

**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. )

**SBC MISSOURI'S PREHEARING BRIEF**

Southwestern Bell Telephone, L. P. d/b/a SBC Missouri ("SBC Missouri"), respectfully submits its Prehearing Brief in accordance with the Commission's June 15, 2005, Order Adopting Procedural Schedule.

**I. INTRODUCTION**

This case presents the Commission with its first opportunity to exercise a more rigorous level of scrutiny over wireless providers' applications to be designated as eligible telecommunications carriers ("ETCs") for purposes of receiving federal high-cost universal service fund ("USF") support. Recent developments make it abundantly clear that more exacting scrutiny of such applications is needed. For example, due in large part to the burgeoning growth of the high-cost fund, the Federal Communications Commission's ("FCC's") recent ETC Designation Order specifically calls for "a more rigorous ETC designation process" to be applied.<sup>1</sup> In addition, in comments submitted to the FCC only two weeks ago, this Commission expressed its 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."<sup>2</sup>

The ultimate issue to be decided here is, of course, whether the Commission should approve the application of but a single wireless provider, USCOC of Greater Missouri, LLC ("U.S. Cellular"),

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<sup>1</sup> 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"), para. 2.

<sup>2</sup> 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.

for designation as an ETC. However, this decision also has broader implications. This is the first of several ETC designation cases likely to be decided by the Commission,<sup>3</sup> and much of the Commission’s decision-making process and supporting analysis here will no doubt apply to certain issues common among all of these cases. Thus, it is important that the Commission settle on an appropriate analytical framework for assessing U.S. Cellular’s application for ETC status.

At present, there is no Commission rule in place to provide such a framework. Fortunately, however, the FCC’s ETC Designation Order provides a detailed framework consisting of requirements applicable to requests for ETC designation filed with the FCC. The FCC’s framework consists of a series of eligibility requirements, specific public interest criteria and annual certification and reporting requirements. The FCC has strongly encouraged state commissions to apply these requirements (at the federal level) as recommended “guidelines” in ETC designation cases decided at the state level.<sup>4</sup> SBC Missouri strongly urges that this Commission apply each of the FCC’s requirements to U.S. Cellular’s application. As explained in greater detail below, applying two of the most important of these guidelines – the particulars of the ETC applicant’s network improvement plan and the particulars of the public interest analysis – requires that U.S. Cellular’s application for designation as an ETC be denied.

## II. THE SPECIFIC ISSUES TO BE DECIDED BY THE COMMISSION

**Issue 1: Telecommunications companies seeking eligible telecommunications carrier (“ETC”) status must meet the requirements of Section 214(e)(1) throughout the service area for which designation is received. Section 214(e)(1) requires carriers to offer the services that are supported by Federal universal service support mechanisms either using its own facilities or a combination of its**

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<sup>3</sup> See, e.g., In the Matter of the Third Application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TO-2005-0325; In the Matter of the Application of Northwest Missouri Cellular Limited Partnership for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to § 254 of the Telecommunications Act of 1996, Case No. TO-2005-0466; In the Matter of the Application of Chariton Valley Telecom Corporation for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support Pursuant to § 254 of the Telecommunications Act of 1996, Case No. TO-2005-0423.

<sup>4</sup> 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.

**own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and to advertise the availability of such services and the charges therefor using media of general distribution. Does U.S. Cellular meet the requirements of Section 214(e)(1) throughout the service area for which U.S. Cellular seeks ETC designation?**

Pursuant to Section 214(e)(1) of the Act and the FCC’s implementing orders, an ETC applicant must meet each of the following “eligibility” requirements:<sup>5</sup>

(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;<sup>6</sup>

(2) demonstrate its ability to remain functional in emergency situations;<sup>7</sup>

(3) demonstrate that it will satisfy appropriate consumer protection and service quality standards;<sup>8</sup>

(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;<sup>9</sup> 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.<sup>10</sup>

For multiple reasons, U.S. Cellular does not meet the first of these five requirements throughout the service area for which U.S. Cellular seeks ETC designation. Additionally, it is questionable whether U.S. Cellular sufficiently meets the second requirement.

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<sup>5</sup> See also, 47 C.F.R. § 54.101.

