

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

In the matter of the application of USCOC of)
Greater Missouri, LLC for designation as an) Case No. TO-2005-0384
eligible telecommunications carrier pursuant to)
the Telecommunications Act of 1996.)

AT&T MISSOURI’S POST-HEARING BRIEF

AT&T Missouri¹ respectfully submits its post-hearing brief, in accordance with the Commission’s December 19, 2006 Notice Regarding Filing of Briefs.

SUMMARY

U.S. Cellular’s application for designation as an ETC must be denied with respect to AT&T Missouri’s wire center areas. Even assuming that U.S. Cellular’s “build-out” plan is accomplished, only nine of the approximately 146 AT&T Missouri wire centers areas for which U.S. Cellular seeks ETC designation are expected to receive improved service coverage or capacity. This fails the requirement to demonstrate improvements on a wire center-by-wire center basis throughout the ETC service area. Further, granting U.S. Cellular ETC designation in AT&T Missouri’s wire center areas would not be consistent with the public interest, convenience and necessity. Finally, the Commission should specifically determine that any expenditure of federal universal service high-cost support in AT&T Missouri’s wire center areas would not be consistent with the requirement to use support only for the purpose for which it is intended.

Alternatively, if the Commission grants ETC designation to U.S. Cellular, the Commission should expressly limit the designation to no more than the nine AT&T Missouri wire centers areas that are expected to receive improved service coverage or capacity as a result

¹ Southwestern Bell Telephone, L. P. d/b/a AT&T Missouri (“AT&T Missouri”).

of the completion of U.S. Cellular's build-out plan.² U.S. Cellular conceded that there is nothing that precludes it from "coming back later" and asking the Commission to designate it as an ETC in additional wire center areas for which ETC designation is not currently appropriate.³

ARGUMENT

Issue 1: Telecommunications companies seeking eligible telecommunications carrier ("ETC") status must meet the requirements of Section 214(e)(1) throughout the service area for which designation is received. Section 214(e)(1) requires a carrier to offer the services that are supported by Federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and to advertise the availability of such services and the charges therefore using media of general distribution. Does U.S. Cellular meet the requirements of Section 214(e)(1) throughout the service area for which it seeks ETC designation?

No – The undisputed evidence is that, even assuming that U.S. Cellular's "build-out" plan is fully and timely accomplished, only nine of the approximately 146 AT&T Missouri wire centers areas for which U.S. Cellular seeks ETC designation are expected to receive improved service coverage or capacity. Given this extremely small number, the Commission has no basis on which to conclude that U.S. Cellular meets the requirements of Section 214(e)(1) throughout the AT&T Missouri service area for which U.S. Cellular seeks ETC designation.

The FCC has implemented Section 214(e)(1) by expressly requiring that, in connection with an ETC applicant's obligation to provide service throughout its proposed designated service area, the applicant must submit a "formal network improvement plan"⁴ which "describ[es] with specificity its proposed improvements or upgrades to the applicant's network on a wire center-

² Even a limited ETC designation, however, should be accompanied by an express prohibition against using federal high-cost support in wire centers not designated as high-cost.

³ Tr. 687 (testimony of U.S. Cellular's Mr. Wood).

⁴ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) ("ETC Designation Order"), para. 21

by-wire center basis throughout its designated service area.”⁵ The Commission’s own implementing rule (4 CSR 240-3.570(2)(A)(3)) similarly requires a granular analysis throughout the service area for which ETC designation is sought:

The two (2)-year plan shall include a demonstration that universal service support shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the Missouri service area for which the requesting carrier seeks ETC designation[.] (emphasis added).

U.S. Cellular plan does not comply with this requirement. To the contrary, the plan U.S. Cellular initially provided (in its August 11, 2006 Compliance Filing) indicates that of the approximately 146 AT&T Missouri wire centers for which U.S. Cellular seeks ETC designation,⁶ only 21 of these wire centers are expected to receive improved coverage or capacity.⁷ U.S. Cellular did not rebut AT&T Missouri’s testimony that the coverage maps offered by U.S. Cellular in its Compliance Filing indicate “minimal expansion.”⁸ Instead, less than four months after its August 11, 2006 filing, it proceeded to reduce by more than half this already very low number. U.S. Cellular’s December 7, 2006, testimony provided a chart (Johnson Surrebuttal, Exhibit D) identifying the “wire centers that will receive improved coverage.”⁹ Only nine AT&T Missouri wire centers (i.e., only about 6% of the 146 wire centers)

⁵ ETC Designation Order, para. 23.

