

**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) Case No. TO-2005-0384
Telecommunications Carrier Pursuant to)
the Telecommunications Act of 1996.)

**PREHEARING BRIEF OF THE STAFF OF
THE MISSOURI PUBLIC SERVICE COMMISSION**

I. Introduction

On April 22, 2005, USCOC of Greater Missouri, LLC d/b/a U.S. Cellular (“U.S. Cellular”) filed an Application for eligible telecommunications carrier (“ETC”) status. U.S. Cellular’s Application is the second ETC application filed by a wireless carrier to be considered by the Commission. The first application for ETC status was filed by Mid-Missouri Cellular, which the Commission ultimately denied in its November 30, 2004 *Amended Report and Order*.¹ The issues presented in this case are likely to arise in several other ETC applications currently before the Commission,² and in the proposed rule to establish requirements for ETC applications and designations that the Commission is currently considering in Case No. TX-2006-0169.³

¹ In the Matter of the Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Company 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 (“*Mid-Missouri Cellular Order*”).

² ETC applications currently before the Commission include: 1) Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular re-filed for ETC designation in Case No. TO-2005-0325. The hearing is set for November 28-29, 2005; 2) Northwest Missouri Cellular Limited Partnership filed for ETC status in Case No. TO-2005-0466. The procedural schedule in TO-2005-0466 is temporarily suspended; and 3) Chariton Valley Telecom Corporation (a CLEC) applied for ETC designation in Case No. TO-2005-0423. The hearing is set for December 14-15, 2005.

³ In The Matter of Proposed New Rule 4 CSR 240-3.570 Regarding Eligible Telecommunications Carrier Designations For Receipt Of Federal Universal Service Fund Support.

The parties have identified several issues and sub-issues that one or more of the parties believe must be considered in granting or denying ETC status to U.S. Cellular. These issues, abbreviated below, essentially ask the Commission to determine:

- Has U.S. Cellular satisfied its burden of proving that it meets the requirements of Section 214(e)(1) by offering the supported services and by advertising the availability of such services?
- Should the Commission require U.S. Cellular to prove that the designation is in the public interest for both rural and non-rural areas?
- Has U.S. Cellular satisfied its burden of proving that designating U.S. Cellular as an ETC is in the public interest?
- What requirements or commitments should the Commission determine are necessary before granting ETC status to U.S. Cellular?

Included in these issues is a disagreement over whether the Commission should follow the FCC's guidelines for ETC designation that the FCC encouraged states to adopt in its March 17, 2005 *Report and Order*.⁴

After an extensive review, the Staff believes U.S. Cellular has satisfied its burden of proving that it offers the supported services, its burden of proving that it advertises the availability of such services, and its burden of proving that the designation is in the public interest, provided certain conditions are met.

⁴ *In the Matter of the Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC-05-46, released March 17, 2005.

II. Background on Eligible Telecommunications Carriers

A. The Telecommunications Act of 1996

The purpose of the Federal Universal Service Fund (“USF”) is to provide financial support to carriers for the advancement of universal service principles. Before a carrier can receive support from the USF, the carrier must be designated an ETC by the state commission with jurisdiction over the service area where the carrier seeks to apply its USF support. 47 U.S.C. § 214(e).

Under the Telecommunications Act of 1996 (“Act”), state commissions must confirm that the petitioning carrier offers the services, as defined by the FCC, that are supported by Federal universal service support mechanisms under Section 254(c) of the Act. Pursuant to 47 C.F.R. § 54.101, the following services or functionalities shall be supported by USF support mechanisms:

- Voice grade access to the public switched network;
- Local usage (An amount of minutes of use of exchange access provided free of charge to end-users);
- Dual tone multi-frequency signaling or its functional equivalent (Facilitates the transportation of signaling through the network, thus shortening call set-up time);
- Single-party service or its functional equivalent;
- Access to emergency services;
- Access to operator services;
- Access to interexchange service;
- Access to directory assistance; and
- Toll limitation for qualifying low-income consumers.

