Exhibit No.:
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Witness: James E. Stidham, Jr.
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Sponsoring Party: Southwestern Bell Telephone, L.P., d/b/a/ AT&T Missouri
Case No.: TO-2006-0172

SOUTHWESTERN BELL TELEPHONE, L.P.,

d/b/a AT&T MISSOURI

CASE NO. TO-2006-0172

SUPPLEMENTAL REBUTTAL TESTIMONY

OF

JAMES E. STIDHAM, JR.

Dallas, Texas
May 19, 2006

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 §254 of the Telecommunications Act of 1996.	)))))	Case No. TO-2006-0172

AFFIDAVIT OF JAMES E. STIDHAM, JR.

STATE OF TEXAS)
SS
COUNTY OF DALLAS)

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 AT&T Services, Inc.

2. Attached hereto and made a part hereof for all purposes is my Supplemental Rebuttal 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 19 day of May, 2006.

NANCY L. GRIFFITH
Notary Public, State of Texas
My Commission Expires 01-26-09

Notary Public

My Commission Expires: 1-26-09

INTRODUCTION

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

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

Q. ARE YOU THE SAME JAMES E. STIDHAM, JR. WHO EARLIER PROVIDED TESTIMONY IN THIS CASE?

A. Yes. I prepared Rebuttal Testimony that was filed on March 1, 2006 in this case.

Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL TESTIMONY?

A. The purpose of my Supplemental Rebuttal Testimony is to respond to the Supplemental Direct Testimony of James A. Simon filed on April 17, 2006 in support of the application of Missouri RSA No. 5 Partnership ("MO5") requesting that MO5 be designated as an Eligible Telecommunications Carrier ("ETC") for purposes of receiving federal Universal Service Fund ("FUSF") support. (hereinafter, "MO5's Application"). Mr. Simon's Supplemental Direct Testimony and my Supplemental Rebuttal Testimony are directed to the matter of whether MO5's Application complies with the requirements of the Commission's newly adopted ETC rules.[1] I recommend that the Commission consider the information and analysis I provide in assessing whether to grant MO5's Application.

[1] On March 7, 2006, the Commission authorized the filing of its Final Order of Rulemaking with the Secretary of State. The rules have been published in the Missouri Register. 31 Mo. Reg. 790 (May 15, 2006). They become effective approximately thirty days after they are published in the Code of State Regulations. Section 536.021.8, RSMo. 2005 (Supp.).

SUMMARY

Q. PLEASE IDENTIFY THE MAIN POINTS CONVEYED BY YOUR SUPPLEMENTAL REBUTTAL TESTIMONY.

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

- The Commission should use its new ETC rules (to appear at 4 CSR 240-3.570 (2)(A)(5)) to evaluate MO5's application. While these rules are not yet effective, they borrow extensively from the Federal Communications Commission's ("FCC's") March, 2005 ETC Designation Order and resulting rules,[2] which AT&T Missouri and others have consistently argued should apply to all ETC cases pending before this Commission. Moreover, the Commission has previously concluded (in the context of "build out plans" required of ETC applicants) that the rules serve as a "good guide" for the evidence that the Commission currently requires of an ETC applicant.

- Because the Commission's new ETC rules borrow extensively from the FCC's ETC Designation Order, the analysis I conveyed in my Rebuttal Testimony based on that order applies in all material respects when considered in the context of the Commission's new ETC rules. MO5's Supplemental Direct Testimony, even when joined with its previously filed Direct Testimonies, still leaves questions unanswered about MO5's qualification to become an ETC and regarding whether the public interest would be served by granting its request for ETC status.

