

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

In the matter of the application of USCOC of)
Greater Missouri, LLC for designation as an) Case No. TO-2005-0384
eligible telecommunications carrier pursuant to)
the Telecommunications Act of 1996.)

**POST-HEARING BRIEF OF SOUTHWESTERN BELL TELEPHONE, L.P.,
D/B/A AT&T MISSOURI**

DECEMBER 6, 2005

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Southwestern Bell Telephone, L. P. d/b/a AT&T Missouri (“AT&T Missouri”),¹ respectfully submits its post-hearing Brief in accordance with the Commission’s October 28, 2005, Notice Regarding Filing of Briefs.

I. SUMMARY

As an overarching matter in this case – the first of several “eligible telecommunications carrier” (“ETC”) cases likely to be decided by this Commission since the FCC’s March, 2005, ETC Designation Order² – the Commission should apply the FCC’s ETC Designation Order to U.S. Cellular’s application. (Section II herein). The FCC’s order establishes requirements reflecting a “more rigorous ETC designation process” meant to “improve the long-term sustainability of the universal service fund.”³ While these requirements technically apply only to ETC designation requests filed with the FCC, the FCC has encouraged state commissions to apply them in ETC designation cases decided at the state level.⁴ AT&T Missouri urges the Commission to apply them here, particularly given the Commission’s own expressed “concerns

¹ Southwestern Bell Telephone, L.P. has previously done business as SBC Missouri.

² In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (“ETC Designation Order”).

³ ETC Designation Order, para. 2.

⁴ 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 Designation Order, para. 8.

about the rapid increase in the size of the fund” and that “as additional carriers receive support from the federal fund, the fund will continue to expand at an alarming rate.”⁵

With regard to the specifics of U.S. Cellular’s application, the Commission must send an unmistakable signal to U.S. Cellular: “go back and do it right.”⁶ In at least two important respects, U.S. Cellular has failed to carry its burden to show that it meets the pertinent requirements of the Act for designation as an ETC, as interpreted and implemented by the FCC’s ETC Designation Order.

First, U.S. Cellular has failed to show that it intends to provide service throughout its proposed designated service area to all customers, as is required by Section 214(e)(1) of the Act. (Section III herein). More particularly, U.S. Cellular has not submitted a five-year plan – or any plan, for that matter – that specifies proposed improvements or upgrades to its network on a wire center-by-wire center basis throughout its proposed designated service area. Second, for related reasons, U.S. Cellular failed to show that granting it ETC status is “consistent with the public interest, convenience, and necessity,” as is required by Section 214(e)(2) of the Act. (Section IV herein).

Both failures of proof are most pronounced in the case of the approximately 146 AT&T Missouri wire centers for which U.S. Cellular seeks designation as an ETC. AT&T Missouri’s un rebutted testimony at the hearing was that any improvement in signal coverage, quality or capacity in these wire center areas that might be derived from the 16 cell site towers U.S. Cellular proposes to build would be only “minimal” or “insignificant” at best.⁷ It is self-evident

⁵ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of the Public Service Commission of the State of Missouri, September 30, 2005 (in response to the FCC’s August 17, 2005, Public Notice) (“Commission’s Federal USF Comments”), pp. 11, 15-16.

⁶ Tr. 336.

⁷ Tr. 415-416.

– and U.S. Cellular’s expert witness conceded – that a customer cannot “get health and safety benefits” from a cellular telephone “if they don’t have signal coverage.”⁸ Thus, regardless of how the Commission views that portion of U.S. Cellular’s application directed to the rural ILECs’ wire centers, the Commission must deny that portion of the application directed to AT&T Missouri’s 146 wire centers.

Finally, in all events U.S. Cellular’s application is deficient in that it has failed to demonstrate that its proposed network improvements would not otherwise occur absent its receipt of high-cost support. (Section V herein).

In sum, the Commission should not grant an application that could release almost \$9 million in high-cost funds annually to a carrier whose present plans go no further than to commit to investing only \$6 million over 18 months, especially for cell towers that would bring only marginal benefit at best to Missourians.