To be eligible for receipt of USF support, a petitioning carrier must first prove to the state commission that it provides these supported services throughout the service area for which it seeks ETC designation. 47 U.S.C. § 214(e)(1) and 47 U.S.C. § 254(c). The petitioning carrier must also prove that it advertises the availability of such services and charges using media of general distribution. 47 U.S.C. § 214(e). Lastly, the Act places requirements on state commissions in designating more than one ETC in a particular service area. The Act states:

...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*. [emphasis added]. 47 U.S.C. § 214 (e)(2).

Accordingly, designation of more than one carrier as an ETC in a particular service area must be “consistent with the public interest, convenience, and necessity.” Before a state commission may grant an additional ETC for an area served by a rural telephone company, the state commission must determine that the designation is in the public interest.

B. FCC’s March 2005 Report and Order

On March 2005, the FCC released its *Report and Order* regarding many of the issues surrounding a petition for ETC designation.⁵ A majority of the *Report and Order* addresses the ETC designation process and the requirements for carriers petitioning the FCC for ETC designation. The FCC encourages state commissions to adopt the same requirements when reviewing ETC petitions.

⁵ *In the Matter of the Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC-05-46, released March 17, 2005.

1. Eligibility Requirements

The FCC first addressed the statutorily prescribed eligibility requirements an ETC applicant must meet before the FCC can approve their designation as an ETC. The FCC identified six (6) separate eligibility requirement headings and adopted the following requirements:

a. Commitment and Ability to Provide the Supported Services

Under this requirement, an ETC applicant must demonstrate its commitment and ability to provide supported services throughout the designated service area: (1) by providing services to all requesting customers within its designated service area; and (2) by submitting a formal five-year 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. The five-year must demonstrate in detail:

1. How signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation;
2. The projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support;
3. The specific geographic areas where the improvements will be made; and
4. The estimated population that will be served as a result of the improvements.

The FCC determined that applicants should provide this information for “each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area.”⁶

⁶ *Id.* at ¶ 21-24.

b. Ability to Remain Functional in Emergency Situations

Under this requirement, the FCC requires ETC applicants to demonstrate that it “has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.”⁷

c. Consumer Protection

ETC applicants must also demonstrate to the FCC their commitment to meeting consumer protection and service quality standards. For wireless ETC applicants, the FCC determined that this requirement would be satisfied by a commitment from the wireless applicant to comply with the Cellular Telecommunications and Internet Association’s (“CTIA”) Consumer Code for Wireless Service. In addition, an ETC applicant must report information on consumer complaints per 1,000 handsets or lines on an annual basis. The FCC encourages states to impose these requirements, but acknowledges that states may either follow the FCC’s framework “or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers.”⁸

d. Local Usage

Local usage is defined as by the FCC as “an amount of minutes of use of exchange service, prescribed by the [FCC], given free of charge to its end-users.” 47 C.F.R. § 54.101(a)(2). In the FCC’s *Report and Order*, the FCC requires “an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation.” The FCC declined to adopt a

⁷ *Id.* at ¶ 25.

⁸ *Id.* at ¶ 28.

specific amount of required local usage minutes, but will instead review a local usage plan on a case-by-case basis.⁹

e. Equal Access

Equal access is defined in the FCC's *Report and Order* to include, among other things, "the ability to access the presubscribed long distance carrier of the customer's choice by dialing 1+ the phone number."¹⁰ Under this requirement, the FCC does not impose a general equal access requirement on ETC applicants, but instead requires an ETC applicant to acknowledge that the FCC "may require them to provide equal access to long distance carriers in their designated service areas in the event that no other ETC is providing equal access within the service area."¹¹

2. Public Interest Determinations

In addition to the above mandatory eligibility requirements, the FCC's *Report and Order* also sets an analytical framework that the FCC will use to determine whether the public interest would be served by an applicant's designation as an ETC. The FCC adopts in the *Report and Order* "the fact-specific public interest analysis" the FCC developed in the *Virginia Cellular* and the *Highland Cellular Orders*, and strongly encourages states commissions to consider the same factors in their public interest reviews.¹² The FCC outlines a two-part public interest analysis. In the first part, the FCC conducts a cost-benefit analysis by considering a variety of factors, including: 1) the benefits of increased consumer choice; 2) the impact of the designation on the universal service fund; and 3) the unique advantages and disadvantages of the competitor's

⁹ *Id.* at ¶ 32-34.

