BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

POST-HEARING BRIEF OF INTERVENORS SPECTRA COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL AND CENTURYTEL OF MISSOURI, LLC

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COME NOW Intervenors, Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (collectively "CenturyTel") and submit the following post-hearing brief pursuant to the Commission's *Order Setting Briefing Schedule* issued on July 21, 2006 in the above-captioned cause.

INTRODUCTION

It is a fact that the Commission has yet to grant ETC status to any wireless carrier. It also well may be that the Commission, as a general policy, may wish to remedy that situation sooner rather than later. Missouri RSA No. 5 Partnership ("MO-5") in this case, admittedly, has made in comparison a more complete showing in support of its ETC application than that made by U.S. Cellular in Case No. TO-2005-0384 (CenturyTel witness Brown Rebuttal, Exhibit 11, p. 5; Brown Supplemental Rebuttal, Exhibit 12, p. 2), where U.S. Cellular, a national/regional wireless carrier, is seeking ETC designation in the same wire centers now sought by MO-5. Like all other wireless companies coming before it, MO-5 also has verbally assured the Commission that it will comply with all applicable Commission rules once it receives ETC status. In spite of all this, the Commission should deny MO-5's ETC designation request because the evidentiary

record clearly shows that MO- 5 has not fully compiled with the Commission's new ETC rule nor has MO-5 carried its burden of proof to show that granting MO-5's ETC request would be in the public interest.

I. The Commission's ETC Designation Process

This case is the second eligible telecommunications carrier ("ETC") case to be heard since the Commission concluded its ETC rulemaking proceeding in Case No. TX-2006-0169.[1] No party disputes that the Commission in this case should apply the new ETC rule provisions to MO-5's Application. In fact, MO-5 requested and received an opportunity to supplement its direct case through supplemental direct testimony in order to comply with the new ETC rule. If MO-5 has failed to fully comply with the Commission's new ETC rule, and has failed to present sufficient evidence to show that granting MO-5 ETC status is in the public interest, MO-5 should not be heard to legitimately complain that it was not given ample opportunity to do so.

As a general rule, the Commission traditionally holds all the companies that come before it to rather strict scrutiny before granting their requests. The Commission rarely, if ever, overlooks deficiencies, bends or ignores its rules, or otherwise "bails out" a sophisticated company when that company has been given the opportunity but has failed to make its case. That MO-5 is a wireless carrier not otherwise accustomed to Commission oversight does not somehow exempt MO-5 from the Commission's usual level of scrutiny nor does it somehow entitle MO-5 to special regulatory treatment. To the contrary and as implied by the Office of the Public Counsel (Tr. 16-17), given that the Commission lacks comprehensive regulatory authority over wireless carriers, the

[1] The first case, Case No. TO-2005-0466 (*Northwest Missouri Cellular*), was heard on May 31, 2006, has been briefed, and is pending decision. The text of the Commission's new rule can be found in Schedule ACM – 1-1, attached to the pre-filed Supplemental Rebuttal Testimony of Staff witness McKinnie.

Commission arguably should be even more vigilant with respect to requests by wireless carriers in those few areas over which it does have jurisdiction. Even if a somewhat higher level of scrutiny is not appropriate, the Commission at least should ask itself at the outset whether a *Commission-regulated company* would be able to prevail if it submitted the same type of financial, signal coverage and other evidentiary material as flawed, confusing and lacking in detail as that submitted by MO-5 in this case.

II. The Overall Evidentiary Record

MO-5's basic approach to its evidentiary showing in this case is puzzling on the most fundamental and elementary level. It should be undisputed that the Commission's decision to grant or reject the Application in this case necessarily must be based on competent and substantial evidence on the whole record. *State ex rel. Chicago, Rock Island & Pac. R.R. Co. v. Public Service Commission*, 312 S.W.2d 791, 794 (Mo. Banc 1958). Here, CenturyTel presented the comprehensive Rebuttal and Supplemental Rebuttal Testimony of its outside expert, Mr. Brown (Exhibits 11, 12). Although being given ample opportunity to file surrebuttal testimony to address the issues raised by Mr. Brown, MO-5 inexplicably elected not to do so (Tr. 100-101) except to generally imply that MO-5 viewed the issues raised as wholly irrelevant and that no further comment was required (Exhibit 4, Simon Surrebuttal, p. 7, lines 2-7; Tr. 108). Even so, MO-5 at hearing did not object to the receipt into the evidentiary record of Mr. Brown's testimony on the basis of relevance (or on any other grounds, including Mr. Brown's expertise) nor did MO-5 (or any other party) elect to cross-examine Mr. Brown at hearing.[2]

[2] MO-5 elected the same approach with respect to the testimony and witnesses of the other parties, all of whom opposed MO-5's Application on various grounds.