<sup>6</sup> ETC Designation Order, paras. 21-23.

<sup>7</sup> ETC Designation Order, para. 25.

<sup>8</sup> ETC Designation Order, para. 28.

<sup>9</sup> ETC Designation Order, para. 33.

<sup>10</sup> ETC Designation Order, para. 35.

**Providing service “throughout the proposed designated service area” and submission of a five year network improvement plan:** SBC Missouri joins in 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.”<sup>11</sup> 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.”<sup>12</sup>

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”<sup>13</sup> 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.”<sup>14</sup> Instead of taking 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 simply listing the locations of 16 planned tower constructions over 18 months.<sup>15</sup>

These deficiencies are particularly acute with respect to the approximately 146 SBC Missouri wire centers for which U.S. Cellular seeks ETC designation.<sup>16</sup> None of the 16 towers planned to be built by U.S. Cellular will be located in communities served by these wire centers.<sup>17</sup> Moreover, many if not most of these towers appear to be too far away to provide any meaningful service coverage to consumers within SBC Missouri’s wire center areas. U.S. Cellular’s maps depicting the predicted signal coverage for these towers (produced in discovery) confirm that Missourians situated within the

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<sup>11</sup> Staff (McKinnie) Rebuttal, p. 6 (emphasis added); see also, SBC Missouri (Stidham) Surrebuttal, p. 4.

<sup>12</sup> OPC (Meisenheimer) Rebuttal, pp. 3-4 (emphasis added); see also, SBC Missouri (Stidham) Surrebuttal, pp. 13-14.

<sup>13</sup> Staff (McKinnie) Rebuttal, p. 6.

<sup>14</sup> OPC (Meisenheimer) Rebuttal, pp. 3-4; see also, SBC Missouri (Stidham) Rebuttal, pp. 19-21, and SBC Missouri (Stidham) Surrebuttal, pp. 13-14.

<sup>15</sup> See, Exhibit E of U.S. Cellular’s application (identifying anticipated locations for construction of new towers).

<sup>16</sup> See, Exhibit C of U.S. Cellular’s application (listing non-rural ILEC wire centers for ETC designation), pp. 2-6.

<sup>17</sup> See, Exhibit E of U.S. Cellular’s application.

areas served by most of the 146 SBC Missouri wire centers will not receive any tangible benefits from the designation of U.S. Cellular as an ETC.

Additionally, U.S. Cellular's proposed 18-month plan is deficient for other reasons. For example, U.S. Cellular does not identify the 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 Order.<sup>18</sup> 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.<sup>19</sup>

These multiple deficiencies highlight U.S. Cellular's having failed to adequately explain how it intends to deploy for the benefit of Missourians the approximately \$12 million or so of high-cost funds it anticipates receiving over the 18 months following any grant of its application.<sup>20</sup> This is particularly troublesome given that this \$12 million – revised upward by a factor of ten from earlier USAC projections of \$200,000 per quarter, or \$1.2 million over 18 months<sup>21</sup> – is \$6 million more than the most recent estimate of "approximately \$6 million" to construct 16 towers,<sup>22</sup> a cost which itself was revised upwards by 50% without any particulars provided that would account for the new estimate.<sup>23</sup>

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<sup>18</sup> ETC Designation Order, para. 23; see also, SBC Missouri (Stidham) Rebuttal, pp. 20-21.

<sup>19</sup> ETC Designation Order, para. 23.

<sup>20</sup> See, U.S. Cellular (Wright) Direct, p. 14 (stating that "new projections show that U.S. Cellular would receive roughly \$2 million per quarter").

<sup>21</sup> 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").

<sup>22</sup> U.S. Cellular (Wright) Surrebuttal, p. 1.

<sup>23</sup> 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.

While the Commission must satisfy itself about precisely how U.S. Cellular will spend the high-cost funds it hopes to receive, U.S. Cellular's evidence does not provide sufficient detail allowing the Commission to do so. To the contrary, the available evidence suggests that the Commission should have an especially heightened concern about U.S. Cellular's intended use of funds in light of its testimonies to the effect that giving high-cost USF support to U.S. Cellular "will only accelerate" its ability to construct additional facilities.<sup>24</sup> It is elementary that high-cost support must be used "for service improvements that would not occur absent receipt of such support."<sup>25</sup>

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 improvements to U.S. Cellular's network would not otherwise occur absent the receipt of high-cost support."<sup>26</sup> Nor, for similar reasons can it be said that granting U.S. Cellular's application is in the public interest, as explained later herein.

