

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

In the Matter of the Application of Missouri RSA)
No. 5 Partnership for Designation as a)
Telecommunications Company Carrier) Case No. TO-2006-0172
Eligible for Federal Universal Service Support)
Pursuant to Section 254 of the Telecommunications)
Act of 1996.)

AT&T MISSOURI'S PRETRIAL BRIEF

Southwestern Bell Telephone, L. P. d/b/a AT&T Missouri ("AT&T Missouri"), respectfully submits its Pretrial Brief in accordance with the Commission's April 7, 2006, Order Modifying Procedural Schedule.

I. INTRODUCTION

The Commission should deny the Application of Missouri RSA No. 5 Partnership ("MO5") for designation as an eligible telecommunications carrier ("ETC") in the six AT&T Missouri wire center areas in which MO5 seeks ETC designation.¹ MO5's Application fails to meet both Section 214(e) of the federal Telecommunications Act of 1996 (47 U.S.C. § 214(e)) as well as the Commission's newly adopted ETC rules governing requests for ETC designation (4 CSR 240-3.570(2)(A)(1)-(10)).²

¹ MO5's Application, para. 8 & Appendix C, p. 3. MO5 seeks ETC designation "in the entire non-rural Brookfield, Marceline and Moberly wire centers" of AT&T Missouri as well as "portions of the Armstrong, Higbee and Glasgow wire centers" of AT&T Missouri. MO5's Application, para. 8.

² The Commission's Final Order of Rulemaking was published in the Missouri Register on May 15, 2006. 31 Mo. Reg. 790. The rules were published in the Code of State Regulations on May 31, 2006, and become effective thirty days thereafter, i.e., June 30, 2006. Section 536.021.8, RSMo 2005 (Supp.). The parties have agreed that the Commission's new rules should be applied to MO5's Application, and thus did not include within the Issues List filed June 6, 2006 the question of whether the Commission should use its new ETC rules to evaluate MO5's Application.

Only last year, the Federal Communications Commission (“FCC”) issued its ETC Designation Order specifically calling for “a more rigorous ETC designation process.”³ This Commission subsequently adopted ETC rules that largely replicate those adopted by the FCC in its ETC Designation Order. These rules are a welcome development, given that the Commission has properly noted its own “concerns about the rapid increase in the size of the fund” and that “as additional carriers receive support from the federal fund, the fund will continue to expand at an alarming rate.”⁴

As explained in greater detail below, MO5’s Application does not provide a sufficiently detailed network improvement plan demonstrating additional signal coverage in the six AT&T Missouri wire center areas in which MO5 seeks ETC designation. Further, MO5 has not specifically demonstrated its ability to provide emergency service in certain respects nor has MO5 committed to providing Lifeline services comparable to those of AT&T Missouri. Finally, MO5 has not demonstrated that granting its request for ETC designation would be consistent with the public interest, convenience and necessity, as required by the Act and this Commission’s ETC rules.

II. THE SPECIFIC ISSUES TO BE DECIDED BY THE COMMISSION

Issue 1: Telecommunications companies seeking eligible telecommunications carrier (“ETC”) status must meet the requirements of Section 214(e)(1) throughout the service area for which designation is received. Section 214(e)(1) requires a carrier to offer the services that are supported by Federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications

³ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (“ETC Designation Order”), para. 2.

⁴ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of the Public Service Commission of the State of Missouri, September 30, 2005 (in response to the FCC’s August 17, 2005, Public Notice) (“Commission’s Federal USF Comments”), pp. 11, 15-16.

carrier); and to advertise the availability of such services and the charges therefore using media of general distribution. Does MO5 meet the requirements of Section 214(e)(1) throughout the service area for which it seeks designation?

Pursuant to Section 214(e)(1) of the Act and the FCC's implementing orders, an ETC applicant must meet each of the following "eligibility" requirements:⁵

(1) commit to provide service throughout its proposed designated service area to all customers, and more particularly, submit a network improvement plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area;⁶

(2) demonstrate its ability to remain functional in emergency situations;⁷

(3) demonstrate that it will satisfy appropriate consumer protection and service quality standards;⁸

(4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation;⁹ and

(5) certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers if all other ETCs withdraw from the market.¹⁰

⁵ See also, 47 C.F.R. § 54.202(a).

⁶ ETC Designation Order, paras. 21-23.

⁷ ETC Designation Order, para. 25.

⁸ ETC Designation Order, para. 28.

⁹ ETC Designation Order, para. 33.

¹⁰ ETC Designation Order, para. 35.

MO5 does not meet the first of these five requirements in any of the six AT&T Missouri wire center areas in which MO5 seeks ETC designation. Additionally, it is questionable whether MO5 sufficiently meets the second requirement.