CenturyTel's record evidence, therefore, stands wholly uncontested and cannot be simply ignored *sua sponte* when the Commission weighs all the record evidence before it.

Beyond this, MO-5 as the applicant in this case bears the burden of proof[3] to show that: 1) it has fully complied with all the provisions of the Commission's new ETC rule;[4] *and* 2) that granting MO-5's ETC request otherwise would be in the public interest. The record evidence reflects that it has done neither.

a. Rule Compliance

With respect to the former, this case and the *Northwest Missouri Cellular* case will be the Commission's very first opportunity to apply its new ETC rule. The manner in which the Commission chooses to apply this new rule in these cases, and the level of rigor that it applies in its analysis of the required data submissions and public interest showings, will significantly impact all future ETC applications. Future ETC applicants no doubt will look to the Commission's decision in this case to see how high (or how low) the Commission sets the bar in terms of the rule's minimum requirements necessary to obtain ETC status.

The language of the Commission's rule appears clear enough, especially with respect to Section (2) (A) (1)-(3) and the fundamental principles that: 1) all USF dollars should only be spent for USF-supported services; 2) MO-5's proposed expansion plans would not otherwise occur absent the receipt of high-cost support; 3) such support will be used for expenses that MO-5 would not otherwise incur; and 4) the use of USF support

[3] *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371 (March 17, 2005) ("ETC Designation Order").

[4] 4 CSR 240-3.570.

should further urban/rural parity. If MO-5 has failed in its case in chief to clearly convince the Commission on any of these counts, MO-5's Application should be denied.

According to MO-5 witness Simon, MO-5's Supplemental Direct and Surrebuttal Testimony are intended to show that MO-5 has complied with Section (2) (A) (1)-(3) of the Commission's ETC rule (*see, e.g.*, Simon Surrebuttal, Exhibit 4); specifically citing to MO-5's Appendices F, M (as revised), I, and N as containing the details of MO-5's USF build-out plan as required by the rule. Even a cursory review of these documents, however, should indicate that MO-5's plan is at best unclear and lacking in the level of detail necessary for the Commission to conclude that MO-5 has fully complied with the ETC rule.

Mr. Brown has provided uncontested testimony that MO-5's Appendix M (financials, as revised) does not provide the information required by Section 2(A)(1) of the new ETC rule in sufficient detail for the Commission to conduct a meaningful cost/benefit analysis, citing as an example MO-5's failure to provide information on the nature of the improvement in signal quality or capacity and as providing no specifics of the number of customers that will experience an improvement to a level of service that would be reasonably comparable to that available in urban areas (Brown Supplemental Rebuttal, Exhibit 12, pp. 6-7).

With respect to Section 2(A)(2), Mr. Brown further testified without challenge that MO-5's Appendix M (financials, as revised) fails to demonstrate with specificity how USF support will be used for its intended purposes, again in the context of the rule's rural/urban parity principle (Brown Supplemental Rebuttal, Exhibit 12, p. 7).

Finally, Mr. Brown testified again without challenge that MO-5 totally failed to meet the requirements of Section 2(A)(3). Specifically: 1) that MO-5's Appendices E, H, and I (maps) only depict wireless signal coverage at a single, and relatively weak level of signal coverage when MO-5 could have, but did not, provide the type of signal coverage map provided by Mr. Brown in Schedule GHB-4HC; 2) that the type of information contained on Schedule GHB-4HC[5] is the very type of information that the Commission needs to determine the number of consumers that might experience an increase in service quality to be comparable to service available in urban areas, and thus to further determine if USF support was being used for intended USF purposes; 3) that MO-5's Appendix N (map purportedly showing MO-5's existing network coverage) suffers from the same infirmities as Appendices E, H, and I in that it only shows coverage at a single, relatively weak, level of signal strength, such that the Commission is left unable to perform the type of analysis needed to determine if USF support is being used for its intended purpose and whether the grant of MO-5's request would produce sufficient benefits to pass the cost/benefit test; and 4) that MO-5's Appendix M (financials, as revised) does not meet the requirement that MO-5 show how its proposed system improvements would not otherwise occur absent USF support, and that such support will be used in addition to any expenses MO-5 would normally incur, specifically that MO-5's plan includes significant capacity-related investments that MO-5 would make anyway without USF support. (Brown HC Surrebuttal, Exhibit 12, pp. 6-11).

