

**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.)

**THE SMALL TELEPHONE COMPANY GROUP'S REPLY TO
US CELLULAR'S RESPONSE REGARDING ADDITIONAL PROCEEDINGS**

COMES NOW the Missouri Small Telephone Company Group ("STCG"), and for its reply to U.S. Cellular's late-filed response to the requests for additional proceedings, states to the Missouri Public Service Commission ("PSC" or "Commission") as follows:

INTRODUCTION AND SUMMARY

The STCG supports the procedural schedule proposed by all of the parties to this proceeding except U.S. Cellular. First, the parties to a contested case have the right to rebut and test the evidence that U.S. Cellular now seeks to introduce to this case. This is required by Missouri law, and it is expressly stated in the Commission's prior orders in this case. Second, U.S. Cellular failed to meet its burden of proof during the first phase of this proceeding, and U.S. Cellular waited nearly five months to file its additional evidence and new plan. Therefore, any delay is largely, if not entirely, of U.S. Cellular's own doing.

DISCUSSION

1. On March, 21, 2006, the Commission issued its *Order* in this case finding that “**U.S. Cellular has not presented sufficient evidence** regarding how it intends to use the support it would receive from the Universal Service Fund to improve its network through improved coverage, signal strength, or capacity, in ways that would not otherwise occur without the receipt of high-cost support.” (Emphasis added.) Rather than deny U.S. Cellular’s application outright, the Commission allowed U.S. Cellular to submit additional **evidence** on that issue. Specifically, the Commission stated that it “will not further consider U.S. Cellular’s application until that **evidence** is submitted.” (Emphasis added.)

2. The Commission’s March 2006 *Order* also expressly stated that the other parties would have a chance to respond to any subsequent filings. Specifically, the *Order* stated, “**Of course, all other parties will be given an opportunity to respond to whatever additional evidence U.S. Cellular submits.**” (Emphasis added.)

3. Nearly five months later, on August 11, 2006, U.S. Cellular filed what it deemed a “compliance filing” purporting to provide additional information about its intended use of federal Universal Service Fund (USF) support. The new information filed by U.S. Cellular is essentially a new plan and should be given the same scrutiny as its previous build-out plan. U.S. Cellular itself states that the new plan “is both quantitatively and qualitatively different from the original plan.”¹

¹ See U.S. Cellular’s Response to Staff’s Suggestions in Opposition, p. 2, ¶15, filed Oct. 4, 2006.

4. On August 14, the Commission directed each party to file a pleading indicating whether it wishes to: (a) cross-examine U.S. Cellular's witness; (b) present additional evidence; and/or (c) present additional argument. The STCG and other parties answered "yes" to all of these questions.

5. The Commission's orders are consistent with the law governing evidence and the due process rights of parties in contested cases:

Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not the subject of the direct examination, to impeach any witness regardless of which party first called him to testify, and to rebut the evidence against him.

§536.070(2) RSMo. 2000; *see also State ex rel. Util. Consumers Council v. PSC*, 562 S.W.2d 688, 692-4 (Mo. App. 1978).

6. Nevertheless, on September 21, 2006, U.S. Cellular filed, out of time, an objection to the other parties' requests to cross-examine U.S. Cellular's witness, present additional evidence, and/or present additional argument. U.S. Cellular raises two main arguments. First, U.S. Cellular argues that its post-hearing information provides the Commission with "the information it needs" to approve U.S. Cellular's ETC application. Second, U.S. Cellular accuses the other parties of seeking "additional delay in the form of more discovery, cross-examination and evidence." (See Sept. 21 *Motion*, pp. 5-6). Neither of U.S. Cellular's arguments have merit.

A. The Right to Present Evidence and Test U.S. Cellular's Evidence

7. The Commission's March 21 and August 14 *Orders* both recognize that parties to a contested case have the right to present evidence, to cross-examine the opponent's witnesses, and to present argument. The Commission's orders are consistent with Missouri law, which requires such due process. §536.070(2) RSMo. 2000; *State ex rel. Util. Consumers Council v. PSC*, 562 S.W.2d 688, 692-4 (Mo. App. 1978). The Commission's March 2006 *Order* expressly found that U.S. Cellular failed to present sufficient evidence to support its application. Rather than rejecting the application outright, the Commission allowed U.S. Cellular to file additional evidence after the hearing. U.S. Cellular failed to meet its burden of proof the first time and had to file additional information, so U.S. Cellular should not be heard to complain when the other parties assert their rights to rebut U.S. Cellular's post-hearing evidence and cross-examine U.S. Cellular's witness at hearing.

B. Any Delay Is of U.S. Cellular's Own Making.

8. U.S. Cellular complains that it has been months since it filed its application and the Commission held its first hearing in this matter. As noted above, U.S. Cellular failed to meet its burden of proof the first time, and this is the primary reason for any delay. Moreover, U.S. Cellular waited almost five months after the Commission issued its March 2006 Order before submitting its "compliance filing" at issue here.

9. During the hearing, U.S. Cellular witness Nick Wright stated twice that U.S. Cellular could prepare a detailed build-out plan within thirty (30) days if ordered to do so by the Commission.

Q: If this Commission were to direct U.S. Cellular to file a five-year plan, how long would it take to prepare such a plan?

A: 30 days.

(Tr. 122)

* * *

Q: But you think you can do it within 30 days?

A: **We would be committed to doing it within 30 days.**

(Tr. 174)(Emphasis added.) Thus, U.S. Cellular claimed at the hearing that it could prepare a five-year build out plan within 30 days. The Commission's Order and ETC rules only required U.S. Cellular to submit a two-year plan. Nevertheless, it took U.S. Cellular nearly five months (not 30 days) to file its two-year plan.

CONCLUSION

WHEREFORE, the STCG respectfully requests that the Commission adopt the procedural schedule proposed by Staff, Public Counsel, and all of the Intervenors in this case and grant such other relief as is reasonable in the circumstances.

RESPECTFULLY SUBMITTED,

/s/ Brian T. McCartney

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or via electronic mail, or hand-delivered on this 4th day of October, 2006, to the following parties:

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