

**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 ) Case No. TO-2006-0172  
Eligible for Federal Universal Service )  
Support Pursuant to Section 254 of the )  
Telecommunications Act of 1996. )

**INITIAL PREHEARING BRIEF OF INTERVENORS  
SPECTRA COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL  
AND CENTURYTEL OF MISSOURI, LLC**

CHARLES BRENT STEWART  
Missouri Bar No. 34885  
STEWART & KEEVIL, L.L.C.  
4603 John Garry Drive, Suite 11  
Columbia, Missouri 65203

Attorney for Intervenors  
Spectra Communications Group, LLC d/b/a  
CenturyTel and CenturyTel of Missouri, LLC

June 14, 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 ) Case No. TO-2006-0172  
Eligible for Federal Universal Service )  
Support Pursuant to Section 254 of the )  
Telecommunications Act of 1996. )

**INITIAL PREHEARING BRIEF OF INTERVENORS  
SPECTRA COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL  
AND CENTURYTEL OF MISSOURI, LLC**

COME NOW Intervenors, Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (collectively “CenturyTel”) and submit the following prehearing brief pursuant to the Commission’s *Order Modifying Procedural Schedule* issued on April 7, 2006 in the above-captioned cause.

**INTRODUCTION**

This case, initiated by wireless carrier Missouri RSA No. 5 Partnership (“MO 5”), is the second eligible telecommunications carrier (“ETC”) case to be heard since the Commission concluded its ETC rulemaking proceeding in Case No. TX-2006-0169 and sent its new rule, 4 CSR 240-3.570, to the Missouri Secretary of State for publication in the Code of State Regulations.<sup>1</sup> That the new rule, 4 CSR 240-3.570, should be used by the Commission in this case as part of its evaluation<sup>2</sup> of MO 5’s Application has not been contested by any of the parties; in fact, MO 5 requested and received a modification of

---

<sup>1</sup> The first case, Case No. TO-2005-0466 (*Northwest Missouri Cellular*), was heard on May 31, 2006 and post-hearing briefs have not yet been filed. The text of the Commission’s new rule can be found in Schedule ACM - 1-1, attached to the pre-filed Supplemental Rebuttal Testimony of Staff witness McKinnie. This new rule was first published in the Missouri Register on May 15, 2006.

<sup>2</sup> CenturyTel witness Glenn H. Brown in his Rebuttal and Supplemental Rebuttal Testimony provides a brief summary of the evolution of applicable federal law respecting ETC applications, its relationship with the Commission’s new rule ETC rules, and the appropriate analytical framework to be used in evaluating MO 5’s Application, and as such, it will not be here repeated. *See*, pp. 6-13, Brown Rebuttal; pp. 3-6, Brown Supplemental Rebuttal.

the original procedural schedule in this case in order to file supplemental direct testimony to address how MO 5 intended to comply with the provisions of the Commission's new rule.

However, even with the additional information provided in MO 5's Supplemental Direct Testimony, filed on April 17, 2006, no party to this proceeding--other than MO 5-- supports MO 5's Application as currently submitted. While specific reasons may differ, every party other than MO 5 has pre-filed testimony showing that MO 5 still has not fully met the requirements of new rule 4 CSR 240-3.570 nor the underlying and applicable provisions of federal law as outlined in the Federal Communications Commission's ("FCC's") March 17, 2005 *ETC Designation Order*<sup>3</sup> and FCC's prior orders in the *Virginia Cellular*<sup>4</sup> and *Highland Cellular*<sup>5</sup> cases.

This case is extremely important and has far-reaching public policy implications. The way and level of rigor in which the Commission chooses to apply its new ETC rule in this proceeding, and in pending Case No. TO-2005-0466, no doubt will significantly impact all future ETC applications. The Commission in this case, as in Case No. TO-2005-0466, necessarily is being asked to decide whether the language of its new ETC rule either means what it clearly says or whether it somehow does not. Future ETC applicants no doubt will be watching closely to see where the Commission "sets the bar" with its new ETC rule respecting the minimum evidentiary showing required for new

---

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

<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (January 22, 2004) ("*Virginia Cellular*").

<sup>5</sup> *In the Matter of Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 (April 12, 2004) ("*Highland Cellular*").

infrastructure investment, availability and quality of service, and public accountability commitments.

