

**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 Company Carrier)	Case No. TO-2003-0531
Eligible for Universal Service Support)	
Pursuant to Section 254 of the)	
Telecommunications Act of 1996.)	

**INITIAL BRIEF OF INTERVENORS
SPECTRA COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL
AND CENTURYTEL OF MISSOURI, LLC**

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INTRODUCTION

All parties agree that the instant Application is a case of first impression for this Commission in that this case constitutes the first time a wireless carrier has requested eligible telecommunications carrier (“ETC”) status in Missouri. (Tr. 17, 20, 23, 28, 332). The Issue Statement filed in this case asks the single and fundamental question of whether granting ETC status to the Applicant is in the public interest.

It is uncontested that Applicant Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular (“MMC”) is *not* subject to the general regulatory and rate setting jurisdiction of this Commission as a Commission-regulated “public utility” (Tr. 42-43), Sections 386.020 (53)(d)(i), 386.020(51) and 386.020 (42) RSMo 2000. It also is uncontested MMC has the burden of providing the Commission with record evidence sufficient to show that granting its Application is in the public interest (Tr. 25)¹. MMC claims that it has met its burden of proof

¹ See also, Exhibit 10, *In re: Virginia Cellular*, CC Docket No. 96-45, Memorandum Opinion and Order, Adopted December 31, 2003, at paragraph 26.

while all the other parties, with the possible exception of the Office of the Public Counsel², argue that, at minimum, MMC has not met its burden.

Specifically, Intervenor Spectra Communications Group, LLC d/b/a CenturyTel (“Spectra”) and CenturyTel of Missouri, LLC (“CenturyTel”) respectfully submit that: 1) federal law requires the Commission to engage in a detailed and rigorous public interest analysis with respect to MMC’s instant Application and the evidence that MMC has presented; 2) that the Commission is not restricted to the simple question of whether granting MMC’s request somehow “promotes competition” and that the factors the Commission may look at as part of its public interest analysis are broad; 3) that recent Federal Communications Commission (“FCC”) precedent and the *Recommended Decision* of the Federal-State Joint Board on Universal Service issued on February 27, 2004³ indicate a clear shift in federal policy from a less rigorous to a much more rigorous public interest analysis for state commissions and the FCC in the context of ETC designation requests generally; and that 4) MMC’s Application, direct testimony, and surrebuttal testimony as currently submitted on the record--even with the additional testimony of MMC witness Kurtis adduced at the first time at hearing--*at minimum* fails to support the evidentiary showing necessary to grant MMC’s Application, and that therefore, MMC’s Application should be denied.

I. APPLICABLE STATUTORY STANDARDS

In addition to a portion of the service area served by its corporate affiliate Mid-Missouri

² At the time of hearing, Public Counsel consistent with its filed Position Statement had not taken a definitive position on whether granting Applicant’s request would be in the public interest. (Tr. 20).

³ Federal-State Joint Board, FCC CC Docket No. 96-45, *Recommended Decision*, adopted and released on February 27, 2004. (Copy attached hereto per RLJ’s request).

Telephone Company, MMC in this case is seeking to be designated as a second ETC in the service territories of Spectra, CenturyTel, Alma Telephone Company and Citizens Telephone Company. (Application, page 8, paragraph 6; Application Appendix D). It is uncontested that these particular incumbent carriers already have been designated as ETCs in their respective service areas and currently are receiving universal service fund support for their respective wireline customers. It also is uncontested that a grant of ETC status by this Commission would entitle MMC to receive universal service fund support, which necessarily would increase MMC's revenues by at least 1.75 million dollars annually (Schoonmaker Rebuttal, Exhibit 8, page 17, lines 1-8, Tr. 49, 69, 367, HC Tr. 187)⁴, and while perhaps somewhat qualified, most likely MMC's profitability. (Jones, Tr. 102-103).

Federal statutes address applications for additional ETC designations in areas already receiving federal universal service fund support. Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("the Act"), states in relevant part:

Upon request and *consistent with the public interest, convenience, and necessity*, the State commission *may*, in the case of an area served by a rural telephone company, and 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 paragraph (1). 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. (Emphasis supplied).⁵

Section 214(e)(1), i.e. "paragraph (1)", of the Act states:

(e) PROVISION OF UNIVERSAL SERVICE.--

⁴ The universal service fund calculation for MMC was not classified as highly confidential in rebuttal testimony filed by witness Schoonmaker but reference to that funding amount was discussed during one of the *in camera* portions of the hearing in questions from Commissioner Clayton.

