

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

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

**BRIEF OF STAFF**

COMES NOW the Staff of the Missouri Public Service Commission and for its Brief states:

**Introduction**

USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, filed an application asking the Commission to designate it as an Eligible Telecommunications Carrier (ETC) pursuant to federal law. U.S. Cellular asks to be designated as eligible to receive all available support from the Universal Service Fund, including support for rural, insular, and high-cost areas and for low-income customers. The Commission conducted an initial evidentiary hearing on October 26 and 27, 2005, and the parties filed post-hearing briefs on December 6, 2005.

In an Order issued March 21, 2006, the Commission found that U.S. Cellular had 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 occur without the receipt of high-cost support. Rather than simply rejecting U.S. Cellular's application, the Commission allowed U.S. Cellular an opportunity to submit additional evidence on that issue. The Commission noted that it had proposed a new regulation regarding applications for designation as an ETC and suggested that the requirements of that regulation - - regarding the proposed build out plan that must be

submitted with any application for ETC designation - - are a good guide for the information that U.S. Cellular would be required to submit in this case.

The Commission's ETC regulation, 4 CSR 240-3.570, became effective June 30, 2006.

On August 11, 2006, U.S. Cellular filed the Compliance Filing of U.S. Cellular which set forth its plan for spending high-cost support during its first two years as an ETC. Other parties responded that they wished to cross-examine U.S. Cellular's witness and to present additional evidence and argument regarding that filing. The Commission directed the parties to file prepared testimony, a list of issues, and position statements in advance of the hearing which was held on December 18 and 19, 2007.

The presiding officer directed the parties to file their post-hearing briefs on January 31, 2006. The Staff's Argument will address the five issues as submitted by parties in the List of Issues.

### **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?

**Staff's Position:** Yes.

The supported services are listed in Federal Communications Commission (FCC) Rule 47 CFR Section 54.101(a): (1) voice grade access to the public switched network, (2) local usage, (3) dual tone multi-frequency signaling or its functional equivalent, (4) single-party service or its functional equivalent, (5) access to emergency services, (6) access to operator services, (7) access to interexchange service, (8) access to directory assistance, and (9) toll limitation for qualifying low-income customers.

The Direct Testimony of U.S. Cellular witness Lowell states that U.S. Cellular provides each of the listed services. (Ex. 4, p. 2-4). The Direct Testimony of U.S. Cellular witness Wright states that U.S. Cellular is willing to advertise its services. (Ex. 5, p. 5).

**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 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)?

**Staff's Position:** No. It is not in the public interest to grant ETC status to U.S. Cellular because it has failed to demonstrate that its proposed construction would not otherwise occur absent the receipt of high cost support.

In its ETC Order,<sup>1</sup> the Federal Communications Commission (FCC) adopted mandatory requirements for ETC designation proceedings before the FCC and encouraged states that exercise jurisdiction over ETC designations to adopt those requirements. The FCC adopted a requirement, *inter alia*, that an ETC applicant must demonstrate its commitment and ability to provide supported services throughout the designated area by submitting a (five-year) formal network improvement plan that demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support.<sup>2</sup>

The Commission's ETC rule requires each request for ETC designation to include a two-year plan including a statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur. 4 CSR 240-3.570 (2)(A)(3)(G).

U.S. Cellular states that "[it] will use all of the available federal high-cost support to fund projects that would not otherwise be undertaken if support were not provided." (Supp. Surr. of Wright, Ex. 25, p. 5). However, U.S. Cellular does not explain "how" the proposed plans would not otherwise occur.

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<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, rel. March 17, 2005.

<sup>2</sup> *Id.*, para. 21, 23.

U.S. Cellular's initial application stated that it would use high-cost support to construct sixteen cell sites that would not otherwise be constructed in the absence of high-cost support. However, in the absence of high-cost support, U.S. Cellular built or started four of those sixteen cell sites in the summer of 2006. (Supp. Rebuttal of McKinnie, Ex. 29, pp. 12-13).

U.S. Cellular explained that two of the sites moved up on the priority list because of the need to shorten existing microwave hops by placing new sites between existing sites, and two other sites moved up because of changing competitive conditions and increasing customer feedback. (Supp. Surr. of Johnson, Ex. 26, p. 13). When Mr. Wright had testified in the earlier hearing that these sites would not be built without high cost support, he had in mind a time frame of 18 months. (Tr. 506). Mr. Johnson testified that the horizon - - when U.S. Cellular states that the sites on the current list will not be built without high cost support - - is two years. (Tr. 588)

Mr. Johnson explained that U.S. Cellular looks at several inputs such as market growth, system performance, customer complaints, and population to prioritize all sites and then lists those sites in priority order. He testified that U.S. Cellular determines which sites it can support in terms of a business plan, and those sites that aren't supported by the business plans are considered to be below the line and would not be built without high cost support. (Tr. 586-87).

Mr. Johnson testified that a team at U.S. Cellular meets on a quarterly basis to reprioritize cell sites. (Tr. 650). Mr. Johnson was asked whether U.S. Cellular would build only 38 sites with high-cost support if U.S. Cellular were to decide, based on a change in circumstances, to move one of the 39 sites from below the line to above the line. He answered that one of the sites in the build plan list (i.e., above the line) has to come down, and so the list of sites for ETC purposes would still be 39. (Tr. 651-52).

