

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

Intervenors Spectra Communications Group, LLC d/b/a CenturyTel (“Spectra”) and CenturyTel of Missouri, LLC (“CenturyTel”) submit the following Proposed Findings of Fact and Conclusions of Law for the Commission’s consideration.

1. Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular (“MMC”) is a telecommunications carrier authorized by the Federal Communications Commission (“FCC”) to provide commercial mobile radio services (“CMRS”) in its authorized coverage area in Missouri.

3. On June 2, 2003, MMC filed an Application For Designation as an Eligible Telecommunications Carrier Pursuant to Section 254 of the Telecommunications Act of 1996 (“Application”) requesting that the Commission designate it as a

telecommunications carrier eligible (“ETC”) to receive Universal Service Fund funding support within its requested ETC service area within Missouri.

4. In its Application, MMC initially requested ETC status throughout Spectra’s entire Concordia exchange and for portions of Spectra’s Lawson, Braymer, and Kingston exchanges. MMC also requested ETC status for portions of CenturyTel’s Prairie Home, Rocheport and Wooldridge exchanges and for the Harrisburg wire center, which is a part of CenturyTel’s Columbia exchange.

5. After the evidentiary hearing, MMC amended its request with respect to Spectra’s existing service area to include only Spectra’s Concordia exchange and not portions of Spectra’s Lawson, Braymer and Kingston exchanges. The Commission finds MMC’s Application to be amended accordingly.

6. Spectra and CenturyTel are incumbent local exchange companies (“LECs”) which provide basic local and other telecommunications services in their respective service areas, as certificated by the Commission, pursuant to Commission approved tariffs. Spectra and CenturyTel are carriers of last resort and are ETC’s providing service to the public throughout their respective service areas. Spectra is a rural telephone company. No evidence was presented indicating that any member of the public currently was being denied basic local telecommunications service in either Spectra or CenturyTel’s respective service areas. MMC witness Kurtis testified and the Commission finds that most of MMC’s existing customers also have landline telephone service provided by the incumbent LEC. Both Spectra’s and CenturyTel’s ETC study areas are much larger than the requested ETC service area sought by MMC.

7. By seeking ETC status in only Spectra's Concordia exchange, and not in the remaining portions of Spectra's existing ETC study area, MMC's Application necessarily raises the issue of potential cream-skimming. In order to determine whether MMC is engaging in prohibited cream-skimming with respect to Spectra's Concordia exchange, the Commission must look to the factual record before it. The record, however, is silent with respect to existing Spectra USF support levels in the Concordia exchange, the specifics of Spectra's disaggregation plan, and the number of affected customers in the Concordia exchange as compared to numbers of customers in other Spectra high cost exchanges. The evidentiary record does, however, indicate that the Concordia exchange is much larger than the other partial Spectra exchanges within MMC's FCC-licensed coverage area and that it is located in an already highly competitive area along a major interstate highway, where according to MMC witness Kurtis, other wireless carriers target their marketing and engage in cream-skimming. Accordingly, on this record Commission is unable to find that no cream-skimming would occur with respect to Spectra's Concordia exchange if MMC request is granted.

8. Spectra/CenturyTel witness Martinez testified that neither Spectra or CenturyTel disaggregate or keep or report ETC-related records below the exchange level, that MMC's request as originally filed would require the incumbent LECs to begin to do so, and that this would create added and unnecessary administrative burdens and costs to the incumbents where this was to occur. MMC has provided no evidence to controvert witness Martinez's allegations and the Commission finds Mr. Martinez's concerns have merit.

9. The record shows that MMC has been providing competitive wireless service since at least 1991 without the need for universal service support. MMC's current service plans, or very similar service plans, have been offered within a competitive environment for many years. Six other wireless carriers currently compete with MMC, in addition to the incumbent LECs. MMC has failed to show and the Commission finds that granting ETC status to MMC cannot be said to promote additional competition in the areas sought by MMC.

