

Exhibit No.:

Issues: ETC Designation

Witness: Adam McKinnie

Sponsoring Party: MO PSC Staff

Type of Exhibit: Rebuttal Testimony

Case No.: TO-2005-0384

Date Testimony Prepared: November 14, 2006

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

ADAM MCKINNIE

USCOC OF GREATER MISSOURI, LLC

CASE NO. TO-2005-0384

Jefferson City, Missouri

November 2006

**** Denotes Highly Confidential Information ****

**** Denotes Proprietary Information ****

NP

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

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**

AFFIDAVIT OF Adam McKinnie

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Adam McKinnie, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 15 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matter are true to the best of his knowledge and belief.

Ad McKinnie

[Name]

Subscribed and affirmed before me this 14th day of November
I am commissioned as a notary public within the County of Cole,
State of Missouri and my commission expires on March 16, 2009



DAWN L. HAKE
My Commission Expires
March 16, 2009
Cole County
Commission #06407643

Dawn L. Hake

NOTARY PUBLIC

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OF
ADAM MCKINNIE
USCOC OF GREATER MISSOURI, LLC
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SURREBUTTAL TESTIMONY
OF
ADAM MCKINNIE
USCOC OF GREATER MISSOURI, LLC
CASE NO. TO-2005-0384

Q. Are you the same Adam McKinnie who filed Rebuttal Testimony in this case on September 12, 2005?

A. Yes, I am

EXECUTIVE SUMMUARY

Q. What is the purpose of your Rebuttal Testimony?

A. The purpose of my Rebuttal Testimony is to respond to the “Compliance Filing of U.S. Cellular” (Compliance Filing) filed on August 11, 2006. My testimony will explain Staff’s assessment of whether the Compliance Filing comports with the Commission’s March 31, 2006 *Order Directing Applicant to File Additional Information About Intended Use of High-Cost Support* (Intended Use Order) and the portions of 4 CSR 240-3.570 (MO ETC Rule) listed in the Intended Use Order. My testimony will also explain the concerns Staff has regarding U.S. Cellular’s Compliance Filing.

PREVIOUS STAFF RECOMMENDATION

Q. What was your recommendation in the instant case in your earlier Rebuttal Testimony filed on September 12, 2005?

A. Beginning on page 21, line 10 of my earlier Rebuttal Testimony, I wrote:

Q. What is your recommendation on U.S. Cellular’s request to be designated as an eligible telecommunications carrier?

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1 A. I recommend the Commission grant U.S. Cellular ETC status. U.S.
2 Cellular has met four of the five guidelines in the latest FCC *Report and Order*
3 put forth for competitive ETC carriers, and has provided enough information
4 on the remaining guideline to satisfy Staff's review.

5 There are certain guidelines, such as the 5-year business plan, which U.S.
6 Cellular states are not applicable since the FCC rules are not yet effective.
7 Although the FCC rules may not yet be effective, the FCC indicates that the
8 criteria set forth in the Report and Order are guidelines for state commissions
9 to consider. Staff followed these guidelines in conducting its review and
10 recommends the Commission utilizing the same standards when considering
11 U.S. Cellular's application. Regarding the five year plan, as mentioned above,
12 Staff recommends the Commission consider this issue in a proposed
13 rulemaking.

14 I further recommend the Commission place the following requirements on
15 U.S. Cellular as conditions of receiving ETC status:

16 (1) U.S. Cellular shall follow the CTIA Code.

17 (2) U.S. Cellular shall provide annual updates to the Commission (or Staff) as
18 described in paragraph 69 of the *Report and Order*

19 (3) U.S. Cellular shall not self-certify to the Universal Service Administrative
20 Company (USAC), but shall comply with the Commission's annual
21 certification process.

22 (footnotes omitted)

23
24 Q. After completing your analysis of the supplemental filing, is your
25 recommendation the same?

26 A. No, it is not. As explained below, I no longer recommend the Commission
27 grant ETC status for U.S. Cellular due to U.S. Cellular not meeting the portions of the MO
28 ETC Rule in the Intended Use Order.

