

Exhibit No.:
Issues: *FCC Requirements
for ETC Status; Areas
Included in Request;
Public Interest*
Witness: *Michael Kurtis*
Sponsoring Party: *Missouri RSA No. 7
Limited Partnership
d/b/a Mid-Missouri
Cellular*
Type of Exhibit: *Direct Testimony*
Case No.: *TO-2005-0325*
Date Testimony Prepared: *March 23, 2005*

**MISSOURI PUBLIC SERVICE COMMISSION
UTILITY OPERATIONS DIVISION**

**DIRECT TESTIMONY
OF
MICHAEL KURTIS**

**MISSOURI RSA No. 7 LIMITED PARTNERSHIP
d/b/a MID-MISSOURI CELLULAR**

CASE NO. TO-2005-0325

March 2005

1 In 1995, I founded Kurtis and Associates, P.C. ("K&A"), which provided legal and
2 technical representation to telephone companies, personal communications, cellular, paging,
3 microwave and other wireless communication carriers and entrepreneurs. As of January 1,
4 2004, the K&A practice was acquired by Bennet & Bennet, PLLC and I became Of
5 Counsel.

6 **Q. To what professional associations do you or your firm belong?**

7 A. I am a member of the Institute for Electrical and Electronic Engineers, the District of
8 Columbia Bar Association, the Indiana State Bar Association, the American Bar
9 Association and the Federal Communications Bar Association. The firms that I have
10 worked with have been Associate Members of the Rural Cellular Association, the Rural
11 Telecommunications Group ("RTG"), the Organization for the Promotion and
12 Advancement of Small Telecommunications Companies ("OPASTCO"), the National
13 Telephone Cooperative Association ("NTCA") and various states Telecommunications
14 Association. I sit on the OPASTCO wireless committee and am an active participant in the
15 Rural Wireless Working Group ("RWWG") which is a joint working group on wireless
16 issues between OPASTCO, NTCA and RTG. I also sit on the RWWG working group
17 committee addressing issues relating to the designation of eligible telecommunications
18 carriers ("ETC").

19 **Q. What professional services have you provided to Missouri RSA No. 7 Limited**
20 **Partnership d/b/a Mid-Missouri Cellular ("MMC")?**

21 A. I have been involved, either directly or in a supervisory capacity, in all facets of
22 providing technical and federal legal/regulatory representation to MMC since 1991. In
23 terms of our technical representation, I and my colleagues have provided MMC with a full

1 array of design, analytic and implementation services with respect to MMC's cellular
2 communications system in Missouri RSA No. 7 and Ray County. Using proprietary
3 propagation and system analysis software, we have analyzed MMC's coverage
4 requirements and advised MMC concerning infrastructure modifications that would
5 improve and expand reliable coverage provided to its subscribers. We have prepared and
6 circulated requests for proposals to equipment manufacturers and other vendors, analyzed
7 the ensuing responses and, based upon our understanding of MMC's service objectives,
8 recommended the optimal proposal to MMC's management. We have supervised and
9 evaluated equipment installation and other construction activity, performed initial testing,
10 and all due diligence incident to and necessary for system acceptance, system expansion and
11 migration to digital technologies. We have been involved in all system design, expansion,
12 optimization and coordination of frequency usage with adjacent market licensees.

13 In addition to these activities, I have supervised the preparation of numerous
14 applications and other documents filed with the Federal Communications Commission (the
15 "FCC"), and coordinated with FCC staff to facilitate successful processing of these
16 submissions. I have also provided technical representation in connection with FCC, FAA,
17 state regulatory, and zoning compliance matters.

18 Regarding legal representation, I have advised MMC on all aspects of complying
19 with FCC rules generally pertaining to wireless carriers as well as those that specifically
20 apply to cellular carriers. In addition, I have advised MMC concerning federal
21 telecommunications law and all relevant FCC regulatory initiatives including (but not
22 limited to): the Communications Assistance for Law Enforcement Act of 1994 ("CALEA");
23 emergency - E911 service (particularly, accuracy requirements for wireless carriers under

1 the FCC's Rules); FCC environmental rules and policies; universal service fund; and
2 wireless number pooling and portability. With respect to these matters, I have prepared or
3 supervised the preparation on MMC's behalf of pleadings, comments, applications and
4 other documents for filing with the FCC or with other regulatory agencies. I am also
5 involved in the ongoing representation of MMC's interests with respect to other carriers,
6 third parties and MMC's various equipment and service suppliers. I have negotiated or
7 assisted in the negotiating of its several agreements, including its purchase agreements with
8 equipment and service suppliers.

9 **Q. What is the purpose of your testimony in this proceeding?**

10 A. My testimony will support and expand upon certain statements and factual
11 representations in MMC's Application For Designation As An Eligible
12 Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support
13 Pursuant to Section 214(e)(2) Of The Telecommunications Act Of 1996 ("Application") in
14 this docket.

15 **Q. Have you previously provided testimony before the Missouri Public Service**
16 **Commission (the "Commission")?**

17 A. Yes, I have. I provided testimony on behalf of MMC in the arbitration of its
18 interconnection agreement with Southwestern Bell Telephone in Case No. TO-99-279 as
19 well as expert testimony in the previous MMC ETC proceeding (Case No. To-2003-0531).

