

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

Application of USCOC of Greater Missouri,)	
LLC for Designation as an Eligible)	Case No. TO-2005-0384
Telecommunications Carrier Pursuant to the)	
Telecommunications Act of 1996)	

POST-HEARING BRIEF OF U.S. CELLULAR

Applicant USCOC of Greater Missouri, LLC d/b/a U.S. Cellular (“U.S. Cellular” or “Company”) submits this Post-Hearing Brief in accordance with the ALJ’s decision at the hearing on October 27, 2005.¹

I. INTRODUCTION AND LEGAL FRAMEWORK.

“As an overarching principle, it is the interests of the public – the consumers of telecommunications services – that must be considered. The interests of individual carriers, or categories of carriers, are a secondary consideration if it is to be considered at all.”² Thus Don J. Wood accurately captured the touchstone for determining the public interest in this case. This case turns on whether consumers will be well served by U.S. Cellular having access to federal high-cost support to improve its network in rural Missouri.

As vividly illustrated at the recent hearing, U.S. Cellular faces the same obstacle to providing universal service in rural Missouri as do ILECs. That is, sufficient network facilities cannot be constructed in most areas within rural Missouri to provide high-quality service unless high-cost support is provided. Congress recognized this fact in creating the federal Universal Service Fund (“USF”) in 1996. Moreover, Congress intended “to provide for a pro-competitive, de-regulatory national policy framework” aimed at fostering rapid deployment

¹ Tr. at p. 440, lines 4-5.

² Exh. 8 at p. 4, lines 22-25.

of telecommunications services to all Americans “by opening all telecommunications markets to competition. . . .”³

Congress did not intend to limit the benefits of competition to urban areas where market forces alone would attract multiple carriers. As part of the 1996 legislation, Congress amended Section 214 of the Communications Act of 1934 (“Act”) to make universal service subsidies available to competitors willing to take on ETC obligations in rural areas.⁴ The Act explicitly envisions the receipt of federal universal support by competitors upon a “public interest” finding by the state commission.⁵ Thus, Congress made clear that the advancement of universal service and the promotion of competition are dual goals that must be served equally.⁶

While preserving state authority to make competitive ETC (“CETC”) designations and adopt universal service rules, Congress mandated that states do so “on a competitively neutral basis.”⁷ Consistent with this congressional directive, the FCC adopted the principle of competitive and technical neutrality to guide the implementation of the Act’s universal service provisions.⁸ The principle of competitive and technological neutrality requires “that any telecommunications carrier using any technology, including wireless technology, is

³ See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. At 113.

⁴ See 47 U.S.C. §§ 214(e)(2), 254(b)(3).

⁵ See 47 U.S.C. § 214(e)(2).

⁶ See 47 U.S.C. §§ 254(b)(3), (5); *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8787-89, 8791-92 (1997) (“*First Report and Order*”).

⁷ 47 U.S.C. §§ 253(a), (b) (“No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. [. . .] Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public interest and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”)

⁸ See *First Report and Order*, 12 FCC Rcd at 8801-02 (“competitive neutrality means universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another”).

eligible to receive universal service support if it meets the criteria under section 214(e)(1).”⁹ U.S. Cellular’s designation as an ETC is consistent with this additional principle. In making ETC designations that are competitively and technologically neutral, the FCC has consistently rejected ILEC arguments that introducing a wireless CETC will harm universal service.¹⁰

In its Application, in its pre-filed testimony, and at the hearing, U.S. Cellular has amply demonstrated: (1) its capability to offer universal service throughout its proposed service area; (2) a commitment to advertise the supported services; (3) that the public interest would be served by a grant of its Application; and (4) the proposed redefinition of several affected rural ILECs comports with the FCC’s rules.

The Small Telephone Company Group (“STG”), Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (“CenturyTel”) (collectively, the “Rural ILECs”) have strategically erected barriers that do not exist in the law or precedent in an attempt to disguise an otherwise simple analysis - whether *consumers* would be served if U.S. Cellular carries out the commitments it has made to this Commission to use whatever federal high-cost support is available to construct, upgrade and maintain its network in rural Missouri. SBC Missouri (“SBC”) focuses mostly on non-rural issues affecting its business, while the Rural ILECs seek to obscure obvious facts. According to the most recent local competition report published by the FCC, 48 percent of zip codes in this state have no competition for the ILEC, compared to 22 percent nationwide.¹¹ Currently, rural ILECs draw roughly \$91 million a year in federal support here in Missouri.¹² Rural wireless consumers who pay into this fund currently see zero benefit from their contributions when they use their wireless phones.

⁹ *See id.* at 8858.

¹⁰ Indeed, the FCC has recognized that assertions by ILECs that competition in rural areas would harm the public “present a false choice between competition and universal service.” *See First Report and Order*, 12 FCC Red at 8803.

¹¹ Local Telephone Competition: Status as of December 31, 2004 (Ind. Analys. and Technol. Div., Wir. Comp. Bur., July 2005) at Table 16.

¹² First Quarter Appendices 2006, Appendix HC02, available on USAC’s web site at <http://www.universalservice.org/overview/filings/2006/Q1/default.asp>.

The public benefits that will result from granting U.S. Cellular the ability to compete on a level playing field with SBC and the Rural ILECs are compelling. Consumers in rural areas who receive improved service as a result of U.S. Cellular making substantial investments in its network will for the first time have a choice among *primary* service offerings. In every area where U.S. Cellular is able to construct a new cell site, consumers will immediately see universal service benefits in the form of improved health, safety, and economic development opportunities, along with the introduction of competition that will force ILECs to respond in the marketplace – all to the *consumers'* benefit.

II. DISCUSSION

A. U.S. CELLULAR MEETS THE REQUIREMENTS TO BE DESIGNATED AS AN ETC IN THE STATE OF MISSOURI.

1. **U.S. Cellular Has Committed to Offer the Nine Supported Services Throughout Its Proposed ETC Service Areas as Required by Federal Law.**

To be designated as an ETC, 47 C.F.R. § 54.101(a) requires a petitioner to demonstrate that it is capable of offering and advertising the nine supported services throughout its proposed ETC service area, specifically: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency (“DTMF”) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services;¹³ (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. U.S. Cellular has demonstrated that it can provide all nine services.¹⁴ None of the intervenors have rebutted

¹³ Exh. 4 at p. 3, lines 13-19. At the hearing, U.S. Cellular reconfirmed that it is in compliance with Phase II E-911 requirements. *See* Tr. at p. 63, lines 2-16; p. 87, line 19 – p. 91, line 20; p. 96, line 6– p. 97, line 14.

¹⁴ Exh. 4 at p. 2, line 8 – p. 4, line 20. In response to the Rural ILECs’ concern that U.S. Cellular does not provide toll blocking (see Exh. 14 at p. 26, line 11 – p. 27, line 2), Mr. Lowell testified under oath at Tr. 97-98: “Q. Do you know whether U.S. Cellular has the capability to toll block roaming, international and 900 calls? A. Yes, we can toll block roaming, international and 900 calls. Q. And do you know whether those services are going to be offered if the company is designated to Life Line consumers without charge? A. They will be.” Since U.S. Cellular’s local calling area is the continental United States, its customers incur no long distance toll charges. U.S. Cellular has made precisely the same toll blocking commitment as those approved by the FCC, most recently in its *RCC New Hampshire Order*. *See RCC Minnesota, Inc. and RCC Atlantic*, CC Docket No. 96-45, DA 05-2673 (rel. Oct. 7, 2005) at ¶ 16 (“*RCC New Hampshire Order*”).

U.S. Cellular’s demonstration that it provides all the required services. Moreover, five other state commissions have found, in granting ETC status to U.S. Cellular, that the company offers the nine supported services.¹⁵

An ETC must offer and advertise the supported services throughout the proposed ETC service area, “either using its own facilities *or a combination of its own facilities and resale of another carrier's services.*”¹⁶ “Federal law does not require the applicant to already be providing these services prior to ETC designation.”¹⁷ Indeed, ILECs have constructed networks over many decades while receiving implicit and explicit support.¹⁸ Consistent with the statute, U.S. Cellular has committed to offer and advertise the supported services throughout its proposed ETC service area.¹⁹ When asked about a reasonable timetable for U.S. Cellular to offer and advertise its services throughout its ETC service area, Mr. Wright responded: “Our commitment to do so is immediate.”²⁰

Staff concludes that U.S. Cellular has demonstrated that it can provide the supported services throughout the proposed ETC service area.²¹ Public Counsel and the Rural

¹⁵ U.S. Cellular, Order Approving Stipulation, Docket No. 2004-246 (Maine PUC, Sept. 8, 2005) (“U.S. Cellular Maine Order”); United States Cellular Corp., Cause No. PUD 200300195, Final Order Adopting the Report of the Administrative Law Judge (Okla. Corp. Comm’n, Sept. 28, 2004) (“U.S. Cellular Oklahoma Order”); United States Cellular Corp., Docket No. UT-970345, *aff’d*, *Wash. Indep. Tel. Ass’n v. WUTC*, 65 P.3d 319 (Wa. 2003) (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”).

¹⁶ 47 U.S.C. Section 214(e)(1)(a).

¹⁷ *Application of GCC License Corp. seeking Designation as an Eligible Telecommunications Carrier*, Application No. C-1889, *Order Granting ETC Status and Issuing Findings*, ¶34 (Nov. 21, 2000), *aff’d*, *In re Application No. C-1889 of GCC License Corp.*, 264 Neb. 167, 647 N.W. 2d 45 (2002).

¹⁸ See Exh. 8 at p. 42, line 21 – p. 43, line 10..

¹⁹ Petition at pp. 4-9; Exh. 5 at p. 5, lines 19-22.

²⁰ See Exh. 5 at p. 14, line 19.

²¹ Exh. 9 at p. 3, lines 17-20; Staff Prehearing Brief at p. 17.

ILECs misinterpret the standard contained in the federal statute for CETCs as requiring a carrier to provide *facilities-based* services throughout its proposed ETC service area.²²

As set forth above, that is not the standard contained in Section 214 of the federal statute. The FCC's ruling on this very point is dispositive:

We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. If new entrants are not provided with the same opportunity to receive universal service support as the incumbent LEC, such carriers will be discouraged from providing service and competition in high-cost areas. Consequently, under an interpretation of section 214(e) that requires new entrants to provide service throughout the service area prior to designation as an ETC, the benefits that may otherwise occur as a result of access to affordable telecommunications services will not be available to consumers in high-cost areas. We believe such a result is inconsistent with the underlying universal service principles set forth in section 254(b) that are designed to preserve and advance universal service by promoting access to telecommunications services in high-cost areas.²³

U.S. Cellular has committed to immediately offer and advertise its service throughout the proposed ETC service area because it already has in place roaming agreements with other wireless carriers that permit it to offer service to consumers in areas where its

²² See Public Counsel Prehearing Brief at p. 1 (“the Commission should be furnished with additional evidence that USCOC can reasonably serve ubiquitously and timely throughout the requested areas”); STG Prehearing Brief at pp. 3-4 (“Clearly, U.S. Cellular does not provide service to the entire service territory (i.e. “throughout the study area”) of many companies, and U.S. Cellular provides no service at all in many of the study areas for which it has requested ETC status.”); CenturyTel Prehearing Brief at p. 8 (“US Cellular’s Application fails to meet the minimum statutory and FCC requirements in that US Cellular makes no firm commitment or demonstration that it will add new facilities or improve its existing facilities to provide high quality wireless signal coverage *throughout* its requested ETC service area in order to receive ETC status.”)

²³ Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, 15 FCC Rcd 15168, 15177-78 (2000) (“South Dakota Preemption Order”) (footnote omitted). See also, Tr. at p. 216, line 18 – p. 217, line 8 (“Q. Mr. Wood, do you know whether -- could you state what is the standard, that is whether a competitive ETC has an obligation to construct facilities throughout its proposed ETC service area as a requirement of being designated as an ETC? A. Yes, I can. That suggestion has been made a couple of times. It's been consistently rejected. It was rejected by the Joint Board. It was rejected by the FCC yet again in this latest Order. The focus of the FCC has consistently been, and I think it makes a lot of sense that it is, on responding to reasonable requests for service. It may be that a customer -- that a carrier needs to build out further facilities, and these funds are targeted not towards services or carriers but toward facilities and toward networks, so that's where they should go.”)

facilities are not currently serving. In an area where a wireless carrier does not offer service, U.S. Cellular will immediately enter into resale arrangements a carrier that does serve the area.²⁴

The federal high-cost support system provides no funds to a CETC when it serves a customer via resale.²⁵ Thus, U.S. Cellular has every incentive to provide service using its facilities, to capture both customer revenues and support. As the system currently works, no CETC, including U.S. Cellular, will receive sufficient high-cost support to immediately construct a network throughout its proposed ETC service area. But it is sufficient to permit the orderly expansion of its network into new areas that will presumably draw new customers and additional support in the future to permit additional expansion.