Beyond interpreting and applying its new ETC rule to MO 5's evidence in this case, the Commission also must ultimately determine whether MO 5's Application is in the public interest. As discussed in the pre-filed Rebuttal and Supplemental Rebuttal Testimony of CenturyTel witness Mr. Glenn H. Brown, CenturyTel believes that the Commission as a matter of policy should apply its new ETC rule provisions, and applicable federal law, in a uniform manner to all prospective ETC applicants to determine if approval of the particular ETC application would be in the public interest. Consistent with federal requirements, this should be a *fact-specific* exercise and should be based on the strength or weakness of each ETC applicant's specific and comparative ETC evidentiary showing, and especially in the context of the use of scarce public funds, the level of public accountability obtained from the applicant and the applicant's enforceable commitment to Universal Service Fund ("USF") principles. CenturyTel witness Brown has submitted pre-filed testimony—un-rebutted by MO 5 in its pre-filed Surrebuttal Testimony--on why the public costs of granting MO 5's Application outweigh the purported public benefits, a key factor in the Commission's overall public interest analysis.

While not specifically listed on the parties' joint list of issues, the Commission also necessarily must and will determine how it will handle requests from multiple, otherwise unregulated wireless providers for ETC designation in the same wire centers. Specifically, all the wire centers for which MO 5 has requested ETC designation in this case also have been requested by U.S. Cellular in Case No. TO-2005-0384, which

remains pending before the Commission. Underlying the Commission's still developing ETC designation process itself, the Commission must assure in this and future ETC cases that the incremental public benefits from designating an additional wireless ETC (or multiple wireless ETCs) outweighs the incremental public costs of designating additional ETC USF recipients in insular, high cost rural areas of the state.

## **II. ISSUE LIST STATEMENT OF POSITIONS**

Pursuant to the *Proposed Issues List, Witness List, Order of Cross-Examination and Order of Opening Statements* filed by the Staff on June 6, 2006, CenturyTel offers the following positions on each disputed issue.

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

**POSITION: No.** Section 214(e)(1) of the Federal Act must also be read in the context of Section 254(b)(3), which states that the purpose of high-cost support is to provide consumers in rural, insular and high-cost areas with telecommunications services and prices reasonably comparable to those in urban areas. The Commission's new ETC rule

echoes this same fundamental and important USF principle. Urban customers currently receive high quality wireless service at a high level of signal quality and strength; simply showing that rural area customers will receive the *minimum* level of signal quality and strength after the expenditure of scarce USF dollars does not meet this test. Incumbent ETCs in high-cost rural areas receive the support they do today because they have made the infrastructure investment in high-cost facilities necessary to provide urban-quality service ubiquitously throughout their ETC service areas. Rural ILEC customers currently receive the same basic dial-tone and service quality as their urban counterparts. Under current USF support mechanisms, incumbent ETCs receive support some two years *after* they have made rural high-cost infrastructure investment, while under current FCC rules new wireless ETCs receive USF dollars *prior* to actually making their high-cost infrastructure investment. It is for this reason that a detailed network build-out plan is an essential part of the Commission's ETC designation rules, and a careful review of this plan must be an essential component of the Commission's public interest analysis. MO 5's pre-filed testimony has failed to provide adequate information showing: 1) the actual *extent* and *quality* of its current signal strength and coverage; 2) the improvements in its signal strength and coverage that will result from its rural infrastructure investment commitments; and 3) exactly which improvements would not otherwise occur anyway without USF support. If MO 5 is to receive high-cost support at the same per-line level of the incumbent, MO 5 must make a meaningful demonstration to the Commission that it will use high-cost USF dollars to provide high quality service throughout its requested ETC service area within a reasonable time frame. MO 5 has failed to make such a demonstration in their initial Application and pre-filed testimony. What information MO

5 has provided does not reveal with necessary specificity exactly what MO 5 intends to do with its USF monies and exactly where in its service area it intends to do it. Instead, both CenturyTel and Staff's pre-filed testimony reveals that MO 5's own plans show a *significant mismatch* between USF dollars it expects to receive and the subsequent infrastructure investments it agrees to make. The Commission already has found this to be a serious problem with U.S. Cellular's Application and again should do so in this proceeding.