¹⁰ *Id.* at fn. 90.

¹¹ *Id.* at ¶ 35-36.

¹² *Id.* at ¶ 41. *In the Matter of the Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, January 22, 2004 ("Virginia Cellular Order").

service area. In the second part of the public interest analysis, the FCC will consider the potential for cream-skimming in areas where an ETC applicant seeks designation below the study area level of a rural telephone company. Cream-skimming occurs when competitors seek to serve only the low-cost, high-revenue customers in a rural telephone company's study area, which the FCC has determined is against the public interest.¹³ Under the FCC's cream-skimming analysis, the FCC will deny designation if it concludes the potential for cream-skimming is against the public interest.¹⁴

The FCC next determined that under the Telecommunications Act, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where the designation is sought is served by a rural or a non-rural carrier. The FCC encourages states to apply this same analysis in determining whether an ETC designation would be in the public interest.¹⁵ The FCC stated:

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. In the *Virginia Cellular ETC Designation Order*, the Commission determined that merely showing that a requesting carrier in a non-rural study area complies with the eligibility requirements outlined in section 214(e)(1) of the Act would not necessarily show that an ETC designation would be consistent with the public interest in every instance. We find the public interest concerns that exist for carriers seeking ETC designation in areas served by rural carriers also exist in study areas served by non-rural carriers. Accordingly, we find that many of the same factors should be considered in evaluating the public interest for both rural and non-rural designations, except that creamskimming effects will be analyzed only in rural study areas because the same potential for creamskimming does not exist in areas served by non-rural incumbent LECs. [footnotes omitted]

¹³ *Virginia Cellular Order*, at ¶ 16.

¹⁴ *Report and Order*, at ¶ 41.

¹⁵ *Id.*, at ¶ 3.

According to the FCC, the same public interest concerns that exist for areas served by rural carriers also exist for areas served by non-rural carriers. The only exception noted by the FCC is the cream-skimming analysis, which is only necessary in the rural study areas.

3. Reporting Requirements

The FCC's *Report and Order* also strengthened the FCC's reporting requirements for ETCs and now requires on an annual basis:

- (1) Progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;
- (2) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;
- (3) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;
- (4) The number of complaints per 1,000 handsets or lines;
- (5) Certification that the ETC is complying with applicable service quality standards and consumer protection rules, *e.g.*, the CTIA Consumer Code for Wireless Service;
- (6) Certification that the ETC is able to function in emergency situations;

- (7) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

To continue to receive universal service support, the FCC requires all ETCs it designates to submit this information annually.¹⁶ The FCC also encourages states to require these reports to be filed by all ETCs.

4. Administrative Requirements for ETC Designations

In addition to the substantive requirements outlined above, the FCC also adopted and encouraged states to adopt, a requirement that all ETC orders include: 1) the name of each ILEC study area in which an ETC has been designated; 2) a clear statement of whether the ETC has been designated in all or part of each ILEC study area; and 3) a list of all wire centers in which the ETC has been designated.

5. State Commissions Urged to Adopt these Requirements

At the conclusion of the FCC's *Report and Order*, the FCC again encouraged state commissions to consider the requirements adopted by the FCC when examining whether the state should designate a carrier as an ETC. The FCC stated:

We encourage state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order. We also encourage states to impose the annual certification and reporting requirements uniformly on all ETCs they have previously designated. In doing so, we encourage states to conform these guidelines with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable eligibility criteria and reporting requirements. We agree with the Joint Board's recommendation that a rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all

¹⁶ *Id.* at ¶ 68-72.

customers within the designated service area. Additionally, a set of guidelines allows for a more predictable application process among the states. We believe that these guidelines will assist states in determining whether the public interest would be served by a carrier's designation as an ETC. We also believe that these guidelines will improve the long-term sustainability of the fund, because, if the guidelines are followed, only fully qualified carriers that are capable of and committed to providing universal service will be able to receive support.