20 **Q. Please provide some background information concerning MMC's cellular**
21 **service in Missouri RSA 7 and Ray County.**

22 A. Pursuant to its FCC cellular license (Call Sign KNKN595), MMC provides analog
23 and TDMA-based cellular service in Missouri RSA No. 7, Market No. 510B, which

1 comprises Cooper, Howard, Johnson, Lafayette, Pettis and Saline counties. MMC, pursuant
2 to cellular license KNKR207, is also a cellular carrier in previously unserved territory
3 located in MSA Market No. 24B(2), *i.e.*, the Kansas City MSA, which comprises a large
4 portion of Ray County. MMC has also claimed small portions of Carroll, Henry and
5 Morgan counties, which were also previously unserved areas, as part of its Missouri RSA
6 No. 7 Cellular Geographic Service Area (“CGSA”).

7 The FCC licenses cellular systems on the basis of a Cellular Geographic Service Area
8 (“CGSA”) and not on a per site basis. The CGSA is determined by applying FCC formulas
9 to the operating parameters of a licensee’s cell sites to determine the Service Area Boundary
10 (“SAB”) for each cell site, and then using the composite of the area encompassed within
11 those SABs, as limited by the particular market boundary, to define the CGSA.
12 Accordingly, only cell site locations with SABs that are used to form a part of the CGSA
13 are listed on the FCC license. Additional cell sites having SABs that are wholly contained
14 within the CGSA are not listed on the FCC license.

15 Within the area proposed for ETC designation in its Application, MMC operates 27
16 individual cellular base stations (cell sites) and provides service utilizing analog (“AMPS”),
17 time division multiple access (“TDMA”) digital technology and code division multiple
18 access (“CDMA”) digital technology. In addition, MMC has overbuilt 18 of its cell sites
19 with code division multiple access (“CDMA”) digital technology. The antenna towers
20 associated with these base stations are either owned outright by MMC or leased from third
21 parties.

1 **Q. Before discussing the communication services MMC provides in its proposed**
2 **ETC area, please comment on the “rural telephone company” service areas that are**
3 **included within MMC’s proposed ETC area.**

4 A. Appendix A of the Application, a copy of which is attached hereto as Appendix A,
5 shows MMC’s composite Cellular Geographic Service Area (“CGSA”) as licensed by the
6 FCC. MMC’s proposed ETC designated area is discussed at Section II of the Application,
7 which references to Appendices C and D. The map set forth as Appendix C of the
8 Application, a copy of which is attached hereto as Appendix C, was prepared under my
9 direct supervision, shows the area in which MMC seeks ETC designation. That area is
10 superimposed over a map depicting the various wire centers for local exchange carriers
11 (“LECs”) providing traditional wireline telephone service in this area. MMC’s proposed
12 ETC service area is comprised of the wire centers listed in Appendix D of the Application, a
13 copy of which is attached hereto as Appendix D. All of these appendices were prepared
14 under my direct supervision. The term “rural telephone company” is defined in
15 Section 153(37) of the Communications Act, 47 U.S.C. § 153(37) is a LEC that meets that
16 statutory provision’s requirements with respect to size or service area criteria. LECs that do
17 not qualify for designation as a “rural telephone company” are designated as non-rural, even
18 though they may, in fact be providing service to a rural geographic area.

19 **Q. What is the significance of the rural versus non-rural telephone company**
20 **designation in the context of an application seeking designation for a competitive**
21 **ETC?**

22 A. Section 214(e)(2) of the Act states, in relevant part:

1 Upon request and consistent with the public interest, convenience and
2 necessity, the State commission may, in the case of an area served by a rural
3 telephone company, and shall, in the case of all other areas, designate more
4 than one common carrier as an eligible telecommunications carrier for a
5 service area designated by the State commission, so long as each additional
6 requesting carrier meets the requirements of paragraph (1). Before
7 designating an additional eligible telecommunications carrier for an area
8 served by a rural telephone company, the State commission shall find that the
9 designation is in the public interest.

10 Thus the Commission must designate more than one carrier as an ETC in an area
11 served by a non-rural telephone company if the requesting carrier meets the requirements of
12 Section 214(e)(1) of the Act. With respect to areas served by a rural telephone company, the
13 Commission may make the ETC designation if it finds that the designation is consistent with
14 the public interest, convenience and necessity; and the requirements of Section 214(e)(1) of
15 the Act are met. The requirements of Section 214(e)(1) of the Act are as follows:

16 (e) PROVISION OF UNIVERSAL SERVICE --

17 (1) ELIGIBLE TELECOMMUNICATIONS CARRIERS. -- A
18 common carrier designated as an eligible telecommunications carrier under
19 paragraph (2) or (3) shall be eligible to receive universal service support in
20 accordance with section 254 and shall, throughout the service area for which
21 the designation is received --

22 (A) offer the services that are supported by Federal universal
23 service support mechanisms under section 254(c), either using its own

1 facilities or a combination of its own facilities and resale of another
2 carrier's services (including services offered by another eligible
3 telecommunications carrier); and
4 (B) advertise the availability of such services and the charges
5 therefore using media of general distribution.

6 **Q. What are the services that are supported by Federal universal service support**
7 **mechanisms under Section 254(c)?**

8 A. Pursuant to Section 54.101(a) of the FCC's Rules, the following core services and
9 functions are to be offered by an ETC and should be supported by federal universal support
10 mechanisms:

11 (a) Voice grade access to the public switched network: (the FCC
12 concluded that voice-grade access means the ability to make and receive phone calls,
13 within a bandwidth of approximately 2700 Hertz, within the 300 to 3000 Hertz
14 frequency range).¹

15 (b) Local usage: (to date, the FCC has not quantified any minimum
16 amount of local usage required to be included in a universal service offering, but has
17 initiated a separate proceeding to address this issue.² Any minimum local usage

¹ See Federal-State Board on Universal Service (First Report and Order in CC Docket No. 96-45) 12 FCC Rcd 8776, 8810-11 (1997) ("First Report and Order").

