

**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)
eligible telecommunications carrier pursuant to)
the Telecommunications Act of 1996.) Case No. TO-2005-0384

AT&T MISSOURI'S POSITION STATEMENT

Southwestern Bell Telephone, L. P. d/b/a AT&T Missouri ("AT&T Missouri"), respectfully submits its Position Statement in accordance with the Commission's October 25, 2006 Order Amending Procedural Schedule.

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 a carrier to offer the services that are supported by Federal universal service support mechanisms either using its own facilities or a combination of its 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 therefore using media of general distribution. Does U.S. Cellular meet the requirements of Section 214(e)(1) throughout the service area for which it seeks ETC designation?

No - U.S. Cellular does not meet the requirements of Section 214(e)(1) throughout the AT&T Missouri service area for which it seeks ETC designation. More specifically, both the FCC and this Commission have implemented Section 214(e)(1) by requiring that, in connection with an ETC applicant's obligation to provide service throughout its proposed designated service area, it must submit a formal network improvement plan which demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity.¹ However, the Network Improvement Plan provided in U.S. Cellular's August 11, 2006 Compliance Filing does not comply with this requirement. To the contrary, the plan indicates that of the approximately 146 AT&T Missouri wire

¹ 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. 21; 4 CSR 240-3.570(2)(A)(3).

centers for which U.S. Cellular seeks ETC designation,² only *___* of these wire centers are expected to receive improved coverage or capacity.³ Moreover, even this relative handful appears overstated. The surrebuttal testimony of U.S. Cellular’s Mr. Johnson attaches a chart which, according to the testimony, illustrates the existing and proposed coverage maps on a wire center basis and identifies the “wire centers that will receive improved coverage.”⁴ Only *___* AT&T Missouri wire centers are identified in the exhibit.⁵ Likewise, the coverage maps offered by U.S. Cellular in its Compliance Filing indicate “minimal expansion.”⁶

Under these circumstances, U.S. Cellular has failed to demonstrate the requisite commitment to provide the supported services throughout the area for which it seeks ETC designation.

Issue 2: ETC designations by a state commission must be consistent with the public interest, convenience and necessity pursuant to Section 214(e)(2). Section 214(e)(2) provides: A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon 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 designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. 4 CSR 240-3.570(2)(A)(5) provides that an application for designation as an ETC include a demonstration that the commission’s grant of the applicant’s request for ETC designation would be consistent with the public interest, convenience and necessity. Is granting ETC status to U.S. Cellular consistent with the standards set forth in Section 214(e)(2) and 4 CSR 240-3.570(2)(A)(5)?

² See, Exhibit C of U.S. Cellular’s April 22, 2005, application (listing non-rural ILEC wire centers for ETC designation), pp. 2-6.

³ See, Compliance Filing, Appendix 2 entitled “List of Wire Centers to Receive Improved Coverage or Capacity” (listing the following AT&T Missouri wire centers: *_____

_____*)).

⁴ U.S. Cellular, Johnson Compliance Filing Surrebuttal, p. 6 & Exhibit D.

⁵ The testimony identifies the following AT&T Missouri wire centers are identified: *_____

_____*)).

⁶ Compliance Filing, Appendices 4 and 5; AT&T Missouri, Stidham Compliance Filing Rebuttal, p. 2.

No - Granting ETC status to U.S. Cellular would not be consistent with the standards set forth in Section 214(e)(2) and 4 CSR 240-3.570(2)(A)(5).⁷

U.S. Cellular claims that ETC status will further competition. The FCC, however, has determined that “the value of increased competition, by itself, is unlikely to satisfy the public interest test.”⁸ Moreover, any potential for increased consumer choice and the additional advantage of mobility is significantly diluted given that U.S. Cellular has failed to provide proof, in the form of a sufficient Network Improvement Plan, that U.S. Cellular intends to improve service quality throughout the area for which it seeks ETC designation.⁹ Instead, it appears that U.S. Cellular merely seeks to improve service primarily in areas that it already serves.¹⁰ That being the case, few if any of the benefits that might be generated by giving high-cost 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.