II. THE COMMISSION SHOULD APPLY THE ETC DESIGNATION ORDER’S REQUIREMENTS TO U.S. CELLULAR’S APPLICATION.

For several reasons, the Commission should apply the requirements approved by the FCC’s ETC Designation Order in evaluating U.S. Cellular’s application.⁹ The need to do so is particularly important here because, as Staff’s counsel correctly observed, “U.S. Cellular’s application for ETC status is potentially significant beyond the parties here today because it could set the stage for future wireless ETC applications considered by the Commission.”¹⁰ Moreover, U.S. Cellular’s resistance to applying the FCC’s order to its application is undercut by admissions it made at the hearing.

⁸ Tr. 388.

⁹ AT&T Missouri (Stidham) Rebuttal, pp. 2-6.

¹⁰ Tr. 23.

The ETC Designation Order is the most recent FCC ruling regarding the “minimum requirements” applicable to a telecommunications carrier’s ETC request.¹¹ Its more rigorous requirements reflect growing concerns about the future health of the high-cost fund, including this Commission’s own “concerns about the rapid increase in the size of the fund” and that “as additional carriers receive support from the federal fund, the fund will continue to expand at an alarming rate.”¹² The FCC’s order is targeted to meeting these concerns, and its implementation “by the [FCC] and state commissions will improve the long-term sustainability of the universal service fund.”¹³ While this is reason alone to apply the requirements of the ETC Designation Order to U.S. Cellular’s application, it is also noteworthy that the FCC took action only after extensive industry comment on the recommendations of the Federal-State Joint Board on Universal Service.¹⁴

Applying the FCC’s “more rigorous ETC designation process”¹⁵ would also ensure that “only fully qualified carriers that are capable of and committed to universal service will be able to receive support.”¹⁶ In addition, it would also “allow for a more predictable ETC designation process.”¹⁷ 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.”¹⁸

¹¹ ETC Designation Order, para. 1.

¹² In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of the Public Service Commission of the State of Missouri, September 30, 2005 (in response to the FCC’s August 17, 2005, Public Notice) (“Commission’s Federal USF Comments”), pp. 11, 15-16.

¹³ ETC Designation Order, para. 2.

¹⁴ ETC Designation Order, para. 1. Indeed, over 50 parties filed comments in the FCC’s rulemaking proceeding. ETC Designation Order, para. 1 & Appendix B.

¹⁵ ETC Designation Order, para. 2.

¹⁶ ETC Designation Order, para. 58.

¹⁷ ETC Designation Order, para. 1.

¹⁸ ETC Designation Order, para. 60.

Furthermore, the FCC has been steadfast in its desire that the same requirements be applied among all states: “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.”¹⁹ AT&T Missouri likewise urges the Commission to embrace this call for uniformity.

Finally, even apart from the foregoing considerations, the Commission should reject U.S. Cellular’s objection to the portion of the ETC Designation Order which requires an ETC applicant to submit a formal five-year network improvement plan that “describ[es] with specificity its proposed improvements or upgrades to the applicant’s network on a wire center-by-wire center basis throughout its designated service area.”²⁰ U.S. Cellular made at least three admissions that undercut its objection. First, U.S. Cellular’s counsel admitted in his opening statement that the ETC Designation Order “does represent a thoughtful and good-faith attempt to balance the benefits and the burdens and the need for some important regulation of ETCs, and I think the FCC did a reasonable job.”²¹ Next, U.S. Cellular’s Vice President of West Operations (encompassing seven states, including Missouri) readily conceded that U.S. Cellular could prepare a five-year plan in “30 days.”²² Finally, the same witness was asked as follows: “So in effect, U.S. Cellular does not have a problem with the FCC’s March 17th Order; is that correct?” He stated: “No, we do not.”²³

¹⁹ ETC Designation Order, para. 58.

²⁰ ETC Designation Order, para. 23.

²¹ Tr. 15-16.

²² Tr. 122, 174.

²³ Tr. 192.

III. U.S. CELLULAR FAILS TO MEET THE REQUIREMENTS OF SECTION 214(E)(1) OF THE ACT TO OFFER THE SUPPORTED SERVICES “THROUGHOUT THE SERVICE AREA” FOR WHICH IT SEEKS ETC DESIGNATION.

U.S. Cellular has failed to demonstrate that it will offer and advertise the supported services “throughout the service area” for which U.S. Cellular seeks ETC designation, including the service area encompassed by the approximately 146 AT&T Missouri wire centers for which U.S. Cellular has sought ETC designation. For this reason alone, its application should be denied.