THE COMMISSION'S NEW ETC RULES

Q. SHOULD THE COMMISSION APPLY ITS NEW ETC RULES (TO BE PUBLISHED AT 4 CSR 3.570) TO THIS CASE?

A. Yes. Even though the Commission's newly adopted ETC rules have not been published in the Code of State Regulations and do not yet have the force of law, they borrow extensively from the rules which the FCC adopted in its March, 2005 ETC Designation Order for purposes of ETC applications submitted to that agency,[3] and no one in the Missouri telecommunications industry has seriously challenged the Commission's

[2] 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 Designation Order"); 47 C.F.R. §§ 54.202, 54.209.
[3] 47 C.F.R. §§ 54.202, 54.209.

reliance on the FCC's rules pending the effective date of the Commission's own newly adopted rules.

Moreover, the Commission has already observed, in the context of U.S. Cellular's pending ETC Application, that its new rules' "build out plan" requirements are "a good guide for the information that U.S. Cellular will be required to submit" before the Commission will further consider U.S. Cellular's Application.[4] The same can be said of the entirety of the rules' requirements. Thus, the build out plan portion of the new rules - as well as the remainder of the Commission's newly adopted ETC rules - should be applied in this case.

Finally, this course would also be most efficient. Mr. Simon's Supplemental Direct Testimony is directed squarely to the new rules' requirements,[5] so with the filing of all remaining testimonies due in this case, evidence on all aspects of the new rules will already have been supplied by the parties.

Q. WHAT ARE THE SPECIFIC REQUIREMENTS OF THE COMMISSION'S NEW ETC RULES?

[4] Application of USCOC of Greater Missouri, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Case No. TO-2005-0384, Order Directing Applicant to File Additional Information About Intended Use of High-Cost Support (March 21, 2006), p. 2.

[5] Simon Supplemental Direct, p. 2 ("Specifically, my testimony will address the requirements identified in the [Commission's] pending Order of Rulemaking for rule 4 CSR 240-3.570 that was adopted after MO5's application was submitted.")

A. The Commission's rules require that a carrier requesting ETC status must meet certain eligibility requirements, in accordance with Rule 3.570(2)(A)(1-10). The applicant must show:

- Its intended use of the high-cost support, including detailed descriptions of any construction plans with start and end dates, populations affected by construction plans, existing tower site locations for CMRS cell towers, and estimated budget amounts.

- A two (2)-year plan demonstrating that high-cost universal service support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

- The two (2)-year plan shall include a demonstration that universal service support shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the Missouri service area for which the requesting carrier seeks ETC designation, including a detailed map of coverage area before and after improvements and in the case of CMRS providers, a map identifying existing tower site locations for CMRS cell towers; the specific geographic areas where improvements will be made; the projected start date and completion date for each improvement; the estimated amount of investment for each project that is funded by high-cost support; the estimated population that will be served as a result of the improvements; if an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area; and a statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur.

- A demonstration of the carrier's ability to remain functional in emergency situations, including a demonstration that the carrier has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.

- A demonstration that the commission's grant of the applicant's request for ETC designation would be consistent with the public interest, convenience and necessity.

- A commitment to advertise the availability of services and charges therefore using media of general distribution throughout the ETC service area.

- A commitment to provide Lifeline and Link Up discounts consistent with 47 CFR 54.401 and 47 CFR 54.411. Each request for ETC designation shall include a commitment to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service consistent with 47 CFR 54.405.

- A statement that the carrier will satisfy consumer privacy protection standards as provided in 47 CFR 64 Subpart U and service quality standards as applicable.
- A statement that the requesting carrier acknowledges it shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designations pursuant to section 214(e) of the Telecommunications Act of 1996.

- A commitment to offer a local usage plan comparable to those offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. Such commitment shall include a commitment to provide Lifeline and Link Up discounts and Missouri Universal Service Fund ("MoUSF") discounts pursuant to Chapter 4 CSR 240-31, if applicable, at rates, terms and conditions comparable to the Lifeline and Link Up offerings and MoUSF offerings of the incumbent local exchange carrier providing service in the ETC service area.

