

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)
Northwest Missouri Cellular Limited)
Partnership for Designation as a)
Telecommunications Company Carrier) Case No. TO-2005-0466
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**

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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 Granting Motion To Modify Procedural Schedule* issued on April 13, 2006 in the above-captioned cause.

INTRODUCTION

This case, initiated by wireless carrier Northwest Missouri Cellular Limited Partnership (“NWMC”), is the first 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.¹ That the new rule, 4 CSR 240-3.570, should be used by the Commission in this case as part of its evaluation² of NWMC’s Application has not been contested by any of the parties; in fact, NWMC requested and

¹ The text of the Commission’s new rule can be found in Schedule ACM - 1-1, attached to the pre-filed Rebuttal Testimony of Staff witness McKinnie. This new rule was first published in the Missouri Register on May 15, 2006.

² CenturyTel witness Glenn H. Brown in his 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 NWMC’s Application, and as such, it will not be here repeated. *See*, pp. 6-12, Brown Rebuttal.

received a modification of the original procedural schedule in this case in order to file supplemental direct testimony to address the Commission's new rule.

However, even with the additional information provided in NWMC's supplemental direct testimony, filed on April 17, 2006, no party to this proceeding--other than NWMC--supports NWMC's Application as currently submitted. While specific reasons may differ, every party other than NWMC has pre-filed testimony showing that NWMC 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*³ and FCC's prior orders in the *Virginia Cellular*⁴ and *Highland Cellular*⁵ cases.

This case is extremely important because this will be the Commission's very first opportunity to apply the terms of 4 CSR 240-3.570 to an ETC application. The way and level of rigor in which the Commission chooses to apply this new rule in this proceeding no doubt will significantly impact all future ETC applications.

As discussed in the pre-filed Rebuttal Testimony of CenturyTel witness Mr. Glenn H. Brown, CenturyTel believes that the Commission 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 a particular application would be in the public interest. Consistent with federal requirements, this should be a fact-specific exercise and

³ *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*").

⁴ *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*").

⁵ *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*").

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.

While not specifically listed on the parties' joint list of issues, the Commission in this proceeding 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 NWMC has requested ETC designation in this case also have been requested by U.S. Cellular in Case No. TO-2005-0384, which is still pending before the Commission and awaiting final disposition.

Underlying the entire ETC designation process, 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 May 22, 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 NWMC 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 principle. Urban consumers receive high quality wireless service at a high level of signal quality and strength. 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. 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.⁶ 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. NWMC's pre-filed testimony has failed to provide adequate information showing the actual extent and quality of its current signal strength and coverage, and any improvements in its signal coverage, that will result from its rural infrastructure investment commitments. If NWMC is to receive high-cost

⁶ See the Rebuttal Testimony of Holway Telephone Company witness Warinner.

support at the same per-line level of the incumbent, NWMC must make a meaningful demonstration to the Commission that they will use high-cost USF dollars to provide high quality service throughout their requested ETC service area within a reasonable time frame. NWMC has failed to make such a demonstration in their initial Application and pre-filed testimony. What information NWMC has provided does not reveal with necessary specificity exactly what NWMC intends to do with its USF monies and exactly where in its service area it intends to do it. Instead, NWMC'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 NWMC consistent with the public interest, convenience and necessity throughout the service area for which NWMC 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 is in the public interest. What is critically important, and where the NWMC application falls significantly short, is the commitment that the applicant 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 is only 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. NWMC has failed to provide the Commission with a sufficient factual basis upon which the Commission can conclude that NWMC's Application passes this fundamental cost/benefit test. CenturyTel has also presented heretofore un-rebutted testimony 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 rules.

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 NWMC meet the requirements of the Commission's ETC rules?

POSITION: No. As discussed in detail in the pre-filed Rebuttal Testimony of CenturyTel witness Glenn H. Brown, who has provided the Commission with a detailed and un-rebutted “propagation analysis”, NWMC has failed to meet the requirements of the Commission’s new rules in several key respects. While not conducting their own propagation analyses, even the Staff, OPC and the other intervenors also have found other problems with NWMC’s lack of compliance with the provisions of 4 CSR 240-3.570. From CenturyTel’s perspective, first, NWMC’s HC Appendix M (Bundridge Supplemental Direct) does not show that USF dollars will be used for intended USF purposes; indeed, it shows just the opposite. Second, the signal coverage maps provided by NWMC as part of its initial and supplemental filings do not show sufficient detail regarding 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, NWMC 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.

NMWC 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. NMWC, unlike ETC applicants coming before, has had the benefit of being allowed to supplement its pre-filed case to make its request comply with the

Commission's new ETC rule provisions. NMWC, for whatever reason, apparently has elected not to do so. This suggests that NMWC is either unwilling, or simply unable, to comply with the Commission's new ETC rules. In either case, to approve NMWC's Application, based on NMWC'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 rules and the minimum requirements of applicable Federal law. In this case, NWMC has failed to make such a showing and its Application, therefore, should be denied.

Respectfully submitted,

/s/ Charles Brent Stewart

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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-2005-0466 by electronic transmission this 24th day of May, 2006.

/s/ Charles Brent Stewart
