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Service Commission

SOUTHWESTERN BELL TELEPHONE, L.P.,

d/b/a AT&T MISSOURI

CASE NO. TO-2006-0172

REBUTTAL TESTIMONY

OF

JAMES E. STIDHAM, JR.

Dallas, Texas
March 1, 2006

Exhibit No. 14
Case No(s) TO-2006-0172
Date 6-22-06 Rptr KF

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INTRODUCTION

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

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

5 **Q. HAVE YOU PREPARED AN EXHIBIT THAT PROVIDES INFORMATION**
6 **REGARDING YOUR EMPLOYMENT, EDUCATIONAL BACKGROUND AND**
7 **PREVIOUS APPEARANCES BEFORE STATE PUBLIC UTILITY**
8 **COMMISSIONS?**

9 A. Yes. That information is included in Schedule JES-1, which is attached to my Rebuttal
10 Testimony.

11 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

12 A. The purpose of my Rebuttal Testimony is to respond to the Direct Testimonies of
13 Kathryn G. Zentgraf, Jonathan D. Reeves, and James A. Simon filed on December 29,
14 2005 in support of the application of Missouri RSA No. 5 Partnership (“MO5”)
15 requesting that MO5 be designated as an Eligible Telecommunications Carrier (“ETC”)
16 for purposes of receiving Federal Universal Service Fund (“FUSF”) support. (hereinafter,
17 “MO5’s Application”). I recommend that the Commission consider the information and
18 analysis I provide in assessing whether to grant MO5’s Application.

19 **Q. PLEASE IDENTIFY THE MAIN POINTS CONVEYED BY YOUR REBUTTAL**
20 **TESTIMONY.**

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

22 • MO5’s Application should be tested against the analytical framework adopted by the
23 Federal Communications Commission (“FCC”) in its March, 2005 ETC Designation

1 Order.¹ It is particularly appropriate that the Commission rely on the FCC's ETC
2 Designation Order because doing so will advance three important policies. These
3 policies are, first, to "improve the long-term sustainability of the universal service
4 fund[;]"² second, to "allow for a more predictable ETC designation process[;]"³ and third,
5 to "ensure designation of carriers that are financially viable, likely to remain in the
6 market, willing and able to provide the supported services throughout the designated
7 service area, and able to provide consumers an evolving level of universal service."⁴ The
8 FCC expressly noted that state decisions regarding ETC status "have national
9 implications that affect the dynamics of competition, the national strategies of new
10 entrants, and the overall size of the federal universal service fund."⁵

- 11 • Based on the analytical framework established by the FCC's ETC Designation Order,
12 MO5 has not met its burden of proof to show that granting its Application would be
13 consistent with the public interest. MO5's position is that it is not required to show that
14 its application is in the public interest in non-rural service areas, and as such MO5
15 neglects to provide evidence that its application meets the public interest showing
16 required by Section 214 (e)(2) of the Communications Act of 1934 as amended by the
17 Telecommunications Act of 1996 ("the Act") in the wire centers of AT&T Missouri in
18 which MO5 requests ETC status. However, the FCC has soundly rejected MO5's
19 position. On this point, the law is clear - an applicant for ETC designation must
20 demonstrate that granting its request is "consistent with the public interest, convenience

¹ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 20 FCC
Red 6371 (2005) ("ETC Designation Order").

² ETC Designation Order, para.2 .

³ ETC Designation Order, para.1 .

⁴ ETC Designation Order, para.6 0.

⁵ ETC Designation Order, para.6 0.

1 and necessity,” regardless of whether the applicant seeks designation in an area served by
2 a rural or non-rural carrier.⁶ MO5 offers no public interest evidence specific to the areas
3 served by AT&T Missouri’s wire centers, and to the extent that it purports to rely on
4 evidence relating to the wire centers of other, rural carriers, that evidence is insufficient
5 insofar as the wire centers of non-rural carriers (such as AT&T Missouri) are concerned.

- 6 • Granting applications like that of MO5, when considered collectively, has a material
7 impact on the FUSF and negatively impacts Missouri consumers by increasing FUSF
8 contributions.

9 **THE POLICY SIGNIFICANCE OF THE FCC’S ETC DESIGNATION ORDER**

10 **Q. PLEASE IDENTIFY THE PERTINENT PORTIONS OF THE FCC’S ETC**
11 **DESIGNATION ORDER.**

12 A. In its ETC Designation Order, the FCC adopted many of the recommendations of the
13 Federal-State Joint Board on Universal Service (“Joint Board”). Specifically, the FCC
14 adopted certain requirements for applicants seeking designation as an ETC. The FCC
15 also “encourage[d] states that exercise jurisdiction over ETC designations pursuant to
16 section 214(e)(2) of the Act. to adopt these requirements when deciding whether a
17 common carrier should be designated as an ETC.”⁷

18 The FCC’s ETC Designation Order also adopted certain factors for use in the public
19 interest analysis required by Section 214(e)(2) of the Act. The FCC “strongly
20 encourage[d] state commissions to consider the same factors in their public interest
21 reviews.”⁸

⁶ 47 U.S.C. § 214(e)(2), (6).

⁷ ETC Designation Order, para.1 .