As suggested by commenters and the Joint Board, we encourage state commissions to consider the requirements adopted in this Report and Order when examining whether the state should designate a carrier as an ETC. An ETC designation by a state commission can ultimately impact the amount of high-cost and low income monies distributed to an area served by a non-rural carrier, an area served by one or more rural carriers, or both. A single set of guidelines will encourage states to develop a single, consistent body of eligibility standards to be applied in all cases, regardless of the characteristics of the incumbent carrier. As noted above, however, the public interest analysis for ETC applications for areas served by rural carriers should be more rigorous than the analysis of applications for areas served by non-rural carriers.

The FCC declined to mandate that states commissions adopt the FCC's requirements for ETC designation, and acknowledged that Section 214(e)(2) of the Act gives states primary responsibility for designating ETCs within the state. The FCC stated:

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.

The FCC's *Report and Order* was released on March 17, 2005. Several parties filed Petitions for Reconsideration to the *Report and Order*. Among the issues raised in the petitions is the FCC's decision to encourage, rather than require, state commissions to adopt the same ETC guidelines. Despite the petitions for reconsideration, the FCC is currently applying the requirements from its *Report and Order* to ETC designation applications.¹⁷

C. Redefinition of ILEC Service Areas

ETC designations may also require a redefinition of the underlying ILEC's service area. ETC status is granted pursuant to a service area. 47 U.S.C. § 214(e)(2). The Act defines "service area" as "a geographic area established by a State commission...for the purpose of determining universal service obligations and support mechanisms." 47 U.S.C. § 214(e)(5). The service area designation is significant because it defines the area for which support is to be used and determines the amount of support received by the ETC. 47 C.F.R. § 54.207.

A state commission has discretion in defining a service area with one exception. For an area served by a rural telephone company, the Act defines service area as such company's "study area" unless and until the FCC and the state commission establish a different definition. 47 U.S.C. § 214(e)(5). The ETC service area for additional carriers operating in an area served by a rural telephone company must follow the "study area" of the underlying rural telephone company. If the state commission or the FCC wish to grant ETC status to a carrier in an area served by a rural telephone company, and for an area other than the rural carrier's study area, the Act requires consensus between the state commission and the FCC for the redefined service area.

¹⁷ *In the Matter of the Federal State Joint Board on Universal Service, RCC Minnesota, Inc. and RCC Atlantic, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire*, CC Docket No. 96-45, *Order*, DA-05-2673, released October 7, 2005.

The FCC's rules further outline the steps that a state commission must take if it proposes to define a service area served by a rural telephone company to be other than such company's study area. The FCC requires as follows:

- (1) A state commission or other party seeking the Commission's agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission. The petition shall contain:
 - (i) The definition proposed by the state commission; and
 - (ii) The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company. 47 C.F.R. § 54.207(c).

It is clear from the Act and the FCC's rules that consensus among both the state commission and the FCC is required where the state commission initiates a proceeding to redefine a service area in an area served by a rural telephone company.

D. The Commission's Order Denying ETC Status to Mid-Missouri Cellular

As mentioned earlier, the Commission previously addressed some of the issues raised in this case when the Commission considered the ETC designation request of Mid-Missouri Cellular. On November 30, 2004, the Commission issued its *Amended Report and Order* in Case No. TO-2003, denying Mid-Missouri Cellular's request for ETC designation. The Commission concluded on page 28:

The Commission determines that the grant of ETC status to MMC is not in the public interest because MMC has not provided competent and substantial evidence to show that the public will benefit from designating MMC an eligible telecommunications carrier for universal service fund purposes.