None of these deficiencies can 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 ETC order entered in this case that U.S. Cellular "update its submission to the Commission during the annual certification process," as Staff recommends.<sup>27</sup> 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.<sup>28</sup> And, certification updates are meant to provide - at the "wire center level" - annual "progress reports on the ETC's five year service quality improvement plan."<sup>29</sup> They do not excuse an applicant's duty to show that it will provide

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<sup>24</sup> SBC 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").

<sup>25</sup> ETC Designation Order, para. 23. (emphasis added).

<sup>26</sup> ETC Designation Order, para. 21.

<sup>27</sup> Staff (McKinnie) Rebuttal, pp. 11-12.

<sup>28</sup> SBC Missouri (Stidham) Surrebuttal, p. 5.

<sup>29</sup> ETC Designation Order, para. 69; see also, SBC Missouri (Stidham) Rebuttal, pp. 9-10.

service throughout the proposed designated service area or to submit a formal network improvement plan before it is designated as an ETC.

**The ability to remain functional in emergency situations:** It remains unclear whether U.S. Cellular has sufficiently demonstrated that it is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.<sup>30</sup> U.S. Cellular’s testimony is uncertain, for example, as to U.S. Cellular’s capabilities in true emergency situations, as opposed to the loss of a tower’s power for but a few hours or the onset of higher than normal traffic for a cell site. The Commission should be completely comfortable that U.S. Cellular can adequately operate where power is lost over a large area for an extended period or where a large number of customers must evacuate because of a natural or man-made disaster.<sup>31</sup>

**Issue 2: ETC designations by a state commission must be consistent with the public interest, convenience and necessity pursuant to Section 214(e)(2). All parties agree that ETC designations must be consistent with the public interest, convenience and necessity for areas served by rural carriers, and all parties but U.S. Cellular agree that ETC designations in areas served by non-rural carriers must also be consistent with the public interest, convenience and necessity. The Federal Communications Commission’s (“FCC’s”) ETC Designation Order determined that this public interest standard applies regardless of whether the area is served by a rural or non-rural carrier.**

**A. Is granting ETC status to U.S. Cellular in areas served by rural carriers consistent with the public interest, convenience and necessity?**

U.S. Cellular maintains that its designation in non-rural areas will be in the public interest based upon its showing pertaining to rural areas.”<sup>32</sup> Inasmuch as SBC Missouri is a “non-rural” company for federal high-cost USF purposes, U.S. Cellular’s public interest showing is discussed in connection with SBC Missouri’s discussion of Issue 2(D) below, pertaining to the public interest analysis applicable to areas served by non-rural carriers such as SBC Missouri. For the reasons stated

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<sup>30</sup>ETC Designation Order, para. 25.

<sup>31</sup> SBC Missouri (Stidham) Surrebuttal, p. 10.

<sup>32</sup> U.S. Cellular’s application, p. 9.

in that discussion, granting ETC status to U.S. Cellular in areas served by rural (and non-rural) carriers is not consistent with the public interest, convenience and necessity.

**B. Must ETC designations in areas served by non-rural carriers be consistent with the public interest, convenience and necessity?**

All parties in this case agree that ETC designations must be consistent with the public interest, convenience and necessity for areas served by rural carriers, and all parties but U.S. Cellular agree that ETC designations in areas served by non-rural carriers such as SBC Missouri must also be consistent with the public interest, convenience and necessity. U.S. Cellular's lone disagreement among the parties is without merit. Section 214(e)(2) of the federal 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).

Furthermore, the FCC has 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,<sup>33</sup> thus rejecting the notion that ETC designations in areas served by non-rural carriers need not be in the public interest. 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,

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<sup>33</sup> 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.").



‘consistent with the public interest, convenience and necessity.’”<sup>34</sup> U.S. Cellular has not advanced any reason to ignore either the FCC’s or the Commission’s own precedent.