⁸ ETC Designation Order, para.4 1.

1 The FCC's requirements and public interest criteria are appropriate and reasonable.
2 Applying them here would help achieve a reasonable level of consistency in treatment of
3 ETC applications across the nation. It would also ensure that MO5's Application (and
4 others) would be subjected to the same requirements and public interest criteria
5 regardless of whether such applications were filed with a state commission or the FCC.

6 **Q. DOES MO5 COMMENT ON THE APPLICATION OF THE ETC DESIGNATION**
7 **ORDER TO THIS CASE?**

8 A. Yes. Paragraph 54 of MO5's Application states that "[t]he Commission may choose to
9 evaluate the MO5 application using the guidance recently announced in the [ETC
10 Designation Order]. Those guidelines are wholly consistent with the precedent cited by
11 MO5 and the evaluation of the MO5 application would result in a favorable action under
12 those guidelines."

13 **Q. SHOULD THE COMMISSION APPLY THE FCC'S ETC REQUIREMENTS AND**
14 **PUBLIC INTEREST FACTORS TO THIS CASE?**

15 A. Yes. In its ETC Designation Order, the FCC adopted requirements and public interest
16 tests applicable to ETC applications filed with the FCC. This Commission can and
17 should use the FCC's criteria in evaluating MO5's application. The FCC strongly
18 recommended, and AT&T Missouri strongly supports, that the same criteria used by the
19 FCC also be applied to all ETC applications filed with state commissions. In other
20 words, the ETC Designation Order's requirements and public interest factors are
21 "Permissive Guidelines for State ETC Designation Proceedings"⁹ that this Commission
22 should apply here.

⁹ ETC Designation Order, para. 58 (caption).

1 Q. ARE THERE OTHER REASONS WHY AT&T MISSOURI SUPPORTS
2 APPLYING THE FCC'S OWN REQUIREMENTS AND PUBLIC INTEREST
3 FACTORS TO THIS CASE?

4 A. Yes, there are a number of them. Missouri's use of these requirements and public interest
5 factors will contribute to a rational, comprehensive, national policy to promote the
6 advancement and preservation of universal service. While the FCC did not require states
7 to use them, it found that, collectively, state decisions regarding ETC status "have
8 national implications that affect the dynamics of competition, the national strategies of
9 new entrants, and the overall size of the federal universal service fund."¹⁰ The FCC
10 believes that consistent and uniform state commission use of the FCC's requirements and
11 public interest factors will produce the best results.

12 The FCC's requirements and public interest factors are fully consistent with the Act and
13 the recommendations of the Joint Board, which spent considerable time analyzing the
14 issue. AT&T Missouri believes that the FCC's conclusions are correct: that uniformly
15 applying the requirements and public interest factors set forth in the ETC Designation
16 Order will result in a "more rigorous ETC designation process[;]"¹¹ will "improve the
17 long-term sustainability of the universal service fund[;]"¹² will "allow for a more
18 predictable ETC designation process[;]"¹³ and will "ensure designation of carriers that
19 are financially viable, likely to remain in the market, willing and able to provide the
20 supported services throughout the designated service area, and able to provide consumers
21 an evolving level of universal service."¹⁴

¹⁰ ETC Designation Order, para.6 0.

¹¹ ETC Designation Order, para.2 .

¹² ETC Designation Order, para.2 .

¹³ ETC Designation Order, para.1 .

¹⁴ ETC Designation Order, para.6 0.

1 The FCC's requirements provide for certain consumer protections and a review, on a
2 case-by-case basis, of the factors necessary to ensure that each ETC provides a local
3 usage component in its universal service offerings that is comparable to the plan offered
4 by the incumbent local exchange carrier ("ILEC") in the area. Also, they require the
5 ETC to be able to remain operational in case of an emergency, so that consumers will
6 have service when they need it most. They create an annual review of the actions of an
7 ETC, so the qualification process is ongoing, and they provide clear planning and
8 reporting requirements to show that the use of FUSF support complies with Section 254
9 of the Act.

10 AT&T Missouri also supports the FCC's reaffirmation that a public interest showing is
11 required in all ETC proceedings, regardless of whether the request for ETC status is
12 limited to areas served by rural telephone companies or also includes areas served by

1 non-rural telephone companies (as in the case of AT&T Missouri).¹⁵ The ETC

2 Designation Order is clear in this regard:

3 Section 214(e)(2) of the Act gives states the primary responsibility to designate
4 ETCs and prescribes that all state designation decisions must be consistent with
5 the public interest, convenience, and necessity.¹⁶

6
7 The Act is likewise clear:

8
9 Upon request and consistent with the public interest, convenience, and
10 necessity, the State commission may, in the case of an area served by a
11 rural telephone company, and shall, in the case of all other areas, designate
12 more than one common carrier as an eligible telecommunications carrier
13 for a service area designated by the State commission.¹⁷

14
15
16 **Q. MS. ZENTGRAF STATES THAT THE FCC'S ETC DESIGNATION ORDER**
17 **DOES NOT REPRESENT "FINAL FCC ACTION." (ZENTGRAF DIRECT, P.**
18 **15). IS SHE CORRECT?**

19
20 A. No. While the ETC Designation Order became effective June 24, 2005, the effective date
21 of the FCC's implementing rules - 47 C.F.R §§54.202 and 54.209 - was deferred by the

¹⁵ ETC Designation Order, para. 3 ("We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier."); para. 40 ("Under section 214 of the Act, the Commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity."); para. 42 ("We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier."); para. 61 ("Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.").

