

Exhibit No.:  
Issue: *ETC Status*  
Witness: *Robert C. Schoonmaker*  
Type of Exhibit: *Rebuttal Testimony*  
Sponsoring Parties: *Citizens Telephone Co. of Higginsville, Alma Communications. Co. d/b/a Alma Telephone Co. and Mid-Missouri Telephone Co.*  
Case No.: *TO-2005-0325*  
Date: *June 10, 2005*

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Third Application of )  
Missouri RSA No. 7 Limited Partnership, )  
d/b/a Mid-Missouri Cellular, ) Case No. TO-2005-0325  
for Designation as a Telecommunications )  
Company Carrier Eligible for Federal Universal )  
Service Support pursuant to §254 of the )  
Telecommunications Act of 1996. )

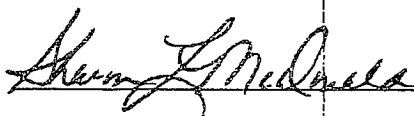
AFFIDAVIT OF ROBERT C. SCHOONMAKER

Robert C. Schoonmaker, of lawful age, being duly sworn, deposes and states as follows:

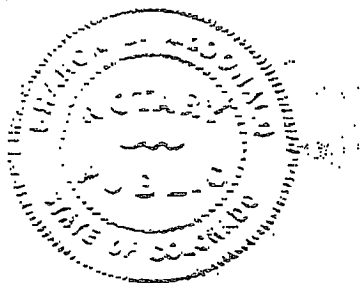
1. My name is Robert C. Schoonmaker. I am employed by GVNW Consulting, Inc. as President and Chief Executive Officer.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony with accompanying schedules.
3. I hereby affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief and that the information contained in the attached schedules is also true and correct to the best of my knowledge and belief.

  
Robert C. Schoonmaker

Subscribed and sworn to before me this 10th day of June, 2005.

 Notary Public

My Commission expires: 8-28-2006



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1           **REBUTTAL TESTIMONY OF ROBERT C. SCHOONMAKER**

2  
3  
4   **I.     BACKGROUND OF WITNESS**

5  
6   Q.    Please state your name and address.

7   A.    My name is Robert C. Schoonmaker. My business address is 2270 La Montana  
8           Way, Colorado Springs, Colorado 80918.

9  
10   Q.   By whom are you employed and in what capacity?

11   A.   I am President and CEO of GVNW Consulting, Inc., a consulting firm  
12           specializing in working with small telephone companies.

13  
14   Q.   Would you please outline your educational background and business experience?

15   A.   I obtained my Masters of Accountancy degree from Brigham Young University in  
16           1973 and joined GTE Corporation in June of that year. After serving in several  
17           positions in the revenue and accounting areas of GTE Service Corporation and  
18           General Telephone Company of Illinois, I was appointed Director of Revenue and  
19           Earnings of General Telephone Company of Illinois in May, 1977 and continued  
20           in that position until March, 1981. In September, 1980, I also assumed the same  
21           responsibilities for General Telephone Company of Wisconsin. In March, 1981, I  
22           was appointed Director of General Telephone Company of Michigan and in  
23           August, 1981 was elected Controller of that company and General Telephone  
24           Company of Indiana, Inc. In May, 1982, I was elected Vice President-Revenue  
25           Requirements of General Telephone Company of the Midwest. In July, 1984, I  
26           assumed the position of Regional Manager of GVNW Inc./Management (the

1 predecessor company to GVNW Consulting, Inc.) and was later promoted to the  
2 position of Vice President. I served in that position until October 1, 2003 except  
3 for the period between December 1988 and November, 1989 when I left GVNW  
4 to serve as Vice President-Finance of Fidelity and Bourbeuse Telephone  
5 Companies. I was elected to the position of President and Chief Executive  
6 Officer effective October 1, 2003. In summary, I have had over 30 years of  
7 experience in the telecommunications industry working with incumbent local  
8 exchange carrier companies.

9  
10 Q. What are your responsibilities in your present position?

11 A. In my current position I have overall responsibility for the management and  
12 direction of GVNW Consulting, Inc. In addition, I consult with independent  
13 telephone companies and provide financial analysis and management advice in  
14 areas of concern to these companies. Specific activities which I perform for client  
15 companies include regulatory analysis, consultation on regulatory policy,  
16 financial analysis, business planning, rate design and tariff matters,  
17 interconnection agreement analysis, and general management consulting.

18  
19 Q. Have you previously testified in regulatory proceedings?

20 A. Yes. I have submitted testimony and/or testified on regulatory policy, local  
21 competition, rate design, accounting, compensation, tariff, rate of return,  
22 interconnection agreements, and separations related issues before the Illinois  
23 Commerce Commission, the Public Service Commission of Wisconsin, the

1 Michigan Public Service Commission, the Iowa Utilities Board, the Tennessee  
2 Public Service Commission, the New Mexico Public Regulation Commission, the  
3 Public Utilities Commission of the state of South Dakota, the Public Service  
4 Commission of West Virginia, and the Missouri Public Service Commission. In  
5 addition, I have filed written comments on behalf of our firm on a number of  
6 issues with the Federal Communications Commission and have testified before  
7 the Federal-State Joint Board in CC Docket #96-45 on Universal Service issues.  
8

9 Q. On whose behalf are you testifying in this case?

10 A. I am presenting testimony on behalf of Citizens Telephone Company of  
11 Higginsville Missouri, Alma Communications Company d/b/a Alma Telephone  
12 Company and Mid-Missouri Telephone Company. I refer to these Companies as  
13 "Citizens", "Alma" and "MMTC", or collectively as "the Companies". Each of  
14 the Companies are rural telephone companies as defined in the  
15 Telecommunications Act of 1996 ("the Act"), each has its own unique study area  
16 and each has been designated an Eligible Telecommunications Carrier ("ETC")  
17 within its respective study area.

18  
19 **II. PURPOSES AND CONCLUSIONS OF TESTIMONY**  
20

21 Q. What is the purpose of your testimony?

22 A. The purpose of my testimony is to respond to the Application ("Application") of  
23 Mid-Missouri Cellular ("MMC") to be designated as an ETC for receipt of federal  
24 Universal Service Funds ("USF") in the rural high-cost areas served by the  
25 Companies. I will present the legal framework and regulatory guidelines and

1 factors to assist the Missouri Public Service Commission (the "Commission") in  
2 its determination of this matter. I will also respond to the testimony presented by  
3 MMC supporting that application and will describe why I do not believe that  
4 MMC has demonstrated that such a designation is in the public interest.

5  
6 Q. Does it appear that MMC's usage of anticipated USF support is to fulfill the  
7 prime intent of maintaining local service rates at lower and more affordable levels  
8 and to preserve and advance universal service?

9 A. No, it does not appear that the granting of ETC status to MMC will affect local  
10 service rates, will increase competition or will bring additional benefits that the  
11 communities do not already have. Based upon its Application and  
12 testimony, it appears that MMC's primary anticipated usage of USF support is to  
13 complete the final part of the overlay of its present time division multiple access  
14 (TDMA) network with code division multiple access (CDMA) technology. As I  
15 will develop in my testimony, I believe that the CDMA overlay completion will  
16 occur regardless of whether MMC is designated as an ETC due to technological  
17 and competitive pressures,<sup>1</sup> and because MMC is required by federal law to  
18 implement improvements to its E-911 system which require the CDMA  
19 technology.<sup>2</sup> I question whether MMC has met its evidentiary burden that ETC

---

<sup>1</sup> Application for Designation as an ETC at ¶¶ 30 – 31. ("Application"). Direct Testimony of Michael Kurtis at pp. 20 -31. ("Kurtis Testimony")

<sup>2</sup> The Missouri Commission has previously found that Federal law requires MMC to implement such improvements and that a CDMA overbuild is necessary to meet the "FCC accuracy requirements with respect to E-911 Phase II locational services." 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 Eligible for Federal Universal Service Support pursuant to § 254. Report and Order, Case No. TO-2003-0531, (Rel. August 5, 2004) at p. 10. ("MMC – Report and Order")

1 status is in the public interest and that such would preserve and advance universal  
2 service.

3  
4 Q. You have referred in a footnote to the Commission's Report and Order in MMC's  
5 previous ETC application. As an overview, do you believe that MMC's  
6 Application and testimony in the instant docket better meets the requirements for  
7 being granted ETC status than did its previous filing?

8 A. Yes it meets those requirements better, though it doesn't necessarily satisfy them.  
9 MMC has made improvements in its direct case -- such as its Lifeline plans, the  
10 planned offering of a local plan with unlimited minutes, acknowledgements of  
11 new FCC recommendations and the presentation of a certain level of detailed  
12 future construction plans. The Commission should review carefully the testimony  
13 presented by all the Parties in this case to determine whether MMC provides  
14 substantial and sufficient evidence that granting them ETC status would be in the  
15 public interest. The Commission will also want to consider that since the  
16 Commission's Report and Order was issued, the FCC has adopted new rules for  
17 the Commission's consideration that recommend a more stringent and rigorous  
18 ETC process. I would encourage the Commission, as it did in MMC's previous  
19 filing, to carefully weigh the testimony presented to see whether granting such  
20 ETC status is in the public interest.

21  
22 **III. THE FEDERAL TELECOMMUNICATIONS ACT AND THE**  
23 **FCC'S CORRESPONDING REGULATIONS AND DECISIONS**  
24 **PROVIDE THE BASIC FOUNDATION.**  
25

1 Q. What are the key sections of Federal law and Federal Communications  
2 Commission ("FCC") rules, pertaining to ETC designations and Universal  
3 Service, which the Commission should focus on?

4 A. The key or primary sections of focus should be:

- 5 • Section 214(e) of the Telecommunications Act of 1934, as amended by the  
6 Telecommunications Act of 1996 (hereinafter "the Act") which pertains to the  
7 designation of ETCs.  
8
- 9 • FCC Rule 54.201 (47 C.F.R. § 54.201) which contains the implementing  
10 regulations.  
11
- 12 • FCC Rule 54.101(a) (47 C.F.R. § 54.101(a)) which lists the nine services  
13 supported by the federal Universal Service Fund and which are required for  
14 ETC status.  
15
- 16 • FCC Rule 54.202 (47 C.F.R. § 54.202) which is a recent amendment to  
17 Part 54 of the FCC's rules and includes additional requirements for ETC  
18 designations approved by the FCC.<sup>3</sup>  
19
- 20 • Section 254(b) of the Act (47 C.F.R. § 254(b)) which defines the  
21 "Universal Service Principles" to guide regulatory bodies such as the  
22 Commission in preserving and advancing universal service.  
23  
24

25 Q. What responsibility does the Act give to state commissions in the ETC  
26 designation process?

27 A. Section 214(e)(2) of the Act states in relevant part:

28 Upon request and consistent with the public interest, convenience, and  
29 necessity, the State commission *may, in the case of an area served by*  
30 *a rural telephone company*, and shall, in the case of all other areas,  
31 designate more than one common carrier as an eligible  
32 telecommunications carrier for a service area designated by the State  
33 commission, so long as each additional requesting carrier meets the  
34 requirements of paragraph (1). Before designating an additional  
35 eligible telecommunications carrier for an area served by a rural

---

<sup>3</sup> Rules 54.202, and the additional FCC ETC designation requirements, were ordered in the FCC's recently released Report and Order 05-46. *Federal-State Joint Board on Universal Service*; Report and Order, CC Docket No. 96-45 (rel. March 17, 2005) (*Report and Order*).



1 telephone company, the *State commission shall find that the*  
2 *designation is in the public interest.* (emphasis added)  
3

4 In regard to *rural areas*, the Commission *may* designate more than one carrier  
5 *only if* the commission finds that the designation is in the public interest.  
6 Additionally, the requirements of Section 214(e)(1) must be met under the Act;  
7 namely, whether MMC offers the nine required services listed in 47 C.F.R. §  
8 54.101(a) and advertises such. Finally, the principles of universal service, found  
9 in Section 254(b), provide a clear description of the purpose of Universal Service  
10 Funds which MMC is seeking to receive, and provide guidelines to assist the  
11 Commission in determining whether the designation of MMC as an ETC would  
12 be in the public interest.  
13

14 Q. Has the FCC issued rules that the Commission can use as guidance in making a  
15 public interest finding for competitive ETC designations in areas served by rural  
16 telephone companies in Missouri?

17 A. Yes. In March, the FCC released the *Report and Order* which adopted additional  
18 requirements for ETC proceedings before the FCC. The *Report and Order* is a  
19 statement of the minimum public interest requirements that the FCC will follow in  
20 such cases and, though not binding on state commissions, provides guidance to  
21 state commissions in their ETC designations. These additional minimum  
22 requirements became effective in April.<sup>4</sup>  
23

---

<sup>4</sup> The amendments to Part 54 became effective on or about April 1, 2005, or 30 days after the March 2 Federal Register publication. See *Report and Order*, Section VIII Ordering Clauses, ¶ 109.

1 Q. What is the FCC's recommendation regarding states using these guidelines in  
2 their individual ETC proceedings?

3 A. The FCC strongly encourages the state commissions to adopt these minimum  
4 recommendations. In the context of preserving the federal USF and reducing  
5 fund growth attributable to lax ETC designations, the FCC was concerned that the  
6 states adopt its much more rigorous guidelines for ETC designation than have  
7 been used in the past.<sup>5</sup> I wish to emphasize that these are *minimum* recommended  
8 guidelines for the states. The Commission need not be constrained by the FCC in  
9 establishing ETC criteria that the Commission believes better defines the public  
10 interest. Indeed, the Commission may deviate from the FCC's recommended  
11 ETC guidelines and adopt criteria different and more restrictive than the criteria  
12 used by the FCC.

13

14 Q. Would you recommend the Commission consider the FCC's rules in its public  
15 interest evaluation of MMC's application for ETC status?

16 A. Yes, the Commission should use the FCC's recommended guidelines as a starting  
17 point and build upon that foundation, along with other public interest  
18 considerations to reach a conclusion regarding MMC's application

19

20 Q. What specific measures did the FCC adopt in its recent Report and Order?

---

<sup>5</sup> *Id.* at ¶ 2 ("We also believe that because these requirements create a more rigorous ETC designation process, their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund.") and ¶ 5.

1 A. The FCC stated that competition, by itself, is insufficient to satisfy the public  
2 interest test, but that numerous other factors should be considered and weighed.

3 The new FCC criteria, for initial ETC designation, include the following:

4 (1) **Eligibility Requirements** – An ETC applicant, in addition to the Act’s  
5 requirements, must now, throughout the service area for which it seeks  
6 designation:

- 7
- 8 • Provide a five-year plan demonstrating how high-cost universal service
  - 9 support will be used to improve its coverage, service quality or capacity;
  - 10 • Demonstrate its ability to remain functional in emergency situations;
  - 11 • Demonstrate that it will satisfy consumer protection and service quality
  - 12 standards;
  - 13 • Offer local usage plans comparable to those offered by the incumbent
  - 14 local exchange carrier (LEC); and
  - 15 • Acknowledge that it may be required to provide equal access if all other
  - 16 ETCs in the designated service area relinquish their designations.<sup>6</sup>
  - 17

18 (2) **Public Interest Determinations** –The FCC clarified that its public  
19 interest examination will review many of the same factors for ETC  
20 designations in areas served by non-rural and rural incumbent LECs. In  
21 addition, as part of its public interest analysis, the FCC will examine the  
22 potential for creamskimming effects where an ETC applicant seeks  
23 designation below the study area level of a rural incumbent LEC.<sup>7</sup>

24

25 I will discuss each of these criteria later in my testimony.

26

27 Q. On the federal level, what else could assist the Commission in determining ETC  
28 designation?

29 A. Given that it is Federal Universal Service funds for which MMC would be  
30 eligible under an ETC designation, it is appropriate that the principles of universal  
31 service, in the Federal Act, should guide the Commission. It is noteworthy that  
32 the purpose of these principles is to base future policy decisions “for the

---

<sup>6</sup> See Report and Order at ¶ 2.

<sup>7</sup> Id. at ¶ 3.

1 preservation and advancement of universal service." The Act defines the  
2 following Universal Service Principles in Section 254(b):

3 (b) UNIVERSAL SERVICE PRINCIPLES.--The Joint Board and the  
4 Commission shall base policies for the preservation and advancement of  
5 universal service on the following principles:  
6

7 (1) QUALITY AND RATES.--Quality services should be  
8 available at just, reasonable, and affordable rates.

9 (2) ACCESS TO ADVANCED SERVICES.--Access to advanced  
10 telecommunications and information services should be provided  
11 in all regions of the Nation.

