

Exhibit No.:
Issue: Policy
Witness: James E. Stidham, Jr.
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone, L.P. d/b/a/
SBC Missouri
Case No.: TO-2005-0325

SOUTHWESTERN BELL TELEPHONE, L.P., d/b/a

SBC MISSOURI

CASE NO. TO-2005-0325

SURREBUTTAL TESTIMONY

OF

JAMES E. STIDHAM, JR.


Dallas, Texas

July 14, 2005

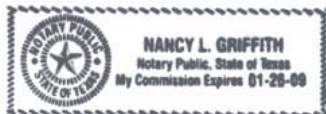
In the Matter of the Third Application of Missouri RSA)
No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular,)
for Designation as a Telecommunications Company) Case No. TO-2005-0325
Carrier Eligible for Federal Universal Service Support)
Pursuant to Section 254 of the Telecommunications Act)
of 1996.)

STATE OF TEXAS)
COUNTY OF DALLAS SS

1. My name is James E. Stidham, Jr. I am presently Associate Director - Regulatory Planning and Policy for SBC Services, Inc.
2. Attached hereto and made a part hereof for all purposes is my Surrebuttal 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 1 day of July, 2005.



Nancy L. Rizzotti
Notary Public

My Commission Expires: 26-09

INTRODUCTION

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

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

5 **Q. ARE YOU THE SAME JAMES E. STIDHAM, JR. WHO FILED**
6 **REBUTTAL TESTIMONY IN THIS CASE ON JUNE 10, 2005 ON**
7 **BEHALF OF SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A SBC**
8 **MISSOURI (“SBC MISSOURI”)?**
9

10 A. Yes.

11 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

12 A. The purpose of my Surrebuttal Testimony is to respond to the Rebuttal
13 Testimonies of Adam McKinnie (on behalf of the Commission’s Staff) and
14 Barbara Meisenheimer (on behalf of the Office of the Public Counsel, or “OPC”)
15 filed on June 10, 2005.

16 **Q. PLEASE IDENTIFY THE MAIN POINTS CONVEYED BY YOUR**
17 **SURREBUTTAL TESTIMONY.**

18 A. The main points conveyed by my Surrebuttal Testimony are:

- 19 • The Staff’s Rebuttal Testimony provides a generally reasonable review of the
20 application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri
21 Cellular (“MMC”) pursuant to the requirements found in section IV (A) of the
22 FCC’s ETC Report and Order.¹ However, the analysis in Staff’s Rebuttal
23 Testimony does not include a determination that the designation of MMC as an

¹ 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”).

1 eligible telecommunications carrier (“ETC”) is in the public interest, based on
2 applying the analytical framework found in section IV (B) of the FCC’s ETC
3 Report and Order. As the FCC has explained, this determination must be made
4 during the ETC designation process.² Accordingly, still unanswered and
5 unaddressed by the Staff is whether MMC has met its burden of proof to show
6 that granting its request to be designated as an ETC is in the public interest. SBC
7 Missouri demonstrated that MMC has not done so.³

- 8 • OPC’s Rebuttal Testimony focused primarily on consumer protection matters,
9 including issues regarding the offering of Lifeline service, informing potential
10 Lifeline customers of the cost of the lowest cost handset, and providing examples
11 of MMC’s customer service agreements. OPC, however, also fails to state any
12 view about whether MMC has proven that granting it ETC status is in the public
13 interest, based on the FCC’s ETC Report and Order.

14 **THE COMMISSION STAFF’S REVIEW**

15 **Q. PLEASE IDENTIFY THE PORTIONS OF THE FCC’S ETC REPORT**
16 **AND ORDER THAT STAFF’S REBUTTAL TESTIMONY RELIED ON.**

17 A. Staff’s Rebuttal Testimony is limited to analysis of MMC’s application under
18 Section IV (A) and Section V of the FCC’s Report and Order (i.e., “Eligibility
19 Requirements” and “Annual Certification and Reporting Requirements,”
20 respectively). Section IV (A) of the FCC’s ETC Report and Order lists and
21 describes the following five requirements that a carrier must fulfill to be
22 considered for ETC status:

² ETC Report and Order, paras. 40-43.

³ Stidham Rebuttal, pp. 2, 9-15.

