

*Exhibit No.:*  
*Issue:* *Application for Designation as an Eligible  
Telecommunications Carrier*  
*Witness:* *Michael K. Kurtis*  
*Sponsoring Party:* *Missouri RSA No. 7 Limited Partnership  
d/b/a Mid-Missouri Cellular*  
*Type of Exhibit:* *Surrebuttal Testimony*  
*Case No.:* *TO-2003-0531*  
*Date Testimony Prepared:* *January 14, 2004*

**MISSOURI RSA NO. 7 LIMITED PARTNERSHIP**

**d/b/a**

**MID-MISSOURI CELLULAR**

**SURREBUTTAL TESTIMONY**

**OF**

**MICHAEL K. KURTIS**

**CASE NO. TO-2003-0531**

## SURREBUTTAL TESTIMONY

OF

MICHAEL K. KURTIS

**APPLICATION OF MISSOURI RSA NO. 7 LIMITED  
PARTNERSHIP d/b/a MID-MISSOURI CELLULAR**

**CASE NO. TO-2003-0531**

Q. Have you reviewed the Rebuttal Testimony of: Adam McKinnie on behalf of the Telecommunications Department Staff (“Staff”) of the Missouri Public Service Commission; Robert C. Schoonmaker on behalf of Alma Telephone Company and Citizens Telephone Company; and Arthur P. Martinez on behalf of Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC in this proceeding?

A. Yes I have.

Q. How will you refer to the three rebuttal testimonies in your instant surrebuttal testimony?

A. I will refer to them as: (a) the McKinnie Rebuttal (on behalf of Commission Staff); (b) the Schoonmaker Rebuttal (on behalf of Alma and Citizens); and (c) the Martinez Rebuttal (on behalf of CenturyTel).

Q. What general conclusions were reached by the rebuttal witnesses?

A. The McKinnie Rebuttal (p. 11) concluded that the Commission should completely deny ETC status to MMC. The Schoonmaker Rebuttal (p. 5) asserts that the Commission can deny MMC's ETC application outright, but subsequently recommends (p. 29) denial

1 of ETC status in the Alma and Citizens study areas. CenturyTel's witness Martinez  
2 concluded (p. 17) that "a balancing of the public interest factors supports denial of  
3 MMC's application as it pertains to rural areas served by [rural local exchange carriers.]"  
4 Alternatively, Martinez advised the Commission to stay the case "at least to the extent  
5 MMC seeks designation in areas served by [rural local exchange carriers.]"

6 Q. Subsequent to filing the McKinnie Rebuttal, has Commission Staff revised its  
7 position concerning opposition to MMC's application?

8 A. Commission Staff seems to have revised its ultimate conclusion with respect to  
9 MMC's application. Staff apparently has recognized that its categorical opposition to any  
10 grant of ETC status to MMC is irreconcilable with Section 214(e)(2) of the  
11 Communications Act. In response to MMC Data Request 2.d. (Exhibit 1 hereto), Staff  
12 conceded that its "position regarding MMC's not meeting the public interest standard  
13 applies to the areas where the underlying carrier is rural; that is, all areas except those  
14 served by SBC Missouri." This is a tacit admission by Staff that MMC is legally entitled  
15 to ETC status in areas served by non-rural ILECs. Staff's contention, however, that only  
16 the areas in MMC's proposed ETC designated area served by SBC Missouri are non-rural  
17 is factually incorrect, as discussed below.

18 Q. How has the FCC decided wireless ETC applications in cases where the local  
19 state public utility or public service commission declined jurisdiction?

20 A. In cases decided by the FCC, ETC status has been uniformly granted, without  
21 limiting conditions or qualifications. Thus, the FCC has awarded ETC status irrespective  
22 of the underlying ILEC's classification as a "rural" or "non-rural" carrier.

1 Q. In wireless ETC application cases where the local state commission asserted  
2 jurisdiction, what has been the result?

3 A. In cases decided by local state commissions in Nebraska, South Dakota and  
4 Washington the applicant was granted ETC status for both rural and non-rural areas. In a  
5 single case in Utah, the grant was limited to non-rural areas. I am aware of no case where  
6 a state commission denied a wireless ETC application outright. For that reason, the  
7 unequivocal claim in the Schoonmaker Rebuttal (p. 5, line 6) that the Commission can  
8 deny MMC's application flat out is incorrect and is in no way supported by the single  
9 case cited therein. Note also that the ETC applicant in the Utah case was Western  
10 Wireless, a regional cellular carrier that provides service in multiple states. As discussed  
11 further herein, MMC operates exclusively in Missouri; accordingly, there is absolutely  
12 no prospect that contributions to MMC authorized by this Commission's grant of ETC  
13 status will be used by MMC to support services provided in other states.

14 Q. Why did you characterize as factually incorrect Staff's assertion, in response to  
15 MMC Data Request 2.d. (Exhibit 1 hereto), that MMC's proposed ETC designated area is  
16 entirely rural, except for areas served by SBC Missouri.

17 A. The Martinez Rebuttal (at p. 12) indicates that CenturyTel of Missouri, LLC's  
18 ("CenturyTel's") Central and Southwest study areas are non-rural. Appendix D to  
19 MMC's Application shows that portions of CenturyTel's Prairie Home and Woolridge  
20 exchanges, and a very small area in its Rocheport exchange are within MMC's proposed  
21 ETC designated area. These exchanges are absent from Schedule 1 to the Martinez  
22 Rebuttal, which "identifies all the current rural exchanges in each of the three rural study  
23 areas for both Spectra and CenturyTel of Missouri." Accordingly, I conclude that the

1 Prairie Home, Woolridge and Rocheport exchanges are part of CenturyTel's Central  
2 study area and are non-rural.

3 Q. What are the reasons to include the local exchanges of Sprint Missouri, Inc.  
4 ("Sprint") and Mid-Missouri Telephone Company ("MMTC") within the designated area  
5 to which a grant of ETC status to MMC will extend.