The FCC had earlier clarified that a carrier's simply having met Section 214(e)(1) does not fulfill meeting the public interest requirement. For example, when the FCC reached its decision in In the Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Application for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004) ("Virginia Cellular ETC Designation Order"), it stated: "We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act. We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance." Virginia Cellular ETC Designation Order, para. 27.

¹⁶ ETC Designation Order, para. 61. (emphasis added).

¹⁷ 47 U.S.C. Section 214(e)(2). (emphasis added).

1 Office of Management and Budget (“OMB”) pending approval of the rules’ information
2 collection requirements.¹⁸ OMB approval followed on October 14, 2005¹⁹ - before MO5
3 filed its Application with the Commission. To the extent that Ms. Zentgraf might be
4 basing her view on various pending petitions for reconsideration of the ETC Designation
5 Order, the FCC’s rules provide that “[w]ithout special order of the [Federal
6 Communications] Commission, the filing of a petition for reconsideration shall not
7 excuse any person from complying with any rule or operate in any manner to stay or
8 postpone its enforcement.”²⁰ To the best of my knowledge, no order has been entered by
9 the FCC staying its ETC Designation Order.

10 **Q. WHAT ACTIONS WOULD YOU RECOMMEND TO THE COMMISSION**
11 **REGARDING THE ETC DESIGNATION ORDER?**

12 A. I recommend that the Commission apply the FCC’s requirements and public interest
13 analysis stated in the ETC Designation Order to MO5’s Application and all other pending
14 (and future) ETC applications until the Commission completes its rulemaking
15 proceeding, at which time the requirements of the new rule should apply to MO5 (in the
16 event that the Commission grants it ETC status). As discussed above, MO5’s
17 Application appears to consent to the Commission’s use the FCC’s ETC Designation
18 Order as the basis for evaluating its Application.

¹⁸ See, 70 Fed. Reg. 29960 (May 25, 2005).

¹⁹ See, 70 Fed. Reg. 66407 (November 2, 2005).

²⁰ 47 CFR § 1.429(k).

1 **THE REQUIREMENTS OF THE ETC DESIGNATION ORDER**

2 **Q. WHAT ARE THE SPECIFIC REQUIREMENTS OF THE FCC'S ETC**
3 **DESIGNATION ORDER?**

4 A. The ETC Designation Order reaffirms that all applications for ETC status must be in the
5 public interest. In addition, the Order requires a carrier requesting ETC status to meet
6 certain eligibility requirements:

7 (1) commit to provide service throughout its proposed designated service area to all
8 customers,²¹ as demonstrated by submission of a five-year plan that describes with
9 specificity proposed improvements or upgrades to the applicant's network on a wire
10 center-by-wire center basis throughout its proposed designated service area;²²

11 (2) demonstrate its ability to remain functional in emergency situations;²³

12 (3) demonstrate that it will satisfy appropriate consumer protection and service quality
13 standards;²⁴

14 (4) demonstrate that it offers a local usage plan comparable to the one offered by the
15 incumbent LEC in the service areas for which it seeks designation;²⁵ and

16 (5) certify that the carrier acknowledges that the FCC may require it to provide equal
17 access to long distance carriers if all other ETCs withdraw from the market.²⁶

18 These requirements are explained in detail in Part IV(A) of the FCC's ETC Designation
19 Order.

²¹ ETC Designation Order, para.2 1.

²² ETC Designation Order, para.2 3.

²³ ETC Designation Order, para.2 5.

²⁴ ETC Designation Order, para.2 8.

²⁵ ETC Designation Order, para.3 2

²⁶ ETC Designation Order, para.3 5.

1 Q. **DOES THE ETC DESIGNATION ORDER CONVEY A FRAMEWORK FOR**
2 **APPLYING A PUBLIC INTEREST ANALYSIS?**

3 A. Yes. The FCC's ETC Designation Order "set[s] forth our public interest analysis for
4 ETC designations, which includes an examination of (1) the benefits of increased
5 consumer choice, (2) the impact of the designation on the universal service fund, and (3)
6 the unique advantages and disadvantages of the competitor's service offering."²⁷ These
7 considerations are explained in detail in Part IV(B) of the FCC's ETC Designation Order.

8 Q. **IS THERE ANY ON-GOING OR ANNUAL REVIEW OF THE ETC'S**
9 **PERFORMANCE?**

10 A. Yes. Each year, the reviewing authority assesses the performance of each ETC certified
11 by it, so as to decide whether to recertify the carrier as an ETC. Once approved to be an
12 ETC, an ETC must provide annually a progress report on its five-year service quality
13 improvement plan; detailed information on any outage; the number of requests for service
14 from potential customers within the ETC's service areas that were unfulfilled during the
15 past year; the number of complaints per 1,000 handsets or lines; certification that it is
16 complying with applicable service quality standards and consumer protection rules;
17 certification that the carrier is able to function in emergency situations; certification that
18 the carrier is offering a local usage plan comparable to that offered by the ILEC; and,
19 certification that the carrier acknowledges that the FCC may require it to provide equal
20 access.²⁸ These annual certification and reporting requirements are explained in detail in
21 Part V of the FCC's ETC Designation Order.