² See, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998). As recently as March 17, 2005, the FCC has re-affirmed that while there is a local service requirement, it has set no minimum level of local usage as a pre-condition to ETC designation. See, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC-05-46 (Rel. March 17, 2005) ("*FCC Guidelines Report & Order*") at ¶ 34.

1 requirement established by the FCC as a result of this proceeding will be applicable to
2 all designated ETCs.)

3 (c) Dual tone multi-frequency signaling or its functional equivalent:
4 (DTMF is a method of signaling that facilitates the transportation of call set-up and
5 call detail information). Consistent with the principles of competitive and
6 technological neutrality, the FCC permits carriers to provide signaling that is
7 functionally equivalent to DTMF in satisfaction of this service requirement.³

8 (d) Single-party service or its functional equivalent: (“Single-party
9 service” means that only one party will be served by a subscriber loop or access line,
10 in contrast to a multi-party line.)⁴

11 (e) Access to emergency services: The ability to reach a public
12 emergency service provider through dialing “911” is a required universal service
13 offering. A wireless carrier such as MMC is not required to provide E911 services
14 until a local emergency provider has made arrangements for delivery of ALI and ANI
15 from carriers.⁵

16 (f) Access to operator services: (Access to operator services is defined as
17 any automatic or live assistance provided to a consumer to arrange for the billing or
18 completion, or both, of a telephone call.)

19 (g) Access to interexchange service: (An ETC providing universal service
20 must offer consumers access to interexchange service to make or receive toll or

³ 47 C.F.R. § 54.101(a)(3).

⁴ See, 12 FCC Rcd at 8810.

⁵ See, 12 FCC Rcd at 8815-8817.

1 interexchange calls. Interexchange service access entails access to live or automatic
2 operator assistance for the placement and billing of telephone calls, including collect
3 calls, calling card calls, credit card calls, person-to-person calls, and third party calls,
4 as well as obtaining related information.)

5 (h) Access to directory assistance; and

6 (i) Toll limitation for qualifying low-income consumers. On
7 December 30, 1997, the FCC changed its definition of toll-limitation services in its
8 Fourth Order on Reconsideration of the Universal Service Report and Order,
9 CC Docket Nos. 96-45 *et al.* The FCC stated, “we define toll-limitation services as
10 either toll blocking or toll control and require telecommunications carriers to offer
11 only one, and not necessarily both, of those services at this time in order to be
12 designated as eligible telecommunications carriers.”

13 The Commission has previously determined that MMC offers all of these required
14 services in Case No. TO-2003-0531.

15 **Q. What LEC wire centers are included in the MMC proposed ETC service area**
16 **and which of those LECs are rural and non-rural telephone companies?**

17 A. Of the specific LEC wire centers identified in Appendix D as being encompassed
18 within the proposed ETC service area, Alma Telephone Company (“Alma”), Citizens
19 Telephone Company (“Citizens”), Mid-Missouri Telephone Company (“MMTC”), Spectra
20 Communications Group. LLC (“Spectra”) and Sprint/United Telephone Company of
21 Missouri (“Sprint”) are rural telephone companies, while CenturyTel of Missouri LLC
22 (Southwest) and CenturyTel of Missouri LLC (Central) (collectively “CenturyTel”) and
23 Southwestern Bell Telephone Company (“SBC”) are non-rural telephone companies.

1 **Q. How did MMC determine what areas to include within its proposed ETC service**
2 **area?**

3 A. MMC is a facilities-based wireless CMRS FCC licensee. To the greatest extent
4 possible, MMC tried to specify an ETC service area that corresponded to its FCC-licensed
5 CGSA. With respect to the areas served by the non-rural LECs, MMC's proposed ETC
6 service area corresponds with the MMC CGSA. However, where the MMC CGSA boundary
7 crosses the area served by a rural LEC, MMC modified its proposed ETC service area to
8 follow the LEC wire center boundaries. Appendix D hereto identifies the wire centers that
9 are included in the MMC proposed ETC service area.

10 **Q. Why did MMC follow the wire center boundaries in the areas served by rural**
11 **LECs as opposed to its FCC-licensed CGSA?**

12 A. The FCC has recently issued a pair of orders providing guidance to state commissions
13 in determining when the grant of an ETC designation will serve the public interest. Those
14 orders are *In the Matter of Federal-State Joint Board on Universal Service, Virginia*
15 *Cellular, LLC Application for Designation as an Eligible Telecommunications Carrier In the*
16 *Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45,
17 FCC 03-338 (rel. January 22, 2004), ("*Virginia Cellular Order*"); and *In the Matter of*
18 *Federal-State Joint Board on Universal Service, Highland Cellular Petition for Designation*
19 *as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum*
20 *Opinion and Order*, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004), ("*Highland*
21 *Cellular Order*"). In the *Highland Cellular Order* the FCC held that a proposed ETC service
22 area may not specify an area below the wire center level for a rural LEC. Accordingly,

1 where the MMC CGSA crossed a rural LEC wire center, MMC modified its proposed ETC
2 service area to include only entire wire centers.

