

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

APPLICATION OF USCOC OF GREATER)
MISSOURI, LLC FOR DESIGNATION AS AN)
ELIGIBLE TELECOMMUNICATIONS CARRIER) Case No. _____
PURSUANT TO THE TELECOMMUNICATIONS)
ACT OF 1996)

**APPLICATION OF USCOC OF GREATER MISSOURI, LLC (“U.S. Cellular”)
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

USCOC of Greater Missouri, LLC, d/b/a/ U.S. Cellular submits this Application for Designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, (“1996 Act”), 47 U.S.C. § 214(e)(2), Section 54.201 of the Rules of the Federal Communications Commission (“FCC”), 47 C.F.R. § 54.201, and 4 CSR 240.060. Applicant requests that it be designated as eligible to receive all available support from the federal Universal Service Fund (“USF”), including support for rural, insular and high-cost areas and low-income customers.

In support of its Application, the Applicant states as follows:

I. Background

1. The name and address of Applicant is USCOC of Greater Missouri, LLC (“U.S. Cellular”), 8410 Bryn Mawr Avenue, Suite 700, Chicago, Illinois 60631. U.S. Cellular is an operating company controlled by United States Cellular Corporation. USCOC of Greater Missouri, LLC is a Delaware entity that is registered as a foreign company active and in good standing with the Missouri Secretary of State’s office. Attached as **Exhibit A** is a Certificate of Good Standing from the Missouri Secretary of State.

2. Through its cellular authorizations, U.S. Cellular is licensed to serve the Missouri 2, 3, 5, 6, 11, 13, 15, 16 and 17 Rural Service Areas (“RSAs”), as well as the Columbia and

Joplin Metropolitan Service Areas (“MSAs”). In addition, U.S. Cellular is also authorized by the FCC under the licensee names of its various operating companies to provide Personal Communications Service (“PCS”) in the St. Joseph, MO, Sedalia, MO, and Burlington, IA Basic Trading Areas (“BTAs”), as well as several partitioned portions of the St. Louis, MO Major Trading Area (“MTA”).

II. Applicable Statutes and Rules

3. This Application is made pursuant to 47 C.F.R. 240.060, 47 U.S.C. §§ 153(27), 153(44), 153(46), 214(e), 253(b), 254(e) and 332(c)(3), as well as 47 C.F.R. §§ 51.5, 54.5, 54.101, 54.201, 54.207, 54.313 and 54.314.

III. U.S. Cellular Eligibility and Identification of the Service Area

4. U.S. Cellular is a commercial mobile radio service (“CMRS”) provider pursuant to the definition of “mobile service” set forth in 47 U.S.C. § 153(27). U.S. Cellular provides interstate telecommunications services as defined in 47 U.S.C. § 153(46) and 47 C.F.R. § 54.5.

5. A telecommunications carrier may be designated as an ETC and receive Universal Service Fund support if it agrees, throughout the proposed ETC service area, to: (a) offer services that are supported by federal universal service support mechanisms, and (b) advertise the availability of such services.¹ In its *First Report and Order* implementing Sections 214(e) and 254, the FCC set forth the services a carrier must provide in order to be designated as an ETC and thus receive federal universal service support.²

6. Section 214(e)(2) of the 1996 Act provides that ETC designations shall be made for a “service area” designated by the state commission. A map of U.S. Cellular’s proposed ETC

¹ See 47 U.S.C. § 214(e)(1).

² *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8809-25 (1997) (“*First Report and Order*”).

service area is attached hereto as **Exhibit B**. In areas served by a non-rural company, the state commission may establish an ETC service area for a competitor without federal concurrence.³ Accordingly, U.S. Cellular requests designation for its ETC service area in the non-rural wire centers listed in **Exhibit C**, attached hereto. Where U.S. Cellular serves only a portion of a wire center listed, it requests that it be designated as an ETC in that portion of the wire center where it is authorized by the FCC to serve.⁴

7. In areas served by a rural telephone company, “service area” means the local exchange carrier (“LEC”) study area unless and until the FCC and the states, taking into account recommendations of the Federal-State Joint Board on Universal Service, establish a different definition of service area for such company.⁵ Where U.S. Cellular’s proposed ETC service area covers an entire rural LEC study area, the Missouri Public Service Commission (“MPSC”) may designate U.S. Cellular as an ETC without the need to redefine the LEC service areas. Attached as **Exhibit D** is a list of rural LEC study areas that are covered in their entirety by U.S. Cellular’s proposed ETC service area.

8. There are several rural LEC study areas that U.S. Cellular does not cover entirely, solely because U.S. Cellular is not licensed by the FCC along LEC boundaries. In order to accommodate CMRS carriers who have authorized service areas that do not match LEC wire centers, states may designate the competitive ETC’s service area along boundaries that are not identical with LEC study area boundaries. To do otherwise would effectively exclude wireless

³ 47 U.S.C. § 214(e)(5).

⁴ Those wire centers that U.S. Cellular partially serves are indicated on Exhibit B by the word “partial.”

