

**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	)	Case No. TO-2005-0325
Eligible for Federal Universal Service Support	)	
Pursuant to Section 254 of the	)	
Telecommunications Act of 1996	)	

**POSITION STATEMENT OF SOUTHWESTERN BELL TELEPHONE, L. P.,  
D/B/A SBC MISSOURI**

Southwestern Bell Telephone, L. P. d/b/a SBC Missouri ("SBC Missouri"), respectfully submits the following Position Statement, including a summary of the factual and legal points relied on by SBC Missouri, in accordance with the Commission's May 6, 2005, Order Adopting Procedural Schedule With Modifications:

**I. INTRODUCTION**

This case presents the Commission with its first opportunity to exercise a higher level of scrutiny over wireless providers' applications to be designated as eligible telecommunications carriers ("ETCs") for purposes of the federal universal service fund ("USF"), in light of the concerns culminating in the Federal Communications Commission's ("FCC's") recent ETC Report and Order.<sup>1</sup> SBC Missouri strongly encourages the Commission to take this opportunity and establish appropriate standards for ETC designation.

While the ultimate issue here is whether the Commission should approve the ETC application of a single wireless provider, RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular ("MMC"), the Commission's analysis of the issues presented here will no doubt apply

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<sup>1</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46, released March 17, 2005 ("ETC Report and Order").

to the same issues that are common to several pending cases.<sup>2</sup> Thus, it is important that the Commission settle on an appropriate analytical framework for assessing MMC's application.

Although there is no Commission rule presently in place to provide such a framework, the FCC's ETC Report and Order provides a detailed framework consisting of "requirements" applicable to requests for ETC designation filed with the FCC. The FCC has strongly encouraged state commissions to apply these requirements (at the federal level) as recommended "guidelines" (at the state level).<sup>3</sup> SBC Missouri urges the Commission to apply each of them to MMC's application.

## II. SBC MISSOURI'S POSITION ON SPECIFIC ISSUES

**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 carriers to offer the services that are supported by Federal universal service support mechanisms and to advertise the availability of such services and the charges therefor using media of general distribution. Does MMC meet the requirements of Section 214(e)(1) throughout the service area for which MMC seeks ETC designation?

**SBC Missouri's Position:** MMC does not meet the requirements of Section 214(e)(1) in the SBC Missouri wire centers for which MMC seeks designation as an ETC.

An ETC applicant must meet the following "eligibility" requirements:

(1) commit to provide service throughout its proposed designated service area to all customers, and more particularly, submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area;<sup>4</sup>

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<sup>2</sup> See, e.g., In the matter of the 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; In the Matter of the Application of Northwest Missouri cellular Limited 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-2005-0466; In the matter of the application of Chariton Valley Telecom Corporation for designation as a telecommunications carrier eligible for Federal Universal Service Support pursuant to § 254 of the Telecommunications Act of 1996, Case No. TO-2005-0423.

<sup>3</sup> Section 214(e)(2) of the federal Telecommunications Act of 1996 ("the Act") provides state commissions with the primary responsibility for performing ETC designations. ETC Report and Order, para. 8.

<sup>4</sup> ETC Report and Order, paras. 21-23.

- (2) demonstrate its ability to remain functional in emergency situations;<sup>5</sup>
- (3) demonstrate that it will satisfy appropriate consumer protection and service quality standards;<sup>6</sup>
- (4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation;<sup>7</sup> and
- (5) certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers if all other ETCs withdraw from the market.<sup>8</sup>

SBC Missouri's position is that MMC does not sufficiently meet the first and second requirements, and it is questionable whether MMC meets the fourth. Further, these deficiencies cannot be cured by as commitment to include the information within the Annual Certification and Reporting "yearly updates," as Staff recommends in connection with MMC's five-year network improvement plan.<sup>9</sup> The yearly updates are but "progress reports"<sup>10</sup> that do not excuse the showing of a "formal network improvement plan" before being designated as an ETC in the first instance.<sup>11</sup>

**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 Report and 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 MMC consistent with the public interest, convenience and necessity throughout the service area for which MMC seeks ETC designation?

