

**BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION**

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

**RESPONSE TO SMALL COMPANY INTERVENORS' MOTION TO COMPEL**

Comes Now MISSOURI RSA No. 5 PARTNERSHIP (“MO 5” or “Applicant”) by its undersigned counsel and for its response to the Small Company Intervenors’ (collectively, Mark Twain Rural Telephone Company and Northeast Missouri Rural Telephone Company) Motion to Compel, states as follows:

1. Intervenors’ data requests seek information wholly irrelevant to any issue properly before the Commission. Data Request No. 1.12 requests actual capital expenditures for years 2003, 2004 and 2005. Intervenors seek the information to establish a “base line” of capital expenditures which MO 5 has made in its facilities and infrastructure. Intervenors are of the “opinion” that any USF monies should be used only for capital expenditures that are over and above “base line” capital expenditures. Intervenors’ “opinion” has no basis in law or fact.

2. The premise that a “base line” can be established for capital expenditures is absolutely false. Like most wireless carriers, MO 5’s capital expenditures are driven by a variety of factors that change over time. Changes in law, technology and intercarrier relationships are but a few critical factors which may have a dramatic effect on what must be spent or can be economically justified for capital expenditures in a given year. The FCC’s

decision to change the requirements for wireless compliance with E911 have caused significant expenditures which may not have otherwise occurred. Similarly, a change in roaming agreements between carriers may dramatically effect revenues and thus the ability to make capital expenditures.

3. Because there is no such thing as a “base line” for capital expenditures any historic data is irrelevant and potentially misleading. Significant expenditures may have been made to comply with regulatory requirements or in the alternative otherwise desirable expenditures may have been delayed or avoided due to lack of revenue.

4. To be granted ETC status MO 5 is required to demonstrate that USF monies would be spent for network enhancements in the ETC service area and the rendition of qualifying services. MO 5 has submitted sworn testimony as to where USF monies would be spent and exactly what would be built. None of the expenditures identified would be made in the absence of USF monies. Analysis of potentially misleading historic data would do nothing to enhance the record or establish any material facts.

5. Similarly, Intervenors’ Data Request No. 1.15 seeks irrelevant information. Specifically, it requests MO 5’s financial statements for the past two years, neither of which are relevant to any issue presented in this case. There is no statutory or other requirement that an entity seeking ETC status disclose any financial information or demonstrate anything about its past performance.

6. MO 5 has committed in sworn testimony to provide details as to how all USF monies are spent. In the event the Commission has any questions or concerns it will be in a position to address them each year USF monies are distributed to MO 5. Again, historic data

is irrelevant in the context of this proceeding. The critical information is how USF monies are spent.

7. Intervenors' "opinions" with respect to the importance of reviewing historical financial information and establishment of a "base line" for capital expenditures are unfounded and not supported by any statutory provision or case law. Requiring the production of information that is not in any way related to the material issues in this case would serve only to waste the resources of the parties and burden the record with unnecessary, potentially misleading and confusing information.

WHEREFORE, MO 5 respectfully requests that the Commission deny Intervenors' Motion to Compel.

Respectfully submitted,

LATHROP & GAGE, L.C.

*/s/ Paul S. DeFord*

Paul S. DeFord      Mo. #29509  
Suite 2800  
2345 Grand Boulevard  
Kansas City, MO 64108-2612  
Telephone: (816) 292-2000  
Facsimile: (816) 292-2001  
E-mail: pdeford@lathropgage.com

*Attorneys for Missouri RSA No. 5 Partnership*

Dated: March 27, 2006

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Response to Small Company Intervenors' Motion to Compel has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 27th day of March, 2006, to:

*Case No. To-2006-0172*

<b><u>Name of Company Name of Party</u></b>	<b><u>Email Phone Fax</u></b>	<b><u>Mailing Address</u></b>	<b><u>Street Address</u></b>	<b><u>City</u></b>	<b><u>State</u></b>	<b><u>Zip</u></b>
Missouri Public Service Commission General Counsel Office	GenCounsel@psc.mo.gov 573-751-2481 573-751-9285	P.O. Box 360	200 Madison Street, Suite 800	Jefferson City	MO	65102
Office Of Public Counsel Mills Lewis	opcservice@ded.mo.gov 573-751-1304 573-751-5562	P.O. Box 2230	200 Madison Street, Suite 650	Jefferson City	MO	65102
Missouri Public Service Commission Haas William	William.Haas@psc.mo.gov	P.O. Box 360	200 Madison Street, Suite 800	Jefferson City	MO	65102
Mark Twain / NE MO Rural Telephone Company McCartney T Brian	bmccartney@brydonlaw.com 573-635-7166 573-634-7431	P.O. Box 456	312 East Capitol Avenue	Jefferson City	MO	65102
Spectra / Century Tel of Missouri LLC Stewart B Charles	Stewart499@aol.com 573-499-0635 573-499-0638		4603 John Garry Drive, Suite 11	Columbia	MO	65203
SBC Missouri Gryzmala Robert	robert.gryzmala@att.com 314-235-6060 314-247-0014	Room 3516	One SBC Center	St. Louis	MO	63101

*/s/ Paul S. DeFord*  
Paul S. DeFord