

**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)	

**RESPONSE OF U.S. CELLULAR TO REPLY OF THE SMALL TELEPHONE
COMPANY GROUP TO APPLICATION FOR REHEARING OR, IN THE
ALTERNATIVE, REQUEST FOR CLARIFICATION**

Applicant USCOC of Greater Missouri, LLC d/b/a U.S. Cellular (“U.S. Cellular” or “Company”) submits this response to the Reply of the Small Telephone Company Group (“STG”) to U.S. Cellular’s Application for Rehearing or, in the Alternative, Request for Clarification of the Commission’s Report and Order issued May 3, 2007 (“Reply”).

I. INTRODUCTION

STG was the only party to submit a reply to any of the three applications for rehearing that were filed in this case. Because STG’s reply contains several egregious misstatements, U.S. Cellular is constrained to respond in order to correct and clarify the record.

STG’s claim that the baseline spending requirement is “part of” the Commission’s existing ETC rules is plainly incorrect, especially given Staff’s recent proposal to add baseline language to the rules.¹ Even CenturyTel concedes that the base line requirement was “heretofore unheard of.” See CenturyTel Application for Rehearing at 5.

STG’s statement that a baseline spending requirement is “no different” from the spending requirements imposed on Northwest Missouri Cellular and Missouri RSA No. 5 is demonstrably wrong. U.S. Cellular has reviewed those orders and finds no requirement that is even remotely

¹ See Exhibit 1, e-mail to industry representatives from Regulatory Economist Natelle Dietrich of the Commission’s Telecommunications Department dated May 29, 2007, attaching proposed amendments to 4 CSR 240-3.570 and announcing a June 11, 2007 workshop to discuss proposed changes.

similar. While STG believes the benchmark was necessitated by the multi-state nature of U.S. Cellular's operations, this is a red herring. USAC does not provide funds to wireless carriers on a "multi-state" basis. Federal universal service support is provided by individual state and the amounts are publicly available. Support to U.S. Cellular will be Missouri-specific. The Commission will be able to track every incoming dime and match it up to every dime that U.S. Cellular invests in Missouri. That level of accountability far exceeds what is required of Missouri's wireline carriers.

II. DISCUSSION

A. The Order's Baseline Requirement Is Not in the Commission's ETC Rules.

STG makes the unsupported assertion that the base line spending requirement is "part of" the Commission's ETC rules adopted in June 2006. This is untrue, as confirmed by CenturyTel, who described the base line spending requirement as "totally absent in the ETC rule itself." See CenturyTel Application for Rehearing at 5. U.S. Cellular could not have said it better.

The rules do *not* provide for the establishment of a baseline by the Commission. Rather, they require a *statement* by the applicant "as to how the proposed plans would not otherwise occur absent high-cost support and that such support will be used in addition to any expenses the company would normally incur." See 4 CSR 240-3.570(2(A)3.G. U.S. Cellular has repeatedly stated under oath, in its written testimony and at the hearing, that every dollar of federal support it receives will be invested incrementally.²

Any remaining doubt that the rule contains no base line requirement was erased two days ago on May 29, 2007, when Commission Staff circulated a draft revision to the rule that

² Tr. 757; Ex. 25, Wright Supp. Surrebuttal, p. 5, 1.5-9.

contained a proposal to *add a base line spending requirement* to the rule.³ If the requirement were in the rule, Staff’s proposal would be unnecessary. It is clear that the Commission’s imposition of a base line requirement on U.S. Cellular in an ETC designation proceeding violated the state’s rulemaking procedures.

B. No Baseline or Similar Requirement Has Been Imposed on Any Other ETC.

STG claims that an “identical” requirement was imposed on Northwest Missouri Cellular and Missouri RSA No. 5. However, nothing in those cases imposes a requirement that either company invest some minimum amount over and above their federal high-cost support. U.S. Cellular agrees with CenturyTel’s statement that such a requirement had never been “imposed on any other applicant in any prior ETC application proceeding.” See CenturyTel Application on Rehearing at 5.