- 1 (1) commit to provide service throughout its proposed designated service
2 area, by providing services to all requesting customers in the area and
3 by submitting a five-year plan that describes with specificity proposed
4 improvements or upgrades to the applicant's network on a wire center-
5 by-wire center basis throughout its proposed designated service area;⁴
- 6 (2) demonstrate its ability to remain functional in emergency situations;⁵
- 7 (3) demonstrate that it will satisfy appropriate consumer protection and
8 service quality standards;⁶
- 9 (4) demonstrate that it offers a local usage plan comparable to the one
10 offered by the incumbent local exchanger carrier ("ILEC") in the
11 service areas for which it seeks designation;⁷ and
- 12 (5) certify that the carrier acknowledges that the FCC may require it to
13 provide equal access to long distance carriers if all other ETCs
14 relinquish their ETC designations.⁸

15 Again, these requirements are the minimum standards that a carrier must
16 meet, according to the FCC, even to be considered eligible for ETC status. The
17 ETC applicant also must prove that granting its request is "consistent with the

⁴ ETC Report and Order, paras. 21-24.

⁵ ETC Report and Order, paras. 25-27.

⁶ ETC Report and Order, paras. 28-31.

⁷ ETC Report and Order, paras. 32-34.

⁸ ETC Report and Order, paras. 35-36.

1 public interest, convenience and necessity,” regardless of whether the applicant
2 seeks designation in an area served by a rural or non-rural carrier.⁹

3 **Q. WHAT IS THE RESULT OF STAFF’S ANALYSIS OF WHETHER MMC**
4 **SATISFIES THE FCC’S ELIGIBILITY CRITERIA FOUND IN SECTION**
5 **IV (A) OF THE FCC’S ETC REPORT AND ORDER?**

6 A. Staff concludes that MMC has met these criteria despite 1) its having found that
7 MMC has not met the five year plan portion of the FCC’s eligibility guidelines,
8 and 2) its not having reviewed two of the three requirements applicable to
9 emergency operations.

10 Mr. McKinnie responds to the question “In your opinion, does MMC satisfy the
11 first guideline?” by saying “Not entirely. Thus, the Staff recommends that the
12 Commission condition any ETC designation on a requirement that MMC provide
13 a yearly update on the status of the build-out and the effects of that build-out on
14 customers on a wire center-by-wire center basis.”¹⁰ Mr. McKinnie’s response
15 underscores that MMC fails to meet the FCC’s first guideline, and that MMC
16 needs to first take the steps necessary to comply with the guideline before ETC
17 status can granted. The Commission should not now grant MMC’s ETC status
18 application subject to its agreement to meet a future condition; rather, MMC must
19 first meet the condition before the Commission grants it ETC status. As the FCC

⁹ 47 U.S.C. § 214(e)(2), (6); see also, ETC Report and Order, para. 2 (“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.”).

¹⁰ McKinnie Rebuttal, p. 6.

1 has emphasized, “[a]n ETC applicant must commit to serve the entire service area
2 and must provide five-year network improvement plans addressing each wire
3 center for which it expects to receive support.”¹¹

4 In addition, Mr. McKinnie concludes that MMC has met the second guideline (the
5 ability to operate in emergency situations), relying on MMC’s Direct Testimony
6 that MMC provides emergency power back-up. However, Mr. McKinnie does
7 not address all of the elements included within the FCC’s “emergency situations”
8 guideline: “Specifically, in order to be designated as an ETC, an applicant must
9 demonstrate it has a reasonable amount of back-up power to ensure functionality
10 without an external power source, is able to reroute traffic around damaged
11 facilities, and is capable of managing traffic spikes resulting from emergency
12 situations.”¹²

13 **Q. WHAT IS YOUR RESPONSE TO THE PORTION OF STAFF’S**
14 **REBUTTAL TESTIMONY PERTAINING TO “ADDITIONAL**
15 **REQUIREMENTS / CONCERNS”?**

16 A. I would have included Staff’s discussion of the use of universal service fund
17 (“USF”) high cost support (which appears at pages 10-13 of Mr. McKinnie’s
18 Rebuttal Testimony), with its analysis of the first eligibility guideline, which
19 begins at page 5 of that testimony (and which I discussed above). As I noted, the
20 first guideline requires a carrier to show that it will provide service throughout the
21 service area and to show that the USF high cost support will be used as intended.
22 The FCC’s ETC Report and Order makes clear that the “formal network

¹¹ ETC Report and Order, para. 29.

¹²ETC Report and Order, para. 11. (emphasis added).

