

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

In the Matter of Proposed New Rule)	
4 CSR 240-3.570 Regarding Eligible)	
Telecommunications Carrier Designations)	Case No. TX-2006-0169
for Receipt of Federal Universal Service)	
Fund Support)	

Reply of U.S. Cellular

USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular (“U.S. Cellular”), pursuant to 4 C.S.R. 240-2.160 and R.S.Mo. § 386.500, hereby replies to the responses of Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (collectively, “CenturyTel”) and Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T”) to U.S. Cellular’s Motion for Clarification or Rehearing relating to the Commission’s Rule for Requirements for Carrier Designation as Eligible Telecommunications Carriers (“ETC”).

Introduction

The CenturyTel and AT&T responses display a misunderstanding of both federal ETC requirements and the nature of U.S. Cellular’s Motion. Contrary to the assertions by AT&T, U.S. Cellular is not requesting a “departure” from the guidelines adopted in the FCC’s *Report and Order* of March 17, 2005 (“*ETC Report and Order*”).¹ Rather, U.S. Cellular simply requests that the Commission’s rules match those guidelines more closely. Second, CenturyTel makes the unfounded allegation that accepting U.S. Cellular’s proposal somehow “shifts the entire focus away from” the Commission’s requirement that a carrier provide a build-out plan for its use of support.

¹ See AT&T Response at p. 4 (referring to “U.S. Cellular’s unwarranted departure from the FCC’s own model”).

A. U.S. Cellular's Motion Seeks to Conform the Commission's Rule More Closely to the FCC's Rules.

As U.S. Cellular stated in its Motion, Section 3(C)(3) of the newly adopted rule departs in certain critical respects from the corresponding provision of the FCC's rules. When responding to consumer requests for service, Section 54.202(a)(1)(A) of the FCC's rules provides that an ETC must:

... provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, ***if service can be provided at reasonable cost*** by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.²

As part of the annual certification requirement, Section 54.209(a) requires ETCs to report, *inter alia*, "the number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year." In its report, the carrier must also "detail how it attempted to provide service to those potential customers, as set forth in §54.202(a)(1)(A)."

In contrast to these FCC's rules, the Commission's new rule contains no reference to whether service can be provided "at reasonable cost." Instead, Section 3(C)(3) states that: "ETCs ***shall take the following steps***, as applicable, to respond to all such reasonable requests for service within its ETC service area." Moreover, whereas the FCC's rule requires reporting of unfulfilled requests if service could not be provided at reasonable cost, Section 3(C)(3)(D) of the Commission's new rule only permits an ETC to report instances where there is "***no possibility*** of

² 47 C.F.R. Section 54.202(a)(1)(A) (emphasis added).

providing service to the requesting customer.” The FCC’s rule contains no such reference to impossibility.

As noted in U.S. Cellular’s Motion, earlier versions of the Commission’s rule contained a limiting provision that counter-balanced these departures from the FCC’s rules. The draft rule stated that in considering a request for service, an ETC shall “[e]valuate the costs and benefits of using high-cost universal service support to serve the number of customers requesting service.”³ This provision was deleted without explanation in the final rule. Because this provision was important in ensuring that an ETC will not face a requirement to construct facilities unless there is “no possibility” to do so, U.S. Cellular’s Motion sought to restore this important limitation.

Significantly, no party to the rulemaking objected to the provision in question. Indeed, mark-ups submitted by AT&T and Staff left this provision intact.⁴ It is unclear why AT&T now objects to the restoration of the limiting provision.

Both Staff and U.S. Cellular made multiple requests to change the draft rule so as to track the FCC’s rule more closely by making clear that no ETC has an absolute obligation to provide service regardless of cost. For example, Staff recommended changing the customer notification and reporting requirement to read “no reasonable possibility” instead of “no possibility.”⁵ Several of U.S. Cellular’s filings noted that the draft rule implied an absolute obligation to

³ See Section 10(D)(3) of proposed rule published in Missouri Register, Vol. 30, No. 23 (Dec. 1, 2005) at p. 2480. *See also* Motion at p. 2 (citing version of draft rule circulated by Staff on Oct. 4, 2005).

⁴ See Comments of AT&T Missouri (filed Jan. 3, 2006) (“AT&T Comments”) at Attachment A, Section 10(D)(3); Comments of the Staff of the Missouri Public Service Commission (filed Jan. 3, 2006) (“Staff Comments”) at Appendix A, Section 12(C)(3); Staff Submission in Response to Requests from the Missouri Public Service Commission (filed Jan. 9, 2006) (“Staff Submission”) at Exhibit A, Section 12(C)(3).

⁵ See Staff Comments at p. 12 and Appendix A, Section 12(C)(4).

provide service, in contrast to federal requirements.⁶ Staff's and U.S. Cellular's recommendations were not adopted and were not discussed in the Order of Rulemaking.