⁵ 47 C.F.R. § 54.207(b).

carriers as a class from receiving universal service support and, as discussed in Section VI, *infra*, would be contrary to the pro-competition policies articulated by the FCC and other states. According to Section 214(e)(1)(A) of the 1996 Act, an ETC may offer the supported services through its own facilities or a combination of its own facilities and resale. Consistent with the FCC's policy in *Highland Cellular* and its progeny, U.S. Cellular has eliminated from its petition any rural ILEC wire centers that are only partially covered by U.S. Cellular's FCC-licensed service area.⁶ Where appropriate, U.S. Cellular has committed to serve areas outside of its licensed service area through resale or roaming⁷ in order to serve the remaining portions of those wire centers that are only partially covered by its FCC-licensed service area. In other cases, typically where U.S. Cellular's FCC-licensed service area covers only a small portion of a rural ILEC wire center, U.S. Cellular has excluded the wire center in its entirety. Accordingly, for the rural LEC study areas that are only partially covered by U.S. Cellular's authorized service area, U.S. Cellular requests that the MPSC designate it as an ETC in that portion of the study area where U.S. Cellular is authorized to provide service through its own facilities, resale and/or roaming.

IV. U.S. Cellular Offers the Supported Services Required To Qualify For Federal USF Support

9. Section 214(e)(1) of the 1996 Act and Section 54.201(d) of the FCC's rules provide that carriers designated as ETCs shall, throughout their service area, (a) offer the services that are supported by federal universal service support mechanisms either using their own facilities or a combination of their own facilities and resale of another carrier's services, and

⁶ See *Highland Cellular, Inc.*, 19 FCC Rcd 6422, 6438 (2004) ("*Highland Cellular*").

⁷ Under these roaming arrangements, U.S. Cellular will pay the roaming costs and customers will not be charged per-minute roaming fees. Such a roaming arrangement is "invisible" to customers.

(b) advertise the availability of such services and the charges using media of general distribution.

The nine-point checklist of required services which are supported by the Federal USF are:

- (1) voice grade access to the public switched network;
- (2) local usage;
- (3) dual tone multi-frequency signaling or its functional equivalent;
- (4) single-party service or its functional equivalent;
- (5) access to emergency services;
- (6) access to operator services;
- (7) access to interexchange service;
- (8) access to directory assistance; and
- (9) toll limitation for qualifying low-income consumers.

See 47 C.F.R. § 54.101(a).

10. U.S. Cellular has been designated as an ETC in Washington, Iowa, Oregon and Wisconsin, and has demonstrated its capability to offer the supported services.⁸ U.S. Cellular is a full-service wireless carrier, which offers all of these services within the State of Missouri, as described in detail below. U.S. Cellular therefore satisfies the requirements of Section 214(e)(1).

11. VOICE GRADE ACCESS. U.S. Cellular provides voice grade access to the public switched network through interconnection arrangements with local telephone companies. U.S. Cellular offers its subscribers this service at bandwidth between 300 and 3,000 hertz, as required by 47 C.F.R. §54.101(a)(1), thereby providing voice grade access. U.S. Cellular commits to responding to reasonable requests for service by providing service to a customer who has a billing address in the service area at the customer's billing address or at a different address

⁸ United States Cellular Corp., Docket No. UT-970345 (Wash. Util. and Transp. Comm'n, Jan. 27, 2000) ("U.S. Cellular Washington Order"); United States Cellular Corp., Docket No. 8225-TI-102 (Wisc. Public Serv. Comm'n, Dec. 20, 2002) ("U.S. Cellular Wisconsin Order"); United States Cellular Corp., Docket No. 199 IAC 39.2(4) (Iowa Util. Bd., Jan. 15, 2002) ("U.S. Cellular Iowa Order"), United States Cellular Corp., Docket No. UM 1084 (Oregon Public Utility Comm'n, June 24, 2004.)("U.S. Cellular Oregon Order.")

specified by the customer that represents the customer's home or work location.⁹ U.S. Cellular will also take steps to assist customers who wish to receive U.S. Cellular's service and will provide reasonable assistance, including enhanced equipment such as an external fixed antenna on a car or home; a "cell extender" or more powerful telephone; adjustment of U.S. Cellular's existing antennas or providing a "repeater" to improve service; or the construction of new infrastructure.¹⁰

12. LOCAL USAGE. U.S. Cellular has a variety of rate plans that provide local usage consistent with 47 C.F.R. § 54.101(a)(2). To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering.¹¹ In the *First Report and Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide.¹² In a subsequent *Notice of Proposed Rulemaking*, the FCC sought comment on a definition of the public service package that must be offered by all ETCs, including how much, if any, local usage should be required to be provided to customers as part of a universal service offering.¹³ In July 2003, after considering public comments and recommendations of the Joint Board, the FCC released an order declining to impose a specific

⁹ *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1570-71 (2004) ("Virginia Cellular"). Several parties have filed for reconsideration of the FCC's *Virginia Cellular* order. The petitions for reconsideration remain pending.

¹⁰ Id.

¹¹ See *NPCR, Inc. d/b/a Nextel Partners*, 19 FCC Rcd 16530, 16536 (2004) ("Nextel Partners").

¹² See *First Report and Order*, supra, 12 FCC Rcd at 8813.

¹³ *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252, 21279-81 (1998) ("October 1998 NPRM").

amount of local usage as a condition for ETC status.¹⁴ More recently, the FCC sought comment on another set of recommendations by the Joint Board regarding ETC criteria which again declined to specify a minimum quantity of local usage.¹⁵ Instead of setting a minimum amount, the FCC has determined that when a carrier offers a choice of rate plans containing varying amounts of local usage, it meets that local usage requirement.¹⁶ Other states have similarly declined to impose a specific minimum quantity of local usage.