⁵ 47 U.S.C. Section 214(e)(2).

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.—A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, *throughout the service area* for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier; and

(B) advertise the availability of such services and the charges therefor using media of general distribution. (Emphasis supplied)⁶.

These federal statutes make it clear that this Commission may only grant ETC status to additional carriers within a particular service area if the Commission finds that such a grant would be consistent with the public interest, convenience and necessity. In addition, the Commission has a further affirmative obligation in the case of an area served by a *rural* telephone company to make specific factual findings that such designation is in the public interest for that company’s particular rural service area. The particular public interest factors that the Commission should look to in its analysis are discussed below in Section II.

A. Service Area Redefinition

Each carrier designated as an ETC necessarily must have an ETC “service area”. With regard to ETC service areas, Section 214(e)(5) of the Act states:

The term “service area” means a geographic area established by a State commission for the purpose of determining universal support obligations and support mechanisms. In the case of an area served by a rural telephone company, “service area” means such company’s [the incumbent rural LEC’s] “study area” unless and until the Commission [the FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company. (Emphasis supplied).⁷

⁶ 47 U.S.C. Section 214 (e)(1).

⁷ 47 U.S.C. Section 214 (e)(5). *See also*, 47 C.F.R. Section 54.207 “Service areas”.

This means in this case that by federal statute MMC's ETC "service area" must be the same as Spectra's respective "study area", unless this Commission (Kurtis, Tr. 214) and the FCC after a "rigorous" analysis redefine Spectra's service area after taking into account the recommendations of the Federal-State Joint Board.⁸ In the case of Spectra, it is uncontested that its one rural study area corresponds to *all* of Spectra's exchanges within the state; in the case of CenturyTel, there are four distinct study areas in Missouri, some of which are rural. (Martinez Rebuttal, Exhibit 9, page 12, lines 3-30, page 13, lines 1-15).

"Study area" boundaries are important because incumbent LECs perform jurisdictional separations to determine high cost loop support amounts and generally tariff their rates at the study area level. If a competitive carrier like MMC seeks to be an ETC in a territory served by a rural incumbent LEC, the competitive carrier's service area must, at a minimum, serve the rural LEC's study area entirely, unless the rural LEC's service area is redefined by the FCC and the state commission. (Martinez Rebuttal, Exhibit 9, page 11, lines 21-27, page 12-22).

MMC in this case, however, has requested ETC designation in only portions of Spectra and CenturyTel's existing service areas by splitting up the incumbents' respective service areas *below the exchange level* (with the sole exception of the Concordia exchange, discussed below). (Application, pages 8-9, Application Appendix D). Aside from the fact that it is impossible to determine exactly where these exchange splits are to occur based on the crude hand-drawn map presented by MMC--which makes it difficult if not impossible to respond to MMC's proposal and raises system arbitrage issues--it is uncontested in the record that any redefinition below the

⁸ The most recent specific recommendations from the Federal-State Joint Board are discussed below in Section II below.

exchange level would cause significant financial and administrative burdens since Spectra and CenturyTel do not keep records, report loops, or disaggregate per line support below the exchange level. (Martinez Rebuttal, Exhibit 9, pages 13-14; Kurtis Tr. 225-226).

The procedure for redefining an incumbent rural telephone company's service area is addressed in the FCC's rules. 4 C.F.R. Section 54.207 (c) states in relevant part:

(c) If a state commission proposes to define a service area served by a rural telephone company to other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.

(1) A state commission or other party seeking the Commission's agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission. The petition shall contain:

(i) The definition proposed by the state commission; and

(ii) The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

For MMC's requested service area redefinition to occur, this Commission first is required to engage in a detailed analysis, taking into account the recommendations of the Federal-State Joint Board, and then have this Commission's new service area definition, and the specific reasons therefore, ruled on by the FCC. While the record evidence is scant, at best, in support of MMC's proposed redefinition of Spectra's rural service area, Spectra's evidence is uncontested that any service area redefinition will cause significant financial and administrative burdens on Spectra, and for that matter, on CenturyTel as well. At the very minimum, the record in this case does not provide the Commission with the evidence necessary to carry out its required service area redefinition function under the FCC's rule.

