

Exhibit No.:
Issues: ETC Designation

Witness: Adam McKinnie
Sponsoring Party: MO PSC Staff
Type of Exhibit: Rebuttal Testimony
Case No.: TO-2005-0325
Date Rebuttal Testimony Prepared: June 10, 2005

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

ADAM McKINNIE

MID-MISSOURI CELLULAR

CASE NO. TO-2005-0325

Jefferson City, Missouri

June 2005

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

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

Case No. TO-2005-0325

AFFIDAVIT OF ADAM MCKINNIE

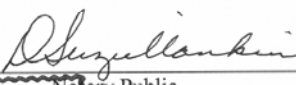
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Adam McKinnie, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 15 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.




Adam McKinnie

Subscribed and sworn to before me this 9th day of June, 2005.



Notary Public



My commission expires _____

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Rebuttal Testimony
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1 conducted research and worked on special projects related to telecommunications and
2 economics.

3 Q. Have you worked on any cases or projects that are related to your
4 testimony in this case?

5 A. Yes, I have. I was the Staff witness in Case No. TO-2003-0531, *In the*
6 *Matter of the Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri*
7 *Cellular, for Designation as a Telecommunications Company Carrier Eligible for*
8 *Federal Universal Service Support Pursuant to Section 254 of the Telecommunications*
9 *Act of 1996* (first MMC case), the first case in which the Commission considered Mid-
10 Missouri Cellular (MMC) request for designation as an eligible telecommunications
11 carrier (ETC) for the purpose of receiving universal service support. I also filed
12 testimony in Case No. TO-2004-0527, *In the Matter of the Application of WWC License,*
13 *LLC, d/b/a CellularOne(R), for Designation as an Eligible Telecommunications Carrier,*
14 *and Petition for Redefinition of Rural Telephone Company Service Areas* (Western
15 Wireless ETC Case). I have worked on the annual federal Universal Service Fund (USF)
16 certification process. I have also worked on the pending draft proposed rulemaking for
17 competitive ETCs.

18 Q. Have you testified in any other previous Commission cases?

19 A. Yes, in addition to the cases listed above, I have testified in Case No. IO-
20 2003-0281, *In the Matter of the Investigation of the State of Competition in the*
21 *Exchanges of Sprint Missouri, Inc.* and Case No. TO-2005-0035, *In the Matter of the*
22 *Second Investigation into the State of Competition in the Exchanges of Southwestern Bell*
23 *Telephone, L.P., d/b/a SBC Missouri.*

Rebuttal Testimony
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1 Q. What is the purpose of your testimony?

2
3 A. The purpose of my testimony is to respond to the Direct Testimony of
4 MMC witnesses Dawson and Kurtis, as well as MMC's application for ETC status. My
5 testimony will explain why Staff is in favor of granting MMC ETC status, with some
6 caveats.

7 **Previous ETC Decisions**

8
9 Q. Has the Commission decided previously whether or not MMC should be
10 granted ETC status?

11 A. Yes, it has. In the first MMC case, the Commission did not grant MMC
12 ETC status. In its Report and Order, effective August 15, 2004, the Commission wrote,
13 beginning on page 26:

14 The Commission determines that the grant of ETC status to MMC
15 is not in the public interest because MMC has not provided
16 competent and substantial evidence to show that the public will
17 benefit from designating MMC an eligible telecommunications
18 carrier for universal service fund purposes.
19

20 **Guidelines for ETC Status Review**

21
22 Q. According to Section 214(e)(1) of the Telecommunications Act (Act), a
23 carrier shall, throughout the service area for which it receives ETC designation, offer
24 services supported by federal support and advertise the availability of those services
25 using media of general distribution. Has MMC provided verification of these standards?

26 A. Yes. MMC verifies in its application that it provides all of the services
27 required by the Act and advertises the same throughout its service area. Staff concurs
28 with MMC witness Dawson that MMC meets these eligibility requirements.

1 Q. What has happened since the first MMC ETC case that is significant in
2 this case?

3 A. On March 17, 2005, the FCC released a decision¹ regarding carriers'
4 burden of proof when applying for ETC status. This decision is attached as Schedule
5 ACM-1. Paragraph one of the Report and Order states:

6 This Report and Order addresses the minimum requirements for a
7 telecommunications carrier to be designated as an "eligible
8 telecommunications carrier" or "ETC," and thus available to
9 receive federal universal service support.
10

11 Q. What direction has the FCC provided in its *Report and Order* regarding
12 the FCC's adoption of the minimum requirements for designation as an ETC?