3 In its *Virginia Cellular Order*, the FCC made it clear that where a wire center lies
4 partially beyond a wireless ETC's FCC-licensed CGSA, it can meet its obligations as an ETC
5 by providing service in those areas through agreements with other wireless carriers and
6 MMC will do so with respect to the portions of wire centers that lie beyond the boundaries of
7 MMC's FCC-licensed service area.

8 **Q. How would MMC's USF support be determined?**

9 A. The level of support available to MMC is a function of the level of support available
10 to the LEC whose area is encompassed within MMC's ETC service area. Where an MMC
11 subscriber has a billing address in a particular LEC wire center, the amount of support
12 available to MMC is based upon the per line level of support received by that LEC.

13 **Q. Does that result in a loss of USF for the underlying LEC?**

14 A. No, except in the limited case where an MMC subscriber disconnects its landline
15 phone and replaces it with an MMC phone. Otherwise, from a USF support perspective, the
16 MMC subscriber phone would look the same as an additional line for the underlying LEC.

17 **Q. Doesn't that place a substantial burden on the USF?**

18 A. No. All telecommunications carriers contribute to the USF. That includes all
19 wireless carriers. While there is concern that the current practice could threaten the long-
20 term viability of the USF, to date the evidence suggests that wireless ETC designations have
21 not had an adverse impact on the USF. While wireless ETC designations have been
22 increasing over the last two years, the level of carrier contribution to the USF (calculated as
23 the percent of revenues needed to support the fund) has actually been decreasing.

1 Specifically, the contribution factor has declined from 9.5% (third quarter 2003), to 9.2%
2 (fourth quarter 2003) to 8.7% (first quarter 2004) to 8.7 percent, the same factor as for the
3 first quarter of 2004, for the second quarter of 2004. The Third and Fourth Quarter 2004
4 Universal Service Contribution Factors of 8.9 percent remained well below the contribution
5 factor for the prior year and is a further indication of the current fund stability. The
6 contribution factors for 2005 increased to 10.7 percent for the first quarter and is proposed at
7 11.1 percent for the second quarter. *Proposed Second Quarter 2005 Universal Service*
8 *Contribution Factor*, DA 05-648 (CC Docket No. 96-45)(Rel. March 10, 2005). While this
9 does represent an increase in the contribution factor, it should be noted that the increase is
10 primarily attributable to increased program support costs for the Schools and Libraries
11 program. Comparing the Program Support levels from the 4th quarter 2004 to those
12 projected for the second quarter of 2005, the Schools and Libraries Projected Program
13 Support increased 36.33% as compared to an increase of 5.21% in the High-Cost program.

14 **Q. While that may currently be the case, shouldn't this Commission be worried**
15 **about the global impact on the USF of designating additional wireless ETCs?**

16 A. No. The MMC Application is before this Commission under an established set of
17 rules and statutory requirements. Denial of MMC's Application will not affect the ability of
18 wireless carriers in other states to draw upon the USF; it will only affect the ability of the
19 citizens of rural Missouri to benefit from those federal funds. The grant of the MMC
20 Application will, in and of itself, place an insignificant burden on the USF. Accordingly, the
21 Commission should avoid consideration of generalized policy arguments relating to the
22 wisdom of including wireless ETCs in the USF and the present funding mechanisms. These
23 concerns are presently being fully considered by the Federal-State Joint Board on Universal

1 Service, Congress and the FCC. The FCC has recently issued a Notice of Proposed
2 Rulemaking to consider recommendations advanced by the Federal-State Joint Board on
3 Universal Service last February which could ultimately result in a change in the methodology
4 for determining the level of wireless support from the USF. *In re Federal-State Joint Board*
5 *on Universal Service*, FCC 04-127 (CC Docket No. 96-45) (Rel. June 8, 2004). On
6 March 17, 2005, the FCC issued *its FCC Guidelines Report & Order* adopting certain
7 changes in the manner in which the FCC will process ETC applications on a going forward
8 basis and setting forth those procedures as suggested guidelines for state commissions to
9 follow in processing ETC applications. In adopting those changes, the FCC again made it
10 clear that rule changes adopted as a result of that or any future proceeding would affect the
11 methodology for calculating USF support for all ETCs, including MMC if the subject ETC
12 designation is granted. ETCs are not “grand-fathered” with respect to the method of
13 determining their ongoing level of support. The FCC has made this abundantly clear in its
14 *Virginia Cellular Order*. The *FCC Guidelines Report & Order* made no changes to the
15 method by which USF support for ETCs would be calculated.

16 **Q. With respect to this particular ETC designation, what would be the impact on**
17 **the USF?**

18 A. As Mr. Dawson has testified, the total USF support MMC expects to receive for its
19 proposed service area is \$1,706,412.00 annually. That would represent approximately
20 **0.04%** of the total high cost support received by carriers from the USF. In sharp contrast, the
21 LECs in the proposed ETC service area receive \$35,084,224⁶ annually in high cost support

⁶ According to USAC’s Second quarter filings with the FCC, the ILECS operating in MMC’s proposed ETC service area would receive the following in annual support for all of their wire centers in the state of Missouri: Alma - \$121,480; CenturyTel

