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Witness: James E. Stidham, Jr.
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Sponsoring Party: Southwestern Bell Telephone, L.P. d/b/a/
SBC Missouri
Case No.: TO-2005-0384

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Missouri Public
Service Commission

SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a

SBC MISSOURI

CASE NO. TO-2005-0384

SURREBUTTAL TESTIMONY

OF

JAMES E. STIDHAM, JR.

Dallas, Texas
October 3, 2005

Exhibit No. 18
Case No(s) TO-2005-0384
Date 10-26-05 Rptr KF

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of USCOC of Greater Missouri, LLC for)
Designation as an Eligible Telecommunications Carrier) Case No. TO-2005-0384
Pursuant to the Telecommunications Act of 1996)

AFFIDAVIT OF JAMES E. STIDHAM, JR.

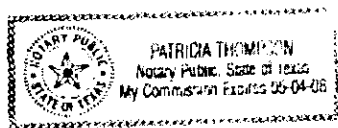
STATE OF TEXAS)
) SS
COUNTY OF COLLIN)

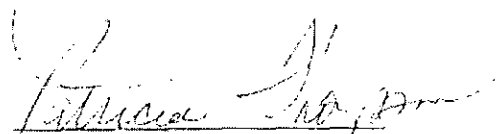
I, James E. Stidham, Jr., being duly sworn, depose and state:

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


James E. Stidham, Jr.

Subscribed and sworn to before me this 26 day of September, 2005.




Notary Public

My Commission Expires: 5-4-08

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
3 Regulatory Planning and Policy. My business address is 208 S. Akard Street,
4 Room 3041, Dallas, Texas 75202.

5 **Q. ARE YOU THE SAME JAMES E. STIDHAM, JR. WHO FILED**
6 **REBUTTAL TESTIMONY IN THIS CASE ON SEPTEMBER 12, 2005 ON**
7 **BEHALF OF SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SBC**
8 **MISSOURI ("SBC MISSOURI")?**

9
10 A. Yes.

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

12 A. The purpose of my Surrebuttal Testimony is to respond to the Rebuttal
13 Testimonies of Adam McKinnie (on behalf of the Commission's Staff) and
14 Barbara Meisenheimer (on behalf of the Office of the Public Counsel, or "OPC")
15 filed on September 12, 2005.

16 **Q. PLEASE IDENTIFY THE MAIN POINTS CONVEYED BY YOUR**
17 **SURREBUTTAL TESTIMONY.**

18 A. The main points conveyed by my Surrebuttal Testimony are:

- 19 • The Staff's Rebuttal Testimony fails to provide an analysis of the Application of
20 USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular ("U.S. Cellular") and the
21 Direct Testimony submitted by U.S. Cellular that is in keeping with the analytical
22 framework established by the Federal Communications Commission ("FCC") in

1 its ETC Report and Order.¹ Put simply, the Staff's recommendation fails to
2 provide a meaningful analysis regarding two of the most important aspects of the
3 evidence U.S. Cellular has put forth regarding its request for eligible
4 telecommunications carrier ("ETC") designation: (a) the details of its intended
5 network improvement plan and (b) whether granting its Application is in the
6 public interest. Consequently, the Staff errs when it recommends grant of the
7 Application despite the fact that U.S. Cellular's proposed network improvement
8 plan is deficient in material respects and despite the lack of sufficient evidence
9 demonstrating that granting the Application is in the public interest, based on
10 applying the analytical framework found in section IV (B) of the FCC's ETC
11 Report and Order.

- 12 • OPC's Rebuttal Testimony is particularly noteworthy in two specific regards.
13 First, OPC correctly notes that U.S. Cellular "has provided incomplete
14 information on its planned offerings and future expansion plans for Missouri" and
15 thus finds the evidence deficient as to whether U.S. Cellular will serve
16 "ubiquitously and on a timely basis throughout the requested designated areas."²
17 Second, OPC concludes that U.S. Cellular's network improvement plan is
18 deficient, stating that "the Application and supporting testimony should be
19 supplemented to include a five-year plan detailing specifically how it intends to
20 use USF support to expand and enhance the availability of supported services in

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

² Meisenheimer Rebuttal, pp. 3-4.