29 **STANDARD FOR REVIEW**

30 Q. Can you provide some background for the instant case?

31 A. Yes. Starting on page 1 of the Intended Use Order, the Commission wrote:

32 In reviewing the evidence and arguments of the parties, the Commission finds
33 that U.S. Cellular has not presented sufficient evidence regarding how it
34 intends to use the support it would receive from the Universal Service Fund to
35 improve its network through improved coverage, signal strength, or capacity,
36 in ways that would not otherwise occur without the receipt of high-cost
37 support. Rather than simply rejecting U.S. Cellular's application, the

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1 Commission will allow U.S. Cellular an opportunity to submit additional
2 evidence on that issue.

3
4 Q. Did the Commission provide any guidance as to what should be used to
5 evaluate U.S. Cellular's "additional evidence"?

6 A. Yes. The Commission further wrote, starting on page 2 of the Intended Use
7 Order:

8 The Commission has recently examined this issue in detail while considering a
9 new regulation regarding applications for designation as an ETC. That
10 regulation has not yet been published and does not yet have the force of law.
11 Nevertheless, the Commission believes that the requirements of that regulation
12 regarding the proposed build out plan that must be submitted along with any
13 application for ETC designation are a good guide for the information that U.S.
14 Cellular will be required to submit in this case. The Commission will expect
15 U.S. Cellular's budgeted expenditures to match expected revenues from the
16 high-cost support fund.

17
18 Q. Has there been any action by the Commission regarding the regulation
19 referred to in the above excerpt since issuing the Intended Use Order?

20 A. Yes. The MO ETC Rule became effective June 30, 2006.

21 Q. Has U.S. Cellular responded to the Intended Use Order?

22 A. Yes. On August 11, 2006, U.S. Cellular filed its Compliance Filing to attempt
23 to comply with the Intended Use Order. As much of that document is classified as either
24 Proprietary or Highly Confidential, much of the discussion regarding that document will be
25 either Proprietary or Highly Confidential.

26
27 **ANALYSIS OF COMPLIANCE WITH INTENDED USE ORDER**

28 Q. Does the Compliance Filing contain information responding to the expectation
29 that U.S. Cellular's budgeted expenditures match expected revenues from the high-cost
30 support fund?

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1 A. Yes, it does. On page 2 of Exhibit A of the Compliance Filing, U.S. Cellular
2 states:

3 Based on USAC's most recent projections, U.S. Cellular expects to receive
4 approximately \$11 million in federal high-cost support per year, for a total of
5 approximately \$22 million over the two-year period at issue. The total cost of
6 the network improvements proposed in U.S. Cellular's two-year plan is
7 projected to be approximately ** _____ **, which is approximately ** __
8 _____ ** in excess of the amount of projected support for that period.
9

10 Q. Does U.S. Cellular provide any information as to how it arrived at its
11 estimated "cost of the network improvements"?

12 A. Yes. Highly Confidential Appendix 3 attached to the Compliance Filing has a
13 table of "Projected Expenditures Using High-Cost USF Support". The Appendix gives
14 estimates for prices of four components of cell towers. The four components are:

- 15 • ** _____
- 16 • _____
- 17 • _____
- 18 • _____
- 19 • _____ **
- 20

21 Instead of applying each cost element applicable to each cell tower, the Appendix applies
22 the price for ** _____ ** on an average basis across all cell towers
23 expected to be built. In other words, there is no cost for ** _____ **
24 listed for any one cell tower. This has the effect of making it impossible to track the amount
25 planned to be spent on any given project, especially in the annual certification reviews.

26 Q. Do you have any concerns or comments on the list of "Projected
27 Expenditures" in Appendix 3 of the Compliance Filing?

28 A. Yes. This is the first detailed list of estimated budget expenditures submitted
29 by U.S. Cellular. The general category, ** _____ **, is calculated ** __

1 _____ **. By the numbers
2 listed on the spreadsheet, this percentage is roughly ** ___ **.

3 On October 18, 2006, Staff submitted a Data Request to U.S. Cellular asking what activities
4 will be included under this category. In response, U.S. Cellular wrote:

5 ** _____ ** break down into ** _____

6 _____

7 _____

8 _____ ** The information

9 enclosed in asterisks in this Response is Highly Confidential and subject to the
10 Protective Order in this proceeding.

11
12 The entire Data Request and response is included as Schedule ACM-1.

13 Q. Do you have any concerns about the above response?

14 A. Yes. Staff has not found any justification to include ** _____ ** as a
15 supported services for USF. Further, without more specificity as to the function of said item,
16 the applicability of ** _____ ** to supported services is not
17 clear.