1 from the USF for their service areas throughout the state of Missouri placing more than
2 twenty (20) times the burden on the USF that designation of MMC as an ETC would place
3 on the fund. In any event, the FCC has held that a potential high cost support of 1.88% of the
4 total level of high-cost support, or approximately forty-seven (47) times the burden of the
5 proposed MMC designation, did not represent a significant increased burden on the USF.
6 *See, In the Matter of Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a*
7 *Nextel Partners Application for Designation as an Eligible Telecommunications Carrier In*
8 *the States of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee and the*
9 *Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45,
10 DA 04-2667 (rel. August 25, 2004) (“*Nextel Order*”), at paragraph 21. Indeed, in the *FCC*
11 *Guidelines Report & Order*, the FCC acknowledged that “...given the size of the total high
12 cost fund -- approximately \$3.8 billion a year -- it is unlikely that any individual ETC
13 designation would have a substantial impact on the overall size of the fund.”⁷

14 **Q. Returning to the specific MMC proposal as it relates to the rural LEC wire**
15 **centers, how is the level of support determined for the rural LEC?**

16 A. The rural LEC support is based upon its cost of providing service. These costs are
17 either determined through a specific cost study or by following an average schedule of costs.
18 The LEC wire centers of an individual carrier throughout the state are typically considered on
19 an aggregated basis. Collectively, these wire centers are referred to as that LEC’s study area.
20 In the MMC Application, it has proposed including the entire study areas for Alma, Citizens

Central -\$777,636; CenturyTel SW - \$2,619,864; Citizens \$2,067,988; MMTC - \$3,416,820;
SBC - \$3,468,000; Spectra - \$15,575,200; and Sprint - \$7,037,236.

⁷ *FCC Guidelines Report & Order* at ¶ 53 (footnote omitted).

1 and MMTC. However, in the case of Spectra and Sprint, the MMC proposal does *not*
2 encompass the entire LEC study area.

3 **Q. What is the significance of the fact that only a portion of the Spectra and Sprint**
4 **study areas are included in the proposed MMC ETC service area?**

5 A. As I previously stated, the level of support received by Spectra and Sprint in any
6 given wire center is based upon their cost to provide service throughout their respective study
7 areas. Where, as here, a competitive ETC seeks to only include a portion of the LEC study
8 area in its ETC service area, there is concern that a competitive ETC not be providing service
9 to only a lower-cost portion of the LEC study area while receiving support based upon an
10 overall higher average cost spread across the entire LEC study area.

11 In its *Virginia Cellular Order* and *Highland Cellular Order*, the FCC examined the
12 relative population densities for the portions of the study areas for each LEC that lie within
13 the proposed CETC service area as compared to the population densities of the entire LEC
14 study area. The FCC held that where the population densities of the entire ILEC study area
15 are significantly lower than the population density within the ETC service area, cream
16 skimming has occurred. That is *not* the case with respect to the redefinition proposed herein.

17 In the case of the proposed redefinition of the Spectra service area, Spectra has
18 disaggregated its study area into Zones. The Concordia wire center included in the proposed
19 MMC ETC service area is located within Spectra's Zone 1. The average population density
20 for the Concordia wire center is 38.93 persons per square mile; well below the overall
21 population density of the Spectra's Zone 1 study area which is 49.50 persons per square mile.

22 Accordingly, any level of support based upon the entire Spectra study area would
23 have been determined on the average cost of providing service to a population density of

1 49.50. Since the population density within the portion of the Spectra study area that lies
2 within MMC's proposed ETC service area is below the population density of the entire
3 disaggregated Spectra study area zone, the portion of the disaggregated Spectra study area
4 which MMC seeks to include in its ETC designated service area would be expected to have a
5 higher cost of service than the average upon which the level of USF support is based.

6 With respect to the Sprint wire centers, those included within the proposed MMC
7 ETC service area have an average population density of 43.32 persons per square mile as
8 compared to a an overall study area population density of 54.00 persons per square mile.
9 Accordingly, in each and every instance where MMC seeks redefinition of the ILEC service
10 area, the average population densities within the portions of those study areas sought to be
11 included in the MMC ETC service area fall below the overall population densities upon
12 which the level of support has been based. Since the proposed redefined service area
13 represents a population density below the average population density upon which the level of
14 USF support for the ILEC was based, under established FCC precedent, there would be no
15 cream skimming issue presented by the proposed redefinition of the Citizens service area.

16 **Q. Is population density the only consideration in these types of cases?**

17 A. While the FCC based its *Virginia Cellular Order* and *Highland Cellular Order*
18 decisions on this single factor, the FCC has previously considered this issue and formulated a
19 procedure to virtually eliminate this concern even where the population density might not be
20 as set forth herein.

21 [A]s the FCC concluded in *Universal Service Order*, the primary objective in
22 retaining the rural telephone company's study area as the designated service area of a
23 competitive ETC is to ensure that competitors will not be able to target only the customers

1 that are the least expensive to serve and thus undercut the incumbent carrier's ability to
2 provide service to the high-cost customers. Rural telephone companies now have the option
3 of disaggregating and targeting high-cost support below the study area level so that support
4 will be distributed in a manner that ensures that the per-line level of support is more closely
5 associated with the cost of providing service. *Therefore, any concern regarding "cream-*
6 *skimming" of customers that may arise in designating a service area that does not*
7 *encompass the entire study area of the rural telephone company has been substantially*
8 *eliminated.*⁸

9 Spectra has already disaggregated the study area that includes Concordia.

10 Finally, while there is clearly no cream-skimming issues involved in the proposed
11 redefinition, I note that the FCC has also recognized that the principle of competitive
12 neutrality controls in the designation of CETCs, holding that

13 Universal service support mechanisms and rules should be
14 competitively neutral. In this context, competitive neutrality means that
15 universal service support mechanism rules neither unfairly advantage nor
16 disadvantage one provider over another and neither unfairly favor nor disfavor
17 one technology over another.⁹

18 In the case of Spectra and Sprint, the various wire centers that comprise their study
19 areas (or disaggregated portion thereof) are scattered in non-contiguous geographic clusters
20 throughout the state. In cases such as MMC's, which is a Missouri-only regional CMRS

⁸ *Petitions for Reconsideration of Western Wireless Corporation's Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 19144, 19149 (2001) (emphasis added, footnotes omitted).