13. RATE PLANS AND LIFELINE/LINKUP. U.S. Cellular offers dozens of rate plans which provide customers with a variety of local usage included free of charge. U.S. Cellular will offer consumers Lifeline and LinkUp discounts on its service plans if ETC status is granted to U.S. Cellular. Also, any minimum local usage requirement established by the FCC will be applicable to all designated ETCs, and U.S. Cellular will comply with any and all minimum local usage requirements adopted by the FCC.

14. DTMF SIGNALING. U.S. Cellular provides dual tone multi-frequency (“DTMF”) signaling to facilitate the transportation of signaling throughout its network. U.S. Cellular currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling.

¹⁴ See *Federal-State Joint Board on Universal Service, Order and Order on Reconsideration*, FCC 03-170 at ¶ 14 (rel. July 14, 2003).

¹⁵ *Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking*, 19 FCC Rcd 10800, 10826-27 (2004).

¹⁶ See, e.g., *Sprint Corp.*, DA 04-3617 at ¶ 11 (rel. Nov. 18, 2004); *ALLTEL Communications, Inc.*, 19 FCC Rcd 20496, 20500-01 (2004); *Nextel Partners, supra*, 19 FCC Rcd at 16536.

15. SINGLE PARTY SERVICE. “Single-party service” means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line.¹⁷ U.S. Cellular provides single party service, as that term is defined in 47 C.F.R. Section 54.101.

16. ACCESS TO EMERGENCY SERVICES. U.S. Cellular currently provides 911 access to emergency services throughout its service area.

17. ACCESS TO OPERATOR SERVICES. U.S. Cellular provides customer access to operator services. Customers can reach operator services in the traditional manner by dialing “0.”

18. ACCESS TO INTEREXCHANGE SERVICES. U.S. Cellular has signed interconnection agreements with interexchange carriers. These arrangements enable U.S. Cellular to provide its customers access to interexchange services. Customers may also “dial around” to reach their interexchange carrier of choice.

19. ACCESS TO DIRECTORY ASSISTANCE. Subscribers to U.S. Cellular’s services are able to dial “411” or “555-1212” to reach directory assistance from their mobile phones.

20. TOLL LIMITATION. U.S. Cellular can provide toll limitation by utilizing its toll blocking capabilities, enabling U.S. Cellular to provide toll blocking service for Lifeline customers once U.S. Cellular is designated an ETC.

21. Pursuant to 47 C.F.R. § 54.201, U.S. Cellular will advertise the availability of each of the supported services detailed above, throughout its licensed service area, by media of general distribution. The methods of advertising utilized may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. In addition, U.S. Cellular will advertise the availability of Lifeline and Link-up benefits throughout

¹⁷ See First Report and Order, supra, 12 FCC Rcd at 8810.

its service area by including mention of such benefits in advertising and reaching out to community health, welfare, and employment offices to provide information to those people most likely to qualify for Lifeline and Link-up benefits.

V. **Granting U.S. Cellular's Application Would Serve The Public Interest**

22. In areas served by a rural telephone company, the Commission must find that a grant of ETC status would serve the public interest.¹⁸ In numerous cases decided by the FCC and state commissions, the answer has been in the affirmative. In areas served by non-rural LECs, the Act does not require a separate public interest finding. The FCC has previously held that designating a competitor as an ETC in non-rural areas is per se in the public interest.¹⁹ Although the FCC now states that with respect to petitions filed at the FCC, designating a competitive ETC in non-rural areas will not necessarily be in the public interest in every case,²⁰ a petitioner will clearly meet the nonrural threshold if it satisfies the higher public-interest standard for rural areas.²¹ U.S. Cellular clearly has demonstrated that its designation in nonrural areas will be in the public interest based on its strong showing pertaining to rural areas set forth below.

23. The public interest is to be determined by following the guidance provided by Congress in the Telecommunications Act of 1996 and the FCC in its enabling orders.²² The

¹⁸ See 47 U.S.C. § 214(e)(2).

¹⁹ *Cellco Partnership d/b/a Bell Atlantic Mobile*, 16 FCC Rcd 39, 45 (2000).

²⁰ *Virginia Cellular*, supra, 19 FCC Rcd at 1575.

²¹ See *Virginia Cellular*, supra, 19 FCC Rcd at 1575. See also *NPCR, Inc. d/b/a Nextel Partners, Inc.*, Case No. 2003-00143 (KYPSC Dec. 16, 2004) (“Nextel Kentucky Order”) at p. 7. See also *Smith Bagley, Inc.*, Docket No. 04-000289, Recommended Decision at p. 12 (N.M. Nov. 24, 2004) (“SBI Gallup Decision”), aff'd by state commission Dec. 7, 2004.

²² *First Report and Order*, supra; *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd. 20432, 20480 (1999) (“*Ninth Report and Order*”); *Fourteenth Report and Order, Twenty-Second Order on*

overarching principles embodied in the 1996 Act are to “promote competition and reduce regulation ... secure lower prices and higher quality services ... and encourage the rapid deployment of new telecommunications technologies.”²³ In its implementing orders, the FCC ruled that the pro-competitive and deregulatory directives from Congress required universal service support mechanisms to be competitively neutral and portable among eligible carriers.²⁴

24. The MPSC must determine whether designation of U.S. Cellular as an ETC will promote the principles embodied in the 1996 Act, specifically the goal of ensuring that consumers in rural, insular, and high-cost areas “have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”²⁵

25. In considering whether U.S. Cellular’s designation as an ETC will bring new and cost-effective services to rural areas, the MPSC may properly weigh the public cost against the public benefits. Applying this balancing test to U.S. Cellular, specifically the factors that the FCC enunciated as a framework for making ETC designations, the benefits of designating U.S. Cellular as an ETC in Missouri’s rural areas outweigh the costs, as more fully described below.

Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244 (2001) (“*Fourteenth Report and Order*”). See also *NAACP v. FPC*, 425 U.S. 662, 669 (1976). *Accord*, *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1427 (D.C. Cir. 1983); *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 628 & n.22 (D.C. Cir. 1978).

²³ 1996 Act (preamble).

²⁴ *First Report and Order*, *supra*, 12 FCC Rcd at 8801, 8861-62; *Ninth Report and Order*, *supra*, 14 FCC Rcd at 20480.

²⁵ 47 U.S.C. § 254(b)(3).

26. In designating Virginia Cellular as an ETC, the FCC enunciated a framework for its consideration of future ETC designations. This framework was reaffirmed in a recent *Report and Order* making several changes to the rules competitive ETC petitions before the FCC.²⁶ Although this Commission has independent authority under Section 214(e)(2) of the Act to apply a modified public interest analysis that is appropriate for Missouri, U.S. Cellular addresses the FCC's analysis in the event this Commission applies all or part of it to U.S. Cellular's application. In determining the public interest in *Virginia Cellular*, the FCC considered:

- The benefits of increased competitive choice;
- The impact of designation on the Universal Service Fund;
- The unique advantages and disadvantages of the competitor's service offering;
- Any commitments made regarding the quality of telephone service; and
- The competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.²⁷

27. U.S. Cellular sets forth below specific facts demonstrating how its designation will advance the public interest under these five factors. In addition, the company anticipates providing to the Commission one or more witnesses who will testify to the need for improved wireless telephone service in rural areas covered by this Petition.

A. Increased Consumer Choice and Service Quality

28. Designation of U.S. Cellular will promote competition and facilitate the provision of advanced communications services to the residents of rural Missouri. Residents in many rural

²⁶ See *Federal-State Joint Board on Universal Service, Report and Order*, FCC 05-46 (rel. March 17, 2005) ("*ETC Report and Order*").

²⁷ *Virginia Cellular*, *supra*, 19 FCC Rcd at 1575-76.

areas have long trailed urban areas in receiving competitive local exchange service and advanced telecommunications services. In many rural areas, no meaningful choice of local exchange carrier exists.

29. To date, a number of wireless carriers have been designated as ETCs in rural areas by the FCC and state commissions, including U.S. Cellular in the states of Washington, Wisconsin, Oregon and Iowa. Recognizing the advantages wireless carriers can bring to the universal service program, the FCC has found that “[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”²⁸ The Oregon Public Utilities Commission, in its order designating U.S. Cellular as an ETC in June 2004, concluded that

USCC’s application would bring competition, spurring innovation; provide advantages through increased mobile wireless offerings; and offer the supported services to customers who request service in the designated area.²⁹

The Wisconsin Public Service Commission similarly found that the public would benefit from the increased choice and service quality likely to result from U.S. Cellular’s designation:

The Commission finds that designating US Cellular as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice. While it is true that US Cellular is currently serving in at least some of these areas, the availability of high cost support for infrastructure

²⁸ *Western Wireless Recon. Order*, supra, 16 FCC Rcd at 19149 (“[T]he primary objective in retaining the rural telephone company’s study area as the designated service area of a competitive ETC is to ensure that competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the incumbent carrier’s ability to provide service to high-cost customers. Rural telephone companies, however, now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. Therefore, any concern regarding ‘cream-skimming’ of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.”)(footnotes omitted).

²⁹ U.S. Cellular Oregon Order, supra, at p. 13.

deployment will allow US Cellular to expand its availability in these areas. Further, designation of another ETC may spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. Additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas will benefit consumers and improve the quality of life for affected citizens of Wisconsin. As a result, the Commission finds that it is in the public interest to designate US Cellular as an ETC in the areas served by rural telephone companies for which it has requested such designation.³⁰

Several states, including Kansas, Michigan, and West Virginia, have reached similar conclusions in designating competitive ETCs in rural areas.

30. In addition, with ETC designation, U.S. Cellular will implement its Lifeline and Link-up programs which will offer service to those lowest-income customers who have not previously had the opportunity to afford any choice in telephone service. Federal high-cost support will enable U.S. Cellular to reach out to those counties in Missouri that have no choice of service and provide them with quality telephone service. It is difficult to specify or quantify areas within Missouri that currently have no or limited choice of competitive providers, but U.S. Cellular submits that any area served exclusively by an RLEC is relatively deficient of choices of wireline service providers for consumers. Similarly, there are numerous areas served by RLECS in which there is poor or limited wireless coverage. This situation also presents a lack of choice, as there is little opportunity to choose a wireless provider over a wireline provider (intramodal LNP), and to choose a wireless provider over another wireless provider.