1 each geographic region for which it receives support.”³ It is unclear to me as a
2 procedural matter whether U.S. Cellular’s evidence can now be “supplemented” (as
3 SBC Missouri and perhaps other parties would desire an opportunity to present
4 testimony on such evidence). In any case, OPC’s point nonetheless highlights the
5 fact that OPC, Staff, and every intervenor in this case has found U.S. Cellular’s
6 network improvement plan deficient in material respects.

7 **Q. WHEN ASKED WHETHER U.S. CELLULAR PROVIDES**
8 **INFORMATION ON THE FIRST OF THE FIVE ELIGIBILITY**
9 **REQUIREMENTS SET FORTH IN THE FCC’S ETC REPORT AND**
10 **ORDER - WHICH REQUIRES THE APPLICANT TO SUBMIT A**
11 **DETAILED “FIVE-YEAR PLAN DESCRIBING WITH SPECIFICITY ITS**
12 **PROPOSED IMPROVEMENTS OR UPGRADES TO THE APPLICANT’S**
13 **NETWORK ON A WIRE CENTER-BY-WIRE CENTER BASIS**
14 **THROUGHOUT ITS DESIGNATED SERVICE AREA”⁴ - STAFF**
15 **STATES: “NOT IN ITS ENTIRETY.” (MCKINNIE REBUTTAL, P. 5). OF**
16 **WHAT SIGNIFICANCE IS STAFF’S DETERMINATION ON THIS**
17 **SUBJECT?**

18 A. One cannot reasonably conclude that U.S. Cellular’s Application should be
19 granted given this determination. The FCC has emphasized the ETC applicant’s
20 burden of proof relative to its proposed network improvement plan:

21 The five-year plan must demonstrate in detail how high-cost
22 support will be used for service improvements that would not
23 occur absent receipt of such support. This showing must
24 include: (1) how signal quality, coverage, or capacity will
25 improve due to the receipt of high-cost support throughout the
26 area for which the ETC seeks designation; (2) the projected
27 start date and completion date for each improvement and the
28 estimated amount of investment for each project that is funded
29 by high-cost support; (3) the specific geographic areas where
30 the improvements will be made; and (4) the estimated
31 population that will be served as a result of the improvements.

³ Meisenheimer Rebuttal, pp. 3-4.

⁴ ETC Report and Order, para. 23.

1 To demonstrate that supported improvements in service will be
2 made throughout the service area, applicants should provide
3 this information for each wire center in each service area for
4 which they expect to receive universal service support, or an
5 explanation of why service improvements in a particular wire
6 center are not needed and how funding will otherwise be used
7 to further the provision of supported services in that area.⁵

8 I have seen only limited evidence devoted to these above-stated elements, and no
9 evidence directed to either of the first two of them. Moreover, Staff correctly
10 concludes that “U.S. Cellular does not break down how high cost universal
11 [service fund (“USF”)] support will be used to ‘improve its coverage, service
12 quality, or capacity in every wire center’ where U.S. Cellular requests ETC
13 designation[,]” and that “U.S. Cellular fails to provide a five year build out plan
14 for the use of potential USF monies.”⁶ Under these circumstances, one cannot
15 conclude that U.S. Cellular has shown the requisite commitment and ability to
16 provide the supported services throughout the area for which it seeks ETC
17 designation, or that improvements to U.S. Cellular’s network would not otherwise
18 occur absent the receipt of high-cost support.⁷ These deficiencies not only
19 preclude any finding that U.S. Cellular’s Application and supporting evidence
20 meet the first ETC eligibility guideline, they also preclude any finding that
21 granting the Application is in the public interest.

22 **Q. DO YOU AGREE WITH STAFF THAT THE COMMISSION SHOULD**
23 **APPROVE U.S. CELLULAR’S APPLICATION AND THAT THE**
24 **COMMISSION SHOULD “ADDRESS THE NEED FOR A FIVE YEAR**
25 **PLAN IN A COMMISSION ETC PROPOSED RULEMAKING?”**
26 **(MCKINNIE REBUTTAL, P. 11).**

⁵ ETC Report and Order, para. 23.