AT&T's argument that the limiting provision is a "departure" from the FCC's requirement is not true. A determination of whether service can be provided "at reasonable cost" *by definition* requires a carrier to evaluate the costs and benefits of using high-cost support to serve a given number of customers requesting service consistent with FCC guidelines. Other states have taken a similar approach. The Mississippi Public Service Commission recently imposed a service provisioning obligation on a wireless ETC, holding that once a carrier believes that it cannot provide service using any of the first six steps, it is required to:

[d]etermine whether an additional cell site can be constructed to provide service and evaluate the costs and benefits of using high-cost support to serve the number of customers requesting service through such additional cell sites.⁷

The South Dakota and Louisiana Commissions have adopted similar language.⁸

Therefore, the provision that was omitted from the final rule is fully consistent with the FCC's rule and is virtually identical to language adopted in other states interpreting the same FCC requirement. Without that provision, the rule is subject to an unintended interpretation that there is an absolute requirement upon an ETC to build a cell site, regardless of cost, for even a

⁶ See Letter to Natelle Dietrich dated Aug. 15, 2005 at p. 4 ("the rule should clarify, as the FCC does, that the six-step process is a means of determining whether service can be provided "at reasonable cost." The *FCC ETC Order* does not require service to each and every requesting customer irrespective of how expensive construction would be. The rule as currently drafted could require a wireless ETC to build a \$300,000 cell tower to serve a single customer."); Letter to Natelle Dietrich dated Oct. 7, 2005 at p. 3 ("In our August 15 letter, we noted that Section (10)(D) as currently drafted could require a wireless ETC to build a \$300,000 cell tower to serve a single customer. . . Without the clarifications requested in our August 15 letter, it is impossible to estimate the fiscal impact of the provisioning requirement in Section (10)(D). However, it is safe to say that if the interpretation above were to be adopted, the costs would be potentially enormous such that no carrier would seek ETC status."); U.S. Cellular Reply Comments (filed Jan. 17, 2006) ("U.S. Cellular Reply Comments") at pp. 3-4 (noting that the service provisioning requirements in the draft rule failed to track FCC's rule, which makes clear that the six-step process is not an absolute requirement but is instead a means for determining whether service can be provided at reasonable cost).

⁷ See RCC Holdings, Inc. d/b/a Unicel, Docket No. 2005-UA-0157 (Miss. PSC Sept. 28, 2005) at p. 8.

⁸ See Brookings Municipal Utilities d/b/a Swiftel, TC 04-213 (S.D. PUC Feb. 10, 2006) at pp. 4-5; NPCR, Inc. d/b/a Nextel Partners, Docket No. U-27289 (La. PSC June 29, 2004) at pp. 7-8.

single customer, unless the carrier can demonstrate there is “no possibility of providing service to the requesting customer.”⁹

U.S. Cellular has consistently argued that the rules should conform closely to the FCC’s guidelines to avoid inconsistent interpretations of otherwise straightforward requirements.¹⁰ Because Subsection B of Section (3)(C)3 is inconsistent with the FCC guidelines, and U.S. Cellular believes no other state has adopted such a requirement, the restoration of the draft provision would align the Commission’s rule more closely with the FCC guidelines.

B. U.S. Cellular’s Motion Deals with Service Requests, not Build-out Plans.

While CenturyTel acknowledges that the federal service provisioning requirement does not require construction of facilities in every case,¹¹ it asserts without any basis that U.S. Cellular seeks to draw the Commission’s focus away from the rule requiring a carrier to submit a build-out plan. To the contrary, U.S. Cellular has always endorsed a requirement for such a plan, which dovetails properly with the requirement that a carrier respond to all reasonable requests for service from individual consumers.¹²

CenturyTel confuses the FCC’s rule for provisioning service to an individual - which involves a determination by the ETC whether facilities-based service can be provided “at reasonable cost” – with the obligation to use federal high-cost support to build, operate, and maintain infrastructure in high-cost areas. Apparently, CenturyTel aims to convince the

⁹ Taken to its logical conclusion, all ETCs would be required to construct facilities if it were “possible” even if the resulting revenue streams and high-cost support would be insufficient to recover costs.

¹⁰ See, e.g., Letter to Natelle Dietrich date Aug. 15, 2005 at p. 2 (“We believe that Missouri consumers would be much better served by rules that generally track the FCC’s recent decision...”); U.S. Cellular Comments (filed Jan. 6, 2006) (“U.S. Cellular Comments”) at p. 6 (“U.S. Cellular urges the Commission to retain the certification procedures established in Case No. TO-2002-347, and to consider incorporating some or all of the permissive guidelines set forth in the FCC’s *ETC Report and Order*.”); U.S. Cellular Reply Comments at p. 3 (“In sum, the Commission should honor the FCC’s intent to create a predictable ETC designation and certification process around the nation by adopting the guidelines set forth in the ETC Report and Order.”)

¹¹ CenturyTel Response at p. 1.

¹² See, e.g., Reply Comments of U.S. Cellular at pp. 1-2 (Jan. 17, 2006).

Commission to require Competitive ETCs (“CETC”) to construct facilities throughout an area, even where no requests for service have been made. No state has ever adopted such a requirement for any ILEC or CETC. Indeed, CenturyTel misstates a CETC’s obligation as being “to provide ... high quality, urbanlike signal coverage *throughout the ETC service area.*”¹³ All ETCs share an obligation under Section 254 of the Federal Act to provide rural consumers with services that are reasonably comparable to those in urban areas. That obligation has never been interpreted to require an ILEC to construct facilities in areas where no consumer requests it. Indeed, most rural ILECs could never replicate the availability of wireline service in urban areas, where a telephone line is rarely more than a block away.

U.S. Cellular’s Motion seeks clarification only with regard to the obligation to provide service upon the reasonable request of an individual. Granting the Motion will merely conform the new rule to the FCC’s approach. It will have no effect on a carrier’s obligation to submit a plan demonstrating how it will use federal support to construct facilities in high-cost areas.

Restoration of limiting language in prior drafts will provide clarity to all ETCs, minimize the possibility of future controversies, and conform the rule to the FCC’s guidelines. Accordingly, U.S. Cellular urges the Commission to grant its Motion.

Respectfully submitted,

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¹³ CenturyTel Response at p. 2.

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 29th day of March, 2006.

/s/Karl Zobrist
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