⁷ To the extent that U.S. Cellular may argue that it need not meet the public interest requirement with regard to AT&T Missouri’s wire center areas, its argument should be rejected. 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, thus rejecting the notion that ETC designations in areas served by non-rural carriers need not be in the public interest. 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.”). This Commission has similarly held that “in order to be granted ETC status in the non-rural areas, an [ETC applicant] must also show that the designation will be, ‘consistent with the public interest, convenience and necessity.’” 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. Finally the Commission’s newly adopted ETC rules explicitly require that an ETC applicant demonstrate “that the commission’s grant of the applicant’s request for ETC designation would be consistent with the public interest, convenience and necessity[,]” and no exception is made with respect to an area served by a non-rural carrier. See, 4 CSR 240-3.570(2)(A)(5).

⁸ 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.

⁹ AT&T Missouri, Stidham Surrebuttal, pp. 11-13.

¹⁰ AT&T Missouri, Stidham Compliance Filing Rebuttal, p. 5.

Issue 3: The Commission has promulgated rules to be used in evaluating ETC applications. Commission Rule 4 CSR 240-3.570, Requirements for Carrier Designation as Eligible Telecommunication Carriers, effective June 30, 2006. Does U.S. Cellular meet the requirements of the Commission’s ETC rules?

No – For three reasons, U.S. Cellular does not meet the requirements of the Commission’s ETC rules.

First, as noted above, the Commission’s rules require that an ETC applicant submit a formal network improvement plan which demonstrates that universal service funds will be used to improve coverage, signal strength, or capacity.¹¹ This showing must be made on a “wire center-by-wire center basis throughout the Missouri service area for which the requesting carrier seeks ETC designation.”¹² For the reasons stated in connection with the discussion pertaining to Issue 1, above, U.S. Cellular fails to meet this requirement.

Second, the Commission’s rules require that an ETC applicant demonstrate “that the commission’s grant of the applicant’s request for ETC designation would be consistent with the public interest, convenience and necessity.”¹³ For the reasons stated in connection with the discussion pertaining to Issue 2, above, U.S. Cellular has failed to meet this requirement.

Third, the Commission’s rules require that an ETC applicant demonstrate that high-cost support will be used for the provision, maintenance and upgrading of facilities and services “for which the support is intended,”¹⁴ a requirement which mirrors federal law.¹⁵ For the reasons stated in connection with the discussion pertaining to Issue 4, below, U.S. Cellular has failed to meet this requirement.

Issue 4: AT&T proposes the following issue: Is U.S. Cellular’s proposed use of federal Universal Service High-Cost support with respect to its network improvement plans in AT&T Missouri’s wire center areas consistent with the

¹¹ 4 CSR 240-3.570(2)(A)(3).

¹² 4 CSR 240-3.570(2)(A)(3).

¹³ 4 CSR 240-3.570(2)(A)(5).

¹⁴ 4 CSR 240-3.570(2)(A)(2).

¹⁵ 47 U.S.C. § 254(e).

requirement to use support only for the purpose “for which the support is intended.” 47 U.S.C. § 254(e); 4 CSR 240-3.570(2)(A)(2)

No – U. S. Cellular’s proposed use of federal universal service high-cost support with respect to its Network Improvement Plan in AT&T Missouri’s wire center areas is not consistent with the requirement to use support only for the purpose “for which the support is intended.”