⁶ McKinnie Rebuttal, p. 6.

⁷ ETC Report and Order, para. 21.

1 A. No. Either the first eligibility guideline is met or it is not. U.S. Cellular's failure
2 to have met the "entirety" of the FCC's network improvement plan guideline - a
3 critically important guideline at that - should end the analysis. It is insufficient
4 for this Commission to be left with simply "an idea of U.S. Cellular's plan of how
5 to specifically spend ETC monies."⁸ A mere "idea" is not consistent with the
6 FCC's intention to "create a more rigorous ETC designation process" whose
7 application by the FCC and state commissions "will improve the long-term
8 sustainability of the universal service fund."⁹ Until U.S. Cellular explains to this
9 Commission how it is going use the estimated \$9 million in annual USF high cost
10 support to create a ubiquitous network that will serve its entire service area (not
11 just the more profitable portions), and until U.S. Cellular can sufficiently assure
12 the Commission that the network improvements planned, if any, will not occur
13 absent receipt of USF monies, U.S. Cellular has not met the burden of proof
14 necessary to earn ETC status and the resulting USF high cost support.

15 SBC Missouri does not oppose a rulemaking designed to craft rules governing
16 requests for ETC designation. But the fact that such a rulemaking has not yet
17 been undertaken should not excuse U.S. Cellular's burden to demonstrate
18 precisely how it plans to spend about \$9 million annually to improve its network
19 for the benefit if Missourians throughout the area in which it is seeking ETC
20 designation.

⁸ McKinnie Rebuttal, p. 11. (emphasis added).

⁹ ETC Report and Order, para. 2.

1 Additionally, U. S. Cellular's failure to have provided a sufficiently detailed
2 network improvement plan raises two other concerns, both of which are
3 unaccounted for in Staff's Rebuttal Testimony. First, recall that "at the time the
4 Application was filed," U.S. Cellular anticipated constructing 16 new towers, on
5 the assumption that U.S. Cellular "would receive roughly \$200,000 per quarter."¹⁰
6 Since filing the Application, Universal Service Administrative Company
7 ("USAC") has released new projections showing that U.S. Cellular would receive
8 roughly ten times that amount, or "roughly \$2 million per quarter."¹¹ Not
9 surprisingly, U.S. Cellular stated its intention "to amend the Application to
10 include additional construction commitments."¹² However, it has not done so.
11 Given USAC's projection that U.S. Cellular would receive more than \$13 million
12 in USF high cost support during the 18 months of its planned network build out, it
13 is wholly insufficient for U.S. Cellular to rest on a commitment to build out its
14 network as if it were receiving only about \$1.2 million in USF high cost support
15 during that period. One of the reasons the FCC requires a five year plan is to
16 ensure that all USF monies - including the approximately \$12 million in
17 additional funds expected to be given to U.S. Cellular - serve their intended
18 purpose. Without a full explanation in the form of a five year build out plan,
19 neither this Commission nor the FCC will know if USF high cost support received

¹⁰ Wright Direct, p. 13.

¹¹ Wright Direct, p. 14.

¹² Wright Direct, p. 14.

1 by this competitive ETC is being used in a manner that complies with section
2 254(e) of the 1996 Act.¹³

3 The other concern not accounted for by Staff is that most consumers situated
4 within the areas served by the almost 150 SBC Missouri wire centers for which
5 U.S. Cellular seeks ETC designation will not see any tangible benefits from the
6 designation of U.S. Cellular as an ETC in these wire center areas. As indicated in
7 Exhibit E of the Application, none of the 16 towers are planned to be built in
8 communities served by SBC Missouri's wire centers. Moreover, many if not
9 most of these towers would appear to be too far away to provide any meaningful
10 service coverage to consumers within SBC Missouri's wire center areas.