12 (3) ACCESS IN RURAL AND HIGH COST AREAS.--Consumers  
13 in all regions of the Nation, including low-income consumers and  
14 those in rural, insular, and high cost areas, should have access to  
15 telecommunications and information services, including  
16 interexchange services and advanced telecommunications and  
17 information services, that are reasonably comparable to those  
18 services provided in urban areas and that are available at rates that  
19 are reasonably comparable to rates charged for similar services in  
20 urban areas.

21 (4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.-  
22 -All providers of telecommunications services should make an  
23 equitable and nondiscriminatory contribution to the preservation  
24 and advancement of universal service.

25 (5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.--  
26 There should be specific, predictable and sufficient Federal and  
27 State mechanisms to preserve and advance universal service.

28 (6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES  
29 FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.--Elementary and  
30 secondary schools and classrooms, health care providers, and  
31 libraries should have access to advanced telecommunications  
32 services as described in subsection (h).

33 (7) ADDITIONAL PRINCIPLES.--Such other principles as the  
34 Joint Board and the Commission determine are necessary and  
35 appropriate for the protection of the public interest, convenience,  
36 and necessity and are consistent with this Act.  
37

38 Q. Did the FCC adopt any additional principles under 254(b)(7)?

39 A. Yes. It adopted the following additional principle in its Report and Order in CC

40 Docket No. 96-45, FCC 97-157 Issued May 8, 1997 (§ 47):

1 COMPETITIVE NEUTRALITY -- Universal service support  
2 mechanisms and rules should be competitively neutral. In this  
3 context, competitive neutrality means that universal service  
4 support mechanisms and rules neither unfairly advantage nor  
5 disadvantage one provider over another, and neither unfairly favor  
6 nor disfavor one technology over another.  
7

8  
9 Q. What is the relevance of these principles as adopted by Congress and the FCC in  
10 relationship to the Application of MMC for ETC status?

11 A. In evaluating MMC's Application for ETC status in the rural study areas, the  
12 Commission should utilize this set of universal service principles as a guide in  
13 evaluating the public interest benefits of granting that status. Also, as reflected in  
14 its *Report and Order*, the FCC is increasingly concerned about the impact of  
15 multiple ETC designations on the high-cost universal service fund and the  
16 resultant effect in rural areas. It is not simply the extra burden on the universal  
17 service fund that is at issue in this case, but also the implications for the  
18 overarching public policy goal of universal service, starting in the 1930's, to  
19 provide affordable phone service to all.  
20

21 **IV. THE MISSOURI COMMISSION'S APPROACH AND**  
22 **RESPONSIBILITY TO DEVELOP ITS OWN ETC CRITERIA.**  
23

24 Q. Can the Commission impose additional obligations on carriers seeking ETC  
25 status?

26 A. Yes, the Act allows that "States may adopt regulations not inconsistent with the  
27 Commission's [FCC's] rules *to preserve* and advance universal service."<sup>8</sup> A

---

<sup>8</sup> 47 U.S.C. § 254(f). (emphasis added)

1 Federal Court has upheld a state commission's right to impose additional  
2 requirements when designating carriers as eligible for federal USF.<sup>9</sup> In addition,  
3 in the *Report and Order*, the FCC repeatedly stated that a state can add additional  
4 requirements,<sup>10</sup> and indeed appears to encourage the states to do so.<sup>11</sup> It is  
5 important for the Commission to note that in the very first sentence of the *Report*  
6 *and Order*, the FCC stated that that they were adopting additional measures  
7 addressing "the *minimum* requirements" for a carrier's ETC designation.<sup>12</sup>

8  
9 Q. Have other state commissions imposed additional obligations?

10 A. Yes. As one example, the Oklahoma Corporation Commission, on January 12,  
11 2005, adopted additional requirements for ETC designation including a  
12 requirement of unlimited local calling for Lifeline subscribers.<sup>13</sup>

13  
14 Q. MMC cites to FCC ETC designations of Western Wireless Corporation in  
15 Wyoming and Guam Cellular and Paging in Guam as examples of the FCC's pro-  
16 competitive policies.<sup>14</sup> How significant is this precedent to the Commission?

17 A. In my mind this is not terribly significant as a precedent. Those FCC ETC  
18 designations generally predate the *Virginia Cellular* Order, released on January

---

<sup>9</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5<sup>th</sup> Cir. 1999). The Fifth Circuit overturned a portion of the FCC's universal service order that attempted to prohibit a state commission's imposition of additional ETC requirements.

<sup>10</sup> Report and Order at ¶ 25 (geographically-specific factors for emergency functionality); ¶ 30 (consumer protection); ¶ 34 ("there is nothing ... that would limit state commissions from prescribing some amount of local usage as a condition of ETC status").

<sup>11</sup> See generally, *Id.* at ¶ 61.

<sup>12</sup> *Id.* at ¶ 1.

<sup>13</sup> See, Agency Rule Report, Oklahoma Corporation Commission, Permanent Rulemaking, Cause No. RM 200400014 at: <http://www.occ.state.ok.us/Divisions/GC/OCCRULES/Proprules/ARR%202004-14.pdf>

See also, News Release, "A Win for Consumers, Industry", January 12, 2005 at:

[http://www.occ.state.ok.us/Divisions/NEWS/nrp\\_publicfullarticle.htm](http://www.occ.state.ok.us/Divisions/NEWS/nrp_publicfullarticle.htm).

<sup>14</sup> Application at ¶ 27.

1 22, 2004, and were primarily based on criteria related solely to the existence of  
2 competition, a criteria the FCC has now found inadequate.<sup>15</sup> They certainly  
3 predate the current FCC rules that are even more fully developed.  
4

5 Q. Does MMC have the burden of proof on all aspects of its application?

6 A. Yes. MMC has the burden to demonstrate that it meets the requirements of the  
7 statute and the FCC rules, and that its application is in the public interest.  
8 MMC's obligation in this proceeding is to produce sufficient evidence that its  
9 ETC designation and subsequent receipt of USF support will cause sufficient  
10 benefits to occur, such as lower prices and availability of service throughout its  
11 designated service area, to make such designation "in the public interest."  
12

13 Q. Does this burden of proof relate in broad terms to its application throughout the  
14 portion of the state as a whole that it serves, or does it extend to each individual  
15 study area?

16 A. While MMC's ETC Application involves a number of companies and study  
17 areas, the Commission needs to take an individualized, analytical approach  
18 regarding each affected study area.  
19

20 Section 214(e)(2) of the Act directs that a State commission, before it designates  
21 an additional ETC for an area served by a rural telephone company, "shall find  
22 that the designation is in the public interest." Thus, the State commissions have

---

<sup>15</sup> The more recent of the two FCC Designations cited by MMC, Guamcell, was released on January 25, 2002.

1 the responsibility to analyze the public interest for each individual rural telephone  
2 study area. The FCC, in its recent Order, endorsed such an approach. The FCC  
3 stated that:

4 [A]lthough we adopt one set of criteria for evaluating the public interest  
5 for ETC designations in rural and non-rural areas, *in performing the public*  
6 *interest analysis, the Commission and state commissions may conduct the*  
7 *analysis differently, or reach a different outcome, depending upon the*  
8 *area served.* For example, the Commission and state commissions may  
9 give more weight to certain factors in the rural context than in the non-  
10 rural context and *the same or similar factors could result in divergent*  
11 *public interest determinations, depending on the specific characteristics of*  
12 *the proposed service area,* or whether the area is served by a rural or a  
13 non-rural carrier.<sup>16</sup>  
14

15 In his concurring comments, FCC Commissioner Adelstein noted that the ETC  
16 designation criteria should not be applied in a rote or mechanical fashion but the  
17 FCC should carefully consider “the unique nature of individual circumstances” to  
18 satisfy the FCC’s obligation as stewards of the USF.<sup>17</sup>  
19

20 Q. You mention that the Commission’s approach should be on an individualized  
21 analysis; what do you mean by that?

22 A. In other words, the Commission must analyze the fact-specific circumstances and  
23 make a determination for each individual LEC’s study area or areas separately, on  
24 an individual basis, and not under a global or blanket approach. In making its  
25 determination for each study area, the Commission should consider such factors  
26 as comparisons to the telco local service offerings, the extent of competition in  
27 each area, MMC’s existing service coverage, MMC’s plans for future

---

<sup>16</sup> Report and Order at ¶ 43. (emphasis added)

<sup>17</sup> Id. Statement of Commissioner Jonathan S. Adelstein, attached to FCC’s Memorandum Opinion and Order.



1 enhancements, and others on an individual study area basis, rather than focusing  
2 on MMC's total statewide plans.  
3

4 **V. ETC DESIGNATION PROCESS – THE ELIGIBILITY**  
5 **REQUIREMENTS. A DISCUSSION OF MID-MISSOURI**  
6 **CELLULAR'S APPLICATION.**  
7

8 Q. Can you give a brief recap of the ETC designation requirements for the  
9 Commission?

10 A. Yes. ETC applicants have to meet statutorily prescribed requirements in order to  
11 become eligible as an ETC including showing that such designation is in the  
12 public interest. The statutory requirements under Section 214(e) are: (1) Offer  
13 the nine supported services; and (2) Advertise those services and charges  
14 (including the Lifeline and Link-up programs). The recent FCC Order provides  
15 guidelines in five specific areas for determining whether the public interest is  
16 being served by such an application.  
17

18 Q. One of the requirements for ETC eligibility status is providing the nine services  
19 required by the FCC in 47 C.F.R. § 54.101(a). What are your comments  
20 regarding the provision of these services?

21 A. The nine services supported by the federal universal service are:

- 22 (1) Voice grade access to the public switched network
- 23 (2) Local usage
- 24 (3) Dual tone multi-frequency signaling or its functional equivalent
- 25 (4) Single-party service or its functional equivalent
- 26 (5) Access to emergency services
- 27 (6) Access to operator services
- 28 (7) Access to interexchange service

1 (8) Access to directory assistance

2 (9) Toll limitation for qualifying low-income consumers

3  
4 MMC, in its application and Mr. Dawson's testimony, discusses each of these  
5 services and asserts that it is providing them.<sup>18</sup> In general, the Companies do not,  
6 at least at this time, question that MMC is providing these nine services in most of  
7 the area for which it is requesting ETC designation. The exception concerns  
8 MMTC's wire centers of Fortuna, High Point and Latham where MMC does not  
9 provide any of the nine services. MMC admits that these three wire centers do  
10 not lie within its FCC-licensed study area.<sup>19</sup> MMC's provision of these services,  
11 in comparison to the offerings by the affected rural Local Exchange Carriers  
12 (RLECs) and Incumbent Local Exchange Carriers (ILECs) generally, raise issues  
13 regarding how well the public interest will be served by granting ETC status to  
14 MMC. There are also issues raised regarding the competitive neutrality principle  
15 established by the FCC.

16  
17 Q. Did MMC sufficiently establish how it would provide service to the three MMTC  
18 wire centers that do not lie within its licensed area?

19 A. I don't believe that it has presented sufficient evidence. Given that MMC does  
20 not provide service to these three wire centers and apparently does not intend to  
21 use anticipated USF support there,<sup>20</sup> the only way that MMC can meet its ETC  
22 obligation to provide service is by resale agreements. MMC correctly states that

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<sup>18</sup> Testimony of Kevin Dawson at pp. 3 - 5. ("Dawson Testimony")

<sup>19</sup> Application at ¶ 13.

<sup>20</sup> *Id.* at ¶ 41 (MMC plans to use USF only "within its FCC-licensed area".) *Also see*, Application at ¶ 32 ("... MMC envisions implementing capacity expansions that, in conjunction with the deployment of the additional CDMA cell sites, would result in network enhancements in virtually all of the wire centers located in MMC's FCC-licensed service area, that are included in the proposed MMC ETC service area.")

1 the FCC permits service to be provided by other carriers through resale  
2 agreements.<sup>21</sup> In Mr. Dawson's testimony of how MMC will provide service to a  
3 potential customer requesting service, there is no discussion of how a potential  
4 customer outside of MMC's licensed serving area but within its ETC serving area  
5 will obtain service.<sup>22</sup> Neither is there any specific evidence presented whether  
6 and how service to these three wire centers will be advertised. In answer to a data  
7 request, MMC stated that it has roaming agreements in place to enable it to  
8 provide service to all MMTC wire centers, but was unable to provide copies of  
9 such agreements.<sup>23</sup>

10  
11 Q. Do the FCC rules for the nine required services discuss a specific price at which  
12 such services are offered?

13 A. No, they do not. However, the first principle in the Act related to Universal  
14 Service which I previously quoted states "...quality service should be available at  
15 just, reasonable and affordable rates." If one reviews the history of Universal  
16 Service, a prime intent of providing USF funds is to maintain rates for local  
17 service at lower, more affordable levels. In other words, the purpose of the fund  
18 is to preserve and advance universal service.

19  

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<sup>21</sup> *Id.* at ¶ 13 (Service "may be provided by other carriers through roaming and/or resale agreements."). Pursuant to Section 214 (e), an ETC may offer services throughout the designated ETC service area by using a combination of its own facilities and resale of another carrier's services.

<sup>22</sup> Dawson Testimony at p. 16.

<sup>23</sup> Schedule RCS - 2, Response to the Companies' Data Request No. 16. Editorial Note: Schedule RCS - 1 was not used and the denotation "RCS - 1" is not used. Thus, the first Schedule is "RCS - 2".

1 Q. What regulatory oversight does the Commission have to assure that the rates of  
2 rural incumbent LECs (ILECs) are maintained at just and reasonable levels?

3 A. The Commission, by state statute, has the authority to review and establish the  
4 rates of these Companies, along with other rate-of-return regulated companies in  
5 the state, to assure that they are "just, reasonable, and affordable".  
6

7 Q. Does the Commission have any authority to regulate the rates of MMC?

8 A. No, by federal and state statute, the Commission does not have authority to  
9 regulate MMC's rates.  
10

11 Q. What are the rates that the Companies you represent charge for local service?

12 A. The local tariffed rates for basic residential service are (inclusive of the  
13 mandatory federal subscriber line charge (SLC)).<sup>24</sup>

	<u>Local Rate</u>	<u>SLC</u>	<u>Total</u>
15 Alma Telephone	\$ 6.50	\$ 6.50	\$ 13.00
17 Citizens Telephone	\$ 8.40	\$ 6.50	\$ 14.90
19 MMTC	\$ 8.00	\$ 6.50	\$ 14.50

20  
21 Q. What plans does MMC offer for "local" service?

22 A. The plans currently offered are presented in Mr. Dawson's testimony, Appendix J,  
23 and are in the range from \$ 19.95 to \$ 99.95 per month for varying minutes.<sup>25</sup>

24 These "Next Generation Calling Plans" are categorized as "Consumer" and

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<sup>24</sup> From the Commission's Website under "Local Rates" at:  
[http://www.psc.state.mo.us/teleco/access\\_lines\\_and\\_res\\_rates.xls](http://www.psc.state.mo.us/teleco/access_lines_and_res_rates.xls)

<sup>25</sup> Dawson's Testimony at p. 6 and Appendix J.

1       “Unlimited”. I do not know the distinction between the two categories, but from  
2       page 1 of Appendix J it appears that the coverage area of the “Consumer” plans  
3       includes the entire state of Missouri. On May 27, 2005, I viewed the plans  
4       currently available on MMC’s website and noted several differences in  
5       presentation, plans and features from those in Appendix J to Mr. Dawson’s  
6       testimony. Included on MMC’s website are four “MyDigital Local Rate Plans”, a  
7       copy of which I have attached to my testimony.<sup>26</sup> Also included are the  
8       MyDigital Next Generation Plans” which differs from Appendix J starting at the  
9       1000 minute level. A copy of these plans have been attached.<sup>27</sup> Finally, I have  
10      attached a copy of “MyDigital Unlimited Zone Plan” that appears to be  
11      comparable to the “Unlimited Plans” on Appendix J.<sup>28</sup>

12  
13   Q.   Does MMC intend that all of its plans qualify for federal USF?

14   A.   Based on MMC’s testimony, it is my understanding that they intend for all of  
15      their service offerings to be eligible for universal service.<sup>29</sup>

16  
17   Q.   Has MMC given any indication that it would reduce any of its rates if it is  
18      designated an ETC?

19   A.   Putting aside the two proposed Lifeline plans, Mr. Dawson testified to the  
20      introduction of a reduced rate plan called the “ILEC Equivalent” Plan - “The

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<sup>26</sup> Schedule RCS - 3, “MyDigital Rate Plan – Local” from MMC’s website on May 27, 2005.

<sup>27</sup> Schedule RCS - 4, “MyDigital Rate Plan – Next Generation Plans” from MMC’s website on May 27, 2005.

<sup>28</sup> Schedule RCS - 5, “MyDigital Unlimited Zone Plan” from MMC’s website on May 27, 2005.

