

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 27th day of February, 2007.

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)

**ORDER STRIKING PORTIONS OF U.S. CELLULAR'S
SUPPLEMENTAL BRIEF**

Issue Date: February 27, 2007

Effective Date: February 27, 2007

On February 9, 2007, the Small Telephone Company Group (STCG) filed a motion asking the Commission to strike portions of the Supplemental Brief filed by USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, on January 31. U.S. Cellular filed a timely response to the motion to strike on February 20.

STCG's motion challenges two portions of U.S. Cellular's brief. The first is a sentence and accompanying footnote regarding the qualifications of a witness - Robert C. Schoonmaker - whose testimony was offered by STCG. In the paragraph that begins on page 20 of its brief, U.S. Cellular questioned, in an appropriate manner, Mr. Schoonmaker's credibility as an expert. But, in the first full sentence at the top of page 21, U.S. Cellular indicates that Mr. Schoonmaker's qualifications to testify regarding wireless matters were challenged in a June 2005 proceeding in Illinois. Then, in a footnote, U.S. Cellular offers an extensive quote from a witness in the Illinois proceeding that roundly criticizes

Schoonmaker's testimony in that case. STCG contends that the challenged sentence and footnote are based upon extra-record hearsay and asks that they be struck.

U.S. Cellular responds by arguing that the quoted testimony from a witness in the earlier Illinois case is not hearsay because it is not offered as proof of the matter asserted, namely that Mr. Schoonmaker is unqualified. Rather, U.S. Cellular argues that it is offering the statement merely to demonstrate that Mr. Schoonmaker's qualifications have been challenged in another proceeding.

U.S. Cellular's argument about the admissibility of a statement it included in its brief entirely misses the point of STCG's objection. The point is: the statement is not in evidence. Regardless of whether the statement could have been admitted as evidence at the hearing, it is now too late for U.S. Cellular to offer rebuttal evidence in its post-hearing brief. The purpose of a brief is to present argument based on the evidence that was admitted into the record at the hearing, not to offer new evidence. The challenged sentence and footnote are not based on any evidence in the record and they will be struck.

STCG's second challenge is to a three-page section of the brief that refers to extra-record information regarding participation in the Lifeline program by Missouri households. The challenged section is identified as section IV. E and begins on page 32 of the brief. In that section, U.S. Cellular cites statistics from the U.S. Census Bureau, the Universal Service Administrative Company, and the Missouri Department of Social Services, to argue that there is an unmet need for Lifeline benefits in rural Missouri. The problem, once again, is that none of the cited statistics are in evidence.

U.S. Cellular is attempting to introduce new evidence through its brief and that cannot be allowed. The portion of section IV. E of the brief that refers to extra-record

statistics will be struck. However, not all of Section IV. E is improper. The last two paragraphs of that section, found on page 34, properly refer to testimony offered at the hearing by U.S. Cellular's witness. Those two paragraphs will not be struck.

IT IS ORDERED THAT:

1. The Motion to Strike filed by the Missouri Small Telephone Company Group is granted in part.
2. The following portions of the Supplemental Brief filed by USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, on January 31, 2007, are struck:
 - (a) The first full sentence on page 21, and accompanying footnote 61; and
 - (b) Section IV. E on pages 32-34, except the last two paragraphs of that section.
3. This order shall become effective on February 27, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Woodruff, Deputy Chief Regulatory Law Judge