

**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.)	

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

The Staff of the Missouri Public Service Commission (“Staff”) supports a Commission order designating USCOC of Greater Missouri, LLC d/b/a U.S. Cellular (“U.S. Cellular”) an eligible telecommunications carrier (“ETC”), eligible for receipt of Federal Universal Service Fund (“USF”) support. However, the Staff believes certain conditions should be attached to U.S. Cellular’s ETC designation to ensure the designation is in the public interest. Those conditions include the following: 1) U.S. Cellular shall follow the CTIA Code; 2) U.S. Cellular shall provide annual updates to the Commission regarding its use of USF support; and 3) U.S. Cellular shall comply with the Commission’s annual certification process and any forthcoming ETC rules. These conditions, in addition to U.S. Cellular’s commitments in its April 22, 2005 Application and in U.S. Cellular’s witness’ testimony before the Commission, provide sufficient justification for designating U.S. Cellular an ETC throughout its Missouri service area. According to U.S. Cellular’s current build-out plan, a Commission order designating U.S. Cellular an ETC will provide the resources necessary for extending U.S. Cellular’s coverage to new areas currently not served by U.S. Cellular. This new build-out will further the Telecommunication Act’s goal of providing greater access to telecommunications and information services in rural and high cost areas.

A. The Federal Universal Service Fund

The USF was established to provide greater access to quality telecommunications and information services throughout all regions of the nation, including rural and high cost areas. The USF also aims to provide telecommunications services at just, reasonable and affordable rates, and at rates that are comparable between the urban and rural areas of the nation. Lastly, the USF provides that schools, health care providers and libraries should have access to advanced telecommunications services.¹ To achieve these goals, the USF provides financial support to telecommunications carriers that can only be spent on the “provision, maintenance and upgrading of facilities and services for which the support is intended.”²

B. ETC Designation Requirements

To qualify for USF funding, a telecommunications carrier must first be designated an ETC by the state commission with jurisdiction over the carrier and the area for which the carrier seeks ETC status.³ The requirements for ETC designation include: 1) The carrier must prove that it offers the services that are supported by Federal universal service support mechanisms; 2) The carrier must prove that it advertises the availability of such services and charges using media of general distribution; and 3) The ETC designation must be in the public interest.⁴

On April 22, 2005, U.S. Cellular filed its Application for designation as an ETC. 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”). The Commission held an evidentiary hearing on October 26-28, 2005.

¹ 47 U.S.C. § 254(b).

² 47 U.S.C. § 254(e).

³ 47 U.S.C. § 214(e).

⁴ *Id.*

The parties presented three issues to the Commission for resolution. These issues were agreed to by the parties as the only issues that needed to be resolved to consider U.S. Cellular's Application for ETC designation. These issues are separately addressed below.

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. The Staff also recommends that the Commission authorize U.S. Cellular to petition the Federal Communications Commission ("FCC") as requested to redefine the applicable service areas. Following is a more detailed explanation of the Staff's position and recommendation.

1. Offers and Advertises the Supported Services

Section 214(e)(2) of the Act requires that state commissions may only grant ETC status if the applicant meets the requirements of Section 214(e)(1). Section 214(e)(1) requires an ETC to offer the services supported by the USF and to advertise the availability of these services using media of general distribution. Issue 1, as agreed upon by the parties, asks the Commission to determine whether U.S. Cellular has met the requirements of Section 214(e)(1) by offering the supported services and by advertising the availability of those services. The parties phrased Issue 1 as follows:

Issue 1. Telecommunications companies seeking 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 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 therefor using media of general distribution. Does U.S. Cellular meet the requirements of Section 214(e)(1) throughout the service area for which U.S. Cellular seeks ETC designation?

Under Section 254(c) of the Act, Congress gave the FCC the task of determining which services shall be supported by the USF.⁵ The FCC determined that 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.⁶

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). 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.⁷ 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.

⁵ 47 U.S.C. § 254(c).

⁶ 47 C.F.R. § 54.101.

⁷ Application, at p. 5.

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). U.S. Cellular witness Mr. Nick Wright, Vice President – West Operations, commits to advertising the availability of U.S. Cellular’s services throughout the proposed service area.⁸

The Staff’s witness, Mr. Adam C. 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.⁹ 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) and advertises the availability of such services using media of general distribution.

2. Public Interest Standard

In addition to the requirements to offer the supported services and to advertise such services, the Act also requires ETC designations to be in the public interest. 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

⁸ Direct Testimony of Nick Wright, Ex. 5, p. 5.

