

**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)
eligible telecommunications carrier pursuant to)
the Telecommunications Act of 1996.) Case No. TO-2005-0384

OFFICE OF PUBLIC COUNSEL’S PRETRIAL BRIEF

Overview of Public Counsel’s Position

The Office of Public Counsel asks the Public Service Commission to reject USCOC of Greater Missouri, LLC, d//b/a/ U.S. Cellular Corporation’s application for ETC status.

The Application does not provide all of the information necessary for approval and lacks a number of fundamental consumer protections. The PSC designation of a wireless carrier as an ETC raises jurisdictional issues for the oversight of supported service offerings and the Commission’s responsibility under the 1996 Federal Telecommunications Act to verify that federal universal service support is used only for the intended USF purposes. USCOC has not fully disclosed its planned offerings and future expansion plans so that the PSC can analyze the availability of supported services. While USCOC serves a significant portion of the state and possesses substantial technical and financial resources, the Commission should be furnished additional evidence that USCOC can reasonably serve ubiquitously and timely throughout the requested areas, including areas with intermittent wireless service. The Commission should also require evidence that demonstrates how USCOC will use USF support to expand and enhance the availability of supported services in each supported geographic area.

USCOC now provides its customers with many of the services identified for Federal Universal Service support and has committed in its Application and testimony to offer the remaining supported services. But Public Counsel has reservations about the price, terms and conditions of service, in particular Lifeline offerings that do not provide a clear picture of the cost or terms and conditions of receiving service. Prior to its designation as an ETC, USCOC must give the PSC assurance that reasonably priced service will be continuously available to Lifeline customers. To ensure adequate Commission access to and monitoring of USCOC's supported services, USCOC must regularly make basic information and administrative filings with the Commission.

Because USCOC seeks substantial support funds to grow and enhance its service offerings in Missouri, it should provide evidence and assurances that such support will benefit Missouri consumers.

Discussion of Issues

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 carriers

- to offer the services that are supported by Federal universal service support mechanisms
- to advertise by “media of general distribution” the availability of these services and the charges for those services.

The carrier may provide the supported services using either

- 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.

2. The PSC's grant of ETC designation must be consistent with the public interest, convenience and necessity

Section 214(e)(2) authorizes the Public Service Commission to designate eligible telecommunications carriers:

- "A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements . . . 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"
- "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. "

Public Counsel's wants to ensure that rural Missouri customers have access to reasonably priced local telecommunications service that will also afford them reasonably priced access to an expanded calling scope. Public Counsel views this as an essential element under Section 214(e)(2): "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."

For a statement of the applicable public interest, Public Counsel asks the PSC to study Section 392.185, RSMo 2000 for the public purposes and standards that it should consider in determining whether or not the application is in the public interest.

Section 392.185.

The provisions of this chapter shall be construed to:

(1) Promote universally available and widely affordable telecommunications services;

(2) Maintain and advance the efficiency and availability of telecommunications services;

(3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;

(4) Ensure that customers pay only reasonable charges for telecommunications service;

(5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;

(7) Promote parity of urban and rural telecommunications services;

(8) Promote economic, educational, health care and cultural enhancements; and

(9) Protect consumer privacy.

The Commission and the entire telecommunications industry knows that rural Missouri is not a high priority target in the local service provider's quest for competitive entry. The realities of population levels and density deter many providers from investing in local service in rural areas. Yet, the legislature has made promotion of parity of urban

and rural telecommunications services (Section 386.185 (7)), reasonable charges (Section 386.185 (4)), and universally available and widely affordable telecommunications services (Section 386.185 (1)) goals.

Unless telecommunications companies are willing to propose creative solutions and unless the Commission is willing to be receptive and consider creative proposals, rural Missouri may not reap the full measure of benefits promised in the Federal Telecommunications Act of 1996 and in Senate Bill 507. However, in an effort to use wireless technology to achieve these goals, Public Counsel urges the PSC not to sacrifice the hard-won service quality, adequacy of service and maintenance standards as well as consumer billing, collection, and complaint rights enjoyed by wireline customers for creative solutions. Public Counsel is concerned about the reliability of wireless technology when the underlying issue is to provide essential basic telecommunications service that connect the rural customer to work, medical assistance, and the world. While technology should not stand in the way of a designation of an ETC to make telecommunications services available to rural Missouri, Public Counsel does not want Missouri rural customers to become second-class telecommunications customers while the carrier is supported by federal USF dollars.

The Commission does not have direct supervision over the operation of wireless carriers as it does over wireline carriers. Therefore, it should establish reasonable limits on the applicant and the process so the PSC can monitor and ensure that essential telecommunications services are provided in a manner consistent with the protections afforded to wireline customers. To that end, the FCC has clarified the jurisdiction of the PSC over any carrier that seeks ETC designation thereby providing a reassuring legal

basis and template for evaluating wireless ETC applications and for imposing necessary conditions consistent with federal law weighing it to promote the public interest when it makes its ETC designation decision.

Public Counsel proposes various conditions that promote the public interest and should be required of a wireless carrier that seeks ETC designation. The USCOC has agreed to those conditions. (Meisenheimer Rebuttal, p. 3-5).

In addition to those conditions, Public Counsel states that a wireless applicant should be required to comply with certain standards equivalent to those required of wireline service providers. These standards include:

- ➤ Specific details regarding lifeline offerings
- ➤ Demonstrate sufficient financial and technical resources to provide adequate service
- ➤ Exchange specific service area maps
- ➤ Make readily available the terms and conditions of service
- ➤ Report to PSC on the use of USF funds for intended purpose for PSC certification purposes
- ➤ Adhere to minimum billing disclosures, service quality standards, a formal complaint process, and other customer relations' procedures, such as snap-back provisions.

3. The PSC should apply the FCC's ETC Report and Order guidelines in its evaluation of U.S. Cellular's application.

In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005), the FCC emphasized the dual jurisdiction of the states and the federal authorities:

63. We decline to mandate that state commissions adopt our requirements for ETC designations. 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. We believe that section 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law. States that exercise jurisdiction over ETCs should apply these requirements in a manner that is consistent with section 214(e)(2) of the Act. Furthermore, state commissions, as the entities most familiar with the service area for which ETC designation is sought, are particularly well equipped to determine their own ETC eligibility requirements. Because the guidelines we establish in this Report and Order are not binding upon the states, we reject arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations. We also find that federal guidelines are consistent with the holding of United States Court of Appeals for the Fifth Circuit that nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1). Consistent with our adoption of permissive federal guidelines for ETC designation, state commissions will continue to maintain the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose. **(footnotes omitted)**

The FCC guidelines in *In the Matter of Federal-State Joint Board on Universal Service* are reasonable and consistent with the determination of whether or not granting the applicant's request for ETC status is in the public interest. The PSC can impose reasonable conditions so that the applicant can demonstrate that it will not use its status as a wireless carrier outside of the PSC's plenary authority over providers of statutory "telecommunications service" under Section 386.020 (53) (c) to escape the PSC's oversight on service quality, service adequacy, and customer rights concerning billing and complaints. The applicant should directly and specifically agree as a condition of the grant of the ETC to abide by those provisions that the wireline carriers follow.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, emailed and/or hand delivered this 14th day of October 2005 to the following attorneys of record:

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