10. The record shows that MMC will receive approximately \$1.75 million dollars in universal service fund support annually if MMC's request as originally filed is granted. MMC, however, has failed to provide written documentation of any specific system build-out plans and improvements or of any timetable for implementation of such plans should ETC status be granted and the universal service fund be burdened by this annual amount.

11. MMC has admitted that it is required by federal law to implement E-911 system improvements regardless of whether this Commission grants MMC's requested ETC status.

12. MMC has admitted that it already provides service throughout its entire licensed CMRS service area and that MMC already has an extensive network in place. According to MMC, its existing network is the most extensive CMRS network in the seven county MMC licensed service area as compared with other wireless carriers.

13. With the exception of its proposed new lifeline offering, MMC has not guaranteed to reduce its prices if ETC status is granted.

14. MMC currently is under no obligation to provide service upon request, unlike the incumbent LECs in MMC's requested ETC service area, and the record is unclear as to whether MMC would be ready, willing and able to become the carrier of last resort should the incumbent LEC relinquish that obligation.

15. The Commission agrees with the Office of the Public Counsel that should MMC's request be granted it is important that the Commission place reasonable limits on MMC so that the Commission can monitor and ensure that essential telecommunications services are provided in a manner consistent with the protections currently afforded to wireline customers. While MMC has verbally made general system improvement and customer service commitments, such commitments have not been presented to the Commission in writing as part of MMC's Application and the record is unclear as to the extent of the Commission's legal authority and practical ability to enforce such commitments if MMC's request is granted.

Proposed Conclusions of Law

1. Spectra and CenturyTel are each a "telecommunications company" and a "public utility" as those terms are defined in Section 386.020 RSMo 2000 and are therefore fully subject to the regulatory jurisdiction of the Commission. Spectra is a rural telephone company, an eligible telecommunications carrier, and an incumbent local exchange carrier as defined by the Federal Telecommunications Act of 1996 ("the Act"). While not a rural telephone company as defined by the Act, CenturyTel also is an eligible telecommunications carrier and an incumbent local exchange carrier with at least two of its four state-wide ETC study areas being rural. Both Spectra and CenturyTel previously have been designated as ETCs by this Commission.

2. The CMRS service provided by MMC is specifically excluded from the definition of “telecommunications service” in Section 386.020(53)(c) RSMo and MMC therefore is not subject to the general regulatory jurisdiction of the Commission.

3. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(3e) shall be eligible to receive specific Federal universal service support”. 47 U.S.C. Section 254(e).

4. Section 214(e)(2) of the Act grants state commissions the primary responsibility for making ETC designations. 47 U.S.C. Section 214(e)(2).

5. Section 214(e)(2) of the Act requires that MMC’s designation as an ETC in areas served by rural incumbent local exchange companies, such as in Spectra’s existing service area, must be supported by a specific finding that such designation is in the public interest.

6. Section 214(e)(2) of the Act further requires that any ETC designation in non-rural incumbent LEC service areas be “consistent with the public interest, convenience and necessity”.

7. The burden of proof to show that an ETC designation is in the public interest is on the ETC applicant. *In the Matter of Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45 (January 22, 2004), paragraph 26 (“*Virginia Cellular*”).

8. The value of increased competition, by itself, is not sufficient to satisfy the public interest in rural areas. *Virginia Cellular*, FCC 03-338, paragraph 4.

9. The FCC in *Virginia Cellular* set forth new, more stringent guidelines for state commissions and the FCC to follow when analyzing ETC applications. The minimum

factors to be examined include weighing the benefits of increased competitive choice, the impact on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of service, and the ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time.