²⁷ ETC Designation Order, para.1 8.

²⁸ ETC Designation Order, para.6 9.

1 **ANALYSIS OF MO5's APPLICATION AND SUPPORTING TESTIMONY**

2 **Q. IN YOUR OPINION, BASED ON MO5'S APPLICATION AND DIRECT**
3 **TESTIMONIES, HAS MO5 SHOWN THAT IT MEETS THE REQUIREMENTS**
4 **STATED IN PART IV(A) OF THE FCC'S ETC DESIGNATION ORDER?**

5 **A.** I cannot conclude that MO5 meets these FCC requirements. More specifically, I cannot
6 address the quality or completeness of MO5's evidence regarding the FCC's "five year
7 plan" requirement because the plan submitted by MO5 is classified as highly confidential
8 ("HC") and I cannot view the information, pursuant to the protective order entered in this
9 case. In addition, I did not see sufficient information in the MO5's Application or Direct
10 Testimonies demonstrating MO5's ability to remain functional in emergency situations.
11 Although MO5 generally addressed its back-up power capabilities (Simon Direct, pp. 20-
12 21), I found no evidence directed to whether MO5 "is able to reroute traffic around
13 damaged facilities, and is capable of managing traffic spikes resulting from emergency
14 situations[,]" as the FCC requires.²⁹

15 **Q. IN YOUR OPINION, BASED ON MO5's APPLICATION AND DIRECT**
16 **TESTIMONIES, HAS MO5 SHOWN THAT DESIGNATING IT AS AN ETC**
17 **WOULD BE IN THE PUBLIC INTEREST?**
18

19 **A.** No. Indeed, Ms Zentgraf appears to contend that no such showing is required of MO5
20 insofar as its request for ETC status among AT&T Missouri's wire center areas are
21 concerned. She states that this Commission "must designate more than one carrier as an
22 ETC in an area served by a non-rural telephone company if the requesting carrier meets
23 the requirements of Section 214(e)(1)." (Zentgraf Direct, p. 6) (emphasis added).
24 However, she neglects to mention that Section 214(e)(2) specifically includes a public

²⁹ ETC Designation Order, para.2 5.

1 interest analysis. Section 214(e)(2) states that “[u]pon request and consistent with the
2 public interest, convenience and necessity, the State commission may, in the case of an
3 area served by a rural telephone company, and shall, in the case of all other areas,
4 designate more than one common carrier as an eligible telecommunications carrier for a
5 service area, so long as each additional requesting carrier meets the [eligibility]
6 requirements of paragraph (1).” (emphasis added).

7 Moreover, the FCC has reaffirmed that an applicant for ETC designation must
8 demonstrate that granting its request is consistent with the public interest, convenience
9 and necessity regardless of whether the applicant seeks designation in an area served by a
10 rural or non-rural carrier.³⁰ This Commission has likewise held that “in order to be
11 granted ETC status in the non-rural areas, an [ETC applicant] must also show that the
12 designation will be, ‘consistent with the public interest, convenience and necessity.’”³¹

13 **Q. SETTING ASIDE MS. ZENTGRAF’S VIEWS REGARDING THE**
14 **APPLICABILITY OF THE PUBLIC INTEREST REQUIREMENT FOR AREAS**
15 **SERVED BY NON-RURAL CARRIERS, DOES MO5 PRESENT SUFFICIENT**
16 **EVIDENCE THAT GRANTING ITS APPLICATION WOULD BE IN THE**
17 **PUBLIC INTEREST?**

³⁰ 47 U.S.C. § 214(e)(2),(6); see also ETC Designation Order, para. 3 (“We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier.”); para. 40 (“Under section 214 of the Act, the commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity.”); para. 42 (“We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.”); para. 61 (“Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.”).

³¹ In the Matter of the Application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TO-2003-0531, Amended Report and Order, November 30, 2004, p. 27.

1 A. No. MO5 focuses primarily on the argument that granting it ETC status would increase
2 competition.³² But MO5's emphasis on the importance of competition rests on outdated
3 FCC orders. Among these is a reference to a 1995 FCC Order predating the passage of
4 the Act, presumably standing for the proposition that "stimulating competition, whenever
5 possible, is a paramount FCC objective."³³ Such references are no longer helpful, nor
6 even accurate. On several occasions since, the FCC has made clear that "the value of
7 increased competition, by itself, is unlikely to satisfy the public interest test."³⁴

8 MO5 also asserts that wireless service would add public health and safety benefits that
9 would be in the public interest. MO5 notes that with a cell phone (whether or not active),
10 an individual can call 911 using MO5's network. However, my understanding (based on
11 the testimony of other wireless ETC applicants) is that all wireless carriers provide access
12 to 911 if there is a signal from the wireless carrier's network and the individual is using a
13 compatible technology.³⁵ Consequently, granting MO5's application might afford public
14 health and safety benefits only if none of the holders of at least six other wireless licenses
15 referenced by Ms. Zentgraf's Direct Testimony (at p. 25) provide a usable signal. MO5
16 has not shown that this is the case. In short, MO5 has not shown that it would be the only
17 provider of wireless service in the area for which MO5 is requesting ETC status, or at a
18 minimum, that it would be the preferred provider in an area where another wireless

³² See, MO5's Application, paras. 28-32.