**SBC Missouri's Position:** Granting ETC status to MMC is not consistent with the public interest, convenience and necessity in the SBC Missouri wire centers for which MMC seeks designation as an ETC.

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<sup>5</sup> ETC Report and Order, para. 25.

<sup>6</sup> ETC Report and Order, para. 28.

<sup>7</sup> ETC Report and Order, para. 33.

<sup>8</sup> ETC Report and Order, para. 35; see also, 47 C.F.R. § 54.101.

<sup>9</sup> Staff (McKinnie) Rebuttal, p. 6.

<sup>10</sup> ETC Report and Order, para. 69.

<sup>11</sup> SBC Missouri (Stidham) Surrebuttal, p. 6.

The FCC's public interest analysis 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."<sup>12</sup> It also includes an analysis of the potential for cream-skimming.<sup>13</sup> MMC does not provide specific evidence that granting ETC status to MMC is consistent with the public interest, convenience and necessity in the SBC Missouri (non-rural) wire centers for which MMC seeks ETC status.<sup>14</sup> Moreover, to the extent MMC relies on evidence regarding rural wire centers to fill this gap, its reliance is misplaced because its evidence directed to rural carriers is deficient.<sup>15</sup>

**Issue 3:** The FCC's ETC Report and Order determined that carriers seeking ETC designation from the FCC must meet certain requirements related to eligibility, the public interest, and annual certification and reporting. The FCC encouraged state commissions to apply these requirements. Should the Commission consider the guidelines approved by the FCC's ETC Report and Order in its evaluation of the application filed by MMC?

**SBC Missouri's Position:** For several reasons, the Commission should apply the guidelines approved by the FCC's ETC Report and Order in evaluating MMC's application.<sup>16</sup>

The ETC Report and Order is the most recent FCC ruling regarding the "minimum requirements" governing ETC applications, and was issued only after extensive debate and

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<sup>12</sup> ETC Report and Order, para. 18.

<sup>13</sup> ETC Report and Order, para. 18.

<sup>14</sup> SBC Missouri emphasizes that MMC must demonstrate that granting its request is "consistent with the public interest, convenience and necessity" in SBC Missouri's "non-rural" wire center areas. ETC Report and Order, para. 3 ("We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier."); para. 40 ("Under section 214 of the Act, the commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity."); para. 42 ("We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier."); para. 61 ("Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.").

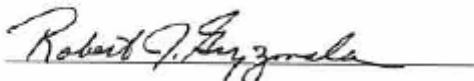
<sup>15</sup> SBC Missouri (Stidham) Rebuttal, p. 2.

<sup>16</sup> SBC Missouri (Stidham) Rebuttal, pp. 2-6.

discussion regarding the recommendations of the Federal-State Joint Board on Universal Service (“Joint Board”).<sup>17</sup> Furthermore, applying the FCC’s “more rigorous”<sup>18</sup> requirements to MMC’s application would improve the long-term sustainability of the USF, because “if the guidelines are followed, only fully qualified carriers that are capable of and committed to universal service will be able to receive support.”<sup>19</sup> It would also “allow for a more predictable ETC designation process.”<sup>20</sup> Finally, it would help to “ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service.”<sup>21</sup> For these reasons, the FCC has urged state commissions to apply the same requirements: “We encourage state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order.”<sup>22</sup>

Respectfully submitted,

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<sup>17</sup> ETC Report and Order, para. 1. Indeed, over 50 parties filed comments in the FCC’s rulemaking proceeding. ETC Report and Order, para. 1 & Appendix B.

<sup>18</sup> ETC Report and Order, para. 2.

<sup>19</sup> ETC Report and Order, para. 58.


<sup>20</sup> ETC Report and Order, para. 1.

<sup>21</sup> ETC Report and Order, para. 60.

<sup>22</sup> ETC Report and Order, para. 58.

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were served to all parties by e-mail on July 27, 2005.

  
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