

**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 Eligible for Federal Universal Service)	Case No. TO-2006-0172
Support Pursuant to § 254 of the)	
Telecommunications Act of 1996.)	

AT&T MISSOURI’S POST-TRIAL BRIEF

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

I. SUMMARY

MO5’s testimony at the June 22, 2006, hearing on the merits forcefully brought home the reasons why MO5’s Application should be denied in the six AT&T Missouri wire center areas in which MO5 seeks ETC designation. First, MO5 failed to demonstrate that it would provide any meaningful additional signal coverage in these areas, as required by Section 214(e) and 4 CSR 240-3.570(2)(A)(3). Indeed, its signal coverage witness conceded that MO5’s current network already provides an acceptable level of service to a*_____

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 rules were published in the Code of State Regulations on May 31, 2006, and became effective June 30, 2006, pursuant to Section 536.021.8, RSMo 2005 (Supp.). The parties agree that the Commission’s new



^{*3} Second, MO5 has not specifically demonstrated its ability to provide emergency service as required by Section 214(e) and 4 CSR 240-3.570(2)(A)(4).

Third, while MO5 has asserted that its proposed Lifeline rates “would be below those offered by the ILECs[,]”⁴ AT&T Missouri’s evidence is un rebutted that when all appropriate Lifeline discounts are deducted from the Rate Group A rates applicable to AT&T Missouri’s six wire center areas, those customers pay just \$0.15 before applicable 911/Relay Missouri charges, not \$13.60, as MO5 represented.⁵ Applicable Lifeline discounts provided to AT&T Missouri’s customers in Moberly (a Rate Group B area) yield a rate of just \$1.79 before applicable 911/Relay Missouri charges, not \$15.49, as MO5 represented.⁶ On the other hand, MO5’s “Option 1” and “Option 2” Lifeline customers would pay at least \$6.75 and \$11.75, respectively.⁷ MO5 has not demonstrated compliance with this requirement of Section 214(e) or 4 CSR 240-3.570(2)(A)(10).

Finally, MO5 has failed to meet its burden to show that granting it ETC status would be consistent with the public interest. MO5’s public policy consultant conceded that her testimony suggesting that the public interest showing is inapplicable in non-rural wire centers “would have to be altered”⁸ to take into account the FCC’s ETC Designation Order and the requirements of the Commission’s new ETC rules, both of which require a public interest showing in all wire centers for which ETC designation is sought. In addition, what little public interest evidence MO5 mounted was undercut both by its admission that there are eight wireless carriers licensed to provide service in the same area in which MO5 seeks ETC status, of which five (counting MO5)

rules should be applied to MO5’s Application, and thus withdrew from the Issues List filed June 6, 2006 the question of whether the Commission should use its new ETC rules to evaluate MO5’s Application.

³ In-Camera Tr. 222.

⁴ Simon Direct, p. 9 & Appendix K.

⁵ Tr. 110.

⁶ Tr. 111.

⁷ Simon Direct, Appendix K. The MO5 rates depicted on Appendix K (Simon Direct) warrant an upward adjustment, to \$8.00 and \$13.00, respectively, given MO5’s concession at the hearing that MO5 incorrectly assumed a federal line charge discount of \$6.50 instead of \$5.25. Tr. 110-111, 150.

⁸ Tr. 86.

actually provide service in the area,⁹ and by MO5's failure to show that consumers are not already adequately served by these providers.

Less than two months ago, the FCC noted that "[t]here is widespread agreement that the [f]und is currently under significant strain."¹⁰ USF fund disbursements continue to rise while the assessable revenue base declines.¹¹ These unwelcome developments underscore the several reasons for which the Commission should deny MO5's Application for ETC status.

II. DISCUSSION OF THE SPECIFIC ISSUES TO BE DECIDED

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 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:¹²

- (1) 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;¹³
- (2) demonstrate its ability to remain functional in emergency situations;¹⁴

⁹ Tr. 70, 84. MO5 identified them as follows: "There's Chariton Valley [i.e., MO5], Dobson, U.S. Cellular, Cingular, AT&T, Sprint." Tr. 70.

¹⁰ In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-95 (rel. June 27, 2006), para. 17.

¹¹ In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-95 (rel. June 27, 2006), para. 18.

¹² See also, 47 C.F.R. § 54.202(a).

¹³ ETC Designation Order, paras. 21-23.

¹⁴ ETC Designation Order, para. 25.

