

Exhibit No.:
Issue: Policy
Witness: James E. Stidham, Jr.
Type of Exhibit: Supplemental Rebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone, L.P.,
d/b/a/ AT&T Missouri
Case No.: TO-2006-0172

SOUTHWESTERN BELL TELEPHONE, L.P.,

d/b/a AT&T MISSOURI

CASE NO. TO-2006-0172

SUPPLEMENTAL REBUTTAL TESTIMONY

OF

JAMES E. STIDHAM, JR.

Dallas, Texas

May 19, 2006

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

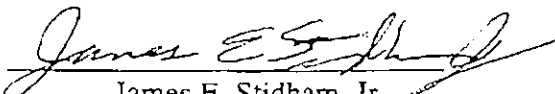
In the Matter of the Application of Missouri RSA No. 5)
Partnership for Designation as a Telecommunications)
Company Carrier Eligible for Federal Universal Service) Case No. TO-2006-0172
Support Pursuant to §254 of the Telecommunications)
Act of 1996.)

AFFIDAVIT OF JAMES E. STIDHAM, JR.

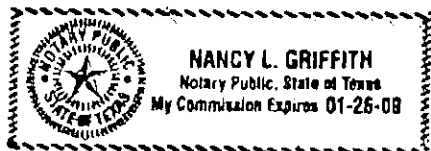
STATE OF TEXAS)
) SS
COUNTY OF DALLAS)

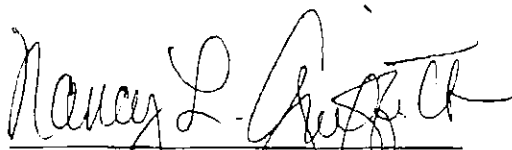
I, James E. Stidham, Jr., being duly sworn, depose and state:

1. My name is James E. Stidham, Jr. I am presently Associate Director - Regulatory Planning and Policy for AT&T Services, Inc.
2. Attached hereto and made a part hereof for all purposes is my Supplemental Rebuttal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


James E. Stidham, Jr.

Subscribed and sworn to before me this 19 day of May, 2006.




Notary Public

My Commission Expires: 1-26-09

INTRODUCTION

1 **Q. WHAT IS YOUR NAME, TITLE AND BUSINESS ADDRESS?**

2 A. My name is James E. Stidham, Jr. My title is Associate Director – Corporate Regulatory
3 Planning and Policy. My business address is 208 S. Akard Street, Room 3041, Dallas,
4 Texas 75202.

5 **Q. ARE YOU THE SAME JAMES E. STIDHAM, JR. WHO EARLIER PROVIDED**
6 **TESTIMONY IN THIS CASE?**

7 A. Yes. I prepared Rebuttal Testimony that was filed on March 1, 2006 in this case.

8 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL**
9 **TESTIMONY?**

10 A. The purpose of my Supplemental Rebuttal Testimony is to respond to the Supplemental
11 Direct Testimony of James A. Simon filed on April 17, 2006 in support of the application
12 of Missouri RSA No. 5 Partnership (“MO5”) requesting that MO5 be designated as an
13 Eligible Telecommunications Carrier (“ETC”) for purposes of receiving federal
14 Universal Service Fund (“FUSF”) support. (hereinafter, “MO5’s Application”). Mr.
15 Simon’s Supplemental Direct Testimony and my Supplemental Rebuttal Testimony are
16 directed to the matter of whether MO5’s Application complies with the requirements of
17 the Commission’s newly adopted ETC rules.¹ I recommend that the Commission
18 consider the information and analysis I provide in assessing whether to grant MO5’s
19 Application.

¹ On March 7, 2006, the Commission authorized the filing of its Final Order of Rulemaking with the Secretary of State. The rules have been published in the Missouri Register. 31 Mo. Reg. 790 (May 15, 2006). They become effective approximately thirty days after they are published in the Code of State Regulations. Section 536.021.8, RSMo. 2005 (Supp.).

