that the ILEC receives. A rural ILEC receives support
4 based on its actual embedded costs of providing the service and making
5 investments in its area. This support is based on annual cost filings prepared by
6 the ILEC to reflect its costs and submitted to the USAC. These study results are
7 verified by both USAC and the National Exchange Carrier Association
8 (“NECA”). A competitive ETC, on the other hand, merely reports the number of
9 customers it is serving in its designated ETC area and then receives the same
10 amount of support per line as the ILEC without verification by any regulatory or
11 administrative entity of its costs or the underlying need for support.⁸⁸ There is
12 certainly a question as to whether this approach meets the competitive neutrality
13 principle.

14
15 Q. Did the FCC express concerns about the stability of the USF and future ETC
16 designations?

17 A. Yes, in its recent Report and Order, the FCC repeatedly expressed its concern
18 about the long-term sustainability of the USF.⁸⁹

19

⁸⁸ Ms. Zentgraf’s brief description of how MO 5’s USF support will be determined underscores the ease with which MO 5 will potentially gain USF support. Zentgraf’s Testimony at p. 11.

⁸⁹ *Report and Order* at ¶ 5 (The adoption of the rigorous ETC designation requirements will ensure that only adequate ETCs “will receive ETC designation, thereby lessening fund growth attributable to the designation and supporting the long-term sustainability of the universal service fund”.); ¶ 49 (“In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed”)

1 Q. What is your response to Ms. Zentgraf’s statement that “...the Commission
2 should avoid consideration of generalized policy arguments relating to the
3 wisdom of including wireless ETCs in the USF...”?⁹⁰

4 A. I disagree and would urge the Commission to consider the impact that this
5 designation application will have as a precedent and the collective effect on the
6 federal USF as it relates to the public interest of providing such support.
7 Ironically, in the same passage where Ms. Zentgraf recommends the
8 Commission’s avoidance of this issue, she cites to the FCC’s recent *Report and*
9 *Order*,⁹¹ which encourages state Commissions to consider the impact of
10 individual ETC designations on the federal USF.⁹²

11
12 Q. What is your response to Ms. Zentgraf’s statement that the current fund is
13 stable?⁹³

14 A. I disagree with Ms. Zentgraf’s assertion that the Universal Service Contribution
15 Factors of 8.7 percent for the second quarter of 2004 and 8.9 percent for the third
16 and fourth quarters of 2004 are an indication of stability in the current federal
17 fund. Ms. Zentgraf further discusses the FCC’s March announcement that the
18 second quarter 2005 contribution factor percentage would be 11.1% - which is a
19 jump of almost 25% from the fourth quarter 2004 factor – and explains that this
20 increase is primarily due to an increase in the program support costs for the

⁹⁰ Zentgraf’s Testimony at p. 13.

⁹¹ *Id.* at pp. 13 - 14.

⁹² *Report and Order* at ¶ 60 (“While Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications that affect the ... overall size of the federal universal service fund.”)

⁹³ Zentgraf’s Testimony at pp. 12 - 13.

1 Schools and Libraries program.⁹⁴ However, the High-Cost program also rose
2 over 5% in that same period and the High-Cost fund is over 1.8 times the size of
3 the Schools and Libraries program. This certainly raises questions as to the
4 stability of the contribution factor and the High-Cost fund. The Commission
5 should be concerned about the growth of the fund and its long-term sustainability.

6

7 Q. What is your response to Ms. Zentgraf's statement that the evidence suggests that
8 wireless ETC designations have not had an adverse impact on the USF fund?⁹⁵

9 A. The evidence suggests the opposite; the granting of ETC status to wireless carriers
10 is causing a dramatic growth in the size of the federal USF. Between the fourth
11 quarter of 2001 and the second quarter of 2005, the amount of USF received (or
12 proposed to be received) by competitive ETCs, the vast majority of which are
13 wireless carriers, grew from approximately \$11 million annually to \$736 million
14 annually.⁹⁶ This has grown further to \$879 million in the second quarter of 2006.
15 In a Joint Board proceeding addressing this issue, comments of the National
16 Association of State Utility Consumer Advocates stated:

17 "Under the current ETC designation rules, in the near future there will
18 likely be a sharp upward curve in the growth of the high-cost fund
19 related to the issues being examined here. A substantial portion of this
20 growth is a result of additional funds needed to support multiple lines
21 per customer and to support lines provided by new competitive eligible
22 telecommunications carriers ("CETCs"), mostly wireless ETCs.

23

24 and:

⁹⁴ *Id.*

⁹⁵ *Id.* at p. 12.

⁹⁶ Universal Service-Rural Infrastructure at Risk, McLean & Brown, March 2005, p. 21. (emphasis added)
Filed with the FCC on April 14, 2005 as an *ex parte* presentation in CC Docket 96-45.