The Rural ILECs have gone to great lengths in attempting to prove that U.S. Cellular does not currently offer service in all portions of its proposed ETC service area.²⁶ U.S. Cellular will stipulate to that fact – indeed, the lack of high-quality wireless service in many areas is perhaps the most important fact in favor of **GRANTING** this petition.²⁷ In numerous

²⁴ See Petition at p. 4.; Exh. 6 at p. 13, lines 11-14 (“When a consumer tells us that our service does not work at their home or business, we will promptly determine how to get service out there. We may be able to provide service through an existing roaming arrangement, which is a form of resale.”). See also Mr. Wright’s testimony, Tr. at p. 189, lines 11-14 (“Currently, does the company have roaming agreements with other wireless carriers that would allow your customers to use their networks in other parts of the state? A. Yes, we do.”)

²⁵ See *First Report and Order*, *supra*, 12 FCC Rcd at 8791.

²⁶ See, e.g., Exh. 11HC at p. 4, lines 15-19, p. 17, lines 18-19; Exh. 15HC at p. 57, lines 11-17. We are constrained to note that Witness Brown, who prepared maps purporting to depict U.S. Cellular’s coverage, is not a licensed radiofrequency engineer. Tr. at p. 312, lines 10-19. To the extent that his radiofrequency engineering goes beyond drawing rough service boundaries, his testimony regarding U.S. Cellular’s coverage and the Company’s ability to use various engineering techniques as part of the six-step process to extend service to a consumer requesting service beyond the boundaries he has depicted, is worthless.

²⁷ Mr. Wood’s testimony on cross-examination illustrates this point: (“Q. Okay. Would you accept that under your filing an ETC request, that less than half of the roads in your ETC service area are covered by U.S. Cellular’s signal strength today and that it would still be less than half with the addition of the 16 new towers? A. I factually don’t know, but if that’s the case, then that’s a pretty compelling reason that this designation ought to be granted so that the funds can be spent and those roads can be covered. Q. But even -- assuming this is correct, that even after you bring in your 16 new towers and spend those funds, still less than half are covered? A. Factually, can’t agree or disagree, but it’s a compelling case to do it. These first 16 are certainly not the end of the process, just at ILECs

other cases, Mr. Brown has submitted similar testimony and maps alleging that the applicant does not provide sufficient service to warrant a grant. Other state commissions have rejected his position in all cases where U.S. Cellular has participated or examined the record.²⁸ If U.S. Cellular were already providing service throughout the area without support, the Rural ILECs would undoubtedly argue against designation because support is not needed.²⁹ What U.S. Cellular has done is put forth a plan for using support that is expected to come in during its first year as an ETC, until such time as the Commission undertakes its initial review to determine whether U.S. Cellular should be recertified in October of 2006.³⁰

The FCC and every state that has considered this issue have made rulings consistent with the statute, and consistent with U.S. Cellular's request here.³¹ To cite one

didn't build out in one year either to cover all those areas. It's going to take longer than that. This is the first step.") Tr. at p. 388, lines 4-21.

²⁸ See, e.g., Alaska DigiTel, Docket U-02-39, Order No. 10, Order Granting Eligible Telecommunications Carrier Status and Requiring Filings (Aug. 28, 2003) at p. 8 ("ADT Alaska Order"); U.S. Cellular Oregon Order, supra, at p. 12; RCC Minnesota, Inc. and Wireless Alliance, L.L.C. d/b/a UniceL, TC03-193 (S.D. PUC, June 6, 2005) ("RCC South Dakota Order") at pp. 8-9. For the Commission's reference, U.S. Cellular has attached a number of recent ETC orders from other states as Appendix 1.

²⁹ The Rural ILECs' argument that U.S. Cellular has not constructed sufficient facilities in its proposed ETC service area is a "Catch-22" argument that has consistently failed before state commissions and at the FCC. When a competitor constructs facilities in a substantial portion of the proposed ETC service area first ILECs argue that support is not 'needed' because facilities were already in place at the time of application. Where facilities are not constructed because the area to be built requires high-cost support to justify the business risk, ILECs argue that a commitment to serve throughout the area is lacking.

³⁰ Mr. Wood's testimony accurately captures the appropriate standard: ("I think what Mr. Brown doesn't like is that it doesn't show all that white area filled in overnight, all at once throughout. Well, of course, that's not the standard. It's not the standard for them or they'd fail it. It's not standard for any company. We've got a benefit here for this company that we're in here early with this early map. We weren't in here early with the ILECs when their maps looked kind of the equivalent of this and they were starting to build out. Their networks didn't spring full-blown overnight. It took time. They were getting a series of implicit rather than explicit subsidies over time, and then some different USF plans, but they were receiving support as they built out. I don't have a problem with that. What I have a problem with is saying, well, now that it's someone else, in order to receive support, you've got to already have built out. Well, that's not the standard. It doesn't make any sense. The standard is that money is for the build-out.") Tr. 365-66.

³¹ See, e.g., *NPCR, Inc. d/b/a Nextel Partners*, 19 FCC Rcd 16530, 16538-39 (2004) ("*Nextel Partners*") ("We reject the arguments of certain commenters that Nextel does not offer service throughout the study areas where it seeks designation and therefore should not be designated in these areas. Specifically, these commenters allege that service

example, the Regulatory Commission of Alaska (“RCA”) granted ETC status to Alaska DigiTel (“ADT”) in a huge area in Alaska despite the fact that the company had covered only a small fraction of the proposed ETC service area with facilities at the time the application was filed.³² ADT was given the opportunity to use support to assist in constructing facilities in areas that it would not construct in the absence of support. Post-*Virginia Cellular*, the Oregon commission granted ETC status to U.S. Cellular even though it lacked coverage in the vast majority of rural Oregon.³³ U.S. Cellular submitted a plan for using its initial draw of support to extend service to rural areas beyond its existing network, similar to that which has been provided here.

Given U.S. Cellular’s submission of its plans for using USF support, it is puzzling that STG would make the assertion that “the Commission has already denied an earlier ETC application by Mid-Missouri Cellular that offered far more information than U.S. Cellular has provided in this case.”³⁴ STG provides no specific instances of what “more information” means. The reality is quite the opposite; U.S. Cellular’s showing is complete in ways that Mid-Missouri Cellular’s was not. For example, in *Mid-Missouri Cellular*, the Commission concluded: “MMC provided no specific written plans to the Commission regarding the use of the universal service funds. MMC has failed to provide written documentation of any specific system build-out plans and improvements other than the technology upgrade and has not provided any timetable for

is not offered in many of the zip codes within the study areas where Nextel seeks ETC designation. The Commission has already determined that a telecommunications carrier’s inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC. Moreover, Nextel has committed to improve its network and reach out to areas that it does not currently serve.”); RCC Minnesota, Inc., Docket No. 04-RCCT-338-ETC (Ks. Corp. Comm’n, Sept. 30, 2004) (“RCC Kansas Order”) at p. 12; U.S. Cellular Oregon Order, *supra*, at p. 10.

³² ADT Alaska Order, *supra*, at p. 8.

³³ U.S. Cellular Oregon Order, *supra*.

³⁴ STG Prehearing Brief at p. 2.

implementation of the upgrade.”³⁵ The Commission also found that MMC’s entire build-out commitment consisted of a CDMA overlay that would occur “with or without USF support.”³⁶ By contrast, U.S. Cellular has provided a list of specific communities that would benefit from construction within a specified timeframe, as well as sworn testimony that this construction would not occur in the absence of USF support.³⁷

The Rural ILECs also claim that there is already high-quality wireless service throughout rural Missouri by citing reports that there are already multiple carriers serving rural Missouri.³⁸ The critical fact, which the Rural ILECs conveniently ignore, is that their analysis is purely based on where wireless carriers advertise service, not where they are actually providing usable signal.³⁹ As anyone who travels in rural America knows, service in major towns and along highways is a far cry from high-quality service throughout an area. Here in Missouri, State Senators Delbert Scott and Chris Koster have expressed their concern over wireless coverage in rural areas. See Exhibit 1. Wireless carriers that are not ETCs build facilities only in areas where the business plan makes sense – dense population centers and major roads.⁴⁰ Unlike other carriers, an ETC takes on the obligation to respond to all reasonable requests for service

³⁵ Missouri RSA No. 7 Ltd. Partnership d/b/a Mid-Missouri Cellular, Case No. 2003-TO-0531 (issued Aug. 5, 2004) at pp. 10-11.

³⁶ *Id.* at p. 15.

³⁷ Tr. at p. 139, line 25 – p. 140, line 2 (“Our commitment is to build out these networks in these areas that would not otherwise have received coverage to date.”); Exh. 5 at p. 13, lines 10-15; Petition at p. 14 and Exh. E.

³⁸ *See, e.g.*, Exh. 11HC at p. 17, lines 13-15; p. 25, lines 12-23; p. 45, lines 6-16; Exh. 15HC at p. 51, line 20 – p. 53, line 3; p. 74, lines 3-4; p. 81, lines 14-22.

³⁹ *See, e.g.*, Exh. 15HC at Schedule RCS 13, which purports to depict Verizon Wireless’ service in Missouri as covering most of the state. That map not Verizon’s FCC-licensed service area. U.S. Cellular submitted Verizon’s actual coverage area in Missouri, which comprises only a small portion of the state. *See* Exh. 6 at Schedule NW-6 (revised).

⁴⁰ *See* U.S. Cellular’s Exh. 1, which depicts the company’s existing network, constructed in St. Louis, in major towns, and along major roadways.

throughout an area, which requires a level of investment that simply cannot yield a return on investment without high-cost support.

Recently, the FCC adopted rules establishing criteria to be used when the FCC designates ETCs.⁴¹ U.S. Cellular's certifications as to its commitment to provide the supported services are consistent with those accepted by the FCC and its commitments have consistently been accepted by other state commissions. U.S. Cellular has provided sworn testimony that it will "use all available USF high-cost support to improve its network infrastructure to offer Missouri's rural consumers the highest possible service quality."⁴²

2. U.S. Cellular Will Advertise the Availability of Supported Services Throughout its Proposed Service Area.

As required by 47 C.F.R. § 54.201(d)(2) of the FCC's rules, U.S. Cellular has certified to its commitment to advertise the supported services throughout its proposed ETC service area.⁴³ U.S. Cellular has also committed to reach out to the communities it serves and provide Lifeline and Link-Up services to low income customers.⁴⁴ U.S. Cellular's certification as to its commitment is consistent with that which the FCC has accepted in a number of cases, including *Virginia Cellular*.⁴⁵

⁴¹ *Federal-State Joint Board on Universal Service, Report & Order*, 20 FCC Rcd 6371 (2005) ("FCC Order").

⁴² Exh. 5 at p. 13, lines 10-11.

⁴³ See Petition at pp. 8-9; Exh. 5 at p. 4, lines 19-20.

⁴⁴ See Petition at pp. 8-9. U.S. Cellular offers Lifeline consumers a digital handset for one cent (Tr. at p. 112, lines 6-7), does not require Lifeline consumers to pay a termination fee (Tr. at p. 153, line 24 – p. 154, line 5; p. 186, lines 22-23), and waives its deposit requirement (Tr. at p. 187, lines 3-7).

⁴⁵ *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1573 (2004) ("*Virginia Cellular*").

B. GRANT OF U.S. CELLULAR’S APPLICATION WILL SERVE THE PUBLIC INTEREST IN MISSOURI.

1. A Proper Definition of the “Public Interest” Will Establish Conclusively That U.S. Cellular’s Application Meets the Public Interest Prerequisite for ETC Designation in Rural Areas in Missouri.

The public interest must be determined by following guidance provided by Congress in adopting the Act and the FCC in its enabling orders.⁴⁶ The overarching principles embodied in the Act are to “promote competition and reduce regulation . . . secure lower prices and higher quality services . . . and encourage the rapid deployment of new telecommunications technologies.”⁴⁷ 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.⁴⁸

In its prehearing brief, U.S. Cellular explained why a separate public interest analysis is not properly applied to areas served by non-rural telephone companies such as SBC. We will not repeat that analysis here, other than to note that even if the Commission follows the FCC’s recent view that a public interest, convenience and necessity showing is applicable in non-rural areas, U.S. Cellular meets this standard. Where a company meets the public interest standard in rural areas, that is sufficient to support a public interest finding in non-rural areas.⁴⁹

This Commission must determine whether designation of U.S. Cellular as an ETC will promote the principles embodied in the Act, specifically the goal of ensuring that consumers in rural, insular, and high-cost areas “have access to telecommunications and information

⁴⁶ Pub. L. No. 104-104, 110 Stat. 56 (1996). See also *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 (1999) (“*Ninth Report and Order*”); *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-Second Order on 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, e.g., *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).

⁴⁷ 1996 Act (preamble).

⁴⁸ *First Report and Order, supra*, 12 FCC Rcd at 8801, 8861-62; *Ninth Report and Order, supra*, 14 FCC Rcd at 20480.