18 Q. In Staff's opinion, has U.S. Cellular submitted sufficient information
19 regarding its budget plans to determine whether or not it is spending more than its expected
20 USF draw for the first two years of the plan?

21 A. Yes, it has. However, as noted above, Staff has concerns that not all items in
22 the budget plans are supported services.

23 **ANALYSIS OF COMPLIANCE WITH MO ETC RULE**

24 Q. Does the Compliance Filing contain information addressing Paragraph (2)(A)1
25 of the MO ETC rule, regarding details that each request for ETC designation shall include?

26 (In other words does the Compliance Filing discuss: intended use of the high-cost support,
27 including detailed descriptions of any construction plans with start and end dates; populations

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1 affected by construction plans; existing tower site locations for CMRS cell towers; and
2 estimated budget amounts?)

3 A. Yes. The Compliance Filing contains the following details:

- 4 • Proprietary Appendix 1 attached to the Compliance Filing contains approximate start
5 and end dates for each cell site by quarter. (For example, project 1 starts in 1st quarter
6 2007 and ends in second quarter 2007.)
- 7 • Proprietary Appendix 2 attached to the Compliance Filing contains the list of wire
8 centers that will receive benefit from each of the cell towers proposed to be built in
9 the first two years of the plan.
- 10 • Page 3 of Exhibit A attached to the Compliance Filing states that 236,291 people will
11 benefit from the proposed 39 towers.
- 12 • U.S. Cellular has submitted estimated budget amounts. As explained in other portions
13 of this testimony, Staff has questions regarding the estimated budget amounts.

14
15 Q. Are there any portions of Paragraph (2)(A)1. of the MO ETC rule that are not
16 directly referenced in the Compliance Filing?

17 A. Yes. There is no submission or discussion of “existing tower site locations for
18 CMRS cell towers”. Proprietary Appendix 4 attached to the Compliance Filing has a black
19 and white map of “Existing Coverage” for U.S. Cellular, but it is presented in such a way that
20 it is not possible to discern the location of individual cell sites.

21 Q. In Staff’s opinion, has U.S. Cellular submitted sufficient information
22 regarding this requirement?

23 A. No. U.S. Cellular has not submitted sufficient information since it has not
24 submitted easily discernible information on “existing tower site locations”.

25 Q. Does the Compliance Filing contain a “two (2)-year plan demonstrating, with
26 specificity, that high-cost universal service support shall only be used for the provision,
27 maintenance and upgrading of facilities and services for which the support is intended in the
28 Missouri service area in which ETC designation was granted” as required by Paragraph
29 (2)(A)2. of the MO ETC rule?

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1 A. Yes. Proprietary Appendix 1 contains a list of 39 cell sites to be built over the
2 first 2 years after ETC designation. Furthermore, as commented above, Highly Confidential
3 Appendix 3 contains budgetary information regarding “Projected Expenditures Using High-
4 Cost USF Support”.

5 Q. In Staff’s opinion, has U.S. Cellular submitted sufficient information
6 regarding this paragraph?

7 A. Yes.

8 Q. Does the Compliance Filing contain information regarding Subsection (3)(A)
9 of the MO ETC rule, concerning the submitted two year plan including “A detailed map of
10 coverage area before and after improvements and in the case of CMRS providers, a map
11 identifying existing tower site locations for CMRS cell towers”?

12 A. Not entirely. Proprietary Appendix 4 contains a map of U.S. Cellular’s
13 “Existing Coverage” in the state of Missouri. Additionally, Proprietary Appendix 5 contains
14 “Proposed Cell Sites and Coverage Using USF Support (2007-2008)”.
15 However, as referenced in the discussion regarding Paragraph (2)(A)1. of the MO ETC rule,
16 U.S. Cellular has not filed a map or list “identifying existing tower site locations for CMRS
17 cell towers”.

18 Q. In Staff’s opinion, has U.S. Cellular submitted sufficient information
19 regarding this paragraph of the Mo ETC rule?

20 A. No.

21 Q. Does the Compliance Filing contain information in the two year plan
22 identifying “the specific geographic areas where improvements will be made”?

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1 A. Yes. Proprietary Appendix 1 lists the site name of each of the proposed cell
2 sites to be built in the two year period of the plan. Furthermore, Proprietary Appendix 2 lists
3 the wire centers that will “Receiv[e] Improved Coverage” to further describe the geographic
4 areas.