6 A. The most important reason is that, as explained in greater detail in this testimony,  
7 such a grant will serve the public interest, convenience and necessity-- which justifies  
8 including the Alma and Citizens exchanges in MMC's ETC area as well. With specific  
9 reference to Sprint and MMTC, however, there are several additional factors militating in  
10 favor of inclusion. Recall that Staff initially moved to dismiss MMC's application (*see*  
11 Staff Motion to Dismiss, filed June 13, 2003); grant of that motion would have allowed  
12 MMC to seek ETC status from the FCC where an unconditional grant covering rural and  
13 non-rural exchanges was virtually assured. The Commission rejected the Staff Motion in  
14 its Order Denying Motion to Dismiss, Setting Prehearing Conference, and Directing  
15 Filing of a Proposed Procedural Schedule (at 5) on the ground that:

16           The designation of a wireless carrier as an eligible  
17           telecommunications carrier in a rural area may impact the  
18           rights and well-being of *small rural incumbent*  
19           *telecommunications carriers* and it is the general  
20           jurisdiction of this Commission as granted by the state  
21           legislature to regulate those companies. (Emphasis added;  
22           footnote omitted).

23  
24 It strains credulity to contend that the Commission, in asserting jurisdiction over MMC's  
25 application to safeguard the rights and well-being of small rural incumbent  
26 telecommunications carriers, was thinking principally or even secondarily of Sprint, a  
27 company whose local telecommunications operations provide local telephone service

1 through over 8 million access lines located in 18 states. But even if the Commission  
2 views Sprint as a “small rural incumbent,” the Commission must acknowledge that Sprint  
3 intervened in this proceeding to *support* MMC’s request for ETC status. (Application To  
4 Intervene in Case No. TO-2003-0531 of Sprint Missouri, Inc. and Sprint Spectrum, L.P.,  
5 filed June 25, 2003, p. 5.) Supporting MMC’s quest for ETC status cannot be reconciled  
6 with confining MMC’s designated ETC area to exchanges served only by non-rural  
7 ILECs, and Sprint has never advocated such a position in this proceeding. Similarly,  
8 MMTC, an affiliate of MMC, has never indicated agreement with the rejectionist notions  
9 advanced by Commission Staff, Alma and Citizens, and, to a lesser extent, CenturyTel.  
10 Indeed, MMTC never intervened in the instant proceeding.

11 Q. Why is grant of MMC’s application without conditions or limitations consistent  
12 with the public interest, convenience and necessity, and in the public interest.

13 A. As I stated in my direct testimony (p. 12, line 23):

14 designation of qualified ETCs promotes marketplace  
15 competition, which enhances consumer welfare by  
16 increasing customer choice, and by promoting innovative  
17 services and new technologies. Designating MMC an ETC  
18 will make it easier for customers in rural Missouri to  
19 choose telecommunications service based on pricing,  
20 service quality, customer service and service availability.  
21 In addition, this designation will facilitate universal service  
22 in MMC’s proposed ETC area by creating incentives to  
23 ensure that quality services are available at just, reasonable  
24 and affordable rates.  
25

26 Although the rebuttal witnesses variously challenge this testimony, their  
27 allegations and accusations fail to withstand scrutiny. For example, the McKinnie  
28 Rebuttal (p.4, lines 15-16) charges that MMC has provided no evidence of how it will be

1 “easier for the customer in rural Missouri to choose telecommunications services.” I  
2 testified, however, that designating MMC an ETC will *increase* the choices available to  
3 consumers in Missouri. For example, my direct testimony (p. 11, line 13) demonstrated  
4 that because of MMC’s expanded local calling area, MMC subscribers will be able to  
5 avoid intra-LATA toll charges associated with ILEC service. Mr. McKinnie never refutes  
6 or challenges the testimony concerning MMC’s more extensive local calling area,  
7 testimony with which CenturyTel’s witness Martinez candidly agrees (p. 16, line 24).  
8 Notably, the FCC has held that reduced intra-LATA toll charges offered by wireless  
9 ETCs make intrastate toll calls more affordable to rural consumers, a benefit not available  
10 from incumbent carriers. MMC’s service offering thus fulfills FCC policies favoring  
11 competition and provision of affordable telecommunications services to rural consumers.  
12 For these reasons, witness Martinez’s claim (p. 16, line 28) that MMC’s expanded local  
13 calling area creates “regulatory inequity [that] puts RLECs at a competitive  
14 disadvantage” is contrary to FCC precedent and policies, and should be disregarded.

15 In Case No. CO-2003-0162, the Staff raised no objection whatsoever to claims  
16 by a CLEC applicant that its designation as an ETC in a rural exchange met the public  
17 interest requirement of Section 214(e)(2) of the Communications Act. In stark contrast  
18 to the instant proceeding, the Staff--- without the benefit of discovery, direct testimony or  
19 a hearing--- signed a Stipulation and Agreement in the CLEC case stating that  
20 designating the CLEC applicant as an ETC met the statutory public interest requirement  
21 because such designation would expand the availability of innovative, high-quality and  
22 reliable telecommunications service and would further stimulate economic development  
23 in the State of Missouri.

1           In an apparent attempt to justify Staff’s support of CLEC ETC designations in  
2 CO-2003-0162 and similar cases, Mr. McKinnie testified (p.6, line 4) that when a CLEC  
3 receives ETC status it is presumed that the CLEC “will be taking the same customer line  
4 from the ILEC” whereas the wireless ETC, by contrast, will provide additional lines “for  
5 a large majority of the [ILEC’s] customers.” Assuming *arguendo* that Mr. McKinnie’s  
6 presumptions (for which he provides absolutely no authoritative support) are true, then  
7 does not the wireless ETC’s provisioning of additional lines to existing ILEC subscribers  
8 expand the availability of innovative, high-quality and reliable telecommunications  
9 service and stimulate in-state economic development to an equal or greater degree than  
10 the CLEC’s mere replacement of existing service? This rather profound inconsistency in  
11 the Staff’s approach to CLEC versus wireless ETC petitions is nowhere explained in the  
12 McKinnie Rebuttal.