1 improvement plan” is a component of the first guideline above, and it further
2 details what that plan must contain:

3 The five-year plan must demonstrate in detail how high-cost support will
4 be used for service improvements that would not occur absent receipt of
5 such support. This showing must include: (1) how signal quality,
6 coverage, or capacity will improve due to the receipt of high-cost support
7 throughout the area for which the ETC seeks designation; (2) the
8 projected start date and completion date for each improvement and the
9 estimated amount of investment for each project that is funded by high-
10 cost support; (3) the specific geographic areas where the improvements
11 will be made; and (4) the estimated population that will be served as a
12 result of the improvements. To demonstrate that supported
13 improvements in service will be made throughout the service area,
14 applicants should provide this information for each wire center in each
15 service area for which they expect to receive universal service support, or
16 an explanation of why service improvements in a particular wire center
17 are not needed and how funding will otherwise be used to further the
18 provision of supported services in that area.¹³

19
20 Mr. McKinnie would have MMC treat the five-year plan requirement as
21 complying with Section V of the FCC’s ETC Report and Order (regarding
22 “Annual Certification and Reporting Requirements”). However, the purpose of
23 the latter is to provide “progress reports on the ETC’s five year service quality
24 improvement plan.”¹⁴ Under this separate requirement, the carrier must provide
25 annual updates of the progress it has made towards providing service throughout
26 its service area and must provide information showing that it has used the USF
27 high cost support it received in compliance with Section 254(e) of the
28 Telecommunications Act of 1996 (“the Act”) before being allowed to continue as
29 an ETC. But this requirement does not excuse the showing of a “formal network
30 improvement plan” before being designated as an ETC in the first instance.

¹³ ETC Report and Order, para. 23. (emphasis added).

¹⁴ ETC Report and Order, para. 69 (emphasis added).

1 **Q. DOES STAFF PROVIDE A PUBLIC INTEREST ANALYSIS, IN**
2 **ACCORDANCE WITH THE FCC’S ETC REPORT AND ORDER?**

3 A. No. However, such a public interest test is required by the Act. Under the Act,
4 an ETC application filed with the FCC is reviewed pursuant to Section 214(e)(6)
5 while an application filed with a state commission is reviewed pursuant to Section
6 214(e)(2), but in either case, the reviewing authority must determine that an ETC
7 designation is consistent with the public interest, convenience and necessity. In
8 this regard, the FCC “strongly encourages state commissions to consider the same
9 factors [the FCC uses] in their public interest reviews.”¹⁵ Section IV (B) of the
10 FCC’s ETC Report and Order¹⁶ provides the guidelines for the “Public Interest
11 Determination.” This analysis “includes an examination of (1) the benefits of
12 increased consumer choice, (2) the impact of the designation on the universal
13 service fund, and (3) the unique advantages and disadvantages of the competitor’s
14 service offering.”¹⁷ The FCC’s public interest examination also includes an
15 analysis of the potential for cream-skimming in instances where an ETC applicant
16 seeks designation below the study area of a rural ILEC.¹⁸ Staff’s Rebuttal
17 Testimony does not present such an examination.

18 **THE OFFICE OF PUBLIC COUNSEL**

19 **Q. OPC’S REBUTTAL TESTIMONY FOCUSES, NOT UNEXPECTEDLY,**
20 **ON CONSUMER ORIENTED ISSUES, AND LISTS SIX COMMITMENTS**
21 **THAT WOULD “PROMOTE THE PUBLIC INTEREST.”**
22 **(MEISENHEIMER REBUTTAL, PP. 4-5). DO YOU AGREE THAT**
23 **THESE COMMITMENTS WOULD PROMOTE THE PUBLIC**
24 **INTEREST?**

¹⁵ ETC Report and Order, paras. 40, 41.

¹⁶ ETC Report and Order, paras 40-57.

¹⁷ ETC Report and Order, para. 18.

¹⁸ ETC Report and Order, para. 18.