II. PUBLIC INTEREST FACTORS

A. Virginia Cellular

The FCC in the *Virginia Cellular* case clearly signaled that the days of virtually automatic approval of ETC designations upon minimal public interest showings is at an end in large part due to the increasing financial pressure on the universal service fund.⁹ With regard to ETC designations in *non-rural* telephone company study areas, the FCC in the *Virginia Cellular* decision stated:

“We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act. We do not believe that designation of an additional ETC in a non-rural telephone company’s study area based on merely a showing that the requesting carrier complies with Section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance”.¹⁰

Accordingly, MMC here should show more than merely Section 214(e)(1) (i.e. “paragraph 1”) compliance in order to be designated an ETC in CenturyTel’s non-rural service area. The Commission should note that the written, “detailed commitments” present in the *Virginia Cellular* case, which the FCC found to be key in that case,¹¹ are entirely absent in this case.

With regard to *rural* telephone company service areas such as Spectra’s, the FCC specifically acknowledged “the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas” and concluded “that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas”.¹²

⁹ The states also appear to be following suit. In addition to the Louisiana proceeding discussed by witness Schoonmaker, the Nebraska Public Service Commission recently denied a Nextel wireless request on February 10, 2004 finding that Nextel’s request was not in the public interest. *In re: Amended NPCR d/b/a Nextel Partners*, Application C-2932, order entered February 10, 2004.

¹⁰ Exhibit 10, *In re: Virginia Cellular*, CC Docket No. 96-45, at paragraph 27 (footnote omitted).

¹¹ *Id.*

¹² *Id.*, at paragraph 4.

The FCC noted that the framework enunciated in the *Virginia Cellular* order is to apply to all future ETC designations for rural areas pending further action by the FCC.¹³ According to the FCC:

“...in determining whether designation of a competitive ETC in a rural telephone company’s service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC’s ability to provide the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding....We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas. ”¹⁴

Here again, the written, “specific commitments” made by the ETC applicant in the *Virginia Cellular* case are entirely absent in this case. In its public interest analysis for rural areas, the Commission is required to “balance the benefits and costs” on a fact-specific basis.¹⁵ The evidentiary record currently before the Commission is so sparse, and at best general, that it does not allow the Commission to engage in the type of public interest analysis directed by the FCC, let alone make specific findings of MMC’s proposal somehow being in the public interest.

B. Federal-State Joint Board Recommendation

Echoing the statements by the FCC regarding the need for a more detailed and stringent public interest analysis of ETC designations, the Federal-State Joint Board on February 27, 2004 also reaffirmed that state commissions have the primary responsibility for performing ETC

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*, at paragraph 28.

designations¹⁶ and stated repeatedly that the states should “*conduct rigorous proceedings.*”¹⁷

The Federal-State Joint Board also proposed a *minimum* set of public interest factors to be considered by the states and the FCC and reaffirmed the Fifth Circuit United States Court of Appeals holding that nothing in Section 214(e)(1) of the Act prohibits the states from *imposing their own* eligibility requirements beyond the statutory requirements described in Section 214(e)(1).¹⁸

According to the The Federal-State Joint Board, the minimum ETC eligibility requirements and public interest factors should include, but are not limited to:

1. That an ETC applicant must offer the services supported by the federal universal service mechanisms *throughout the designated service area*, using either its own facilities or a combination of its own facilities and *resale* of another carrier’s services.¹⁹

2. That the ETC applicant demonstrate that it has adequate financial resources.²⁰

3. That the ETC applicant demonstrate its capability and commitment to provide service *throughout* the designated service area to all customers who make a reasonable request for service by requiring the submission of formal build-out plans where facilities are not yet built,

¹⁶ Federal-State Joint Board, *Recommended Decision*, paragraph 7.

¹⁷ *Id.*, at paragraphs 4, 5, 9, and 11.

¹⁸ *Id.*, at paragraph 10, citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

¹⁹ *Id.*, at paragraphs 19, 26. MMC does not propose to offer service throughout Spectra and CenturyTel’s service areas and apparently has no plans to offer service through resale.