13       Q.     Does the Schoonmaker Rebuttal challenge your testimony that designating MMC  
14 an ETC will increase the choices available to Missouri consumers.

15       A.     No, Mr. Schoonmaker actually confirms my testimony, albeit unintentionally. He  
16 testifies (p. 13, line 18) that, under MMC’s Unlimited Zone Plan (“UZP”), a consumer  
17 can obtain unlimited local usage for \$34.95 with no toll charges for intra-LATA calling.  
18 He then opines that there is little public interest benefit in providing universal service  
19 support for such a plan because “the customer could obtain *similar service* from Citizens  
20 for \$8.40 per month and Alma for \$6.50” (emphasis added). To claim that MMC’s UZP  
21 offers consumers a service that is “similar” to the basic Citizens and Alma rate plans is  
22 grossly misleading. MMC’s service allows for complete mobile usage anywhere in  
23 MMC’s FCC licensed service area by residential and business subscribers alike; the



1 Citizens and Alma service, which is limited to residential subscribers only, allows service  
2 from a single fixed location. Further, MMC's UZP subscribers enjoy toll-free LATA  
3 wide calling, whereas their Citizens and Alma counterparts incur tolls whenever they call  
4 outside their circumscribed local calling areas. Even MMC Lifeline customers will enjoy  
5 the benefits of mobile telecommunications throughout the reliable service area of the cell  
6 site (or sites) that serves the subscriber's residence. (A single MMC cell site's reliable  
7 service area may be circumscribed by a radius ranging approximately ten to eighteen  
8 miles from the site's transmitting antenna.) In addition, in emergency situations, all  
9 MMC subscribers, including Lifeline subscribers, will be able to initiate "911" calls  
10 **anywhere in the United States.** FCC rules requiring carriers to route calls placed to  
11 911, without cost to the user and regardless of the subscriber's calling plan, make the  
12 wireless handset infinitely more versatile and robust than a fixed, wireline phone. Thus,  
13 the MMC and Citizens/Alma services, which Mr. Schoonmaker so uncritically  
14 categorizes as "similar," differ substantially in terms of basic functionality and usage  
15 capabilities.

16 Even if the Schoonmaker Rebuttal were correct that MMC's UZP, on the one  
17 hand, and the Alma and Citizens' basic residential service options, on the other, were  
18 somehow "similar" (which they most assuredly are not), UZP is only one of several  
19 service/rate plans offered by MMC, each with its own unique combination of "free" (*i.e.*,  
20 bundled) local usage and toll-free calling. The FCC ruled in its Twelfth Report and  
21 Order (Federal-State Joint Board on Universal Service; Promoting Deployment and  
22 Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,  
23 CC Docket No. 96-45) that rural consumers benefit when wireless ETCs offer a variety

1 of calling plans. The array of plans offered by MMC greatly expands the  
2 telecommunications choices available to Missouri consumers.

3 It should also be noted that witness Schoonmaker's claim (p. 14, line 2) that "the  
4 consumer could obtain similar service from Citizens for \$8.40 per month and from Alma  
5 for \$6.50" could be misconstrued because the stated rates omit the mandatory federal  
6 subscriber line charge of \$6.50 that the consumer will incur for this service.

7 Q. What other claims do the rebuttal witnesses make in their attempts to cast doubt  
8 on the public interest benefits of granting ETC status to MMC.

9 A. The Schoonmaker Rebuttal (p. 11, line 2) contends that "it would not appear to be  
10 in the public interest to provide universal service support to a wireless carrier" who did  
11 not provide equal access to interexchange carriers as ILECs are required to provide.  
12 Thus, witness Schoonmaker is proposing to this Commission that MMC's ETC  
13 application should be denied because MMC failed to provide a service that is nowhere  
14 mentioned as a requirement for ETC eligibility in Section 54.101(a) of the FCC's Rules,  
15 47 C.F.R. § 54.101(a). Compounding this lapse of logic, witness Schoonmaker fails to  
16 acknowledge the reason the FCC decided to exclude equal access as an ETC eligibility  
17 requirement. Section 332(c)(8) of the Communications Act states that a provider of  
18 commercial mobile services, such as cellular communications, "shall not be required to  
19 provide equal access to common carriers for the provision of telephone toll services."  
20 The FCC expressly excluded equal access to interexchange service among the services  
21 supported by universal service support mechanisms because such a requirement would  
22 contradict the mandate of Section 332(c)(8). Stated briefly, the Schoonmaker Rebuttal

1 seeks to penalize MMC for failing to provide a service the FCC has ruled would violate a  
2 federal statute if required as a condition for universal service support.

3       The FCC's decision to exclude equal access as an ETC eligibility requirement  
4 notwithstanding, nothing in MMC's ETC application or in its direct testimony indicates  
5 that MMC is unwilling to provide equal access. MMC is prepared to offer equal access  
6 to a Lifeline customer because, as indicated in the Surrebuttal Testimony of MMC  
7 witness Kevin Dawson, toll is not included in that service offering. MMC service plans  
8 that include unlimited toll service are conditioned on use of MMC's toll provider. An  
9 MMC subscriber to one of these plans could opt out from using MMC's toll provider,  
10 electing to designate and compensate its preferred IXC charges in lieu of the "free" or  
11 bundled toll service included in the applicable plan. To date, no MMC subscriber has  
12 ever pursued this option, nor does MMC anticipate that any subscriber will do so because  
13 its subscribers already have unlimited toll either included as part of their monthly access  
14 or, depending on the service plan, available for a low, fixed monthly fee. Nevertheless,  
15 MMC stands ready, willing and able to provide equal access under the terms just  
16 described.

17 Q.     Each rebuttal witness---- McKinnie (p. 6, line 10), Schoonmaker (p. 27, line 12)  
18 and Martinez (p. 8, line 20)--- testifies that grant of competitive ETC status to carriers  
19 other than ILECs in general and/or to MMC in particular will somehow jeopardize the  
20 sustainability of the Universal Service Fund's limited resources. Do you agree with this  
21 testimony.