10. On February 27, 2004 the Federal-State Joint Board on Universal Service issued its Recommended Decision wherein it addressed the ETC designation process for state Commissions and the FCC. *In the Matter of Federal-State Board on Universal Service*, Recommended Decision, CC Docket No. 96-45 (February 27, 2004). The Federal-State Joint Board recommended additional *minimum* eligibility requirements, including that an applicant have adequate financial resources, the applicant's commitment and ability to provide the supported services throughout the designated service area using either its own facilities or a combination of its own facilities and resale of another carrier's services, the ability to remain functional in emergency situations, consumer protection guarantees, and the quality of local usage plans. The standards used by the FCC and recommended by the Federal-State Joint Board are minimum standards and this Commission may lawfully impose any additional reasonable standards or requirements it deems necessary to protect the public interest. Federal-State Joint Board Recommended Decision, at paragraph 10; *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

11. *Virginia Cellular*, the Federal-State Joint Board's Recommended Decision, and recent actions in other states such as Nebraska and Louisiana, indicate a transition to a more stringent public interest analysis for ETC applications.

12. Virginia Cellular and the Federal-State Joint Board's Recommended Decision require this Commission, in the case of areas served by a rural telephone company such as Spectra, to engage in a rigorous, fact-specific analysis with respect to potential prohibited cream-skimming specifically and the public interest generally.

13. With respect to Spectra's existing ETC service area, MMC has amended its application to request ETC status only in Spectra's Concordia exchange and the Commission will treat MMC's Application as now excluding the partial Spectra exchanges of Lawson, Braymer and Kingston. Accordingly, the Commission need not engage in a public interest analysis for those partial Spectra exchanges.

14. With respect to Spectra's remaining Concordia exchange, the record is insufficient to conclude, and MMC on this record has not met its burden of proof to show, that prohibited cream-skimming would not occur if the Concordia exchange was included in MMC's requested ETC service area. MMC admits that the supposed cream-skimming protection afforded by the corporate affiliate relationship in the case of MMC's affiliate, Mid-Missouri Telephone Company, is not present in the case of Spectra. What record evidence there is would appear to point to a likely cream-skimming situation, at least on the record as it currently stands. In addition, unlike the Applicant in *Virginia Cellular*, MMC has not provided the Commission with written documentation as to MMC's proposed build-out or financial plans, system improvements, timetables for such plans, or even written customer protection and quality of service commitments. It was unclear from MMC's testimony exactly what enforcement powers MMC believed the Commission might have over such commitments in any event. In short, MMC has not provided competent and substantial evidence that it is making the same commitments to

this Commission in this case as the Applicant in *Virginia Cellular* made to the FCC. The Commission concludes, therefore, that granting MMC ETC status in Spectra's rural Concordia exchange, on balance, would not be in the public interest.

15. Under Section 214(e)(5) of the Act an ETC service area means the incumbent rural LEC's study area unless and until state commissions and the FCC, after taking into account the recommendations of the Federal-State Joint Board, establish a different definition of service area for such company. This means that by federal statute MMC's ETC service area must be the same as Spectra's study area unless the Commission rules otherwise. MMC is requesting ETC status in only one Spectra exchange, rather than Spectra's entire rural ETC study area. 4 C.F.R. Section 54.207 (c) governs the procedures for redefining service areas. For MMC's proposed service area definition to occur, this Commission first is required to engage in a detailed analysis, taking into account the recommendations of the Federal-State Joint Board. The record evidence is scant, at best, that redefining Spectra's service area to only the Concordia exchange is in the public interest. Based on the record before it, the Commission declines to redefine Spectra's service area.

16. MMC on this record has failed to show that the public interest benefits of MMC being designated an ETC in the partial CenturyTel exchanges outweigh the administrative burdens and costs to CenturyTel should CenturyTel be required to keep and report relevant ETC information below the exchange level. The Commission concludes, therefore, that granting MMC ETC status in the partial exchanges served by CenturyTel would not be consistent with the public interest, convenience and necessity.

Respectfully submitted,

/s/ Charles Brent Stewart

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was sent via electronic mail to counsel for all parties of record in Case No. TO-2003-0531 on the 6th day of April, 2004.

/s/ Charles Brent Stewart