[5] It is worth noting that the multi-signal strength map shown on Schedule GHB-4HC was provided to CenturyTel by MO-5 in response to a data request. As clearly shown, this map was prepared by a company (Bennet & Bennet) by whom Mr. Reeves was previously employed (Reeves Direct Testimony at page 1, line21).

MO-5's commitment to subsequently modify its plan to bring it into compliance with the Commission's rule later--in time for annual review--wholly misses the point. The Commission never allows the other companies it regulates to demonstrate compliance with Commission rules in this manner. This is especially troublesome in that wireless carriers are not otherwise subject to the Commission's ongoing general regulatory jurisdiction, and therefore, should be realistically expected to resist or perhaps even challenge attempts by the Commission to exercise further regulatory oversight after ETC status is granted and USF dollars have been transferred.

In any event, MO-5 has had ample opportunity prior to hearing to craft its build-out plans and submit the required information according to the rule's requirements. For the Commission to conclude that MO-5's evidentiary showing somehow complies with the new ETC rule not only is contrary to the weight of the record evidence, it also would render the clear language of the ETC rule meaningless in this and in other ETC cases. Requiring upfront and full compliance with the Commission's rule is the Commission's only real and meaningful regulatory opportunity to affect how otherwise unregulated carriers will use scarce USF dollars for appropriate USF purposes in the interest of Missouri consumers.

b. The Public Interest

With respect to the public interest, Congress and the FCC have made it clear that *state* commissions have *primary* authority over ETC designations and the FCC has strongly encouraged the states to exercise that authority through a "rigorous" or "stringent" ETC designation process.[6] The Commission under both federal[7] and state

[6] ETC Designation Order, para. 8. *See also*, *Virginia Cellular*, para. 4, fully cited in footnote 4 below.

law has broad inherent powers, discretion and authority in making its public interest determinations. Technical compliance (or lack thereof) with the Commission's ETC rule is just one aspect of the overall public interest analysis. Two related public interest factors are found in Section 392.185 (1) and (7) RSMo 2000 (promoting universally available and widely affordable telecommunications services and promoting parity of urban and rural telecommunications services). As testified by Mr. Brown (Exhibit 11, pp. 6-17 , 33-37), additional public interest factors to be considered are found in the FCC's *ETC Designation Order* and the *Virginia Cellular*[8] and *Highland Cellular*[9] orders. Mr. Brown further testified without challenge as to the application of those factors to MO-5's Application, including a cost/benefit analysis, to conclude that MO-5 has not clearly demonstrated that the incremental public benefits of granting MO-5 ETC status will exceed the approximately $1.5 million annual increased public cost[10] thereby created, and that therefore, MO-5's Application should be denied (Brown Rebuttal, Exhibit 11, pp. 18-33, 37-43; Brown Supplemental Rebuttal, Exhibit 12, pp. 11-12).

In weighing all the various public interest factors, the Commission fundamentally must assure in this and future ETC cases that *the incremental public benefits from designating an additional wireless ETC (or multiple wireless ETCs) outweighs the*

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[7] 47 U.S.C. Section 214(e)(2).

[8] *In the Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (January 2004).

[9] *In the Matter of Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 (April 12, 2004).

[10] According to MO-5 witness Zentgraf, MO-5 expects to receive $1,534,230 annually in USF support although MO-5 witness Simon submitted evidence using a different number. (Tr. 68-69, 81-82, 107-108, 126-127, 166-168).

incremental public costs of designating additional ETC USF recipients in insular, high cost rural areas of the state. This is especially important in the context of the use of scarce public funds, the level of public accountability obtained from the applicant who will be otherwise unregulated by the Commission, and the applicant's enforceable commitment to use USF funds only for their intended purposes. Even if the Commission were to somehow conclude contrary to the weight of the record evidence that MO-5 had fully complied with the Commission's ETC rule, MO-5's Application still should be denied because MO-5 has failed to meet its evidentiary burden to show that granting MO-5's Application would be in the public interest.

