

**BEFORE THE PUBLIC SERVICE COMMISSION  
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**

**U.S. CELLULAR’S RESPONSE TO MOTION TO STRIKE**

USCOC of Greater Missouri, LLC d/b/a U.S. Cellular (“U.S. Cellular” or “Company”), in response to the Missouri Small Telephone Company Group’s (STCG) motion to strike portions of U.S. Cellular’s January 31, 2007 supplemental brief states the following:

1. U.S. Cellular is surprised at the STCG motion. Throughout this hearing and many other hearings at this Commission, the citing of information from other agencies is routinely practiced by all parties including STCG. Rather than file a motion to strike when other parties use outside information, U.S. Cellular considers it is appropriate for the Commission to be informed by as much relevant information as possible. Therefore, U.S. Cellular did not object to STCG, on page 12 of its Supplemental Brief, citing to the FCC’s Eleventh CMRS Competition report and referring to specific data from that report as evidence to support its statements regarding competition in rural areas. CenturyTel attached an FCC order denying U.S. Cellular’s E-911 waiver petition as evidence to support its arguments about public safety matters. All of these examples are attempts to add extra-record information. Yet STCG only objects now, when it apparently believes the cited information is harmful to its case. U.S. Cellular does not believe that the use of statistics, decisions, and docket filings made publicly available by other government agencies should present the Commission with any difficulties as the Commission can judge for itself the usefulness of the cited information.

2. STCG also asserts, incorrectly, that U.S. Cellular’s citation of testimony filed in an Illinois ETC proceeding constitutes an attempt to introduce “hearsay.” Missouri courts define hearsay as “a statement, other than one made by the declarant while testifying in court, offered in evidence to prove the truth of the matter asserted.” D.L.H. v. H.T.H., 780 S.W.2d 104, 105 (Mo. App. E.D. 1989). In the cited paragraph, a witness for a wireless ETC applicant stated that Robert Schoonmaker – STCG’s witness in this proceeding and an ILEC witness in the Illinois proceeding – lacked engineering credentials and was therefore unqualified to testify about wireless telecommunications systems. U.S. Cellular’s citation to this testimony would be hearsay only if it were offered as proof of Mr. Schoonmaker’s lack of qualifications to testify on wireless matters. However, the quote was not used for this purpose. Rather, it was used to refute Mr. Schoonmaker’s testimony at the hearing that his qualifications as a witness had not been challenged in other proceedings. Accordingly, the quoted testimony does not fall within the definition of hearsay.<sup>1</sup>

3. U.S. Cellular finds it interesting that the STCG objects to U.S. Cellular’s use of Lifeline-related information from the Census Bureau, the Universal Service Administrative Company (“USAC”) and the Missouri Department of Social Services (“DSS”). The Commission is vitally interested in the Lifeline area. Indeed, the Commission requires that all telephone companies report the number of Lifeline customers reported to USAC in their annual report to the Commission. U.S. Cellular’s reference to official statistics published by those entities represents a legitimate effort to provide the Commission with a complete record

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<sup>1</sup> STCG’s objection to the “lengthy” and “inflammatory” nature of the quote – a single paragraph in a footnote – is ironic, given that nearly two pages of STCG’s post-hearing brief following the 2005 hearing were devoted to an excerpt from another state commission’s order that can fairly be characterized as inflammatory. *See* STCG Post-Hearing Brief at pp. 19-21.

regarding Lifeline penetration in Missouri. For example, rather than object to the unsupported suggestion by STCG's witness that low-income consumers in rural Missouri are less willing than others to receive government assistance,<sup>2</sup> U.S. Cellular elected to cite official statistics directly refuting that assertion. This is an appropriate use of official agency data. The Commission has broad discretion in evidentiary determinations. Deaconess Manor Association v. P.S.C., 994 S.W.2d 602, 611 (Mo. App. 1999).

4. The STCG's alternative motion to respond and present data should be rejected as an improper attempt to reply to U.S. Cellular's brief. Notably, STCG did not challenge the veracity of the statistics cited by U.S. Cellular. Instead, STCG offers out-of-record cites of its own that purportedly rebut the data referenced in U.S. Cellular's brief. STCG's pleading is therefore an attempt to circumvent the decision not to allow reply briefs. Worse, it cited data in a manner that is at best selective and at worst misleading. For example, STCG boasts that its members experienced a 79% increase in Lifeline support from 2004-2005. Tellingly, STCG does not mention the fact that at least 4 STCG members reported *zero* Lifeline/Link-up dollars in 2004. For those companies, anything above zero in 2005 certainly was a major improvement.<sup>3</sup>

5. Another example is STCG's statement that because wireless subscribers outnumber wireline access lines in Missouri, the state does not "need" the improved and expanded wireless service U.S. Cellular's designation would bring. STCG's statement ignores the fact that wireless subscribers are inordinately concentrated in heavily populated areas such as St. Louis and its suburbs. The tendentious comparison made by STCG is simply irrelevant in a proceeding about the use of high-cost support to bring improved wireless service to Missouri's

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<sup>2</sup> Tr. 816.

<sup>3</sup> One remained at zero dollars in 2005.

rural areas. Rather than seeking to strike STCG's use of extra-record data, U.S. Cellular simply requests the Commission to give it appropriate consideration in light of the context provided above.

Wherefore, U.S. Cellular asks the Commission to deny the STCGs' Motion to Strike.

Respectfully submitted,

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/s/ Karl Zobrist

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been mailed electronically to all counsel of record this 20th day of February, 2007.

/s/ Karl Zobrist

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