1 **SUMMARY**

2 **Q. PLEASE IDENTIFY THE MAIN POINTS CONVEYED BY YOUR**
3 **SUPPLEMENTAL REBUTTAL TESTIMONY.**

4 A. The main points conveyed by my Supplemental Rebuttal Testimony are that:

- 5 • The Commission should use its new ETC rules (to appear at 4 CSR 240-3.570
6 (2)(A)(5)) to evaluate MO5’s application. While these rules are not yet effective,
7 they borrow extensively from the Federal Communications Commission’s
8 (“FCC’s”) March, 2005 ETC Designation Order and resulting rules,² which
9 AT&T Missouri and others have consistently argued should apply to all ETC
10 cases pending before this Commission. Moreover, the Commission has
11 previously concluded (in the context of “build out plans” required of ETC
12 applicants) that the rules serve as a “good guide” for the evidence that the
13 Commission currently requires of an ETC applicant.
14
15 • Because the Commission’s new ETC rules borrow extensively from the FCC’s
16 ETC Designation Order, the analysis I conveyed in my Rebuttal Testimony based
17 on that order applies in all material respects when considered in the context of the
18 Commission’s new ETC rules. MO5’s Supplemental Direct Testimony, even
19 when joined with its previously filed Direct Testimonies, still leaves questions
20 unanswered about MO5’s qualification to become an ETC and regarding whether
21 the public interest would be served by granting its request for ETC status.
22
23

24 **THE COMMISSION’S NEW ETC RULES**

25 **Q. SHOULD THE COMMISSION APPLY ITS NEW ETC RULES (TO BE**
26 **PUBLISHED AT 4 CSR 3.570) TO THIS CASE?**

27 A. Yes. Even though the Commission’s newly adopted ETC rules have not been published
28 in the Code of State Regulations and do not yet have the force of law, they borrow
29 extensively from the rules which the FCC adopted in its March, 2005 ETC Designation
30 Order for purposes of ETC applications submitted to that agency,³ and no one in the
31 Missouri telecommunications industry has seriously challenged the Commission’s

² 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”); 47 C.F.R. §§ 54.202, 54.209.

³ 47 C.F.R. §§ 54.202, 54.209.

1 reliance on the FCC's rules pending the effective date of the Commission's own newly
2 adopted rules.

3
4 Moreover, the Commission has already observed, in the context of U.S. Cellular's
5 pending ETC Application, that its new rules' "build out plan" requirements are "a good
6 guide for the information that U.S. Cellular will be required to submit" before the
7 Commission will further consider U.S. Cellular's Application.⁴ The same can be said of
8 the entirety of the rules' requirements. Thus, the build out plan portion of the new rules -
9 as well as the remainder of the Commission's newly adopted ETC rules - should be
10 applied in this case.

11
12 Finally, this course would also be most efficient. Mr. Simon's Supplemental Direct
13 Testimony is directed squarely to the new rules' requirements,⁵ so with the filing of all
14 remaining testimonies due in this case, evidence on all aspects of the new rules will
15 already have been supplied by the parties.

16
17 **Q. WHAT ARE THE SPECIFIC REQUIREMENTS OF THE COMMISSION'S NEW**
18 **ETC RULES?**

⁴ Application of USCOC of Greater Missouri, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Case No. TO-2005-0384, Order Directing Applicant to File Additional Information About Intended Use of High-Cost Support (March 21, 2006), p. 2.

⁵ Simon Supplemental Direct, p. 2 ("Specifically, my testimony will address the requirements identified in the [Commission's] pending Order of Rulemaking for rule 4 CSR 240-3.570 that was adopted after MO5's application was submitted.")

1 A. The Commission's rules require that a carrier requesting ETC status must meet certain
2 eligibility requirements, in accordance with Rule 3.570(2)(A)(1-10). The applicant must
3 show:

- 4 • Its intended use of the high-cost support, including detailed descriptions of
5 any construction plans with start and end dates, populations affected by
6 construction plans, existing tower site locations for CMRS cell towers, and
7 estimated budget amounts.
8
- 9 • A two (2)-year plan demonstrating that high-cost universal service support
10 shall only be used for the provision, maintenance and upgrading of
11 facilities and services for which the support is intended in the Missouri
12 service area in which ETC designation was granted.
13
- 14 • The two (2)-year plan shall include a demonstration that universal service
15 support shall be used to improve coverage, service quality or capacity on a
16 wire center-by-wire center basis throughout the Missouri service area for
17 which the requesting carrier seeks ETC designation, including a detailed
18 map of coverage area before and after improvements and in the case of
19 CMRS providers, a map identifying existing tower site locations for
20 CMRS cell towers; the specific geographic areas where improvements will
21 be made; the projected start date and completion date for each
22 improvement; the estimated amount of investment for each project that is
23 funded by high-cost support; the estimated population that will be served
24 as a result of the improvements; if an applicant believes that service
25 improvements in a particular wire center are not needed, it must explain its
26 basis for this determination and demonstrate how funding will otherwise
27 be used to further the provision of supported services in that area; and a
28 statement as to how the proposed plans would not otherwise occur absent
29 the receipt of high-cost support and that such support will be used in
30 addition to any expenses the ETC would normally incur.
31
- 32 • A demonstration of the carrier's ability to remain functional in emergency
33 situations, including a demonstration that the carrier has a reasonable
34 amount of back-up power to ensure functionality without an external
35 power source, is able to reroute traffic around damaged facilities and is
36 capable of managing traffic spikes resulting from emergency situations.
37
- 38 • A demonstration that the commission's grant of the applicant's request for
39 ETC designation would be consistent with the public interest, convenience
40 and necessity.
41

- 1 • A commitment to advertise the availability of services and charges
2 therefore using media of general distribution throughout the ETC service
3 area.
4
- 5 • A commitment to provide Lifeline and Link Up discounts consistent with
6 47 CFR 54.401 and 47 CFR 54.411. Each request for ETC designation
7 shall include a commitment to publicize the availability of Lifeline service
8 in a manner reasonably designed to reach those likely to qualify for the
9 service consistent with 47 CFR 54.405.
10
- 11 • A statement that the carrier will satisfy consumer privacy protection
12 standards as provided in 47 CFR 64 Subpart U and service quality
13 standards as applicable.
- 14 • A statement that the requesting carrier acknowledges it shall provide equal
15 access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that
16 service area relinquish their designations pursuant to section 214(e) of the
17 Telecommunications Act of 1996.
18
- 19 • A commitment to offer a local usage plan comparable to those offered by
20 the incumbent local exchange carrier in the areas for which the carrier
21 seeks designation. Such commitment shall include a commitment to
22 provide Lifeline and Link Up discounts and Missouri Universal Service
23 Fund (“MoUSF”) discounts pursuant to Chapter 4 CSR 240-31, if
24 applicable, at rates, terms and conditions comparable to the Lifeline and
25 Link Up offerings and MoUSF offerings of the incumbent local exchange
26 carrier providing service in the ETC service area.
27

28 **Q. DO THE COMMISSION’S ETC RULES CONVEY A FRAMEWORK FOR**
29 **APPLYING A PUBLIC INTEREST ANALYSIS?**

30 A. No. While the rules require a demonstration that the Commission’s grant of ETC
31 designation would be consistent with the public interest, convenience and necessity, they
32 do not prescribe any specific factors that the Commission should consider when assessing
33 whether the ETC applicant has met its burden of proof. AT&T Missouri urges the
34 Commission to use a process similar to the one used by the FCC. As the FCC noted, its
35 ETC Designation Order “set[s] forth our public interest analysis for ETC designations,
36 which includes an examination of (1) the benefits of increased consumer choice, (2) the

1 impact of the designation on the universal service fund, and (3) the unique advantages
2 and disadvantages of the competitor’s service offering.”⁶ These considerations are
3 explained in detail in Part IV(B) of the FCC’s ETC Designation Order. The FCC
4 “strongly encourages state commissions to consider the same factors in their public
5 interest reviews.”⁷

6
7 **ANALYSIS OF MR. SIMON’S SUPPLEMENTAL DIRECT TESTIMONY**

8 **Q. IN YOUR OPINION, DOES MR. SIMON’S SUPPLEMENTAL DIRECT**
9 **TESTIMONY DEMONSTRATE THAT MO5 HAS MET THE REQUIREMENTS**
10 **OF THE COMMISSION’S ETC RULES?**

11 **A.** No. In my opinion, much of that testimony lacks the same detail that I found lacking in
12 MO5’s Direct Testimonies. For example, I found no specific evidence in Mr. Simon’s
13 Supplemental Direct Testimony demonstrating that MO5 “is able to reroute traffic around
14 damaged facilities and is capable of managing traffic spikes resulting from emergency
15 situations[,]” as the Commission’s Rule 3.570(2)(A)(4) requires.