22 A.     No, I do not. In the referenced testimony, the rebuttal witnesses are challenging  
23 the federal law and policies that allow grant of ETC status to any wireless carrier. Those

1 generalized arguments should be made to the United States Congress and to the FCC, the  
2 two entities that authorized wireless carriers to receive ETC status. They have no place  
3 in this proceeding, which concerns the lawful application of a single carrier. As I  
4 testified, the FCC and the state commissions (with one exception noted above) have  
5 granted and continue to grant ETC status to wireless carriers for rural and non-rural areas  
6 alike. Whatever the outcome of this proceeding, wireless carriers nationwide will  
7 continue to obtain USF support. The sole issue before this Commission is whether any of  
8 those universal service funds will be used to enhance and improve wireless service within  
9 Missouri or whether access to those funds will be available to rural wireless carriers in  
10 every state **but** Missouri.

11 Q. Do you agree with the rebuttal witnesses' assertions that designating additional  
12 wireless ETCs jeopardizes the sustainability of the USF.

13 A. I do not. Mr. McKinnie, for example, testified (p. 6, line 11) that "[m]ore  
14 companies requesting support from the fund could affect the stability of the fund or force  
15 each ILEC to receive less support . . . ." Before addressing this argument's substance,  
16 I must remark that if the Staff really believed this claim then its response to the multiple  
17 applications for ETC status by Missouri CLECs would have been consistent with its  
18 instant opposition to MMC. Instead, based on the CLEC ETC proceedings reported on  
19 the Commission's web site, the Staff appears to have supported each such CLEC  
20 application. Such support is completely at odds with the excerpt above from Mr.  
21 McKinnie's testimony. Indeed, in response to MMC Data Request Nos. 7.a. and 7.b.  
22 (Exhibit 2 hereto), Staff conceded that, compared to the wireless ETC that provides  
23 additional lines to an existing ILEC subscriber, the financial impact when a CLEC

1 replaces an ILEC line with one of its own is far more detrimental (to the ILEC).<sup>1</sup>  
2 Nevertheless, the Staff has consistently supported CLEC ETC applications while  
3 vigorously opposing MMC's parallel request for ETC status in Mr. McKinnie's rebuttal  
4 testimony.

5 Based on its response to another MMC data request, there is substantial doubt  
6 whether Mr. McKinnie even believes his claim that grant of ETC status to additional  
7 competitive carriers could affect the stability of the fund or force each ILEC to receive  
8 less support. In its Data Request No. 8 to Staff, MMC requested specific evidence for  
9 this assertion. In response (Exhibit 2 hereto), the Staff stated that "it was not taking any  
10 position on the change in fund during 2003, but "was *speculating* as to the impact on the  
11 amount of universal support available to incumbent wireline carriers as more competitors  
12 continue to receive support from the fund" (emphasis added). Mr. Schoonmaker also  
13 speculates (p. 27, line 13) that the increase "...in wireless ETC designations ultimately  
14 may jeopardize the sustainability of the USF fund for all providers."

15 Q. Both Mr. Schoonmaker (p. 26, line 27) and Mr. Martinez (p. 7, line 28) testify  
16 that granting ETC status to wireless carriers has resulted in a dramatic growth in the  
17 amount of funds that competitive ETCs have drawn from the USF. Do these statistics  
18 support the contention that the increase in wireless ETC designations will jeopardize the  
19 stability of the fund for all providers.

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<sup>1</sup> In the second sentence of its response to MMC's Data Request No. 7.b., Staff refused to agree that an ILEC would lose its USF support for an existing subscriber line that was captured by a CLEC ETC. While such a loss of support "seems appropriate," the Staff stated that it was "aware that, at least informally, there are discussions at the federal level as to whether this is in fact reality." Notably, Staff provides no authority or documentary support for this alarming declaration that is tantamount to a claim that ILECs are inflating the line counts they submit to the Universal Service Administrative Company. Query whether such a practice, in Staff's view, could affect the stability of the USF?

1 A. No they do not. The increase in the amount drawn by wireless and/or competitive  
2 ETCs tells only half of the story. Although non-ILEC ETCs are drawing increasing  
3 amounts from the fund, the fund itself is expanding substantially due to the growth in  
4 wireless subscribers and the overall growth in telephone usage. (Remember, wireless  
5 subscribers also contribute to the USF.) In recent quarters, the fund has grown faster than  
6 the claims thereon by all carriers. As a result (and contrary to the implication of the  
7 Martinez Rebuttal, p. 7, line 36), the USF contribution factor has actually **declined**  
8 during the last two quarters from 9.5% (third quarter, 2003), to 9.2% (fourth quarter,  
9 2003) to 8.7% (first quarter, 2004). Thus, the rebuttal witnesses' claim that growth in  
10 wireless ETC designations is jeopardizing or destabilizing the fund is erroneous.

11 Q. Can the grant of ETC status to wireless carriers actually result in savings for the  
12 USF fund?

13 A. Yes it can. The level of USF support required by a traditional ILEC is a function  
14 of that ILEC's costs of providing service. If an ILEC incurs significant costs to deploy a  
15 telephone circuit to meet its carrier of last resort commitments, those costs are  
16 incorporated into the USF support to which the ILEC is entitled. Indeed, as MMC  
17 witness Mr. David Jones testifies, the PSC Staff previously determined that allowing an  
18 ILEC to utilize cellular or other wireless service in connection with its carrier of last  
19 resort obligations produced substantial cost savings for the ILEC. In one instance,  
20 MMC's affiliate MMTC was allowed to use an MMC cellular phone to fulfill a carrier of  
21 last resort service request, thereby avoiding tens of thousands of dollars in capital costs to  
22 provision a single landline telephone in a remote area. By allowing the wireless phone  
23 and loop to substitute for the landline phone and its extraordinarily expensive cabling and

1 related plant, the PSC Staff obviated the need for the costly facilities to be deployed and  
2 supported by the USF.