²⁰ *Id.*, at paragraph 22. While Intervenors do not necessarily dispute MMC’s financial resources, MMC has not provided the Commission with specific financial documentation as part of its Application.

including cost information relating to installation and customer premises equipment.²¹ States are to determine what constitutes a “reasonable request” for service and build-out plans are to be harmonized with any existing policies regarding line extensions and carrier-of-last-resort obligations.²²

4. That state commissions be encouraged to require competitive ETCs to provide equal access if all other ETCs in that service area relinquish their designations pursuant to Section 214(e)(4) of the Act.²³

5. That states require ETC applicants to demonstrate the ability to remain functional in emergency situations.²⁴

6. That states impose consumer protection requirements as a condition of ETC designation, including rules relating to disconnections, treatment of customer deposits, and submission of consumer complaints.²⁵ The Federal-State Joint Board specifically acknowledged that states are free to impose their own unique eligibility requirements and that such power is not limited with respect to wireless carriers which otherwise may not be subject to state consumer protection requirements.²⁶

²¹ *Id.*, at paragraphs 23, 24, 25, 27. MMC has provided no written build-out plans or cost documentation for the parties or for the Commission to review.

²² *Id.*, at 27. Whether MMC is willing to assume carrier-of-last-resort obligations is unclear.

²³ *Id.*, at paragraph 28. MMC currently does not provide equal access as is required of the incumbent LECs. There is no record evidence as to MMC’s plans should Spectra and CenturyTel withdraw as carriers of last resort and relinquish their respective ETC designations.

²⁴ *Id.*, at paragraph 30. There apparently is no record evidence on this point.

²⁵ *Id.*, at paragraphs 31, 32. It is unclear as to exactly what consumer protection requirements MMC is willing to agree to and what requirements would be enforceable by the Commission.

²⁶ *Id.*, at paragraphs 32, 33.

7. That states should be free to consider how much (or set some minimum amount of) local usage an ETC should offer as a condition of federal universal support, including comparisons with plans offered by incumbent LECs.²⁷

Additional factors were cited with approval, including potential benefits customers might receive from designation of an additional ETC in a particular area, new customer choices, affordability, quality of service, service to unserved customers, comparison of benefits to public cost, considerations of material harm, whether customers are likely to benefit from increased competition as a result of ETC designation, whether the new ETC will provide benefits not otherwise available from incumbent carriers, whether consumers might be harmed if the incumbent withdraws from the service area, harm to a rural incumbent LEC, and the level of federal high-cost per line support to be received by the ETC.²⁸ On page 9 of his prefiled Rebuttal testimony, Mr. Martinez offered six basic factors that the Commission should consider with respect to MMC's request, some if not all of which are in some manner reflected in the factors set forth by the Federal-State Joint Board. The Commission is free to--and should--consider all of these factors as part of its public interest determination in this case.

As previously noted, the Federal-State Joint Board further interpreted Section 214(e)(2) of the Act to require a higher level of scrutiny for ETC applicants seeking designation in areas served by rural carriers.²⁹ A simple claim of "supporting competition" might not always serve

²⁷ *Id.*, at paragraphs 35, 36. Local usage was addressed by witness Schoonmaker in his rebuttal testimony, Exhibit 8. The Joint Board's Recommended Decision clearly implies that this Commission can condition ETC designation on minimum local usage criteria if it so chooses.

²⁸ *Id.*, at paragraphs 40, 43.

²⁹ *Id.*, at paragraph 38

the public interest in rural service areas; low customer densities and high per-customer cost characteristics support a more rigorous standard of eligibility. Accordingly, state commissions have the obligation, and statutory duty, to perform an “in-depth public interest analysis” concerning ETC applications in rural areas.³⁰

This is especially so in the context of proposed redefinition of service areas. The Federal-State Joint Board endorsed the procedures established by the FCC in 1997 for the redefinition of service areas. Such procedures establish a presumption that a rural carrier’s study area should be the service area for the new ETC, unless the state and FCC decide a different service area definition would be in the public interest. In making such a determination, the *burden of proof is on the ETC applicant*. If a service area redefinition is proposed, the existing rules also require the states and the FCC to analyze the Joint Board’s previously expressed concerns about cream skimming in the particular area covered by the ETC application. States should “conduct a rigorous and fact-intensive analysis of requests for service area redefinition.”³¹ The record here, however, simply does not provide sufficient basis to perform such an analysis with respect to cream skimming in particular or redefinition of the service areas in general.