**C. If the answer to B is “no,” should the Commission nonetheless ensure that all ETC designations in areas served by non-rural carriers are consistent with the public interest, convenience and necessity?**

Even if the Commission were to conclude 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.<sup>35</sup> The Commission’s doing so will help advance three important policies: first, to “improve the long-term sustainability of the universal service fund;”<sup>36</sup> second, to “allow for a more predictable ETC designation process;”<sup>37</sup> 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.”<sup>38</sup> 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.”<sup>39</sup> 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.”<sup>40</sup>

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<sup>34</sup> 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.

<sup>35</sup> SBC Missouri (Stidham) Rebuttal, pp. 1-2, 17-18; SBC Missouri (Stidham) Surrebuttal, p. 10.

<sup>36</sup> ETC Designation Order, para. 2.

<sup>37</sup> ETC Designation Order, para. 1.

<sup>38</sup> ETC Designation Order, para. 60.

<sup>39</sup> ETC Designation Order, para. 60.

<sup>40</sup> Commission’s Federal USF Comments, pp. 15-16.

In addition, jettisoning the public interest analysis when considering areas served by so-called “non-rural” carriers would ignore the reality that SBC 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.”<sup>41</sup> Thus, 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 SBC Missouri. Indeed, a contrary result would amount to discriminating among customers based solely upon the status of the carrier serving them, an approach which is also at odds with an applicant’s seeking ETC designation presumably for the benefit of all customers throughout the areas encompassed by its designation request.

**D. If the answer to either B or C is “yes,” is granting ETC status to U.S. Cellular consistent with the public interest, convenience and necessity in areas served by non-rural carriers?**

Granting ETC status to U.S. Cellular is not consistent with the public interest, convenience and necessity in the SBC Missouri wire centers for which U.S. Cellular seeks designation as an ETC.

In determining whether the public interest has been served, the burden of proof rests upon the ETC applicant.<sup>42</sup> 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.<sup>43</sup> The FCC’s public interest examination also includes an analysis of the potential for cream-skimming.<sup>44</sup> U.S. Cellular does not provide specific evidence that designating it as an ETC is consistent with the public interest,

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<sup>41</sup> Commission’s Federal USF Comments, p. 10. Thus, its comments directed to the FCC 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.*

<sup>42</sup> 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. 20.

<sup>43</sup> ETC Designation Order, para. 18.

<sup>44</sup> ETC Designation Order, para. 18.

convenience and necessity in the SBC 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.<sup>45</sup>

U.S. Cellular's citation to several dated and pre-ETC Designation Order decisions of the FCC and of commissions of states other than Missouri is of no help to its case. The ETC Designation Order represents the last definitive word from the FCC on the ETC application process.<sup>46</sup> Moreover, U.S. Cellular's heavy dependence on the value of furthering competition is likewise beside the point. The FCC has 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."<sup>47</sup>

To the extent that U.S. Cellular argues that increased consumer choice and the advantages of mobility might constitute potential benefits of granting its application, these potential benefits are significantly diluted given that U.S. Cellular has failed to provide proof - in the form of a sufficiently detailed five year plan and otherwise - that it truly intends to serve throughout the area for which it seeks ETC designation.<sup>48</sup> Consequently, none of the benefits that might be generated by giving high-cost USF support to U.S. Cellular will accrue to customers who are situated within the area in which U.S. Cellular seeks ETC designation but who U.S. Cellular will not serve by this high-cost support.

Furthermore, expanding the size of the federal USF by the amount that U.S. Cellular would receive is not in the public interest based on the facts presented in the record.<sup>49</sup> This Commission is correct to have expressed "concerns about the rapid increase in the size of the fund."<sup>50</sup> And, while the

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<sup>45</sup> SBC Missouri (Stidham) Rebuttal, pp. 3-4.

<sup>46</sup> SBC Missouri (Stidham) Rebuttal, pp. 10, 15.

<sup>47</sup> ETC Designation Order, para. 44; citing, Virginia Cellular ETC Designation Order, para. 4, and In the Matter of Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 ("Highland Cellular ETC Designation Order"), para. 4.

<sup>48</sup> SBC Missouri (Stidham) Surrebuttal, pp. 11-13.