3 Q. The rebuttal witnesses in general and Mr. Martinez in particular (p. 8, line 26, and  
4 p. 17, line 21) argue that grant of MMC's application will set a precedent that will induce  
5 many other wireless carriers to seek ETC status from this Commission. Do you agree?

6 A. While it is clear that a case of first impression always sets precedent, the  
7 precedential effect of a grant of ETC status to MMC will be extremely narrow. USF was  
8 established to ensure that customers in rural, high cost and insular areas have access to  
9 the same telecommunications services as urban customers, at a reasonable rate.  
10 Accordingly, the public interest determination that Section 214(e) requires of this  
11 Commission and its counterparts involves consideration of where USF contributions will  
12 be used. MMC's FCC CMRS license and its ETC application are limited to seven rural  
13 counties wholly within Missouri. MMC offers no service in any urban area within  
14 Missouri, nor does MMC offer any service outside the state. Accordingly, granting  
15 MMC's instant application would have precedential effect only with respect to wireless  
16 carrier ETC applicants that offer service exclusively to rural areas wholly within state  
17 boundaries. For an ETC applicant that serves both rural and urban areas and/or whose  
18 service area extends beyond Missouri's borders, the Commission would still need to  
19 make a public interest determination that USF support for *that* wireless applicant was  
20 consistent with the principles set forth in Section 254(b) of the Communications Act,  
21 specifically ensuring that consumers in rural, insular and high cost areas have access to  
22 telecommunications services and that USF support was being expended only for such  
23 areas within Missouri.

1 CenturyTel witness Martinez demonstrates some awareness of this issue when he  
2 testifies (p.14, line 28) “[t]he problem would arise when one of MMC’s customers signs  
3 up for wireless service within MMC’s designated rural high cost ETC area but then  
4 travels with his or her cellular handset and makes calls in different service areas across  
5 MMC’s entire licensed coverage area which includes non-rural areas and multiple  
6 states.” Mr. Martinez, however, is utterly mistaken in claiming that MMC’s FCC  
7 licensed coverage area includes non-rural areas and extends into multiple states. It is  
8 precisely because MMC is licensed to provide service only in Missouri RSA No. 7 and  
9 Ray County, which are entirely rural, high cost and wholly within Missouri, that the  
10 precedential and incentive effects of granting MMC’s instant application are significantly  
11 constrained.

12 Q. Regarding the CMRS providers characterized by Mr. Schoonmaker (p. 21, line 7)  
13 as MMC competitors, which of those carriers provide service exclusively to rural areas in  
14 Missouri.

15 A. None of the carriers identified by Mr. Schoonmaker are exclusively rural.  
16 MMC’s current competitors in its proposed ETC area are, in fact, the six nationwide  
17 CMRS carriers: AT&T Wireless, Cingular, Nextel, Sprint PCS, T-Mobile, and Verizon  
18 Wireless. The scope and character of their national operations are hardly comparable to  
19 MMC’s seven county service in central Missouri. Accordingly, grant of MMC’s ETC  
20 application will in no way prejudice the Commission’s ability to undertake a broad public  
21 interest analysis with respect to both the need for support and the proper use of USF  
22 funds in connection with ETC applications filed by the six nationwide carriers.



1 Q. Why would an exclusively rural wireless carrier's justification for USF support be  
2 readily distinguishable from that of a national wireless carrier.

3 A. The facilities that the nationwide carriers have deployed in Missouri RSA No. 7  
4 essentially provide coverage only to the major traffic arteries and the most significant  
5 population centers in the seven county area. MMC, which has no licensed service area  
6 other than Missouri RSA No. 7, provides substantially more extensive coverage than the  
7 rival nationwide carriers. Relative to the handful of cells constructed and operated by  
8 these carriers, MMC, by contrast, currently has 26 cell sites in its proposed ETC area,  
9 which serve towns as modest as Holden, Missouri. Moreover, the nationwide competitors  
10 offer the same service and rate plans in the rural counties of Missouri RSA No. 7 that  
11 they offer in the Kansas City MSA. Accordingly, since the cost of providing service is  
12 higher in the rural markets, the nationwide carriers may be providing an internal cost  
13 support mechanism in the rural counties that they serve. Thus, the nationwide carriers are  
14 supporting a very confined and limited service offering in rural markets with the capital-  
15 intensive service they provide in urban areas. Carriers like MMC lack this luxury and  
16 can serve their high-cost rural markets only with the revenues generated thereby and USF  
17 contributions.

18 Q. Mr. Schoonmaker and Mr. Martinez claim that using LEC costs to establish the  
19 level of USF support available for a wireless carrier is improper. Is that at issue here?

20 A. No. Witnesses Schoonmaker and Martinez are again using MMC's application  
21 proceeding to raise generic, policy objections to the USF process. Such concerns should  
22 be addressed to the U.S. Congress and to the FCC. Granting ETC status to MMC will  
23 have no impact on how the compensation level for wireless ETCs is or should be

1 determined. Moreover, many LEC associations have voiced an opinion opposite to the  
2 Schoonmaker/Martinez position because CMRS costs on a per subscriber basis may  
3 exceed the corresponding LEC support level. Thus, although the cost of a wireless  
4 deployment might be a fraction of wireline costs for a comparable or identical  
5 infrastructure, the corresponding per subscriber comparison may indicate that the  
6 wireless costs are considerably higher because there are substantially fewer wireless  
7 users.

8 Q. Mr. Schoonmaker asserts (p.16, line 13) that granting MMC ETC status will  
9 result in no public interest benefits because such grant will allegedly result neither in  
10 MMC rate reductions or infrastructure increases. Is this correct?

11 A. No. The existing MMC network offers analog and digital CMRS service using  
12 time division multiple access (TDMA) technology. Unfortunately, the two nationwide  
13 carriers using the TDMA technology are migrating to a new digital technology that is  
14 incompatible with TDMA. Accordingly, all equipment vendors, including MMC's, have  
15 discontinued developing additional and enhanced features for TDMA, and will soon  
16 terminate support for TDMA entirely. As a result, all TDMA carriers, such as MMC, are  
17 being forced to overbuild their entire networks with new digital technologies. MMC  
18 intends to do this using code division multiple access (CDMA) technology. USF  
19 funding will be used in part to support the over-build and operation of the CDMA  
20 network.