³³ See, MO5's Application, para. 28 & n. 24.

³⁴ ETC Designation Order, para. 44; Virginia Cellular ETC Designation Order, para. 4.

³⁵ Significantly, wireless E911 service would not be limited to MO5 subscribers. MO5's wireless E911 service is available to any compatible handset in MO5's coverage area, whether or not the user is a MO5 customer, the customer of a competitor or not even a customer of any service provider. The MO5 network routes all 911 calls regardless of the status of the caller. This is even true for a customer whose wireless phone service has been disconnected.

1 provider (or providers) offers service. Thus, the record affords the Commission no basis
2 to conclude that granting MO5's Application would provide Missourians any meaningful
3 public health and safety benefits.

4 **Q. DOES MO5 OFFER ANY OTHER ARGUMENTS FOR WHY ITS REQUEST**
5 **SHOULD BE APPROVED?**

6 A. Yes. MO5 contends that designation of wireless carriers has had no adverse impact on
7 the FUSF and that its own designation as an ETC would not have a substantial impact on
8 the overall size of the FUSF.³⁶ Ms. Zentgraf's Direct Testimony (at p. 16) contends that
9 the amount MO5 would receive is small when compared both to the amount received by
10 the ILEC and to the amount received by Nextel when the FCC granted its ETC requests
11 in several states almost two years ago.

12 **Q. HAS THERE BEEN A MATERIAL IMPACT TO THE FUSF AS A RESULT OF**
13 **COMPETITIVE ETC'S GAINING HIGH COST SUPPORT?**

14 A. Yes. Ms. Zentgraf's comparison of the support received by the ILEC is at best a red
15 herring. Ms. Zentgraf compares the projected USF high cost support that MO5 would
16 receive for the few, or maybe several, thousand lines it would serve in its proposed
17 service area (within approximately five counties) to the total FUSF high-cost support
18 received statewide by AT&T Missouri and the other Missouri ILECs that collectively
19 provide over 2.6 million working loops. That comparison is not helpful.

20 The FCC's granting of Nextel's requests is likewise of no help to MO5 because it
21 predated the ETC Designation Order calling for a "more rigorous ETC designation
22 process."³⁷ Also worth mentioning is that Nextel's continued ETC status will be
23 reviewed by the FCC this coming October when all carriers previously granted ETC

³⁶ Zentgraf Direct, pp. 12-13, 16-17.

³⁷ ETC Designation Order, para.2 .

1 status by the FCC will be reviewed using the requirements stated in the FCC's ETC
2 Designation Order.

3 Ms. Zentgraf points to the steady FUSF contribution factors from the third quarter of
4 2003 through fourth quarter of 2004 (in the range of about 8.9% to 9.5%) and the current
5 10.2% contribution factor as proof that support provided to competitive ETCs has not
6 impacted the FUSF. Ms. Zentgraf claims that for the period in which there was an
7 exception (i.e., 10.7% for the first quarter, 2005; 11.1% for the second quarter, 2005), the
8 contribution factor increase was attributable to escalating support costs for the Schools
9 and Libraries Program.³⁸ But Ms. Zentgraf's analysis is faulty. First, she fails to note
10 that the FCC used surplus funds from the Schools and Libraries program to stabilize the
11 contribution factor during the latter part of 2003 through the fourth quarter of 2004. In
12 other words, the contribution factor was suppressed by the infusion of these surplus
13 funds. When the use of the surplus funds ended at the start of 2005, the contribution
14 factor jumped to 10.7% for the first quarter of 2005, and it then jumped to 11.1% for the
15 second quarter of 2005. The contribution factor has been 10.2% since third quarter 2005.

16 In any case, the contribution factor does not tell the full story, because it is the net result
17 of many dynamic elements of the different components of the FUSF. To isolate the
18 effect of wireless ETCs on the FUSF, one must look at the estimates of demand for the
19 high-cost program from which wireless ETCs draw support. Based on the Universal
20 Service Administration Company's ("USAC's") demand projections, for the third quarter
21 of 2005, annualized wireless high cost support was about \$776 million. In less than a
22 year, (i.e., the annualized second quarter of 2006), wireless high cost support is expected

³⁸ Zentgraf Direct, pp. 12-13.

1 to increase by approximately \$200 million, to an estimated \$972 million. The \$972
2 million received by wireless ETCs represents over 23% of all high-cost support. To put
3 this into perspective, in the absence of payments to wireless ETCs, the current FUSF
4 contribution factor of 10.2% (and the consequent FUSF surcharge) would decrease by
5 about 13.7%, to about 8.8%. And, given the recent spate of wireless ETC applications
6 for high-cost support, one may well see an increase in this percentage and consequent
7 surcharge.