III. EVIDENTIARY RECORD

In order to conclude that the public interest would be served by granting ETC status to MMC, the Commission necessarily first must look to the record evidence presented by Applicant MMC. As no other party supported MMC’s request at hearing, that record evidence necessarily consists of MMC’s Application itself, its prefiled direct testimony, its prefiled surrebuttal

³⁰ *Id.*, at paragraph 38.

³¹ *Id.*, at paragraphs 49, 50, 51, 52, 53, 54 and 55.

testimony, and subsequent verbal testimony offered at hearing.

MMC's Application contained numerous and significant errors, especially with regard to Spectra and CenturyTel, which MMC for some reason has not felt compelled to correct through written amendments to its Application (Tr. 212-217)³². MMC's prefiled testimony contained only general statements, and its supposed plans to overbuild its existing network in exchange for ETC status and supposed service commitments, came out *for the first time* at hearing--and then, only in the *in camera* non-public portion of the hearing. (HC Tr. 171-173). MMC's proposed planned conversion to new technology, which should have been part of MMC's case-in-chief, clearly was not mentioned in MMC's direct testimony (Tr. 205), was not addressed in response to parties' legitimate data requests (Tr. 206, Exhibit 13), was not directly addressed in its surrebuttal testimony, and no business plans or cost analysis has been provided either to the parties or to the Commission on the record (Tr. 208, 210-211, Exhibit 14).

Accordingly, the parties to the case were denied the opportunity by MMC to meaningfully review and comment on MMC's proposals. Pursuant to Commission rules, a party's direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief. 4 CSR 240-2.130(7)(A). MMC chose to wholly ignore the Commission's rule. If the information was truly deemed to be highly confidential, MMC should have sought the Commission's standard protective order and submitted such information under seal. This at least would have allowed the parties to retain, if necessary, an outside consultant to evaluate MMC's

³² Appendix E to MMC's Application has not been amended in writing still incorrectly lists all of Spectra and CenturyTel's exchanges as "non-rural wire centers". The only record evidence designating MMC's proposed ETC service area is Appendix D to MMC's Application, which does not show split-exchange boundaries with any detail or specificity.

proposal.³³ The problem is especially exacerbated here, where Intervenors were only permitted “one bite of the apple” by being limited to the filing of one round of rebuttal testimony.

MMC’s main witness has admitted upon cross-examination that even as of the hearing it had submitted *no written documents* to the Commission regarding its build-out plans, plans for new cell sites, and no timelines or details as to its planned use of universal service funds. (Tr. 222). MMC has failed to provide the parties with sufficient detail of its proposals in prefiled testimony (Exhibit 9, page 11, lines 15-20) and even as of the last day of hearing it was unclear exactly what lifeline plan (or plans) MMC intends to offer (Tr. 373-374) or what firm customer protection commitments or proposals MMC had agreed to make (Tr. 354-355). The commitments made by Virginia Cellular in writing on the record in CC Docket No. 96-45 are absent in this case. (Tr. 143-145, Exhibit 11).

MMC’s failure to present its case in sufficient detail up-front, and reserving its case-in-chief to oral statements made during the *in camera* portion of the hearing, not only has wrongfully foreclosed the opportunity for the parties to analyze and meaningfully respond to MMC’s request but it more importantly has left the Commission with an evidentiary record that is, at best, problematic. In essence, not only is MMC asking the Commission to first craft MMC’s ETC plan, it also is asking the Commission to engage in a public interest analysis based on a dearth of meaningful public evidence.

The Commission as a matter of practice traditionally has required parties before it to provide any regulatory commitments they might wish to make in writing as part of the record

³³ Because of the way MMC presented its case, Spectra’s witness Mr. Martinez was wholly unable to review and comment on MMC’s *in camera* evidence.

through either written stipulations or at least in prefiled testimony, both of which would normally be submitted at some point *before* the Commission issues its decision. Such is not the case here. Even assuming, *arguendo*, MMC's specific plans and commitments can actually be discerned from the verbal testimony adduced for the first time in the *in camera* portions of the hearing, MMC is asking the Commission to craft MMC's ETC plan for the first time in the Commission's order. To the extent the Commission might somehow be inclined to take up this unnecessary burden, the only public record that future interested persons will have is basically just the Commission's order itself; a review of the actual evidentiary record in the case will reveal precious little except for closed portions of the hearing transcript, which of course will be kept under seal. The combination of MMC's procedural approach in this case and the evidentiary record deficiencies alone should be sufficient for the Commission to deny MMC's request.³⁴