5 Q. In Staff’s opinion, has U.S. Cellular submitted sufficient information
6 regarding this paragraph?

7 A. Yes.

8 Q. Does the Compliance Filing include “the projected start date and completion
9 date for each improvement” included in the two year plan?

10 A. Yes. Proprietary Appendix 1 lists, by quarter, the approximate start and end
11 dates of each of the listed cell sites.

12 Q. In Staff’s opinion, has U.S. Cellular submitted sufficient information
13 regarding this paragraph?

14 A. Yes.

15 Q. Does the Compliance Filing include “the estimated amount of investment for
16 each project that is funded by high-cost support”?

17 A. Yes. As discussed above, Highly Confidential Appendix 3 contains
18 aggregated budgetary information for the projects instead of specific estimated costs for each
19 proposed project.

20 Q. Are there any concerns regarding “the estimated amount of investment for
21 each project that is funded by high-cost support”?

22 A. Yes. The information submitted by U.S. Cellular is not specific. The costs for
23 all of the cell towers to be built during the two-year period are averaged together; i.e., there is

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1 no specific cost listed for each cell tower. There is also an aggregate listing of how many
2 sites need the additional expense of “additional microwave equipment” instead of listing
3 specifically which sites need “additional microwave equipment”.

4 Furthermore, the estimated cost to construct a cell site is more than the estimate previously
5 submitted in the record. Previously, U.S. Cellular stated the “average cost to construct a cell
6 site typically exceeds \$250,000”¹. Staff submitted a Data Request to U.S. Cellular asking
7 about the cost of individual cell sites. U.S. Cellular responded:

8 The \$375,000 cost average per site is based on having better detail on the
9 specific situation for each site that is proposed. The primary variant for site
10 cost is whether it is to be a collocate on an existing structure or a raw-land
11 build. In the case of a collocate, particularly in an urban setting, the cost of
12 implementing a site can be as low as \$250,000, although an average of this
13 lower cost scenario is more accurately around \$300,000. Raw-land builds are
14 higher because of additional site preparation, the cost of constructing a new
15 tower, and site access development. The range of cost is from \$350,000 to
16 \$425,000. Given the rural nature of the proposed sites, there are more raw-
17 land builds expected which drives the average cost to \$375,000.
18 (the entire Data Request and response is included in Schedule ACM-2)
19

20 Q. In Staff’s opinion, has U.S. Cellular submitted sufficient information
21 regarding “the estimated amount of investment for each project that is funded by high-cost
22 support”?

23 A. No. In Staff’s opinion, the aggregate submission does not meet the criteria of
24 the subsection, particularly the language asking for the expense of “each project”. In Staff’s
25 opinion, U.S. Cellular should submit a two-year plan with specificity as to the estimated
26 expense for each cell tower, including whether or not the cell tower needs “additional
27 microwave equipment”.

28

¹ U.S. Cellular Wright Direct Testimony, page 13, beginning on line 9

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1 Q. Does the Compliance Filing contain information regarding “the estimated
2 population that will be served as a result of the improvements”?

3 A. Yes. As stated above, on page 3 of Appendix A, “U.S. Cellular estimates that
4 the 39 proposed sites will provide improved coverage to 236,291 people, based on Census
5 2000 block data”.

6 Q. In Staff’s opinion, has U.S. Cellular submitted sufficient information
7 regarding this requirement?

8 A. Yes.

9 Q. Subsection (3)(F) of the MO ETC rule states:

10 If an applicant believes that service improvements in a particular wire center
11 are not needed, it must explain its basis for this determination and demonstrate
12 how funding will otherwise be used to further the provisions of supported
13 services in that area

14
15 Does the Compliance Filing contain information regarding this Subsection?

16 A. No. Starting on page 3 of Exhibit A, U.S. Cellular states:

17 To be clear, U.S. Cellular commits to use federal support to extend its network
18 throughout its proposed ETC service area to the fullest extent possible. In
19 order to meet this commitment however, far more than 39 cell sites will be
20 required. Put simply, 39 cell sites do not provide coverage to every wire
21 center. U.S. Cellular has targeted all available support to constructing and
22 operating as many cell sites as possible. The wire centers shown on the
23 attached map cannot be reached within U.S. Cellular’s first two years as an
24 ETC.