<sup>29</sup> Dawson Testimony at p. 6 (“lifeline customers would be able to pick any existing MMC service plan.”) and at p. 9 (“MMC will make available multiple local usage plans that prospective customers can select from as part of its universal service offering.”)

1 ILEC-Equivalent Plan offers the same features and services as the first Lifeline  
2 Plan and will be offered at the price of \$ 14.50 per month.”<sup>30</sup> The referred  
3 Lifeline Plan would offer unlimited local calling in an MMC’s customer’s home  
4 cell site area (defined to include all of the ILEC local exchange area). Beyond  
5 Mr. Dawson’s brief description, there are no further details presented and no other  
6 references to this particular plan in the Application or Mr. Kurtis’ testimony.  
7

8 Q. What would you recommend for the Commission’s analysis of MMC’s ILEC-  
9 Equivalent Plan?

10 A. I would urge the Commission to inquire into the ILEC-Equivalent Plan’s details  
11 such as the capabilities to call outside the home cell site area and at what price;  
12 the availability of this plan to MMC’s existing customers and the transaction costs  
13 for switching to this plan; the availability to customers outside MMC’s FCC-  
14 licensed service area but within its ETC service area (e.g., MMTC’s wire centers  
15 of Fortuna, High Point and Latham); MMC’s ongoing commitment to this plan  
16 once ETC designation is granted; and whether this plan is eligible for the Lifeline  
17 discounts. Also, although Mr. Dawson explicitly states that MMC is unable to  
18 provide the two Lifeline plans without ETC support,<sup>31</sup> he did not make a similar  
19 statement as to the ILEC-Equivalent Plan. Thus, I would recommend inquiry if  
20 the latter plan will be offered, in the same or similar form, regardless of ETC  
21 designation. Until further details are known about this plan and the extent of its

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<sup>30</sup> *Id.* at p. 9.

<sup>31</sup> *Id.* at p. 8.

1           availability, I am unable to draw a conclusion based upon a comparison of  
2           MMC's rates to the Companies' rates.

3

4    Q.    If MMC's rates are higher than the rates in each of the Companies' requested  
5           study areas and MMC does not indicate that it will reduce its rates if granted ETC  
6           status and USF support, what is your assessment of the public interest  
7           determination as it relates to the rates that MMC charges?

8    A.    It does not seem like the public will gain much benefit by granting ETC status to  
9           MMC in any of these study areas from a rate standpoint. The Commission will  
10          need to make a determination if any public benefit gained from an additional ETC  
11          will outweigh the cost of such. I would fear that MMC's stockholders may be the  
12          primary beneficiaries of such a designation.

13

14   Q.    What is "access to interexchange service"?

15   A.    "Access to interexchange service" is one of the supported services and provides a  
16          telephone subscriber the ability to originate and terminate interexchange calls.

17

18   Q.    Can you discuss policy issues regarding access to interexchange services?

19   A.    Yes. Pursuant to the Act, ILECs are required to offer dialing parity. Under FCC  
20          rules implementing dialing parity, ILECs are obligated to offer each end user a  
21          presubscription choice from all interexchange carriers to be dialed using (1+) and  
22          code dialing (101xxxx) for all other carriers – i.e., "dialing around" or "dial  
23          around".

1 Q. Does MMC offer similar access to interexchange carriers?

2 A. No. Mr. Dawson states that MMC has direct interconnection to an access tandem  
3 and indirect access to interexchange carriers ("IXCs").<sup>32</sup> Although Mr. Dawson  
4 states that MMC is "ready, willing and able to offer any customer the option to  
5 pre-select and pay its toll carrier of choice",<sup>33</sup> it would appear that MMC does not  
6 advertise this option based on my review of MMC's marketing attachments,<sup>34</sup> and  
7 on-line plans.<sup>35</sup> Contrast this with the access to interexchange services offered by  
8 ILECs. Pursuant to the Act, ILECs are required to offer dialing parity and under  
9 FCC rules implementing dialing parity are required to offer each end user their  
10 choice of all interexchange carriers that choose to serve the area either on a  
11 presubscribed basis or on a code dialed before each call. If Congress and the FCC  
12 felt that choice in interexchange carriers was so important to the public interest  
13 that they required by legislation wireline ILECs to offer those choices, it would  
14 not appear to be either in the public interest or competitively neutral to provide  
15 universal service support to a wireless carrier who did not provide that choice.  
16 Such treatment unfairly advantages wireless providers over wireline providers.

17  
18 Q. Is Lifeline service one of the nine supported services?

19 A. No. But the FCC rules require that ETCs offer Lifeline Service.<sup>36</sup>

20  
21 Q. What is the purpose of the Lifeline program?

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<sup>32</sup> Dawson Testimony at pp. 4 - 5.

<sup>33</sup> *Id.* at p. 19.

<sup>34</sup> Dawson's Testimony, Appendix J, pp. 1 - 2.

<sup>35</sup> See MMC's website information at: <http://www.mydigitalphone.com/plans/index.cfm>

<sup>36</sup> 47 CFR 54.405.



1 A. The purpose of the low-income programs, of which the Lifeline program is a  
2 component, is to help low-income customers establish and maintain local service.  
3 Thus, the purpose of the program is to provide affordable telephone service to low  
4 income individuals.

5  
6 Q. What information does MMC provide regarding its Lifeline and Linkup  
7 offerings?

8 A. Mr. Dawson states that a Lifeline customer would be able to pick any existing  
9 MMC service plan and have the Lifeline discounts apply. He also discusses  
10 MMC's two proposed Lifeline-only plans.<sup>37</sup>

11  
12 Q. How does the cost of MMC's Lifeline plan based on any existing MMC plan  
13 compare to ILEC plans?

14 A. The Lifeline discount of \$ 8.25 (\$ 1.75 + \$ 6.50) applied to MMC's lowest-priced  
15 plan of \$ 19.95 computes to \$ 11.70 for 100 minutes. The cost, assuming that the  
16 100-minute allowance is not exceeded, is in the same range as the Companies'  
17 rates for Lifeline service and the MMC plan has a wider local calling area.  
18 However, if the customer exceeds the 100 minute allowance (either originating or  
19 terminating minutes), the cost escalates very quickly. With an additional 10  
20 minutes the cost would increase by \$4.00 and if the customer exceeded this limit  
21 by 100 minutes, the service would cost \$40.00 more or a total of \$51.70.

22  
23 Q. Could you discuss MMC's Lifeline-only plans?

---

<sup>37</sup> Dawson Testimony at pp. 6 – 9.

1 A. Under the first Lifeline Plan presented by Mr. Dawson, a customer would pay a  
2 fixed monthly price of \$ 6.25 per month for unlimited local calling to any  
3 numbers within that customer's present ILEC exchange.<sup>38</sup> Under the second  
4 Lifeline Plan, the potential customer pays a flat \$10.00 per month for unlimited  
5 local calling throughout MMC's proposed ETC service area. Under this scenario,  
6 an individual located in MMTC's High Point wire center could sign up for this  
7 Lifeline Plan, MMC would be bound to provision service via a roaming and/or  
8 resale agreement and that High Point Lifeline customer could then make  
9 unlimited calls to any wire center within MMC's proposed ETC service area for a  
10 flat \$ 10 per month fee.

11

12 Q. How do MMC's Lifeline-only plans compare to the ILEC plans?

13 A. The two specific plans proposed just for Lifeline subscribers are attractively  
14 priced and both allow for unlimited local calling within their specific calling  
15 areas. Both plans, if there truly will be no per minute charges, compare quite  
16 favorably to the ILECs' Lifeline plans. However, no details have been provided  
17 as to the cost of a call to a number not within that exchange. This concern is  
18 heightened for the "first plan" where the calling area matches that of the ILEC's  
19 local calling area. To the extent the per minute charge is \$ 0.40, for example, a  
20 handful of out-of-area calls could quickly undermine the reasonableness of this  
21 plan. Also, neither Lifeline-only plan would allow roaming into other cellular  
22 networks to place and receive routine calls. Finally, to initiate service a new

---

<sup>38</sup> Dawson Testimony at p. 7. This is the price after applying Lifeline discounts for local exchange service and the federal subscriber line charge.

1 Lifeline customer would need to pay a \$ 15 activation fee (discounted from \$ 30  
2 for Link Up eligible subscribers) and the cost of a subscriber handset. These costs  
3 could be deferred for a period not to exceed one year.<sup>39</sup>  
4

5 **VI. FCC RECOMMENDED PUBLIC INTEREST**  
6 **CONSIDERATIONS.**  
7

8 Q. What are the FCC's five recommendations for the Commission to consider in  
9 evaluating the public interest that the FCC enunciated in its *Report and Order and*  
10 *rules*?

11 A. They are:

12 (1) Offer local usage plans comparable to those offered by the incumbent  
13 LEC in the areas for which it seeks designation.  
14

15 (2) Demonstrate its ability to remain functional in emergency situations.  
16

17 (3) Acknowledge that it may be required to provide equal access if all  
18 other ETCs in the designated service area relinquish their carrier of last  
19 resort obligations.  
20

21 (4) A demonstration that it will satisfy consumer protection and service  
22 quality standards,<sup>40</sup> and  
23

24 (5) Provide a five-year plan demonstrating how high-cost support will be  
25 used to improve its coverage, service quality or capacity in every wire  
26 center.  
27

28  
29 **A. THE RECOMMENDATION THAT LOCAL USAGE**  
30 **PLANS BE COMPARABLE.**  
31

32 Q. What is the "local usage" recommendation?

---

<sup>39</sup> *Id.* at p. 8.

<sup>40</sup> See *Report and Order* at ¶¶ 2, 17 and 20.

1 A. In addition to the requirement that MMC offer a local usage component as one of  
2 the nine supported services, the FCC has recommended in its *Report and Order*  
3 that a comparison of the ETC petitioner's local usage plan should be made as to  
4 the plans offered by the specific incumbent LEC in the area; a "[c]ase-by-case  
5 consideration of these factors is necessary",<sup>41</sup> to determine if the plan is  
6 comparable.

7  
8 Q. Can the Commission formulate its own local usage requirement?

9 A. Yes. The FCC clearly recognized that a state commission, such as the  
10 Commission, could prescribe a minimum amount of local usage as a prerequisite  
11 condition to ETC status.<sup>42</sup> I understand that the MPSC Staff is considering a draft  
12 of a proposed rulemaking that would require a minimum of 500 minutes of local  
13 usage. MMC has indicated that such a minimum amount of local usage should  
14 not be required for each and every plan so long as at least one plan offering  
15 includes the local usage minimum.

16  
17 Q. How does MMC's "local usage" offerings compare to those of the represented  
18 ILECs?

19 A. In the wireline industry, the vast majority of the rural carriers in the nation,  
20 including the Companies I represent, offer unlimited local usage, both originating  
21 and terminating, for a flat monthly rate. As I have previously discussed, MMC  
22 intends to offer an "ILEC-Equivalent" plan for unlimited local usage for \$

---

<sup>41</sup> *Id.* at ¶ 33.

<sup>42</sup> *Id.* at ¶ 34. ("[T]here is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.")

1 14.50.<sup>43</sup> This plan would offer unlimited local calling in an MMC's customer's  
2 home cell site area. The other unlimited plans as shown at Appendix J to Mr.  
3 Dawson's testimony are priced at \$ 39.95 and \$ 99.95 and offer unlimited minutes  
4 for MMC's "seven county" area and "coast-to-coast", respectively.

5  
6 Q. How should the Commission evaluate local prices and usage plans in its public  
7 interest evaluation?

8 A. In comparing MMC's rate plans, I believe that the Commission should carefully  
9 consider the lower rates charged by, and the unlimited calling plans of, the  
10 Companies in conjunction with the purposes of USF funds to provide universal  
11 network connectivity. I do not see a strong public interest need for providing  
12 federal USF to MMC from this standpoint.

13  
14 **B. THE EQUAL ACCESS RECOMMENDATION.**

15  
16 Q. You discussed dialing parity and "equal access" in relationship to the requirement  
17 to provide "access to interexchange carriers". Can you briefly summarize your  
18 conclusions in that section?

19 A. Yes. Congress in the Act and the FCC in its rules implementing the Act placed  
20 requirements on Local Exchange Carriers (LECs) to provide dialing parity to  
21 interexchange carriers, indicating a strong public interest need to have such  
22 service. As I described, MMC provides substantially less access to interexchange  
23 carriers than do LECs, including each of the Companies. I recommended that the

---

<sup>43</sup> Dawson Testimony, at p. 9. The ILEC-Equivalent plan is the same as the "first" Lifeline Plan discussed on p. 7 of Mr. Dawson's testimony, but for the price.

1 Commission consider this in making its public interest determination regarding  
2 MMC's ETC application.  
3

4 Q. What additional criteria did the FCC recommend in its rules?

5 A. In its recent Order, the FCC indicated the need for ETC applicants to  
6 acknowledge that they may be required to provide equal access in the future, if  
7 there is no other certified ETC in the area.  
8

9 Q. Has MMC made such an acknowledgement?

10 A. MMC has acknowledged that it "stands ready, willing and able to offer any  
11 customer the option to pre-select and pay its toll carrier of choice".<sup>44</sup> However,  
12 the Question prefacing this acknowledgment is: "Would MMC offer equal access  
13 if all other ETCs in MMC's designated service area relinquished their ETC  
14 designations?" This leaves the question unanswered as to whether MMC would  
15 offer equal access if any one of the incumbent ETC within MMC's ETC service  
16 area relinquishes their ETC designations but the rest do not. I would recommend  
17 that the Commission inquire further into MMC's conditional acknowledgment  
18 and require an unconditional statement that would avoid the aforementioned  
19 scenario.  
20  
21  
22

---

<sup>44</sup> Dawson Testimony at p. 19.

1           **C.    THE EMERGENCY FUNCTIONALITY**  
2           **RECOMMENDATION.**  
3

4    Q.    What is the FCC's emergency functionality recommendation?

5    A.    The FCC's recommendation is for an ETC applicant to demonstrate its ability to  
6           remain functional in emergency situations. Specifically, the FCC requires a  
7           demonstration of reasonable back-up power, ability to reroute traffic and  
8           capability of managing traffic spikes.<sup>45</sup> The FCC also invited state commissions  
9           to adopt geographically specific factors for their own emergency functionality  
10          requirements.<sup>46</sup>  
11

12   Q.    Has the Commission established emergency operations requirements for LECs  
13          operating in Missouri?

14   A.    Yes, such requirements are contained in 4 CSR 240-32.060(5) of the Code of  
15          State Regulations. In order to be competitively neutral and to provide adequate  
16          service support in emergency situations, the Commission should require MMC to  
17          adhere to similar emergency operation requirements. Failure to do so would create  
18          a framework which could unfairly advantages MMC over the incumbents affected  
19          by this requirement and which could leave customers without adequate  
20          safeguards..  
21

22   Q.    Does MMC's application address the FCC's recommendations?

---

<sup>45</sup> *Report and Order* at ¶ 25.

<sup>46</sup> *Id.*

1 A. Not completely. While there is testimony regarding MMC's battery backup  
2 capabilities,<sup>47</sup> the Commission will need to determine if such is adequate and  
3 reasonable. However, there is no discussion of rerouting and traffic spike  
4 capabilities.

5

6 **D. THE RECOMMENDATION THAT AN ETC MUST**  
7 **DEMONSTRATE ITS COMMITMENT AND ABILITY TO**  
8 **PROVIDE THE SUPPORTED SERVICES.**

9

10

11 Q. What does this FCC recommendation consist of and how can you measure it?

12 A. The recommendation, simply stated, is that an ETC applicant must demonstrate  
13 its commitment and its ability to provide the nine supported services, upon a  
14 reasonable request, throughout the designated service area. This demonstration is  
15 made through specific commitments to provide service,<sup>48</sup> and through the  
16 submission of a formal five-year network improvement plan with specific details  
17 of "how universal service funds will be used to improve coverage, signal strength,  
18 or capacity that would not otherwise occur *absent the receipt of high-cost*  
19 *support*".<sup>49</sup>

20

21 Q. You mentioned "reasonable request". Who decides what is "reasonable"?

22 A. The FCC recommends that the state commissions, pursuant to their state law,  
23 determine what constitutes a "reasonable request" for service.<sup>50</sup> MMC has

---

<sup>47</sup> Dawson Testimony at pp. 22-23.

<sup>48</sup> These specific commitments are delineated at *Report and Order* at ¶ 22.

<sup>49</sup> *Id.* at ¶ 22. (emphasis added)

<sup>50</sup> *Id.* at ¶ 21.