⁴⁹ *Virginia Cellular, supra*, 19 FCC Rcd at 1575.

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.*⁵⁰ In evaluating whether U.S. Cellular’s designation will fulfill these objectives, the Commission may properly consider, for example, U.S. Cellular’s intent and ability to bring high-quality service and a broad array of rate plans and local calling options to Missouri consumers. This Commission also can and should consider the competitive response that may result from upgrading and expanding U.S. Cellular’s network, which may “provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.”⁵¹

The FCC’s views on the public interest test to be applied in ETC designation cases, as expressed in the *FCC ETC Order*, are also relevant, although not binding. The FCC ruled that the following factors may be taken into consideration when assessing the public interest:

- increased competitive choice;
- the unique advantages and disadvantages of the competitor’s service offering;
- the potential for cream-skimming in portions of rural ILEC study areas;
- the competitive ETC’s commitments to improve its network and provide service upon reasonable request; and
- the impact of the designation on the universal service fund.⁵²

⁵⁰ See 47 U.S.C. § 254(b)(3) (emphasis added).

⁵¹ *Western Wireless Corp.*, 16 FCC Rcd 48, 57 (2000) (“*Western Wireless Wyoming Order*”), recon. denied, FCC 01-311 (rel. Oct. 19, 2001) (“*Western Wireless Wyoming Recon. Order*”).

⁵² *Federal-State Joint Board on Universal Service, Report & Order*, 20 FCC Rcd 6371, 6388-96 (2005) (“*ETC Report and Order*”).

Because the Commission may follow the federal scheme for its ETC designations, U.S. Cellular will include in its discussion below how U.S. Cellular's designation will accomplish each of the FCC's public interest objectives throughout its proposed ETC service area.

Throughout this proceeding, the Rural ILECs have revealed that they are interested in only one thing: preventing U.S. Cellular from improving its service in rural Missouri so that their constituent companies can retain their monopoly on the local exchange marketplace indefinitely. Consumers in rural Missouri deserve more, and they will get much more if U.S. Cellular's Application is granted as proposed

2. U.S. Cellular's Application Should be Granted Throughout U.S. Cellular's Licensed Service Area in Missouri.

U.S. Cellular witness Don J. Wood aptly commented that "[t]he purpose of this proceeding is *not* whether the introduction of competition for basic telecommunications services in rural areas is in the public interest. That question has already been answered in the affirmative. The policy direction has been set on the federal level by both Congress and the FCC. The questions to be addressed here concern the facts of U.S. Cellular's Application."⁵³ As detailed in the record, there are numerous public interest benefits which will accrue to Missouri consumers as a result of U.S. Cellular's designation.

a. Granting U.S. Cellular's application will advance universal service in Missouri.

To date, U.S. Cellular has invested more than \$160 million in its Missouri network, constructing just over 200 cell sites, not including its St. Louis market, tying the system together with microwave, switching and ILEC trunking facilities.⁵⁴ U.S. Cellular has also set forth a specific plan for using its initial draw of federal high-cost support that may be provided to

⁵³ Exh. 7 at p. 5, lines 8-12.

⁵⁴ Exh. 5 at p. 12, lines 6-8; letter from K. Zobrist to G. Brown, M. Poston, B. McCartney and M. Dandino dated Aug. 30, 2005 (providing, *inter alia*, a list of existing cell sites in proposed ETC service area.).

construct new network facilities in 16 communities that are unserved or underserved by other wireless carriers.⁵⁵

U.S. Cellular has explained how the provision of high-cost support will enable it to deliver to rural consumers higher quality networks that will provide them with the kinds of choices now available in urban areas.⁵⁶ As Mr. Wright testified, “Our ultimate goal is to reinvest and invest every penny that we get from this back into these areas that we would not have otherwise invested.”⁵⁷ As U.S. Cellular’s network improves, the nine supported services will be extended throughout its ETC service area.

On cross-examination, STG counsel asked a series of legal questions (drawing objections), implying that U.S. Cellular has an obligation to invest high-cost support in the same area from which it is generated, regardless of where the greatest need for service arises.⁵⁸ To be clear, the legal requirement applicable to all ETCs is to invest federal high-cost support to “for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 C.F.R. § 54.7. Support is not drawn from any particular Missouri area and neither the FCC nor any other state has ever required a CETC to invest support as STG counsel suggested.⁵⁹ Any ETC may invest in any area where it is designated as an ETC, to expand its

⁵⁵ See Petition at Exh. E. Witness McKinnie noted at the hearing that U.S. Cellular has not yet identified precise cell site locations. Tr. at p. 267, lines 11-14. Identifying precise locations requires, among other things, RF engineering work needed to ensure appropriate coverage, site acquisition work to locate specific real estate or existing towers, legal work to secure leases, and regulatory approvals. All of these steps take place after funding is in place and plans to construct move to the execution stage. See U.S. Cellular Response to CenturyTel’s First Set of Data Requests, DR No. 5.

⁵⁶ Exh. 5 at p. 15, line 11 – p. 18, line 5.

⁵⁷ Tr. at p. 119, lines 20-23.

⁵⁸ See, e.g., Tr. at p. 159, lines 4-6 (“So it’s possible you could get support, say, from a CenturyTel wire center but spend that money in say a Grand River Mutual Telephone Company wire center?”)

⁵⁹ Vermont, the only state to U.S. Cellular’s knowledge that has addressed this question, squarely rejected such a proposal based on the “numerous policy difficulties” and “wasteful spending” that would result. See RCC Atlantic, Inc., Docket No. 6934 (Vt. Pub. Serv. Bd., Sept. 29, 2004) (“RCC Vermont Order”) at pp. 52-53 (“The effect of the ITC’s recommendation is that where support is based upon facts measured at a certain place, support must also be spent in that place. We reject this argument. Congress might have done this if federal support were actually *collected* from customers in the ITC areas where it is distributed. Support, however, is collected nationally from all industry sectors, including the wireless industry. . . . Moreover . . . [the proposal] would be likely to hamper timely and

network in an orderly fashion. U.S. Cellular is currently meeting its legal obligation to demonstrate that it is properly investing in its ETC service areas in other states where it has been designated.⁶⁰

U.S. Cellular has amply demonstrated its ability and commitment to serve consumers. U.S. Cellular has a proven track record in five other states, which is of great relevance to its Petition here. U.S. Cellular has set forth specific accomplishments as an ETC, including the construction of new cell sites, an overlaid digital service, upgrading of its switch, additional channel capacity, and investment in backhaul links to provide rural consumers with a high-quality network.⁶¹ All of these investments advance universal service by making the nine supported services available to a greater number of people living in high-cost areas. Mr. Wood described how federal high-cost support will advance universal service:

Now, clearly there are white areas on that map. There are people in those white areas. Either they live there, they work there, they pass through there, they have health and safety needs that would benefit from wireless coverage. To go into most of those areas, you can't make a business case for it without the Universal Service money coming in and tilting that business case one way or the other to make it a positive case to make these investments.⁶²

The FCC has put in place every incentive for CETCs to construct additional facilities in high-cost areas. In particular, a CETC receives support only after it gets a customer

effective investment. . . One area could get a new cell site only when its capital reserve grew sufficiently, possibly a matter of years or even decades. In the interim, large amounts of support would be left unused, providing no benefit to the state. Under the best of circumstances this would delay construction in many areas. At worst, some areas might never get service if they generate little federal support.”) (footnotes omitted).

⁶⁰ See Tr. at p. 191, lines 2-14: (“Q. If the company receives a designation and let's say \$8 million comes in, is it the company's intention to use some accounting method to segregate that \$8 million in its budgets or planning or any other process so that this Commission can be assured that that \$8 million went where it was supposed to? A. I understand your question. We have the systems in place now where we'll be able to track monies received versus expenses. Yes, we have the systems in place. Q. Do you, in fact, do that in other states? A. Yes, in Oregon, Washington and Oklahoma, as well as Wisconsin markets. Yes, sir, we do.”)

⁶¹ Exh. 5 at p. 5, lines 4-15; p. 10, line 19 – p. 11, line 7.

⁶² Tr. at p. 357, line 18 - 358, line 2.

and receives no support when it provides service via resale.⁶³ Thus, to succeed in obtaining customer revenue and high-cost support, U.S. Cellular must first construct facilities, then convince consumers to choose its service.⁶⁴ Through its six-step process for provisioning service, U.S. Cellular has demonstrated its commitment to offer service throughout its proposed ETC service area.⁶⁵

- b. Granting U.S. Cellular's application will lead to improved service quality.

Improving service quality and consumer choice is critical to advancing universal service. The most critical component of service quality is service availability. U.S. Cellular has detailed for the Commission how federal high-cost support has enabled U.S. Cellular to improve service availability in Washington.⁶⁶ U.S. Cellular has also set forth a detailed recitation of its service quality *in every area where it currently provides service*.⁶⁷ Without unduly repeating U.S. Cellular's testimony, we note specifically:

- U.S. Cellular actively monitors its service quality, specifically measuring (1) established call rate at the beginning of the call set-up process; (2) established call rate on the traffic channel; (3) traffic channel congestion; (4) network utilization and blocking for network trunks; and (5) network quality in terms of CDMA-specific measurements such as up-link and

⁶³ See 47 C.F.R. § 54.307(a), (b).

⁶⁴ Witness Meisenheimer incorrectly believes that an ETC could get support without first serving customers with its own facilities (Tr. at p. 238, line 2 – p. 239, line 2), however Mr. Wood accurately testified, “Q. Is there any way for U.S. Cellular to get support for a customer before it builds facilities? A. No, because if it's not actually serving the customer, it can't report the line and can't receive support. So it's got to begin its build-out process in order to generate customers in order to generate support.” Tr. at p. 215, line 22 – p. 216, line 3.

⁶⁵ Exh. 5 at p. 7, line 18 – p. 10, line 5. See also *ETC Report and Order*, supra, 20 FCC Rcd at 6380-81.

⁶⁶ Exh. 5 at p. 5, lines 4-10.

⁶⁷ *Id.* at p. 11, lines 12-21.

down-link receive quality. These measurements are analyzed daily, and many are available to analyze real-time.⁶⁸

- U.S. Cellular has a call completion rate of roughly 98%, which includes dropped calls in its calculation.⁶⁹
- U.S. Cellular takes an “aggressive and proactive approach” to resolving network blocking in both radio frequency and interconnect areas.⁷⁰
- U.S. Cellular utilizes a powerful RF analysis tool for its network coverage models, assumptions, and coverage predictions to ensure that consumers receive high-quality service.⁷¹
- The company prioritizes network consistency by using conservative assumptions in designing its system so that the handset can effectively communicate with the base station and dropped calls are minimized.⁷²
- Once new facilities are installed, U.S. Cellular conducts drive tests to verify its propagation analysis, and makes necessary adjustments if the results fall short.⁷³
- Each site has backup power capable of operation for at least 4 hours, and portable diesel generators are available for immediate deployment to provide service for at least 24 hours without refueling.⁷⁴ Each cell site is

⁶⁸ Exh. 4 at p. 8, lines 3-10.

⁶⁹ *Id.* at p. 8, lines 12-14; Tr. 55 at lines 5-8.

⁷⁰ *Id.* at p. 8, line 17 – p. 9, line 6.

⁷¹ *Id.* at p. 9, lines 9-20.

⁷² *Id.* at p. 9, line 23 – p. 10, line 7.

⁷³ *Id.* at p. 10, lines 7-10.

⁷⁴ *Id.* at p. 6, lines 2-7; Tr. at p. 45, lines 14-25.

monitored 24/7 and equipped with alarms to alert technicians of problems.⁷⁵

- U.S. Cellular keeps long office hours and maintains 24/7 call centers for customers who need service after hours.⁷⁶ Its work crews respond immediately to outages 24/7.⁷⁷
- U.S. Cellular has implemented E-911 Phase II in Missouri and is prepared to roll it out in every area where a PSAP requests it within the state.⁷⁸
- Not surprisingly, U.S. Cellular’s high level of customer service has resulted in an especially loyal subscriber base, with a churn rate that is well below the national average for major carriers.⁷⁹
- U.S. Cellular has committed to abide by the Cellular Telecommunications Industry Association Consumer Code for Wireless Service (“CTIA Code”) and to provide the Commission with data concerning the number of consumer complaints per 1,000 handsets on an annual basis.⁸⁰

In every area where U.S. Cellular constructs new service consumers will receive the benefits described above.⁸¹

Based on the facts and commitments on service quality U.S. Cellular has placed into the record, CenturyTel’s unsupported assertion that U.S. Cellular has fallen short on service

⁷⁵ *Id.* at p. 6, lines 19-21.

⁷⁶ Exh. 5 at p. 11, lines 17-18.

⁷⁷ *Id.* at lines 18-19.

⁷⁸ Exh. 4 at p. 3, lines 13-15.