16
17 **Q. WHAT DOES MR. SIMON’S SUPPLEMENTAL DIRECT TESTIMONY SAY**
18 **ABOUT COMPLYING WITH THE COMMISSION’S RULE 3.570(2)(A)(4)?**

19 **A.** With regard to traffic rerouting, the Supplemental Direct Testimony of Mr. Simon (at p.
20 6) states that “[MO5’s] switching infrastructure is configured in a manner to allow traffic
21 to automatically reroute around damaged facilities should a particular link to the PSTN
22 be interrupted.” However, no more testimony is devoted to the subject. Thus, no
23 description of the switching configuration is provided, nor any explanation as to how the

⁶ ETC Designation Order, para. 18.

⁷ ETC Designation Order, para. 41.

1 configuration MO5 employs can be counted on to provide reliable redundancy and
2 rerouting in the event that facilities are damaged.

3
4 With regard to the management of traffic spikes, the Supplemental Direct Testimony of
5 Mr. Simon (at p. 6) states that “[b]ecause of the nature of emergency situation traffic
6 spikes, it’s impossible to specifically size and configure the wireless network to handle
7 the emergency load in advance.” Although Mr. Simon’s asserts that it is “impossible” to
8 plan for traffic increases associated with an emergency, Incumbent Local Exchange
9 Carriers (“ILECs”) have been building networks based on engineering standards designed
10 to handle just such situations for decades. While Mr. Simon further states that “the
11 normal operation of the switch allows for significant additional overhead traffic above
12 and beyond ‘normal’ use[,]” this statement does not provide the requisite detail that
13 would enable the Commission to find that MO5 can sufficiently handle the onset of
14 traffic spikes and various mass calling situations in a reliable manner.

15
16 **Q. DOES MR. SIMON PRESENT SUFFICIENT EVIDENCE THAT GRANTING**
17 **MO5’S APPLICATION WOULD BE CONSISTENT WITH THE PUBLIC**
18 **INTEREST, CONVENIENCE AND NECESSITY, AS REQUIRED BY THE**
19 **COMMISSION’S RULE 3.570(2)(A)(5)?**

20 A. No. Mr. Simon asserts that enhanced Global System for Mobile (“GSM”) network
21 coverage would be in the public interest, and he notes that with a cell phone (whether or
22 not active) an individual can call 911 using MO5’s network. (Simon Supplemental
23 Direct, p. 7). However, my understanding (based on the testimony of other wireless ETC
24 applicants) is that all wireless carriers provide access to 911 if there is a signal from the

1 wireless carrier's network and if the network and the individual's phone are using
2 compatible technology. Consequently, granting MO5's application might afford
3 additional public health and safety benefits, but only if none of the other holders of
4 wireless licenses operating within MO5's licensed territory provide a usable signal. MO5
5 has not shown that this is the case, which is important given that Ms. Zentgraf's Direct
6 Testimony referred to two cellular licensees and six Personal Communications Services
7 ("PCS") licensees that may be operating within MO5's licensed territory. (Zentgraf
8 Direct, p. 25).

9
10 In short, MO5 has not shown that it would be the only provider of wireless service in the
11 area for which MO5 is requesting ETC status, or at a minimum, that it would be the
12 preferred provider in an area where another wireless provider (or providers) offers
13 service. Thus, the record affords the Commission no basis upon which to conclude that
14 granting MO5's Application - thus allowing MO5 access to high-cost fund support -
15 would provide Missourians any meaningful public health and safety benefits.