⁹ Rebuttal Testimony of Adam McKinnie, Ex. 9, p. 3.

must determine that the designation is in the public interest. The parties addressed this in Issue 2, which was phrased as follows:

Issue 2. ETC designations by a state commission must be consistent with the public interest, convenience and necessity pursuant to Section 214(e)(2). All parties agree that ETC designations must be consistent with the public interest, convenience and necessity for areas served by rural carriers, and all parties but U.S. Cellular agree that ETC designations in areas served by non-rural carriers must also be consistent with the public interest, convenience and necessity. The Federal Communications Commission's ("FCC's") ETC Report and Order determined that this public interest standard applies regardless of whether the area is served by a rural or non-rural carrier.

A. Is granting ETC status to U.S. Cellular in areas served by rural carriers consistent with the public interest, convenience and necessity?

B. Must ETC designations in areas served by non-rural carriers be consistent with the public interest, convenience and necessity?

C. If the answer to B is "no," should the Commission nonetheless ensure that all ETC designations in areas served by non-rural carriers are consistent with the public interest, convenience and necessity?

D. If the answer to either B or C is "yes," is granting ETC status to U.S. Cellular consistent with the public interest, convenience and necessity in areas served by non-rural carriers?

It is the Staff's position that granting ETC status to U.S. Cellular in areas served by rural carriers is in the public interest, convenience and necessity as required by Section 214(e)(2) (Issue 2(A)). It is also the Staff's position that ETC designations must be consistent with the public interest for areas served by non-rural carriers, and that granting ETC status to U.S. Cellular in areas served by non-rural carriers is consistent with the public interest, convenience and necessity (Issue 2(B) and 2(D)). Assisting the Staff in its public interest analysis is the FCC's March 2005 *Report and Order*, which attempts to set a framework for the FCC and state commissions to use in determining whether to grant ETC status on an applicant. The FCC's *Report and Order* offers guidelines to the Commission in making its public interest

determination, guidelines for determining whether a petitioning carrier has met certain eligibility requirements, and guidelines regarding reporting requirements and other administrative matters. In the following section of this brief, the Staff analyzes U.S. Cellular's Application under the guidelines suggested by the FCC.

C FCC's March 2005 Report and Order

In March 2005, the FCC released its *Report and Order* regarding many of the issues concerning a petition for ETC designation.¹⁰ 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. The parties addressed the FCC's *Report and Order* in Issue 3, which was agreed to by all parties and phrased as follows:

Issue 3. The FCC's ETC Report and Order determined that carriers seeking ETC designation from the FCC must meet certain requirements. The FCC encouraged state commissions to apply these requirements. Should the Commission apply the guidelines included in the FCC's ETC Report and Order in its evaluation of the application filed by U.S. Cellular?

The FCC's *Report and Order* specifically addressed certain eligibility requirements, public interest requirements, reporting requirements, and other administrative requirements. As further discussed below, the Staff applied the FCC's *Report and Order* to its analysis of U.S. Cellular's Application.

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

¹⁰ *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.

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.”¹¹

Under this first guideline requiring that the ETC applicant provide a five-year plan, Mr. McKinnie testified 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

¹¹ *Id.* at ¶ 21-24.

the FCC requires, Mr. McKinnie suggested that the 18-month plan provides the Commission with an idea of how U.S. Cellular plans to spend ETC monies to the benefit of Missouri citizens. Mr. McKinnie further recommended 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.¹²

Mr. McKinnie also testified that U.S. Cellular does not break down how high cost universal service support will be used to "improve its coverage, service quality, or capacity in every wire center" where U.S. Cellular seeks ETC designation. Mr. McKinnie states that from Exhibit E attached to U.S. Cellular's application, it appears there will be wire centers where there will be no signal coverage before or after a potential grant of ETC designation. U.S. Cellular will not receive high cost support for wire centers where it does not have customers. Therefore, Staff recommended that U.S. Cellular be granted ETC status for all requested wire centers for the purpose of administrative simplicity. If U.S. Cellular invests in cellular service for wire centers where it does not currently serve, consistent with its commitments, U.S. Cellular could then receive USF monies for those customers without an additional proceeding seeking ETC designation in those additional wire centers.¹³

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

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

¹³ *Id.*, pp. 6-8.

able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.”¹⁴

Under this 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.” During the evidentiary hearing, Mr. Lowell provided additional testimony explaining how U.S. Cellular’s standard design for cellular tower sites includes battery and generator backup.¹⁵ 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.¹⁶

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.”¹⁷

Under this third guideline, Mr. McKinnie testified that U.S. Cellular has demonstrated that it will satisfy consumer protection and service quality standards. Mr. McKinnie further

¹⁴ FCC Report and Order, at ¶ 25.