⁹ Report and Order, CC Docket No. 96-45, FCC 97-157 (May 8, 1997) (§ 47).

1 carrier, the situation where the ILEC study area is scattered statewide warrants additional
2 consideration. A CMRS ETC cannot effectively provide service to geographic areas far
3 removed from its FCC-licensed service area. Accordingly, where, as here, the study area is
4 comprised of numerous non-contiguous regions scattered throughout an expansive
5 geographic area, the Commission should not apply a standard that would allow only one
6 class of CMRS licensee (large nationwide licensees) to qualify for ETC status by being the
7 only carriers that can cover an entire LEC study area.

8 Since no cream-skimming would result, MMC requests that this Commission redefine
9 Spectra's and Sprint's service areas to allow MMC to be designated as a competitive ETC
10 only in the specified portions of those study areas.

11 **Q. Since Spectra and Sprint apparently prepare all of their cost analysis based**
12 **upon several wire centers, wouldn't this re-definition result in increased costs and**
13 **administrative burden for those LECs?**

14 A. No. It is important to note that MMC is *not* seeking to redefine the *study* area for any
15 rural LEC. Rather, MMC is seeking only to redefine the LEC *service* areas for purposes of
16 designating a competitive ETC ("CETC"). As the FCC fully explained in the *Virginia*
17 *Cellular Order*, the proposed *service* area redefinition would have no impact on the rural
18 LEC reporting or administrative obligations. Specifically, the FCC found that redefining the
19 rural telephone company *service* areas would not require rural telephone companies to
20 determine their costs on any basis other than the *study* area level. The redefinition, therefore,
21 only enables MMC, as an ETC, to serve an area that is smaller than the entire LEC study
22 area. Accordingly, MMC respectfully requests the redefinition of the Spectra and Sprint

1 *service* area, but not *study* area, to include only those wire centers identified in Appendix D
2 hereto.

3 **Q. Does MMC offer ubiquitous service throughout its proposed ETC service area?**

4 A. The MMC network offers analog and TDMA digital services throughout its market to
5 a far greater area than any of its competitors. Recently, MMC, in response to decisions by
6 the major nationwide carriers to abandon the TDMA digital technology, has found it
7 necessary to migrate its network to CDMA. MMC has been able to overlay CDMA at
8 approximately 18 of its cell sites that provide service to the largest population centers and
9 major traffic arteries within its FCC-licensed service area. However, there are areas within
10 the market where the quality of primarily CDMA digital services could be enhanced.
11 Application Appendix E, a copy of which is attached hereto as Appendix E, identifies the
12 areas where CDMA coverage would benefit from coverage enhancement. These areas
13 include 9 of the rural-most cell sites in MMC's existing network as well as some of the rural-
14 most portions of the market. Appendix F of the Application, a copy of which is attached
15 hereto as Appendix F, depicts the area where CDMA coverage would be enhanced by the
16 completion of the CDMA overlay of the existing MMC network. Appendix G of the
17 Application, a copy of which is attached hereto as Appendix G, depicts the areas where
18 CDMA coverage would be enhanced by the additional sites testified to by Mr. Dawson as
19 representing MMC's proposed use of USF funds to enhance MMC's network coverage over
20 the next five years. Appendix H of the Application, a copy of which is attached hereto as
21 Appendix H, depicts the physical location of each existing MMC cell site as well as the areas
22 where the proposed expansion cell sites would be located, with the underlying LEC wire
23 centers superimposed. The maps included in Appendices E, F, G and H were all prepared

1 under my direct supervision. MMC considers this information to be highly confidential and
2 thus Appendices E, F, G and H have been redacted from the public copy of this testimony.
3 In addition, the maps set forth in Mr. Dawson's testimony as Appendix K and Appendix L
4 were also prepared under my supervision.

5 **Q. With respect to the proposed completion of the MMC CDMA overlay of its**
6 **existing network and the additional planned cell sites depicted on the map in**
7 **Appendix G, please discuss and quantify the specific wire centers where MMC network**
8 **coverage would be enhanced.**

9 A. Appendix P hereto identifies the wire centers where coverage would be enhanced by
10 both the Phase 2 and Phase 3 CDMA deployments. I have also set forth in that appendix the
11 population that would be affected by each enhancement. Since the sites being deployed in
12 Phase 2 are planned to be deployed simultaneously, the information for Phase 2 (wire centers
13 as well as population) has been presented on a consolidated basis. With respect to each site
14 proposed for Phase 3, the analysis has been presented on a per site basis since the
15 deployment of these sites would be phased in over the course of a 5 year period.
16 Mr. Dawson has testified that the precise timing for these deployments would be a function
17 of the level of USF support received coupled with evolving customer service needs.
18 Appendix P was prepared under my direct supervision and the information contained therein
19 is deemed to be highly confidential and has been redacted from the public copy of this
20 testimony.