31. U.S. Cellular commits to use available high-cost support to improve service in areas it would not otherwise invest in. While acknowledging that “wireless carriers often are not subject to mandatory service quality standards,” the FCC recently credited a wireless ETC applicant’s commitments to alleviate dropped calls by using universal support to build new

³⁰ U.S. Cellular Wisconsin Order, supra, at p. 8.

towers and facilities to offer better coverage, comply with the “Cellular Telecommunications Industry Association Consumer Code for Wireless Service,” which “sets out certain principles, disclosures, and practices for the provision of wireless service,” and provide the FCC with data concerning the number of consumer complaints per 1,000 handsets on an annual basis, all of which represented a commitment to provide better coverage to unserved areas that addressed concerns about the quality of wireless service.³¹ U.S. Cellular hereby commits to use high-cost support in its service area to improve coverage and channel capacity to improve system performance when needed. **Exhibit E** hereto provides a list of 16 locations in which U.S. Cellular intends to construct facilities within the first 18 months of receiving high-cost support. U.S. Cellular has identified these areas as high-cost areas that are in need of improved signal coverage. The exact locations of the proposed sites are subject to shifts in demand and other factors, and the overall number of proposed sites is subject to available funding, which tends to fluctuate from quarter to quarter. If U.S. Cellular receives substantially more support than is currently projected, it will be able to invest in additional cell sites or other infrastructure improvements; if it receives less, it will be able to construct fewer towers within that time frame. U.S. Cellular also commits to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service.³²

32. The improved service quality, reliability, and increased choices to rural Missouri will be significant. As U.S. Cellular constructs additional cell sites in high-cost areas to improve the quality of its radio frequency (“RF”) signal, its customers will have a greater choice among service providers and will receive more reliable service. Some will have the option to receive

³¹ *Virginia Cellular*, supra, 19 FCC Rcd at 1584-85.

³² http://www.wow-com.com/pdf/The_Code.pdf.

U.S. Cellular's service for the first time. Others will see service quality and reliability improvement such that they may choose U.S. Cellular's service instead of ILECs, as opposed to confining their use of U.S. Cellular's service to an ancillary communications tool. The company has every incentive to meet its commitment because use of such funds in this manner will improve its competitive position in the marketplace. Moreover, it has every incentive to maintain or improve reliability and to lower its prices over time because under the current system it can only receive high-cost support when it has customers.

33. It is also evident that the deployment of high-quality wireless telecommunications infrastructure is essential to economic development in rural areas. In 2004, the West Virginia Public Service Commission designated two wireless carriers, Highland Cellular and Easterbrooke Cellular Corp., as competitive ETCs for rural areas that overlapped in places. In the order designating Easterbrooke, the PSC concluded that:

The existence of competitive options for telecommunication service, particularly the availability of wireless service, is important for rural economic development. When making decisions on whether or not to locate their facilities in a given area, businesses consider the availability of reliable voice services, data services and wireless services with sufficient coverage. Rural areas require these services in order to be able to compete with urban and suburban areas in attracting investment and jobs.³³

34. U.S. Cellular already provides more than 100,000 Missouri customers with high-quality service. The company employs an experienced engineering and technical support team that provides on-call emergency support 24 hours a day, seven days a week. U.S. Cellular's response time to an outage report is normally less than one hour.

³³ Easterbrooke Cellular Corp., Docket No. 03-0935-T-PC at p. 61 (W. Va. PSC, May 14, 2004) ("Easterbrooke W.V. Rural Order"), aff'd by Final Order Aug. 27, 2004. ("Easterbrooke W.V. Final Order").

35. U.S. Cellular's system is reinforced by the presence of battery backups installed at its cell sites, accompanied by generators at more remote and key communication sites, along with a pair of diesel generators at its switch, which are capable of running indefinitely in the event of a major electrical outage. In addition, the company has portable generators that can be moved to individual cell sites to supplement back-up batteries. Back-up batteries at U.S. Cellular's primary cell sites provide at least 4 hours of back-up power, supplemented by generators that will run unattended up to several days before refueling is necessary. Because individual cell sites are spread out, it is highly unlikely that an electrical outage would affect more than two sites simultaneously. In the event of power or other types of fault, the cell sites are equipped with alarms that will alert our technicians. Additionally, the sites are monitored remotely by the switch should there be a total communications failure at the site.

36. U.S. Cellular's service has a call completion rate of 98% or greater during the busy hour. Service quality comments are forwarded to the company's operations department to enable it to monitor network performance and improve customer service. The company's customer service representatives may be reached toll- and airtime-free, 24 hours a day seven days a week. Customer service representatives may be contacted through a number of convenient methods, including: (1) visiting any of the company's 74 company- or agent-owned retail/customer service locations in Missouri; (2) a 1-800 toll-free number from any phone; (3) by dialing *611, toll and airtime-free, from their wireless handset; or (4) by contacting our customer care center through the e-mail address provided on our web site at www.uscellular.com.

37. Once U.S. Cellular has been designated as an ETC, U.S. Cellular will construct new facilities with high-cost support to improve service quality levels to rural Missouri

consumers. U.S. Cellular currently provides high service quality levels in every area where it has strong signal strength, and the grant of ETC status to U.S. Cellular will permit it to maintain and improve its service quality. In addition, if granted ETC status, U.S. Cellular commits to providing the MPSC with annual reports indicating the amount of universal service funding received and providing a detailed explanation and accounting for the use of that support to benefit the State of Missouri. Similar commitments have been accepted in other states.³⁴

38. Just like ILECs, there are many areas where U.S. Cellular would like to provide service but cannot without support. If designated, U.S. Cellular commits to extend service to customers upon reasonable request. In areas where signal strength is weak and where no business plan supports construction of new facilities, U.S. Cellular will use high-cost support to construct facilities to improve signal strength and serve consumers with top quality mobile service that urban consumers enjoy today.