¹⁵ Transcripts, Vol. 1, p. 45.

¹⁶ Rebuttal Testimony of Adam McKinnie, p. 12.

¹⁷ FCC Report and Order, at ¶ 28.

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.¹⁸

d. Local Usage

Local usage is defined 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 specific amount of required local usage minutes, but will instead review a local usage plan on a case-by-case basis.¹⁹

During the evidentiary hearing, U.S. Cellular witness Mr. Nick Wright testified that U.S. Cellular would offer a \$25 rate plan which would include 400 minutes of local usage. Mr. Wright further testified that this plan would be available to Lifeline customers.²⁰

Under this 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 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.²¹

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

¹⁸ Rebuttal Testimony of Adam McKinnie, p. 13.

¹⁹ FCC *Report and Order*, at ¶ 32-34.

²⁰ Transcript, Vol. 1, pp. 103-104.

²¹ Rebuttal Testimony of Adam McKinnie, p. 14-15.

1+ the phone number.”²² 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.”²³

Under this 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 concluded that U.S. Cellular has satisfied 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.²⁴

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 adopted in the *Report and Order* “the fact-specific public interest analysis” the FCC developed in the *Virginia Cellular Order*, and strongly encourages states commissions to consider the same factors in their public interest reviews.²⁵ 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

²² FCC *Report and Order*, fn. 90.

²³ *Id.* at ¶ 35-36.

²⁴ *Id.*, pp. 15-16.

²⁵ *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*”).

fund; and 3) the unique advantages and disadvantages of the competitor's 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.²⁶ 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.²⁷

The FCC next determined that under the 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 state commissions to apply this same analysis in determining whether an ETC designation would be in the public interest.²⁸ 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]

²⁶ *Virginia Cellular Order*, at ¶ 16.

²⁷ *FCC Report and Order*, at ¶ 41.

²⁸ *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.

In its Application, U.S. Cellular provided the Commission with a public interest analysis. Contrary to the FCC's public interest analysis, U.S. Cellular limited its public interest analysis to areas served by rural ILECs under the argument that the Act does not require a separate public interest finding for areas served by non-rural ILECs. U.S. Cellular argued 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.²⁹

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.³⁰ 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

²⁹ Application, at p. 9.

³⁰ *Id.*, p. 11.

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.”³¹

In its Application, U.S. Cellular proposes to meet these five requirements by committing to use its USF support to build cellular towers in high-cost areas that are in need of improved signal coverage.³² This commitment was based on an estimate that U.S. Cellular would receive \$200,000 per quarter in USF support.³³ In prefiled testimony, U.S. Cellular witness Mr. Nick Wright testified that this estimate was revised by the Universal Service Administrative Company (USAC), and the new projections show that U.S. Cellular would receive \$2 million per quarter.³⁴ During the evidentiary hearing, U.S. Cellular committed to apply their entire USF support to the new cellular tower construction.³⁵

Taking into consideration the guidelines offered by the FCC in its *Report and Order*, 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 the result of: 1) U.S. Cellular satisfying four of the five guidelines; 2) U.S. Cellular providing sufficient information on the fifth guideline to satisfy Staff’s review; and 3)

³¹ Application, at pp. 11-20.

³² Application, at p. 14.

³³ Application, at p. 42.

³⁴ Direct Testimony of Nick Wright, Ex. 5, pp. 13-14.

³⁵ Transcript, Vol. 1, pp. 103, 125.

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.³⁶

3. Additional FCC Requirements

The FCC's Report *and Order* also strengthened the FCC's reporting requirements for ETCs and added additional reporting requirements. In addition, the FCC also adopted and encouraged states to adopt, a requirement that all ETC orders include the name of each ILEC study area and wire center in which an ETC has been designated, and a clear statement of whether the ETC has been designated in all or part of each ILEC study area.

D. 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.

³⁶ Rebuttal Testimony of Adam McKinnie., pp. 16-18.

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.

U.S. Cellular acknowledges that under Section 214(e)(5), ETC designation shall be for a "service area" designated by the state commission. 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.³⁷ 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

³⁷ 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.

petition requesting that the FCC concur with the redefinition. The Staff has no objections to U.S. Cellular's request to redefine service areas.

E. Conclusion

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 and any new ETC rules.³⁸

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.³⁹ Designating U.S. Cellular an ETC is consistent with the public interest provided the conditions listed above are applied and the commitments made by U.S. Cellular are followed. Lastly, the Staff does not oppose the requested service area redefinitions and an order from the Commission that authorizes U.S. Cellular to petition the FCC for a redefinition of the service area.

³⁸ *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.

³⁹ 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 6th day of December 2005.

/s/ Marc Poston
