

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

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

**AT&T MISSOURI'S RESPONSE TO U.S. CELLULAR'S MOTION  
FOR CLARIFICATION OR REHEARING**

AT&T Missouri<sup>1</sup> respectfully submits this Response to the Motion for Clarification or Rehearing ("Motion") filed on March 17, 2006, by USCOC of Greater Missouri, LLC. ("U.S. Cellular"). For the reasons explained below, U.S. Cellular's Motion should be denied in its entirety.

**I. SUMMARY**

U.S. Cellular's Motion asserts that the Commission should modify the eligible telecommunications carrier ("ETC") rule the Commission adopted in its March 7, 2006 Final Order of Rulemaking, to add certain language which, according to U.S. Cellular, was contained in "the draft rules circulated by Staff." Motion, p. 2. The language would state that, when considering a request for new service, the ETC shall "[e]valuate the costs and benefits of using high-cost universal service support to serve the number of customers requesting service." Id. U.S. Cellular's Motion also requests that the Commission add other language to the rule that would allow an ETC, when responding to a request for service, to consider "the customer's specific facts and circumstances, as well as the cost to the ETC." Motion, p. 3.

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<sup>1</sup> Southwestern Bell Telephone, L. P. d/b/a AT&T Missouri ("AT&T Missouri").

When the Commission adopted its ETC rule, it correctly looked to the FCC's March, 2005, ETC Designation Order<sup>2</sup> for guidance on the matter. Consequently, the part of the Commission's rule now criticized by U.S. Cellular – which states an ETC's obligations upon receiving a “reasonable request” for service – is in all material respects the same as the rule that was adopted by the FCC. The “reasonable request” rule stands as a matter of federal law, and U.S. Cellular offers no explanation why a rule already effective for ETC designations granted by the FCC is somehow “unlawful, unjust and unreasonable” for ETC designations granted by state commissions. Motion, p. 1.

Second, the Commission's rule already strikes the correct balance in allowing an ETC a meaningful opportunity to explain to the Commission why it has declined an individual request for service. The Commission should thus reject U.S. Cellular's newly proposed language revisions, because they unacceptably stray from the ETC's federal statutory obligation to provide service “throughout the service area for which the [ETC] designation is received.” 47 U.S.C. § 214(e)(1).

In sum, the Commission should deny U.S. Cellular's Motion. Its suggested changes are without merit and, in any case, no showing has been made as to why they could not have been made earlier.

## **II. THE COMMISSION'S RULE CORRECTLY IMPLEMENTS FEDERAL STATUTORY LAW AND THE FCC'S OWN REQUIREMENTS.**

The Commission's March 7, 2006, Final Order of Rulemaking adopted, among other things, a “reasonable request” rule (4 C.S.R. 3.570(3)(C)(3)) which requires ETCs to “extend their networks to serve new customers upon a reasonable request.” It also requires that an ETC

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<sup>2</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (“ETC Designation Order”); 47 CFR §§ 54.202, 54.209.

take various specified steps to respond to all such requests for reasonable service. When the request comes from a customer residing within the designated ETC area where the ETC does not already provide service, the rule requires the ETC to "take reasonable steps to provide acceptable service" to a customer, including but not limited to "employing, leasing or constructing an additional cell site, a cell extender, repeater or other similar equipment."

U.S. Cellular requests that the Commission now add to the rule certain revisions to the effect that an ETC could decline service based upon "consideration of the customer's specific facts and circumstances, as well as the cost to the ETC." Motion, p. 3. Other revisions proposed by it would allow an ETC to decline service upon "evaluat[ing] the costs and benefits of using high-cost universal service support to serve the number of customers requesting service." Id.

The FCC's own rule (47 CFR § 54.202 (a)(1)(i)(B)(6)) is virtually identical to that adopted by the Commission. It requires that an ETC applicant commit to provide service "to all customers making a reasonable request for service" by, for example, "[e]mploying, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment." U.S. Cellular never explains how or why the FCC's own rule – from which this Commission appropriately borrowed – is unlawful. Nor does U.S. Cellular explain why the rule, already effective at the federal level, is unlawful when implemented at the state level. The fact is that this Commission, at the urging of the FCC, appropriately replicated the FCC's "reasonable request" rule. The failure of U.S. Cellular's Motion to explain how the FCC somehow got it wrong, or how the rule is not suited for implementation in Missouri, is sufficient reason alone to deny its Motion.

### **III. U.S. CELLULAR'S PROPOSED RULE REVISIONS WOULD UNACCEPTABLY DILUTE AN ETC'S OBLIGATION TO SERVE "THROUGHOUT THE SERVICE AREA" FOR WHICH ETC DESIGNATION IS GRANTED.**

Even apart from U.S. Cellular's unwarranted departure from the FCC's own model, U.S. Cellular's proposed language is ill-advised for other reasons. Quite simply, it would allow an ETC far too much latitude in determining how – or even whether – to meet service requests. That should not be allowed to occur, because the cardinal purpose of infusing high-costs funds into an area is to provision service for high-cost customers whose requests would otherwise go unmet. Specifically, U.S. Cellular's proposed revisions, which would allow an ETC to decline service due to "specific facts and circumstances" or due to an evaluation of the relative "costs and benefits," offer no comfort that high-cost support funds actually will be used to provide service "throughout the service area for which the [ETC] designation is received." 47 U.S.C. § 214(e)(1). The FCC's and this Commission's approach reflects a wiser and more prudent course in ensuring that an ETC will be held to its statutory obligations.

The Commission's adopted rule already sufficiently protects an ETC's interests inasmuch as the obligation to meet an individual service request turns on whether the request is "reasonable." If, as a result of the multi-step provisioning process called for by the rule, a specific request is declined, the Commission's rule requires that the ETC "include such information in its annual certification documentation to the Commission." (Rule 3.570(3)(B)). This rule is virtually identical to that which was approved by the FCC where, if service is not provided, "then the ETC must report the unfulfilled request to the [FCC]." ETC Designation Order, para. 22. Consequently, U.S. Cellular will have ample opportunity to explain any instance of a failure to serve when the Commission reviews and considers U.S. Cellular's report. The Commission need not and should not allow an ETC more.

#### IV. CONCLUSION

For the foregoing reasons, AT&T Missouri respectfully requests that the Commission deny U.S. Cellular's Motion for Clarification or Rehearing in its entirety.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

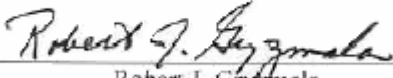
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## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were served to all parties by e-mail on March 27, 2006.

  
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