(3) demonstrate that it will satisfy appropriate consumer protection and service quality standards;¹⁵

(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;¹⁶ 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.¹⁷

MO5 does not meet the first of these five requirements in the six AT&T Missouri wire center areas in which MO5 seeks ETC designation. Additionally, MO5 has not demonstrated that it 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.¹⁸ However, MO5's maps comparing its current signal coverage with that of its planned "network enhancement" coverage show that the additional signal coverage that MO5 would provide residents in AT&T Missouri's six wire centers is marginal at best.¹⁹ In fact, at the hearing MO5's witness *

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¹⁵ ETC Designation Order, para. 28.

¹⁶ ETC Designation Order, para. 33.

¹⁷ ETC Designation Order, para. 35.

¹⁸ Reeves Direct, p. 7.

¹⁹ Reeves Direct, Appendices H and I (both designated as HC); Reeves Supplemental Direct, Appendix N (HC).

²⁰ In-Camera Tr. 207. In particular, he explained that *

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²¹ In-Camera Tr. 222.

* 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 has not provided sufficient evidence demonstrating that it "is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations."²²

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."²³ However, MO5 has not described the switching configuration nor has it explained how the configuration actually can be counted on to provide reliable redundancy and rerouting in the event that facilities are damaged.²⁴

With regard to the management of traffic spikes, MO5 stated 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."²⁵ However, it is not "impossible" to plan for traffic increases associated with an emergency. While MO5 further stated that "the normal operation of the switch allows for significant additional overhead traffic above and beyond 'normal' use[,] "²⁶ 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.²⁷ In short, MO5 fails to provide requisite detail that would

²² ETC Designation Order, para. 25.

²³ Simon Supplemental Direct, p. 6.

²⁴ Stidham Supplemental Rebuttal, pp. 6-7.

²⁵ Simon Supplemental Direct, p. 6.

²⁶ Simon Supplemental Direct, p. 6.

²⁷ Stidham Supplemental Rebuttal, p. 7.



enable the Commission to find that MO5 can sufficiently handle the onset of traffic spikes and various mass calling situations in a reliable manner.²⁸

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?

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.”²⁹ MO5 has not met its burden to show that granting it ETC status would be consistent with the public interest. Thus, MO5’s Application should be denied with respect to AT&T Missouri’s wire center areas.

MO5’s public policy consultant conceded that her testimony suggesting that the public interest showing is inapplicable in non-rural wire centers “would have to be altered”³⁰ to take into account the FCC’s ETC Designation Order and the requirements of the Commission’s new ETC rules, both of which require a public interest showing in all wire centers for which ETC designation is sought.³¹ MO5’s consultant also suggested that granting its ETC Application would promote competition and increase consumer choices and cited to various pre-ETC Designation Order FCC decisions so stating.³² However, the same witness also acknowledged that the FCC’s ETC Designation Order unequivocally determined that “in light of the numerous factors it

²⁸ Stidham Supplemental Rebuttal, p. 7.

²⁹ ETC Designation Order, para. 18.

³⁰ Tr. 86.

³¹ ETC Designation Order, para. 42; 4 CSR 3.570(2)(A)(5).

³² MO5’s Application, paras. 28-31; Zentgraf Direct, pp. 25-26.

considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.”³³ She also stated that she knew of no later-issued FCC order holding otherwise,³⁴ and there is none. Moreover, granting MO5 ETC status would do little to increase either competition or consumer choice given MO5’s concession that there are eight wireless carriers licensed to provide service in the same area in which MO5 seeks ETC status, of which five (counting MO5) actually provide service in the area.³⁵

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.³⁶ However, since MO5 provided no detail regarding the actual coverage afforded by any of its several competitors, it cannot be concluded that MO5 would actually provide GSM coverage that is not already being provided to consumers by other wireless carriers.

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, 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.³⁷ Consequently, granting MO5’s application might afford public health and safety benefits only if MO5 had shown that none of the other holders of wireless licenses operating within MO5’s licensed territory provide a compatible, usable signal. MO5 did not make that showing.

³³ Tr. 85; ETC Designation Order, para. 44. (further citations omitted).

³⁴ Tr. 85.

³⁵ Tr. 70, 84. MO5 identified them as follows: “There’s Chariton Valley, Dobson, U.S. Cellular, Cingular, AT&T, Sprint.” Tr. 70.

³⁶ Simon Supplemental Direct, p. 7.