MMC has not agreed to abide by the same quality of service standards as landline companies and will not be required to do so by law. The Commission will have no jurisdiction over rates or service plans of MMC, and MMC has not agreed to

provide plans with lower rates if it is allowed to become an ETC except for the Lifeline service required under the law. MMC has told the Commission that the funds will be used for an upgrade of its system, but it has not presented the Commission with any construction or financial plans or any timelines for these upgrades.

Additionally, MMC has not shown that the customers will see any increased competition or benefits from the grant of ETC status to MMC. MMC has made no showing that it intends to expand its coverage area or fix dead spots. Although cellular service does offer mobility that the landline carriers cannot provide, that service is already available throughout MMC's service area to those customers who have a need for that service. MMC states that it intends to update its TDMA platform to a CDMA with the funds, but it also admits that it will make the upgrade regardless of whether it is granted ETC status.

MMC has not met its burden to show that a grant of ETC status in the rural areas is in the public interest. Furthermore, MMC has not shown that a grant of ETC status in the non-rural areas would be "consistent with the public interest, convenience, and necessity." Therefore, the Commission will deny MMC's request.

III. U.S. Cellular's Application

On April 22, 2005, U.S. Cellular filed its Application for designation as an ETC. The Office of the Public Counsel ("OPC") filed a motion for an evidentiary hearing on April 27, 2005, and on May 27, 2005 the Commission granted intervention to Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"); Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (collectively "CenturyTel"); and the Small Telephone Company Group ("STCG").

A. U.S. Cellular's Service Offerings

U.S. Cellular states in its Application that it is "a full-service wireless carrier" offering all of the supported services within the State of Missouri.¹⁸ The Application details the specific offerings that U.S. Cellular believes satisfy the supported services requirement from Section 214(e)(1) and 47 C.F.R. § 54.101.

¹⁸ Application, at p. 5.

B. U.S. Cellular's Public Interest Analysis

In its Application, U.S. Cellular also provides the Commission with a public interest analysis. Contrary to the FCC's public interest analysis, U.S. Cellular limits its public interest analysis to areas served by rural ILECs under the argument that the Telecommunications Act does not require a separate public interest finding for areas served by non-rural ILECs. U.S. Cellular argues that if ETC designation is in the public interest for rural areas, a petitioning carrier will clearly meet the non-rural threshold if it satisfies the higher public-interest standard for rural areas.¹⁹

Despite the FCC's findings in the March 2005 *Report and Order* regarding the public interest analysis and the FCC's encouragement to state commissions to adopt the same public interest guidelines, U.S. Cellular's public interest analysis follows the earlier January 2004 *Virginia Cellular Order*. Under the *Virginia Cellular* public interest analysis, U.S. Cellular claims that designating it an ETC will advance the public interest under five factors: 1) The benefits of increased competitive choice; 2) The impact of designation on the USF; 3) The unique advantages and disadvantages of the competitor's service offering; 4) Any commitments made regarding the quality of telephone service; and 5) The competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. U.S. Cellular claims to meet these five requirements as follows: 1) ETC designation will increase consumer choice and service quality; 2) Health and safety benefits of providing service to areas underserved by wireless telephone facilities will be increased with an ETC designation; 3) The burden on the USF will be negligible; and 4) ETC designation "will spur a competitive response from affected ILECs as they seek to retain and attract customers."²⁰

¹⁹ Application, at p. 9.

²⁰ Application, at p. 20.