25 This statement suggests improvements are needed, but cannot be accomplished within the
26 two-year budget. The statement does not address whether there are any wire centers in which
27 service improvements are not needed.

28 In addition, while the excerpt refers to a map of wire centers that will not have
29 coverage either before or after the expected improvements from the two-year plan, Staff can
30 find no such map within the Compliance Filing.

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1 Q The second part of Subsection (3)(F) of the MO ETC rule requires an ETC
2 applicant to demonstrate how funding will otherwise be used to further the provisions of
3 supported services in that area. Has U.S. Cellular met this requirement?

4 A. No. On page 5 of Exhibit A, U.S. Cellular states:

5 U.S. Cellular also notes that with each new cell site constructed, consumers in
6 areas covered with new signal will see improved service levels, both in
7 quantity and quality. In areas where there are overlaps with existing cell sites,
8 consumers will see increased capacity, seamless hand-offs from one site to
9 another, and network redundancies in the event of a cell site outage. The
10 provision of high-cost support will accelerate U.S. Cellular's ability to provide
11 competitive service offerings in rural Missouri, while at the same time
12 enabling rural consumers to depend on their wireless phones as they do in
13 urban areas.

14
15 While Staff appreciates that users in areas with coverage overlap will benefit from the
16 new cell towers, that does not "demonstrate how funding will otherwise be used to further the
17 provisions of supported services" in areas that *do not need to receive improvements* during
18 the two year plan. U.S. Cellular does not identify the wire centers that do not need to receive
19 improvements nor does it provide criteria regarding how it determined those wire centers
20 that do not need to receive improvements at this time.

21 Q. Subsection (3)(G) of the MO ETC Rule requires:

22 A statement as to how the proposed plans would not otherwise occur absent
23 the receipt of high-cost support and that such support will be used in addition
24 to any expenses the ETC would normally incur.

25
26 Does the Compliance Filing contain information regarding this Subsection?

27 A. Yes. Section V on page 5 of Exhibit A states:

28 As specified in Paragraph 3(G) of the Order, U.S. Cellular states that the
29 network improvements proposed in this two-year plan would not be
30 undertaken as proposed herein in the absence of federal high-cost support, and
31 that the proposed expenditures are over and above what would be budgeted in
32 the absence of such support. The cell sites proposed in this plan were selected

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1 from a list of sites that the company wishes to build in rural areas, but would
2 not be able to for the next several years without such support.

3
4 Q. Does Staff have any concerns regarding this section?

5 A. Yes. In the original Application regarding this case, U.S. Cellular presented
6 an 18 month plan for the construction of 16 cell sites.

7 Regarding this plan, U.S. Cellular witness Wright wrote in his Direct Testimony on
8 July 12, 2005, starting on page 13, line 8:

9 Q. Exactly what is U.S. Cellular's commitment regarding the use of
10 federal high-cost funds in Missouri?

11
12 A. U.S. Cellular agrees to use all available USF high-cost support to
13 improve its network infrastructure to offer Missouri's rural customers the
14 highest possible service quality. In the Application, U.S. Cellular committed
15 that during the first 18 months as an ETC in Missouri, *it would construct 16*
16 *new cell sites that would not otherwise be constructed in the absence of high-*
17 *cost support.* The sites are to be located within U.S. Cellular's proposed ETC
18 area in the communities listed in Exhibit E of the Application. (emphasis
19 added)

20
21 Q. Has U.S. Cellular built any of the 16 cell sites listed in Exhibit E of the
22 Application?

23 A. Yes. In response to a Data Request submitted after the Compliance Filing,
24 U.S. Cellular stated that four of the sixteen cell sites were built or were started in the summer
25 of 2006. The Data Request and response are attached as schedule ACM-3.

26 Q. Did Staff follow up on the response to that Data Request?

27 A. Yes. Staff submitted an additional Data Request to U.S. Cellular asking for
28 more details about why the four cell towers were built prior to receipt of ETC designation.

29 First, Staff asked what factors changed that allowed U.S. Cellular to build the four
30 sites in the absence of high cost support. U.S. Cellular listed as factors "the need to improve
31 the signal strength and reliability of the microwave network" (for two towers) and "because

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1 the company received a significant amount of feedback from its customers, sales associates
2 and third-party agents that service in these areas needed improvement” (for the other two
3 towers). For all four towers, U.S. Cellular wrote that it “did not want to wait until perhaps
4 mid to late 2007 to make the improvement”.