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

⁷ See, Compliance Filing, Appendix 2 entitled “List of Wire Centers to Receive Improved Coverage or Capacity” (listing the following AT&T Missouri wire centers: * _____)

⁸ Compliance Filing, Appendices 4 and 5; AT&T Missouri, Stidham Compliance Filing Rebuttal, p. 2.

⁹ U.S. Cellular, Johnson Compliance Filing Surrebuttal, p. 6 & Exhibit D.

are identified in the exhibit.¹⁰ U.S. Cellular confirmed at the hearing both that Exhibit D “provides information on all wire centers that -- that will receive additional associated coverage associated with the 39 [cell] sites that we proposed[]”¹¹ and that the wire centers not shown on Exhibit D (i.e., approximately 137 AT&T Missouri wire centers) will receive no improved coverage under U.S. Cellular’s two-year plan.¹²

As AT&T Missouri asked at the hearing: “How many fewer [than nine] wire centers need to be involved for the Commission to find that the requirement is not meaningfully met?”¹³ Of course, the Commission need not reach this specific question. Yet, both the question and U.S. Cellular’s 21-to-9 move in less than four months underscores that U.S. Cellular has failed to demonstrate the requisite commitment to provide the supported services throughout the AT&T Missouri wire center areas for which it seeks ETC designation.

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

¹⁰ The testimony identifies the following AT&T Missouri wire centers: *

¹¹ Tr. 633 (testimony of U.S. Cellular’s Mr. Johnson) (emphasis added).

¹² Tr. 634 (testimony of U.S. Cellular’s Mr. Johnson).

¹³ Tr. 494 (opening statement).

public interest, convenience and necessity. Is granting ETC status to U.S. Cellular consistent with the standards set forth in Section 214(e)(2) and 4 CSR 240-3.570(2)(A)(5)?

No - Granting ETC status to U.S. Cellular would not be consistent with the public interest, convenience and necessity, as required by Section 214(e)(2) of the Act and 4 CSR 240-3.570(2)(A)(5).¹⁴

U.S. Cellular claims that ETC status will further competition. The FCC, however, has determined that “the value of increased competition, by itself, is unlikely to satisfy the public interest test.”¹⁵ Moreover, any potential for increased consumer choice and the additional advantage of mobility is significantly diluted given that, as explained in connection with Issue 1, U.S. Cellular has failed to provide proof, in the form of a sufficient Network Improvement Plan, that it intends to improve service quality throughout the AT&T Missouri wire center areas for

¹⁴ To the extent that U.S. Cellular may argue that it need not meet the public interest requirement with regard to AT&T Missouri’s wire center areas, its argument should be rejected. The FCC has squarely held that an applicant for ETC designation must demonstrate that granting its request is consistent with the public interest, convenience and necessity regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier, thus rejecting the notion that ETC designations in areas served by non-rural carriers need not be in the public interest. 47 U.S.C. § 214(e)(2), (6); see also, ETC Designation Order, para. 3 (“We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier.”); para. 40 (“Under section 214 of the Act, the commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity.”); para. 42 (“We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.”); para. 61 (“Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.”). This Commission has similarly held that “in order to be granted ETC status in the non-rural areas, an [ETC applicant] must also show that the designation will be, ‘consistent with the public interest, convenience and necessity.’” In the Matter of the Application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TO-2003-0531, Amended Report and Order, November 30, 2004, p. 27. Finally the Commission’s newly adopted ETC rules explicitly require that an ETC applicant demonstrate “that the commission’s grant of the applicant’s request for ETC designation would be consistent with the public interest, convenience and necessity[,]” and no exception is made with respect to an area served by a non-rural carrier. See, 4 CSR 240-3.570(2)(A)(5).