Section 214(e)(1) of the Act requires that common carriers seeking ETC status offer and advertise the availability of the services supported by federal universal service support mechanisms “throughout the service area” for which ETC designation is received. It further specifies that the supported services must be offered by the carrier either using its own facilities or a combination of its own facilities and resale of another carrier’s services.

Pursuant to Section 214(e)(1) and the FCC’s interpretation and implementation of the statute, an ETC applicant must meet each of the following “eligibility” requirements:²⁴

(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;²⁵

(2) demonstrate its ability to remain functional in emergency situations;²⁶

²⁴ See also, 47 C.F.R. § 54.101.

²⁵ ETC Designation Order, paras. 21-23.

²⁶ ETC Designation Order, para. 25.

(3) demonstrate that it will satisfy appropriate consumer protection and service quality standards;²⁷

(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;²⁸ 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.²⁹

AT&T Missouri agrees with Staff's conclusion that "U.S. Cellular does not break down how high-cost universal service fund support will be used to 'improve its coverage, service quality, or capacity in every wire center' where U.S. Cellular requests ETC designation"³⁰ and its further clarification that this conclusion applies to AT&T Missouri's wire centers as well.³¹ OPC similarly agrees that U.S. Cellular "has provided incomplete information on its planned offerings and future expansion plans for Missouri" and thus finds the evidence deficient as to whether U.S. Cellular will serve "ubiquitously and on a timely basis throughout the requested designated areas."³²

In addition, there is no dispute that "U.S. Cellular [has] fail[ed] to provide a five-year build out plan for the use of potential USF monies"³³ or, as OPC put it, "a five-year plan detailing specifically how it intends to use USF support to expand and enhance the availability of supported services in each geographic region for which it receives support."³⁴ Instead of taking

²⁷ ETC Designation Order, para. 28.

²⁸ ETC Designation Order, para. 33.

²⁹ ETC Designation Order, para. 35.

³⁰ Staff (McKinnie) Rebuttal, p. 6 (emphasis added); see also, AT&T Missouri (Stidham) Surrebuttal, p. 4.

³¹ Tr. 278-279.

³² OPC (Meisenheimer) Rebuttal, pp. 3-4 (emphasis added); see also, AT&T Missouri (Stidham) Surrebuttal, pp. 13-14.

³³ Staff (McKinnie) Rebuttal, p. 6.

³⁴ OPC (Meisenheimer) Rebuttal, pp. 3-4; see also, AT&T Missouri (Stidham) Rebuttal, pp. 19-21, and AT&T Missouri (Stidham) Surrebuttal, pp. 13-14.

the FCC's five-year plan requirement to heart, U.S. Cellular has provided a so-called 18-month plan that amounts to but a single page (Exhibit E) and fails to meet the requirements of the FCC's ETC Designation Order.³⁵ This is especially unfortunate given that U.S. Cellular admitted at the hearing that it could prepare a five-year plan in "30 days."³⁶

These deficiencies are especially pronounced with respect to the approximately 146 AT&T Missouri wire centers for which U.S. Cellular seeks ETC designation.³⁷ According to U.S. Cellular, Exhibit E of the application, which shows the planned locations of the 16 towers it proposes to build, also "shows the closest town or municipality and estimated population that will be affected by the proposed network improvements."³⁸ However, Exhibit E reflects that none of the planned 16 towers will be located in communities served by AT&T Missouri's wire centers. AT&T Missouri's witness also testified that "it doesn't appear that there's much, if any, additional coverage in [AT&T Missouri's] territory. I think the impact is minimal or insignificant."³⁹ U.S. Cellular never challenged this testimony. Instead, when U.S. Cellular's witness was asked whether he knew if any of these towers would improve service coverage, quality or capacity among any of the 146 AT&T Missouri wire centers, he stated: "No, I do not."⁴⁰

Additionally, U.S. Cellular's proposed 18-month plan is deficient for other reasons. For example, U.S. Cellular does not identify either "the projected start date and completion date for each improvement" or "the estimated amount of investment for each project that would be funded by high-cost support," both of which are required by the FCC's ETC Designation

³⁵ See, Exhibit E of U.S. Cellular's application (identifying anticipated locations for construction of new towers).

³⁶ Tr. 122, 174.