Q. DO THE COMMISSION'S ETC RULES CONVEY A FRAMEWORK FOR APPLYING A PUBLIC INTEREST ANALYSIS?

A. No. While the rules require a demonstration that the Commission's grant of ETC designation would be consistent with the public interest, convenience and necessity, they do not prescribe any specific factors that the Commission should consider when assessing whether the ETC applicant has met its burden of proof. AT&T Missouri urges the Commission to use a process similar to the one used by the FCC. As the FCC noted, its ETC Designation Order "set[s] forth our public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the

impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering."[6] These considerations are explained in detail in Part IV(B) of the FCC's ETC Designation Order. The FCC "strongly encourages state commissions to consider the same factors in their public interest reviews."[7]

ANALYSIS OF MR. SIMON'S SUPPLEMENTAL DIRECT TESTIMONY

Q. IN YOUR OPINION, DOES MR. SIMON'S SUPPLEMENTAL DIRECT TESTIMONY DEMONSTRATE THAT MO5 HAS MET THE REQUIREMENTS OF THE COMMISSION'S ETC RULES?

A. No. In my opinion, much of that testimony lacks the same detail that I found lacking in MO5's Direct Testimonies. For example, I found no specific evidence in Mr. Simon's Supplemental Direct Testimony demonstrating that MO5 "is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations[,]" as the Commission's Rule 3.570(2)(A)(4) requires.

Q. WHAT DOES MR. SIMON'S SUPPLEMENTAL DIRECT TESTIMONY SAY ABOUT COMPLYING WITH THE COMMISSION'S RULE 3.570(2)(A)(4)?

A. With regard to traffic rerouting, the Supplemental Direct Testimony of Mr. Simon (at p. 6) states that "[MO5's] switching infrastructure is configured in a manner to allow traffic to automatically reroute around damaged facilities should a particular link to the PSTN be interrupted." However, no more testimony is devoted to the subject. Thus, no description of the switching configuration is provided, nor any explanation as to how the

[6] ETC Designation Order, para. 18.
[7] ETC Designation Order, para. 41.

configuration MO5 employs can be counted on to provide reliable redundancy and rerouting in the event that facilities are damaged.

With regard to the management of traffic spikes, the Supplemental Direct Testimony of Mr. Simon (at p. 6) states that "[b]ecause of the nature of emergency situation traffic spikes, it's impossible to specifically size and configure the wireless network to handle the emergency load in advance." Although Mr. Simon's asserts that it is "impossible" to plan for traffic increases associated with an emergency, Incumbent Local Exchange Carriers ("ILECs") have been building networks based on engineering standards designed to handle just such situations for decades. While Mr. Simon further states that "the normal operation of the switch allows for significant additional overhead traffic above and beyond 'normal' use[,]" this statement does not provide the requisite detail that would enable the Commission to find that MO5 can sufficiently handle the onset of traffic spikes and various mass calling situations in a reliable manner.

Q. DOES MR. SIMON PRESENT SUFFICIENT EVIDENCE THAT GRANTING MO5'S APPLICATION WOULD BE CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY, AS REQUIRED BY THE COMMISSION'S RULE 3.570(2)(A)(5)?

A. No. Mr. Simon asserts that enhanced Global System for Mobile ("GSM") network coverage would be in the public interest, and he notes that with a cell phone (whether or not active) an individual can call 911 using MO5's network. (Simon Supplemental Direct, p. 7). However, my understanding (based on the testimony of other wireless ETC applicants) is that all wireless carriers provide access to 911 if there is a signal from the

wireless carrier's network and if the network and the individual's phone are using compatible technology. Consequently, granting MO5's application might afford additional public health and safety benefits, but only if none of the other holders of wireless licenses operating within MO5's licensed territory provide a usable signal. MO5 has not shown that this is the case, which is important given that Ms. Zentgraf's Direct Testimony referred to two cellular licensees and six Personal Communications Services ("PCS") licensees that may be operating within MO5's licensed territory. (Zentgraf Direct, p. 25).

In short, MO5 has not shown that it would be the only provider of wireless service in the area for which MO5 is requesting ETC status, or at a minimum, that it would be the preferred provider in an area where another wireless provider (or providers) offers service. Thus, the record affords the Commission no basis upon which to conclude that granting MO5's Application - thus allowing MO5 access to high-cost fund support - would provide Missourians any meaningful public health and safety benefits.