¹⁵ ETC Designation Order, para. 44; citing, Virginia Cellular ETC Designation Order. para. 4, and In the Matter of Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 (“Highland Cellular ETC Designation Order”), para. 4.

which it seeks ETC designation.¹⁶ Instead, it appears that U.S. Cellular merely seeks to improve service primarily in areas that it already serves.¹⁷ That being the case, the benefits that might be generated by giving high-cost support to U.S. Cellular will accrue to only a very small portion of the customers situated within the area in which U.S. Cellular seeks ETC designation.

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

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

First, as noted above, the Commission's rules require that an ETC applicant submit a formal network improvement plan which demonstrates that universal service funds will be used to improve coverage, signal strength, or capacity.¹⁸ This showing must be made on a "wire center-by-wire center basis throughout the Missouri service area for which the requesting carrier seeks ETC designation."¹⁹ For the reasons stated in connection with Issue 1, U.S. Cellular fails to meet this requirement.

Second, as likewise noted above, the Commission's rules require that an ETC applicant demonstrate "that the commission's grant of the applicant's request for ETC designation would be consistent with the public interest, convenience and necessity."²⁰ For the reasons stated in connection with Issue 2, U.S. Cellular fails to meet this requirement.

¹⁶ AT&T Missouri , Stidham Surrebuttal, pp. 11-13.

¹⁷ AT&T Missouri, Stidham Compliance Filing Rebuttal, p. 5.

¹⁸ 4 CSR 240-3.570(2)(A)(3).

¹⁹ 4 CSR 240-3.570(2)(A)(3).

²⁰ 4 CSR 240-3.570(2)(A)(5).

Third, 4 CSR 240-3.570(2)(A)(2) requires that an ETC applicant demonstrate that high-cost support will be used for the provision, maintenance and upgrading of facilities and services “for which the support is intended,”²¹ a requirement which mirrors federal law.²² For the reasons stated in connection with Issue 4 (below), U.S. Cellular fails to meet this requirement.

Issue 4: AT&T proposes the following issue: Is U.S. Cellular’s proposed use of federal Universal Service High-Cost support with respect to its network improvement plans in AT&T Missouri’s wire center areas consistent with the requirement to use support only for the purpose “for which the support is intended.” 47 U.S.C. § 254(e); 4 CSR 240-3.570(2)(A)(2)

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

As of July 1, 2006, AT&T Missouri receives no federal universal service high-cost support for any of its wire centers, including the Interstate Access Support (“IAS”) that AT&T Missouri previously received. Thus, all AT&T Missouri wire centers are considered to be non-high-cost, i.e., none are eligible for high-cost support.²³ U.S. Cellular’s plan to spend federal high-cost support funds in non-high-cost wire center areas would not be a use of the support for the purpose for which it is intended, i.e., for high-cost wire center areas.²⁴

At the hearing, U.S. Cellular acknowledged that it seeks ETC designation in such high density areas as St. Louis, Chesterfield, Manchester, Harvester, Valley Park and Fenton.²⁵ It also acknowledged that were it to receive ETC designation in AT&T Missouri’s wire center areas, it

²¹ 4 CSR 240-3.570(2)(A)(2).

²² 47 U.S.C. § 254(e).

²³ AT&T Missouri, Stidham Compliance Filing Rebuttal, p. 5. U.S. Cellular agreed that AT&T Missouri’s wire centers “do not receive [high-cost] support.” Tr. 688-689 (testimony of U.S. Cellular’s Mr. Wood); see also, Tr. 691 (testimony of U.S. Cellular’s Mr. Wood).

²⁴ AT&T Missouri, Stidham Compliance Filing Rebuttal, pp. 5-6.

²⁵ Tr. 559-561, 579.

would receive “zero” high-cost support for those wire centers.²⁶ However, although U.S. Cellular professed that it would not spend any high-cost dollars in such areas,²⁷ its testimony provides little comfort that such spending will not occur.