8 **Q. SINCE MO5 CONTRIBUTES TO THE FUSF, ISN'T IT ENTITLED TO**
9 **RECEIVE MONEY FROM THE FUND?**

10 A. Wireless carriers often make the argument that since they contribute to the FUSF they are
11 entitled to receive support from it. The FUSF is a federal program that provides support
12 for essential telecommunications service in areas where the cost of providing service is
13 greater than the carrier can recover from a customer. Interexchange carriers ("IXCs")
14 were, and still are, large contributors to the FUSF, yet IXCs have never received any high
15 cost support. Similarly, AT&T Missouri contributes several times more dollars into the
16 FUSF than it receives in FUSF support. On the other hand, Chariton Valley Telephone, a
17 member of the Chariton Valley family of companies³⁹ whose holdings include a portion
18 of MO5, is estimated to contribute less than 2% of the dollars it receives annually in
19 FUSF high-cost support, based on the lines reported to USAC and a limited amount of
20 interstate revenue. It is also unlikely that MO5's contribution into the FUSF will be
21 sufficient to cover the high-cost support it is asking to receive. Roughly calculated, MO5

³⁹ The Chariton Valley family of companies includes several lines of business, including local telephone, cellular, voice mail, and ISDN (Integrated Service Digital Network) services. (see, <http://www.cvalley.net>).

1 would need to have about 88,000 access lines with monthly revenue of \$50 per line to
2 cover the cost of its high-cost support it would receive as an ETC.

3 **Q. WILL MISSOURI MISS OUT ON THE BENEFITS OF INCREASED HIGH-**
4 **COST SUPPORT IF MO5'S APPLICATION IS DENIED AND OTHER STATE**
5 **COMMISSIONS APPROVE COMPETITIVE ETC APPLICATIONS?**

6 A. Missourians who would purchase MO5's service may benefit (assuming, however, that
7 there are no other wireless carriers serving their area that could make a better price/value
8 offer than MO5). But the fact is that the FUSF will grow larger, and all Missouri
9 ratepayers will contribute more if MO5's Application is granted than if its Application is
10 denied. Furthermore, while other state commissions will impact the size of the FUSF if
11 they grant ETC applications, these other state commissions have stepped up to their
12 fiduciary responsibility to require a more rigorous review of ETC applications. For
13 example, among the AT&T ILECs' 13 states, the Oklahoma Corporation Commission
14 has adopted rigorous new rules for wireless ETCs,⁴⁰ the Michigan Public Service
15 Commission has adopted the FCC's ETC Designation Order,⁴¹ the Indiana Utility
16 Regulatory Commission has stated its intention to adopt the ETC Designation Order,⁴²
17 the Kansas Corporation Commission and this Commission each has opened rulemakings
18 considering adopting the ETC Designation Order,⁴³ and the Public Utility Commission of
19 Texas has announced that it will open a rulemaking to consider adopting the ETC
20 Designation Order. As state commissions have intensified their scrutiny of ETC
21 applications, several carriers, including Budget Phone, have recently withdrawn

⁴⁰ See, OAC 165:55-23-1, et seq.

⁴¹ See, In the Matter, On the Commission's Own Motion, to Examine the Commission's Role in Eligible Telecommunications Carrier Determinations, Case No. U-14530, Order, 2005 Mich PSC LEXIS 356 (2005).

⁴² See, In the Matter of the Designation of Eligible Telecommunications Carriers by the Indiana Utility Regulatory Commission Pursuant to the Telecommunications Act of 1996 and Related FCC Orders, Cause No. 41052-ETC 47, Opinion, 2005 Ind. PUC LEXIS (2005).

⁴³ See, Docket No. 06-GIMT-446-GIT (Kansas); Docket No. TX-2006-0169 (Missouri).

1 applications for ETC status, after their application received closer study by various
2 commissions' staffs and/or opposing testimony was filed by consumer/public counsel
3 and/or interveners. These developments reinforce the FCC's observation that
4 "collectively these decisions have national implications that affect the dynamics of
5 competition, the national strategies of new entrants, and the overall size of the federal
6 universal service fund."⁴⁴

7 **Q. MO5'S TESTIMONY STATES THAT IT IS READY TO UNDERTAKE**
8 **CARRIER OF LAST RESORT OBLIGATIONS IF THE EXISTING LEC IN ITS**
9 **DESIGNATED ETC SERVICE AREA SEEKS TO RELINQUISH ITS ETC**
10 **STATUS. (SIMON DIRECT, P. 16). PLEASE COMMENT ON THIS**
11 **STATEMENT.**

12 A. I cannot comment on whether MO5 is in fact ready to take on the Carrier of Last Resort
13 obligations under such a circumstance. Furthermore, I am not sure exactly what MO5
14 means when it says it is "ready to undertake carrier of last resort obligations" should this
15 circumstance occur.

16 Section 214(e)(1) of the Act states that "[a] common carrier designated as an eligible
17 telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive
18 universal service support in accordance with section 254 of this title and shall, throughout
19 the service area for which the designation is received . . . offer the services that are
20 supported by Federal universal service support mechanisms." (emphasis added). Section
21 214(e)(4) states that "[a] State commission . . . shall permit an eligible
22 telecommunications carrier to relinquish its designation as such a carrier in any area
23 served by more than one eligible telecommunications carrier."