³⁷ See, Exhibit C of U.S. Cellular's application (listing non-rural ILEC wire centers for ETC designation), pp. 2-6.

³⁸ Wright Surrebuttal, Schedule NW-4, p. 4.

³⁹ Tr. 415-416.

⁴⁰ Tr. 180-181.

Order.⁴¹ These additional deficiencies also further underscore U.S. Cellular’s overall failure to demonstrate that “the supported improvements in service will be made throughout the service area” for which U.S. Cellular seeks designation as an ETC.⁴²

These multiple deficiencies exacerbate the concerns raised by U.S. Cellular’s having failed to adequately explain how it intends to deploy the approximately \$12 million or so of high-cost funds it anticipates receiving over the 18 months following any grant of its application.⁴³ This is particularly troublesome given that this \$12 million – revised upward by a factor of ten from earlier Universal Service Administrative Company (“USAC”) projections of \$200,000 per quarter, or \$1.2 million over 18 months⁴⁴ – is \$6 million more than the most recent estimate of “approximately \$6 million” to construct 16 towers,⁴⁵ a cost which itself was revised upwards by 50% without any particulars provided that would account for the new estimate.⁴⁶

Staff testified without challenge that U.S. Cellular had only demonstrated how about one-third to one-half of the funds it would receive would actually be used.⁴⁷ The Commission cannot deem acceptable U.S. Cellular’s receipt of such significant amounts of high-cost funds without a sufficiently detailed plan indicating in advance how those funds are to be spent. Certainly, evidence adduced at the hearing provided no comfort about U.S. Cellular’s proposed solution (i.e., approval of the application now, followed by an accounting of funds spent only next fall

⁴¹ ETC Designation Order, para. 23; see also, AT&T Missouri (Stidham) Rebuttal, pp. 20-21.

⁴² ETC Designation Order, para. 23.

⁴³ See, U.S. Cellular (Wright) Direct, p. 14 (stating that “new projections show that U.S. Cellular would receive roughly \$2 million per quarter”).

⁴⁴ U.S. Cellular (Wright) Direct, p. 13 (stating that “[b]ased on the available projections from USAC at the time the Application was filed, U.S. Cellular would receive roughly \$200,000 per quarter”).

⁴⁵ U.S. Cellular (Wright) Surrebuttal, p. 1.

⁴⁶ Compare, U.S. Cellular (Wright) Direct, p. 13 (stating that “the average cost to construct a new cell site typically exceeds \$250,000[.]”) with U.S. Cellular (Wright) Surrebuttal, p. 1 (stating that “I understand that our current commitment, sixteen cell sites, will cost approximately \$6 million, not including significant switch and capacity upgrades . . . and not including the ongoing cost of maintaining those sites and related infrastructure”). This yields a single-site cost of approximately \$375,000 (\$6 million divided by 16), which is approximately 50% higher than the originally anticipated single-site cost of approximately \$250,000.

⁴⁷ Tr. 271-272.

when U.S. Cellular would hope to be “re-certified” together with a new plan for proposed tower construction).

First, U.S. Cellular was unable to explain the costs underlying its present plan. Specifically, the witness who spoke to these costs did not know why the build-out cost estimates presented in his direct testimony had suddenly increased 50% in his surrebuttal testimony.⁴⁸ Second, U.S. Cellular does not compile or maintain capital expenditures or capital budgets on a state-specific basis.⁴⁹ Thus, there is no evidence, for example, that high-costs funds earmarked for rural Missouri won’t be spent in Oklahoma City or Tulsa, because as U.S. Cellular indicated, Oklahoma “pick[s] up the Joplin market.”⁵⁰

Under all of these circumstances, one cannot conclude that U.S. Cellular has shown the requisite commitment and ability to provide the supported services throughout the area for which it seeks ETC designation, or that any high-cost funds provided to U.S. Cellular would be spent only for the purposes intended and in a fiscally prudent manner.

These deficiencies cannot be excused by simply punting to a rulemaking proceeding the matter of whether to impose a five-year plan requirement upon an ETC applicant, and if such a plan is ultimately adopted, to require as part of the order entered in this case that U.S. Cellular “update its submission to the Commission during the annual certification process,” as Staff recommends.⁵¹ A rulemaking proceeding does not excuse U.S. Cellular’s burden in this case to demonstrate how it expects to spend high-cost support funds over the next five years.⁵² And, certification updates are meant to provide - at the “wire center level” - annual “progress reports

⁴⁸ Tr. 171.