Mr. Wright testified that “U.S. Cellular is going to build some facilities in Missouri, irrespective whether it receives high-cost support. But it is not going to build facilities out of rural areas of Missouri as fast as it would if it does receive high-cost support.” (Supp. Surr., Ex. 25, p. 4). In its response to a Staff data request, U.S. Cellular states that “. . . U.S. Cellular has never stated, and could not state, a guarantee that it would not build *all* of the cell sites listed on its first build out plan during the first 18 months following designation in the absence of support . . .” (Supp. Rebuttal of McKinnie, Ex. 29, Sch. ACM-4-2).

Mr. Wright explained that each of U.S. Cellular market areas has a plan and a list of cell sites that need to be built in a given year; and that U.S. Cellular has separated which of those cell sites will get built within the internal U.S. Cellular side (or budgeted dollars) and which would be ETC sites. (Tr. 517). Similarly, Mr. Wood testified as to his understanding that U.S. Cellular has prioritized projects in terms of customer need, and then they move down the list in terms of internal capital, and move further down the list if there is support available, and there may be projects that aren’t funded. (Tr. 665).

U.S. Cellular’s listing of 39 cell sites that, as of today, it does not plan to construct within two years using internal capital is not a statement as to how that proposed construction would not otherwise occur absent high-cost support. High-cost support is intended to be used for projects that would not occur absent the receipt of high-cost support. In other words, high-cost support is not intended to be used to move up the construction dates for projects that would occur absent high-cost support.

The Commission’s ETC rule requires an ETC applicant to demonstrate how the plan would not occur absent the receipt of high-cost support. Because U.S. Cellular has failed to make that demonstration, its ETC application is not in the public interest and should be denied.

**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?

**Staff's Position:** No. As explained by Staff witness McKinnie, U.S. Cellular meets most but not all of the criteria. (Supp. Rebuttal, Ex. 29, pp. 5-13, Tr. 771). Specifically, U.S. Cellular does not meet the requirements of subsection (2)(A)(3)(D) of the Commission's ETC rule. This subsection directs that a request for ETC designation shall include a two-year plan that shall include the "estimated amount of investment for each project that is funded by high-cost support".

U.S. Cellular's Highly Confidential Appendix 3 contains aggregated budgetary information for the projects instead of specific estimated costs for each proposed project. The costs for all of the cell towers to be built during the two-year period are averaged together; i.e., there is no specific cost listed for each cell tower.

There is also an aggregate listing of how many sites need the additional expense of "additional microwave equipment" instead of listings specifically which sites need "additional microwave equipment". (Supp. Rebuttal of McKinnie, Ex. 29, pp. 8-9). At the hearing, U.S. Cellular supplied information on which sites need additional microwave equipment. (HC Ex. 35).

Mr. Johnson testified that U.S. Cellular's annual report to the Commission would provide site specific costs after a project is completed. (Supp. Surr., Ex. 26, pp.14-15). There is, however, no provision in the Commission's ETC rule that allows an ETC to submit its detailed

budget and expense information for the first time in its annual review phase as opposed to its upfront initial application. (McKinnie, Tr. 777)

In Staff's opinion, the aggregate submission does not meet the criteria of the subsection, particularly the language asking for the expense of "each project". In Staff's opinion, U.S. Cellular should have submitted up front a two-year plan with specificity as to the estimated expense for each cell tower, including whether or not the cell tower needs "additional microwave equipment". (Supp. Rebuttal of McKinnie, Ex. 29, p. 9).

**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).

**Staff Position:** The issue of whether U.S. Cellular meets the requirement of paragraph (2)(A)(2) of the Commission's ETC rule is covered by Issue 3 which asks whether U.S. Cellular meets the requirements of the Commission's ETC rules. The Staff does not challenge U.S. Cellular's compliance with paragraph (2)(A)(2). The Staff's position concerning U.S. Cellular's compliance with the Commission's ETC rule is set forth under Issue 3.

**Issue 5.** 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 U.S. 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?



**Staff Position:** The fact that the Commission has granted ETC status to Missouri RSA No. 5 Partnership and to Northwest Missouri Cellular Limited Partnership for some wire centers for which U.S. Cellular is also seeking ETC status may be considered under the general public interest analysis of Issue 2 but is not a stand-alone issue. The fact that U.S. Cellular's proposed ETC service area overlaps other carriers' ETC service areas was not a factor in Staff's position that U.S. Cellular's application is not in the public interest. The Staff's position concerning the public interest analysis of U.S. Cellular's application is set forth under Issue 2.

WHEREFORE, the Staff requests the Commission to find that U.S. Cellular's application for ETC status is not consistent with the public interest, and therefore to deny U.S. Cellular's application.

Respectfully submitted,

**/s/ William K. Haas**

William K. Haas  
Deputy General Counsel  
Missouri Bar No. 28701

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-7510 (Telephone)  
(573) 751-9285 (Fax)  
[william.haas@psc.mo.gov](mailto:william.haas@psc.mo.gov)

#### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 31st day of January 2007.

**/s/ William K. Haas**

William K. Haas