⁷⁹ *Id.* at p. 11, lines 14-17; Exh. 5 at p. 15, lines 5-6.

⁸⁰ Petition at p. 14; Exh. 5 at p. 20, lines 10-16.

⁸¹ Exh. 5 at p. 17, lines 2-4. Tr. at p. 194, lines 13-19. CenturyTel’s counsel made this point succinctly in a rhetorical question to Mr. Wright, asking, “isn’t it true that none of the benefits such as mobility or health and safety can actually accrue to the customer if the customer is unable to adequately receive adequate signal coverage?” Tr. at p. 147, lines 19-22.

quality in the same manner as Mid-Missouri Cellular must be rejected.⁸² As detailed above, U.S. Cellular provided not only verbal commitments, but also a detailed discussion of its track record in other states where it is an ETC, specifics on its internal service quality monitoring, and details on its system engineering. Moreover, its commitments to follow the CTIA Code and to report annually on complaints have been accepted and deemed sufficient by the FCC and several states.⁸³ To the extent the Commission wishes to explore additional competitively neutral criteria, U.S. Cellular has unequivocally stated its willingness to take part in a rulemaking.⁸⁴ Indeed, it participated in a workshop that preceded the recently commenced rulemaking on this subject.⁸⁵ Staff provided testimony largely expressing satisfaction with these commitments, recommending that “the Commission address any additional quality of service standards in a rulemaking regarding ETC carriers in general.”⁸⁶

In sum, the improved service quality, reliability, and increased choices to rural Missouri will be dramatic. U.S. Cellular’s sworn testimony concerning its high-quality service provides this Commission with a compelling basis to conclude that granting ETC status is in the public interest.

⁸² CenturyTel Prehearing Brief at p. 23; Tr. at p. 30, lines 16-19, p. 31, lines 12-15.

⁸³ See, e.g., *RCC New Hampshire Order*, *supra*, at para. 21; *Bluegrass Wireless, LLC, et al.*, Case Nos. 2005-00017 et al. at p. 6 (Ky. PSC, July 8, 2005) (“Bluegrass Kentucky Order”) at p. 7; *RCC Kansas Order*, *supra*, at pp. 25-26; *Viaero Nebraska Order*, *supra*, at p. 9; *Easterbrooke Cellular Corp.*, Docket No. 03-0935-T-PC (W.V. PSC, Aug. 27, 2004) (“Easterbrooke West Virginia Order”) at pp. 8-9,

⁸⁴ Exh. 5 at p. 21, line 19 – p. 22, line 4.

⁸⁵ *In the Matter of Proposed New Rule 4 CSR 240-3.570 Regarding Eligible Telecommunications Carrier Designations for Receipt of Federal Universal Service Fund Support*, Case No. TX-2006-0169.

⁸⁶ Exh. 9 at p. 13, lines 20-23 (“Q. If the Commission grants ETC status to U.S. Cellular, do you recommend the Commission place additional quality of service standards on U.S. Cellular? A. Not at this time. I recommend the Commission address any additional quality of service standards in a rulemaking regarding ETC carriers in general.”).

- c. Granting U.S. Cellular's application will increase consumer choice.

U.S. Cellular described in detail how its service currently provides consumers with choices that are not available from rural ILECs, or are available *only* from rural ILECs.⁸⁷ Of course, consumers can only take advantage of U.S. Cellular's service in areas where network facilities have been constructed. Federal high-cost support will permit U.S. Cellular to extend its service so as to increase consumer choice in more areas in Missouri. Mr. Wright, a Missouri native who has first-hand knowledge of the area where U.S. Cellular hopes to improve its network, testified about several communities that need investment that U.S. Cellular is prepared to make with support:

A couple specifically, Livonia, which is the area all the way up north just as you go into Iowa, very little coverage at all, currently today. As again was one of those areas I used to work as an outside sales rep, and there isn't much coverage, if any at all. Another one is the Brashear area, which is about 45 minutes south of that particular cell site, another area of opportunity and very little coverage today, if at all. And so the Laddonia area, which is in the Missouri 13 area, which is kind of sitting off by itself right now to the right, south of St. Louis, an area that has had very little coverage for an extended period of time, and this would greatly enhance the opportunities for a person to have wireless service today. Just to name three.

Q. Okay. Can you project for me with any --even an estimate of when these communities would be likely to receive your company's service if this application is denied?

A. An estimate? Years. Years.⁸⁸

In areas where new network facilities are constructed, U.S. Cellular will be able to deliver mobility, which the FCC and several states have found to be an important public interest benefit.⁸⁹ U.S. Cellular also provides consumers with a variety of local calling plans, which it

⁸⁷ *Id.* 5 at pp. 17, line 2 – p. 18, line 5.

⁸⁸ Tr. at p. 195, line 11 – p. 196, line 5.

⁸⁹ See, e.g., *ETC Report and Order*, *supra*, 20 FCC Rcd at 6391; *Virginia Cellular*, *supra*, 19 FCC Rcd at 1576; *ADT Alaska Order*, *supra*, at 13; *RCC Kansas Order*, *supra*, at pp. 24-25; *Bluegrass Kentucky Order*, *supra*, at p. 6;

believes to be equal to or superior to plans available from competing ILECs, so that consumers may decide what plans and features suit their needs. All of U.S. Cellular's rate plans offer consumers the ability to call every phone in the continental United States without toll charges.⁹⁰ The area within which a customer can use a U.S. Cellular phone (local calling scope) is obviously larger than that of any rural ILEC, which only offers service at the end of a line. U.S. Cellular also offers a variety of features, such as caller ID, three way calling, call waiting, voice call notification, short digit dialing, and short message service ("SMS").⁹¹ A byproduct of high-cost support, these services increase competition and consumer benefit, which are important public interest considerations.

d. Granting U.S. Cellular's application will deliver health and safety benefits.

The public safety benefits from improved wireless services scarcely bear mention. People living in rural areas increasingly depend on mobile phones to provide critical communications needs.⁹² It is self-evident that each time U.S. Cellular adds a cell site or increases channel capacity, the number of completed calls, including important health and safety calls, will increase.

E-911, which permits a caller to be located and tracked, is useless in areas where signal is weak or non-existent. Thus, for every cell site that U.S. Cellular constructs, the

U.S. Cellular Maine Order, *supra*, at p. 3; RCC South Dakota Order, *supra*, at p. 6; RCC Vermont Order, *supra*, at p. 37; U.S. Cellular Washington Order, *supra*, at p. 11; U.S. Cellular Wisconsin Order, *supra*, at p. 8.

⁹⁰ See Exh. 6 at p. 2, lines 9-12.

⁹¹ Exh. 5 at p. 11, lines 12-16.

⁹² See Exh. 7 at p. 9, line 20 – p. 10, line 2 (“The availability of even the highest quality wireline service is no substitute for a mobile service with broad geographic coverage, simply because the wireline service is often physically not there when needed. In an area where fields being worked are far from the road, and where wireline phones along the roadway are few and far between, the availability of wireless communication can literally save a life.”)

reliability and performance of U.S. Cellular's basic 911 service will improve immediately and E-911 service will improve as PSAPs come on line.⁹³

As Mr. Wood testified:

And the last thing that I don't want to get understated is the health and safety benefit, because while the ILECs, fine companies all, they're providing service, they talk about serving throughout, they don't serve throughout. They serve at the end of a wire, and it may be that when you have an emergency you're not at the end of a wire, you're alongside a road, you're in a field, you're away from that. That access to emergency services with the company's phones that can tell the emergency operator where you are within six feet on the planet without you being able to utter a word, that's a benefit that I don't want to get lost in this.⁹⁴

In sum, it would be difficult to overstate the important public interest benefits relating to health and safety that will be realized by supporting improvement to critical wireless infrastructure in these rural areas.

- e. Rural Missouri will reap economic development benefits as new cell sites are constructed.

Don Wood testified how infrastructure development opens opportunities for people who live in smaller towns to conduct business the way they want to.

I want you to take away from this that are benefits here. There's federal money available for this specific purpose, to expand that coverage, not just that first phase on that map, but to fill out through that map to provide this coverage certainly for people's convenience, certainly for people who do business, who need the phone service for their business on a mobility basis, certainly for the economic development of these areas. The research that I've done for these rural areas, granted in Georgia, is that availability of wireless service and availability of high-speed data services are the top two things we hear from companies when we're asking them,

⁹³ Commissioner Appling noted the critical health and safety benefits that mobile wireless telephony can provide. See Tr. at p. 361, line 25 – p. 362, line 9.

⁹⁴ Tr. at p. 360, lines 13-24.

what's your threshold on coming to this area to put your factory, to put your office? That's the things that consistently come up. So there's rural economic development benefit issue to this.⁹⁵

In every area where U.S. Cellular constructs a new cell site, businesses that require mobile communications to improve how they serve their customers will be able to take advantage of new efficiencies and opportunities that are not available without high-quality mobile services.⁹⁶

- f. Granting U.S. Cellular's application will stimulate a competitive response by the Rural ILECs that will benefit the public.

One of the biggest problems rural consumers have with wireline service is that, unless all of their calling is within a very small geographic area, it is expensive. This is because local calling areas offered by most Rural ILECs encompass only a few thousand, or even a few hundred, other numbers.⁹⁷

There is no question that if U.S. Cellular is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from the Rural ILECs. Some, and maybe all of the following things can be expected to occur: (1) service quality and customer service will improve; (2) new investments in plant will be made; (3) in areas where high-speed data (DSL) is not available, it will be deployed more quickly; (4) wider local calling areas, bundled service offerings, and lower prices overall will be introduced; and (5) ILECs will

⁹⁵ Tr. at p. 359, line 20 – p. 360, line 12.

⁹⁶ See RCC Vermont Order, *supra*, at p. 50 (finding that “[a]dditional wireless deployment will . . . provide an economic-development benefit because the quality of telecommunications networks is a critical factor for businesses deciding whether to locate or remain in a rural area. Business and community leaders. . . often say that they need high-quality networks to permit contractors, farmers and other businesses that rely on mobile communications to conduct their businesses efficiently.”); Easterbrooke West Virginia Order, *supra*, at p. 61 (“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.”)

⁹⁷ See discussion at Section B.4 *infra*, addressing the limited local calling areas of Missouri rural ILECs.

begin to offer video delivery services.⁹⁸ The Rural ILECs will take these steps to ensure that they remain competitive with U.S. Cellular and continue to retain and attract customers.

Without federal high-cost support being made available to improve and expand service to rural consumers, U.S. Cellular will not be able to compete for primary service in a way that would force a competitive response from the Rural ILECs members. U.S. Cellular has outlined how it offers customers a wide variety of choices. If the playing field for high-cost support is leveled, U.S. Cellular will be able to compete with ILECs for primary telephone service, which will undoubtedly trigger a competitive response.

- g. A grant of U.S. Cellular's application will not burden the federal universal service support mechanism.

The recent *FCC ETC Order* indicated that whether the size of the federal universal service support mechanism would significantly increase as a result of a proposed ETC designation could be a factor in the designation process. The FCC did not provide state commissions with any guidance as to what would amount to "significant." However, it is clear that no individual designation anywhere in the country is likely to cause a significant burden on the fund.⁹⁹ First, over 90% of the federal fund goes to ILECs and the vast majority of increases in the fund over the past several years have gone to ILECs.¹⁰⁰ In every area where it serves, U.S. Cellular is projected to receive much less support than its wireline counterparts.¹⁰¹ Second the

⁹⁸ See Exh. 7 at p. 7, line 18 – p. 8, line 3 (“These competitive benefits have both a short term and long term component. End user consumers will benefit in the short term from a choice of suppliers that present different technologies, and also from choosing the technology that best meets their needs. They can also select from a much broader array of service and pricing plans, and again can choose the plan that best meets their individual needs. Over the longer term, consumers will benefit as competitive market forces act to make all providers, including the ILECs, more efficient and responsive to customer needs.”)

⁹⁹ *ETC Report and Order*, *supra*, 20 FCC Rcd at 6395.

¹⁰⁰ See Federal-State Joint Board Monitoring Report, October 2004, *supra*, at Table 3.1; See also Tr. 361, lines 1-4.