13 A. Paragraph 1 of the order states:

14 Specifically, consistent with the recommendations of the Federal-
15 State Joint Board on Universal Service (Joint Board), we adopt
16 additional mandatory requirements for ETC designation
17 proceedings in which the Commission acts pursuant to section
18 214(e)(6) of the Communications Act of 1934, as amended (the
19 Act). (footnotes omitted)
20

21 Q. Has the FCC provided any guidance as to whether or not the Commission
22 is encouraged to follow the minimum requirements set forth in the FCC's order?

23 A. Yes, there is. Paragraph 1 of the order continues:

24 In addition, as recommended by the Joint Board, we encourage
25 states that exercise jurisdiction over ETC designations pursuant to
26 section 214(e)(2) of the Act, to adopt these requirements when
27 deciding whether a common carrier should be designated as an
28 ETC. We believe that application of these additional requirements
29 by the Commission and state commissions will allow for a more
30 predictable ETC designation process. (footnotes omitted)
31

32 **Five FCC Guidelines**

33

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC-05-46.
Rel. March 17, 2005. ("*Report & Order*")

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1 Q. What are the guidelines the FCC puts forth in its *Report and Order*?

2 A. Paragraph 2 of the *Report and Order* states:

3 Specifically, in considering whether a common carrier has satisfied
4 its burden of proof necessary to obtain ETC designation, we
5 require that the applicant: (1) provide a five-year plan
6 demonstrating how high-cost universal service support will be used
7 to improve its coverage, service quality or capacity in every wire
8 center for which it seeks designation and expects to receive
9 universal service support; (2) demonstrate its ability to remain
10 functional in emergency situations; (3) demonstrate that it will
11 satisfy consumer protection and service quality standards; (4) offer
12 local usage plans comparable to those offered by the incumbent
13 local exchange carrier (LEC) in the areas for which it seeks
14 designation; and (5) acknowledge that it may be required to
15 provide equal access if all other ETCs in the designated service
16 area relinquish their designations pursuant to section 214(e)(4) of
17 the Act.
18

19 Q. Does MMC provide information on the first of the five guidelines, “a five-
20 year plan demonstrating how high-cost universal service support will be used to improve
21 its coverage, service quality or capacity in every wire center for which it seeks
22 designation and expects to receive universal service support”?

23 A. Not in its entirety. MMC provides information on a five year build out
24 plan beginning on page 18, line 5 of MMC witness Dawson’s Direct Testimony:

25 I have already testified that MMC will proceed promptly upon
26 qualification for USF to complete its CDMA [code division
27 multiple access] network overbuild. The level and continued
28 availability of USF funds would dictate the speed with which the
29 additional cell sites could be constructed. MMC believes that the
30 deployment of all of the cells listed in Appendix M would be
31 completed within 5 years of designation as an ETC.
32

33 Q. In your opinion, is this information the FCC is requiring of carriers
34 applying for ETC status?

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1 A. No, it is not. MMC does not break down how high cost universal support
2 will be used to “improve its coverage, service quality, or capacity” for every wire center
3 MMC requests ETC designation. Highly Confidential (HC) Appendix P does list which
4 wire centers will receive **enhanced** coverage through conversion of existing towers from
5 time division multiple access (TDMA) technology to code division multiple access
6 (CDMA) technology or which wire centers will receive **new** coverage from the build out
7 of new towers. However, there is no information provided about how service to wire
8 centers **currently** receiving CDMA technology from existing towers will improve in
9 coverage, service quality, or capacity.

10 Q. In your opinion, does MMC satisfy the requirements of the first guideline?

11 A. Not entirely. Thus, Staff recommends the Commission condition any ETC
12 designation on a requirement that MMC provide a yearly update on the status of the
13 build-out and the effects of that build-out on customers on a wire center-by-wire center
14 basis.

15 Furthermore, Staff recommends the Commission direct MMC to provide
16 information in this case about how the universal service money will be used to improve
17 its “coverage, service quality or capacity” in the wire centers currently receiving CDMA
18 technology, and then on an annual basis in the certification process.

19 Q. Does MMC provide information on the second of the five guidelines,
20 “demonstrat[ing] its ability to remain functional in emergency situations”?