For one thing, U.S. Cellular made it clear that, in its view, federal law would not constrain it from such spending. That is because, according to U.S. Cellular, there is “no[] language in the federal rules” that would prohibit using high-cost funds in St. Louis or any other AT&T Missouri wire center areas.²⁸ Instead, according to U.S. Cellular, “the oversight of the Commission would prohibit that.”²⁹

U.S. Cellular’s answer does not adequately address Section 254(e) of the Act, nor does it adequately address the FCC’s rules, which require that “[a] carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³⁰ Commission “oversight” provides little comfort. First, such spending would be inordinately difficult for the Commission to identify in the first instance -- U.S. Cellular conceded that it does not maintain state-specific (much less wire center-specific) capital expenditures or capital budgets.³¹

Second, even if the Commission were able to identify such spending, it would likely have little recourse against U.S. Cellular as a practical matter. For example, when asked whether the “annual review phase” might offer an opportunity to recover misspent dollars, Staff expressed skepticism: “I don’t believe so. And if so, it would be quite difficult.”³² As Staff further

²⁶ Tr. 691 (testimony of U.S. Cellular’s Mr. Wood). Pursuant to the FCC’s rules, a competitive ETC can receive no more support than the ILEC would receive. 47 CFR § 54.307(a)(1).

²⁷ Tr. 580 (testimony of U.S. Cellular’s Mr. Wright).

²⁸ Tr. 692 (testimony of U.S. Cellular’s Mr. Wood).

²⁹ Tr. 692 (testimony of U.S. Cellular’s Mr. Wood).

³⁰ 47 CFR § 54.7 (emphasis added).

³¹ Tr. 750-751 (testimony of U.S. Cellular’s Mr. Johnson).

³² Tr. 777 (testimony of Staff’s Mr. McKinnie).

explained: “Other than the ability to decline certification on a quarterly basis, no, the Commission does not have any control over the amount of money that would be received by an ETC.”³³ Thus, the Commission cannot conclude that its “oversight” role can provide a sufficient check against inappropriate expenditures of high-cost funds in AT&T Missouri’s non-high-cost wire center areas.

Moreover, such spending would deny benefits to those consumers for whom the support is truly intended -- consumers in high-cost areas as identified pursuant to the FCC’s rules. U.S. Cellular admitted to the obvious in this regard: “As a matter of fact, if you spend a dollar one place, you can’t spend it somewhere else.”³⁴

Furthermore, allowing a carrier to offset costs in a non-rural wire center with high-cost funds, while the ILEC receives no high-cost support, would violate the federal Telecommunications Act’s principle of “competitive neutrality.”³⁵ Even U.S. Cellular conceded that “there would be some advantage, I think, for the [ETC] competitor.”³⁶

In sum, any expenditure of funds in AT&T Missouri’s wire center areas would not be consistent with the requirement to use support only for the purpose “for which the support is intended.”

³³ Tr. 778 (testimony of Staff’s Mr. McKinnie); see also, Tr. 800-801 (testimony of Staff’s Mr. McKinnie).

³⁴ Tr. 697 (testimony of U.S. Cellular’s Mr. Wood).

³⁵ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, released May 8, 1997, para. 46 (“Section 254(b) establishes six principles upon which the Joint Board and the Commission are to base policies for the preservation and advancement of universal service. Section 254(b)(7) allows the Joint Board and the Commission to adopt additional principles necessary for the ‘protection of the public interest, convenience, and necessity.’ . . . [C]onsistent with the Joint Board’s recommendation, we adopt the principles identified in section 254(b) and the additional principle of competitive neutrality.”).


³⁶ Tr. 695 (testimony of U.S. Cellular’s Mr. Wood).

CONCLUSION³⁷

For the foregoing reasons, AT&T Missouri respectfully submits that the application of U.S. Cellular for designation as an ETC must be denied in its entirety or, at a minimum, that its designation be limited to only the nine AT&T Missouri wire center areas referenced herein.

Respectfully submitted,

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³⁷ AT&T Missouri had neither joined in nor taken any position on Issue 5, which is: “CenturyTel, STCG and AT&T propose the following issue: The Commission recently approved ETC status for Missouri RSA No. 5 Partnership in Case No. TO-2006-0172 and for Northwest Missouri Cellular Limited Partnership in Case No. TO-2005-0466. The ETC service areas granted by the Commission for these new ETCs overlap portions of US Cellular’s proposed ETC service area. Is granting ETC status to multiple wireless carriers in wire centers, also currently served by the incumbent ETC, in the public interest?”

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on January 31, 2007.



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