¹⁰¹ See Second Quarter Appendices – 2004, HC01, available on USAC web site at <http://www.universalservice.org/overview/filings/2004/Q2/default.asp>.

high-cost portion of the fund is now nearly \$4 billion, which makes it impossible that the designation here will have anything but a negligible impact on the fund.¹⁰²

Mr. Wood testified that the risk of wasting significant high-cost support only extends to the next October after designation. In response to Commissioner Appling's question, he stated:

So who gets hurt? Let's say they've pulled the wool over all our eyes, we're all fooled, they're not going to do this, any of this. You are going to be from the time of designation until the time of your first certification, depending on how it plays out, some number of months, but less than a year away from your first review where you can cut them off clean and don't recertify them. So who gets hurt? Where's the window of exposure? There's the window of exposure, if for some reason we've all been duped, you can cut them off inside of a year in terms of funding. You recertify them; you say, we're not going to recertify them. You tell the FCC and USAC, they don't get another penny. That's the end of that process. That's the window of exposure. I don't believe it will happen, but that's what gets balanced with these benefits that we've talked about.¹⁰³

Finally, rural ILECs have not raised the "burden on the USF" issue when other competitive carriers have sought competitive ETC status in Missouri. Two examples:

- Mark Twain Communications Company was granted ETC status in docket TA-2000-591. None of the Rural ILECs intervened to oppose.
- Fidelity Communications Services I, Inc. was granted ETC status in docket number TA-2002-122. This company serves the Rolla and Newberg exchanges of Sprint and is affiliated with Fidelity Telephone Company, an intervenor in this case. None of the Rural ILECs intervened to oppose.

¹⁰² Based on USAC's most recent projections, U.S. Cellular estimates that it will receive approximately \$8 million in high-cost support in its first year of eligibility, or about two-tenths of one percent (0.2%) of the total federal high-cost support projected for that time period.

¹⁰³ Tr. at p. 363, line 20 – p. 364, line 12. *See also* Tr. at p. 281, line 17 – p. 282, line 1 (McKinnie testimony).

The negligible impact of U.S. Cellular's designation in Missouri on the fund must be weighed against the significant benefits that the designation will bring to the state. At this stage, it is impossible to conclude that this designation will unduly burden federal support mechanisms or that the projected burden is not outweighed by the benefits that will accrue to Missouri consumers.¹⁰⁴

3. U.S. Cellular Has Provided Sufficient Information Concerning its Plans for Its Use of Support to Permit a Grant and Has Committed to Provide a Five-Year Plan if the Commission Requires One.

Currently, this Commission's rules do not require a five-year plan to be submitted with a petition for ETC status. Until rules are adopted, U.S. Cellular has advocated use of the FCC's guidelines for designation contained in the *ETC Report & Order*. That Order requires all ETC applications filed after the rules become effective to include a five-year plan, which is codified at 47 C.F.R. Section 54.202(b). Any application is filed before the effective date of the rule need not include a five-year plan, but instead must submit one by October 1, 2006. As of this date, the FCC's rule is not effective because it has not been approved by the Office of Management and Budget.¹⁰⁵

Currently this Commission has draft rules which, if adopted, would apply to U.S. Cellular if it is designated in this proceeding. Staff recommends not "wedge" the draft rules into this designation proceeding, as it may prejudice the pending rules.¹⁰⁶ Public Counsel asks the

¹⁰⁴ Rural ILEC concerns about growth in the size of the federal universal service fund due to designation of competitive ETCs are disingenuous. Rural ILECs have expressed no concern about the fact that the high-cost portion of federal universal service has increased from \$1.72 billion to \$3.46 billion over just the past five years, a more than twofold increase. See Federal-State Joint Board Monitoring Report, October 2004, at Table 3.1. Over 86% of that increase has gone to ILECs. See *id.* at Table 3.2. The Monitoring Report can be viewed on the FCC's web site at <http://www.fcc.gov/wcb/iatd/monitor.html>. Moreover, when the FCC proposed to cap funding to rural ILECs, they sued in federal court to overturn the decision. *Alenco, et al. v. FCC*, 201 F.3d 608 (5th Cir. 2000).

¹⁰⁵ See Fed. Reg. Vol. 70, No. 100 at p. 29960 (May 25, 2005).

¹⁰⁶ Tr. at p. 266, lines 5-11.

Commission to adopt an *ad hoc* set of rules that witness Meisenheimer concedes, to her knowledge, that no other state has adopted.¹⁰⁷ U.S. Cellular is also not aware of any state that has adopted such a comprehensive regulatory structure in the course of an adjudicatory proceeding to designate an ETC.

Instead, the Commission should follow the FCC, which has continued to grant petitions for ETC status since March of 2005, most recently in November when it issued a grant to RCC in New Hampshire.¹⁰⁸ Other states have adopted the FCC's guidelines as rules or as interim standards governing ETC petitions,¹⁰⁹ one recent example being West Virginia,¹¹⁰ which was discussed in Don Wood's testimony at the hearing.¹¹¹ The West Virginia example is salient because of the extensive participation of Billy Jack Gregg, a member of the Federal-State Joint Board on Universal Service and member of the Rural Task Force convened in the run-up to the 2001 revisions to the FCC's rural high-cost universal service rules.¹¹² It is also relevant because the state commission, in a separate proceeding considered substantially more intrusive rules but declined to adopt them,¹¹³ instead opening up a new docket to consider the FCC's guidelines. In adopting those guidelines, the Commission noted:

¹⁰⁷ Tr. at p. 241, lines 2-6.

¹⁰⁸ See *RCC New Hampshire Order*, *supra*.

¹⁰⁹ See, e.g., In the Matter of the Commission, on its own motion, seeking to amend Title 291, Ch. 5, Telecom. Rules and Regulations, to add rules for designating eligible telecommunications carriers in Nebraska for the purpose of receiving federal universal service support, Certificate of Adoption (Neb. PSC, Sept. 21, 2005); Bluegrass Kentucky Order, *supra*.

¹¹⁰ General Investigation Regarding Certification of Federal Universal Service Funding for Eligible Telecommunications Carriers in West Virginia, Commission Order, Case No. 05-0714-T-GI (W.V. PSC, May 17, 2005) ("May 17 W.V. Order").

¹¹¹ See Tr. at p. 380, line 14 – p. 381, line 7.

¹¹² See Tr. at p. 308, line 4.

¹¹³ GI: Granting ETC Status to Carriers and ETC Compliance, Commission Order, Case No. 03-1199-T-GI (W.V. PSC, May, 31, 2005).

This Commission concurs with the FCC that its recently adopted annual reporting requirements...are reasonable and will further the goal of ensuring that ETCs satisfy their obligation under Section 214(e) of the Act to provide supported services throughout their designated service areas. Therefore, this Commission will adopt [the] FCC's annual reporting requirements.¹¹⁴

The Rural ILECs and Public Counsel repeatedly extol the FCC's *ETC Report & Order*, which U.S. Cellular has committed to follow as an interim step until rules are adopted in Missouri. Regarding whether a five-year plan must be submitted as a condition of granting an ETC petition, the rule adopted could scarcely be more explicit:

Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier ***or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules*** must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under section 54.209. 47 C.F.R. Section 202(b) (emphasis added).

Section 54.209 of the FCC's rules include a requirement that a five-year plan be submitted. The FCC's recent actions confirm the approach recommended by U.S. Cellular in this case. For example, RCC did not submit a five-year plan with its New Hampshire petition, or amend its petition to include a five-year plan, but will be required to do so on or before October 1, 2006.¹¹⁵ In the West Virginia example discussed above, the state commission issued a separate order to clarify that no carrier would be required to file a network improvement plan until October 1, 2006.¹¹⁶ U.S. Cellular urges this Commission to do likewise. If U.S. Cellular's petition is to be judged by the FCC's framework, then a five-year plan is not required

¹¹⁴ May 17 W.V. Order, *supra*, at p. 5.

¹¹⁵ *RCC New Hampshire Order*, *supra*, at para. 9.

¹¹⁶ General Investigation Regarding Certification of Federal Universal Service Funding for Eligible Telecommunications Carriers in West Virginia, Commission Order, Case No. 05-0714-T-GI (W.V. PSC, July 14, 2005).

to be filed with the petition, but must be filed no later than October 1, 2006. U.S. Cellular has unequivocally and repeatedly committed to provide a five-year plan consistent with the FCC's rules, if that is what the Commission wants.¹¹⁷ If a five-year plan is important to the Commission, it may require U.S. Cellular to submit one before recertifying the company in October, as Nebraska recently did in its designation of Viaero Wireless to be an ETC.¹¹⁸

What U.S. Cellular objects to is the Rural ILECs' advocating dismissal of this petition because U.S. Cellular failed to comply with a requirement that was not in effect when the petition was filed and is not in effect today, ostensibly because the Company has not volunteered to comply.¹¹⁹ Failure to volunteer is not grounds for dismissal. Moreover, it strains credulity to suggest that a rule can be "necessary and essential"¹²⁰ to an adjudication in Missouri

¹¹⁷ Exh. 5 at p. 19, lines 6-17 ("Q. If required to do so, will U.S. Cellular annually submit a five-year service quality improvement plan, at the wire center level, including maps detailing progress towards meeting its plan targets; an explanation of how much universal service support was received; how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled? A. Yes. Although I believe that this Commission would be better served by an annual plan rather than a five-year plan. Since the Commission must recertify U.S. Cellular's eligibility on an annual basis, the company can provide much more accurate and reliable data each year, permitting a proper accounting of its activities. **However, if required, U.S. Cellular will submit a five-year plan for the use of USF high-cost support.**") (emphasis added); Exh. 6 at p. 1, line 21 – p. 2, line 6 ("Assuming a designation occurs near January 1, 2006, we will receive three quarters of support by September 30, 2006, and we will be in a better position at that time to determine how much support we have at our disposal to expand and improve our network coverage. On or before that date, we will submit whatever the Commission requires in terms of plans for use of support, **whether it be a more detailed 18-month plan or a five-year plan set forth by the FCC. To be clear, whatever the Commission requires with respect to plans for the use of support, we will submit.**") (emphasis added); Tr. at p. 122, lines 18-25 ("We just want all carriers to be held to the same standards. **And if that's the case, then we will prepare a five-year plan.** Beyond that, our concern had been not knowing what we were actually going to get in support for the first year, let alone two, three, four and five. It's difficult to put a plan together if that is a concern. But in fact, **if the Commission rules that's what we need to do, then that's, in fact, what we'll do.**") (emphasis added).

¹¹⁸ See Viaero Nebraska Order, *supra*, at p. 15. There, the Nebraska PSC required Viaero to provide a five-year plan by March of 2006 so the PSC would have time to review it in advance of its October recertification.

¹¹⁹ Witness Stidham correctly understood that a five-year plan is not required of applicants filing with the FCC ("Q. Sir, my question is, in these cases -- and maybe you're not familiar with them, but in these cases subsequent to the March 17th order, isn't it true that they did not require to have a five-year plan before them in acting upon those applications? A. As I understand it, that is correct.") Tr. 419.

¹²⁰ STG Prehearing Brief at p. 11.

when the rule has not been adopted in Missouri and, in any event, is not yet effective with regard to petitioners before the FCC.

U.S. Cellular supports the fundamental legal principle that an administrative agency has an obligation to decide an adjudicated matter under the law applicable at the time an application is submitted. *See AT&T Co. v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992). While agencies may issue guidelines or interpretive rules without engaging in a notice-and-comment rulemaking, the Administrative Procedure Act requires a rulemaking proceeding if the agency action adopts a “new position inconsistent with . . . existing regulations.” *Shalala v. Guernsey Memorial Hosp.*, 514 U.S. 87, 88 (1985). Where an agency “changes the rules of the game . . . more than a clarification has occurred.” *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003).

U.S. Cellular’s application should be processed under the standards in force on the date its application was filed. While the Commission is surely empowered to require U.S. Cellular to comply with new standards going forward, it should only impose them post-grant. This is exactly how the FCC treated applications for ETC status pending on or before the effective date of its new rules when it adopted Section 54.202(b).

The Rural ILECs’ view, that U.S. Cellular’s application should be dismissed, is unreasonable and does not serve the public who needs the investment U.S. Cellular is prepared to deliver. U.S. Cellular has submitted into the record a plan for use of support during its first 18 months as an ETC,¹²¹ which amounts to more information than the FCC has ever required of ETC petitioners to date, including the recent grant of ETC status to RCC and to Virginia PCS

¹²¹ *See* Petition at Exh. E.

Alliance, L.C. and Richmond 20 MHz LLC d/b/a/ NTELOS in June of 2005.¹²² Moreover, it will be impossible for U.S. Cellular to complete its initial construction plan before October of 2006, giving the Commission an opportunity to look at additional information from U.S. Cellular before that date to determine whether the company should be recertified.¹²³

Mr. Wright was repeatedly questioned on this point. Although CETCs do not know with any reasonable certainty how much support they will receive, Mr. Wright consistently responded that if U.S. Cellular receives more support than is projected, the company will invest that additional support, dollar for dollar, into its network to expand service in rural Missouri.¹²⁴ Likewise, if U.S. Cellular receives less, it will still commit to construct sixteen sites.¹²⁵ U.S. Cellular has provided the Commission with projected targets for sixteen new cell sites that would be constructed with support, along with detailed maps depicting the new coverage and

¹²² *Virginia PCS Alliance, L.C. and Richmond 20 MHz LLC d/b/a/ NTELOS*, DA 05-1663 (June 14, 2005) (“*NTELOS Virginia Order*”).