21 Q. Are any other carriers offering CDMA service in the market?

22 A. Both Sprint PCS and Verizon are offering CDMA service primarily along the  
23 major traffic arteries. Verizon is presently offering CDMA service from two cell sites;

1 one near I-70 at Booneville and one in Sedalia. MMC presently operates 26 TDMA cell  
2 sites in its proposed ETC designated area and 27 total TDMA cell sites in its FCC-  
3 licensed service area. MMC intends to deploy CDMA throughout its network to  
4 duplicate its TDMA footprint. MMC will deploy additional CDMA cell sites to fill in  
5 coverage holes. The availability of USF support will directly impact the extent and speed  
6 of MMC's CDMA deployment.

7 Q. What are some of the advantages of a full CDMA deployment?

8 A. The wireless industry is deploying enhanced 911 services that connect the  
9 subscriber to the emergency personnel and provide emergency personnel with the  
10 location of the handset placing the calls. CDMA handsets incorporate a GPS chip that  
11 enables them to use an existing satellite network to determine a subscriber's location with  
12 a high degree of accuracy. No handset manufacturer is making that technology available  
13 for either analog or TDMA handsets. As a result, TDMA or AMPS networks must  
14 attempt to determine a handset's location by "triangulating" the handset signal detected  
15 by nearby cell sites. While MMC operate more cell sites than any other wireless carrier  
16 in Missouri RSA No 7, the number of cell sites is still inadequate to meet FCC accuracy  
17 requirements using the triangulation technique. In addition, CDMA technology is also  
18 capable of offering data services at much higher data rates.

19 Q. The current MMC analog and TDMA networks were deployed without USF  
20 support. Why can't MMC simply deploy CDMA out of its operating profits?

21 A. The concept of wireless ETCs grew out of the Telecommunications Act of 1996.  
22 At roughly the same time, the FCC began licensing additional wireless or CMRS carriers  
23 nationwide by auctioning spectrum in the two GHz band for what is known as Personal

1 Communications Service (“PCS”); in addition, the FCC allowed Nextel to construct a  
2 very similar mobile, two-way voice network using 800 MHz SMR spectrum. From a  
3 consumer’s view, PCS and 800 MHz SMR services are virtually indistinguishable from  
4 the cellular service provided by MMC.

5       When the current MMC network was initially deployed in the early 1990s, there  
6 were only two wireless licensees in a cellular market like Missouri RSA No.7. Large  
7 urban carriers were not licensed to provide cellular in rural service areas. Accordingly,  
8 when an urban carrier’s subscriber roamed in rural markets (principally by initiating,  
9 receiving or continuing calls along the interstate highways in the rural markets), the urban  
10 carrier paid considerable roaming fees to the rural carrier. Rural carriers such as MMC  
11 used this roaming revenue to deploy network infrastructure in the more remote, high cost  
12 areas of their markets. With the advent of competing wireless services, large urban  
13 carriers obtained their own rural service area license, which has enabled them to construct  
14 networks that cover the lower-cost higher profit interstate highways and larger population  
15 centers. As a result, those carriers have substantially reduced if not eliminated the  
16 roaming revenues paid to rural-only carriers for roaming that would occur in those  
17 portions of the rural market that tend to generate the most wireless traffic. The ensuing  
18 decline in roaming revenues for MMC and other rural-only wireless carriers has been  
19 extreme, compelling these entities to find other sources of financial support essential to  
20 establishing the most advanced and highest quality wireless technology in the remote,  
21 high cost portions of their service areas. Providing this financial support is precisely the  
22 function intended for the USF, thereby allowing for the offering of comparable services  
23 to the truly rural areas at reasonable costs.

1 Q. Is the public interest advanced in any other ways by the grant of MMC's ETC  
2 application?

3 A. Yes. The FCC has declared that the availability of mobile telecommunication  
4 services is a distinct benefit to the public. ILEC service, by contrast, is available only at a  
5 fixed location. The benefits of mobility are boldly illustrated by an emergency call  
6 situation. Both ILECs and CMRS carriers route emergency phone calls. An ILEC  
7 customer's ability to place an emergency call is entirely dependent on his or her access to  
8 a fixed, wireline telephone. In rural, remote and low density areas, no wireline phone  
9 may be available for an emergency caller. Immediate access to a wireless handset can  
10 often make the difference between life and death. Widespread wireless availability in  
11 rural areas is an irrefutable public benefit.

12 Q. Mr. Schoonmaker (p. 27, line 18) asserts that granting ETC status to MMC  
13 justifies relaxing or eliminating the regulatory regime imposed on ILECs by state law and  
14 by the Commission. Is this an appropriate issue to be considered in the context of MMC's  
15 application?

16 A. No, it is not. Even Mr. Schoonmaker (p. 28, line 4) appears to recognize that this  
17 case is "not the appropriate forum" to raise ILEC regulation issues, which are plainly  
18 outside the scope of MMC's request for ETC status. Nevertheless, Mr. Schoonmaker is  
19 once again using MMC's application as a platform for raising generalized, policy  
20 objections to longstanding legislative and agency decisions concerning the structure and  
21 operation of the USF program. Mr. Schoonmaker employs the same objectionable tactic  
22 when he faults MMC for failing to agree to abide by Chapters 32 and 33 of the  
23 Commission's Rules even though those rules apply exclusively to wireline carriers.

1 MMC sincerely hopes that the Commission sees through this smokescreen and disregards  
2 the offending rebuttal testimony.

3 Q. Should the Commission consider the FCC's local number portability requirements  
4 in making the public interest determination required by Section 214(e)(2) of the  
5 Communications Act in connection with MMC's application?