16
17 **Q. MR. SIMON ASSERTS THAT GRANTING MO5 ETC STATUS WOULD**
18 **BENEFIT RURAL FARMERS. (SIMON SUPPLEMENTAL DIRECT, P. 7).**
19 **DOES THIS POSITION SQUARE WITH HIS DISCUSSION OF WHY SERVICE**
20 **QUALITY REQUIREMENTS ARE UNNECESSARY?**

21 **A.** No. Mr. Simon suggests that without MO5's service, a rural farmer would likely be
22 without any wireless service. But he also suggests that competition in the wireless

1 services market makes it unnecessary to condition ETC status upon compliance with
2 quality of services standards: “If one service provider offers inferior service, the customer
3 often has the ability to switch their service provider.” (Simon Supplemental Direct, p.
4 10). While I am not advocating that service quality requirements be placed on MO5 as a
5 condition of granting it ETC status, I am suggesting that the farmer either may already
6 have, or will have in the near future, multiple carriers from which to choose, and granting
7 MO5’s application would distort the market place. Moreover, it seems inconsistent for
8 MO5 to suggest, on the one hand, that there are few if any wireless alternatives for
9 farmers while also suggesting, on the other hand, that the “competitive” wireless
10 environment makes added regulation unnecessary.

11
12 **Q. DOES MR. SIMON’S SUPPLEMENTAL DIRECT TESTIMONY ADEQUATELY**
13 **ADDRESS THE COMMISSION’S REQUIREMENT REGARDING MO5’S**
14 **COMMITMENT TO PROVIDE LIFELINE AND LINK UP DISCOUNTS?**

15
16 A. No. The Commission’s Rule 3.570(2)(A)(7) requires that an ETC applicant demonstrate
17 its “commitment to provide Lifeline and Link Up discounts consistent with 47 CFR
18 54.401 and 47 CFR 54.411.” The first federal rule referenced (specifically, 47 CFR
19 54.401(a)(2)) defines Lifeline as a “retail local service offering . . . [f]or which qualifying
20 low-income consumers pay reduced charges as a result of application of the Lifeline
21 support amount described in § 54.403.” Mr. Simon’s Supplemental Direct Testimony
22 does not affirmatively state that MO5 commits to comply with this Commission’s
23 requirement (nor even the requirements of the FCC’s above-referenced Rule 54.401).
24 Consequently, the record is bare as to whether MO5’s proposed “Option 2” Lifeline plan

1 rate of \$11.75 represents a rate reached after applying required rate reductions to an
2 actual MO5 retail service offering.⁸ Stated another way, this Commission cannot be sure
3 that the appropriate Lifeline discounts are in fact being passed on to the Lifeline Option 2
4 customer if there is no actual retail service offering against which the discount is applied.
5

6 **Q. DOES MR. SIMON'S SUPPLEMENTAL DIRECT TESTIMONY ADEQUATELY**
7 **ADDRESS THE COMMISSION'S RULE 3.570(2)(A)(10)?**

8 A. No. That rule requires, in part, that the ETC applicant commit to provide Lifeline
9 discounts "at rates, terms and conditions comparable to" the Lifeline offerings of the
10 ILEC serving the ETC service area. Mr. Simon's discussion regarding this rule, which
11 appears at pages 10-12 of his Supplemental Direct Testimony, references MO5's
12 Appendix K, which Mr. Simon submitted with his Direct Testimony. However, as I
13 pointed out in my Rebuttal Testimony (at pp. 20-21), Appendix K is incorrect because it
14 compares MO5's Lifeline rates to AT&T Missouri's rates before applying the appropriate
15 discounts to AT&T Missouri's rates, and further, because it depicts the wrong SLC
16 which, in the case of AT&T Missouri, is \$5.25, not \$6.50. The error made in Appendix
17 K is not mentioned in Mr. Simon's Supplemental Direct Testimony. As a result, it cannot
18 be said that MO5's proposed Lifeline plans are comparable to those of AT&T Missouri.
19

20 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL REBUTTAL TESTIMONY?**

21 A. Yes.

⁸ Mr. Simon had earlier testified that MO5's ILEC-Equivalent Plan would offer the same features and services as the first Lifeline Plan (i.e., Option 1) but would be available to all MO5 subscribers at the price of \$15.00 per month. Simon Direct, p. 8.