5 Furthermore, U.S. Cellular wrote that the four towers were built more than a year
6 after the initial build-out plan was submitted, and “it is normal for plans to change over that
7 timeframe because of demand shifts, changes in technology, and other factors”.

8 Secondly, Staff asked about future U.S. Cellular commitments. A portion of U.S.
9 Cellular’s response follows:

10 ...under its newly adopted rules, the Commission has the opportunity each
11 year to examine what U.S. Cellular has done with funds it has received. Those
12 rules require U.S. Cellular to explain its expenditures in significant detail. The
13 Commission has the option to require U.S. Cellular to sufficiently explain its
14 lawful use of support or to withhold recertification for the following year if it
15 does not. *That process, much more than any promises a carrier can make in*
16 *an ETC designation proceeding, is the acid test for any carrier applying for*
17 *federal support. USCC cannot walk away from this proceeding and do as it*
18 *pleases – it has an affirmative obligation to use the support lawfully and to*
19 *clearly explain such each year so that it can be recertified for another year of*
20 *support. (emphasis added)*

21
22 The entire Data Request and response is included as Schedule ACM-4.

23 Q. Ultimately, what is Staff’s concern regarding this issue?

24 A. Staff’s concern is that U.S. Cellular identified “*16 new cell sites that would*
25 *not otherwise be constructed in the absence of high-cost support*”. Despite the fact that U.S.
26 Cellular stated these cell sites would not be built absent receipt of high-cost support, four of
27 the towers were built without ETC designation.

28 **CONCLUSION**

29 Q. What is your recommendation in this case?

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1 A. While U.S. Cellular meets the criteria of most of the paragraphs discussed in
2 the Intended Use Order and MO ETC Rule, U.S. Cellular does not meet all of the criteria.

3 Specifically, U.S. Cellular does not meet the following portions of the MO ETC Rule:

- 4 • Paragraph (2)(A)1. and Subsection (3)(A): no submission of map or location for
5 existing cell site locations
- 6 • Subsection (3)(D):
 - 7 ○ no submission of specific investment estimated for each project (only
 - 8 investment aggregated over a number of projects)
 - 9 ○ lack of justification for including certain items under the cost heading
 - 10 ** _____ ** as supported services
- 11 • Subsection (3)(F):
 - 12 ○ no submission of basis of determination for improvements not needed in
 - 13 certain wire centers
 - 14 ○ no list of wire centers that do not need improvements
 - 15 ○ no demonstration of how funding otherwise will be used to further the
 - 16 provision of supported service in all areas.

17
18 Staff is even more concerned about U.S. Cellular's previous commitments that it could not
19 build certain cell towers without high cost support; yet those towers are already built or under
20 construction.

21 Without U.S. Cellular meeting the criteria of the Intended Use Order and the MO ETC Rule,
22 Staff cannot recommend approval of this ETC application.

23 Q. Is this recommendation consistent with your previous recommendation in this
24 case?

25 A. No.

26 Q. What has occurred since the filing of your initial recommendation that caused
27 you to change your recommendation regarding U.S. Cellular?

28 A. The Commission issued its Intended Use Order and the MO ETC Rule has
29 become effective since my initial Rebuttal Testimony in the instant case. The Intended Use
30 Order outlines certain expectations of U.S. Cellular and the MO ETC Rule provides specifics

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1 as to what applications for ETC status should contain. Since U.S. Cellular's application does
2 not fully comply with the Intended Use Order, Staff cannot recommend approval of U.S.
3 Cellular's application. Further, since this application and its supporting materials do not
4 comply with the MO ETC Rule, Staff cannot recommend the Commission approve this
5 application.

(2) Please list any and all expenditures that are included under the heading of ** _____
_____, as listed in Appendix 3 attached to US Cellular's Compliance Filing.

Response: ** _____ ** break down into ** _____

_____ **.

The information enclosed in asterisks in this Response is Highly Confidential and subject to the Protective Order in this proceeding.

NP

DATA REQUESTS

1. On page 13 of his Direct testimony, beginning on line 19, US Cellular witness Wright wrote:

Given that the average cost to construct a new cell site typically exceeds \$250,000...