III. ISSUE LIST EVIDENCE

Issue 1. *Telecommunications companies seeking eligible telecommunications carrier ("ETC") status must meet the requirements of Section 214(e)(1) throughout the service area for which designation is received. Section 214(e)(1) requires a carrier to offer the services that are supported by Federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and to advertise the availability of such services and the charges therefore using media of general distribution. Does MO-5 meet the requirements of Section 214(e)(1) throughout the service area for which it seeks designation?*

Contrary to MO-5's apparent view, the list of services referenced in Section 214(e)(1) of the Federal Telecommunications Act of 1996 ("the Act") is not just a "checklist", which once completed, automatically entitles an ETC Applicant to ETC

designation. Section 214(e) must also be read in the context of Section 254(b)(3), which states that the purpose of high-cost support is to provide consumers in rural, insular and high-cost areas with telecommunications services and prices reasonably comparable to those in urban areas. The Commission's new ETC rule echoes this same fundamental principle in Section (2) (A) 2 A (III) as does Section 392.185(7) RSMo 2000.

With respect to the urban/rural parity principle, Mr. Brown provided the Commission with a basic definition of "urban-quality" wireless signal coverage (Exhibit 11, p. 31-33, Schedule GHB-4HC) and explains the importance of wireless ETC's using USF funds to expand the availability of high-quality, urban-like wireless signal coverage in their rural service areas (Exhibit 11, pp. 26-33; Exhibit 12, pp. 8-10). Only when a strong, two-way, high-quality wireless signal is ubiquitously available can the claimed benefits of wireless service for consumers be obtained. He also points out that MO-5 only has presented the Commission in MO-5 Appendices I and N with a low level or minimum wireless signal coverage for its proposed ETC service area, thus *at best* not providing the Commission with sufficient information to determine whether MO-5 meets the requirements of Section 254(b)(3) or Section (2) (A) 2 A (III) of the Commission's ETC rule (*Id.*).

MO-5 witness Reeves testified at hearing that he was familiar with the Commission's ETC rule (Tr. 211) but that he believed MO-5's Appendices I and N were sufficient to show compliance with the Commission's rule and provided sufficient detail for the Commission to determine whether rural customers would be getting the same quality of service as urban customers (Tr. 213, 217). Mr. Reeves refused to define what he believed to be "urban quality service" for purposes of MO-5's service area although he

did indicate that customers at least generally received "good signal strength" within the city limits of Macon, Missouri (Tr. 212). With some difficulty, he also finally admitted that "five bars" was superior to "no bars" (Tr. 210-211) and that Mr. Brown's Schedule GHB-4HC map provided the Commission with more information as to customer location and predicted signal strength than the two-color, "on or off" maps submitted by MO-5 (Tr. 213-216; 227-231; 234-239). MO-5 clearly could have provided more detailed signal coverage information if it had so desired. (Exhibit 12, p. 31).

The record reflects, however, that Mr. Reeves felt obligated to provide the Commission only with two-color "before and after" wireless coverage maps which merely show a "minimal" or low quality baseline wireless signal strength across MO-5's service area,[11] purportedly "for purposes of clarity" and to avoid confusion (Tr. 242-243). Mr. Reeve's intent aside, the Commission should carefully examine MO-5 Appendices I and N; when it does it should be readily apparent that the Commission will be unable to ascertain whether USF funds will be spent to insure that customers in an outlying rural area (such as northern Linn County) are able to receive the same level of signal coverage and quality of service as customers in larger towns (such as Macon or Moberly).[12]

MO-5's failure and unwillingness to provide the Commission with the type of detailed signal strength information shown on schedule GHB-4HCH is very significant. Regardless of the many and various arguments that the current overall USF system

[11] The actual low level signal strength measurement used by MO-5 has been deemed Proprietary by MO-5 but was significantly less than the urban quality signal strength measurement used by Mr. Brown.