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

**POSITION: No.** While the Commission's new rule 4 CSR 240-3.570 provides a listing of the minimum factual showings that an ETC applicant must make in order for the Commission to make an ETC designation, the rule does not provide any specifics on exactly how the ultimate public interest determination will be made. Simply providing a two or even a five year plan and a few coverage maps does not mean the requested ETC designation necessarily either complies with the rule or is in the public interest. The key question is what exactly do the plan and maps show—and equally important, *not* show--the Commission? What is critically important, and where MO 5's pre-filed testimony falls significantly short, is the actual commitment that MO 5 makes to rural infrastructure

investment, and its demonstration of the specific improvement that it will make in the delivery of urban quality wireless services to rural Missouri consumers. The public interest only is served when an ETC applicant clearly shows that the incremental public benefits created by supporting multiple ETC carriers exceed the increased costs that will be created by supporting multiple networks and infrastructure in high-cost, insular rural areas. MO 5 has failed to provide the Commission with a sufficient factual basis upon which the Commission can conclude that MO 5's Application passes this fundamental cost/benefit public interest test. CenturyTel has presented testimony, un-rebutted by MO-5 or any other party, that as multiple carriers seek to serve the same high-cost rural areas, the cost for each carrier to ubiquitously serve the area increases. To the extent that the Commission approves multiple ETCs without considering the ultimate economic impacts, it becomes increasingly likely that no wireless carrier will be able to provide high quality service throughout the territory and also serve as the Carrier of Last Resort, which in turn would be in direct contradiction of the purposes of the Federal Act and the policy behind the Commission's own ETC rule.

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

**POSITION: No.** As discussed in detail in the pre-filed Rebuttal and Supplemental Rebuttal Testimony of CenturyTel witness Glenn H. Brown, MO 5 has failed to meet the requirements of the Commission's new rule in several key respects. Staff, OPC and the



other intervenors also have found other problems with MO 5's lack of compliance with the provisions of 4 CSR 240-3.570. From CenturyTel's perspective, first, MO 5's HC Appendix M (Simon Supplemental Direct) does not show that MO 5's anticipated USF support will be used for intended USF purposes; indeed, it shows just the opposite. Based on Staff witness McKinnie's pre-filed testimony, Staff appears to agree with CenturyTel's assessment. Second, the signal coverage maps provided by MO 5 as part of its initial and supplemental filings do not show sufficient detail regarding existing signal coverage, and improvements to such coverage, to allow the Commission to determine that USF support will be used only for its intended purpose, which as the Commission's new rules make clear, is to provide rural consumers telecommunications services reasonably comparable to that available in urban areas. Finally, in response to Section 2(A)(5) of the Commission's ETC rule, MO 5 provides only vague and unsupported generalities about the benefits of "increased competition" and mobile telephone service rather than provide specific facts and data as to how the grant of ETC status would produce incremental public benefits that would outweigh increased public costs and thus be in the public interest.

MO 5 has had sufficient time to prepare and present its case through pre-filed and even supplemented testimony consistent with the Commission's pre-filed testimony rules prior to hearing. MO 5 has had the benefit of being allowed to supplement its pre-filed case to bring its request into compliance with the Commission's new ETC rule provisions. MO 5, for whatever reason, apparently has elected not to do so. This suggests that MO 5 is either unwilling, or simply unable, to comply with the Commission's new ETC rules. In either case, to approve MO 5's Application, based on

MO 5's inadequate showing, will dilute and for all practical regulatory purposes render impotent the Commission's new ETC rules for future ETC application cases.

## **CONCLUSION**

The Commission should keep in mind in this and all future ETC application cases that the incremental public benefits of granting ETC status must outweigh the public costs of granting such ETC status in high-cost, insular rural areas of the state so that all consumers in those areas continue to have access to at least one Carrier of Last Resort which provides access to high-quality and affordable basic and advanced telecommunications services. The burden of proof rightfully lies with the new ETC applicant who, as part of showing that the benefits outweigh the costs, must also demonstrate that it fully and with specificity has complied with the Commission's new ETC rule and the minimum requirements of applicable Federal law. In this case, MO 5 has failed to make such a showing and its Application, therefore, should be denied.

Respectfully submitted,

**/s/ Charles Brent Stewart**

---

Charles Brent Stewart  
Missouri Bar #34885  
STEWART & KEEVIL, L.L.C.  
4603 John Garry Drive, Suite 11  
Columbia, Missouri 65203  
(573) 499-0635  
(573) 499-0638 (fax)  
[Stewart499@aol.com](mailto:Stewart499@aol.com)

ATTORNEY FOR INTERVENORS  
SPECTRA COMMUNICATIONS GROUP,  
LLC d/b/a CENTURYTEL and  
CENTURYTEL OF MISSOURI, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent to counsel for all parties of record in Case No. TO-2006-0172 by electronic transmission this 14<sup>th</sup> day of June, 2006.

**/s/ Charles Brent Stewart**

---