1 described a process it proposes for responding to requests.<sup>51</sup> I believe it would  
2 behoove the Commission to further inquire how well these procedures might  
3 work, whether such procedures will be followed, or whether they are paper  
4 procedures only. Also, as I previously discussed, MMC has not presented  
5 evidence of the process it will utilize to provide service to a requesting customer  
6 residing outside its FCC-licensed area but within its proposed ETC service area.  
7

8 Q. In evaluating the commitment to provide the supported services, do you believe  
9 that the Commission should take into consideration whether MMC is currently  
10 offering services in these areas?

11 A. Yes, I believe that is a factor that clearly should be considered. While there may  
12 need to be consideration given to the extension of service to portions of  
13 exchanges that are not served as MMC improves its service, I believe that the  
14 Commission should closely consider denying ETC status in areas where MMC  
15 does not currently provide service or plan to provide service.  
16

17 Q. What rationale has the FCC given in describing its service commitment  
18 recommendation?

19 A. In its Report and Order the FCC stated: "In addition, we encourage states to  
20 follow the Joint Board's proposal that any build-out commitments adopted by  
21 states be harmonized with any existing policies regarding line extensions and

---

<sup>51</sup> Dawson Testimony at p. 16.

1 carrier of last resort obligations.”<sup>52</sup> FCC Commissioner and Joint Board Chair  
2 Kathleen Abernathy put it more bluntly in discussing the purpose of a more  
3 rigorous designation process to ensure that all ETCs are prepared to serve  
4 throughout the designated service area: “In other words, competitive carriers  
5 seeking ETC status must serve as carriers of last resort, just as incumbents  
6 must.”<sup>53</sup>

7  
8 Q. What guidance did the FCC give to customize or individualize this  
9 recommendation for each affected incumbent LEC study area?

10 A. Generally, the FCC suggested that the 5-year network improvement plan  
11 specifically describe proposed improvements or upgrades “on a wire center-by-  
12 wire center basis throughout its designated service area”.<sup>54</sup> Also, the FCC  
13 implicitly invited state commissions to develop their own approach when the FCC  
14 rejected suggestions for uniformity and instead stated that its approach accounts  
15 for “unique circumstances” and “allows consideration of fact-specific  
16 circumstances of the carrier and the designated service area”.<sup>55</sup> Thus, the  
17 Commission’s approach should be to analyze MMC’s demonstration of its  
18 commitment and ability to provide the nine supported services throughout the  
19 designated service area for each affected study area.

20  

---

<sup>52</sup> *Report and Order* at ¶ 21. (quoting *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, 4268, para. 27 (2004) (*Recommended Decision*)).

<sup>53</sup> *Report and Order*, Statement of Commissioner Kathleen Q. Abernathy, attached to FCC’s Memorandum Opinion and Order.

<sup>54</sup> *Report and Order*, at ¶ 23.

<sup>55</sup> *Id.* at ¶ 24.

1 Q. Did MMC's application provide information to address the FCC's  
2 recommendation to determine whether ETC applicants were committed to  
3 providing service throughout the designated ETC service area?

4 A. Yes. Both Mr. Dawson and Mr. Kurtis discussed network improvement plans that  
5 consisted of completion of MMC's CDMA overlay in its FCC-licensed service  
6 area (denoted as Phase II) and the deployment of additional planned cell sites over  
7 the next five years (denoted as Phase III).<sup>56</sup>

8

9 Q. Could you explain further how, and to what extent, ETC designation would affect  
10 MMC's Phase II; the completion of the CDMA overlay?

11 A. Yes. Mr. Dawson states that "[a]bsent USF support, MMC cannot make the  
12 business case to complete the CDMA overbuild".<sup>57</sup> While it might be true that  
13 the completion of the CDMA overbuild may not be a good business case from the  
14 view of a cost-benefit or return on investment analysis that does not mean that  
15 MMC will not complete the CDMA absent the receipt of USF support.

16

17 Q. Do you have any evidence that MMC's Phase II will be completed, absent USF  
18 support?

19 A. Yes. In its Report and Order on MMC's previous ETC application, this  
20 Commission concluded that MMC had admitted it will make the CDMA upgrade,  
21 or overlay, "regardless of whether it is granted ETC status."<sup>58</sup> At the time of the

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<sup>56</sup> Dawson Testimony at pp. 10 -11 and pp. 16 - 18. Kurtis Testimony at pp. 20 -21. *Also see* Application at ¶¶ 29 - 32.

<sup>57</sup> Dawson Testimony at p. 11.

<sup>58</sup> MMC - Report and Order at p. 27.

1 hearing in that case, MMC had not yet commenced its CDMA overlay. As of the  
2 filing of its Application in the instant case, MMC had overlayed CDMA at 18 of  
3 its existing cell sites with another 9 left to complete.<sup>59</sup> Thus, two-thirds of the  
4 CDMA overlay project on MMC's existing cell sites had been completed at the  
5 time of filing.

6  
7 Q. What additional evidence is there that MMC will complete its CDMA overlay  
8 without USF funds?

9 A. Another factor causing MMC to complete the CDMA overlay, and further  
10 evidence that USF is not a prerequisite, is MMC's Phase II E911 mandate. MMC  
11 can presently provide its subscribers, throughout its service area, with Phase I  
12 E911. Where the network has an overlay of CDMA technology, MMC is capable  
13 of supporting Phase II E911 services.<sup>60</sup> MMC has previously admitted that it is  
14 required by federal law to implement improvements to its E-911 system and this  
15 Commission has previously found that the completion of the CDMA overbuild is  
16 necessary for MMC to meet "the FCC's accuracy requirements with respect to E-  
17 911 Phase II locational services".<sup>61</sup> Mr. Dawson reiterates this obligation,<sup>62</sup> and  
18 its importance in his testimony.<sup>63</sup> The evidence indicates that the final one-third

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<sup>59</sup> Kurtis Testimony at p. 20.

<sup>60</sup> Application at ¶ 5(e); p. 6. *Also see* ¶ 35. ("Significantly, the ability to provide E911 services is limited to CDMA handsets.")

<sup>61</sup> MMC – Report and Order at p. 10.

<sup>62</sup> Dawson Testimony at p. 10. (MMC is also incurring increased costs to meet its obligations to comply with federal mandates such as E911 services.")

<sup>63</sup> *Id.* at p. 11. ("Perhaps even more important than the general availability of enhanced wireless services, the expansion of MMC's service into these most rural areas would bring wireless E911 services to those areas.")

1 of the CDMA overlay will likely be completed, regardless of whether ETC status  
2 is granted, because the federal mandate of E-911 Phase II dictates that it must.  
3

4 Q. Are there any other factors causing MMC to complete its CDMA overlay  
5 regardless of its receipt of USF support?

6 A. Yes. From MMC's testimony and Application, another motivator – and perhaps  
7 the primary cause - would appear to be the competitive wireless market and  
8 technological changes within that market. As explained by Mr. Kurtis, "recently,  
9 MMC, in response to decisions by the major nationwide carriers to abandon the  
10 TDMA digital technology, has found it necessary to migrate its network to  
11 CDMA."<sup>64</sup> Thus, the remaining portion of the CDMA overlay will be completed,  
12 and must be completed to address the technological gap, by MMC without USF  
13 support and regardless of ETC status.  
14

15 Q. If MMC's Phase II CDMA overlay were to be completed without USF support,  
16 would there be any benefit from ETC designation as to Phase II?

17 A. For the Phase II CDMA overlay completion, perhaps the incremental benefit of  
18 gaining ETC status would be to possibly move the schedule of the remaining nine  
19 existing cell sites up so that the overbuild will be completed within six months of  
20 ordering the necessary equipment.<sup>65</sup> Improvements in coverage, signal strength,  
21 or capacity provided by these sites would constitute network improvements. The

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<sup>64</sup> Kurtis Testimony at pp. 20 - 21. Also, Application at ¶¶ 30 – 31. (TDMA technology "has been largely abandoned by the industry and MMC has since taken steps to overbuild its network ... with the ... [CDMA] technology.")

<sup>65</sup> Dawson Testimony at p. 11.

1 Commission will need to consider whether this incremental increase in the  
2 construction schedule is the type of improvement contemplated by the FCC in its  
3 *Report and Order* when it discusses improvements that “would not otherwise  
4 occur absent the receipt of high-cost support”.<sup>66</sup>

5  
6 Q. Could you explain how, and to what extent ETC designation would affect MMC’s  
7 Phase III; the deployment of additional planned cell sites?

8 A. Yes. The Phase III deployment is for ten potential cell sites indicated by MMC  
9 that cannot be constructed and operated without USF support.<sup>67</sup> Mr. Dawson  
10 graphically shows these ten potential cell sites at proprietary Appendix G and  
11 provides a list of the sites with approximate locations at proprietary Appendix M.  
12 The stated rationale for why the ten cell sites of Phase III cannot be built without  
13 USF support is based upon the level of traffic the cell site would be expected to  
14 generate and because they “afford no return on capital investment and the ongoing  
15 operational expenses”.<sup>68</sup>

16  
17 Q. Did MMC provide sufficient evidence to meet the FCC’s recommendations for  
18 Phase III deployment?

19 A. It does not appear that they do. The FCC recommended that an ETC applicant  
20 submit a formal five-year plan specifically describing, in detail, on a wire center  
21 basis: (1) how signal quality, coverage or capacity will improve; (2) the projected  
22 start and completion dates for each improvement and the estimated amount for

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<sup>66</sup> *Report and Order* at ¶ 21.

<sup>67</sup> Dawson Testimony at pp. 10 -11 and pp. 16 - 18. Kurtis Testimony at pp. 20 -21.

<sup>68</sup> Dawson Testimony at pp. 17 – 18.

each project; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served.<sup>69</sup> MMC admits that the proposed ten cell sites of Phase III are tentative as to timing and location – the site locations are approximations - and are contingent on the level of USF support and customer demand.<sup>70</sup> MMC did not present specific start and completion dates for each of the ten proposed cell sites. Also, given MMC's contingencies, the proposed cell sites may never be built if customer demand does not warrant it.<sup>71</sup>

Q. What level of federal USF support are the Companies currently receiving?

A. There are three different types of federal USF support that the Companies currently receive. These are high cost loop support (HCL), local switching support (LSS), and interstate common line support, (ICLS). Based on the 3rd Qtr, 2005 projected USF projections by the Universal Service Administration Corporation (USAC), the affected Companies would receive levels of support per month per line as follows:

Type of Support	Alma	Citizens	MMTC
	Residence/Single Line Business	Residence/Single Line Business	Residence/Single Line Business
HCL	\$ 7.88	\$ 18.80	\$ 42.04
LSS	\$ 8.18	\$ 7.96	\$ 2.72
ICLS	\$ 10.96	\$ 16.28	\$ 16.25
Total	\$ 27.02	\$ 43.05	\$ 61.01

<sup>69</sup> Report and Order at ¶ 23.

<sup>70</sup> Dawson Testimony at p. 11 ("The actual timing for that rollout [Phase III deployments] would be a function of the level of USF support received as well as customer demand.")

<sup>71</sup> As Mr. Dawson explained, MMC plans its coverage expansions "in response to customer requests and comments, potential subscriber growth and MMC's desire to fully develop network coverage throughout its FCC-licensed service area." Dawson Testimony at p. 16.

1  
2 These amounts would be portable to any competitive ETC that serves customers  
3 in the areas served by these Companies.  
4

5 Q. Did MMC estimate and explain the financial impact on the Federal USF of its  
6 ETC designation?

7 A. MMC stated that it would expect to receive \$ 1,706,412, annually in USF support  
8 based upon its subscriber line counts filed with USAC.<sup>72</sup> Based upon MMC's  
9 most recent line counts as reported to USAC and multiplying by the per line  
10 amounts from the table above, I estimated the following USF support that MMC  
11 could expect to receive from the Companies on a monthly and annualized basis:<sup>73</sup>

12

Type of Support	Alma	Citizens	MMTC
Total per line per month	\$ 27.02	\$ 43.05	\$ 61.01
MMC's Line Counts	257	797	1,347
Monthly Total	\$ 6,944	\$ 34,311	\$ 82,180
Annualized	\$ 83,328	\$ 411,732	\$ 986,160

13  
14  
15  
16  
17

18 Thus, approximately 87% of MMC's expected USF support would come from  
19 just these three Companies' service areas ((\$ 83,328 + \$ 411,732 + \$986,160)/  
20 \$1,706,412). The remaining 13% of MMC's expected USF support, based on  
21 current line counts, would be from the service areas for CenturyTel of Missouri

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<sup>72</sup> Dawson Testimony at p. 18.

<sup>73</sup> The line counts used in the table are from High Cost Appendix HC 18 3Q05 – CETC Reported Lines by Incumbent Study Area – High Cost Loop Support –on USAC's website.



1 (Central), CenturyTel of Missouri (South West), SBC, Spectra Communications  
2 and Sprint/United Telephone Company.  
3

4 Q. What are your observations about MMC's usage of anticipated USF support?

5 A. MMC has presented plans for at least partially using the anticipated USF support.

6 However, I would dispute that the Phase II overlay will not be completed absent  
7 USF support and its proposed Phase III plans are non-specific as to timing and  
8 location and the commitment is contingent. As FCC Commissioner and Joint  
9 Board Chair Kathleen Abernathy put it: "This requirement [formal build-out  
10 requirements] is critical, because universal service support is designed to fund  
11 investments in network; it should not be used to pad the bottom line".<sup>74</sup>  
12

13 **E. THE RECOMMENDATION FOR A CONSUMER**  
14 **PROTECTION AND SERVICE QUALITY STANDARDS**  
15 **DEMONSTRATION.**  
16

17 Q. What does the FCC recommend in regard to consumer protection and service  
18 quality?

19 A. The recommendation is that an ETC applicant must demonstrate its commitment  
20 to meet consumer protection and service quality standards in its application.  
21

22 Q. Can a state regulate CMRS providers in regard to service quality?

23 A. Yes, the FCC stated that Section 332(c)(3) specifically allows states to regulate  
24 CMRS terms and conditions, not dealing with rates and entry, in order to preserve

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<sup>74</sup> *Ensuring the Sustainability of Universal Service*, Remarks by FCC Commissioner Kathleen Q. Abernathy, OPASTCO Winter Meeting, January 21, 2004.

1 and advance universal service.<sup>75</sup> Further, the FCC encouraged states to consider  
2 consumer protection in the wireless context as a prerequisite for obtaining ETC  
3 designation from the state.<sup>76</sup> The FCC invited state commissions either to use the  
4 FCC's framework or to impose their own requirements that ensure consumer  
5 protection and service quality.<sup>77</sup>

6  
7 Q. Are the Companies that you represent required to adhere to the service standards  
8 of the Commission's rules in Chapter 32 and the service and billing standards in  
9 Chapter 33?

10 A. Yes. The Companies are required to follow these rules.  
11

12 Q. Can you describe the types of standards that are in these rules?

13 A. Yes. These rules, which have been developed over a period of years and are  
14 modified periodically, contain provisions which the Commission has felt are  
15 necessary to protect the public interest by establishing standards for such services.  
16

17 Chapter 32 contains rules related to the provision of service to customers. These  
18 rules include the requirements to provide directories and directory listings,  
19 technical standards for the provision of service, customer commitment  
20 requirements for installing service consistent with company commitments,  
21 standards for responding to customer inquiries, and standards for completion of  
22 calls on the network.

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<sup>75</sup> *Report and Order* at ¶ 31.

<sup>76</sup> *Id.* at ¶ 30.

<sup>77</sup> *Id.*

1

2 Chapter 33 contains rules regarding billing practices. These rules include  
3 requirements for the content of bills, customer deposit practices, and practices for  
4 the discontinuance of service and resolving disputes and complaints. They also  
5 contain specific provisions regarding the provision of operator services,  
6 presubscription for long-distance service and prepaid calling services.

7

8 Q. Are CMRS providers, such as MMC, subject to these rules?

9 A. Under the current provisions of the Missouri statutes it would appear they are not  
10 since CMRS providers are excluded from the definition of "telecommunications  
11 carrier" in the state statute. Also, MMC admits that it is not subject to the same  
12 quality of service standards established for the Companies.<sup>78</sup>

13

14 Q. If these standards were important enough to incorporate into formal rules for  
15 ILECs, is it likely that the lack of such rules for CMRS providers will lead to a  
16 service offering that is inferior to the service provided by the ILECs?

17 A. I would think so. The imposition of these service and billing requirements in  
18 many cases imposes additional financial and administrative burdens on the ILECs  
19 which the Commission believes are justified in order to give greater protection  
20 and choice to consumers. Wireless carriers, who do not have to meet these  
21 requirements, will likely not conform to these requirements found necessary for  
22 the provision of telecommunications service and thus provide service that is less  
23 likely to fulfill/advance the public interest.

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<sup>78</sup> Dawson Testimony at p. 20.

