

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

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

**REPLY COMMENTS OF U.S. CELLULAR**

USCOC of Greater Missouri, LLC d/b/a U.S. Cellular (“U.S. Cellular” or “Company”) hereby submits its Reply Comments in accordance with the schedule established at the public hearing in this matter on January 6, 2006.

Specifically, U.S. Cellular responds to the Staff Submission in Response to Requests from the Missouri Public Service Commission (“Staff Submission”) as well as the comments of Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (“CenturyTel”), the Small Telephone Company Group (“STCG”), and Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T”) (collectively, the “ILECs”) and of ALLTEL Communications, Inc. (“ALLTEL”).

**I. THE COMMENTS OVERWHELMINGLY URGE ADOPTION OF THE FCC’S FRAMEWORK**

U.S. Cellular continues to support the adoption of the ETC designation and certification framework set forth in the FCC’s ETC Report and Order.<sup>1</sup> The notion that the FCC’s requirements should be adopted found broad support in the other parties’ comments as well. AT&T accurately summarizes the FCC’s recommended approach: “The FCC expressly encouraged states to adopt its requirements . . . so as to ensure that all jurisdictions uniformly apply the same analytical framework.” AT&T Comments at p. 3. U.S. Cellular therefore agrees with AT&T’s recommendation that the Commission adopt a rule that “replicates” the FCC’s ETC framework. Id. at p. 1. As U.S. Cellular and ALLTEL stated in their initial comments, these requirements may be adjusted where necessary to ensure the rules are

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<sup>1</sup> Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005) (“ETC Report and Order”).

competitively neutral and not unduly burdensome, for example, by requiring a two-year network improvement plan instead of a five-year plan.

U.S. Cellular does not agree with commenters suggesting that wireless carriers should be saddled with regulations that were designed for a monopoly wireline environment and have nothing to do with ETC status. This would amount to “parity for parity’s sake” – an approach that the FCC explicitly cautioned states not to take. STCG’s contention that portable per-line support should not be available to competitors that are not subject to ILEC regulation has been specifically rejected by the FCC.<sup>2</sup> The portability of support is, in any event, a matter of federal concern.<sup>3</sup> CenturyTel appropriately suggests that ILEC regulation may eventually be relaxed once competition takes hold in rural areas. However, CenturyTel’s self-serving approach of first *raising* the level of regulation for competitive carriers must be rejected. Unlike rural ILECs, wireless carriers must constantly respond to competitive pressures to win and retain customers; indeed, wireless subscribership has flourished in the deregulatory environment established by Congress and the FCC. Any attempt to treat wireless carriers as if they were regulated monopolies would reduce consumer choice while diverting critical funds away from the deployment of high-quality wireless service in rural areas on a par with service available in urban areas.

Contrary to STCG’s contention, the FCC did not invite state commissions to adopt requirements that are “more restrictive” than the FCC’s framework. This view is contradicted by the ETC Report and Order, in which the FCC stated: “We believe that application of these additional requirements by the Commission and state commissions will

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<sup>2</sup> See Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 8859 (1997) (“First Report and Order”) (“We note that not all carriers are subject to the jurisdiction of a state commission. Nothing in section 214(e)(1), however, requires that a carrier be subject to the jurisdiction of a state commission in order to be designated an eligible telecommunications carrier. Thus tribal telephone companies, CMRS providers, and other carriers not subject to the full panoply of state regulation may still be designated as eligible telecommunications carriers.”) (footnote omitted).

<sup>3</sup> See id. at 8944 (adopting Joint Board’s recommendation to make rural ILEC support portable to competitors). When the FCC’s decision to make support portable to competitors was challenged in federal court by rural ILECs, the court upheld the FCC’s decision, holding that “portability is not only consistent with predictability, but also is dictated by principles of competitive neutrality and the statutory command that universal service support be spent ‘only for the provision, maintenance, and upgrading of facilities and services for which the [universal service] support is intended.’” Alenco Communications et al. v. FCC, 201 F.3d 608, 622 (5<sup>th</sup> Cir. 2000).

allow for a more predictable ETC designation process.”<sup>4</sup> The FCC also cautioned states against making wireless ETCs subject to ILEC service quality and consumer protection regulations. Before considering such regulations, the FCC counseled, states should “consider, among other things, the extent to which a particular regulation is necessary to protect consumers in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC.”<sup>5</sup> This is hardly the endorsement of regulatory intrusion that CenturyTel and STCG claim.

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.