In fact, STG cites passages from the Northwest Missouri Cellular order that demonstrate the *absence* of any similar condition. One quoted passage reads, in pertinent part:

NWMC’s Appendices M and P included budgets for unsupportable items and expenses that it would make regardless of the ETC designation. When those items are removed, the remaining amounts in the first two years of the budget do not add up to the expected \$1,468,614 in USF support. However, the testimony clarified that NMC will make the USF supportable improvements as laid out in the five year plan as necessary so that it spends funds on cell towers and services that it would not have otherwise spent without the USF funds.⁴

Far from requiring NWMC to demonstrate expenditures in excess of an established baseline amount, the Commission found NWMC satisfied its obligation by clarifying that it

³ For example, the proposed changes to 4 CSR 240-3.570(4)(D) read as follows: “**A base line shall be established for each ETC, including ILECs. The base line shall represent an estimate of the expenses the ETC would normally incur. All ETCs, including ILECS, shall submit a demonstration that high-cost support was used in addition to any expenses the ETC would normally incur by demonstrating that expenditures exceed(ed) the ETC’s established base line.**” (Bolded text in original.)

⁴ NWMC Order at 27-28.

would ensure its overall budget of supportable expenditures would equal or exceed its expected USF funding, and that it would carry out improvements from its five-year plan to make up for any shortfall in supportable expenditures.

The Commission did *not* require NWMC or RSA No. 5 to commit to a base line investment level going forward, or even to submit budgets containing expenditures they would have undertaken without high-cost support. In fact, in the second passage from the NWMC Order quoted by STG, the Commission specifically required NWMC to provide a two-year budget that “*excludes* the improvements and upgrades the company would have made regardless of USF support....” See NWMC Order at 28 (emphasis added). Nor did the Commission require either NWMC or RSA No. 5 to detail expenditures in excess of the amounts shown in the exhibits setting forth expenditures that would be undertaken without high-cost support.

STG appears to concede that there was no baseline requirement in the NWMC or RSA No. 5 orders when it states that a baseline is not necessary where a carrier “only provide[s] service within the state.” This is a red herring. While U.S. Cellular’s network extends beyond the state boundaries, its ETC funding will not. As Witness Wright stated in his prefiled testimony, it is clear from the projection information published by the Universal Service Administrative Company (“USAC”) that an ETC receives dedicated support for an individual state.⁵ Each month, U.S. Cellular will receive an invoice from USAC setting forth exactly how much support is intended for its Missouri ETC service area. Indeed, anyone can find out the specific amounts U.S. Cellular receives in Missouri for a given time period by looking at the

⁵ See Ex. 25, Wright Supplemental Surrebuttal, p. 5, 1.1-3. See also Ex. 28, Two-Year Network Improvement Plan of U.S. Cellular Corp., fn 2 (Third Quarter Appendices -2006, HC01 -High Cost Support Projected By State By Study Area, available online at <http://www.usac.org/about/governance/fcc-filings/2006/quarter3/default.aspx>).

disbursement information on USAC's web site.⁶ As part of its annual certification process, the Commission will be able to review the precise amount of support received by U.S. Cellular in Missouri and compare it to the ETC expenditures U.S. Cellular reports to the Commission in accordance with the ETC rules.⁷ Accordingly, the fact that U.S. Cellular does not compile Missouri-specific budgets has nothing to do with whether it can demonstrate that its investments in Missouri, which look backward in time, were incremental to the support it received.

In sum, STG attempts to saddle U.S. Cellular with a requirement that is unnecessary, that is without precedent, and that is found nowhere in the rules.

C. The Base Line Spending Requirement Is Not Supported By Testimony or Other Record Evidence.

STG incorrectly claims that the base line requirement is supported by U.S. Cellular's witness testimony. See STG Reply at 5. Specifically, STG cites the testimony by U.S. Cellular witness Nick Wright that the Company typically spends approximately \$15 to \$16 million per year in capital investments in Missouri. However, STG fails to note that the company emphasized that capital expenditures can vary significantly from year to year.⁸ This is precisely why Mr. Wright could not commit to a base line investment of \$15 million into the future indefinitely, even though to date U.S. Cellular's investments have been at or above that level.

⁶ Disbursement data for each ETC in each state is available on USAC's disbursement page at: <http://www.usac.org/hc/tools/disbursements/default.aspx>.

⁷ STG's emphasis on the multi-state nature of U.S. Cellular's network raises an important competitive neutrality concern, in that STG urges heightened, burdensome requirements uniquely applicable to wireless carriers, solely because of their choice of technology and a federal licensing scheme that does not respect state boundaries.

⁸ Tr. 733; Ex. 25, Wright Supp. Surrebuttal, p. 5, l. 21-22; Ex. 26, Johnson Supp. Surrebuttal, p.16, l. 13-14.

As U.S. Cellular expert witness Alan Johnson testified, this is not a fact that is unique to U.S. Cellular, but rather applies throughout the telecommunications industry.⁹ Because investments can vary widely, the key for regulators is whether support is being invested in addition to whatever else a company would ordinarily invest.