[12] MO-5 witness Simon indicated that Macon and Moberly were the two largest population centers in MO-5's service area (Tr. 177). CenturyTel suggests that, therefore, the level of service quality and signal strength made available in these areas can be used as a benchmark of "urban quality" for purposes of the rural/urban parity principle.

requires modifications, it is uncontested that incumbent ETCs in high-cost rural areas receive the support they do today because they have made the infrastructure investment in high-cost facilities necessary to provide urban-quality service ubiquitously *throughout* their ETC service areas. Using USF funds to improve capacity and service in urban areas is fine, provided that the rural areas at least have adequate service made available first. Under current USF support mechanisms, incumbent ETCs receive support some two years *after* they have made rural high-cost infrastructure investment, while under current FCC rules new wireless ETCs receive USF dollars *prior* to actually making their high-cost infrastructure investment. Once an unregulated ETC such as MO-5 receives USF support, the Commission has no way to compel the return of the dollars if they are not appropriately used. The Commission's only remedy is to try to stop *future* payments. It is for this reason that a detailed network build-out plan is an essential part of the Commission's ETC rule, and a careful upfront review of this plan must be an essential component of the Commission's overall public interest analysis.

The evidentiary record shows that MO-5 has failed to provide adequate information showing the actual extent and quality of its current signal strength and coverage--and any improvements in its signal coverage--which will result from its proposed ETC rural infrastructure investment commitments. Mr. Brown testified that if MO-5 is to receive high-cost support at the same per-line level of the incumbent, MO-5 must make a meaningful demonstration to the Commission up-front that they will use high-cost USF dollars to provide high quality service throughout their requested ETC service area within a reasonable time frame. The evidence shows that MO-5 has failed to make such a demonstration.

Issue 2. *ETC designations by a state commission must be consistent with the public interest, convenience and necessity pursuant to Section 214(e)(2). The Federal Communications Commission's ("FCC's") ETC Designation Order determined that this public interest standard applies regardless of whether the area is served by a rural or non-rural carrier. Is granting ETC status to MO-5 consistent with the public interest, convenience and necessity throughout the service area for which MO-5 seeks ETC designation?*

That MO-5 does not fully comply with the Commission's ETC rule is evidence in and of itself that granting MO-5 ETC status is not in the public interest. Beyond that, MO-5 cannot and does not meet its burden of proof to show granting it ETC status will be in the public interest by mere claims of increased competition in the proposed rural ETC service area.[13] In fact, MO-5 readily admits that wireless competition already exists within its requested ETC service area (Tr. 70, 84) and no evidence was presented showing that any Missouri consumer in MO-5's requested service area currently cannot receive USF-supported services. In any event, purportedly promoting competition is only one, and certainly not the determining factor, in the Commission's overall public interest analysis.[14]

Mr. Brown testified without challenge that the public interest is only served when an ETC applicant *clearly shows* that the incremental public benefits created by supporting multiple ETC carriers exceed the increased costs that will be created by supporting multiple networks and infrastructure in high-cost, insular rural areas. After conducting his own cost/benefit analysis based on MO-5's direct case, Mr. Brown concluded that

[13] *Virginia Cellular*, para 4.
[14] *Id*, at para. 28.

MO-5 at best has failed to provide the Commission with a sufficient factual basis upon which the Commission could conclude that MO-5's Application passes this fundamental cost/benefit test. Simply submitting a two or even a five year plan and a few "signal coverage maps" does not mean the requested ETC designation necessarily is in the public interest, let alone show compliance with the Commission's ETC rule. What is critically important, and where the MO-5 Application falls significantly short, is the enforceable commitment that the applicant makes to new rural infrastructure investment, and its demonstration of the specific improvements that it will make in the delivery of urban quality wireless services to rural Missouri consumers.[15] Mr. Brown has without challenge testified that as multiple carriers seek to serve the same high-cost rural areas the cost for each carrier to ubiquitously serve the area increases geometrically. To the extent that the Commission approves multiple ETCs without considering the ultimate economic impacts, it becomes increasingly likely that no wireless carrier will be able to provide high quality service throughout the territory and also serve as the Carrier of Last Resort, which in turn would be in direct contradiction of the purposes of the Federal Act and the policy behind the Commission's own ETC rule (Exhibit 11, pp. 40-43).