³⁷ 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.

Moreover, MO5 did not demonstrate that 911 service is unavailable from the several other wireless carriers providing service in the areas in which MO5 seeks ETC status. Thus, there is no basis upon which to conclude that granting MO5's Application would provide Missourians any meaningful public health and safety benefits.

Finally, 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. Less than two months ago, the FCC noted that "[t]here is widespread agreement that the [f]und is currently under significant strain."³⁸ Disbursements have grown (from approximately \$4.4 billion in 2000 to \$6.5 billion in 2005) and are expected to grow even more in the coming years, even as the assessable revenue base declines, thus placing upward pressure on the contribution factor (from 5.9% in 1Q 2000, to 8.9% in 4Q2004, to 10.9% in 2Q 2006).³⁹ Although the impact on the overall fund of but a single ETC designation by a single state commission may be small, the FCC has 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."⁴⁰

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 several 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.

³⁸ In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-95 (rel. June 27, 2006), para. 17.

³⁹ In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-95 (rel. June 27, 2006), para. 18.

⁴⁰ 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.⁴¹ However, MO5 has not specifically demonstrated any significant added coverage; rather, it appears that the additional signal coverage that MO5 would provide residents in those areas is marginal at best.

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 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

⁴¹ Reeves Direct, p. 7.

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”⁴² 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.”⁴³ However, MO5 compares its rates to AT&T Missouri’s Rate Group A rates and Rate Group B rates without reducing AT&T Missouri’s rates to account for the Lifeline discounts provided by the federal USF’s Low Income fund and the further support provided by the Missouri USF. Both reductions must be applied to AT&T Missouri’s rates in order to afford an accurate comparison.⁴⁴

AT&T Missouri’s evidence is un rebutted that when all appropriate Lifeline discounts are deducted from the Rate Group A rates applicable to fix of the six AT&T Missouri wire center areas in which MO5 seeks ETC designation, customers pay just \$0.15 before applicable 911/Relay Missouri charges, not \$13.60, as MO5 represented.⁴⁵ Applicable Lifeline discounts provided to AT&T Missouri’s customers in Moberly (a Rate Group B area) yield a rate of just \$1.79 before applicable 911/Relay Missouri charges, not \$15.49, as MO5 represented.⁴⁶ On the other hand,

⁴² ETC Designation Order, para. 41.

⁴³ Simon Direct, p. 9 & Appendix K.

⁴⁴ Stidham Rebuttal, pp. 20-21; Stidham Supplemental Rebuttal, p. 10.

⁴⁵ Tr. 110.

⁴⁶ Tr. 111.

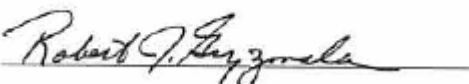
MO5's "Option 1" and "Option 2" Lifeline customers would pay at least \$6.75 and \$11.75, respectively.⁴⁷ In short, MO5's Lifeline rates are significantly higher than AT&T Missouri's Lifeline rates – by approximately 4,500% ($\$6.75/\$0.15=45.00$).⁴⁸ MO5 has not demonstrated compliance with this requirement of Section 214(e) or 4 CSR 240-3.570(2)(A)(10).

III. CONCLUSION

For the foregoing reasons, AT&T Missouri respectfully requests that the Commission deny the application of MO5 for designation as an ETC in the six AT&T Missouri wire centers of Armstrong, Brookfield, Higbee, Glasgow, Marceline and Moberly. MO5 has failed to sufficiently demonstrate that 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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⁴⁷ Simon Direct, Appendix K. The MO5 rates depicted on Appendix K (Simon Direct) warrant an upward adjustment, to \$8.00 and \$13.00, respectively, given MO5's concession at the hearing that, when comparing MO5's and AT&T Missouri's Lifeline rates, MO5 assumed an incorrect federal line charge discount of \$6.50 instead of \$5.25. Tr. 110-111, 150.

⁴⁸ This rate comparison draws on MO5's Option 1 Lifeline offering, under which "[t]he subscriber's outbound local calling would correspond to its traditional ILEC calling area for that subscriber's address." Simon Direct, pp. 6-7. Were the rate comparison to draw on MO5's Option 2 Lifeline offering, which "would allow for local calling and mobility throughout the entire service area for which MO5 is designated as an ETC," (id., p. 7), the comparison would yield 7,833% ($\$11.75/\$0.15=78.33$).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on August 11, 2006.


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