⁴⁴ ETC Designation Order, para. 60.

1 In its ETC Designation Order, the FCC encouraged state commissions to "harmonize" an
2 ETC applicant's build-out commitments "with any existing policies regarding line
3 extensions and carrier of last resort obligations."⁴⁵ Missouri's policy on these subjects is
4 best reflected in Section 386.020(6) RSMo. 2000, which defines a "carrier of last resort"
5 as "any telecommunications company which is obligated to offer basic local
6 telecommunications service to all customers who request service in a geographic area
7 defined by the commission and cannot abandon this obligation without approval from the
8 commission."

9 Section 214(e)(1) makes it very clear that an ETC must offer basic local service
10 throughout the service area for which designation is received and Section 214(e)(4)
11 requires Commission approval to relinquish service. Missouri's policy likewise
12 emphasizes the offering of service to all requesting customers and that the carrier cannot
13 abandon this obligation without Commission approval. MO5 should unequivocally state
14 its commitment to undertake carrier of last resort obligations pursuant to federal law and
15 Missouri's public policy.⁴⁶

16 **Q. WHAT HIGH-COST SUPPORT DOES AT&T MISSOURI RECEIVE, AND HOW**
17 **DOES THIS TYPE OF SUPPORT WORK?**

18 A. AT&T Missouri does not receive what is traditionally considered FUSF high-cost
19 support. AT&T Missouri does receive a small amount of FUSF Interstate Access

⁴⁵ ETC Designation Order, para.2 1.

⁴⁶ Given the federal obligations imposed on ETCs and the FCC's express encouragement to consider state carrier of last resort policies, the Commission is not precluded from reliance on this statute as an indicator of sound public policy merely because service provided pursuant to a radio license from the FCC is not regarded as a "telecommunications service" (Section 386.020(53)(i), RS Mo. 2000) or because the statutory definition of a "telecommunications company" turns on the provision of "telecommunications service." Section 386.020(51), R S Mo. 2000).

1 Support ("IAS").⁴⁷ IAS is the result of the FCC's CALLS Order, which decreased
2 interstate access rates and replaced some of the lost revenue by raising the Subscriber
3 Line Charge ("SLC") cap and providing FUSF high-cost support.⁴⁸ AT&T Missouri
4 receives IAS in its zone 4 wire centers, and five of the six AT&T Missouri wire centers in
5 which MO5 is requesting ETC status are zone 4 wire centers (Moberly is zone 3). Under
6 the FCC's CALLS Order, total nationwide IAS is capped at \$650 million. Addition of
7 new ETCs and any additional access lines associated with the new ETCs dilutes the
8 support available to the original recipients. The original support calculations were
9 developed to provide the support level deemed necessary for the original carriers.
10 Increasing the number of carriers and the number of access lines decreases the support
11 available to carriers currently receiving the support. Thus, carriers like MO5 diminish
12 the IAS provided to the original recipients.

13 **Q. OTHER THAN MOBILITY, DOES MO5'S SERVICE OFFER ANY UNIQUE**
14 **ADVANTAGES?**

15 **A.** Based on the information in MO5's Application and Direct Testimonies, I have not
16 identified anything unique in its service offering aside from mobility.

17 **Q. APPENDIX K, INTRODUCED BY MO5 WITNESS SIMON, PURPORTS TO**
18 **COMPARE LIFELINE RATES AMONG VARIOUS ILECS AND MO5. DOES**
19 **MO5'S EXHIBIT PROVIDE A TRUE REPRESENTATION OF AT&T**
20 **MISSOURI'S LIFELINE RATES?**

⁴⁷ The high-cost FUSF support mechanism is governed by Subpart D of the FCC's Part 54 Universal Service rules. See, 47 CFR §§ 54.301 – 54.315 (captioned "Universal Service Support for High Cost Areas"). The IAS FUSF support mechanism is governed by Subpart J of the FCC's Part 54 Universal Service rules. See, 47 CFR §§ 54.800 – 54.809 (captioned "Interstate Access Universal Service Support Mechanism").

⁴⁸ In the Matter of Access Charge Reform: Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users: Federal-State Joint Board On Universal Service, CC Docket No. 96-262; CC Docket No. 94-1; CC Docket No. 99-249; CC Docket No. 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) ("CALLS Order"), *aff'd in part, rev'd in part, and remanded in part*, Texas Office of Public Util. Counsel v. FCC, 265 F. 3d 313 (5th Cir. 2001), Order on Remand, 18 FCC Rcd 14976 (2003).