C. U.S. Cellular's Request to Redefine Service Areas

U.S. Cellular acknowledges that under Section 214(e)(5), ETC designation shall be for a “service area” designated by the state commission. In areas served by rural telephone companies, “service area” means the local exchange carrier’s study area unless and until the FCC and the states establish a different definition of service area for such company. U.S. Cellular requests that the Commission redefine the rural ILEC service areas, pursuant to 47 C.F.R. § 54.207(c), for ten rural ILECs that have portions of their study areas that fall outside of U.S. Cellular’s FCC-licensed territory.²¹ Specifically, U.S. Cellular requests that the Commission classify a list of wire centers as separate service areas. U.S. Cellular correctly states that once the Commission establishes a redefined service area, either the Commission or U.S. Cellular, at the Commission’s direction, may file a petition requesting that the FCC concur with the redefinition. Assuming the evidence presented during the evidentiary hearing does not reveal the potential for cream-skimming, the Staff has no objections to U.S. Cellular’s request to redefine service areas

IV. The Pre-Filed Testimony and the Facts

U.S. Cellular witnesses Mr. Don J. Wood, Mr. Nick Wright, and Mr. Kevin Lowell filed testimony in support of U.S. Cellular’s ETC designation. In response to the Direct Testimony of these witnesses, the Staff’s witness, Mr. Adam McKinnie, filed Rebuttal Testimony. Also filing rebuttal testimony were STCG witness Mr. Robert C. Schoonmaker, OPC witness Mrs. Barbara A. Meisenheimer, SBC witness Mr. James E. Stidham, Jr., and CenturyTel witness Mr. Glenn H. Brown. Mr. McKinnie’s testimony provides the Staff’s position on whether U.S. Cellular has

²¹ Application, pp. 21-27; The ten rural ILECs include ALLTEL Missouri, Inc., BPS Telephone Company, Chariton Valley Telephone Company, Craw-Kan Telephone Cooperative, Inc. (Missouri), Goodman Telephone Company, Grand River Mutual Telephone Company, Le-Ru Telephone Company, Mid-Missouri Telephone Company, Spectra Communications Group, LLC, and Sprint.

met its burden of proof in the presentation of its case to the Commission. Mr. McKinnie concludes that the Staff is in favor of granting ETC status to U.S. Cellular with some conditions.

B. Staff Testimony on the Eligibility Requirements

First, Mr. McKinnie states that U.S. Cellular has verified, and the Staff concurs, that U.S. Cellular provides all of the services required by the Act and advertises the same throughout its service area.²² The Staff believes the testimony supports a factual finding by the Commission that U.S. Cellular provides all of the supported services as required by Section 214(e)(1).

Second, Mr. McKinnie's testimony considers the FCC's guidelines from its *Report and Order*. Those guidelines include whether the carrier has satisfied its burden of proof by requiring that the applicant to:

1. Provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support;
2. Demonstrate its ability to remain functional in emergency situations;
3. Demonstrate that it will satisfy consumer protection and service quality standards;
4. Offer local usage plans comparable to those offered by the ILEC in the areas for which it seeks designation; and
5. Acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.

Under the first guideline, requiring that the ETC applicant provide a five-year plan, Mr. McKinnie testifies that U.S. Cellular only provided information on an eighteen (18) month plan rather than a five-year plan. Although U.S. Cellular's build out plan is 3 ½ years short of what the FCC requires, Mr. McKinnie suggests that the 18-month plan provides the Commission with

²² Rebuttal Testimony of Adam McKinnie, p. 3.

an idea of how U.S. Cellular plans to spend ETC monies to the benefit of Missouri citizens. Mr. McKinnie further recommends that the Commission address the need for a five-year plan when the Commission promulgates rules regarding ETC designations. It is likely that the ETC rule will become effective prior to the expiration of U.S. Cellular's 18-month plan. If the Commission's rule requires a five-year plan, U.S. Cellular could be required to update its build out plan during the annual certification process. Although the Staff was satisfied with the limited build out plan, Mr. McKinnie recommended that the Commission follow the second part of the FCC's first guideline listed above and require U.S. Cellular to explain how it will spend universal service money to improve its coverage, service quality or capacity in the wire centers currently receiving signal from U.S. Cellular cell towers.²³

Under the second guideline, Mr. McKinnie testified that the Direct Testimony of Mr. Lowell offers a "satisfactory description of how U.S. Cellular's network is redundant and how U.S. Cellular manages emergency situations." The Staff believes the testimony supports a finding by the Commission that U.S. Cellular has demonstrated its ability to remain functional in emergency situations.²⁴