1

2 Q. Does the imposition of tariffs, service standards, and other regulatory  
3 requirements on ILECs to meet service and billing standards, while allowing  
4 CMRS providers to avoid such requirements, lead to a USF system that is  
5 “competitively neutral” as described by the USF principle adopted by the FCC?

6 A. I do not believe that it does and would recommend that the Commission consider  
7 this in its deliberation and analysis of the public interest standard. Imposing  
8 requirements such as providing directory listing and directories, specific deposit  
9 and disconnection procedures, service installation criteria, call completion  
10 standards and other required measures create specific, additional costs on ILECs.  
11 It is not competitively neutral to provide CMRS providers the benefits of USF  
12 when they are not required to meet the same service standards as the ILECs nor  
13 incur the same costs to meet these service standards. Such creates an unfair  
14 disparity between MMC and the ILECs affected by this application.

15

16 Q. Are the terms of service provision for MMC similar to those that ILECs are  
17 required to provide through the tariff approval process?

18 A. No. There are differences that are not necessarily to the subscribers’ benefit. For  
19 example, MMC requires a service contract of undetermined length and a  
20 termination fee applies before the end of that service period.<sup>79</sup> On the other hand,  
21 the Commission requires ILECs to provide service on a monthly basis with no  
22 termination fee or penalty.

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<sup>79</sup> Schedule RCS – 6, Response to the Companies’ Data Request No. 3, Cellular Service Agreement, Part I, Terms and Conditions of Cellular Service.

1

2 Q. If the Commission decides to grant MMC ETC status in some study areas should  
3 it impose service conditions upon MMC as a condition of granting that status?

4 A. Yes. Such conditions should be similar to those imposed on ILECs, although  
5 there may need to be some differences to recognize the different technologies in  
6 the two networks.

7

8 Q. MMC has stated that it will comply with the CTIA's Consumer Code.<sup>80</sup> Is that  
9 sufficient?

10 A. No. Because the CTIA Code is a voluntary code, a major problem is a lack of  
11 enforceability; there is no body to hold MMC accountable for implementation of  
12 the Code. I disagree with MMC's reassurance to the Commission that its  
13 adoption of the CTIA Code should alleviate any concerns regarding its  
14 commitment to meet quality of service standards.<sup>81</sup>

15

16 Q. Could you provide an example specific to MMC of how lack of enforceability  
17 may be a problem?

18 A. Yes. For example, MMC promises, under Section One of the CTIA Code which  
19 MMC included as Appendix O to Mr. Dawson's testimony, to disclose rates and  
20 terms of service of each rate plan on its web site. More specifically, MMC  
21 promises to disclose on its web site for each rate plan offered whether a fixed-  
22 term contract is required and its duration as well as any early termination fee. I

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<sup>80</sup> Dawson Testimony at pp. 19-20.

<sup>81</sup> Application at ¶ 37.

1 viewed the "MyDigital Local Rate Plan", the "MyDigital Next Generation Plans"  
2 and the "MyDigital Unlimited Zone Plan" on May 27, 2005 and found no  
3 disclosures for these rate plans regarding a fixed-term contract, its duration or a  
4 termination fee.<sup>82</sup> However, from reading the fine print on MMC's Cellular  
5 Service Agreement, I know that these plans do have a length of commitment and  
6 early termination charge.<sup>83</sup> Thus, it appears that MMC is currently in violation of  
7 the CTIA Code. The point is that there is no regulatory body to enforce this or  
8 any violation of the Code. In contrast, the wireline companies are subjected to  
9 mandatory Commission regulation and enforcement. Thus, MMC's voluntary  
10 compliance does not mitigate the concerns about competitive neutrality. A  
11 telecommunications attorney sums the problems with the Code well: "The  
12 bottom line is that this 10-point manifesto is both hollow and unenforceable. So  
13 despite the great advance publicity, wireless customers still, as always, need  
14 follow the famous Latin phrase *caveat emptor*."<sup>84</sup>

## 16 VII. ADDITIONAL PUBLIC INTEREST CONSIDERATIONS. 17

18 Q. What additional public interest analysis did the FCC recommend in considering  
19 ETC Designations?

20 A. The *Report and Order* contained additional public interest concerns that a state  
21 commission should consider in reviewing ETC designation requests. These

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<sup>82</sup> See MMC's web site for these plans at: <http://www.mydigitalphone.com/plans/index.cfm>

<sup>83</sup> Schedule RCS - 6, Response to the Companies' Data Request No. 3, Exhibit (Cellular Service Agreement).

<sup>84</sup> Martha Buyer, *Consumer Code for Wireless - Help or Hindrance?* The Daily Record (Sept. 15, 2003). Link at: <http://www.marthabuyer.com/Tele915.pdf>

1 concerns include an examination of (1) the benefits of increased consumer choice,  
2 (2) the unique advantages and disadvantages of the ETC applicant's service  
3 offerings, and (3) the impact on the federal USF. The FCC further stated that, for  
4 ETC designations in rural carrier areas, there should be a more rigorous public  
5 interest analysis than for non-rural areas and for a redefinition of an RLEC's  
6 study area, there will be an examination for creamskimming potential.

7  
8 Q. What advice or recommendations did the FCC have for state commissions such as  
9 this Commission?

10 A. The FCC strongly encouraged state commissions to use the FCC's framework in a  
11 manner to be consistent with the universal service principles – preserving and  
12 advancing universal service and competitive neutrality<sup>85</sup> - and to be consistent  
13 among the states with an eye to improving the long-term sustainability of the  
14 USF. The FCC is, undoubtedly, concerned about the national implications of  
15 individual state commission's ETC decisions and their collective effects on the  
16 federal USF.<sup>86</sup> The FCC acknowledged that state commissions can and have  
17 used additional factors in their public interest analysis.<sup>87</sup> Finally, the FCC  
18 stressed the customized approach that state commissions should use in their  
19 public interest analysis.<sup>88</sup>

20  

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<sup>85</sup> *Report and Order* at ¶¶ 18-19.

<sup>86</sup> *Id.* at ¶¶ 57 and 60.

<sup>87</sup> *Id.* at ¶ 40.

<sup>88</sup> *Id.* at ¶ 60. (“We believe that section 214(e)(2) demonstrates Congress’s intent that state commissions evaluate local factual situations in ETC cases ....” “[N]othing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described ....”)

1 Q. What further suggestions would you have for the Commission's approach to  
2 consideration of these issues in its public interest analysis?

3 A. As I have stated throughout this testimony, the FCC requirements and  
4 recommendations should be the minimum foundation upon which the  
5 Commission should build its own public interest analysis. The FCC, as stated  
6 above, acknowledges and even encourages the state commissions to develop their  
7 own framework. Further, the FCC encourages an individualized analytical  
8 approach whereby the Commission is to examine the public interest on a study  
9 area level using cost-benefit balancing. For example, the FCC suggests that the  
10 state commission may consider limiting the number of ETCs due to the strain on  
11 the USF by examining per-line USF support received by the individual LEC,<sup>89</sup> on  
12 a case-by-case approach.<sup>90</sup> I would encourage the Commission to do likewise for  
13 MMC's application.

14  
15 Q. What are some of the benefits, or effects, that one would expect to be caused from  
16 MMC's designation as an ETC and receipt of USF support?

17 A. The Commission should expect to see MMC's ETC designation and receipt of  
18 USF to cause such benefits as infrastructure investment to bring wireless services  
19 to underserved and unserved areas, lower prices, an increase of the choice of  
20 service offerings or an upgrade of such, and improvements in service quality.  
21 Further, these benefits would be expected throughout MMC's prospective ETC  
22 service area.

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<sup>89</sup> *Id.* at ¶ 55.

<sup>90</sup> *Id.* at ¶ 56.



1

2 Q. You used "cause" and "effect" in describing the relationship between expected  
3 benefits and MMC's ETC designation. Could you expand upon that relationship?

4 A. Yes. MMC has an obligation in this proceeding to produce sufficient evidence  
5 that its ETC designation and subsequent receipt of USF support will cause  
6 benefits to occur such as lower prices and greater availability of service  
7 throughout its designated service area. If such benefits will not occur, or if the  
8 Commission determines that such benefits will occur without ETC designation  
9 and USF support, than MMC has failed in its evidentiary obligation.

10

11 Q. Is there any evidence to suggest that such benefits will occur regardless of  
12 MMC's anticipated receipt of USF funds?

13 A. Yes. I have previously discussed the factors causing, and that will cause, MMC  
14 to complete its CDMA overlay regardless of whether ETC status is granted.  
15 Thus, ETC designation would not be the cause of the benefits from this overlay  
16 completion. In addition, future benefits such as lower prices, new and improved  
17 features and improvements in coverage may very well result from the competitive  
18 marketplace and customer demands rather than from ETC designation and  
19 resultant USF support. Mr. Dawson testified as to the "highly competitive  
20 wireless service market of today", and that "for competitive reasons" MMC is  
21 forced to match the pricing of its wireless competitors.<sup>91</sup> He also testified that  
22 MMC has "continuously expanded its coverage footprint" to serve "an increasing  
23 geographic area and population" and "[e]xpansions are planned in response to

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<sup>91</sup> Dawson Testimony at p. 10.

1 customer requests and comments, potential subscriber growth and MMC's desire  
2 to fully develop network coverage throughout its FCC-licensed service area."<sup>92</sup>  
3 Thus, it would appear that any planned expansion of MMC's network, through the  
4 Phase III cell sites, may be at least partially caused by these factors. The  
5 Commission needs to consider whether the public interest benefits of granting  
6 ETC status and providing USF support is sufficient where the competitive  
7 wireless market environment and customer demand is already prompting MMC to  
8 lower prices, improve features and build out its network.

- 9
- 10 Q. MMC's listed benefits of its ETC designation are primarily to promote  
11 competition with the LECs,<sup>93</sup> the promotion of a market-place rivalry or  
12 competition (which will facilitate the provision of new technologies and  
13 services),<sup>94</sup> and enhancing consumer welfare by bringing service choices,  
14 innovation, quality differentiation and rate competition to the local market.<sup>95</sup> Has  
15 MMC adequately demonstrated that such benefits will occur throughout its  
16 designated ETC service area regardless of its ETC designation and USF support?
- 17 A. No. As a threshold matter, I question whether the listed benefits, especially as to  
18 market-place rivalry and competition, would occur only if MMC receives ETC  
19 designation. As I have already discussed in this testimony, the receipt of federal  
20 USF support may not be a necessary prerequisite to MMC's entry into the areas  
21 affected by this Application or to its proposed network improvement plan. Nor

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<sup>92</sup> *Id.* at p. 16.

<sup>93</sup> Application at ¶¶ 26 and 28.

<sup>94</sup> Application at ¶¶ 26 and 28. Kurtis Testimony at p. 23.

<sup>95</sup> Application at ¶ 28. Kurtis Testimony at pp. 23 - 24.

1 has it been necessary to generate significant market place rivalry already being  
2 experienced. MMC's promised benefits are generalized statements and rely  
3 heavily on the "benefits of competition". In the subsection directly below I  
4 provide testimony, data and other evidence that will provide the Commission with  
5 a fact-intensive analysis to make a determination as to the public interest test.  
6 This subsection addresses the purported generic benefits of competition,  
7 competitive response and lower prices as well as the costs

8

9 Q. Has MMC presented any evidence to show that that there are underserved or  
10 unserved areas in the Companies' service areas affected by this ETC application?

11 A. No. The only substantive mention of unserved areas that I noted in MMC's  
12 Application and testimony was Mr. Kurtis' mention of "previously unserved  
13 territory" in reference to a discussion of MMC's cellular licenses.<sup>96</sup> However, I  
14 assume that this discussion relates to MMC's unserved areas and not to the ILEC  
15 or competing CMRS providers. Beyond this mention, MMC did not present any  
16 evidence to show that any residents in the Companies' service areas are being  
17 denied basic local telecommunications service or access to the public switched  
18 network.

19

20 **A. THE ALLEGED BENEFITS OF PRICING AND**  
21 **INCREASED CONSUMER CHOICE FROM MMC'S ETC**  
22 **PETITION.**  
23

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<sup>96</sup> Kurtis Testimony at p. 5.

1 Q. You previously mentioned pricing. Has MMC addressed whether it plans to  
2 lower prices as a consumer benefit from its ETC designation?

3 A. Yes. In addition to MMC's two Lifeline plans, Mr. Dawson testified to the  
4 introduction of a reduced rate plan called the "ILEC Equivalent" Plan which  
5 offers the same features and services as MMC's first Lifeline Plan and will be  
6 offered at the price of \$ 14.50 per month.<sup>97</sup> The referred Lifeline Plan would  
7 offer unlimited local calling in an MMC's customer's home cell site area.  
8 Beyond Mr. Dawson's brief description, there are no further details presented and  
9 no other references to this particular plan in the Application or Mr. Kurtis'  
10 testimony.

11

12 Q. In analyzing ETC designations, what weight should the Commission give to the  
13 competition factor in rural areas?

14 A. The Commission should give much less weight to the factor of competition than  
15 many states did before the *Report and Order*. In the past, i.e., prior to *Virginia*  
16 *Cellular*, many wireless ETC designations, rested primarily, or even solely, on the  
17 benefits of competition. Now, under the FCC's recommended more rigorous and  
18 thorough public interest analysis, competition will simply be one factor (and in  
19 my mind a relatively small one) to consider whether an ETC designation is  
20 consistent with the public interest, convenience and necessity under section 214 of  
21 the Act and serves the public interest under section 254.

22

---

<sup>97</sup> Dawson Testimony at p. 9.

1 Q. Do you agree with MMC's statements that imply that its ETC designation is in the  
2 public interest because it will stimulate or promote competition and the  
3 facilitation of wireless services to rural Missouri customers?

4 A. No. The underlying premises in MMC's statements,<sup>98</sup> that increased competition  
5 will result from its ETC designation and that the benefits outweigh the harms are:  
6 (1) Competition through a USF-supported competitor has no, or negligible costs,  
7 (2) There is insufficient competition in the targeted area, and (3) MMC needs  
8 USF support in order to enter and compete. I believe each of these underlying  
9 premises to be faulty or shaky, at best. I have already discussed the third premise  
10 above that MMC does not need USF support to complete its CDMA overlay and  
11 may not need USF support for its proposed Phase III cell sites. I will discuss the  
12 remainder below. Finally, given that MMC is already providing service  
13 throughout the Companies' area and most of its license area, the question should  
14 be what *additional* competition, if any, will be caused by MMC's ETC  
15 designation.

16

17 **i. Whether USF Support is Necessary to Promote**  
18 **Competition in the Rural Areas.**  
19

20 Q. Is there a lack of competition in rural areas in general?

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<sup>98</sup> See generally, Application at ¶¶ 25 and 26 (ETC designation will result in "marketplace rivalry"), 28 ("Without competition ... the consumer has no alternative from which to select ..."); Dawson Testimony at p. 21 ("The lack of competition [among traditional wireline carriers] creates an environment where quality of service is appropriately regulated.") and Kurtis Testimony at p. 24 ("Designating MMC as an ETC will make it easier for customers in rural Missouri to choose telecommunications service ....")

1 A. It would appear not. According to the President of the wireless association,  
2 CTIA, the results of a Rural Cellular Association survey in 2004 found that “an  
3 average of 5.1 competitors provide service in any given rural area.”<sup>99</sup>

4  
5 Q. Is there a lack of competition in the rural areas affected by MMC’s ETC  
6 application?

7 A. No. In fact, using the CTIA’s 5.1 average, these affected rural areas have  
8 competition above the national average. The Commission previously found, in  
9 2004, “six other wireless carriers currently compete with MMC”.<sup>100</sup> MMC admits  
10 to the level of wireless competition,<sup>101</sup> and in response to a request for wireless  
11 competitors in the local serving areas of Citizens, Alma and MMTC, has  
12 confirmed the Commission’s previous finding and lists the six wireless  
13 competitors as Sprint, Cingular, T-Mobile, Verizon, Nextel and U.S. Cellular.<sup>102</sup>  
14 My separate inquiry shows that this competitive status continues and in the case  
15 of all three of the Companies there is the possibility of an additional competitor;  
16 Chariton Valley Wireless, which lists the counties in which these companies are  
17 located as part of its “home service area”.<sup>103</sup> Thus, for all three of the Companies  
18 – the three MMTC wire centers outside of MMC’s licensed service area excepted

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<sup>99</sup> Testimony of Steve Largent before the Congressional Rural Caucus Task Force on Telecommunications, February 2, 2005. See link at:

[http://www.house.gov/johnpeterson/ruralcaucus/telecomtaskforce/largenttest\\_020205.pdf](http://www.house.gov/johnpeterson/ruralcaucus/telecomtaskforce/largenttest_020205.pdf).

<sup>100</sup> MMC Report and Order at p. 5.