In its Application for Rehearing, U.S. Cellular noted that even though the base line requirement is unlawful and unnecessary, it could meet it if it were not an indefinite, perpetual commitment and if the investments were not limited just to cell site construction. U.S. Cellular believes it will invest \$15 million per year going forward on the enumerated nine supported services, over and above what it receives in high-cost support. Such a requirement is not in the rules, is not being imposed on any other carrier, and is one that wireline carriers in the state could not and would not agree to.

D. The Commission’s Base Line Spending Requirement is Not Competitively Neutral and Violates 47 U.S.C. Section 253.

While STG concedes that ILECs have never been required to meet a base line expenditure requirement in Missouri, STG incorrectly asserts that there is no “need” for such a requirement to be imposed on ILECs. See STG Reply at 6. Contrary to STG’s claim, the need for accountability of ETC expenditures is no less for ILECs than any other type of carrier. Whether a carrier is an ILEC, a CLEC, or a wireless carrier, it will have a certain set of expenditures that it would undertake in the absence of high-cost support.

ILEC spending varies widely year over year. Rural ILEC requests to extend the deadline to comply with Local Number Portability obligations—largely because their equipment was so antiquated that they could not provide the service—calls into question whether the \$70-90

⁹ Ex. 26, Johnson Supp. Surrebuttal, p. 16, l. 11-12.

million in annual support they receive is actually being invested in modernizing wireline networks in Missouri.

ILECs are not required to estimate how much they spend on construction, maintenance and upgrading of network facilities in the absence of high-cost support. Rather, they merely submit cost information to the National Exchange Carrier Association, which submits cost studies to enable USAC to calculate and disburse support. Based on Staff's May 29 proposal to subject ILECs to new cost reporting requirements, including a base line spending requirement, Staff recognizes the lack of accountability of ILECs under the current rules.¹⁰

Given the recent CassTel case,¹¹ U.S. Cellular finds it particularly inappropriate for ILECs in Missouri to be casting aspersions about whether a publicly traded company that is subject to extensive regulation of its telecommunications business and financial affairs under federal law will be truthful in its reporting obligations. The Commission's current rules provide substantial accountability for wireless ETCs that is not present for wireline carriers.

E. STG's Position on Wireless Rate and Entry Regulation Has Been Overwhelmingly Rejected.

STG's statement that if a carrier wants to be an ETC, it must comply with the Commission's rules is not objectionable on its face. See STG Reply at 1, 7. U.S. Cellular is already subject to the Commission's rules, as just recently adopted. Apparently, STG wants additional requirements to apply as well, even if they amount to rate and entry regulation. STG's

¹⁰ See Exhibit 1, where Staff's e-mail states that the purpose of the workshop is "to get an understanding of current ILEC reporting/accountability requirements and how to effectively apply those requirements to the Missouri certification process."

¹¹ See May 30, 2006 Order Approving Stipulation and Agreement (Case No. TC-2005-0357) where CassTel admitted that staff had sufficient documentation if offered and admitted into evidence that would permit a finder of fact to reasonably conclude that an officer of CassTel caused false entries to be made in the books of account of CassTel and gave false or misleading testimony to the Commission.

belief that states can impose rate or entry regulation on wireless carriers has been repeatedly and overwhelmingly rejected by the FCC and the states.

To be clear, rate and entry regulation of wireless carriers by states is preempted by federal law, even if the wireless carrier is an ETC.¹² Nothing in either Section 254 or 214 of the federal Telecommunications Act overrides the preemption, and Section 253(e) specifically provides that state universal service rules and laws may not interfere with the preemption under Section 332.¹³

III. CONCLUSION

The STG Reply provides nothing new, and certainly nothing based in fact or law that the Commission can rely on in making a well-considered decision in this case. U.S. Cellular is ready, willing and able to carry out its commitments and encourages the Commission to act at the earliest possible date so that consumers in rural Missouri will begin to see the benefits of improved wireless services.

¹² See *Federal-State Joint Board on Universal Service, Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service*, 17 FCC Rcd 14802, 14820 (2002) (“*State Independent Alliance*”) (“Kansas is precluded and preempted from imposing rate and entry regulations on Western Wireless’ BUS [Basic Universal Service] offering, but Kansas may regulate other terms and conditions, and Kansas may impose universal service regulations that are not inconsistent with section 332(c)(3)(A), other provisions of the Act, and the Commission’s regulations.”).

¹³ 47 U.S.C. Section 253(e).

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 31st day of May, 2007.

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