11 **Q. DO YOU HAVE OTHER CONCERNS ABOUT STAFF'S ANALYSIS OF**
12 **EXHIBIT E OF U.S. CELLULAR'S APPLICATION AND U.S.**
13 **CELLULAR'S NETWORK DEPLOYMENT PLANS?**

14 A. Yes. A chief consideration advanced by U.S. Cellular as to why granting it ETC
15 status is in the public interest is that U.S. Cellular offers access to health and
16 safety when a person is away from a landline telephone.¹⁴ Yet, Staff
17 acknowledges that "there will be wire centers where there will be no signal
18 coverage before or after a potential U.S. Cellular ETC designation, even with the
19 addition of the new cellular towers proposed in the application."¹⁵ Staff then,
20 inconsistently, dismisses the importance of serving all wire centers being served
21 by saying "it would seem unlikely a customer would choose U.S. Cellular if there

¹³ Section 254(e) provides, in part, that universal service support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

¹⁴ Wright Direct, pp. 15-16.

¹⁵ McKinnie Rebuttal, p. 8.

1 was no U.S. Cellular signal available in their area.”¹⁶ Staff assumes that if there is
2 no service to buy, no one will want to buy service. But the statutory obligation is
3 to provide service “throughout the service area for which [ETC] designation is
4 received,”¹⁷ not to justify a failure to do so by suggesting that one does not miss
5 what he never had.

6 **Q. STAFF RECOMMENDS THAT THE COMMISSION GRANT U.S.**
7 **CELLULAR’S APPLICATION “FOR THE PURPOSE OF**
8 **ADMINISTRATIVE SIMPLICITY.” (MCKINNIE REBUTTAL, P. 8). DO**
9 **YOU JOIN IN THIS RECOMMENDATION?**

10 A. Absolutely not. The FCC asks state commissions to create a more rigorous ETC
11 designation process in order to improve the long-term sustainability of the
12 universal service fund.¹⁸ Taking the “administrative simplicity” route would relax
13 the designation process, not tighten it up, and it would do nothing to improve the
14 USF’s long-term sustainability.

15 **Q. STAFF DISCUSSES THE DIRECT TESTIMONY OF U.S. CELLULAR’S**
16 **MR. WRIGHT AND U.S. CELLULAR’S RESPONSE TO A DATA**
17 **REQUEST FROM STAFF, BOTH TO THE EFFECT THAT U.S.**
18 **CELLULAR WILL SUBMIT A FIVE YEAR PLAN ONLY IF REQUIRED**
19 **TO DO SO. (MCKINNIE REBUTTAL, PP. 9-10). IS STAFF’S ULTIMATE**
20 **RECOMMENDATION TO APPROVE U.S. CELLULAR’S APPLICATION**
21 **CONSISTENT WITH ITS ANALYSIS OF THAT DIRECT TESTIMONY**
22 **AND DATA RESPONSE?**

23 A. No. The two cannot be squared. When asked whether U.S. Cellular currently
24 possesses a five year build out plan for how it would utilize USF monies in the
25 proposed ETC area, U.S. Cellular stated unequivocally that it “does not currently

¹⁶ McKinnie Rebuttal, p. 8.

¹⁷ 47 U.S.C. Section 214(e)(1). (emphasis added).

¹⁸ ETC Report and Order, para. 2.

1 have such a five year build out plan.”¹⁹ Staff appropriately determined that
2 “[a]bsent established state guidelines, it used the FCC’s guidelines” because to do
3 otherwise would mean that “the Commission would make an initial determination
4 based on an incomplete application for ETC status, and then would need to make
5 an entirely new decision each year during the annual certification process. The
6 Commission should have the information to make the initial decision.”²⁰ SBC
7 Missouri supports Staff’s view that this Commission is entitled to consider a five
8 year plan of the kind required by the FCC before passing on other aspects of U.S.
9 Cellular’s Application. But it cannot support the inconsistent conclusion reached
10 by Staff that despite this gap in proof, the Application should nonetheless be
11 granted.