A network plan that describes improvements or upgrades on a wire center-by-wire center basis: MO5 claims that its new cell site construction plan would afford signal coverage benefits to consumers in six AT&T Missouri wire center areas.¹¹ However, based on maps comparing MO5's current signal coverage with that of its planned "network enhancement" coverage, it appears that the additional signal coverage that MO5 would provide residents in AT&T Missouri's six wire centers is marginal at best.¹² At a minimum, MO5's proof regarding any such signal coverage benefits is unclear. Consequently, MO5 has not specifically described the improvements it intends to make relative to AT&T Missouri's wire center areas.

MO5's ability to remain functional in emergency situations: MO5 provides only limited information regarding its ability to remain functional in emergency situations. Although MO5 generally addresses its back-up power capabilities, it provides insufficient evidence demonstrating that MO5 "is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations."¹³

With regard to traffic rerouting, MO5 claims that its "switching infrastructure is configured in a manner to allow traffic to automatically reroute around damaged facilities should a particular link to the PSTN be interrupted."¹⁴ However, MO5 does not describe the switching configuration on which it claims to rely, and it does not explain how the switching configuration

¹¹ Reeves Direct, p. 7 & Appendix F.

¹² Reeves Direct, Appendices C and H (all designated as HC); Reeves Supplemental Direct, Appendix N (HC); MO5's Application, Appendix I.

¹³ ETC Designation Order, para. 25.

¹⁴ Simon Supplemental Direct, p. 6.

it employs can be counted on to provide reliable redundancy and rerouting in the event that facilities are damaged.¹⁵

With regard to the management of traffic spikes, MO5 states that “[b]ecause of the nature of emergency situation traffic spikes, it’s impossible to specifically size and configure the wireless network to handle the emergency load in advance.”¹⁶ Although Mr. Simon asserts that it is “impossible” to plan for traffic increases associated with an emergency, Incumbent Local Exchange Carriers (“ILECs”) have been building networks based on engineering standards designed to handle just such situations for decades.¹⁷ While Mr. Simon further states that “the normal operation of the switch allows for significant additional overhead traffic above and beyond ‘normal’ use[,]”¹⁸ this statement does not provide the requisite detail that would enable the Commission to find that MO5 can sufficiently handle the onset of traffic spikes and various mass calling situations in a reliable manner.¹⁹

For these reasons, MO5 does not meet the requirements of Section 214(e)(1) with respect to the AT&T Missouri wire center areas in which MO5 seeks ETC designation.

Issue 2: ETC designations by a state commission must be consistent with the public interest, convenience and necessity pursuant to Section 214(e)(2). The Federal Communication Commission’s (“FCC’s”) *ETC Designation Order* determined that this public interest standard applies regardless of whether the area is served by a rural or non-rural carrier. Is granting ETC status to MO5 consistent with the public interest, convenience and necessity throughout the service area for which MO5 seeks ETC designation?

¹⁵ Stidham Supplemental Rebuttal, pp. 6-7.

¹⁶ Simon Supplemental Direct, p. 6.

¹⁷ Stidham Supplemental Rebuttal, p. 7.

¹⁸ Simon Supplemental Direct, p. 6.

¹⁹ Stidham Supplemental Rebuttal, p. 7.

Granting ETC status to MO5 would not be consistent with the public interest, convenience and necessity. Thus, MO5's ETC Application should be denied with respect to AT&T Missouri's wire center areas.

In determining whether the public interest has been served, the burden of proof rests upon the ETC applicant.²⁰ The FCC's public interest analysis includes "an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering."²¹

MO5 suggests that granting its ETC Application would promote competition and increase consumer choices and cites to various pre-ETC Designation Order FCC decisions so stating.²² However, these citations are of no help to its case. The ETC Designation Order represents the last definitive word from the FCC on the ETC application process. In that order, the FCC determined that "in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test."²³ Moreover, as a factual matter, granting MO5 ETC status would have little if any positive effect on increasing competition and consumer choice given MO5's concession that there are at least two cellular licensees and six Personal Communications Services ("PCS") licensees licensed to provide service in the same area in which MO5 seeks ETC status.²⁴

²⁰ Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 ("Highland Cellular ETC Designation Order"), para. 20.

²¹ ETC Designation Order, para. 18.

²² MO5's Application, paras. 28-31; Zentgraf Direct, pp. 25-26.

²³ ETC Designation Order, para. 44; citing, Virginia Cellular ETC Designation Order. para. 4, and In the Matter of Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 ("Highland Cellular ETC Designation Order"), para. 4.

²⁴ Zentgraf Direct, p. 25.