1 A. No. Appendix K compares MO5's rates to AT&T Missouri's Flat Rate Group A and Flat
2 Rate Group B rates before applying to AT&T Missouri's rates the Lifeline discounts
3 provide by the FUSF Low Income fund and the further support allowed due to the
4 Missouri USF. Moreover, Appendix K compounds its error of comparing apples to
5 oranges by depicting the wrong SLC which, in the case of AT&T Missouri, is currently
6 \$5.25, not \$6.50.⁴⁹

7 When the applicable discounts are applied, AT&T Missouri's Lifeline customers in Flat
8 Rate Group A pay a basic local rate of \$0.15, not the \$14.85 represented by MO5's
9 Appendix K (and no FCC line charge), before applicable Missouri Relay and E911
10 charges. In the case of AT&T Missouri's Lifeline customers in Flat Rate Group B, the
11 basic local rate would be \$1.79, not \$16.74, as Appendix K asserts. Both of these rates
12 are substantially below those of MO5, which are \$6.75 and \$11.75, for MO5's Options 1
13 and 2, respectively.

14 **Q. ONE LAST QUESTION, THE CHARITON VALLEY FAMILY OF COMPANIES**
15 **AND GRAND RIVER TELEPHONE ARE THE OWNERS OF MO5. WHAT IS**
16 **THE FINANCIAL IMPACT ON THE CHARITON VALLEY FAMILY OF**
17 **COMPANIES IF THE CHARITON VALLEY TELEPHONE LOSES AN ACCESS**
18 **LINE TO MO5?**

19 A. Until Chariton Valley Telephone (the ILEC) files a new line count report with the
20 Universal Service Administrative Company, it will continue to receive the same support
21 amount for the current year, and MO5 will also receive support based on the per line
22 support amount its ILEC affiliate receives. Next year, when new line counts are reported,
23 Chariton Valley Telephone's support need will be spread across fewer access lines.

⁴⁹ See, Southwestern Bell Telephone Company, L.P. Tariff No. 73, Access Service, Section 4.4(A), at 12th Revised Page 4-8.

1 resulting in a higher per line support amount, but the total support amount will remain
2 essentially the same. MO5 will receive the new higher per line support amount, thus
3 increasing its total support, and as the owner of MO5, Chariton Valley will benefit from
4 the new higher per line support rate while retaining all of the support it receives from its
5 ILEC. In sum, Chariton Valley Telephone receives FUSF support for its costs even
6 though the customer has changed carriers, and MO5 will receive support for serving the
7 customer. The result is that the Chariton Valley family of companies essentially receives
8 twice the FUSF support they had been receiving, yet they still only serve the one
9 customer.

10 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

11 **A. Yes.**

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?

A. I am employed by AT&T Services, Inc. ("AT&T"), as an Associate Director-Regulatory Policy in AT&T's Regulatory Planning and Policy group. My responsibilities include the development of Universal Service Fund ("USF") policy in all of AT&T's jurisdictions, including Missouri.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. I hold Bachelors Degrees in Telecommunications and Political Science from the University of Oregon. I have also done additional graduate level coursework in Communications at the University of Iowa, and in Political Science at Portland State University.

Q. PLEASE SUMMARIZE YOUR TELECOMMUNICATIONS INDUSTRY WORK EXPERIENCE.

A. I have approximately seventeen years of telecommunications experience. In 1988, I began my career in the telephone industry at the National Exchange Carrier Association ("NECA") in the Industry Relations organization. I was responsible for developing Average Schedule methods and procedures, analyzing the impact of new technologies on the NECA member companies, developing special settlements for carriers implementing new technologies (e.g. Equal Access and SS7) and reviewing and analyzing Federal Communications Commission ("FCC") rule changes. I also assisted in the development of the NECA Access Charge Handbook. In 1992, I joined Bell Atlantic (now Verizon) and worked in a variety of regulatory roles both at Bell Atlantic-West Virginia and Bell Atlantic Corporate in Maryland. My responsibilities included regulatory support, intercarrier settlement, regulatory finance and marketing. In 1997, I joined

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American Communications Services, Inc. (ACSI), later known as e.spire Communications, Inc., and now as Xspedius Management Company, as the Director of Carrier Management. My responsibilities with ACSI included wholesale billing, the development of reciprocal compensation policy, billing methods and the billing of reciprocal compensation, industry relations, and the creation and management of their telco cost control organization. In 1998, I left ACSI to provide executive consulting services to competitive local exchange carriers (CLECs) and to a small incumbent local exchange carrier ("ILEC"). This consulting work involved several subjects, including intercarrier compensation, and billing and cost control operations matters. In July 2000, I joined the AT&T (formerly SBC) family of companies. I work with AT&T's federal regulatory group on various policy matters, particularly USF issues, and often serve as the AT&T's corporate policy witness for universal service fund matters. I also participate in the development of corporate policy for intercarrier compensation (i.e. reciprocal compensation and access charges) and have previously participated in the development of corporate policy for advanced services.

Q. WHAT IS YOUR PREVIOUS EXPERIENCE PRESENTING TESTIMONY TO STATE UTILITY REGULATORY COMMISSIONS?

A. I have filed testified before the Missouri Public Service Commission, the Public Utility Commission of Nevada, the Indiana Utility Regulatory Commission, the Kansas Corporation Commission, the Arkansas Public Service Commission and the Illinois Commerce Commission. I have also participated in workshops at the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Indiana Utility Regulatory Commission, the California Public Utility

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Commission, the Arkansas Public Service Commission, the Illinois Commerce Commission, and the Missouri Public Service Commission.