Under the third guideline, Mr. McKinnie testified that U.S. Cellular has demonstrated that it will satisfy consumer protection and service quality standards. Mr. McKinnie further recommends that the Commission provide a condition as a grant of ETC status that U.S. Cellular continue to abide by the CTIA Code of Conduct.²⁵

Under the fourth guideline, Mr. McKinnie testified that U.S. Cellular provided information on the fourth guideline when U.S. Cellular witness Mr. Wright testified that U.S. Cellular offers local usage plans comparable to those offered by the ILEC in the areas for which

²³ Rebuttal Testimony of Adam McKinnie, pp. 5-12.

²⁴ *Id.*, p. 12.

²⁵ *Id.*, p. 13.

U.S. Cellular seeks ETC designation. Mr. McKinnie concludes that U.S. Cellular has satisfied this fourth guideline, and the Staff believes the testimony supports a finding by the Commission that U.S. Cellular offers a local usage plan comparable to those offered by the ILEC.²⁶

Under the fifth and final guideline, Mr. McKinnie testified that U.S. Cellular witness Mr. Wright commits to annually submit a certification acknowledging that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access with the service area. Accordingly, Mr. McKinnie concludes that U.S. Cellular has satisfied this fifth guideline, and the Staff believes this testimony supports a finding by the Commission that U.S. Cellular has met this fifth guideline by acknowledging that it may be required to provide equal access by the FCC if all other ETCs in the service area relinquish their ETC designations.²⁷

C. Staff Testimony on the Public Interest Analysis

Mr. McKinnie considered a variety of factors in the public interest analysis, including the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering. Mr. McKinnie testified that two particular things stand out in conducting this analysis. First, state commissions can and should review other factors in addition to whether ETC designation will increase customer choice. Second, in discussing the five FCC guidelines, Staff has attempted to show whether or not granting the application is in the public interest. Mr. McKinnie concludes that U.S. Cellular has met its burden regarding the public interest standard. This conclusion is a compilation of: 1) U.S. Cellular satisfying four of the five guidelines; 2) U.S. Cellular providing sufficient information on the fifth guideline to

²⁶ Rebuttal Testimony of Adam McKinnie, p. 14-15.

²⁷ *Id.*, pp. 15-16.

satisfy Staff's review; and 3) U.S. Cellular providing sufficient information to show that no cream-skimming will result from designating U.S. Cellular an ETC in the proposed areas.²⁸

V. Conclusion

In the Rebuttal Testimony of Adam McKinnie, the Staff recommends that the Commission grant U.S. Cellular ETC status with the following conditions:

- a. U.S. Cellular shall follow the CTIA Code.
- b. U.S. Cellular shall provide annual updates to the Commission (or Staff) as described in paragraph 69 of the *Report and Order*.
- c. U.S. Cellular shall not self-certify to the Universal Service Administrative Company (USAC), but shall comply with the Commission's annual certification process.²⁹

Mr. McKinnie testified that U.S. Cellular has met four of the five guidelines outlined in the FCC's *Report and Order*, and U.S. Cellular has provided enough information on the remaining guideline to satisfy Staff's review.³⁰ Mr. McKinnie further concludes that designating U.S. Cellular an ETC is consistent with the public interest provided the conditions listed above are followed. Lastly, the Staff does not oppose the requested service area redefinitions provided that the evidence presented during the hearing does not reveal a potential for cream-skimming.

²⁸ *Id.*, pp. 16-18.

²⁹ *Id.* at p. 22. Mr. McKinnie explains in his Rebuttal Testimony, pp. 20-21, that the Universal Service Administrative Company (USAC) encourages states to explicitly include this statement in an order designating a carrier as an ETC.

³⁰ Rebuttal Testimony of Adam McKinnie, at p. 21.

Respectfully submitted,

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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 14th day of October 2005.

/s/ Marc Poston