Q. MR. SIMON ASSERTS THAT GRANTING MO5 ETC STATUS WOULD BENEFIT RURAL FARMERS. (SIMON SUPPLEMENTAL DIRECT, P. 7). DOES THIS POSITION SQUARE WITH HIS DISCUSSION OF WHY SERVICE QUALITY REQUIREMENTS ARE UNNECESSARY?

A. No. Mr. Simon suggests that without MO5's service, a rural farmer would likely be without any wireless service. But he also suggests that competition in the wireless

services market makes it unnecessary to condition ETC status upon compliance with quality of services standards: "If one service provider offers inferior service, the customer often has the ability to switch their service provider." (Simon Supplemental Direct, p. 10). While I am not advocating that service quality requirements be placed on MO5 as a condition of granting it ETC status, I am suggesting that the farmer either may already have, or will have in the near future, multiple carriers from which to choose, and granting MO5's application would distort the market place. Moreover, it seems inconsistent for MO5 to suggest, on the one hand, that there are few if any wireless alternatives for farmers while also suggesting, on the other hand, that the "competitive" wireless environment makes added regulation unnecessary.

Q. DOES MR. SIMON'S SUPPLEMENTAL DIRECT TESTIMONY ADEQUATELY ADDRESS THE COMMISSION'S REQUIREMENT REGARDING MO5'S COMMITMENT TO PROVIDE LIFELINE AND LINK UP DISCOUNTS?

A. No. The Commission's Rule 3.570(2)(A)(7) requires that an ETC applicant demonstrate its "commitment to provide Lifeline and Link Up discounts consistent with 47 CFR 54.401 and 47 CFR 54.411." The first federal rule referenced (specifically, 47 CFR 54.401(a)(2)) defines Lifeline as a "retail local service offering . . . [f]or which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in § 54.403." Mr. Simon's Supplemental Direct Testimony does not affirmatively state that MO5 commits to comply with this Commission's requirement (nor even the requirements of the FCC's above-referenced Rule 54.401). Consequently, the record is bare as to whether MO5's proposed "Option 2" Lifeline plan

rate of $11.75 represents a rate reached after applying required rate reductions to an actual MO5 retail service offering.[8] Stated another way, this Commission cannot be sure that the appropriate Lifeline discounts are in fact being passed on to the Lifeline Option 2 customer if there is no actual retail service offering against which the discount is applied.

Q. DOES MR. SIMON'S SUPPLEMENTAL DIRECT TESTIMONY ADEQUATELY ADDRESS THE COMMISSION'S RULE 3.570(2)(A)(10)?

A. No. That rule requires, in part, that the ETC applicant commit to provide Lifeline discounts "at rates, terms and conditions comparable to" the Lifeline offerings of the ILEC serving the ETC service area. Mr. Simon's discussion regarding this rule, which appears at pages 10-12 of his Supplemental Direct Testimony, references MO5's Appendix K, which Mr. Simon submitted with his Direct Testimony. However, as I pointed out in my Rebuttal Testimony (at pp. 20-21), Appendix K is incorrect because it compares MO5's Lifeline rates to AT&T Missouri's rates before applying the appropriate discounts to AT&T Missouri's rates, and further, because it depicts the wrong SLC which, in the case of AT&T Missouri, is $5.25, not $6.50. The error made in Appendix K is not mentioned in Mr. Simon's Supplemental Direct Testimony. As a result, it cannot be said that MO5's proposed Lifeline plans are comparable to those of AT&T Missouri.

Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL REBUTTAL TESTIMONY?

A. Yes.

[8] Mr. Simon had earlier testified that MO5's ILEC-Equivalent Plan would offer the same features and services as the first Lifeline Plan (i.e., Option 1) but would be available to all MO5 subscribers at the price of $15.00 per month. Simon Direct, p. 8.