⁴⁹ Tr. 162-163.

⁵⁰ Tr. 164.

⁵¹ Staff (McKinnie) Rebuttal, pp. 11-12.

⁵² AT&T Missouri (Stidham) Surrebuttal, p. 5.

on the ETC's five year service quality improvement plan."⁵³ They do not excuse an applicant's duty to show that it will provide service throughout the proposed designated service area or to submit a formal network improvement plan before it is designated as an ETC. In any event, as explained above, U.S. Cellular's 18-month network improvement plan is deficient for reasons beyond its failure to encompass a five-year period.

IV. U.S. CELLULAR FAILS TO DEMONSTRATE THAT GRANTING ITS APPLICATION WOULD BE "CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY" AS IS REQUIRED BY SECTION 214(E)(2) OF THE ACT.

Granting ETC status to U.S. Cellular is not consistent with the public interest, convenience and necessity in the AT&T Missouri wire centers for which U.S. Cellular seeks designation as an ETC. Thus, U.S. Cellular's application should be denied for this independent reason.

A. The public interest test applies to ETC designations in areas served by a non-rural carrier such as AT&T Missouri.

As a threshold matter, there can be no question that ETC designations in areas served by non-rural carriers such as AT&T Missouri must satisfy a public interest test, despite U.S. Cellular's claim to the contrary.⁵⁴ Section 214(e)(2) of the Act provides that "[u]pon request and consistent with the public interest, convenience and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area, so long as each additional requesting carrier meets the [eligibility] requirements of paragraph (1)." (emphasis added).

⁵³ ETC Designation Order, para. 69; see also, AT&T Missouri (Stidham) Rebuttal, pp. 9-10.

⁵⁴ Prehearing Brief of USCOC of Greater Missouri, LLC, pp. 6-7.

Furthermore, in its ETC Designation Order, the FCC squarely held that an applicant for ETC designation must demonstrate that granting its request is consistent with the public interest, convenience and necessity regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.⁵⁵ While U.S. Cellular suggests that this represents a “shift of position” on the part of the FCC,⁵⁶ it is wrong. The ETC Designation Order directly cited the FCC’s prior orders which had already made clear that an ETC applicant’s showing of compliance with the statutory eligibility requirements of Section 214(e)(1) of the Act would not necessarily mean that ETC designation would be consistent with the public interest in every instance.⁵⁷ In any event, this Commission has similarly held that “in order to be granted ETC status in the non-rural areas, an [ETC applicant] must also show that the designation will be, ‘consistent with the public interest, convenience and necessity.’”⁵⁸ U.S. Cellular has not advanced any reason to ignore either the FCC’s or this Commission’s own precedent.

⁵⁵ 47 U.S.C. § 214(e)(2), (6); see also, ETC Designation 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.”).

⁵⁶ Prehearing Brief of USCOC of Greater Missouri, LLC, p. 6.

⁵⁷ ETC Designation Order, para. 42 & ns. 116 and 117, citing, 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 (“Highland Cellular ETC Designation Order”), para. 21; Virginia Cellular, LLC 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 1563 (“Virginia Cellular ETC Designation Order”), para. 27. These holdings were intended to correct the FCC’s Common Carrier Bureau’s finding in 2000 that such designation would be “*per se* in the public interest” based upon a showing of compliance with the eligibility requirements. Highland Cellular ETC Designation Order, para. 21; Virginia Cellular ETC Designation Order, para. 27. (further citations omitted).

⁵⁸ In the Matter of the Application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TO-2003-0531, Amended Report and Order, November 30, 2004, p. 27.

Even assuming (though wrongly) that U.S. Cellular is not specifically required by law to demonstrate that its designation as an ETC in areas served by a non-rural carrier is in the public interest, sound public policy suggests that the Commission should nonetheless impose a public interest requirement.⁵⁹ The Commission's doing so will help advance three important policies: first, to "improve the long-term sustainability of the universal service fund;"⁶⁰ second, to "allow for a more predictable ETC designation process;"⁶¹ and third, 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."⁶² The FCC expressly noted that state decisions regarding ETC status "have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund."⁶³ These policies and their national implications are even more important given the Commission's own concern that "as additional carriers receive support from the federal fund, the fund will continue to expand at an alarming rate."⁶⁴

⁵⁹ AT&T Missouri (Stidham) Rebuttal, pp. 1-2, 17-18; AT&T Missouri (Stidham) Surrebuttal, p. 10.