## **II. RESPONSE TO STAFF’S SUBMISSION**

U.S. Cellular believes that many of the proposals in Staff’s latest submission are sensible changes that would make the proposed rule more competitively neutral and less burdensome on carriers. However, some elements of the submission represent a move away from the stable, competitively neutral regulatory framework envisioned by Congress and the FCC. U.S. Cellular comments on specific proposals below.<sup>6</sup>

- *Special Construction.* The first change is helpful, as it adopts the FCC’s requirement that all ETCs provide service upon reasonable request. However, for CMRS carriers, this section should incorporate the FCC’s six-step service provisioning process, which provides the framework for determining a reasonable request. This process is currently contained in a separate section, but it is integral to the service provisioning commitment in section (12). Additionally, these latest changes do not address the technological disparity in the section, that is, traditional wireline terminology such as “one (1) mile of facilities” that simply does not apply to wireless networks. The rule should make clear that this language applies only to wireline carriers, and that CMRS service provisioning is governed by the six-

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<sup>4</sup> Id.

<sup>5</sup> ETC Report and Order, *supra*, 20 FCC Rcd at 6384.

<sup>6</sup> These comments do not necessarily cover every aspect of Staff’s submission; the omission of a particular proposal or issue does not necessarily indicate U.S. Cellular’s agreement with it.

step process. U.S. Cellular agrees with the language added to subsection C, which harmonizes customer contribution requirements for wireline and wireless ETC service provisioning.

- *Two-Year Plan.* U.S. Cellular agrees with the proposal to require a two-year network improvement plan instead of a five-year plan. As U.S. Cellular and ALLTEL emphasized in their initial comments, a two-year plan reflects a more realistic planning horizon, and the annual updating of two-year plans will provide the Commission with ample information to evaluate whether a carrier is using support for its intended purposes. However, U.S. Cellular is puzzled by Staff's addition of several burdensome and unnecessary reporting requirements above and beyond what the FCC requires in carrier network improvement reports. It is difficult to see how the recertification process will benefit from information such as "the percent of improvements in Missouri compared to the percent of improvements in other states." Moreover, there is no justification for opening up a carrier's non-ETC-related finances (see discussion in next paragraph) by requiring the reporting of the percentage of infrastructure improvements funded from a source other than USF monies. The FCC properly focuses on how a carrier uses support. The Commission should simply adopt the FCC's reporting requirement, which provides more than adequate information to evaluate a carrier's use of high-cost support.
- *Ability to Review Financial Information (Including Non-ETC Related Expenses).* There is no justification for this potentially unlimited intrusion into the finances of a competitive carrier. Neither the FCC nor any other state U.S. Cellular is aware of has reserved such authority to itself, for one simple reason: it is unnecessary to probe the inner workings of a company to determine how USF support is being used. Moreover, all carriers are subject to the possibility of being audited at any time by the Universal Service Administrative Company, the federal entity designated by the FCC to administer and oversee the Fund. The better approach is to follow the FCC's lead and require all ETCs to report the amount of support received and describe the uses to which that support was used. Staff's earlier

submission sensibly recommended the elimination of the superfluous April 15 annual reporting requirement.

- *Extending the Five-Year (Two-Year) Plan to ILECs.* U.S. Cellular agrees with the underlying notion that ILECs, not just competitive ETCs, should be required to describe how support is being used to build new facilities or provide upgraded service to consumers. However, U.S. Cellular notes that Staff misstates the legal requirement for the use of high-cost support. While Staff asserts that different standards apply to ILECs and competitive ETCs, the standard is actually the same: support may only be used for the provision, maintenance, and upgrading of facilities and services. It is unlawful to require any carrier to use all of its support for the upgrading of service or construction of new facilities. Accordingly, the extension of a network improvement plan requirement to ILECs represents a competitively neutral approach that reflects the fact that all ETCs are subject to the same USF spending requirement whether they are incumbents or competitors.
- *Wireline Rule Comparison Chart.* U.S. Cellular maintains its position that it is inefficient and not competitively neutral to take wireline rules and attempt to impose them on competitive wireless carriers. Rather than reiterate its arguments here, U.S. Cellular refers to its discussion of Chapter 32 in its initial comments.

### **III. CONCLUSION**

U.S. Cellular respectfully requests that the Commission adopt the FCC's ETC guidelines consistent with the discussion herein.

Respectfully submitted,

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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 17th day of January, 2006.

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/s/ Karl Zobrist  
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