As of July 1, 2006, AT&T Missouri receives no federal universal service high-cost support for any of its wire centers, including the Interstate Access Support (“IAS”) that AT&T Missouri previously received. Thus, all AT&T Missouri wire centers are considered to be non-high-cost.¹⁶

U.S. Cellular’s plan to use of federal high-cost support in non-high-cost wire center areas would not be a use of the support for which it is intended, i.e., for high-cost wire center areas.¹⁷ The federal universal service fund precludes high-cost support to AT&T Missouri because none of AT&T Missouri’s wire centers are eligible for high-cost support and, pursuant to the FCC’s rules, a competitive ETC can receive no more support than the ILEC would receive.¹⁸ Given this funding structure, it would be incongruous were the Commission to permit a competitive ETC receiving funds due to its ETC status in the wire center areas of rural carriers to use those funds in the wire center areas of non-rural carriers, while funds remain denied altogether to non-rural carriers. Moreover, allowing a carrier to offset costs in a non-rural wire center with high-cost funds, while the ILEC receives no high-cost support, would violate the federal Telecommunications Act’s principle of “competitive neutrality.”¹⁹

¹⁶ AT&T Missouri, Stidham Compliance Filing Rebuttal, p. 5.

¹⁷ AT&T Missouri, Stidham Compliance Filing Rebuttal, pp. 5-6.

¹⁸ 47 CFR § 54.307(a)(1).

¹⁹ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, released May 8, 1997, para. 46 (“Section 254(b) establishes six principles upon which the Joint Board and the Commission are to base policies for the preservation and advancement of universal service. Section 254(b)(7) allows the Joint Board and the Commission to adopt additional principles necessary for the ‘protection of the public interest, convenience, and necessity.’ . . . [C]onsistent with the Joint Board’s recommendation, we adopt the principles identified in section 254(b) and the additional principle of competitive neutrality.”).

Finally, even if U.S. Cellular were somehow permitted to use high-cost support in the AT&T Missouri wire centers situated in “rural areas,”²⁰ still this conclusion would not justify granting U.S. Cellular ETC status in all of the approximately 146 AT&T Missouri wire centers for which U.S. Cellular seeks ETC designation. Notably, U.S. Cellular’s testimony on the subject never identifies even a single named AT&T Missouri wire center that U.S. Cellular would regard as being within the “rural area” rule it advances.²¹

Issue 5: CenturyTel, STCG and AT&T propose the following issue: The Commission recently approved ETC status for Missouri RSA No. 5 Partnership in Case No. TO-2006-0172 and for Northwest Missouri Cellular Limited Partnership in Case No. TO-2005-0466. The ETC service areas granted by the Commission for these new ETCs overlap portions of US Cellular’s proposed ETC service area. Is granting ETC status to multiple wireless carriers in wire centers, also currently served by the incumbent ETC, in the public interest?


AT&T Missouri had not joined in this issue and takes no position on it in this case.

III. CONCLUSION

For the foregoing reasons, AT&T Missouri respectfully submits that the application of U.S. Cellular for designation as an ETC must be denied.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A AT&T MISSOURI

BY: 

PAUL G. LANE	#27011
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454

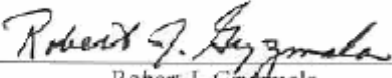
Attorneys for Southwestern Bell Telephone, L.P.
One AT&T Center, Room 3516
St. Louis, Missouri 63101
314-235-6060 (Telephone)/314-247-0014 (Facsimile)
robert.gryzmala@att.com

²⁰ U.S. Cellular, Wood Compliance Plan Surrebuttal, p. 28.

²¹ U.S. Cellular, Wood Compliance Plan Surrebuttal, p. 28.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on December 11, 2006.


Robert J. Grymalala

General Counsel
William K. Haas
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102-0360
gencounsel@psc.mo.gov
william.haas@psc.mo.gov

Public Counsel
Michael F. Dandino
Office of the Public Counsel
Post Office Box 2230
Jefferson City, Missouri 65102
opcservice@ded.mo.gov
mike.dandino@ded.mo.gov

Brian T. McCartney
Brydon, Swearngen & England
PO Box 456
Jefferson City, MO 65102
bmccartney@brydonlaw.com

Charles Brent Stewart
Stewart & Keevil, LLC
4603 John Garry Drive, Suite 11
Columbia, MO 65203
Stewart499@aol.com

Roger W. Steiner
Karl Zobrist
U.S. Cellular
4520 Main Street, Suite 1100
Kansas City, Missouri 64111
rsteiner@sonnenschein.com
kzobrist@sonnenschein.com