

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

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

**OFFICE OF PUBLIC COUNSEL'S PRETRIAL BRIEF**

The Office of the Public Counsel cannot support Missouri RSA No. 5 Partnership's Application based upon its contents and the testimony in the prefiled record. In Case No. TX-2006-0169, the Public Service Commission adopted its rules for designation of Eligible Telecommunications Carriers under the federal Universal Service provisions of the Federal Telecommunications Act of 1996. On May 15, 2006, the Secretary of State published the PSC's order of final rulemaking in the Missouri Register. The primary and controlling law in this case is 4 CSR 240-3.570, Requirements for Carrier Designation as Eligible Telecommunications Carriers. This rule not only identifies the requirements and standards for ETCs, but also serves as a guide to the Commission's view of an ETC designation that promotes the public interest. The essence of the rule is that wireless ETCs must be bound by the same obligations of the landline ETCs to provide public switched access infrastructure, technology, information and telecommunications facilities and functions at reasonable prices. (Federal Telecommunication Act of 1996, Section 259 (a) and (b)).

An eligible carrier must provide all services supported by federal support mechanisms in a designated service area. Eligible carriers must use media of general

distribution to advertise the availability and charges for universal service elements. (47 U.S.C. Section 214(e)(1)(A)-(B) )

Public Counsel would rephrase the PSC rule's core ETC requirement as a mandate that wireless customers in this proposed service area have the same rights, obligations, and consumer protections as guaranteed under Commission rules to wireline customers.

The three case issues reflect that the parties agree on the applicable law. The issues stem from the application of this body of law to the facts as presented in the application, the applicant's testimony and the other parties' testimony.

Public Counsel cannot now support the application because the applicant has left too many unanswered questions on its compliance with the requirements for ETC status. Most of these questions arise from the lack of specifics to round out the manner it will carry out the ETC obligations. In addition, Public Counsel wants a clear, unambiguous, and unequivocal statement by the applicant that it will accept and adopt the hard won consumer protections, such as billing and collection rights (Chapter 33), adequacy and quality of service (Chapter 32, 30) and grievance and complaint resolution (Chapter 33). With the receipt of federal USF funds, the wireless ETC should not only provide the same essential services provided by wireline carriers, but also provide the same level of consumer protections.

This is especially important given contradictory hearing testimony by the applicant's officer on the acceptance and adoption of these consumer protections in *In the Matter of the Application of Northwest Missouri Cellular Limited Partnership for Designation as a Telecommunications Company Carrier Eligible for Federal Universal*

*Service Support Pursuant to Section 254 of the Telecommunications Act of 1996. Case No. TO-2005-0466.* The commitment to these protections is essential to Public Counsel.

Although the applicant supplemented its testimony to take into account the Commission's then pending ETC rule and to add more detailed information consistent with the rule, this supplement did not address OPC witness Barbara Meisenheimer's identification of specific concerns and deficiencies in her May 9, 2006, rebuttal testimony. Here is a short description of those concerns and deficiencies:

- The terms and conditions of the Company's Lifeline and Link-Up proposals are not fully described;
- There is no assurance that the Company's rates and terms of service will not change adverse to the customer's interest once the Company gains PSC approval;
- Whether the Company will commit to inform prospective Lifeline customers of the price of the lowest cost available handset;
- The misleading comparison of Lifeline rates identified in James Simon's direct testimony, Appendix K;
- The failure to demonstrate that the ILEC equivalent plan is equivalent in terms of price or terms of service to the ILECs' basic local services;
- The failure to identify any equipment change fees, term commitments, early termination fees, or credit check that may be a condition of service for the Lifeline and ILEC equivalent plans;
- Regarding calling scopes, the failure to address how its services compare to mandatory expanded basic local services, such as traditional EAS or Mark

Twain's company-wide calling scopes. It is still unclear whether toll and roaming charges will apply to calls to and from traditionally toll free areas;

- Resale is not identified among the methods listed in witness Simon's supplemental direct testimony (page 13) as an option for serving current unserved areas (although resale is referred to on page 17). It is still unclear whether the Company is adequately prepared to utilize resale as an option for serving customers in a timely manner;
- The public interest would be served if MO5 limited customer contributions to construction or extensions to no more than the amount the ILEC charges.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed, emailed and/or hand delivered this 14<sup>th</sup> day of June, 2006 to the attorneys of record.

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