¹²³ When asked how the Commission could be sure U.S. Cellular’s federal high-cost support is being spent appropriately, Staff Witness McKinnie replied: “What I would expect to occur would be that U.S. Cellular, when they come back in for recertification in what I believe would be October 2006. . . is that they would come in and they would demonstrate the amount of money that they have spent in the rural high-cost areas in the state of Missouri. And I think it would be wonderful if they would provide an affidavit and they would say something of that sort. I think that would be part of the recertification process.” Tr. at p. 272, lines 14-21.

¹²⁴ *See, e.g.*, Tr. at p. 142, line 2 – p. 143, line 3 (“ Q. And if you receive 8 million you're still going to build 16? A. Yes, sir. Q. What are you going to do with the other 2 million? A. We're going to put more cell sites -- all monies, dollar for dollar, will go in these areas that currently don't have coverage. So if we can get another four or five sites in and we can take that to 20 or 21 sites, then we absolutely will. Our accountability is to the money which we are receiving. Q. Okay. A. And our focus is going to be in the rural areas that currently do not have coverage....What I'm saying is that if the -- in fact, we get 8 million and it only costs us 6 million, we will put additional cell sites in these areas that would not otherwise have coverage.”)

¹²⁵ *See* Tr. 141-42 (“And I want to be clear on this, too. We have to start at some point. 16 cell sites, we put a dollar amount to that as being around \$6 million cost. If we receive \$3 million, as an example, in 2006, we're going to build, if granted this status, 16 cell sites in these approximate areas, areas that we currently do not have coverage today, they currently do not have coverage today.”)

communities to be served as a result of this investment.¹²⁶ U.S. Cellular has stated its willingness to submit a five-year plan for use of high-cost support within the first year after its designation, or at such other time the Commission may require. In the meantime, the Commission has ample tools at its disposal to ensure that U.S. Cellular is using support properly during that first year to bring benefits to consumers who so clearly need them.¹²⁷ In sum, U.S. Cellular's plan for use of support, placed into the record of this proceeding, is more than sufficient to support a grant.

4. Consumers Will be Well Served by Having Access to U.S. Cellular's Service Offerings, Which Promote Affordable Telephone Service and Increased Choices in Every Area Where U.S. Cellular Constructs Facilities.

Many rural consumers who have no choice but wireline service find themselves in an unfortunate situation – the inability to place calls beyond a few thousand, or even a few hundred numbers, without paying toll charges. In Missouri, customers of the Granby Telephone Company pay only \$6.60 for residential service and \$8.85 for business service, which provides unlimited local calling to the Diamond and Granby exchanges, which comprise 2,188 residential and 551 business access lines. Granby charges separately for all custom calling features that are included in U.S. Cellular's service plans.¹²⁸

¹²⁶ See Petition at Exh. E; Exh. 2; letter from K. Zobrist to G. Brown, M. Poston, B. McCartney and M. Dandino dated Aug. 30, 2005 (providing, *inter alia*, list of existing cell sites in proposed ETC service area and a map showing predicted RF coverage resulting from the proposed sites.)

¹²⁷ If the ILECs are so concerned about seeing that valuable high-cost support is properly used, surely they would support the Commission exercising its authority in a competitively neutral fashion to ensure that ILECs are not wasting valuable support on excessive dividends or otherwise failing to invest, leaving consumers with substandard and antiquated facilities that cannot provide vertical services, local number portability, and most important, no choice in telecommunications service provider.

¹²⁸ Source: Granby Tariff and 2004 Annual Report. U.S. Cellular requests the Commission to take official notice of Granby's Tariff and Annual Report.

Holway Telephone Company charges \$13.00 for residential service and \$25.00 for business service, which provides unlimited local calling to the Skidmore and Maitland exchanges, which comprise 495 residential and 54 business access lines. Holway charges separately for all custom calling features that are included in U.S. Cellular's service plans.¹²⁹

For other rural landline customers, the pattern is usually the same. Consumers pay a low rate to get unlimited access to a few numbers, but pay toll for everything else. In addition, they pay relatively high rates for vertical services such as caller ID that cost almost nothing to provide. In rural America, it is not uncommon for wireline consumers who regularly call beyond their exchange to incur monthly bills over \$100. The lack of choices rural consumers face was a central problem that the 1996 Act attempted to solve, by allowing competitive carriers to access high-cost support to construct facilities that deliver such choices.

In every area where U.S. Cellular is able to construct new facilities, consumers will have the choice of selecting a U.S. Cellular rate plan that will be competitive with, or more affordable than, services offered by ILECs. If U.S. Cellular's offerings are not affordable, consumers will not choose them and U.S. Cellular will not get support or consumer revenue – it will be forced to lower its prices or broaden its offerings to capture support and customer revenue.¹³⁰ We note that the FCC has never conducted an affordability analysis in an ETC designation proceedings because affordability is presumed in competitive markets.¹³¹

¹²⁹ Source: Holway Tariff and 2004 Annual Report. Holway's toll charges could not be located. U.S. Cellular requests the Commission to take official notice of Holway's Tariff and Annual Report.

¹³⁰ The findings of Minnesota ALJ Kathleen Sheehy are on point: "Wireless networks are not limited by traditional exchange areas, and wireless carriers do not and cannot compete on landline terms. They have to compete for local service by offering something different and more desirable to consumers, such as mobility, larger local calling areas, or more flexible rate plans, and there is nothing in the law that requires a wireless carrier's offerings to be priced comparably to what is offered by an ILEC. A wireless carrier's rate plans simply cannot be compared service-by-service or dollar-for-dollar with an ILEC's." Midwest Wireless Communications, LLC, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686, Findings of Fact, Conclusions of Law, and Recommendation at ¶¶ 43-44 (Minn. ALJ Dec. 31, 2002) ("Midwest Minnesota ALJ Decision"), aff'd by Midwest Wireless

Concerns that U.S. Cellular's rate plans may not promote affordability border on absurd, since U.S. Cellular currently has over 105,000 customers in Missouri,¹³² each of whom presumably finds the service affordable. The FCC's *ETC Report and Order* requires a carrier to demonstrate that it has *a rate plan* that is comparable to the ILECs'.¹³³ The FCC does not require a competitor to mirror an ILEC rate plan by offering fixed service for a flat rate to a very small local calling area, and indeed U.S. Cellular sees no consumer benefit in doing so. In fact, the FCC's *ETC Report and Order* offers examples as to how a wireless carrier may offer comparable value without matching an ILEC's rate plan dollar-for-dollar or minute-for-minute.¹³⁴ U.S. Cellular offers mobility and wide local calling areas, both of which provide significant consumer value and public interest benefit and are unavailable from ILECs.¹³⁵ If a

Communications, LLC, OAH Docket No. 3-2500-4980-2, PUC Docket No. PT6153/AM-02686 (March 19, 2003) ("Midwest Minnesota Order").

¹³¹ See generally, *NTELOS Virginia Order*, *supra*; *Public Service Cellular*, *supra*; *Advantage Cellular*, *supra*; *Nextel Partners*, *supra*; *Highland Cellular*, *supra*; *Virginia Cellular*, *supra*. See also *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order*, 85 FCC 2d 1, 31 (1980) ("[F]irms lacking market power simply cannot rationally price their services [or impose terms] in ways which [are unjust, unreasonable or discriminatory.] [A] non-dominant competitive firm . . . will be incapable of violating the just and reasonable standard....If it charges unreasonably high rates or imposes unreasonable terms or conditions in conjunction with the offering, it would lose its market share as its customers sought out competitors whose prices and terms are more reasonable.")

¹³² Exh. 6 at p. 10, lines 12-13.

¹³³ See *ETC Report and Order*, *supra*, 20 FCC Rcd at 6385.

¹³⁴ *ETC Report and Order*, *supra*, 20 FCC Rcd at 6385 ("We believe the Commission should review an ETC applicant's local usage plans on a case-by-case basis. For example, an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area. We also can envision circumstances in which an ETC is offering an unlimited calling plan that bundles local minutes with long distance minutes. The applicant may also plan to provide unlimited free calls to government, social service, health facilities, educational institutions, and emergency numbers.") (footnotes omitted).

¹³⁵ All of U.S. Cellular's rate plans offer a local calling area (the area within which a call can be completed without incurring toll charges) that encompasses the contiguous 48 states. See Exh. 5 at p. 6, line 10 – p. 7, line 13; Exh. 6 at p. 2, lines 9-12; p. 6, lines 16-18; p. 12, lines 3-4. See also Tr. at p. 109, line 21- p. 110, line 3.

consumer is better served with fixed service to a small local calling area, he or she may choose ILEC service.¹³⁶

In its testimony, U.S. Cellular described exactly how, not one, but several of its rate plans compare favorably with ILEC offerings for features and value.¹³⁷ U.S. Cellular does not offer a one size fits all rate plan, but instead offers a choice of many rate plans so that consumers can choose the rate plan that fits how they use the phone. New rate plans become available on an ongoing basis as the company develops promotional offerings to better suit consumer needs. Because consumers can tailor their rate plan to their usage pattern, each of its rate plans is comparable with ILEC service.

For example, if a consumer is a minimal user of telephone service, the \$25 rate plan described in Mr. Wright's testimony offers 400 minutes of any time usage, mobility, a local calling area that is the contiguous 48 states, the ability to move the phone within all of U.S. Cellular's Midwestern service area (Missouri, Illinois, Nebraska, Oklahoma, Indiana, Iowa, and Wisconsin) without incurring roaming charges, plus a number of vertical features, including Call Waiting, Conference calling, Caller ID, and Call Forwarding.¹³⁸

A consumer who makes even a few intra-LATA or interstate long distance calls is likely to choose U.S. Cellular's \$39.95 rate plan, which is a much better value than flat-rated ILEC service with a small local calling area. In addition to the benefits stated above, consumers

¹³⁶ U.S. Cellular understands from the briefs that another ETC petitioner may be offering to mirror a particular ILEC rate plan. It is doubtful that a wireless carrier, which is licensed over a larger area than ILECs, could tailor multiple mobile rate plans to individual ILEC service areas, because the service is mobile. If a carrier can develop a business plan in offering fixed service, it is obviously free to do so, but nothing in the law requires it nor does U.S. Cellular understand why any customer would want to buy fixed service from a carrier that offers a far more valuable feature – mobility. But if another carrier believes that offering fixed service is a good business, that is a competitive choice that it is entitled to make.

¹³⁷ See Exh. 6 at p. 6, line 7 – p. 9, line 8; p. 9, line 20 – p. 10, line 21; p. 11, line 20 – p. 13, line 3.

¹³⁸ See Exh. 6 at p. 11, line 20 – p. 12, line 11; Tr. at p. 103, line 24 – p. 104, line 3.

get 1000 minutes of any time usage, which is roughly equivalent to the amount of voice usage that the average consumer incurs in a month. As with all rate plans, the local calling area is the lower 48 states – no intra-LATA or interexchange toll charges are imposed.

A high-end user will find U.S. Cellular's higher-priced rate plans, which provide many minutes and the ability to use the phone nationwide without roaming charges, to be a better value than using the wireline network in the same way, using pay phones, hotel phones, and calling cards.¹³⁹

The analysis on local usage and affordability provided by U.S. Cellular in this proceeding is similar to (or exactly) what it provided to Oregon, Wisconsin, Iowa, Maine, and Oklahoma, all states that granted ETC status to U.S. Cellular. It is also similar to that which has been provided to the FCC in its consideration of U.S. Cellular's applications for New Hampshire, North Carolina, and Virginia. It is also similar to that which undersigned counsel has presented to over 20 states and the FCC – cases which have resulted in grants of ETC status, most recently in Nebraska.¹⁴⁰

Concerns that a customer may incur overage charges indicates a failure to understand mobile service. Customers who consistently exceed their rate plan minutes are permitted, and indeed encouraged by U.S. Cellular to switch to the rate plan that suits their usage.¹⁴¹ Mobile service providers, who operate in a competitive environment, pay a severe penalty when a customer is unhappy – they switch providers. ILECs, who offer only flat-rated unlimited service within a small local calling area, do not offer such choices and routinely permit

¹³⁹ See Exh. 5 at p. 6, line 21 – p. 7, line 2.

¹⁴⁰ See *Viaero Nebraska Order*, *supra*, at p. 10.

¹⁴¹ See Tr. at pp. 152, line 23 – p. 153, line 8.

consumers to run up toll charges far in excess of the basic service rate. In rural areas, where wireless networks are poor and cable telephony has not arrived, it is the worst of all worlds: consumers pay high prices for voice service and cannot choose another carrier.¹⁴²

U.S. Cellular's demonstration that it offers multiple rate plans that are comparable to any offered by rural ILECs in Missouri, each of which offers flat-rated service within a very narrow range of prices, is more than enough to support a grant, and is uncontroverted in the record. Tellingly, neither the Rural ILECs nor the Public Counsel, which have access to all filed tariffs of affected rural ILECs, introduced any evidence to contradict U.S. Cellular's showing of comparability.