On page 4 of Schedule NW-4 attached to US Cellular witness Wright's Substantial Testimony, a response to a data request signed by Brad Stein states:

The estimated cost of constructing each site ranges from \$250,000 to \$400,000;

The Highly Confidential Appendix 3 attached to the "Compliance Filing of U.S. Cellular", under the heading "Notes:" states:

**

Please explain how the average cost of cell sites that were estimated in excess of \$250,000 in Direct Testimony, then estimated "between \$250,000 - \$400,000" as of the data request response cited in US Cellular witness Wright's Substantial Testimony will now cost ** _____ ** as indicated in the "Compliance Filing of U.S. Cellular".

Response:

The \$375,000 cost average per site is based on having better detail on the specific situation for each site that is proposed. The primary variant for site cost is whether it is to be a collocate on an existing structure or a raw-land build. In the case of a collocate, particularly in an urban setting, the cost of implementing a site can be as low as \$250,000, although an average of this lower cost scenario is more accurately around \$300,000. Raw-land builds are higher because of additional site preparation, the cost of constructing a new tower, and site access development. The range of cost is from \$350,000 to \$425,000. Given the rural nature of the proposed sites, there are more raw-land builds expected which drives the average cost to \$375,000.

Signature: *Stephanie Cassioppi*

Name: Stephanie Cassioppi

Position: Director of External Affairs

20090201

NP

3. Exhibit E in the original US Cellular ETC application, as filed on 4-22-05, lists 16 cell sites to be built in the first 18 months of ETC designation. Appendix I attached to the "Compliance Filing of U.S. Cellular" lists 39 cell sites to be built in the first 24 months after ETC designation.

Upon review, it appears that the following cell sites are listed in the original Exhibit E but are not listed in the new Exhibit I: **

**

For each location, please state whether or not the cell site was built in the time between the filing of the original application and this data request.

Response:

The Birch Tree site was built during this time frame with a on-air date of August 30, 2006.

The Fremont site is under construction with a planned on-air date in September, 2006.

The site Between Willow and Cabool, now named Sargent, was built during this timeframe with an on-air date of June 30, 2006.

The Grove Springs site was built during the time frame with an on-air date of July 27, 2006.

Signature: *Stephanie Cassioppi*

Name: Stephanie Cassioppi

Position: Director of External Affairs



(1) In his Direct Testimony filed on July 12, 2005, US Cellular witness Wright wrote, starting at page 13, line 8:

Q. Exactly what is U.S. Cellular's commitment regarding the use of federal high-cost funds in Missouri?

A. U.S. Cellular agrees to use all available USF high-cost support to improve its network infrastructure to offer Missouri's rural customers the highest possible service quality. In the Application, U.S. Cellular committed that during the first 18 months as an ETC in Missouri, it would construct 16 new cell sites that would not otherwise be constructed in the absence of high-cost support. The sites are to be located within U.S. Cellular's proposed ETC area in the communities listed in Exhibit E of the Application.

Staff submitted a series of Data Requests regarding US Cellular's Compliance Filing, filed on August 11, 2006. The third of those data requests, attached in its entirety, asked about four cell sites that were listed in Exhibit E in the Application but were not listed in the Compliance Filing.

(a) For each of those four cell sites (** **), please state any and all factors that changed between the filing of US Cellular witness Wright's Direct Testimony on July 12, 2005 and the construction of the cell site that allowed the cell site to be constructed in the absence of high-cost support.

Response: U.S. Cellular provides the following explanation as to what factors changed between July 12, 2005 and the construction of each site:

** **: The priority of these sites moved up because of the need to improve the signal strength and reliability of the microwave network. The need to expedite these improvements was identified in late 2005 during a redesign of the southern Missouri network, and U.S. Cellular did not want to wait until perhaps mid to late 2007 to make the improvement.

** **: These two sites moved up on U.S. Cellular's priority list because the company received a significant amount of feedback from its customers, sales associates and third-party agents that service in these areas needed improvement, and U.S. Cellular did not want to wait until perhaps mid to late 2007 to make the improvement.