21 A. Yes, it does. MMC witness Dawson, beginning on line 18, page 22 of his
22 Direct Testimony, states:

23 The MMC network consists of a mobile switching office, identical
24 in most respects to a traditional LEC end office, and cell sites

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1 which can be thought of as somewhat analogous to traditional LEC
2 remote switching offices. The switch that serves the MMC network
3 is fully redundant. The switch, physically located in Sedalia,
4 Missouri, has its own battery back-up plant and is further backed-
5 up with an emergency generator. The MMC cell sites are also
6 redundant and equipped with battery back-up plants capable of
7 operating the cell site under full load for more than 6 hours. Key
8 cell sites are equipped with dedicated back-up generators with the
9 remaining cell sites being equipped with receptacles and manual
10 transfer switches which enables MMC to take a portable generator
11 to any cell site that experiences an extended power failure and
12 literally “plug-in” a backup generator to recharge the battery
13 plants.
14

15 Q. In your opinion, does MMC satisfy the requirements of the second
16 guideline?

17 A. Yes, MMC does.
18

19 Q. Does MMC provide information on the third of the five guidelines,
20 “demonstrat[ing] that it will satisfy consumer protection and service quality standards”?

21 A. Yes, it does. MMC has committed on page 21 of its application to follow
22 the Cellular Telecommunications and Internet Association (CTIA) Code for Wireless
23 Service (The CTIA Code is attached as Appendix O in MMC’s Application).

24 Q. Is there an enforcement mechanism for failure to comply with this code of
25 conduct?

26 A. No. If the Commission grants ETC status to MMC, Staff recommends the
27 Commission expressly state that MMC is required to follow the CTIA Code.

28 Q. Would a requirement to abide by the CTIA Code alleviate all concerns
29 regarding “consumer protection and service quality standards”?

30 A. Not really. The Commission expressed concerns about quality of service
31 issues in its Report and Order for the first MMC ETC case, beginning on page 24:

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1 The Commission concludes that if ETC status were granted to
2 MMC, it would be necessary to place sufficient requirements
3 regarding quality of service to insure that customers would be
4 protected.

5
6 Q. If the Commission grants ETC status to MMC, do you recommend the
7 commission place additional quality of service standards on MMC?

8 A. Not at this time. I recommend the Commission address any additional
9 quality of service standards in a rulemaking regarding ETC carriers in general.

10 Q. In your opinion, does MMC satisfy the requirements of the third
11 guideline?

12 A. No, it does not. However, Staff recommends the Commission provide a
13 condition as a grant of ETC status that MMC abide by the CTIA Code of Conduct. Staff
14 further recommends the Commission address any additional quality of service concerns
15 in a rulemaking procedure to allay concerns in this area.

16 Q. Does MMC provide information on the fourth of the five guidelines, to
17 “offer local usage plans comparable to those offered by the incumbent local exchange
18 carrier (LEC) in the areas for which it seeks designation”?

19 A. Yes, it does. Page 8 of MMC’s Application states:

20 40. Upon designation, MMC will make available several service
21 offerings and rate plans that will compete with those of the
22 incumbent rural telephone company. Moreover, MMC’s
23 designated local calling area will equal or exceed in size the calling
24 areas of the incumbent rural telephone companies whose telephone
25 exchanges are within the area for which MMC is seeking ETC
26 designation. As a result, MMC subscribers should be able to avoid
27 certain intra-LATA toll charges typically associated with wireline
28 service.

29
30 Furthermore, MMC witness Dawson states on page 9 of his Direct Testimony that
31 MMC will offer an “ILEC-equivalent” plan. This plan, priced at \$14.50 per month, will

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1 have the following features, as described on page 7, beginning on line 7 of Dawson's
2 Direct Testimony. (Note that the price referred to in this excerpt refers to the Lifeline
3 service. Although the rate is not the rate associated with the "ILEC-equivalent" plan, the
4 Lifeline service offers the same features as the "ILEC-equivalent" plan.)

5 This Plan would offer unlimited local calling and mobility in the
6 area served by the subscriber's home cell site at a fixed monthly
7 price of \$6.25 per month. The subscriber's outbound local calling
8 area would correspond to its traditional ILEC calling area for that
9 subscriber's address.

10
11 Q. In your opinion, does MMC satisfy the requirements of the fourth
12 guideline?

13 A. Yes, MMC does.

14 Q. Does MMC provide information on the last of the five guidelines, to
15 "acknowledge that it may be required to provide equal access if all other ETCs in the
16 designated service area relinquish their designations pursuant to section 214(e)(4) of the
17 Act"?

18 A. Yes, it does. Beginning on page 22 of its Application:

19 Finally, in the event that an existing LEC were to seek to drop its
20 designation upon grant of the designation to MMC, MMC stands
21 ready to undertake carrier of last resort obligations in such areas,
22 using the processes set forth above and, in conjunction therewith,
23 offer any customer the option to pre-select and pay its toll carrier
24 of choice for any and all toll calls placed by the customer on the
25 MMC network on an equal access basis.