1 A. I generally agree that the six commitments – which OPC states that MMC “has
2 agreed to”¹⁹ – would promote the public interest. I will point out that several of
3 these commitments are already required by either the FCC’s ETC Report and
4 Order or the FCC’s rules. For example, MMC’s agreement to refrain from
5 increasing Lifeline rates or changing its Lifeline offerings is a component of an
6 ETC’s obligation to offer “a local usage plan comparable to the one offered by the
7 [ILEC].”²⁰ As a result, by virtue of the FCC’s guidelines, a competitive ETC
8 must provide a Lifeline rate comparable to the Lifeline rate provided by the ILEC.
9 MMC also commits to pursue resale as an additional method of serving customers
10 (where it is unable to provide facilities-based service), but OPC’s Rebuttal
11 Testimony reflects that an ETC is already required to, “throughout the service
12 area for which the designation is received, offer the services that are supported by
13 Federal universal service support mechanisms under section 254(c), either using
14 its own facilities or a combination of its own facilities and resale of another
15 carrier's services (including the services offered by another eligible
16 telecommunications carrier.).”²¹
17 In addition, MMC is already required to provide a “Link Up” discount to
18 customers, pursuant to 47 C.F.R. §54.411, wherein the “Link Up” program is
19 defined as follows:

20
21 “(a) For purposes of this subpart, the term “Link Up” shall describe
22 the following assistance program for qualifying low-income consumers,
23 which an eligible telecommunications carrier shall offer as part of its
24 obligation set forth in Sec. Sec. 54.101(a)(9) and 54.101(b):
25

¹⁹ Meisenheimer Rebuttal, p. 4.

²⁰ ETC Report and Order, para. 32.

²¹ Meisenheimer Rebuttal, p. 6; see also, 47 U.S.C. § 214(e)(1)(A).

1 (1) A reduction in the carrier's customary charge for
2 commencing telecommunications service for a single
3 telecommunications connection at a consumer's principal place of
4 residence. The reduction shall be half of the customary charge or \$30.00,
5 whichever is less;

6
7 (2) A deferred schedule for payment of the charges assessed for
8 commencing service, for which the consumer does not pay interest. The
9 interest charges not assessed to the consumer shall be for connection
10 charges of up to \$200.00 that are deferred for a period not to exceed one
11 year. Charges assessed for commencing service include any charges that
12 the carrier customarily assesses to connect subscribers to the network.
13 These charges do not include any permissible security deposit
14 requirements.
15

16 Finally, MMC has apparently agreed to provide prospective Lifeline customers
17 information on the lowest cost handsets available. However, OPC does not
18 address other factors that will have an impact upon consumers' ultimate costs,
19 such as contract length, early termination fees, or whether MMC should commit
20 to provide low cost handsets under the conditions in subsection (2) of 54.411
21 listed above.

22 **Q. DOES THE TESTIMONY OF MS. MEISENHEIMER EVALUATE**
23 **WHETHER MMC MEETS THE PUBLIC INTEREST STANDARD**
24 **REQUIRED BY THE FCC'S ETC REPORT AND ORDER?**

25 A. No.

26 **CONCLUSION**
27

28 **Q. ARE YOU CONCERNED THAT NEITHER STAFF NOR OPC HAS**
29 **PROVIDED A PUBLIC INTEREST ANALYSIS, IN ACCORDANCE**
30 **WITH SECTION IV (B) OF THE FCC'S ETC REPORT AND ORDER**
31 **(ENTITLED "PUBLIC INTEREST DETERMINATION")?**

32 A. Yes. I think it is fair to say that Staff and OPC could have provided a useful
33 perspective that is different from that of the other parties in a proceeding of this
34 kind. In determining whether the public interest test required by the FCC in
35 Section IV (B) of its ETC Report and Order has been met, the Commission must

1 rely on MMC, the rural carriers involved in this proceeding, and SBC Missouri in
2 making its evaluation. I remain unconvinced that MMC has met its burden of
3 proof to show that its application is in the public interest. MMC has not proved
4 that most consumers in the requested service area will benefit from increased
5 choice, because choice already exists for them.

6 Moreover, MMC has not shown that expanding the size of the federal USF, even
7 only by the amount that MMC would receive, is in the public interest. The
8 Commission must view MMC's contribution to the expansion of universal service
9 as part of the bigger picture, as has the FCC: "While Congress delegated to
10 individual states the right to make ETC decisions, collectively these decisions
11 have national implications that affect the dynamics of competition, the national
12 strategies of new entrants, and the overall size of the federal universal service
13 fund."²²

14 MMC also has not demonstrated that the advantage of mobility is outweighed by
15 (a) the fact that mobile services are already currently available in its proposed
16 ETC area or (b) disadvantages of MMC's mobile service offerings (e.g., the
17 requirement to commit to a long term contract). In addition, SBC Missouri
18 believes that there is a clear potential for cream-skimming where MMC provides
19 service only to a partial wire center of a non-rural carrier, and that MMC should
20 be required to demonstrate that this will not occur.

21 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

22 A. Yes.

²² ETC Report and Order, para. 60