<sup>49</sup> SBC Missouri (Stidham) Rebuttal, pp. 10, 15.

<sup>50</sup> Commission's Federal USF Comments, p. 11.

FCC has observed that the impact of but one ETC on the overall fund may be inconclusive,<sup>51</sup> 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 FCC 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."<sup>52</sup> Such considerations are all the more critical given the still remaining questions about how precisely U.S. Cellular expects to deploy the approximately \$12 million or so of high-cost funds it anticipates receiving over the 18 months following the grant of its application. (See, discussion of Issue 1, *infra*).

**Issue 3: The FCC's ETC Designation Order determined that carriers seeking ETC designation from the FCC must meet certain requirements related to eligibility, the public interest, and annual certification and reporting. The FCC encouraged state commissions to apply these requirements. Should the Commission consider the guidelines approved by the FCC's ETC Designation Order in its evaluation of the application filed by MMC?**

For several reasons, some of which are discussed in connection with applying the public interest to areas served by a non-rural telephone company (see, Issue 2(C) herein), the Commission should apply the guidelines approved by the FCC's ETC Designation Order in evaluating U.S. Cellular's application.<sup>53</sup>

The ETC Designation Order is the most recent FCC ruling regarding the "minimum requirements" applicable to a telecommunications carrier's request to be designated as an ETC by the FCC.<sup>54</sup> It is the culmination of growing concerns about the future health of the high-cost fund and was issued only after extensive debate and discussion regarding how best to address those concerns.

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<sup>51</sup> ETC Designation Order, para. 54.

<sup>52</sup> ETC Designation Order, para. 60.

<sup>53</sup> SBC Missouri (Stidham) Rebuttal, pp. 2-6.

<sup>54</sup> ETC Designation Order, para. 1.

Particularly noteworthy is that the FCC took action only after extensive industry comment on the recommendations of the Federal-State Joint Board on Universal Service.<sup>55</sup>

As noted earlier, applying the FCC’s “more rigorous ETC designation process”<sup>56</sup> to MMC’s application would also foster several important policies.<sup>57</sup> Specifically, it would “improve the long-term sustainability of the [USF], because, if the guidelines are followed, only fully qualified carriers that are capable of and committed to universal service will be able to receive support.”<sup>58</sup> It would also “allow for a more predictable ETC designation process.”<sup>59</sup> 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.”<sup>60</sup>

Additionally, the FCC has been unwavering in its desire that the same requirements be applied among all states. The FCC stated as much in its ETC Designation Order: “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.”<sup>61</sup> SBC Missouri likewise urges the Commission to embrace this call for uniformity.

In sum, this Commission’s application of the FCC’s requirements to this case will contribute to a rational, comprehensive, national policy to promote the advancement and preservation of universal service.<sup>62</sup> The Commission should seize the opportunity to do so, especially in light of the cumulative impact that granting this (and other) ETC designation applications cases may have on the overall size and sustainability of the federal USF.

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<sup>55</sup> ETC Designation Order, para. 1. Indeed, over 50 parties filed comments in the FCC’s rulemaking proceeding. ETC Designation Order, para. 1 & Appendix B.

<sup>56</sup> ETC Designation Order, para. 2.

<sup>57</sup> SBC Missouri (Stidham) Rebuttal, p. 6

<sup>58</sup> ETC Designation Order, para. 58.

<sup>59</sup> ETC Designation Order, para. 1.

<sup>60</sup> ETC Designation Order, para. 60.

<sup>61</sup> ETC Designation Order, para. 58.

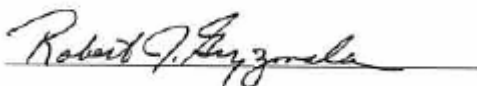
<sup>62</sup> SBC Missouri (Stidham) Rebuttal, p. 6.

### III. CONCLUSION

For the foregoing reasons, SBC 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 designation. Furthermore, U.S. Cellular has failed to sufficiently demonstrate that granting it ETC status is consistent with the public interest, convenience and necessity.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

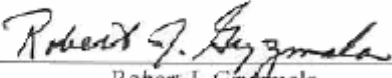
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were served to all parties by e-mail on October 14, 2005.

  
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