Perhaps most important, when U.S. Cellular's ETC application is granted, for the first time, low-income consumers throughout U.S. Cellular's ETC service area will have a choice of telephone service provider, as U.S. Cellular will be eligible to offer federal Lifeline and Link-up discounts. Everyone, from high-end users of the network to those requiring only basic voice services, will have a new choice of service in every place where U.S. Cellular erects a new cell site with high-cost support.

5. The Commission Should Follow the FCC, and Numerous States that Have Designated Wireless Carriers as Competitive ETCs.

U.S. Cellular has met its burden to make a threshold showing that a grant of its Petition would serve the public interest. It has offered credible evidence that it can offer reliable and affordable service throughout its proposed ETC service area, including features such as mobility and wide local calling areas, which are not available from ILECs.¹⁴³ It has

¹⁴² In his prefiled testimony, Mr. Wood provided compelling examples of how U.S. Cellular's service offerings compare favorably to specific Rural ILEC calling plans. *See* Exh. 8 at p. 26, line 2 – p. 27, line 15.

¹⁴³ At the hearing, Mr. Wood testified, "And then I think the third thing that I don't want to overlook is we focus on customers' homes and businesses a lot because with an ILEC wireline service, that's the only place they can use their phone. With wireless service, there's a mobility element that's an important public interest piece and the FCC has recognized it as an important public interest piece. So even if a customer is served at their home well today, it may be that where they need to drive, where they need to use the phone for their business may be in a wire center area

demonstrated compelling public interest benefits that will result, including increased customer choice and improvement of critical health and safety benefits. The Rural ILECs have completely failed to present any credible or specific evidence as to how consumers would be harmed by a grant of U.S. Cellular's Application. CenturyTel goes so far as to argue, without any support, that existing rural carriers may be harmed by U.S. Cellular's designation.¹⁴⁴ In fact, it is impossible for rural ILECs to be harmed because the federal high-cost mechanism guarantees a return on investment no matter how successful the competitor may be.¹⁴⁵

On information and belief, 37 states and U.S. territories have made over 250 CETC designations to date. The vast majority of these CETC designations have been made to wireless carriers.¹⁴⁶ U.S. Cellular is aware of a few denials, including cases in Idaho, Utah, and Nevada, however the overwhelming weight of state and federal precedent supports the designation of wireless CETCs, based on showings similar to that which has been presented here.¹⁴⁷ This Commission should reject ill-founded opposition of rural ILECs to designation of CETCs and grant U.S. Cellular's Petition.

that's not well served today. And I don't want to underestimate the benefit to that customer. Even though it's not at their home, it's still part of their life and part of why they need the service." Tr. at p. 203, line 23 - 204, line 12.

¹⁴⁴ CenturyTel Prehearing Brief at p. 9.

¹⁴⁵ See also Tr. at p. 222, lines 3-15 (Wood Testimony) ("Q. They get paid for a customer they no longer have? A. Effectively, yes. The current mechanism pays them on a total annual amount. We convert it to a per line so we'll know how much to say a CETC, but the ILECs really don't get paid per line. They get paid total. So if an ILEC -- and I'm not suggesting this applies to any of these customers here -- but as a hypothetical, if an ILEC were to serve its customers so poorly that all of them left it during the year but one, it gets the same amount of universal support next year under the current mechanism as it got this year.")

¹⁴⁶ See <http://www.universalservice.org/overview/filings/2006/Q1/default.asp> at Appendix HC01.

¹⁴⁷ See, e.g., *RCC New Hampshire Order*, supra, at para. 21; *Public Service Cellular*, 20 FCC Rcd 6854, 6860 (2005) ("Public Service Cellular"); *Nextel Partners*, supra, 19 FCC Rcd at 16537-40; *Guam Cellular and Paging, Inc. d/b/a Saipancell*, 19 FCC Rcd 13872, 13877-78 (2004) ("Saipancell"); *Advantage Cellular Systems, Inc.*, 19 FCC Rcd 20985, 20991-97 (2004) ("Advantage Tennessee Order"); *Western Wireless Corp.*, 16 FCC Rcd 48, 55 (2000) ("WWC Wyoming Order"), *Order on Reconsideration*, 16 FCC Rcd 19144, 19152 (2001) ("WWC Wyoming Recon. Order"); *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications*, CC Docket No. 96-45, DA 02-174 (C.C.B. rel. Jan. 25, 2002) ("Guamcell Order"); *Cellco Partnership d/b/a Bell Atlantic Mobile*, DA 00-2895 (C.C.B. rel. Dec. 26, 2000) ("Cellco Order"); *SBI New Mexico Decision*, supra; *U.S. Cellular Washington Order*, supra; *Smith Bagley, Inc.*, Docket No. T-02556A-99-0207 at p. 12 (Ariz. Corp. Comm'n Dec. 15, 2000) ("SBI Arizona Order"); *Midwest Wireless Iowa, L.L.C.*, Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. July 12, 2002) ("Midwest Iowa Order"); *ALLTEL Communications, Inc.*, Case No. U-13765 at p. 11 (Mich. PSC Sept. 11, 2003) ("ALLTEL Michigan Order"); *Cellular South Licenses, Inc.*, Docket No. 01-UA-0451 at pp. 7-8 (Miss. PSC

C. THIS COMMISSION SHOULD ADOPT U.S. CELLULAR’S PROPOSED REDEFINITION OF RURAL ILEC SERVICE AREAS.

Under the federal code and FCC’s rules, a competitive ETC must serve the entire rural ILEC service area in order to be eligible for support, unless the state and the FCC agree to redefine the ILEC service area.¹⁴⁸ Understanding that CMRS carriers and ILECs are not licensed along identical boundaries, the FCC has implemented procedures for states to redefine ILEC service areas in order to enable CETCs to serve throughout the greatest possible area and to facilitate competitive entry.¹⁴⁹ The FCC recently reaffirmed this approach, rejecting anticompetitive suggestions by rural ILECs that redefinition should be prohibited outright.¹⁵⁰ We note here that service area redefinition applies only to rural ILECs. The state is free to draw U.S. Cellular’s ETC boundary in areas served by SBC Missouri without regard to service area redefinition.¹⁵¹

In this proceeding, the Commission must first determine whether to redefine an ILEC service area. Following that determination, the state or the petitioner (in this case, U.S. Cellular) must seek concurrence of the FCC.¹⁵² Typically, the state grants conditional ETC

Dec. 18, 2001)(“Cellular South Mississippi Order”); RCC Minnesota, Inc., Docket No. UM-1083 at pp. 8-14 (Or. PUC, May 24, 2004) (“RCC Oregon Order”); RCC South Dakota Order, *supra*, at pp. 6-9.

¹⁴⁸ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

¹⁴⁹ *See* 47 C.F.R. §§ 54.207(b), (c); *See also, First Report and Order, supra*, 12 FCC Rcd at 8882 (“We conclude that requiring a carrier to serve a non-contiguous service area as a prerequisite to eligibility might impose a serious barrier to entry, particularly for wireless carriers.”)

¹⁵⁰ *See ETC Report and Order, supra*, 20 FCC Rcd at 6404 (“We disagree with commenters that argue that the Commission should adopt rules prohibiting redefinition below the study area level when new ETCs are designated in an incumbent LEC’s service area. In particular, we find that this proposal ignores the provision in section 214(e)(5) that allows redefinition to occur.”) (footnote omitted).

¹⁵¹ *Id.*, at 6394 (“We find that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Unlike the rural mechanism, which uses embedded costs to distribute support on a service area-wide basis, the non-rural mechanism uses a forward-looking cost model to distribute support to individual wire centers where costs exceed the national average by a certain amount. Therefore, under the non-rural methodology, high-density, low-cost wire centers receive little or no high-cost support, thereby protecting against the potential for creamskimming.”) (footnote omitted).

¹⁵² 47 C.F.R. § 54.207(c).

status for the areas to be redefined, to take effect automatically upon a grant of concurrence by the FCC.¹⁵³

The recent *ETC Report and Order* stated that, with respect to ETC petitions filed at the FCC, the minimum area that a CETC must propose to serve is an ILEC wire center.¹⁵⁴ Here, U.S. Cellular has only proposed to serve entire rural ILEC wire centers and does not propose to serve less than an entire rural ILEC wire center. U.S. Cellular has proposed to be an ETC in the greatest possible area where its facilities can reach, or where service through resale or roaming can be used to serve requesting customers.

As explained below, redefinition of several ILEC service areas is warranted in this case and is essential to bring the full public interest benefits of U.S. Cellular's ETC designation to the state of Missouri.¹⁵⁵

¹⁵³ See, e.g., *Virginia Cellular, supra*, 19 FCC Rcd at 1584 (“Upon the effective date of the agreement of the Virginia Commission with our redefinition of the service areas of Shenandoah and MGW, our designation of Virginia Cellular as an ETC for these areas as set forth herein shall also take effect. In all other areas for which this Order grants ETC status to Virginia Cellular, as described herein, such designation is effective immediately.”); *Midwest Minnesota Order, supra*, adopting ALJ’s Findings of Fact, Conclusions of Law, and Recommendation at ¶ 14 (ALJ Dec. 31, 2002) (finding that “Midwest Wireless should be designated as an ETC in its proposed service area in Minnesota” and that “[t]he [Minnesota PUC] should petition the FCC for concurrence with Midwest’s service area redefinition[.]”); *U.S. Cellular Wisconsin Order, supra*, at p. 9 (“[W]here US Cellular is asking for ETC designation in some, but not all, parts of the territory of a rural telephone company, the Commission conditionally grants ETC status in the areas for which US Cellular has requested such designation . . . If the FCC approves use of the smaller area, then US Cellular’s ETC status for the smaller area(s) becomes effective.”); *Northwest Dakota Cellular of North Dakota Limited Partnership et al., Case No. PU-1226-03-597* at p. 13 (N.D. PSC Feb. 25, 2004) (“Northwest Dakota Cellular”) (“[the applicant] (a) is designated in those study areas not requiring redefinition and, (b) in those study areas where redefinition is required under 47 C.F.R. § 54.207(c), is designated conditional upon FCC approval.”); *RCC Oregon Order, supra*, at p. 16 (“This designation is conditional on FCC approval of redefinition of the CenturyTel and Sprint service areas. To finalize the application, we will submit a petition for FCC agreement in redefinition of the service areas.”) *N.E. Colorado Cellular, Inc., Docket Nos. 00A-315T and 00A-491T* at p. 8 (Colo. PUC Dec. 21, 2001) (“NECC Colorado Order”) at Exhibit 1 pp. 6-7 (ALJ Dec. 21, 2001) (“ . . . NECC has satisfied all legal criteria for immediate designation as an ETC and should be granted such status immediately by the Commission, pending . . . any necessary FCC approval of initial [redefinition] of service areas. . .”); *RCC South Dakota Order, supra*, at p. 14 (“The Commission finds that it is in the public interest to designate RCC as an ETC for the following redefined service areas, contingent upon the FCC’s concurrence in the redefinitions.”); *SBI Arizona Order, supra*, at 16; *SBI New Mexico Decision, supra*, at 21.

¹⁵⁴ *ETC Report and Order, supra*, 20 FCC Rcd at 6405.

¹⁵⁵ Expert witness Don Wood provided a comprehensive analysis of service area redefinition, and cream-skimming in particular, in his prefiled direct testimony. See Exh. 7 at p. 17, line 21 – p. 22, line 6 (“The population density in three of the ten rural telephone company study areas in question (BPS Telephone Co., Goodman Telephone Co., and Spectra Communications Group, LLC.) is lower than the population density in the areas in which U.S. Cellular is not seeking designation. . . In the seven remaining study areas the population density in the areas in which U.S. Cellular is seeking ETC designation is approximately equal to, or only slightly higher than, the population density in

1. Redefinition of Service Areas Is Necessary to Remove Barriers to Competitive Entry and to Permit U.S. Cellular to Invest in Rural Missouri.

U.S. Cellular is not licensed to serve the entire service territory of several the Rural ILECs' member companies, some of which have portions of their study areas scattered throughout Missouri.¹⁵⁶ Unless the affected Rural ILEC service areas of Alltel, Chairiton Valley, Grand River, Craw-Kan, BPS, Goodman, Spectra, Le-Ru, Sprint, and Mid-Missouri are redefined, U.S. Cellular will be unable to receive high-cost support anywhere within those Rural ILEC service areas. It will be left with a patchwork quilt of areas within its FCC-licensed area that are "ineligible." U.S. Cellular will not be able to invest high-cost support in these areas and low-income consumers will not be able to receive Lifeline and Link-up benefits from U.S. Cellular. To remove this artificial barrier to competition and to permit federal support to be invested in the greatest possible area, U.S. Cellular requests redefinition of the affected Rural ILEC service areas *so that each wire center is classified as a separate service area.*¹⁵⁷

Redefinition as requested by U.S. Cellular is exactly the same relief provided to similarly situated carriers on numerous occasions by the FCC and several state commissions. For example, in the *Virginia Cellular* case, the FCC redefined several rural ILEC service areas so that each wire center is a separate service area.¹⁵⁸ In recent ETC designation orders, the FCC redefined the service areas of affected rural ILECs in similar circumstances.¹⁵⁹

the areas in which U.S. Cellular is not seeking designation. There is no situation in which the "great disparity" in population density, relied upon by the FCC in *Virginia Cellular*, is even approached. Even the theoretical possibility of creamskimming has been eliminated for three of these remaining companies (Alltel, Chariton Valley Telephone Corp., and Grand River Mutual Tel. Corp.), because they have already elected to disaggregate support within their study areas.") See also Exh. 8 at p. 68, line 25 – p. 71, line 4.