26
27 Q. In your opinion, does MMC satisfy the requirements of the fifth
28 guideline?

29 A. Yes, MMC does.

30
31 **Additional Requirements / Concerns**
32

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1 Q. Are there additional statements in the *Report and Order* that are relevant
2 to this case?

3 A. Yes, there are. Paragraph 21 states:

4 21. We adopt the requirement that an ETC applicant must
5 demonstrate its commitment and ability to provide supported
6 services throughout the designated service area: (1) by providing
7 services to all requesting customers within its designated service
8 area; and (2) by submitting a formal network improvement plan
9 that demonstrates how universal service funds will be used to
10 improve coverage, signal strength, or capacity that would not
11 otherwise occur absent the receipt of high-cost support. We
12 encourage states to adopt these requirements and, as recommended
13 by the Joint Board, to do so in a manner that is flexible with
14 applicable state laws and policies. For example, states that adopt
15 these requirements should determine, pursuant to state law, what
16 constitutes a “reasonable request” for service. In addition, we
17 encourage states to follow the Joint Board’s proposal that any
18 build-out out commitments adopted by states “be harmonized with
19 any existing policies regarding line extensions and carrier of last
20 resort obligations.” (underline added)

21
22 Q. Has MMC provided information to address the underlined section of the
23 above excerpt?

24 A. Yes. On page 3 of its motion for expedited treatment, filed March 25,
25 2005, MMC states:

26 MMC has proceeded to overlay approximately 2/3 of its cell sites
27 with the CDMA equipment necessary to comply with the rules but
28 has made clear that it cannot, without ETC designation, and the
29 resulting Universal Service Fund support, complete the build-out
30 of the remainder of its sites.

31 Q. In your opinion, does this statement satisfy the FCC’s requirement to
32 demonstrate how funds will be used in a manner that would not otherwise occur absent
33 the receipt of high cost support?

34 A. Not completely. Therefore, I sent MMC data requests seeking additional
35 support as to how MMC met this requirement. In its response, MMC generally

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1 referenced Mr. Kurtis' testimony in both this proceeding and the first MMC case as
2 providing support on this requirement. The Data Request response also referenced a
3 waiver MMC filed with the FCC. The waiver in part states:

4 Relevant to the instant waiver, MMC provided oral testimony
5 before the MPSC that the ETC designation was essential to
6 enabling MMC to extend its CDMA overbuild to include the rural-
7 most existing cell sites. MMC expressly advised the MPSC of the
8 impact that not being able to complete its CDMA build-out would
9 have on MMC's ability to meet its E911 obligations. Nevertheless,
10 the MPSC found that public interest considerations associated with
11 MMC's inability to complete its CDMA build out, coupled with
12 the uncontroverted testimony that the inability to do so would
13 result in MMC being unable to meet its E911 Phase II obligations,
14 insufficient for the MPSC to find that designation of MMC as an
15 ETC would be in the public interest. MMC has proceeded with the
16 overlay of 18 of its 27 cell sites with CDMA equipment. However,
17 MMC cannot, without ETC designation, and the resulting USF
18 support, complete the build out of the remainder of its cell sites.

19
20 (The data requests and responses are attached as Schedule ACM-2.)

21 Q. Did the additional information alleviate your concerns?

22 A. No it did not. In the FCC waiver request, MMC states, "MMC provided
23 oral testimony before the MPSC that the ETC designation was essential to enabling
24 MMC to extend its CDMA overbuild to include the rural-most existing cell sites." MMC
25 continues, "MMC has proceeded with the overlay of 18 of its 27 cell sites with CDMA
26 equipment. However, MMC cannot, without ETC designation, and the resulting USF
27 support, complete the build out of the remainder of its cell sites." These statements imply
28 that without the funding, MMC would not be able to complete the CDMA build-out, yet
29 MMC concludes by stating that it was able to overlay the majority of its cell sites with
30 CDMA equipment without USF support. This implication is further substantiated in
31 MMC's motion for reconsideration of the Commission's Report and Order:

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Pivotal to the PSC's holding is the conclusion that MMC already provides service throughout its proposed ETC service area, that MMC will proceed with the upgrade to its network to CDMA regardless of whether or not it was designated as an ETC, and that MMC was obligated to provide E911 service with or without ETC designation so that there was no public benefit from an emergency standpoint from affording MMC the requested designation. These findings are contrary to the record evidence.