B. Health And Safety Benefits

39. U.S. Cellular believes that there are significant areas within its proposed ETC service area that are underserved by wireless telephone facilities. U.S. Cellular commits to

³⁴ See, e.g., SBI Gallup Decision, *supra*, at p. 19 (“SBI shall file ... the construction projects completed in the previous year with a detailed statement explaining how much of the service area SBI now serves because of the completed construction, and a construction plan with a timeline for using universal service support to build new towers and other facilities that expand and upgrade coverage and service scheduled in the coming year”.); RCC Vermont Rural Order, *supra*, at pp. 71-72 (requiring ETC to file annual reports that include, inter alia: a certification that it spends its high-cost support as directed by law; a summary of all USF support received for the year preceding the report; and an explanation of the principal purposes of major capital expenditures made during the previous year, including a list of new towers and repeaters); *General Investigation into Eligible Telecommunications Carriers*, Recommended Decision (W.V. PSC, July 1, 2004) (final disposition pending) at Section I(C)(3) (“[N]o formal annual infrastructure review requirements should be established, but rather, at the request of Staff and/or the [Consumer Advocate Division], any ETC must be willing and able to sit down and go over, not only past years’ construction and uses of USF funds, but the proposed uses for the upcoming calendar year.”).

provide service to customers that do not have wireline service at their residence upon reasonable request. The mobility of U.S. Cellular’s wireless service will assist “consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations;” and it will provide “access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.”³⁵

40. Citizens in rural areas depend on mobile phones more and more to provide critical communications needs. Designating U.S. Cellular as an ETC will provide additional consumer choice and a potential solution to health and safety risks associated with geographic isolation. It is self-evident that every time U.S. Cellular adds a cell site or increases channel capacity with high cost support, the number of completed calls, including important health and safety calls, will increase. All wireless carriers are required to implement Phase II E-911 service over the next several years. E-911, which permits a caller to be located and tracked, will be useless in areas where RF is weak or non-existent. Thus, for every cell site that U.S. Cellular constructs, the reliability and performance of U.S. Cellular’s E-911 service will improve. It would be difficult to overstate the important public interest benefit that will be realized by supporting improvement to critical wireless infrastructure.

C. **Granting This Petition Will Impose A Negligible Burden On The Federal Universal Service Fund**

41. In its *Nextel Order* released last year, the FCC addressed the question of whether designating NPCR, Inc. d/b/a Nextel Partners (“Nextel”) as an ETC in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia would cause undue strain on the

³⁵ *Virginia Cellular*, supra, 19 FCC Rcd at 1576.

federal high-cost Fund.³⁶ In making that determination, the FCC used the unrealistic scenario of Nextel capturing each and every ILEC subscriber in Alabama – the state in which the affected ILECs receive the largest amount of support – which would result in Nextel receiving support equivalent to 1.88 percent of the total high-cost Fund.³⁷ Based on that analysis, the FCC concluded that Nextel’s designation in all seven states would not “dramatically burden” the federal high-cost Fund.³⁸

42. Here as well, U.S. Cellular’s designation will not burden the USF. According to USAC’s most recent quarterly filing to the FCC, U.S. Cellular’s projected support is slightly under \$200,000 per quarter, which amounts to just 0.02 percent of all high-cost support paid nationwide.³⁹ This is a significantly lower percentage than the 1.88 figure corresponding to just one of the seven states approved in the *Nextel Order*. Even under the implausible scenario of U.S. Cellular capturing all of the ILEC subscribers in its Missouri service area, U.S. Cellular estimates its total support would amount to only 1.58 percent of support to all carriers nationwide. By any measure, therefore, a grant of the instant Petition will not unduly burden the Fund.

D. Competitive Response

43. One of the principal goals of the 1996 Act was to “promote competition and reduce regulation in order to secure lower prices and high-quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications

³⁶ See *Nextel Partners*, supra, 19 FCC Rcd at 16539-40.

³⁷ See id. at n.69.

³⁸ Id. at 16540.

³⁹ See FCC Filings, Second Quarter Appendices – 2005, High Cost Appendix HC01, available on the USAC web site at www.universalservice.org.

technologies.”⁴⁰ Competition in rural areas increases facilities and spurs development of advanced communications as carriers vie for a consumer’s business.

44. U.S. Cellular submits that, if it is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from affected ILECs as they seek to retain and attract customers. Such a response could include: improved service quality and customer service; new investments in telecommunications plant; more rapid deployment of high-speed data (DSL) service; wider local calling areas; bundled service offerings; and lower prices overall.

45. Further, Congress has mandated that universal service provisions be “competitively neutral” and “necessary to preserve and advance universal service.” See 47 U.S.C. § 253(b). U.S. Cellular will provide consumers with wider local calling areas, mobile communications, a variety of service offerings, high-quality service, and competitive rates. By offering customers new choices, the incumbent LECs will have an incentive to introduce new, innovative, or advanced service offerings.

46. In most rural areas, wireless telephone service is today a convenience, but it will not emerge as a potential alternative to wireline service unless high-cost loop support is made available to drive infrastructure investment. Indeed, without the high-cost program it is doubtful that many rural areas would have wireline telephone service even today. Provision of high-cost support to U.S. Cellular will begin to level the playing field with the incumbent LECs and make available for the first time a potential competitor for primary telephone service in many remote areas of Missouri. The consumer benefits of designating a competitive ETC are already becoming evident. Competitive carriers in numerous states have earmarked and invested high-

⁴⁰ See 1996 Act (preamble).

cost support funds for additional channel capacity, new cell sites, and expedited upgrading of facilities from analog to digital. Likewise, with high-cost support in Missouri, U.S. Cellular will have an opportunity to improve its network such that customers may begin to rely on wireless service as their primary phone.