6 A. Yes, it should. On November 10, 2003, the FCC issued its *Memorandum Opinion*  
7 *and Order and Further Notice of Proposed Rulemaking* in the matter of Telephone  
8 Number Portability, CC Docket No. 95-116 (Released November 10, 2003) ("*Intermodal*  
9 *Porting Order*"). In that order, the FCC recognized that each type of service (wireless  
10 and wireline) offer advantages and disadvantages. The FCC further acknowledged that  
11 wireless carriers might have greater opportunities to port wireline customers than *vice*  
12 *versa*, but emphatically stated that considerations of competitive neutrality did not require  
13 identical regulatory schemes for wireless and wireline number porting. In making this  
14 determination, the FCC expressly recognized that LECs and ILECs encounter more  
15 intensive state regulation than wireless carriers but held that this disparity constituted no  
16 basis for limiting or minimizing the porting obligation of wireline carriers:

17 In our view, it would not be appropriate to prevent wireline  
18 customers from taking advantage of the mobility or the  
19 larger local calling areas associated with wireless service  
20 simply because wireline carriers cannot currently  
21 accommodate all potential requests from customers with  
22 wireless service to port their numbers to wireline service  
23 providers...To the extent that wireline carriers may have  
24 fewer opportunities to win customers through porting, this  
25 disparity results from the wireline network architecture and  
26 state regulatory requirements, rather than Commission  
27 rules. (*Intermodal Porting Order* at ¶12).  
28

1 Q. What other bearing does the *Intermodal Porting Order* have on the MMC ETC  
2 application?

3 A. MMC has served bona fide request for local number portability on Alma,  
4 Citizens, CenturyTel/Spectra and MMTC. MMC is in the process of also serving such  
5 requests on SBC and Sprint. The *Intermodal Porting Order* stands for the proposition  
6 that, absent technical engineering considerations, no artificial barriers may be established  
7 to block the ability of a wireline customer to port its number to a wireless carrier.  
8 Denying ETC status to MMC, however, will automatically and arbitrarily preclude  
9 existing Lifeline and Link-Up subscribers from porting their wireline numbers to MMC.

10 Only an ETC-designated carrier can provide Lifeline and Link-Up support to  
11 eligible low-income consumers. If MMC were granted ETC status, then existing ILEC  
12 Lifeline and Link-Up subscribers would instantly be able to port their numbers to MMC  
13 without jeopardizing the benefits of these universal service programs and exactly as the  
14 *Intermodal Porting Order* envisions. Denial of MMC's ETC application, by contrast,  
15 will result in Lifeline and Link-Up subscribers being singled out as the only class of  
16 ILEC customers for whom the right to port to a wireless carrier has been denied. Such an  
17 outcome violates the FCC's porting rules and its *Intermodal Porting Order*. The  
18 arbitrary denial to low-income ILEC customers of the federally mandated porting right  
19 would also appear to be highly discriminatory and contrary to public policy.  
20 Accordingly, the Commission must safeguard the universal service rights of low income  
21 telecommunications subscribers and avoid any action (*i.e.*, denial of MMC's application)  
22 that will deny to an entire class of subscribers their federally mandated right to port  
23 simply because of their income level.

Surrebuttal Testimony of

Michael K. Kurtis

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1 Q. Does this conclude your testimony?

2 A. Yes it does.



**EXHIBIT 1**

**STAFF RESPONSE TO MID-MISSOURI CELLULAR  
DATA REQUEST NO. 2.d.**

**MISSOURI RSA NO. 7 LIMITED PARTNERSHIP  
d/b/a MID-MISSOURI CELLULAR  
SECOND SET OF DATA REQUESTS TO STAFF OF  
MISSOURI PUBLIC SERVICE COMMISSION**

2. Regarding the statement beginning on line 22, page 2 of the Rebuttal Testimony of Adam McKinnie ("McKinnie Rebuttal"), "Section 214(e)(2) of the Act states that before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the **designation is in the public interest,**" is it the Staff's position that:

- a. Mid-Missouri Cellular ("MMC") is seeking ETC designation exclusively in areas served by one or more "rural telephone companies," as that term is defined in 47 U.S.C. § 153 (37);

Answer: No, that is not Staff's position.

- b. if your answer to subpart "a." is yes, identify those statements and representations in MMC's Application For Designation As An Eligible Telecommunications Carrier Pursuant To §254 Of The Telecommunications Act Of 1996 ("Application") that support or confirm this answer;

Answer: N/A

- c. if you answer to subpart "b." is no, does Staff agree that, in ruling on MMC's Application, the Commission is bound by the following statement in Section 214(e)(2) of the Act: "Upon request and consistent with the public interest, convenience, and necessity, the State commission . . . shall, *in the case of all other areas*, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of [Section 214(e)(1)]." (Emphasis added.)

Answer: Yes, Staff agrees this is the case for non-rural exchanges, such as those served by SBC Missouri.

- d. if your answer to subpart "c." is yes, explain whether Staff's opposition to granting ETC status to MMC: (i) applies to the entire area in which MMC requests ETC status as depicted in Appendix D to the Application; or (ii) is limited to only those areas

where the underlying local exchange carrier ("LEC") is a rural telephone company within the meaning of 47 U.S.C. § 153 (37);

Answer: While it is difficult to interpret Appendix D in the Application due to the quality of the scan, Staff's position regarding MMC's not meeting the public interest standard applies to the areas where the underlying carrier is rural; that it, all areas except those served by SBC Missouri.

- e. if your answer to subpart "d." is "(i); provide a detailed basis, including citations to supporting authority, for that answer.

Answer: N/A

3. Regarding the excerpt from the Commission's Order Denying Motion to Dismiss, Setting Prehearing Conference, and Directing Filing of a Proposed Procedural Schedule beginning on line 4, page 3 of the McKinnie Rebuttal, does the reference therein to "small rural incumbent telecommunications carriers" include Southwestern Bell and/or Sprint, either in general or specifically with respect to either carrier's operations in the area in which MMC is seeking ETC designation; if your answer is "yes," provide a detailed explanation of the basis for that answer.