21 Q. Does the existence of "dead spots" in the proposed ETC area preclude MMC from
22 satisfying its commitment to provide the core services set forth in FCC Rule 54.101(a)?

1 A. No, it does not. Any carrier or operator that provides CMRS is virtually certain to
2 have “dead spots” somewhere in the geographic area in which it provides service. Indeed,
3 with respect to cellular service, the FCC’s Rules (47 C.F.R. § 22.99) expressly acknowledge
4 the existence of “dead spots,” which are defined as “small areas within a service area where
5 the field strength is lower than the minimum level for reliable service.” Acknowledging the
6 prevalence of “dead spots,” the very same rule states that “[s]ervice within dead spots is
7 presumed.” Moreover, the FCC has never required an ETC applicant to demonstrate an
8 ability to provide ubiquitous coverage in the geographic area for which ETC designation was
9 sought. To require a prospective ETC to demonstrate that it can provide the supported
10 services before it receives the ETC designation effectively prohibits these aspiring entrants
11 from providing service. In many cases, it is the availability of high-cost support that allows
12 rural carriers to extend their networks into high cost areas.

13 This is consistent with the way LEC service is presently deployed. LEC service is
14 available throughout its ETC service area only where there is a phone jack. Once the
15 subscriber moves out of reach of his phone’s cable, the subscriber is essentially in a LEC
16 “dead spot”. That is not to say that the LEC is not providing quality service. Rather, it
17 merely highlights that any type of communications service, wired or wireless, is subject to
18 areas of no service.

19 MMC is committed to extending its existing cellular network into the remote and
20 high-cost regions of its proposed ETC area. The high-cost support that MMC will receive
21 once its Application is granted will allow it to fulfill this commitment.

1 **Q. Continuing with that analogy to LEC service, doesn't the LEC ETC have to**
2 **provide ubiquitous service throughout its designated service area as a carrier of last**
3 **resort?**

4 A. The LEC ETC has an obligation to provide service as a carrier of last resort.
5 However, that is not to say that the LEC has to build lines and have phone jacks "standing
6 by" in every corner of its market. LECs are continuously expanding their networks to extend
7 their service to new areas (such as newly constructed retail and residential areas) as the need
8 arises. LECs use their USF support to meet their ongoing construction and operational costs.
9 The very fact that LECs continue to construct new lines year after year is indicative that even
10 LEC ETCs are not providing ubiquitous service throughout their ETC service areas at the
11 time of ETC designation and are continuously working to fill in their "dead spots".

12 **Q. What steps is MMC willing to undertake to provide service to a potential**
13 **customer?**

14 A. Mr. Dawson has testified as to the precise steps MMC would take to provide service
15 to a potential customer. These steps comport with the requirements identified by the FCC in
16 the *Virginia Cellular Order*.

17 **Q. Aside from the issues and topics already discussed in your testimony, what other**
18 **matters should the Commission consider when it undertakes the public interest analysis**
19 **required by Section 214(e)(2) of the Act?**

20 A. In accordance with controlling precedent, the Commission should consider the effects
21 on competition and consumer welfare resulting from a grant of MMC's Application. The
22 FCC and many state public utility commissions have recognized that designation of qualified
23 ETCs promotes marketplace competition, which enhances consumer welfare by increasing

1 customer choice, and by promoting innovative services and new technologies. Designating
2 MMC as an ETC will make it easier for customers in rural Missouri to choose
3 telecommunications service based on pricing, service quality, customer service and service
4 availability. In addition, this designation will facilitate universal service in MMC's proposed
5 ETC area by creating incentives to ensure that quality services are available at just,
6 reasonable and affordable rates.

7 At the same time, the likelihood that consumers in MMC's proposed ETC area will
8 be harmed by a grant of MMC's Application is negligible or non-existent. The strict public
9 interest requirement with respect to areas served by a rural telephone company has been
10 interpreted by the FCC as an expression of Congressional concern that consumers in rural
11 areas continue to be adequately served if an ILEC exercises its right to relinquish ETC status
12 under Section 214(e)(4) of the Act. Because MMC is committed to and capable of providing
13 the core services set forth in FCC Rule 54.101(a) using its own facilities, there is no reason to
14 anticipate that consumers in the proposed ETC area will be inadequately served if one or
15 more ILECs relinquish their ETC designation. Additionally, MMC has expressly committed
16 to undertake carrier of last resort obligations in the event that a LEC within MMC's ETC
17 designated service area were to seek to drop its designation as an ETC with carrier of last
18 resort obligations.

19 **Q. Are there any other CMRS carriers licensed to provide service in the same area?**

20 A. Yes. In addition to the two cellular licenses previously discussed, the FCC has issued
21 six Personal Communications Service ("PCS") licenses throughout the United States. While
22 the PCS licenses are issued on a Major Trading Area and Basic Trading Area basis (which

1 does not match the MSA/RSA licensing scheme used for cellular licenses), just as with
2 MSAs and RSAs, the MTAs and BTAs combine to cover the entire country.