47. For all of the above reasons, the public interest would be served by the designation of U.S. Cellular as a competitive ETC throughout its requested service area in Missouri.

VI. U.S. Cellular Requests Redefinition Of Rural Service Areas

48. ALLTEL Missouri, Inc., BPS Telephone Company, Chariton Valley Telephone Company, Craw-Kan Telephone Cooperative, Inc. (Missouri), Goodman Telephone Company, Grand River Mutual Telephone Company, Le-Ru Telephone Company, Mid-Missouri Telephone Company, Spectra Communications Group, LLC, and United Telephone Company of Missouri d/b/a Sprint (the “Rural LECs”) all have portions of their study areas which fall outside of U.S. Cellular’s FCC-licensed territory. Therefore, U.S. Cellular requests that the MPSC redefine all ten Rural LEC service areas pursuant to Section 54.207(c) of the FCC’s rules. 47 C.F.R. § 54.207(c). Service area redefinition is necessary in order to facilitate competitive entry and advance universal service for those customers of U.S. Cellular living in these LEC service areas.⁴¹

⁴¹ See *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order*, 15 FCC Rcd 9924, 9927-28 (1999) (“*Washington Redefinition Order*”) (“[O]ur concurrence with rural LEC petitioners’ request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry

49. U.S. Cellular requests the MPSC to classify each of the LEC wire centers listed on **Exhibit F** as a separate service area. Once the MPSC establishes redefined service areas for these LECs, either the MPSC or U.S. Cellular, at the MPSC's direction, may file a petition requesting the FCC to concur with the state's redefinition. Upon a grant of FCC concurrence, U.S. Cellular's designation in those areas would become effective.

50. In considering the redefinition of a rural LEC service area, the MPSC must take into account the recommendations of the Joint Board. In the *Recommended Decision*⁴² that laid the foundation for the FCC's *First Report and Order*, the Joint Board recommended that state commissions consider three issues when redefining a service area.

51. First, the Joint Board noted that redefining ETC service areas below the study area level may create the potential for "cream skimming," which could occur if a competitor proposed to only serve the lowest-cost exchanges.⁴³ As noted above, there is no possibility for cream skimming in this case because U.S. Cellular is restricted to providing service in those areas where it is licensed by the FCC. U.S. Cellular is not picking and choosing among the affected LEC exchanges. On the contrary, U.S. Cellular has based its requested ETC area solely on the area it is authorized to serve with its own facilities in tandem with resale and roaming.⁴⁴ Moreover, as of May 2002, all rural ILECs were required to select among the three paths adopted

by permitting new entrants to provide service in relatively small areas . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area redefinition.")

⁴² *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87 (1996) ("*Recommended Decision*").

⁴³ *Recommended Decision*, 12 FCC Rcd at 179-80.

⁴⁴ See, e.g., RCC Minnesota, Inc. et al., Docket No. 2002-344 at p. 3 (Maine PUC, May 13, 2003); ALLTEL Communications, Inc., Case No. U-13765 at p. 15 (Mich. P.S.C. Sept. 11, 2003); Easterbrooke W.V. Decision, supra, at pp. 55-56.

in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level. When support is no longer averaged across an incumbent LEC's study area, a competitor no longer has the incentive or ability to enter into incumbent LEC service territories in an uneconomic manner.⁴⁵ ALLTEL Missouri, Chariton Valley Telephone Company, Grand River Mutual Telephone Corp., and Spectra Communications Group, LLC, have all disaggregated their per-line support under Path Three of the FCC's disaggregation rules, thus removing any opportunities for cream-skimming that might have existed. The remaining rural ILECs opted for Path One and declined to disaggregate support, presumably based upon their belief that the existing apportionment of support corresponded with costs and there were no significant cost disparities that needed to be addressed. Should any of these ILECs nonetheless believe that cream-skimming opportunities persist, they may modify their disaggregation filings subject to state approval, or such further disaggregation may be imposed by order of the state commission.⁴⁶

52. Second, the Joint Board emphasized the special status of rural carriers under the 1996 Act.⁴⁷ In deciding whether to designate U.S. Cellular as an ETC, the FCC will weigh numerous factors and will consider how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). Accordingly, if the MPSC finds that U.S. Cellular's ETC designation is in the public interest, the special status of the rural carriers will have been considered for purposes of determining whether U.S. Cellular's service area designation should be adopted for federal universal service funding purposes. Further, U.S. Cellular notes that no

⁴⁵ See *Fourteenth Report and Order*, supra, 16 FCC Rcd at 11302.

⁴⁶ See 47 C.F.R. §§ 54.315(b)(4); 54.315(c)(5), 54.315(d)(5).

⁴⁷ See *Recommended Decision*, supra, 12 FCC Rcd at 180.

action in this proceeding will affect or prejudice any future action the PSC or FCC may take with respect to the LECs' status as a rural telephone company, or otherwise disturb the "rural exemption" afforded to rural telephone companies pursuant to Section 251 of the Act.⁴⁸ Finally, the Joint Board recommended that the FCC and state commissions consider whether a rural LEC would face an undue administrative burden as a result of service area redefinition. In the instant case, U.S. Cellular is proposing to redefine rural LEC service areas solely for ETC designation purposes. Service area redefinition for ETC purposes will in no way impact the way affected LECs calculate their costs, but it is solely to determine the area in which U.S. Cellular is to be designated as an ETC.⁴⁹ Accordingly, redefinition of the aforementioned LEC service areas as proposed in this Petition will not impose any additional administrative burdens on the affected LECs.