In a similar vein, MO5 also claims that granting it ETC status would result in additional consumer benefits because, while MO5 has better coverage than its competition, its coverage would benefit from enhanced GSM coverage.²⁵ However, MO5 provides no detail regarding the actual coverage afforded by MO5's competitors. Thus, it cannot be concluded that MO5 would actually provide GSM coverage that is not already being provided to consumers by MO5's competitors. Without such proof, MO5 cannot demonstrate that it would be the only provider of wireless service in the area for which MO5 is requesting ETC status, or at a minimum, that it would be the preferred provider, which is important given MO5's testimony that potentially as many as eight other wireless providers may be operating within MO5's licensed territory.²⁶

MO5 also suggests that granting its ETC Application would yield additional public health and safety benefits, noting that with a cell phone (whether or not active), an individual can call 911 using MO5's network. However, AT&T Missouri understands that all wireless carriers provide access to 911 if there is a signal from the wireless carrier's network and the individual uses a handset of compatible technology.²⁷ Consequently, granting MO5's application might afford public health and safety benefits only if none of the other holders of wireless licenses operating within MO5's licensed territory provide a compatible, usable signal. Moreover, once again, there is no indication that wireless carriers other than MO5 do not already provide service

²⁵ Simon Supplemental Direct, p. 7.

²⁶ In this regard, Mr. Schoonmaker's review of major wireless providers' web sites indicates that five providers "have significant coverage in the MO5 operating area in addition to MO5." Schoonmaker Rebuttal, p. 47.

²⁷ Stidham Rebuttal, p. 13. Significantly, wireless E911 service would not be limited to MO5 subscribers. MO5's wireless E911 service is available to any compatible handset in MO5's coverage area, whether or not the user is a MO5 customer, the customer of a competitor or not even a customer of any service provider. The MO5 network routes all 911 calls regardless of the status of the caller. This is even true for a customer whose wireless phone service has been disconnected. Stidham Rebuttal, n. 35.

in the wire center areas for which MO5 seeks ETC status.²⁸ Thus, the record affords the Commission no basis upon which to conclude that granting MO5's Application - thus allowing MO5 access to high-cost USF support - would provide Missourians any meaningful public health and safety benefits.

Furthermore, expanding the size of the federal USF by the amount of high-cost support funds that MO5 would receive is not in the public interest based on the facts presented in the record.²⁹ This Commission is correct to have expressed "concerns about the rapid increase in the size of the fund."³⁰ And, while the FCC has observed that the impact of but one ETC on the overall fund may be inconclusive,³¹ it is of far greater importance that the cumulative effect of ETC policy and the resulting designations is what underlies the FCC's ETC Designation Order and what should underlie the Commission's decision in this case. The FCC specifically noted that collectively, state decisions regarding ETC status "have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund."³²

Issue 3: In addition to the standards set out in the FCC's *ETC Designation Order*, the Commission has promulgated rules to be used in evaluating ETC applications. A final Order of Rulemaking for these rules, designated as 4 CSR 240-3.570, was published in the Missouri Register on May 15, 2006. Does MO5 meet the requirements of the Commission's ETC rules?

MO5 does not meet the requirements of the Commission's ETC rules. On the contrary, its proof is deficient with respect to its network improvement plan, its emergency preparedness, its public interest showing and its Lifeline offerings.

²⁸ Stidham Rebuttal, p. 13.

²⁹ Stidham Rebuttal, pp. 14-17.

³⁰ Commission's Federal USF Comments, p. 11.

³¹ ETC Designation Order, para. 54.

³² ETC Designation Order, para. 60.

A network plan that describes improvements or upgrades on a wire center-by-wire center basis: Commission Rule 3.570(2)(A)(3) requires that an ETC applicant demonstrate that universal service support “shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the Missouri service area for which the requesting carrier seeks ETC designation.” As shown earlier herein (in connection with Issue 1), MO5 claims that its new cell site construction plan would improve signal coverage in six AT&T Missouri wire center areas.³³ However, MO5 has not specifically demonstrated any significant added coverage; rather, it appears that the additional signal coverage that MO5 would provide residents in these areas is marginal at best.³⁴

The ability to remain functional in emergency situations: Commission Rule 3.570(2)(A)(4) requires that an ETC applicant demonstrate its “ability to remain functional in emergency situations [and] that the carrier has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.” As shown earlier herein (in connection with Issue 1), MO5 does not provide sufficient evidence demonstrating that it “is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.”

The public interest: Commission Rule 3.570(2)(A)(5) requires that an ETC applicant demonstrate that “the [C]ommission’s grant of the applicant’s request for ETC designation would be consistent with the public interest, convenience and necessity.” As shown earlier herein (in connection with Issue 2), MO5’s Application fails to satisfy the FCC’s public interest

³³ Reeves Direct, p. 7 & Appendix F.