U.S. Cellular reiterates that wireless network plans continuously change from year to year, sometimes quarter to quarter, due to a number of additional factors, such as for example, shifts in customer demand, technology changes, and the pace of regulatory approvals. Oftentimes there are areas that are not scheduled to be constructed which move up on the list, while sometimes areas anticipated to be constructed move down the list. U.S. Cellular has consistently stated that site construction plans can change.

For example, at paragraph 31 of the Application, U.S. Cellular emphasized that the exact locations of planned sites may change due to "shifts in consumer

demand and other factors.” In response to Intervenor BPS Telephone Company et al’s First Set of Data Requests, DR No. 1.11(c), U.S. Cellular explained that these factors may include “whether ILECs can promptly provision necessary facilities[] and U.S. Cellular’s ability to obtain necessary zoning and other approvals.” Moreover, in providing all parties with maps and cell site data for the 16 sites proposed in the Application, USCC cautioned that: “this cell site data is preliminary in nature and subject to change because of the site acquisition process and regulatory approvals.” See letter to Glenn Brown, Brian T. McCartney, Marc Poston, and Michael F. Dandino dated Aug. 30, 2005, at p. 1.

In his prefiled direct testimony, Nick Wright noted that the pace of build-out cannot be predicted with specificity due to numerous factors, including the possibility of changes in the regulatory environment and the amount of available capital. Therefore, Mr. Wright stated, “We can only plan based on today’s facts and adjust accordingly as technology or the regulatory environment changes.” Wright Direct Testimony at p. 14, lines 14-16. In his Surrebuttal Testimony, Mr. Wright stated that “[m]any factors, not the least of which is the state of new technology, change so fast that predicting investments more than a year down the road quickly become mere speculation.” Wright Surrebuttal Testimony at p. 4, lines 12-14.

As stated in U.S. Cellular’s Response to Staff’s First Data Request, DR No. 3, all four of the towers in question were constructed over a year after U.S. Cellular filed its initial build-out plan in April 2005. Consistent with Mr. Wright’s testimony, it is normal for plans to change over that timeframe because of demand shifts, changes in technology, and other factors.

(b) If USC was able to construct these cell towers absent USF funds despite previous claims to the contrary, how can the Commission be assured that USF support will be used pursuant to the Act and the MO ETC rules at 4 CSR 240-3.570?

Response: This question implies that U.S. Cellular has somehow acted inappropriately by attempting to build its network out to rural Missouri as quickly as possible. U.S. Cellular hopes that the explanation set forth above puts this issue to rest.

To respond directly, U.S. Cellular has never stated, and could not state, a guarantee that it could not build *all* of the cell sites listed on its first build out plan during the first 18 months following designation in the absence of support. As set forth above, U.S. Cellular’s testimony and discovery responses have made it clear that plans may shift due to a number of factors, and that it is impossible to plan with specificity beyond one year. U.S. Cellular’s plans changed over the year following its initial submission and four cell sites were green-lighted as a result of factors set forth above.

The Commission can be assured that U.S. Cellular will use support lawfully for two important reasons. First, Mr. Wright has testified under oath in writing and on the stand that the company will use the funds lawfully. The company is an ETC in a number of other states and has been filing annual compliance reports and demonstrating to other commissions that it is using support lawfully. Thus, it has now developed a record to demonstrate its ability and willingness to use support lawfully.

Second, under its newly adopted rules, the Commission has the opportunity each year to examine what U.S. Cellular has done with funds it has received. Those rules require U.S. Cellular to explain its expenditures in significant detail. The Commission has the option to require U.S. Cellular to sufficiently explain its lawful use of support or to withhold recertification for the following year if it does not. That process, much more than any promises a carrier can make in an ETC designation proceeding, is the acid test for any carrier applying for federal support. USCC cannot walk away from this proceeding and do as it pleases – it has an affirmative obligation to use the support lawfully and to clearly explain such each year so that it can be recertified for another year of support.

It is important to understand that there are two ways for an ETC to handle new construction projects. When a site moves up on a priority list, it may fund it with universal service support scheduled to be received in a future year. Or, it may construct a site with the company's investment and move another site into its place. In either case, it is up to the ETC to explain its use of federal support each year so that the state can certify compliance to the FCC each October.

By accounting for all of the support received during the past year and describing each investment made with such support – including explanations of instances where plans have shifted – U.S. Cellular's annual ETC reports will enable the Commission to verify that the company has spent support only for the "provision, maintenance, and upgrading of facilities and services for which support is intended."