12 **Q. BUT ISN’T IT TRUE THAT THE FCC’S NETWORK IMPROVEMENT**
13 **BUILD OUT RULES ARE NOT YET EFFECTIVE?**

14 A. Yes. U.S. Cellular has argued in response to Staff’s data requests that the five
15 year plan is an FCC requirement that does not specifically apply to U.S. Cellular’s
16 application in Missouri, that the FCC’s rules regarding the five year plan have not
17 yet been approved by the Office of Management and Budget (and thus are not yet
18 effective), that various petitions for reconsideration of the FCC’s ETC Report and
19 Order are pending at the FCC and that at least one federal court appeal is
20 pending.²¹ But U.S. Cellular’s arguments miss several key points. First, this
21 Commission does not have to wait for approval from OMB to apply the five year
22 plan requirement to an Application presented to it for its approval. Section

¹⁹ McKinnie Rebuttal, p. 9.

²⁰ McKinnie Rebuttal, p. 11.

²¹ McKinnie Rebuttal, p. 9.

1 214(e)(2) grants the states the authority to grant ETC status, and the states have
2 discretion regarding what criteria to use. Second, the FCC has specifically
3 encouraged state commissions to apply the same eligibility requirements - of
4 which the five year plan is but one - as does the FCC,²² and SBC Missouri
5 strongly endorses this approach. Third, Staff apparently invited (if not
6 specifically requested) U.S. Cellular to provide a five year plan, but U.S. Cellular
7 declined to do so. Recall, too, that U.S. Cellular earlier stated, albeit grudgingly,
8 that it would submit an after-the-fact (that is, after ETC status is granted) annual
9 five year plan "if required to do so," while advocating instead "an annual plan
10 rather than a five-year plan."²³ Finally, U.S. Cellular has not provided any reason
11 why the five year plan approved by the FCC is inappropriate or otherwise
12 unworthy of use in Missouri, nor has it shown that a plan of shorter duration
13 would be more effective in imposing needed discipline on the ETC application
14 process and in improving the long term sustainability of the USF. Stated another
15 way, no one argues that the five year plan that is good enough for the FCC is
16 nonetheless bad for Missouri.

17 **Q. DOES STAFF ADEQUATELY ADDRESS U.S. CELLULAR'S ABILITY**
18 **TO REMAIN FUNCTIONAL IN EMERGENCY SITUATIONS?**

19 A. No. Staff concludes that U.S. Cellular satisfies this requirement.²⁴ In doing so,
20 Staff appears to accept without question U.S. Cellular's direct testimony. I will
21 acknowledge that I am not a network expert, but I wonder if Mr. Lowell's
22 testimony addresses true emergency situations, as opposed to either the loss of a

²² ETC Report and Order, para. 20.

²³ Wright Direct, p. 19.

²⁴ McKinnie Rebuttal, p. 12.

1 tower or of power for but a few hours or the onset of higher than normal traffic
2 for a cell site. For example, does U.S. Cellular address operations where power is
3 lost over a large area for several days? or where a large number of customers are
4 required to evacuate an area because of a natural or man-made disaster? These
5 questions are not raised and thus are not answered.

6 **Q. DO YOU AGREE WITH STAFF'S PUBLIC INTEREST ANALYSIS?**

7 A. No. Staff seems to suggest that because U.S. Cellular has met its burden of proof
8 as to four of the five eligibility criteria, and has passed a cream-skimming review,
9 the public interest is thus "satisfied."²⁵ However, the public interest test is
10 separate and distinct from the ETC applicant's burden to pass all five of the
11 eligibility guidelines set forth in Section IV (A) of the FCC's ETC Report and
12 Order. Moreover, that test encompasses assessment of "a variety of factors in the
13 overall ETC determination, including the benefits of increased consumer choice,
14 and the unique advantages and disadvantages of the competitor's service
15 offering."²⁶ To the extent that, as U.S. Cellular argues, the advantages of its
16 service is mobility and providing service in remote areas, still U.S. Cellular has
17 yet to provide proof - in the form of a sufficiently detailed five year plan and
18 otherwise - that it truly intends to serve throughout the area for which it seeks
19 ETC designation. Thus, the value of mobility in remote areas that U.S. Cellular
20 claims as an advantage over wireline service is diminished by U.S. Cellular's
21 failure to prove that it will provide its services throughout all of the areas for
22 which it seeks ETC status. In sum, even if U.S. Cellular's Application were

²⁵ McKinnie Rebuttal, p. 17.