<sup>101</sup> Kurtis Testimony at p. 24 (“In addition to the two cellular licenses previously discussed, the FCC has issued six Personal Communications Service (“PCS”) licenses throughout the United States.”)

<sup>102</sup> Schedule RCS – 7, Response to the Companies’ Data Request No. 8.

<sup>103</sup> Chariton Valley Wireless’ website indicates that it is the counties of Lafayette, Saline, Howard, Cooper, Pettis and Johnson are part of their “home service area”. See link at:

<http://www.cvalley.net/CVWS/map.htm>

1       – there are potentially as many as eight wireless competitors and at least one  
2       ILEC for a total of nine choices for a consumer.

3  
4   Q.   What is MMC's present competitive presence, as measured by percentage of  
5       lines, in each of the Companies' study areas?

6   A.   The following data is taken from the USAC submissions as mentioned in my  
7       above testimony and demonstrates that MMC has penetrated into each of the  
8       Companies' study areas. In the case of Alma, MMC has almost 70 % of the lines  
9       that Alma has and this would rebut MMC's claim that it needs USF support in  
10      order to compete with incumbent LECs.<sup>104</sup> Again, this is just MMC's percentages  
11      and do not include the many other wireless competitors in each of these  
12      Companies' areas.

13

	Alma	Citizens	MMTC
14 ILEC Lines	375	4,209	4,507
15 MMC Lines	257	797	1,347
Percentage	69%	19%	30%

16

17   Q.   Do you have any additional evidence of wireless competition in the rural LEC  
18       areas affected by this Application?

19   A.   Yes. A review of these providers' web sites demonstrate that there is a great deal  
20       of competition including a wide variety of pricing plans and packages without  
21       federal USF funds being provided to any of them. A more detailed review of  
22       these plans shows: 1) variations in the packages of minutes, and the times of the  
23       day various services are offered; 2) a wide variety of additional features; and 3)

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<sup>104</sup> Dawson Testimony at p. 15.

1 new services such as Blackberry, PDA services, data and text services, and  
2 picture services. It is important to note that all of these services are being offered  
3 to Missouri consumers without the provision of universal service support.  
4

5 Q. What does MMC state regarding actual wireless competition in the rural LEC  
6 areas affected by this Application?

7 A. As discussed above, MMC admits to the numerous wireless competitors. Further,  
8 MMC readily acknowledges the “highly competitive wireless service market” and  
9 how MMC must match its pricing to competitors for “competitive reasons”.<sup>105</sup>  
10

11 **ii. MMC’s ETC Application and the Costs of**  
12 **Competition.**  
13

14 Q. Generally, what effect does competition have on telecommunication costs and  
15 service?

16 A. The introduction of a competitor into a rural environment does not necessarily  
17 lead to lower costs or higher quality service for consumers. A high-cost market,  
18 by definition, is still a high-cost market even after the introduction of competition.  
19 The primary reason the ILECs are eligible to receive funding from the federal  
20 USF is that they are providing service in geographic areas where it is not  
21 economically feasible to serve at reasonable rates. MMC seemingly supports this  
22 rationale when it states that Federal USF “is necessary if MMC is to establish the  
23 infrastructure required to bring its wireless service to many remote and difficult-

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<sup>105</sup> Dawson Testimony at p. 10.



1 to-reach locales ....”<sup>106</sup> Given MMC’s view - that it is not economical for it to  
2 provide wireless telephone service to some of the rural areas in its service area but  
3 for Federal USF – one needs to ask why another subsidized competitor should be  
4 supported in these same areas. In fact, the introduction of additional competition  
5 may increase the cost for each of the carriers above the level that would be  
6 experienced if there was only one carrier serving the area.

7  
8 Q. But why would costs increase for both carriers?

9 A. With the introduction of a competitive ETC, the only difference is that the market  
10 and the federal USF will now have to support multiple entrants with limited  
11 financial resources in the market and in the USF. Since costs of a  
12 telecommunications network are relatively fixed, the splitting of a rural market  
13 between two or more providers generally causes the cost of service to increase for  
14 each of the providers. The FCC Chairman, Kevin Martin, recognized this aspect  
15 in his concern of using USF to create “competition” in high-cost areas:

16 I am hesitant to subsidize multiple competitors to serve areas in which  
17 costs are prohibitively expensive for even one carrier. This policy may  
18 make it difficult for any one carrier to achieve the economies of scale  
19 necessary to serve all of the customers in a rural area, leading to inefficient  
20 and/or stranded investment and a ballooning universal service fund.<sup>107</sup>  
21

22 Q. Did MMC address the cost or harm of its ETC designation in Missouri on ILECs?

23 A. It did, but very minimally. The only mention of harm to the affected ILECs was  
24 Mr. Kurtis’ statement that ILECs will not experience USF losses except where an

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<sup>106</sup> Application at ¶ 41.

<sup>107</sup> 2<sup>nd</sup> R&O and FNPRM in CC Docket No. 00-256, 15<sup>th</sup> R&O in CC Docket No. 96-45. and R&O in CC Docket Nos. 98-77 and 98-166, released Nov. 8, 2001, *Separate Statement of Commissioner Kevin J. Martin*.

1 MMC subscriber disconnects from the landline.<sup>108</sup> As I have just stated, the  
2 splitting of a rural market in Missouri between the existing ILEC, MMC and other  
3 carriers will cause the cost of service to increase for all while at the same time  
4 potentially reducing the revenues for all. Competition from MMC and other  
5 CMRS providers has already reduced access minute levels and growth in small  
6 Missouri study areas reducing the revenue levels needed to support the network  
7 infrastructure. The FCC suggested, in the context of evaluating the USF impact  
8 of ETC applications, that the state commission might consider evaluating those  
9 areas where the federal high-cost per-line support to be received by a potential  
10 ETC applicant is "high enough" and deny multiple ETCs in such high-cost  
11 areas.<sup>109</sup> As the FCC invited, this is a matter where the Commission should  
12 carefully evaluate the local factual situation. I have previously included in this  
13 testimony, for the affected Companies that I represent, the federal USF per line  
14 being received by each company to assist the Commission in this evaluation.

15  
16 Q. Does granting ETC status to a competitor such as MMC provide a disincentive for  
17 an ILEC to make additional investments?

18 A. Unfortunately, it may. Under the current environment, when there is more than  
19 one ETC, an ILEC that makes the decision to make more investment in  
20 telecommunications infrastructure must take into consideration that the increased  
21 investment it makes, resulting in additional USF support to the ILEC, will result  
22 in more USF support to the competitive ETC. The critical difference is that the

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<sup>108</sup> Kurtis Testimony at p. 12.

<sup>109</sup> FCC's *Report and Order* at ¶ 55.

1 ILEC will be getting the funding to recover a portion of the actual cost of the  
2 investment already made, while the competitor gets the money as a windfall  
3 without any tie to additional investment. In addition, given that the ILEC no  
4 longer has any assurance that high cost customers will remain with the ILEC long  
5 enough for it to recover an investment that typically spans 20-25 years (the  
6 average service lives for cable and wire plant), there is a disincentive to invest in  
7 these longer-term investments. Therefore, the ILEC faces a conundrum or  
8 "Catch-22" situation where its investments yield additional support for its  
9 competitor, who does not face the same costs, and the ILEC's risk associated with  
10 recovering the investment is thereby magnified. This does provide the ILEC a  
11 disincentive to invest in additional infrastructure.

12  
13 **B. THE ALLEGED BENEFITS OF HIGHER QUALITY**  
14 **AND WIDER SERVICE THROUGHOUT THE SERVICE**  
15 **AREA.**  
16

17 Q. Is there a statutory requirement that relates to the extent of service that should be  
18 provided?

19 A. Yes. Section 214(e) of the Act states that for an ETC applicant to receive  
20 designation and support in a rural telephone company's service area it must  
21 provide services, for which it might receive support, "throughout the service area  
22 for which the designation is received". Thus, MMC's burden is to demonstrate  
23 that it will provide the supported services throughout the service areas for each  
24 separate ILEC study area. The Commission should particularly scrutinize  
25 whether MMC has sufficiently demonstrated how it will provide the supported

1 services to the geographical areas lying outside MMC's FCC-licensed service  
2 area but within its proposed ETC service area; such as the MMTC wire centers of  
3 Fortuna, High Point and Latham where MMC does not provide any service.  
4

5 Q. Why should the Commission consider MMC's coverage areas and the signal  
6 quality that customers experience?

7 A. Section 254(b)(3) of the Act describes that the purpose of universal service  
8 funding is to provide access for all consumers – including those in rural, insular  
9 and high-cost area – telecommunications services that are reasonably comparable  
10 to the rates and services available in urban areas. Thus, the Commission should  
11 consider the quality of the signal coverage and range of coverage that MMC's  
12 consumers experience as a key factor in the cost/benefit analysis of the public  
13 interest examination. I would specifically refer the Commission to the maps  
14 provided by MMC as Highly Confidential Appendices E, F, G, L, and N of Mr.  
15 Dawson's testimony to study carefully to see the extent of MMC's current and  
16 proposed service provisioning. MMC touts mobility as an advantage for  
17 emergency calling as well as for geographically isolated rural consumers.<sup>110</sup>  
18 However, in the rural and isolated areas with weak or no signal strength, if a  
19 consumer receives service through a roof-mounted antenna or other [premises-  
20 deployed assumed] equipment,<sup>111</sup> mobility is not comparable to urban areas and  
21 other MMC areas. In this situation, the hypothetical farmer injured in the field

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<sup>110</sup> Application at ¶ 34. *See also*, Dawson Testimony at p. 9.

<sup>111</sup> Dawson Testimony at p. 16.

1 under Mr. Dawson's scenario would not receive the benefits of mobility.<sup>112</sup> Also,  
2 other MMC customers traveling through such areas would receive weak or no  
3 signal and would not enjoy the health and safety benefits that MMC promises.

4  
5 To the extent that the signal coverage provides adequate coverage of the areas  
6 where MMC is seeking to be designated an ETC that would be a positive factor in  
7 the public interest test for their receiving such a designation. To the extent that  
8 such signal coverage is not adequate, that would clearly be a negative factor in the  
9 public interest test for them receiving that designation.

10  
11 **C. THE ADVANTAGES AND DISADVANTAGES OF**  
12 **MMC'S SERVICE OFFERINGS.**  
13

14 Q. What consideration does the FCC recommend the states give in regard to the  
15 CMRS providers service offerings?

16 A. The FCC recommended in its *Report and Order* that the unique advantages and  
17 disadvantages of the ETC applicant's service offerings should be considered when  
18 analyzing the public interest.

19  
20 Q. What were the advantages discussed by MMC for its service offering?

21 A. MMC advances expanded local calling areas and reduced intra-LATA toll charges  
22 and mobility as differences in its service offerings versus the ILECs operating in  
23 MMC's proposed ETC area.<sup>113</sup>

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<sup>112</sup> *Id.* at p. 12.

1

2 Q. What weight should MMC's stated advantages be given by the Missouri  
3 Commission ?

4 A. Given that an ETC applicant's service offering advantages are but one factor in  
5 the cost-benefit balancing test, MMC's stated advantages are not a very important  
6 factor in this balancing test and little weight should be given to them. Neither the  
7 expanded local calling area nor the mobility aspects of MMC's service offerings  
8 are unique. As has previously been discussed, six or more competitors – as well  
9 as MMC - are already providing wireless service and its inherent expanded local  
10 calling areas and mobility aspects. Also, mobility, which is not one of the nine  
11 supported services, could be considered a premium feature for which customers  
12 are willing to pay extra and thus would not need to be supported by universal  
13 service funds.

14

15 Q. Are there any disadvantages to an expanded calling area in MMC's service  
16 offerings?

17 A. No, but this advantage is overstated when one considers that under MMC's basic  
18 consumer plan for \$ 19.95 you would receive only 100 minutes for outgoing and  
19 incoming calls. Anything over 100 minutes carries a \$ 0.40/minute charge.<sup>113</sup>  
20 Compare this to Citizens Telephone Company of Higginsville, for example,  
21 where unlimited local calling costs \$ 15.67 in the city of Higginsville and

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<sup>113</sup> Dawson Testimony at p. 9.

<sup>114</sup> Dawson Testimony, Appendix J.

1 surrounding communities and a consumer can sign up with Citizens Long  
2 Distance's basic plan and receive toll calls for \$ 0.15/minute.  
3

4 Q. What are the disadvantages of MMC's service offerings as to mobility?

5 A. As suggested by the FCC, dropped call rates and poor coverage are disadvantages.  
6 MMC states that any CMRS carrier "is virtually certain to have 'dead spots'  
7 somewhere in the geographic area in which it provides service."<sup>115</sup> This should  
8 be of particular concern for the Commission given that MMC is not subject to  
9 mandatory service quality standards. Also, for those MMC subscribers who  
10 receive wireless service from a roof-mounted antenna or other premises-specific  
11 device, the mobility advantage is almost nonexistent.

12  
13  
14 **D. THE IMPACT ON THE USF FROM MMC'S ETC**  
15 **PETITION.**  
16

17 Q. What did the FCC recommend for state commissions in analyzing the impact  
18 upon the federal USF?

19 A. The FCC focused on a case-by-case approach and prominently suggested that a  
20 state commission, such as this Commission, could consider the level of federal  
21 high-cost per-line support received by the ILEC and whether it would be in the  
22 public interest to have an additional ETC. The FCC concluded that if the per-line  
23 support is high enough, the state commission may indeed be justified in limiting

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<sup>115</sup> Kurtis Testimony at p. 22.

1 to one ETC in that study area because funding multiple ETCs could impose  
2 strains on an already burdened federal USF.<sup>116</sup>

3

4 Q. Did MMC make a per-line USF showing and provide analysis on such?

5 A. No, it did not. If the Commission requires a federal high-cost per-line support  
6 showing in order to determine what is in the public interest, then it is MMC's  
7 burden to make such a showing. Further, such a showing and the subsequent  
8 analysis should be done on an individualized LEC service area basis, due to the  
9 many factors affecting the level of high-cost support.<sup>117</sup>

10

11 Q. If MMC is granted ETC status, what will be the basis of its support?

12 A. Under current FCC rules, MMC will receive federal USF support based on the  
13 identical amount per line that the ILEC receives. A rural ILEC receives support  
14 based on its actual embedded costs of providing the service and making  
15 investments in its area. This support is based on annual cost filings prepared by  
16 the ILEC to reflect its costs and submitted to the Universal Service  
17 Administration Corporation ("USAC"). These study results are verified by both  
18 USAC and NECA (the National Exchange Carrier Association). A competitive  
19 ETC, on the other hand, merely reports the number of customers it is serving in its  
20 designated ETC area and then receives the same amount of support per line as the  
21 ILEC without verification by any regulatory or administrative entity of its costs or

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<sup>116</sup> *Report and Order*. at ¶ 55.

<sup>117</sup> *Id.* at ¶ 56. Factors such as topography, population density, line density, distance between wire centers, loop lengths and investment levels.



1 the underlying need for support.<sup>118</sup> There is certainly a question as to whether this  
2 approach meets the competitive neutrality principle.  
3

4 Q. Did the FCC express concerns about the stability of the USF and future ETC  
5 designations?

6 A. Yes, in its recent Report and Order, the FCC repeatedly expressed its concern  
7 about the long-term sustainability of the USF.<sup>119</sup>  
8

9 Q. What is your response to Mr. Kurtis' statement that "the Commission should  
10 avoid consideration of generalized policy arguments relating to the wisdom of  
11 including wireless ETCs in the USF"?<sup>120</sup>

12 A. I disagree and would urge the Commission to consider the impact that this  
13 designation application will have as a precedent and the collective effect on the  
14 federal USF as it relates to the public interest of providing such support.  
15 Ironically, in the same passage where Mr. Kurtis recommends the Commission's  
16 avoidance of this issue, he cites to the FCC's recent *Report and Order*,<sup>121</sup> which

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<sup>118</sup> Mr. Kurtis' brief description of how MMC's USF support will be determined underscores the ease with which MMC will potentially gain USF support. Kurtis Testimony at p. 12.

<sup>119</sup> *Report and Order* at ¶ 5 (The adoption of the rigorous ETC designation requirements will ensure that only adequate ETCs "will receive ETC designation, thereby lessening fund growth attributable to the designation and supporting the long-term sustainability of the universal service fund"); ¶ 49 ("In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed ....")

<sup>120</sup> Kurtis Testimony at p. 13.

<sup>121</sup> *Id.* at p. 14.