⁶⁰ ETC Designation Order, para. 2.

⁶¹ ETC Designation Order, para. 1.

⁶² ETC Designation Order, para. 60.

⁶³ ETC Designation Order, para. 60.

⁶⁴ Commission's Federal USF Comments, pp. 15-16. In addition, abandoning a public interest analysis when considering areas served by so-called "non-rural" carriers would ignore the fact that AT&T Missouri and other non-rural carriers often serve customers in rural areas, just as do so-called "rural" carriers. As the Commission has very recently noted, "[a]lthough SBC serves the larger metropolitan areas of the state, many SBC exchanges are similarly situated to rural exchanges of CenturyTel and Sprint." Commission's Federal USF Comments, p. 10. The Commission further emphasized that "the majority of the MoPSC supports either the concept of classifying companies with over 100,000 lines as 'non-rural' for USF calculation purposes or supports a concept of tying support to rural and non-rural areas or exchanges as opposed to rural and non-rural carriers." Id. Consequently, there is no reason to decline to apply a public interest analysis in this case on the basis that the area in question is served by AT&T Missouri.

B. U.S. Cellular fails the public interest test as to AT&T Missouri's wire centers.

In determining whether the public interest has been served, the burden of proof rests upon the ETC applicant.⁶⁵ 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."⁶⁶ U.S. Cellular does not provide specific evidence that designating it as an ETC is consistent with the public interest, convenience and necessity in the AT&T Missouri wire centers for which U.S. Cellular seeks ETC status. Moreover, to the extent U.S. Cellular relies on evidence regarding rural wire centers to fill this gap, its reliance is misplaced because its evidence directed to rural carriers is deficient.⁶⁷

U.S. Cellular's reliance on the pre-ETC Designation Order decisions of the FCC and of commissions of states other than Missouri that emphasize the value of increased competition is of no help. The ETC Designation Order represents the last definitive word from the FCC on the ETC application process.⁶⁸ Moreover, despite these earlier decisions, the FCC has expressly determined that "in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test."⁶⁹

Furthermore, none of the potential benefits of increased consumer choice and the advantages of mobility that U.S. Cellular purports to offer will be enjoyed in areas encompassed by the 146 AT&T Missouri wire centers for which U.S. Cellular seeks ETC designation. AT&T Missouri's testimony at the hearing – never challenged by U.S. Cellular – was that any

⁶⁵ Highland Cellular ETC Designation Order, para. 20.

⁶⁶ ETC Designation Order, para. 18.

⁶⁷ AT&T Missouri (Stidham) Rebuttal, pp. 3-4.

⁶⁸ AT&T Missouri (Stidham) Rebuttal, pp. 10, 15.

⁶⁹ ETC Designation Order, para. 44; citing, Highland Cellular ETC Designation Order, para. 4.

improvement in signal coverage, quality or capacity in these wire center areas that might be derived from the 16 cell site tower build-out would be only “minimal” or “insignificant” at best.⁷⁰ It is abundantly clear – and in any case U.S. Cellular’s expert witness conceded – that a customer cannot “get health and safety benefits” from a cellular telephone “if they don’t have signal coverage.”⁷¹ Thus, regardless of how the Commission views that portion of U.S. Cellular’s application directed to the rural ILECs’ wire centers, the Commission must deny that portion of the application directed to AT&T Missouri’s 146 wire centers because none of the benefits that might be generated by giving high-cost funds to U.S. Cellular will accrue to Missourians situated within the areas served by AT&T Missouri’s wire centers.

Any suggestion that customers might enjoy increased choice and the advantages of mobility is also undercut for the reason that U.S. Cellular failed to show that consumers do not already enjoy these benefits due to services being provided by other wireless carriers. U.S. Cellular’s witness identified eight wireless licensees in Missouri other than itself: Alltel, Verizon, Cingular, Sprint, T-Mobile, Dobson and Mid-Missouri Cellular, and he indicated that “three to four” of them are in competition with U.S. Cellular.⁷² Yet, U.S. Cellular made no attempt to identify that the areas in which it seeks ETC designation are not presently served by any of the eight other carriers or even its own competitors. Thus, there can be no inference drawn that Missourians in these areas will suffer unless U.S. Cellular’s application is granted.