²⁶ ETC Report and Order, para. 41.

1 sufficient to allow it to proceed to the point where the public interest test stated
2 found in Section IV (B) of the ETC Report and Order would be applied - which is
3 not the case given that U.S. Cellular has failed the Section IV (A) "eligibility test"
4 - U.S. Cellular's failure to prove that it would provide service throughout these
5 areas tips the public interest balance against granting U.S. Cellular's Application.

6 **Q. STAFF APPEARS TO BE SATISFIED THAT U.S. CELLULAR WILL USE**
7 **USF MONEY TO IMPROVE SERVICE IN AREAS IT WOULD NOT**
8 **OTHERWISE INVEST. ARE YOU SATISFIED?**

9 A. No. Staff relies on a single statement in U.S. Cellular's Application - "U.S.
10 Cellular commits to use available high-cost support to improve service in areas it
11 would not otherwise invest in" - as sufficient assurance.²⁷ However, Staff does
12 not take into account U.S. Cellular's direct testimony. For example, Mr. Wright
13 states that the USF high cost support "will only accelerate our ability to construct
14 additional facilities in high-cost areas of rural Missouri."²⁸ Mr. Lowell states that
15 "the addition of high cost USF support will accelerate our construction plans to
16 fill in the remaining areas within our service area."²⁹ I am perplexed by the use of
17 the word "accelerate" because I associate that word with describing something
18 that has already been decided and planned for regardless of USF support, not
19 something that is planned only if USF support is forthcoming. Moreover, Staff's
20 reliance on the 16 proposed tower sites shown on Exhibit E of the Application is
21 misplaced. Nothing in that exhibit demonstrates that these towers will not be
22 constructed unless U.S. Cellular's Application is granted.

²⁷ McKinnie Rebuttal, p. 18, citing U.S. Cellular's Application, p. 13.

²⁸ Wright Direct, p. 12. (emphasis added).

²⁹ Lowell Direct, p. 11. (emphasis added).

1 Q. **WHAT IS YOUR VIEW OF THE REBUTTAL TESTIMONY OF OPC**
2 **REGARDING U.S. CELLULAR'S APPLICATION AND DIRECT**
3 **TESTIMONY?**

4 A. I found OPC's Rebuttal Testimony noteworthy in two particular respects. First,
5 OPC correctly notes that U.S. Cellular "has provided incomplete information on
6 its planned offerings and future expansion plans for Missouri" and thus finds the
7 evidence deficient as to whether U.S. Cellular will serve "ubiquitously and on a
8 timely basis throughout the requested designated areas."³⁰ Second, OPC
9 concludes that U.S. Cellular's network improvement plan is deficient, stating that
10 "the Application and supporting testimony should be supplemented to include a
11 five-year plan detailing specifically how it intends to use USF support to expand
12 and enhance the availability of supported services in each geographic region for
13 which it receives support."³¹ I am not clear how or even whether, as a procedural
14 matter, U.S. Cellular's evidence can now be "supplemented," at least without
15 allowing SBC Missouri and other parties to submit discovery and to present
16 testimony on such evidence. For present purposes, however, OPC's point
17 underscores the fact that U.S. Cellular has not provided a five year network
18 improvement plan, and that OPC, Staff, and every intervenor in this case has
19 found U.S. Cellular's network improvement plan to be deficient. I concur that for
20 these reasons, and those I have explained in greater detail in this testimony, U.S.
21 Cellular has failed to show a commitment to serve customers throughout its
22 service area and, as such, U.S. Cellular has not met the requirement of Section
23 214(e)(1)(A) to offer the services that are supported by federal USF support

³⁰ Meisenheimer Rebuttal, pp. 3-4.

³¹ Meisenheimer Rebuttal, pp. 3-4.

1 “throughout the service area for which [ETC] designation is received.” (emphasis
2 added).

3 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

4 **A. Yes.**