Issue 3. *In addition to the standards set out in the FCC's ETC Designation Order, the Commission has promulgated rules to be used in evaluating ETC applications. A final Order of Rulemaking for these rules, designated as 4 CSR 240-3.570, was published in the Missouri Register on May 15, 2006. Does MO-5 meet the requirements of the Commission's ETC rules?*

The Staff, Office of the Public Counsel, and other intervenors each have criticized MO-5's lack of compliance, in some form or another, with the Commission's ETC rule.

[15] Section 392.185 (7) RSMo 2000.

Those parties can speak for themselves in their respective briefs. As already discussed in part above, CenturyTel has focused specifically on MO-5's lack of compliance with Section (2) (A) (1)-(3) and the fundamental principles that: 1) all USF dollars should only be spent for USF-supported services; 2) MO-5's proposed expansion plans would not otherwise occur absent the receipt of high-support; 3) such support will be used for expenses that MO-5 would not otherwise incur; and 4) the use of USF support should further urban/rural parity.

As already discussed, the signal coverage maps provided by MO-5 witness Reeves in purported compliance with Section (2)(A)(3) do not show sufficient detail regarding signal coverage and improvements to such coverage to allow the Commission to determine that USF support will be used only for its intended purpose, which as the Commission's new rule makes clear, is to provide rural consumers telecommunications services reasonably comparable to that available in urban areas. This is a significant deficiency with MO-5's Application and the Commission should not allow MO-5's demonstration of purported signal coverage improvement to become the standard in this or in future cases.

Of additional and significant concern is what exactly MO-5's *own evidence* shows for its proposed USF expenditures in light of the USF dollars MO-5 expects to receive if granted ETC status. MO-5 witness Zentgraf testified that MO-5 expects to receive USF support in the amount of $1.5 million annually if NW's ETC Application is approved (see footnote 9 above). MO-5 has testified that its HC Appendix M (as revised), containing HC financial and budgetary expenditure figures, is accurate and is intended to show how MO-5 has complied with Section (2)(A)(1)-(3) of the Commission's ETC rule

with respect to its proposed infrastructure improvement plan. HC Appendix M (as revised) apparently was prepared by MO-5 witness Zentgraf although it was attached to the testimony of MO-5 witness Simon (Tr. 167) and HC Appendix M, as originally filed, contained errors which MO-5 witness Simon could not explain (Tr. 167-168).

One thing that does seem clear is that MO-5's HC Appendix M (as revised) does not take into account customer growth for purposes of anticipated revenues (Tr. 128, 169) but does include rather significant costs for increased capacity additions at *existing* cites due to increased customer demand, costs that likely would be incurred regardless of MO-5's USF status. (Brown Supplemental Rebuttal, Exhibit 12, pp. 10-11; Exhibit 17 (Staff Data Request); Tr. 129-130, 171-176, 180-182). Section (2)(A)(3)(G) of the Commission's ETC rule limits USF expenditures to those that "would not otherwise occur absent the receipt of high cost support" and requires that "such support will be used in addition to any expenses the ETC would normally incur".

CONCLUSION

CenturyTel in this proceeding is not trying to in any way suggest that MO-5 is a "bad" company, somehow inherently undeserving of ETC status, but rather that MO-5 has simply not made its case based on the evidentiary record now before the Commission. The Commission has the right and the duty to insist on certain minimal evidentiary showings and commitments before authorizing the release of scarce USF dollars, regardless of who the ETC applicant might be. The bar should be set higher than the evidentiary showing made by MO-5.

The Commission should keep in mind in this and all future ETC application cases that the incremental public benefits of granting ETC status must outweigh the public

costs of granting such ETC status in high-cost, insular rural areas of the state so that all consumers in those areas continue to have access to at least one Carrier of Last Resort which provides access to high-quality and affordable basic and advanced telecommunications services. The burden of proof rightfully lies with the new ETC applicant who, as part of showing that the benefits outweigh the costs and that granting it ETC status would be in the public interest, also must demonstrate that it fully has complied with the Commission's new ETC rule and its required evidentiary showings. Based on the record evidence presented in this case, MO-5's Application should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent to counsel for all parties of record in Case No. TO-2006-0172 by electronic transmission this 11th day of August, 2006.

/s/ Charles Brent Stewart