Moreover, any such grant could adversely impact customers in other wire center areas. As AT&T Missouri’s witness explained:

⁷⁰ Tr. 415-416.

⁷¹ Tr. 388.

⁷² Tr. 134.

[W]hile allowing or having U.S. Cellular, for example, go into that exchange that's competitive and provide better service is obviously better for the consumer. That's true. I won't disagree. The concern I had was, but at the detriment of someone who's in the next wire center or the next exchange . . . who has to sit and wait for service.⁷³

Finally, expanding the size of the high-cost fund by the amount that U.S. Cellular would receive is not in the public interest for reasons having to do with the high-cost fund's long-term sustainability.⁷⁴ This Commission is correct to have expressed "concerns about the rapid increase in the size of the fund."⁷⁵ And, while the FCC has observed that the impact of but one ETC on the overall fund may be inconclusive,⁷⁶ it is of far greater importance that the cumulative effect of ETC policy and the resulting designations is what underlies the FCC's ETC Designation Order and what should underlie the Commission's decision in this case. The deficiencies in U.S. Cellular's application and testimony exacerbate these concerns.

The FCC also specifically noted that, collectively, state decisions regarding ETC status "have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund."⁷⁷ Such considerations are all the more critical given U.S. Cellular's failure to explain how it intends to deploy all of the approximately \$12 million or so of high-cost funds it anticipates receiving over the 18 months following the grant of its application.

⁷³ Tr. 431-432.

⁷⁴ AT&T Missouri (Stidham) Rebuttal, pp. 10, 15.

⁷⁵ Commission's Federal USF Comments, p. 11.

⁷⁶ ETC Designation Order, para. 54.

⁷⁷ ETC Designation Order, para. 60.

V. U.S. CELLULAR FAILS TO DEMONSTRATE THAT ITS PROPOSED NETWORK IMPROVEMENTS “WOULD NOT OTHERWISE OCCUR ABSENT THE RECEIPT OF HIGH-COST SUPPORT.”

High-cost support funds must be used “for service improvements that would not occur absent receipt of such support.”⁷⁸ U.S. Cellular has failed to show that it will not proceed on its planned construction of 16 towers unless it receives high-cost support. Instead, U.S. Cellular testified to its desire to “cover the entire state of Missouri”⁷⁹ and it further testified that high-cost support “will only accelerate” its ability to construct additional facilities.⁸⁰

At the hearing, U.S. Cellular disclosed that it had already devoted a “very, very large percentage” of its constructed towers to rural markets in Missouri.⁸¹ And, when asked in a follow-up question if “it would be your focus and your commitment to continue to make that kind of investment in the future in those rural markets, whether or not you receive USF support,” U.S. Cellular’s witness answered unequivocally: “Absolutely, yes.”⁸²

The only inference permitted by this evidence is that high-cost support will merely expedite U.S. Cellular’s expansion plans. That is far short of a showing that these plans will not occur at all unless they are financed by high-cost support. Thus, U.S. Cellular’s application is deficient for this independent reason.

VI. CONCLUSION

AT&T Missouri respectfully submits that the application of U.S. Cellular for designation as an ETC must be denied. U.S. Cellular has failed to sufficiently demonstrate that it meets the requirements of Section 214(e)(1) of the Act throughout the service area for which it seeks ETC

⁷⁸ ETC Designation Order, para. 23. (emphasis added).

⁷⁹ Tr. 68.

⁸⁰ AT&T Missouri (Stidham) Surrebuttal, p. 12, quoting U.S. Cellular (Wright) Direct, p. 12. See also, U.S. Cellular (Lowell) Direct, p. 11 (stating that “[t]he addition of high-cost USF support will accelerate our construction plans”).

⁸¹ Tr. 166.

⁸² Tr. 166.

designation. Furthermore, U.S. Cellular has failed to sufficiently demonstrate that granting it ETC status is consistent with the public interest, convenience and necessity, as required by Section 214(e)(2). Finally, U.S. Cellular has not shown that its proposed network improvements will not otherwise occur absent its receipt of high-cost support.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on December 6, 2005.


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