1 The current and anticipated rate of growth in fund requirements needed
2 to support additional lines suggests that the current support mechanisms
3 will be strained unless the Commission makes substantial changes to
4 the ETC designation rules.”
5

6 There clearly is concern that growth in the federal fund resulting from the large
7 increase in wireless ETC designations ultimately may jeopardize the sustainability
8 of the USF fund for all providers. Again, I would urge the Commission to reject
9 Ms. Zentgraf’s suggestion to not consider the potential harm to the federal USF
10 and, instead, carefully consider what this application may mean to future Missouri
11 wireless ETC applications and the future of the USF fund.
12

13 Q. What are the implications of granting ETC status to MO 5 in relation to the
14 current regulatory scheme imposed on the ILECs?

15 A. The current regulatory scheme imposed on the ILECs is based on the assumption
16 that the ILECs are monopoly providers of service and that regulation of the
17 services and prices of the ILEC offerings are necessary to protect the public
18 because of the lack of competition. When ETC status is granted to a competitive
19 carrier such as MO 5, the Commission is essentially determining that there is
20 more than one provider in the designated areas that is fully capable and willing to
21 provide basic telecommunications services throughout these areas and that will be
22 publicly supported in doing so. Once this occurs, the rationale for imposing
23 regulation on the ILECs is no longer valid, and the whole purpose of regulation of
24 the ILEC by the Commission is subject to question. If regulation is to continue,
25 the ILEC should be regulated on the same basis as the competitor. This could

1 occur in one of three ways. Regulation of the ILEC could be relaxed or
2 eliminated, the wireless entrant could be regulated to the same extent the ILEC is
3 currently, or some middle ground of lessened regulation could be applied to both.
4 While this case is not the appropriate forum to address all those issues, the
5 Commission should be aware that its decision in this case will raise those types of
6 fundamental questions which may need to be addressed should it decide to grant
7 ETC status to MO 5.

8

9 **VIII. CHARITON VALLEY CELLULAR'S REQUEST**
10 **FOR STUDY AREA REDEFINITION.**
11

12 Q. What is the legal framework for a study area redefinition request?

13 A. In order for the Commission to designate MO 5 as an ETC in a service area that is
14 smaller than the affected rural telephone company study areas, the Commission
15 must redefine the service areas of the rural companies pursuant to Section
16 214(e)(5) of the Act. That Section states that a rural company's service area will
17 be that company's study area unless and until the state commission and the FCC
18 establish a different definition.

19

20 Q. What guidelines or recommendations are available to the Commission for
21 analyzing a redefinition request?

22 A. The Joint Board recommended that a state commission consider three issues for a
23 redefinition request as to each affected rural LEC's service area: (1) analyze the
24 potential for creamskimming, (2) recognize that the Act places rural companies on

1 a different competitive footing from other LECs, and (3) recognize the
2 administrative burden of requiring rural companies to calculate costs at something
3 other than a study area level. The FCC strongly encouraged state commissions to
4 examine for creamskimming potential by analyzing the degree of population
5 density disparities among wire centers, the extent that an ETC applicant would be
6 disproportionately serving the most densely concentrated areas within a rural
7 service area, and whether the incumbent LEC has disaggregated its support.⁹⁷
8 While these are the guidelines outlined by the FCC, the Commission could
9 consider other criteria as well.

10

11 In considering MO 5's redefinition request, the Commission has the duty to
12 consider the disproportionate burdening of the universal service fund, the adverse
13 effects on rural customers, and whether such a redefinition is in the public interest
14 and consistent with universal service principles.

15

16 Q. What is the focus of your testimony on MO 5's redefinition request?

17 A. Of the companies that MO 5 has targeted for redefinition, both of the Companies'
18 study areas are involved. However, I will focus on Northeast Missouri Rural
19 Telephone Company and its Winigan exchange.

20

21 Q. Did the testimony of Ms. Zentgraf or Mr. Reeves give any reasons as to why MO
22 5 chose to include the Winigan wire center in their proposed ETC service area as
23 opposed to excluding it?

⁹⁷ *Report and Order* at ¶ 49.

1 A. No. They simply said that they chose to draw the boundary in that fashion to
2 include all of the Winigan wire center which is only partially in their FCC license
3 area. Mr. Reeves further provided analysis to show that there wouldn't be a
4 cream-skimming issue as defined by the FCC in regard to the Winigan wire
5 center.

6 Q. In your mind, is this all that the Commission should consider in evaluating the
7 public interest issue related to the redefinition of the Winigan wire center into the
8 MO 5 service area?

9 A. No. In this specific case, the Commission should examine the service capabilities
10 of MO 5 in this wire center as a whole and the portion of the wire center that is
11 outside MO 5's FCC license area.