¹⁵⁶ Petition at p. 21.

¹⁵⁷ *Id.* at p. 22.

¹⁵⁸ *Virginia Cellular, supra*, 19 FCC Rcd at 1581-84. See also Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. §54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., a Rural Telephone Company (filed Aug. 1, 2002) ("in CenturyTel's service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53 separate, non-contiguous wire centers located across the entirety of Colorado . . . [T]his constitutes a significant barrier to entry.")

¹⁵⁹ *Virginia Cellular, supra*, 19 FCC Rcd at 1581-82; *Advantage Cellular, supra*, 19 FCC Rcd at 20997-99; *Public Service Cellular, supra*, 20 FCC Rcd at 6865-66.

The WUTC's action in redefining all of the rural ILECs in Washington is instructive. The FCC approved WUTC's petition to redefine the ILECs' service areas so that each wire center is a separate service area, finding:

[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 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.¹⁶⁰

Other state commissions have similarly redefined rural ILEC service areas so that each wire center is a separate service area, finding that such redefinition is fully justified by the pro-competitive goals of the 1996 Act.¹⁶¹ Similar conclusions were reached in decisions granting ETC status to wireless carriers in South Dakota, Arizona, Maine, New Mexico and Wisconsin.¹⁶²

2. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 214(e)(5) of the Act.

The Commission must consider three factors in making a determination to redefine an ILEC service area: (1) whether the proposal would result in "cream skimming";¹⁶³

¹⁶⁰ *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").

¹⁶¹ Midwest Minnesota ALJ Decision, *supra*, at ¶¶ 53-59 (Minn. ALJ Dec. 31, 2002); Reply Comments of the Minnesota Public Utilities Commission in CC Docket No. 96-45 at 3 (filed Sept. 9, 2003).

¹⁶² *See, e.g.*, RCC South Dakota Order, *supra*; SBI Arizona Order, *supra*; RCC Maine Order, *supra*; SBI N.M. Decision, *supra*; Northwest Dakota Cellular, *supra*; U.S. Cellular Wisconsin Order, *supra*.

¹⁶³ In this context, cream skimming occurs when a competitor selectively enters low-cost portions of a high-cost service area so as to garner uneconomic levels of support. *See Fourteenth Report and Order, supra*, 16 FCC Rcd at 11299. The FCC has also asked state commissions to consider the possibility of unintentional or *de facto* cream skimming, which can occur even though a competitor is not selectively choosing to enter only low-cost portions of an ILEC service area. *See Virginia Cellular, supra*, 19 FCC Rcd at 1578.

(2) whether the ILEC would incur undue administrative burden; and (3) whether the ILEC’s status as a rural carrier would be affected.¹⁶⁴

Although expert witness Wood testified that comparing population density inside the area proposed to be served to the population density outside the area proposed to be served is poor proxy in making cream skimming determinations,¹⁶⁵ that is what the FCC is currently using.¹⁶⁶ Even though the FCC’s ruling on this issue has been appealed to the Fourth Circuit,¹⁶⁷ U.S. Cellular has provided the FCC’s analysis here for the Commission to consider.

In each instance where U.S. Cellular has proposed to serve less than an entire Rural ILEC service area, U.S. Cellular has proposed to be designated only in complete wire centers, as recommended by the FCC. Its population density analysis confirms that cream skimming is not at issue in this proceeding. U.S. Cellular established that it is not proposing to selectively serve low-cost areas. In three instances (Alltel, Chairiton Valley, Grand River), the affected rural ILEC has “disaggregated” its support pursuant to 47 C.F.R. § 54.315, that is, support has already been moved out of low-cost areas to high-cost areas, eliminating even the possibility of cream skimming.

For each affected Rural ILEC, the table below compares the population density per square mile in the area served by U.S. Cellular to the population density in the unserved area, and provides the average population density for the entire ILEC study area.¹⁶⁸

Name	Pop. Density Served	Pop. Density Unserved	Avg. Pop. Density
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¹⁶⁴ See *Virginia Cellular, supra; Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) (“*Joint Board Recommended Decision*”).

¹⁶⁵ See Exh. 7 at p. 20, lines 2-11.

¹⁶⁶ See *ETC Report and Order, supra*, 20 FCC Rcd at 6393.

¹⁶⁷ *Virginia Cellular, LLC, and Highland Cellular, Inc. v. FCC*, No. 05-1807 (4th Cir.).

¹⁶⁸ See Exh. 7 at p. 20, line 17 – p. 21, line 17.

Alltel*	21.43	13.58	21.04
BPS	37.75	54.32	43.27
Chairiton Valley*	12.19	8.94	11.65
Craw-Kan	44.85	10.63	18.24
Goodman	42.76	47.50	45.13
Grand River*	8.33	8.02	8.27
Le-Ru	27.15	25.92	26.54
Mid-Missouri	15.76	12.88	13.44
Spectra	20.61	26.65	22.08
Sprint	60.02	56.25	58.01

* Rural ILECs that have targeted support to higher cost wire centers.

In the cases of BPS, Goodman and Spectra, U.S. Cellular proposes to serve the least dense wire centers of each company. There is no possibility of cream skimming for each of these companies.

For Alltel, Chairiton Valley, and Grand River, cream skimming is not possible because support has been disaggregated, that is, each rural ILEC has moved support to higher-cost wire centers so that a newcomer such as U.S. Cellular receives little or no support for serving low-cost wire centers. Moreover, none of these companies has presented any evidence to demonstrate that cream skimming could be an issue for them. The simple fact that they disaggregated in 2002 is *prima facie* evidence that they believed cream skimming could be a problem, and they took steps to eliminate it, as provided under the FCC's rules.¹⁶⁹ If they

¹⁶⁹ See *id.* at p. 20, lines 7-17.

believe their plan of disaggregation is not sufficient to resolve potential cream skimming, they are permitted under the rules to submit an amended plan.

In the cases of Le-Ru, Mid-Missouri, and Sprint,¹⁷⁰ U.S. Cellular serves higher-density wire centers by a negligible amount. In each case (Le-Ru, 27:26; Mid-Missouri, 16:13; and Sprint, 60:56), the disparity between the wire centers to be served and not served is so small as to make it impossible for the Commission to conclude that cream skimming is a reasonable possibility.¹⁷¹ Redefining these ILECs would be consistent with other recent cases where states have redefined service areas and the FCC has concurred. For example, on May 23, 2005, the FCC concurred with a redefinition proposal by the Kansas Corporation Commission that had areas with larger differentials, including South Central Telephone (1.43:1) and United Telephone Association (1.40:1).¹⁷² On February 1, 2005, the FCC concurred with the Michigan Public Utilities Commission's proposal to redefine the service areas of several rural ILECs, including Upper Peninsula Telephone Company (1.63:1) and Wolverine Telephone Company (1.60:1).¹⁷³ On December 28, 2004, the FCC concurred with a redefinition proposal by the Minnesota Public Utilities Commission, which included KMP Telephone Company (1.52:1).¹⁷⁴ None of the ILECs in the cited cases had disaggregated their support.

¹⁷⁰ The fact that Sprint opted against participating in this adjudication strongly suggests that it does not believe U.S. Cellular's designation in its service area should be held up by a slight disparity in population density. Indeed, Sprint's support for the pending appeal of the *ETC Report and Order* in federal court by two wireless ETCs evidences that Sprint – which has both wireline and wireless operations – properly understands the importance of competitively neutral universal service policies. See Motion of Sprint Nextel Corp. for Leave to Intervene as of Right and for Permission to File a Separate Brief, No. 05-1807 (4th Cir., Aug. 30, 2005).

¹⁷¹ See *Virginia Cellular, supra*, at n. 110 (“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 creamskimming concerns. We also note that there is very little disparity between the population densities of the wire centers in the MGW study area.”)

¹⁷² See Public Notice, DA 05-464 (rel. Feb. 22, 2005) (effective May 23, 2005).

¹⁷³ See Public Notice, DA 04-3506 (rel. Nov. 3, 2004) (effective Feb. 1, 2005).

¹⁷⁴ See Public Notice, DA 04-3137 (rel. Sept. 29, 2004) (effective Dec. 28, 2004).

The only case where there is any significant population density disparity is Craw-Kan, where the ratio of served to unserved is 4:1. As set forth in U.S. Cellular's petition, this ratio is half that which the FCC found to be of concern (8:1) in *Virginia Cellular* when it declined to redefine the Ntelos service area. In other cases, the FCC has expressed concern when a carrier proposes to serve mostly dense wire centers to the exclusion of sparsely populated ones.¹⁷⁵ Unlike the *Highland* case, where 94% of the prospective customers were within the highest-density wire centers, here less than 60% of U.S. Cellular's potential customers are in the highest-density wire center.¹⁷⁶ Craw-Kan has produced no evidence to rebut U.S. Cellular's showing. Craw-Kan has the ability under the FCC's rules to disaggregate its support to prevent the possibility of cream skimming. It has not explained why it cannot simply follow the FCC's rules and disaggregate, to move high-cost support away from its high-cost areas. Lacking any evidence from Craw-Kan, the Commission may designate U.S. Cellular as it has requested and invite Craw-Kan to submit a plan of disaggregation should it believe cream skimming to be a possibility.

Adopting U.S. Cellular's proposed service area redefinition will not cause any undue administrative burden on any Rural ILEC member company.¹⁷⁷ Nothing in the manner in which the Rural ILEC members conduct their business will change as a result of U.S. Cellular's proposed service area redefinition and the Rural ILECs introduced no evidence to the contrary.¹⁷⁸ Should any of the affected ILECs see the need to address potential cream-skimming by disaggregating support, this is an administratively simple matter and does not constitute an undue burden; indeed, no undue burdens were found to exist when the FCC adopted its disaggregation framework, declaring that "as a general matter, support should be disaggregated and targeted

¹⁷⁵ See *Highland Cellular*, *supra*, 19 FCC Rcd at 6436-7.

¹⁷⁶ See Petition at p. 25.

¹⁷⁷ See *id.* at p. 24.

¹⁷⁸ See, e.g., *Virginia Cellular*, *supra* at 1583.

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.”¹⁷⁹

Finally, nothing about U.S. Cellular’s proposal will affect any Rural ILEC member company’s status as a rural telephone company. Service area redefinition does not change how an ILEC is regulated nor does it amount to a change in status under 47 U.S.C. § 251(f) (the rural exemption).

III. CONCLUSION

The question for the Commission is whether U.S. Cellular will be able to improve its network in rural Missouri sooner, later, or in some areas, perhaps never. On its own, U.S. Cellular cannot construct sufficient network infrastructure to enable it to offer consumers high-quality service in areas served by monopoly carriers that receive high-cost support.¹⁸⁰ Congress set forth a means to bring both universal service and competition to rural areas by leveling the playing field in high-cost areas. The FCC has implemented its congressional mandate. U.S. Cellular’s customers pay into the federal fund and they are entitled to the available benefits. Those benefits are not reserved exclusively for ILECs but are required to be distributed pursuant to competitively neutral rules.

This Commission’s decision to grant this Application will have a significant and positive effect on telephone service in rural Missouri. If the Commission follows the FCC and virtually every state commission across the country that has addressed wireless ETC designations, U.S. Cellular will begin to receive federal high-cost support in a manner that is consistent with federal law, enabling it to advance universal service and accelerate network construction in Missouri.

¹⁷⁹ *Fourteenth Report and Order, supra*, 16 FCC Rcd at 11302.

¹⁸⁰ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 15506-07 (1996) (“*Local Competition Order*”) (“The present universal service system is incompatible with the statutory mandate to introduce efficient competition into local markets, because the current system distorts competition in those markets. For example, without universal service reform, facilities-based entrants would be forced to compete against monopoly providers that enjoy not only the technical, economic, and marketing advantages of incumbency, but also subsidies that are provided only to the incumbents.”)

This will bring new, innovative, and better services as well as competitive choice to many rural areas in Missouri for the first time ever.

U.S. Cellular respectfully requests the Commission to designate it as an ETC consistent with applicable federal law and precedent.

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 6th day of December, 2005.

/s/ Karl Zobrist
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