Answer: While it is not clear whether the Commission intended to include Southwestern Bell and/or Sprint as a rural carrier, for purposes of universal service funding, Sprint is considered a rural incumbent local exchange carrier in Missouri.

4. Regarding the statement appearing at page 3, line 17 of the McKinnie Rebuttal ("Staff acknowledges that other states and the FCC have made public interest findings when granting ETC status to wireless carriers;"):

- a. identify each and every grant of ETC status to wireless carriers to which the cited statement refers by providing: (i) the name of the wireless carrier receiving ETC status; (ii) case name and case and/or docket number; (iii) date the order granting ETC status was adopted, released, entered, *etc.*; (iv) a formal legal citation to the official reporter in which the order was published; and (v) a hard copy of the order granting ETC status for any such order that has not been published in an official reporter;

Answer: Sprint PCS, Washington Docket UT-031558, order dated 10-29-03; Western Wireless for the state of Wyoming, Federal Docket DA 00-2896, order dated 12-26-00; GCC License Corporation for South Dakota, Docket 2001 SD 32, order dated 3-14-01. (Hard copies forthcoming).

**EXHIBIT 2**

**STAFF RESPONSE TO MID-MISSOURI CELLULAR  
DATA REQUESTS NOS. 7.a., 7.b and 8**

- b. for each order identified in subpart "a.," provide the page and paragraph numbers where the discussion of the public interest findings begins;

Answer: Sprint PCS Order: Page 5, Paragraph 8; Western Wireless Order: Paragraphs 1, 7, and 16; GCC Order: Paragraphs 22, 23-25, 26.

- c. since Mr. McKinnie has testified on behalf of the Staff that he is unaware of any state of Federal proceeding "that specifically defines standards to be used when making a public interest finding," is it the Staff's view that each of the orders identified in the response to subpart "a" above was decided erroneously; explain your answer

Answer: It is not Staff's position that any of the above decisions were decided erroneously; rather, Staff has been unable to find any documentation of the standards utilized by the appropriate Commission for the public interest finding.

- 5. Identify decisions by state public utility (and/or public service) commission denying petitions by wireless carriers for ETC status in areas where the LEC serving the subject area was not a rural telephone company. For each such decision so identified, provide the information requested in DR 3, subparts "a" and "b."

Answer: see Staff objection.

- 6. Identify each and every FCC decision that denied in whole or in part an application or petition by a wireless carrier for ETC status.

Answer: see Staff objection.

- 7. Does the Commission Staff agree or disagree that:

- a. if an ETC-designated CLEC acquires a subscriber line previously served by an ILEC, then the ILEC loses both the monthly revenue generated by that subscriber line *and* the support for that subscriber line provided by the USF;

Answer: Staff agrees that the ILEC will lose the revenue for the aforementioned subscriber line. While it seems appropriate for the ILEC to lose the monthly revenue received from the support for that subscriber line provided by the USF, Staff is aware that, at least informally, there are discussions at the federal level as to whether this is in fact reality.

- b. if an ETC-designated wireless carrier either provides an additional line (or lines) to an existing ILEC subscriber or provides a new line (or lines) to a presently unserved customer, then the subject ILEC loses neither subscriber revenue nor USF support.

Answer: Staff agrees that a customer currently receiving service from no telecommunications company or receiving a an additional line from an ETC-designated wireless carrier will not decrease the amount of support an ILEC will receive from the USF or presumably will not decrease subscriber revenue.

8. Explain and provide evidence for the assertion in the McKinnie Rebuttal (page 6, lines10-13) that if more companies request support from the USF then the stability of the USF could be affected and could force each ILEC to receive less support. During 2003, has the number of companies requesting support from USF increased or decreased. Is it the Commission Staff's position that USF stability has declined, increased or remained unchanged during 2003; provide evidence for your answer. Is it the Commission Staff's position that the amount of USF support received by ILECs has declined, increased or remain unchanged during 2003; provide evidence for your answer.

Answer: To Staff's knowledge this information is publicly available on the website of the Universal Service Administrative Company. Staff was not taking any position on the change in fund during 2003, but was speculating as to the impact on the amount of universal support available to incumbent wireline carriers as more competitors continue to receive support from the fund.

9. Aside from Mid-Missouri Telephone Company, does any other LEC or ILEC certificated by the Commission have a "corporate relationship" (as that term is used in the McKinnie Rebuttal (page 7, line 9)) with a wireless carrier licensed by the FCC to provide service in Missouri. If so, identify the related carriers and describe the relationship.

Answer: Please note Staff objection to this question.

10. Referring to the McKinnie Rebuttal (pages 8-9), which discusses: (a) certain accounting and administrative services performed on behalf of MMC by Mid-Missouri Telephone Company ("MMTC") and for which MMC paid MMTC; (b) lease agreements between MMC and MMTC for land, buildings, tower space for a cell site and for which lease payments were made by MMC to MMTC; (c) use of MMTC's computer by MMC and for which MMC paid MMTC; and (d) charges for MMTC circuits that MMC paid to MMTC--- for each of the referenced payments made by MMC to MMTC describe in detail Staff's understanding of how such payments are accounted for by MMTC with respect to their periodic reporting of costs and expenses to the Universal

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

In the Matter of the Application of	)	
Missouri RSA No. 7 Limited Partnership	)	
d/b/a Mid-Missouri Cellular	)	
For Designation as a Telecommunications	)	Case No. TO-2003-0531
Company Carrier Eligible for Federal	)	
Universal Service Support pursuant to § 254 of	)	
the Telecommunications Act of 1996	)	
	)	

**AFFIDAVIT OF MICHAEL K. KURTIS**

CITY OF WASHINGTON	)	
	)	ss.
DISTRICT OF COLUMBIA	)	

Michael K. Kurtis, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 23 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

/S/ Michael K. Kurtis  
Michael K. Kurtis

Subscribed and sworn to before me this 14th day of January 2004.

/S/ Ruth E. Garavalia  
Ruth E. Garavalia, Notary Public