12

13 Q. What portion of the Winigan wire center can MO 5 serve within its FCC license
14 area?

15 A. The Winigan wire center can be seen on Appendix C attached to Mr. Reeves
16 testimony at the top left hand side of the MO 5 license area. In the color version
17 of this Appendix, it is the exchange in yellow. From simply observing the map,
18 one can see that the larger part of the Winigan exchange is outside MO 5's license
19 area boundary. It is not evident from this map, but the Winigan exchange
20 encompasses parts of four counties, Sullivan and Adair, which are north of and
21 outside MO 5's license area, and Linn and Macon which are south of and within
22 MO 5's license area. Based on the data provided by Northeast Missouri from
23 their records I have prepared the table below which shows the percentage of the

1 population and land area of the Winigan wire center that is in MO 5's license
2 area.

NE Missouri - Winigan Exchange

County	Access Lines	Area
North (out of MO 5 license area)		
Sullivan	124	48.5
Adair	30	18.0
Total	<u>154</u>	<u>66.5</u>
South (In MO 5 license area)		
Linn	27	15.0
Macon	4	3.5
Total	<u>31</u>	<u>18.5</u>
% in MO 5 license area	<u>16.8%</u>	<u>21.8%</u>

3
4 MO 5's license area encompasses only 16.8% of the potential customers (i.e. only
5 31 customers out of a total of 185) and less than 22% of the land area. Thus, it
6 seems more appropriate to exclude this area from the MO 5 service area, rather
7 than require a redefinition to include it. This is further confirmed by examining
8 this area on Appendix I of Mr. Reeves' testimony. The area of the Winigan
9 exchange, after all of MO 5's proposed service improvements are made will have,
10 at best, only partial signal coverage.

11
12 However, I do agree with the statement in the MO 5 application that the FCC has
13 held that a proposed ETC service area may not specify or serve below the rural
14 LEC's wire center level.⁹⁸ Further, the FCC found that the competitive ETC
15 applicant "must commit to provide the supported services to customers
16 throughout a minimum geographic area" and concluded that a rural LEC's wire

⁹⁸ Application at p. 10, para. 12.

1 center is the “appropriate minimum geographic area for ETC designation”.⁹⁹
2 Thus, the minimum geographic area must be the entirety of the Winigan wire
3 center. Also, MO 5 has not significantly demonstrated its ability to serve areas
4 outside of its licensed area. Since MO 5’s license does not reach the entire wire
5 center and MO 5 can only serve a small portion of that one wire center within its
6 license area I would recommend that the Commission not redefine the Northeast
7 Missouri Telephone Company study area (which includes fourteen exchanges in
8 its study area) and that it exclude the Winigan wire center from MO 5’s service
9 area.

10

11 **IX. RECOMMENDATIONS AND CONCLUSIONS.**

12

13 Q. Do you have any final general comments on how the Commission should
14 approach its evaluation of the Application?

15 A. Yes. First, I believe that it is important to note that the primary purpose of
16 providing universal service funds, as outlined in Section 254(a) of the Act, is
17 focused on the provision of quality services in high cost rural areas comparable to
18 services in urban areas. The Universal Service provisions of the Act are not about
19 promoting and advancing competition. Second, I would encourage the
20 Commission to recognize that the determination of ETC status is something that
21 needs to be done on an individual study area basis, even though there are several
22 study areas that are encompassed in this one case. The legal standards, in some
23 cases, and the factual situations vary between companies and study areas, and the

⁹⁹ *Report and Order* at ¶ 77, footnote 220. Referencing from *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6438, ¶ 33.

1 Commission needs to focus on those issues related to each individual study area.
2 Third, I would emphasize that while the FCC has adopted rules it has imposed
3 upon itself, and those rules provide, in many cases, good guidelines for the
4 Commission to follow, that they are not binding upon the Commission. Thus, the
5 Commission is free to make its own determinations based on its perception of the
6 “public interest”.

7

8 Q. What are some of the significant points that you would emphasize for the
9 Commission to consider?

10 A. There are several:

- 11 1. The Commission should evaluate whether the pricing plans offered by MO 5
12 will really add to the “public interest”, particularly in light of the fact that there
13 will be limited apparent rate changes if ETC status is granted.
- 14 2. The Commission should closely evaluate MO 5’s plan to complete its GMS
15 expansion project to see if it meets the public interest.
- 16 3. The Commission should closely consider whether MO 5 has met its burden of
17 proof regarding the quality of service that it currently provides and will provide if
18 designated an ETC.
- 19 4. The Commission should consider whether MO 5 has made an adequate
20 demonstration that the public’s benefits from a granting of ETC designation
21 outweigh the actual and potential costs to the public and to the federal USF.
- 22 5. The fact that ETC status has been granted to wireless providers in other
23 jurisdictions should have little impact on whether the Commission grants such

1 status. The Commission should use a much stricter set of criteria and analysis
2 than other states did in granting that status.

3

4 Q. Does this conclude your rebuttal testimony?

5 A. Yes.