3 **Q. Since you have testified that there are other CMRS licenses for the same**
4 **geographic area and since, as you have already testified, MMC is presently offering the**
5 **most extensive service than any other CMRS carrier in the proposed ETC service area,**
6 **how can the Commission find that the grant of ETC status would increase competition**
7 **or otherwise be in the public interest where, as here, the ETC applicant is already**
8 **providing service?**

9 A. The FCC has addressed this very issue. In the *Nextel Order*, the FCC's Wireline
10 Competition Bureau considered these very arguments that had been advanced against
11 granting ETC designation and found them unpersuasive. The FCC stated:

12 Other commentors argue that the Commission should not designate
13 Nextel as an ETC because such designation will not increase competition.
14 They argue that Nextel is not a new entrant in the various markets and other
15 CMRS operators are currently offering service in the designated service areas.
16 [Footnote omitted.] We disagree. Quality service available at just,
17 reasonable, and affordable rates is a fundamental principle of the
18 Commission's universal service policies. [Footnote omitted.] Although
19 Nextel and other CMRS operators may already offer service in the subject
20 markets, designating Nextel as an ETC will further the Commission's
21 universal service goals by enabling Nextel to better expand and improve its
22 network to serve a greater population and increase competitive choice for

1 customers within the study areas of its ETC designation. (*Nextel Order* at
2 ¶20).

3 In the Nextel case, the FCC considered specific showings, comparable to those made
4 by MMC here, and found that grant of the requested ETC designation would serve the public
5 interest. Specifically, the FCC looked at the proposed network enhancement and service
6 offerings and the expansion into the more rural portions of the market, coupled with the
7 much larger local calling area being offered by the CMRS carrier and the benefits of
8 mobility, especially in the context of "...access to emergency services that can mitigate the
9 unique risks of geographic isolation associated with living in rural communities." (*Nextel*
10 *Order* at ¶ 18). The grant of MMC's ETC application would be wholly consistent with FCC
11 precedent which has repeatedly found that the types of showings made by MMC in its
12 Application and in Mr. Dawson's testimony, more than sufficient to satisfy the public interest
13 requirement of the applicable statutory provisions.

14 **Q. You previously mentioned and cited to the recently released *FCC Guidelines***
15 ***Report & Order* .**

16 A. Yes. The *FCC Guidelines Report & Order* largely codifies the individual FCC cases
17 I have been discussing in this testimony. The FCC has made it clear that it intends to
18 evaluate all ETC proposals that come before it under these criteria and urges the various state
19 commissions to use these processes as guidelines in evaluating ETC applications that come
20 before them. In adopting specific reporting requirements, the FCC will make those
21 requirements applicable not only to new applicants but also to entities previously designated
22 as ETCs.

23 **Q. Are the State Commissions bound by these FCC procedures?**

1 A. No. The FCC has set forth its specific processes as a suggested framework for states
2 to use in evaluating ETC applications. However, the FCC recognizes that in many instances
3 the state commissions are in a better position to weigh the various factors in making the
4 public interest evaluations required by the Communications Act. While the FCC has left
5 room for the state commissions to establish processes that may differ from those followed by
6 the FCC, in doing so the FCC has made it absolutely clear that any conditions imposed by the
7 state commissions must be "...consistent with federal law to ensure that supported services
8 are offered in a manner that protects consumers..." and that any state imposed requirements
9 are imposed "...only to the extent necessary to further universal service goals." *FCC*
10 *Guidelines Report & Order* at ¶ 30.

11 **Q. How would the MMC application be evaluated under these FCC guidelines?**

12 A. The MMC proposal has been developed in accordance with the established FCC
13 precedent. Inasmuch as the *FCC Guidelines Report & Order* is largely a codification of
14 those orders, following those guidelines would result in the designation of MMC as an ETC.
15 The *FCC Guidelines Report & Order* does add some additional suggested analysis to be
16 performed on a "per wire center" basis. MMC has included such information in its filing and
17 testimony. Taken as whole, the guidelines set forth in *FCC Guidelines Report & Order* are
18 intended to enable a state commission to be satisfied that the applicant, if designated as an
19 ETC, would use the USF support it receives in a manner consistent with the Act and the
20 applicable FCC rules and regulations and for the benefit of the citizens residing in the area
21 from which the support is drawn. MMC has made a detailed showing as to how it would use
22 USF support to enhance service throughout its proposed ETC service area. Accordingly,

Direct Testimony of
Michael Kurtis

- 1 designation of MCC as an ETC would be consistent with the Act and an analysis based upon
- 2 the *FCC Guidelines Report & Order* would lead to that determination.

3 **Q. Does that conclude your testimony?**

4 A. Yes it does.

STATE OF MISSOURI

MISSOURI RSA NO. 7 LIMITED)
PARTNERSHIP DBA MID-MISSOURI)
CELLULAR)

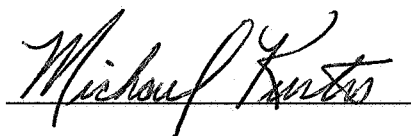
Case No. _____

Application for Designation as an)
Eligible Telecommunications Carrier)
for Purposes of Receiving Federal)
Universal Service Support Pursuant to)
Section 214(e)(2) of the)
Telecommunications Act of 1996.)

AFFIDAVIT OF MICHAEL K. KURTIS

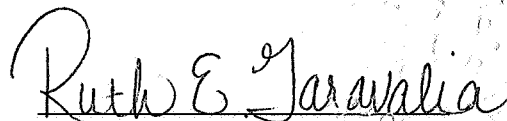
CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

Michael K. Kurtis, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Direct Testimony in question and answer form, consisting of ____ pages of testimony to be presented in the above case; that the answers in the foregoing Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



Michael K. Kurtis

Subscribed and sworn to before me this 23rd day of March, 2005.



Notary Public

My Commission expires:

My Commission Expires May 14, 2007