MMC expressly represented that it would use the USF funds for the construction and operation of its network only as allowed. (emphasis added)

These statements appear to contradict the statement that CDMA build-out would not have occurred without the receipt of USF support, thereby raising questions that were not satisfactorily answered as to the need for future support.

Q. Does this apparent contradiction impact your recommendation for the granting of ETC status to MMC?

A. No it does not. MMC has provided information to support, at least in part, all of the FCC requirements. Although MMC's evidence of future support usage appear somewhat contradictory, Staff suggests this concern can be allayed if the Commission conditions ETC designation on the requirement that MMC provide annual updates on its build-out plans. If the Staff or the Commission identifies any concerns, these concerns can be addressed during the annual certification process.

Q. Are there any additional statements in the *Report and Order* that are relevant to this case?

A. Yes. Paragraph 4 of the Order states:

4. In addition, we further strengthen the Commission's reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. An ETC, therefore, must submit, among other things, on an annual

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1 basis: (1) progress updates on its five-year service quality
2 improvement plan, including maps detailing progress towards
3 meeting its five year improvement plan, explanations of how much
4 universal service support was received and how the support was
5 used to improve service quality in each wire center for which
6 designation was obtained, and an explanation of why any network
7 improvement targets have not been met; (2) detailed information
8 on outages in the ETC's network caused by emergencies, including
9 the date and time of onset of the outage, a brief description of the
10 outage, the particular services affected by the outage, the
11 geographic areas affected by the outage, and steps taken to prevent
12 a similar outage situation in the future; and (3) how many requests
13 for service from potential customers were unfulfilled for the past
14 year and the number of complaints per 1,000 handsets or lines.
15 These annual reporting requirements are required for all ETCs
16 designated by the Commission. We encourage states to require
17 these reports to be filed by all ETCs over which they possess
18 jurisdiction.

19
20 Q. Does MMC commit to meet these requirements in its Application?

21 A. Yes, it does. On page 22 of its Application:

22 Specifically, MMC hereby commits that upon grant of ETC status,
23 it will: (1) annually submit information to the Commission
24 regarding its progress toward meeting its build-out plans in areas
25 where it is designated as an ETC; (2) annually provide information
26 to the Commission with respect to the number of consumer
27 complaints it receives per 1,000 mobile handsets; and (3) annually
28 submit information regarding how many requests for service from
29 potential customers in its designated area were unfulfilled for the
30 past year. MMC would provide this information in a separate
31 schedule as part of the annual report it submits as a certificated
32 carrier.

33
34 Q. In your opinion, does MMC satisfy this requirement?

35
36 A. Yes, MMC does. Staff recommends that the Commission direct

37 MMC to comply with each of these commitments as conditions of ETC
38 designation.

39 Q. If the Commission designates MMC as an ETC, do you recommend any
40 additional conditions not already discussed?

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1 A. Yes, I do.

2
3 Per discussions with a representative of the Universal Service Administrative
4 Company (USAC), in instances where states do not exert jurisdiction over wireless
5 carriers, wireless carriers are allowed to self-certify that they meet the conditions to
6 receive Universal Service support. Therefore, USAC encouraged state commissions to
7 explicitly include a statement in an order designating a carrier as an ETC that that carrier
8 cannot self-certify, but is subject to the state commission annual certification process.
9 Therefore, Staff recommends the Commission, if it grants ETC status to MMC, state that
10 MMC is not allowed to self-certify with USAC, but must comply with the Commission's
11 annual certification process.

12 **Staff Recommendation**

13
14 Q. What is your recommendation on MMC's request to be designated as an
15 eligible telecommunications carrier?

16 A. I recommend the Commission grant MMC ETC status. They have met
17 almost all, if not all, of the guidelines in the latest FCC report and order put forth for
18 competitive ETC carriers. They have committed to follow additional steps from that
19 report and order and have agreed to provide information such as detailed build out plans.

20 With that being said, however, I recommend the Commission place the following
21 requirements on MMC as conditions of receiving ETC status.

22 (1) MMC shall follow the CTIA Code.

23 (2) MMC shall provide annual updates to the Commission (or Staff) as
24 described in paragraph 69 of the FCC Guidelines Report and Order².

² See paragraph 69 of FCC *Report and Order* in Schedule ACM-1.

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1 (3) MMC shall not self-certify to the Universal Service Administrative
2 Company (USAC), but shall comply with the Commission's annual
3 certification process.

4 Q. Does this end your testimony?

5 A. Yes, it does.