1 encourages state Commissions to consider the impact of individual ETC  
2 designations on the federal USF.<sup>122</sup>

3  
4 Q. What is your response to Mr. Kurtis' statement that the current fund is stable.<sup>123</sup>

5 A. I disagree with Mr. Kurtis' assertion that the Universal Service Contribution  
6 Factors of 8.7 percent for the second quarter of 2004 and 8.9 percent for the third  
7 and fourth quarters of 2004 are an indication of stability in the current federal  
8 fund. Mr. Kurtis further discusses the FCC's March announcement that the  
9 second quarter contribution factor percentage would be 11.1% - which is a jump  
10 of almost 25% from the fourth quarter 2004 factor - and explains that this  
11 increase is primarily due to an increase in the program support costs for the  
12 Schools and Libraries program.<sup>124</sup> However, the High-Cost program also rose  
13 over 5% in that same period and the High-Cost fund is over 1.8 times the size of  
14 the Schools and Libraries program. This certainly raises questions as to the  
15 stability of the contribution factor and the High-Cost fund. The Commission  
16 should be concerned about the growth of the fund and its long-term sustainability.

17  
18 Q. What is your response to Mr. Kurtis' statement that the evidence suggests that  
19 wireless ETC designations have not had an adverse impact on the USF fund.<sup>125</sup>

---

<sup>122</sup> *Report and Order* at ¶ 60 ("While Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications that affect the ... overall size of the federal universal service fund.")

<sup>123</sup> Kurtis Testimony at pp. 12 - 13.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at p. 12.

1 A. The evidence suggests the opposite; the granting of ETC status to wireless carriers  
2 is causing a dramatic growth in the size of the federal USF. Between the 4<sup>th</sup>  
3 quarter of 2001 and the 2d quarter of 2005, the amount of USF received (or  
4 proposed to be received) by competitive ETCs, the vast majority of which are  
5 wireless carriers, grew from approximately \$11 million annually to \$736 million  
6 annually.<sup>126</sup> In a Joint Board proceeding addressing this issue, comments of the  
7 National Association of State Utility Consumer Advocates stated:

8 "Under the current ETC designation rules, in the near future there will  
9 likely be a sharp upward curve in the growth of the high-cost fund  
10 related to the issues being examined here. A substantial portion of this  
11 growth is a result of additional funds needed to support multiple lines  
12 per customer and to support lines provided by new competitive eligible  
13 telecommunications carriers ("CETCs"), mostly wireless ETCs.  
14

15 and:

16 The current and anticipated rate of growth in fund requirements needed  
17 to support additional lines suggests that the current support mechanisms  
18 will be strained unless the Commission makes substantial changes to  
19 the ETC designation rules."  
20

21 There clearly is concern that growth in the federal fund resulting from the large  
22 increase in wireless ETC designations ultimately may jeopardize the sustainability  
23 of the USF fund for all providers. Again, I would urge the Commission to reject  
24 Mr. Kurtis' suggestion to avoid considering the potential harm to the federal USF  
25 and, instead, seriously consider what this application might mean to future  
26 Missouri wireless ETC applications and the future of the USF fund.  
27

---

<sup>126</sup> Universal Service-Rural Infrastructure at Risk, McLean & Brown, March 2005, p. 21. (emphasis added)  
Filed with the FCC on April 14, 2005 as an *ex parte* presentation in CC Docket 96-45.

1 Q. What are the implications of granting ETC status to MMC in relation to the  
2 current regulatory scheme imposed on the ILECs?

3 A. The current regulatory scheme imposed on the ILECs is based on the assumption  
4 that the ILECs are monopoly providers of service and that regulation of the  
5 services and prices of the ILEC offerings are necessary to protect the public  
6 because of the lack of competition. When ETC status is granted to a competitive  
7 carrier such as MMC, the Commission is essentially determining that there is  
8 more than one provider in the designated areas that is fully capable and willing to  
9 provide basic telecommunications services throughout these areas and that will be  
10 publicly supported in doing so. Once this occurs, the rationale for imposing  
11 regulation on the ILECs is no longer valid, and the whole purpose of regulation of  
12 the ILEC by the Commission is subject to question. If regulation is to continue,  
13 the ILEC should be regulated on the same basis as the competitor. This could  
14 occur in one of three ways. Regulation of the ILEC could be relaxed or  
15 eliminated, the wireless entrant could be regulated to the same extent the ILEC is  
16 currently, or some middle ground of lessened regulation could be applied to both.  
17 While this case is not the appropriate forum to address all those issues, the  
18 Commission should be aware that its decision in this case will raise those types of  
19 fundamental questions which may need to be addressed should it decide to grant  
20 ETC status to MMC.

1           **VIII. RECOMMENDATIONS AND CONCLUSIONS.**

2  
3       Q.     Throughout this testimony you have presented a wide variety of testimony  
4           regarding public interest issues that the Commission should take into  
5           consideration in evaluating the application of MMC. Do you have any final  
6           general comments on how the Commission should approach its evaluation of the  
7           Application?

8       A.     Yes. First, I believe that it is important that the primary purpose of providing  
9           universal service funds, as outlined in Section 254(a) of the Act is focused on the  
10          provision of quality services comparable to urban areas in high cost rural areas.  
11          The Universal Service provisions of the Act are not about promoting and  
12          advancing competition. Second, I would encourage the Commission to recognize  
13          that the determination of ETC status is something that needs to be done on an  
14          individual study area basis, even though there are a several study areas that are  
15          encompassed in this one case. The legal standards, in some cases, and the factual  
16          situations vary between companies and study areas, and the Commission needs to  
17          focus on those issues related to each individual study area. Third, I would  
18          emphasize that while the FCC has adopted rules that they have imposed upon  
19          themselves to follow, and those rules provide, in many cases, good guidelines for  
20          the Commission to follow, that they are not binding upon the Commission and it  
21          is free to make its own determinations based on its perception of the "public  
22          interest".

1 Q. What are some of the significant points that you would emphasize that the  
2 Commission should consider?

3 A. There are several:

4 1. The Commission should evaluate whether the pricing plans offered by MMC  
5 will really add to the "public interest", particularly in light of the fact that there  
6 will be limited apparent rate changes if ETC status is granted.

7 2. The Commission should closely evaluate MMC's plan to complete its CDMA  
8 overlay project and determine if such will be completed regardless of USF  
9 support. Additionally, the Commission should closely evaluate MMC's tentative  
10 Phase III deployment plans. I believe it should carefully consider whether the  
11 stated plans meet the FCC's recommended evidentiary requirements, whether  
12 they will really serve the high cost areas which are the source of the universal  
13 service funds that MMC would receive if granted ETC status, and whether such  
14 plans are adequate to provide quality service to the areas for which it is seeking  
15 designation.

16 3. The Commission should closely consider whether MMC has met an adequate  
17 burden of proof regarding the quality of service that it currently provides and will  
18 provide if designated an ETC

19 4. The Commission should consider whether MMC has made an adequate  
20 demonstration that the public's benefits from a granting of ETC designation  
21 outweigh the actual and possible costs to the public and to the federal USF.

22 5. The fact that ETC status has been granted to wireless providers in other  
23 jurisdictions should have little impact on whether the Commission grants such

1 status. The Commission should use a much stricter set of criteria and analysis  
2 than other states did in granting that status.

3

4 Q. Does this conclude your direct testimony?

5 A. Yes.

**DATA REQUEST No. 16:** Does MMC currently have roaming and/or resale agreements in place to enable it to provide service to all of Mid-Missouri Telephone Company's local serving area? If so, please provide copies of same.

**RESPONSE:**

MMC currently does have roaming agreements in place to enable it to provide service to all Mid-Mo wire centers. The requested documents are subject to non-disclosure agreements and cannot be provided.



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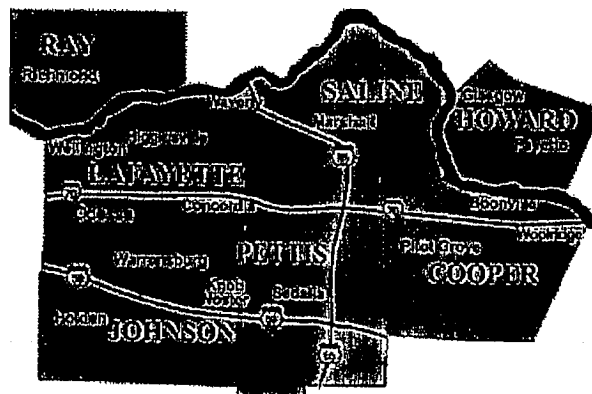


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MONTHLY ACCESS	PACKAGE MINUTES	OVERAGE
<b>\$19.95/MO.</b>	<b>350 min.</b> 100 Plan Minutes Plus 250 Night and Weekend*	45¢
<b>\$29.95/MO.</b>	<b>1400 min.</b> 400 Plan Minutes Plus 1000 Nights and Weekend*	45¢
<b>\$49.95/MO.</b>	<b>2000 min.</b> 750 Plan Minutes Plus 1250 Nights and Weekends*	40¢
<b>\$64.95/MO.</b>	<b>2550 min.</b> 800 Plan Minutes Plus 1750 Night and Weekend*	40¢

\*Night & Weekend  
Home Service Area



## Features

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### **FREE Calling Features Include:**

- Call Forwarding - Transfers your calls to another number when you don't answer, your phone is busy or your phone is turned off.
- Three-Way Calling - Want to talk to your Mom and sister at the same time? Three-Way Calling enables you to add a third party to a current call.
- Call Waiting - Never miss an important call. With call waiting a special tone will alert you to another incoming call. This allows you to answer multiple calls.

### **Any 2 of the following FREE or ALL 3 for \$2.95!**

- Caller ID - Feel like screening your calls? Caller ID permits you to see who is calling your phone by displaying the number and/or name.
- Voice Mail with Message Waiting Indicator - Lets someone leave a message for you, if you are currently on or away from your phone. You'll never have to worry about missing that call!
- MyDigital Messenger - Allows you to send and receive email on your phone. 750 messages are included to use to chat with your friends, remind your husband to pick up milk or let someone know that you're running late. Each additional message is 5¢.

### **Additional Features Always FREE!**

- Long Distance - Mid-Missouri Cellular provides toll-free long distance for all calls made. Whether you're calling out of state or just across town, the rate is always the same, FREE!
- Detailed Billing - We have made it easy with our detailed billing. We show you who you called, how long you talked and what charges may apply.

### **Mobile to Mobile**

Now you have the ability to call other Mid-Missouri Cellular customers with the same exchange within your home area at a reduced rate.

### **What suits your needs? Take your choice...**

1500 mobile to mobile minutes - \$9.95 each line

Unlimited mobile to mobile minutes - \$19.95 each line

**Companion Lines \$14.95 each**

You have the ability to include up to 4 additional  
Companion phones on your plan. Now the whole family  
can share their minutes!

**LOCAL | REGIONAL | NATIONAL**

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**MyDigital Rate Plans - We've Got You Covered**

<b>NEXT GENERATION PLANS</b>			
<b>Monthly Access</b>	<b>Missouri Minutes</b>	<b>Nights/Weekends Mobile to Mobile</b>	<b>Additional/Roaming</b>
<b>\$19.95</b>	100	<b>Choice of</b> Unlimited Nights/Weekends or Unlimited Mobile to Mobile	<b>40¢</b> per minute
<b>\$24.95</b>	250	<b>Unlimited</b> Nights/Weekends and Mobile to Mobile	<b>35¢</b> per minute
<b>\$34.95</b>	500	<b>Unlimited</b> Nights/Weekends and Mobile to Mobile	<b>35¢</b> per minute
<b>\$44.95</b>	750	<b>Unlimited</b> Nights/Weekends and Mobile to Mobile	<b>25¢</b> per minute
<b>\$64.95</b>	1000	<b>Unlimited</b> Nights/Weekends and Mobile to Mobile	<b>25¢</b> per minute
<b>\$84.95</b>	1500	<b>Unlimited</b> Nights/Weekends and Mobile to Mobile	<b>25¢</b> per minute
<b>\$124.95</b>	2000	<b>Unlimited</b> Nights/Weekends and Mobile to Mobile	<b>25¢</b> per minute

Add up to 3 lines and share all the minutes for only \$9.95 per line per month on \$34.95 or higher rate plans. All other plans are \$14.95 per month

## Coverage Area

Anytime, Night & Weekend & Mobile-to-Mobile minutes apply anywhere in the state of Missouri.



Map depicts Mid-Missouri Cellular CDMA Network and CDMA roaming partners. Service not available in all areas. Requires a CDMA wireless phone.

### Features

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**Caller ID** - Feel like screening your calls? Caller ID permits you to see who is calling your phone by displaying the number and/or name.

**Three-Way Calling** - Want to talk to your Mom and sister at the same time? Three-Way Calling enables you to add a third party to a current call.

**Detailed Billing** - We have made it easy with our detailed billing. We show you who you called, how long you talked and what charges may apply.

**Voice Mail with Message Waiting Indicator** - Lets someone leave a message for you, if you are currently on or away from your phone. You'll never have to worry about missing that call!

**Call Waiting** - Never miss an important call. With call waiting a special tone will alert you to another incoming call. This allows you to answer multiple calls.

**Call Forwarding** - Transfers your calls to another number when you don't answer, your phone is busy or your phone is

turned off.

**1st Incoming Minute** - Receive your 1st minute of any incoming call for free. This allows you to not be charged for wrong numbers or hang ups.

### Enhanced 411 Directory

#### **Directory Assistance Provides Convenience and Safety.**

Mid-Missouri Cellular introduces its newest product, directory assistance. More than just a phone number search engine, the new service offers users a host of information at their fingertips. Just dial 411 from your cellular phone and receive any of these services...

#### **99¢ PER CALL**

Local and National Directory Assistance Service  
Business and Category Search  
Call Completion  
Two Look-Ups Per Call  
Flight Times  
Movie Listings  
Horoscopes  
Sports Scores  
Weather Conditions and Much More

#### **Match Your Phone to Your Personality**

Now at Mid-Missouri Cellular you can customize your phone to match your personality with new downloadable ring tones. Simply visit the home page, click on ring tones, and choose your favorite tune from a variety of top hits, Country hits, movie themes and pop hits. Choose any three for only \$5.97 and the ring tones will automatically be sent to your wireless phone. Visit today and start downloading your favorite songs onto your phone.

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MyDigital

## Unlimited Zone

**My Digital Unlimited Zone**

Incoming & Outgoing Minutes\*  
in local service area only

**\$34.95\***

ADD Unlimited Nationwide Long Distance to the 48 contiguous states  
from local service area for \$9.95 per month

■ Unlimited usage and  
free long distance to  
your area code. All other  
long distance 6¢ a minute.

■ 30¢ a minute in the rest  
of Missouri. Includes  
nationwide long distance.

■ 70¢ a  
minute  
outside of  
Missouri.  
Includes  
nationwide  
long  
distance.

Local Service Area



**Bundle Features Pack \$1.95 per month includes:**

**Call Waiting** - Lets you know someone else is calling when you are using your cellular/digital phone (a special tone will alert you to another incoming call).

**Three-Way Calling** - Allows you to add a third party to a current call.

**Call Forwarding** - Allows incoming calls to be forwarded to another phone number.

**Caller ID** - Allows you to see who is calling your phone by viewing their name and number on the display.

**Voice Mail - \$2.95 per month** Lets someone leave a message for you if you are currently on or away from the phone. An Indicator on your phone will notify you if there are any messages on your voice mail.

*\* The home area is Howard, Cooper, Saline, Pettis, Ray, Lafayette and Johnson counties.  
Unlimited minutes are in local service area. Nationwide long distance is in the 48 contiguous states. Certain restrictions apply. Ask for details.*

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**DATA REQUEST No. 3:** In Case No. TO-2003-0531, Mid-Missouri provided a sample of its Customer Service Agreement(s). Has that agreement(s) changed since that time? If so, please provide a current copy of Customer Service Agreement(s) for each of its service plans.

**RESPONSE:**

Please see copy of current contract attached to this response.