53. Although U.S. Cellular does not agree with the FCC's findings in *Virginia Cellular*,⁵⁰ U.S. Cellular submits that in this instance it meets the FCC's criteria in its analysis of population density as a means of determining the likelihood of U.S. Cellular receiving uneconomic levels of support within the study areas of rural ILECs that have not disaggregated their support. Based upon the FCC's assumption in *Virginia Cellular* that "a low population density typically indicates a high-cost area," U.S. Cellular has provided population density figures to demonstrate that no cream skimming will result from designation in the proposed

⁴⁸ Id.

⁴⁹ LECs may disaggregate their study areas to reallocate high-cost support payments pursuant to the FCC's *Fourteenth Report and Order*. See *Fourteenth Report and Order*, supra, 16 FCC Rcd at 11304 n.377.

⁵⁰ See *Virginia Cellular*, supra, 19 FCC Rcd at 1578-79.

areas.⁵¹ As indicated in the table attached as **Exhibit G**, U.S. Cellular is not proposing to serve only, or even primarily, the more densely populated rural ILEC wire centers.

- BPS Telephone Company. The average population density of the BPS wire centers U.S. Cellular proposes to cover is approximately 37.75 psm, while the population density of the wire centers outside of U.S. Cellular’s proposed ETC service area is 54.32 psm. Because U.S. Cellular is proposing to serve the lower-density areas, there is no risk of cream skimming in BPS’s study area.
- Craw-Kan Telephone Cooperative, Inc. (Missouri). The average population density of the two Craw-Kan wire centers U.S. Cellular proposes to cover is approximately 44.85 psm, while the average population density of the remaining wire centers in that study area is 10.63 psm. This disparity does not approach the 8 to 1 differential the FCC disapproved of in *Virginia Cellular* (approximately 273 psm inside and 33 psm outside).⁵² Moreover, a substantial percentage of U.S. Cellular’s potential subscribers within Craw-Kan’s study area are in relatively low-density areas. In the *Highland Cellular* order, the FCC declined to designate a competitive ETC in Verizon South’s study area where 94% of Highland’s potential customers resided in the highest-density wire centers.⁵³ Here, by contrast, the population of the highest-density Craw-Kan wire center comprises slightly under 60% of U.S. Cellular’s potential customers in Craw-Kan’s study area. Therefore, under the applicable FCC analytical framework,

⁵¹ Id.

⁵² Id. at 1579-80.

⁵³ See Highland Cellular, supra, 19 FCC Rcd at 6436-37.

U.S. Cellular is not proposing to serve “primarily” the highest-density wire centers in Craw-Kan’s service area.

- Goodman Telephone Company. The average population density of the Goodman wire centers U.S. Cellular proposes to cover is approximately 42.76 psm, while the population density of the wire centers outside of U.S. Cellular’s proposed ETC service area is approximately 47.50 psm. Because U.S. Cellular is proposing to serve the lower-density areas, there is no risk of cream skimming in Goodman’s study area.
- Le-Ru Telephone Company. The average population density of the Le-Ru wire centers U.S. Cellular proposes to cover is approximately 27.15 psm, while the population density of the wire centers outside of U.S. Cellular’s proposed ETC service area is approximately 25.92 psm. This difference is too small to be significant under the analysis used by the FCC.⁵⁴ Accordingly, there is no risk of cream-skimming in this case.
- Mid-Missouri Telephone Company. The average population density of the Mid-Missouri wire centers U.S. Cellular proposes to cover is approximately 15.76 psm, while the population density of the wire centers outside of U.S. Cellular’s proposed ETC service area is approximately 12.88 psm. Because the differential is very small, and because both the covered and uncovered portions of Mid-Missouri’s study area have very low population densities there is no risk that U.S. Cellular might receive

⁵⁴ See *Virginia Cellular, supra*, 19 FCC Rcd at 1579 and n.110 (“The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW’s remaining wire centers is approximately 2.18 persons per square mile. . . Although the average population density of the MGW wire centers which Virginia Cellular proposes to serve is slightly higher than the average population density of MGW’s remaining wire centers, the amount of this difference is not significant enough to raise cream skimming concerns.”)

high levels of support for a low-cost area.⁵⁵ Accordingly, there is no risk of cream-skimming in Mid-Missouri's study area.

- United Telephone Company of Missouri d/b/a Sprint. The average population density of the United wire centers U.S. Cellular proposes to cover is approximately 60.02 psm, while the population density of the wire centers outside of U.S. Cellular's proposed ETC service area is approximately 56.25 psm. This difference is too small to be significant under the analysis used by the FCC.⁵⁶ Accordingly, there is no risk of cream-skimming in this case.

54. In sum, U.S. Cellular is not proposing to serve primarily the lower-cost, higher-density portions of the affected rural ILECs' service areas, and the ILECs' ability to disaggregate support removes any residual concern regarding the possibility of competitors receiving uneconomic levels of support. The risk of cream-skimming has been minimized, the rural telephone company status of the affected ILECs has been duly considered, and no significant administrative burden will result. Accordingly, the MPSC should approve the proposed redefinition.

VII. High-Cost Certification

⁵⁵ See id.

⁵⁶ See Virginia Cellular, supra, 19 FCC Rcd at 1579 and n.110 (“The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile. . . Although the average population density of the MGW wire centers which Virginia Cellular proposes to serve is slightly higher than the average population density of MGW's remaining wire centers, the amount of this difference is not significant enough to raise cream skimming concerns.”)

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