³⁴ Reeves Direct, Appendices F (Revised), G (Revised) and H (all designated as HC); Reeves Supplemental Direct, Appendix O (HC).

criteria. The Commission's own newly adopted ETC rules do not prescribe any specific factors that the Commission should consider when assessing whether the ETC applicant has met its burden of proof. AT&T Missouri urges the Commission to use the factors used by the FCC. Indeed, the FCC "strongly encourages state commissions to consider the same factors in their public interest reviews"³⁵ and no party has argued that the Commission should do otherwise. Under that analysis, it cannot be said that granting MO5's Application would be in the public interest.

MO5's commitment to provide Lifeline: Commission Rule 3.570(2)(A)(10) requires that an ETC applicant commit to provide Lifeline and Missouri USF discounts at rates, terms and conditions comparable to those of the ILECs providing service in the requested ETC service area. MO5 asserts that its proposed Lifeline rates "would be below those offered by the ILECs."³⁶ However, its rates are neither below, nor even comparable to, those of AT&T Missouri. MO5 compares its rates to AT&T Missouri's Rate Group A rates and Rate Group B rates without accounting for the reductions in AT&T Missouri's rates to reflect the Lifeline discounts provided by the federal USF's Low Income fund and the further support allowed due to the Missouri USF. Both reductions must be applied to AT&T Missouri's rates in order to afford an accurate comparison.³⁷ Moreover, MO5 compounds its error of comparing apples to

³⁵ ETC Designation Order, para. 41.

³⁶ Simon Direct, p. 9 & Appendix K (depicting Lifeline rate comparisons and showing MO5's Option 1 rate as \$9.70 and its Option 2 rate as \$13.70 and showing the AT&T Missouri Flat Rate Group A rate as \$14.85 and its Flat Rate Group B rate as \$16.74.

³⁷ Stidham Rebuttal, pp. 20-21; Stidham Supplemental Rebuttal, p. 10.

oranges by depicting the wrong Subscriber Line Charge (“SLC”) which, in the case of AT&T Missouri, is currently \$5.25, not \$6.50.³⁸

AT&T Missouri’s customers in all but one of the six wire center areas for which MO5 seeks ETC status are Rate Group A customers.³⁹ When the applicable Lifeline discounts are applied to the rates applicable to these customers, they pay \$0.15 before applicable 911/Relay Missouri charges,⁴⁰ not \$14.85, as is represented by MO5.⁴¹ AT&T Missouri’s customers in Moberly are Rate Group B customers.⁴² When the applicable Lifeline discounts are applied to the rates applicable to these customers, they pay \$1.79 before applicable 911/Relay Missouri charges,⁴³ not \$16.74, as is represented by MO5.⁴⁴ The Commission thus cannot give credit to MO5’s assertion that its Lifeline rates are below those of the ILECs, at least insofar as AT&T Missouri is concerned.

For these reasons, MO5’s Application fails to meet the requirements of the Commission’s ETC rules.

III. CONCLUSION

For the foregoing reasons, AT&T Missouri respectfully submits that the application of MO5 for designation as an ETC must be denied. MO5 has failed to sufficiently demonstrate that

³⁸ Stidham Rebuttal, p. 21; Stidham Supplemental Rebuttal, p. 10; *see*, Southwestern Bell Telephone Company, L.P. Tariff No. 73, Access Service, Section 4.4(A), at 12th Revised Page 4-8.

³⁹ *See*, AT&T Missouri P.S.C. Mo.-No. 24, Local Exchange Tariff, Section 1.3.1, Sheet 6.

⁴⁰ Stidham Rebuttal, p. 21 (i.e., \$7.15 (basic rate) plus \$5.25 (SLC) or a subtotal of \$12.40 in charges; less \$5.25 (Ties One), \$1.75 (Tier Two), \$1.75 (Tier Three) and \$3.50 (MoUSF) or a subtotal of \$12.25 in discounts; \$12.40 less \$12.25 equals \$0.15).

⁴¹ Simon Direct, Appendix K.

⁴² *See*, AT&T Missouri P.S.C. Mo.-No. 24, Local Exchange Tariff, Section 1.3.2, Sheet 7.

⁴³ Stidham Rebuttal, p. 21 (i.e., \$8.79 (basic rate) plus \$5.25 (SLC) or a subtotal of \$14.04 in charges; less \$5.25 (Ties One), \$1.75 (Tier Two), \$1.75 (Tier Three) and \$3.50 (MoUSF) or a subtotal of \$12.25 in discounts; \$14.04 less \$12.25 equals \$1.79).

⁴⁴ Simon Direct, Appendix K.

it meets the requirements of Section 214(e)(1) of the Act throughout the service area for which it seeks ETC designation. Furthermore, MO5 has failed to sufficiently demonstrate that granting it ETC status is consistent with the public interest, convenience and necessity. Finally, MO5 has not met the requirements of the Commission's ETC rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on June 14, 2006.


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