# EXHIBIT to DR No. 3 CELLULAR SERVICE AGREEMENT

1500 South Limit Sedalia, MO 65301 Tel: 660-620-1114  
772 S. Odell Suite 2 Marshall, MO 65340 Tel: 660-631-1115  
505 B North Maguire Warrensburg, MO 64093 Tel: 660-624-1115  
514 Ryan Street Booneville, MO 65233 Tel: 660-621-1115

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CASE NO. TO-2005-0325  
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(800) 242-6516 • FAX (660) 620-1116 • e-mail: mailme@mydigital.com • www.midmissouri.com

MOBILE NUMBER \_\_\_\_\_ ESN \_\_\_\_\_ ACCT. NO. \_\_\_\_\_  
DEC. \_\_\_\_\_

Customer Name	
Mailing Address: _____ Within City Limits Y N	
Street Address: _____ Phone: _____	
City/State: _____ Zip: _____	
Primary Phone User	<input type="checkbox"/> Business <input type="checkbox"/> Personal
Other Mobile Service:	
SSN	Driver's License
Employer	Employer Phone
Occupation	Birthdate / /

<b>INITIAL PAYMENT</b>	
Total Amount	_____
Security Deposit	_____
Total Paid	_____
<input type="checkbox"/> Cash	<input type="checkbox"/> Check <input type="checkbox"/> To Be Billed
<input type="checkbox"/> VISA	<input type="checkbox"/> MC <input type="checkbox"/> Discover
Bill to Mobile # _____	
Acct./Ck. No. _____	
Auth. # _____	

<b>SERVICE INFORMATION</b>		
TYPE OF ACCOUNT		
<input type="checkbox"/> Sale	<input type="checkbox"/> Service Only	<input type="checkbox"/> Demo
Order Date _____		
Activation Date _____		
Dealer No. _____		

Initials ☐ \_\_\_\_\_ Copy of Driver's License Attached

<b>CREDIT STATUS</b> - For Mid-Missouri Use Only - <input type="checkbox"/> Approved Initials _____	
BILL TO: <input type="checkbox"/> Business <input type="checkbox"/> Different	
Address: _____ Business # _____	
City/State: _____ Zip: _____	
Contact _____ Years in Business _____	
Tax Exempt Status (attach certificate)	<input type="checkbox"/> Federal <input type="checkbox"/> County <input type="checkbox"/> State <input type="checkbox"/> Local

<b>SERVICE COMMITMENT</b>	
Length of Commitment _____	
Service Commitment Expires _____	
Early Termination Charge _____	
I Understand & Agree with the above _____ Initials _____	

<b>WHERE DID YOU HEAR ABOUT US?</b>	
<input type="checkbox"/> Radio (Station _____)	
<input type="checkbox"/> Television (Station _____)	
<input type="checkbox"/> Newspaper <input type="checkbox"/> Drive-By	
<input type="checkbox"/> Referral _____ Mobile # _____	
<input type="checkbox"/> Other _____	

<b>PRICING PLAN</b>		Amount	ESN/UPC
Activation Fee (One Time Charge)			
Rate Plan	Monthly Service		
<b>CUSTOM CALLING/OPTIONAL FEATURES &amp; MONTHLY CHARGES</b>			
<input type="checkbox"/> Call Forwarding <input type="checkbox"/> 3-Way Calling <input type="checkbox"/> Voice Mail <input type="checkbox"/> Mobile to Mobile			
<input type="checkbox"/> Call Waiting <input type="checkbox"/> Caller ID <input type="checkbox"/> Unlimited Nights/Wknds <input type="checkbox"/> Text Messaging <input type="checkbox"/> Nationwide Toll Free			
<b>EQUIPMENT INFORMATION AND CHARGES</b>			
Make	Model	Unlock/Security # Code	
Accessories			
e-mail: _____		Salesperson	

Notes/Specials: _____	Sub-Total	
	Tax	
	Total Amount	

If signing a 1 or 2 year commitment, must stay on selected rate plan or higher for 12 months. Must live in the Mid-Missouri Cellular licensed areas including Howard, Cooper, Saline, Pemis, Lafayette, Ray and Johnson Counties.  
I understand and agree that the above information will be used to establish this application for cellular radio service and/or equipment. I understand that a suitable deposit may be required for service and/or equipment. This application becomes a contract upon the establishment of service.  
I authorize and instruct any person, consumer reporting agency, credit reporting agency or my local telephone company to compile and furnish Mid-Missouri Cellular with any information it has on my or the entity on whose behalf I am making this application.

Customer Authorization (for Credit Check) \_\_\_\_\_ Date \_\_\_\_\_  
IN MY INDIVIDUAL CAPACITY AND ON BEHALF OF THE ENTITY I REPRESENT, IF ANY, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND ALL OF THE TERMS AND CONDITIONS ON THE FRONT AND BACK OF THIS DOCUMENT AND AGREE TO BE BOUND THEREBY.  
If signing on behalf of an entity, I represent that I am a duly authorized representative of the entity shown under "Bill To" above and I have submitted this application in the capacity indicated as my "Title" below. If I am representing a corporation, I acknowledge that the execution of this document has been authorized by all necessary corporate action.

Customer Authorization \_\_\_\_\_ Date \_\_\_\_\_ Title \_\_\_\_\_  
WHITE - FILE CANARY - STORE PINK - SALES GOLDENROD - CUSTOMER

**PART I**  
**TERMS & CONDITIONS OF CELLULAR SERVICE**

SCHEDULE RCS - 6  
CASE NO. TO-2005-0325  
PAGE 3 OF 3

Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular, hereinafter referred to as MMC, provides cellular service on the terms and conditions specified herein and at rates and charges established from time to time. Every use of the term "you" or "your" in this document includes you, individually, as well as any company or entity on whose behalf you are acting in submitting this application for service and/or equipment. Both you and your company are jointly and severally liable under this agreement.

1. **Availability of Service** - Service is generally available to cellular mobile radio units (cellular telephones) equipped for this service within range of cell sites located in the service area. Service is furnished for use by you or your authorized user. Orders, including those which involve the start, change or discontinuance of service, will be accepted by MMC only from you and only in writing. You have no property right in the telephone number assigned to the mobile unit; the telephone number may not appear in more than one mobile unit. MMC reserves the right to assign, designate or change such number when, in its sole opinion, such assignment, designation or change is reasonably necessary to the conduct of its business. In addition, MMC reserves the right to assign all or any part of its rights and obligations hereunder to any entity at its sole discretion.

2. **Service Commitment** - You have contracted to have MMC provide you service for the term specified on the front of this document under the heading of Service Commitment. The term of your Service Commitment begins with the first day your service is activated. At the end of your Service Commitment, the term of this Agreement shall be deemed automatically renewed on a month-to-month basis on the same terms and conditions contained herein, and shall continue until terminated by either party. If you have contracted for a service commitment other than on a month-to-month basis, you have received certain benefits from MMC in exchange for such service commitment. You understand and agree that the damages MMC will suffer arising out of any breach of your service commitment will be difficult, if not impossible, to determine. THEREFORE, IF YOU TERMINATE YOUR SERVICE BEFORE EXPIRATION OF THE TERM OF YOUR SERVICE COMMITMENT, YOU HEREBY AGREE TO PAY THE EARLY TERMINATION CHARGES FOR LIQUIDATED DAMAGES, AND NOT AS A PENALTY, IN THE AMOUNT SPECIFIED ON THE FRONT OF THIS DOCUMENT TO COMPENSATE MMC FOR ITS COSTS OF ACTIVATION OF YOUR SERVICE, INSTALLATION, ANTENNA, FREE MINUTES OF USE AND/OR OTHER SERVICES WHICH WERE PROVIDED BY MMC TO YOU AT NO CHARGE OR AT A REDUCED CHARGE IN EXCHANGE FOR AND IN RELIANCE UPON YOUR AGREEMENT TO THE SERVICE COMMITMENT. You cannot assign your service contract and your service commitment without the consent of MMC. Except for the special services offered in exchange for your service commitment, MMC reserves the right to increase any and all rates upon 30 days notice to you.

3. **Deposits** - MMC may require you to make a suitable deposit to be held by MMC to secure the payment of all sums due hereunder as well as the performance of all other obligations you may have to MMC whether now or existing or hereafter arising. MMC may apply your deposit against your bill or any other amount you owe MMC at any time. MMC agrees to return your deposit after 12 consecutive timely payments have been made. Until this requirement is met, MMC has the right to retain your deposit. MMC specifically reserves the right to require a deposit or increased deposit for continuation of service at MMC's sole discretion.

4. **Rates, Charges and Payment** - You will receive monthly bills which are due and to be paid in full on the due date shown on the bill. You are responsible to pay MMC for all charges for cellular airtime usage, including cellular airtime charges used on other systems (roamer charges), recurring monthly access charges, if any, optional features, any applicable toll, charges resulting from the origination of mobile calls, collect calls and any other charges or calls billed to your access number. In addition, any applicable federal, state and local use, excise, sales or privilege taxes or similar liabilities chargeable to or against MMC as a result of the provision of MMC's services hereunder to you shall be charged to and payable by you. You accept responsibility for incoming calls to your cellular telephone from the time the line is seized. Chargeable time for calls originated by a cellular telephone begins when a connection is established to the carrier facilities, regardless of whether the call is completed. Airtime rates vary by market. There is a minimum charge for each connected call. Airtime is billed in increments that vary by market. actual airtime usage is rounded up to the next increment for billing purposes. MMC reserves the right to increase any and all rates upon thirty (30) days' written notice to you. You may elect to change your rate plan to another generally available rate plan of MMC at any time during the term of this agreement. Mid-Missouri reserves the right to terminate your service if less than 50% of your overall minutes in each of three consecutive billing cycles are used in Mid-Missouri cellular's market (Cooper, Howard, Lafayette, Johnson, Pettis, Ray, and Saline Missouri counties).

5. **Nonpayment/Breach** - A late payment charge of lesser of one and one-half percent (1 1/2%) per month, or the maximum rate permitted by law, may be applied to each of your service bills not paid by the due date. The late payment charge is applied to the total unpaid amount carried forward to a subsequent bill. A charge of \$20.00 will be made by MMC for any check or other negotiable instrument tendered by you and returned unpaid by a financial institution for any reason, and MMC may demand payment by money order, cashier's check or similarly secure form of payment, at MMC's discretion. If MMC obtains the services of a collection agency or attorney to assist MMC in remedying your breach of this agreement, including but not limited to the non-payment of charges hereunder, this expense will be paid by you.

6. **Credit Information** - You consent to the disclosure of account information to or from credit reporting agencies, credit bureaus, private credit reporting associations, or to or from other providers of cellular service.

7. **Termination of Service** - You may terminate service after your Service Commitment ends by giving MMC at least thirty (30) days written notice. Thirty days will begin from the time the written notice is received at the Mid-Missouri Cellular main store in Sedalia. If you terminate service before the completion of any service commitment other than a month-to-month term, you agree to pay the early termination charge to MMC for liquidated damages in the amount set out on the front of this document and as described in paragraph 2 herein. Upon non-payment of sum due MMC hereunder or for any other service, repairs or equipment furnished in connection with your cellular phone, or upon a violation of any of the conditions of this contract, MMC can, upon written notice, terminate or temporarily discontinue your service under this contract without notice without incurring any liability. Upon written notice, MMC may terminate service in the event of your insolvency, receivership, voluntary or involuntary bankruptcy, assignment for the benefit of creditors, sale of substantially all of your assets, or your use of services furnished by MMC for any unlawful purpose or for any purpose prohibited under the provisions of any regulatory order. Service may be refused or discontinued without notice and without liability to MMC in the event that (1) the service is used in such a manner that will adversely affect MMC service to others or is otherwise in violation of any FCC rule or regulation; (2) any court of competent jurisdiction or any federal or state regulatory authority of competent jurisdiction prohibits MMC from furnishing service; (3) services are not available from the network provider or its successors; (4) your credit information provided to MMC is inaccurate; (5) MMC becomes aware of facts indicating that your credit standing has deteriorated and you refuse or unwilling to provide a deposit or increased deposit at the request of MMC; or (6) there exists any evidence of fraudulent use of the service.

8. **Cellular Telephones** - Except as provided in Part II below, MMC is not responsible for the installation, operation, quality of transmission or maintenance of your cellular telephone. If your equipment is stolen, you are responsible for all cellular service charges until the theft is reported to MMC directly by calling the customer service number at 1-800-242-6516. You understand that in the event of non-payment of charges, the cellular radio system may be programmed to refuse service to the equipment on which the delinquent charges were incurred until payment in full is made. You agree to advise any prospective purchaser of the equipment of any such charges outstanding.

9. **MMC Limitations and Conditions of Liability** - Service may be temporarily interrupted, delayed or otherwise limited due to: (1) transmission limitations caused by atmospheric and other conditions; (2) the availability of radio frequency channels; (3) system capacity limitations; (4) coordination with adjacent cellular systems; (5) equipment modifications, upgrades, relocations, failures, repairs and/or similar activities; and (6) negligence of MMC. MMC therefore assumes no duty to provide uninterrupted service to you and your authorized user. MMC shall have no liability and no credits shall be given for interruptions, delays or failures in transmission arising out of any of the above referenced conditions, nor shall MMC have any liability or responsibility to grant credits for interruptions, delays or failures in transmission arising out of (1) your negligent or willful act; (2) the failure of equipment or service provided through MMC facilities or (3) acts of God, fire, riots, acts of Government authorities or other causes beyond the control of MMC. You agree that the liability of MMC, if any, for interruptions, delays and failures in transmission of service to you whether caused by the negligence of MMC or any other manner except for your negligence or willful act is hereby limited to the allowance of a credit in the form of an adjustment for no more than the charges billed by MMC to you for cellular services for the period during which the service problem occurred, except that no credit shall be given for recurring monthly charges, if any, for a service problem of less than 24 hour duration. No credit shall exceed the cellular service charges billed for this period during which the service problem occurred. MMC has the right to require that credits be applied for upon written request and to deny any request for credit for an alleged service problem where the evidence of such problem is inconclusive, or the request is otherwise unwarranted or insufficient, except as provided above, you hereby agree that MMC shall not be liable for, and shall be held harmless by you from and against, and you agree to indemnify MMC for any and all claims and damages, of every kind, including specifically special or consequential damages, arising out of the use of any service and/or equipment provided under this contract, as well as any damages arising out of our attributed, directly or indirectly, to service problems. You understand that for an additional fee, speakerphone equipment is available from numerous sources. This service enables you to use your cellular telephone without holding a receiver, thereby allowing you to use both hands while operating your motor vehicle.

10. **Governing Law** - This Agreement shall be governed by the laws of the State of Missouri.

**PART II**  
**TERMS & CONDITIONS FOR SALES OR CELLULAR EQUIPMENT**

In addition to the terms and conditions in Part I, the following provisions apply to sales of cellular equipment:

1. **Acceptance** - This document is an offer by you, which will become a contract when acknowledged by in writing by MMC.

2. **Delivery, Installation and Title** - You will be required to deliver your vehicle to the location agreed to for installation services. Upon receipt of payment in full, title to the equipment shall transfer to you. To the extent that less than full payment for equipment is not tendered herewith, you grant to MMC a purchase money security interest in the equipment ordered under this agreement and in the proceeds thereof in the amount of the equipment purchase price.

3. **Limited Warranty** - MMC is the owner of the equipment free from all liens and encumbrances other than any purchase money security interest retained by MMC supplier(s). EXCEPT AS PROVIDED IN ANY APPLICABLE, EFFECTIVE MANUFACTURER'S WARRANTY, OR AS OTHERWISE PROVIDED IN THIS PARAGRAPH, MMC MAKES NO WARRANTIES OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED, TO YOU OR TO ANY OTHER PURCHASER OR LESSEE OF THE EQUIPMENT. WITHOUT LIMITING THE FOREGOING, MMC SPECIFICALLY MAKES NO WARRANTY THAT THE EQUIPMENT SOLD HEREUNDER IS FIT FOR ANY PARTICULAR PURPOSE. YOU AGREE THAT THE LIABILITY OF MMC FOR ANY BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT OF ANY DEFECTIVE PART OF THE EQUIPMENT SOLD HEREUNDER. YOU HEREBY WAIVE ALL OTHER WARRANTIES, GUARANTEES, CONDITIONS OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, WHETHER OR NOT OCCASIONED BY MMC NEGLIGENCE AND INCLUDING WITHOUT LIMITATION, LIABILITY FOR ANY LOSS OR DAMAGE RESULTING FROM THE INTERRUPTION OR FAILURE IN THE OPERATION OF ANY EQUIPMENT PROVIDED HEREUNDER. MMC is not liable for damages to your vehicle which may result from installation or service or equipment by any person who is not an employee of MMC.

4. **Payment Terms** - Payment is due in full with the execution of this order by you or as otherwise agreed to by the parties. A monthly late charge shall accrue on any amount remaining unpaid, at the lesser of one and one-half percent (1 1/2%) per month or the maximum permitted by applicable law.

5. **FFC Matters** - You are solely responsible for compliance with FFC rules and with the rules and regulations of any other federal, state or local regulatory agency. Neither MMC nor any of its employees is an agent or representative of you in FFC matters or otherwise.

**DATA REQUEST No. 8:** To MMC's knowledge, how many other CMRS providers provide wireless telecommunication service in the local serving areas of Citizens, Alma and Mid-Missouri Telephone Companies? Please identify by name.

**RESPONSE:**

Sprint, Cingular, T-Mobile, Verizon, Nextel, and US Cellular are all presently operating facilities in portions of MMC's FCC licensed service area. MMC does not have first hand knowledge as to the extent of coverage each of these carriers may or may not provide in the referenced LEC wirecenters.