Notwithstanding these important evidentiary deficiencies, there is, however, record evidence that should show that granting MMC's request would *not* be in the public interest. Such evidence includes:

1. MMC has been providing competitive service since at least 1991 without the need for federal universal service fund support (Tr. 42, 54, 219-220) and MMC's current service plans, or very similar service plans, have been offered within a competitive environment for many years (Tr. 55). Six other wireless carriers currently compete against MMC, in addition to the incumbent LECS. (Tr. 73-74, 91). Accordingly, a grant of ETC status to MMC on its face can hardly be said to "enhance competition".

³⁴ Should the Commission deny MMC's Application at this time, nothing prevents MMC from re-working and resubmitting another application at a future time. (Kurtis, Tr. 226).

2. If MMC's Application is granted, MMC is likely to receive approximately \$1.75 million dollars in universal service fund support (Tr. 49, 69) from an already burdened universal service fund for areas already receiving universal service fund support.

3. MMC has admitted that it is required by federal law to implement E-911 improvements regardless of its ETC status. (Tr. 55, 64).

4. MMC has admitted that it already provides service throughout its entire service area now (Tr. 56-57) and that MMC already has an extensive network in place, supposedly the most extensive in the seven county MMC licensed service area for all wireless carriers (Tr. 70).

5. MMC has admitted that there are no additional customer benefits flowing from ETC status in terms of "wireless mobility" other than 911 type service for prospective new lifeline customers. (Tr. 67). Wireless service differs significantly from wireline service in many respects and is generally not considered "substitutable".

6. MMC has not guaranteed to reduce its prices, other than for its still unclear lifeline plans, if ETC status is granted. (Tr. 72).

7. MMC currently is under no obligation to provide service upon request (T. 73), unlike the incumbent LECs in MMC's requested service area.

8. The extent of the Commission's enforcement powers to insure MMC commitments as an ETC (Tr. 77-78), including quality of service standards (Tr. 84), is unclear.

9. No Spectra or CenturyTel customer is currently being denied service (Tr. 110, 395) and the majority of MMC's customers already have landline service provided by the incumbent LECs (Tr. 154).

10. MMC has stated that other wireless carriers focus their competitive service to major

highways, that competition gives MMC the incentive to provide innovative services and new technologies in highly profitable areas of the market, and that Spectra's Concordia exchange (the only entire Spectra exchange being sought by MMC) is located along Interstate 70. (Tr. 152, 153, 218-219, HC Tr. 168-169).

11. There presumably should be no "cream skimming" concerns with respect to that portion of MMC's requested service area covering Mid-Missouri Telephone's service area due to common ownership with MMC, but such common ownership does not exist with respect to MMC and Spectra/CenturyTel (Tr. 220-221), thereby *not* ameliorating cream skimming concerns on that basis.

12. MMC agrees that Spectra does not keep records or disaggregate per line support below the wire center (or exchange) level (Tr. 225) although that necessarily would be required under MMC's proposal.

13. MMC "voluntarily" has omitted portions of other rural carrier service areas as part of its Application in order to "spare the Commission" the required public interest analysis but MMC nevertheless has refused to exclude Spectra's partial exchanges. (Tr. 216-217).

CONCLUSION

Federal law requires the Commission to rigorously review MMC's Application and the evidence presented by MMC. MMC has the burden to prove that its Application is in the public interest, especially with regard to areas served by rural telephone company incumbents such as Spectra. A review of the record evidence presented in this case by MMC shows not only that MMC has not met its burden but also that key elements of MMC's proposal remain unknown. The evidentiary record as it currently stands simply fails to provide the Commission with the

evidentiary basis necessary for finding that MMC's Application is in the public interest generally, and specifically, that Spectra and CenturyTel's existing service areas should be redefined as proposed by MMC. Accordingly, MMC's Application should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent via electronic mail, U.S. Mail, or by hand-delivery to counsel for all parties of record in Case No. TO-2003-0531 this 15th day of March, 2004.

/s/Charles Brent Stewart
