

**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) Case No. TO-2005-0384
eligible telecommunications carrier pursuant to)
the Telecommunications Act of 1996.)

**THE SMALL TELEPHONE COMPANY GROUP'S
STATEMENT OF POSITION**

COMES NOW the Missouri Small Telephone Company Group ("STCG"), pursuant to the Missouri Public Service Commission's ("PSC" or "Commission") and for its Statement of Position, states to the Commission as follows:

I. INTRODUCTION AND SUMMARY

The Commission should deny U.S. Cellular's application for Eligible Telecommunications Carrier (ETC) status. First, U.S. Cellular has not demonstrated that it can provide service throughout the area for which it seeks ETC designation. On the contrary, even if U.S. Cellular completes its proposed two-year build-out plan, U.S. Cellular will still offer either no coverage or insufficient coverage in many parts of rural Missouri. Accordingly, in the event that the Commission does choose to grant ETC status to U.S. Cellular in some parts of Missouri, then the Commission should specifically exclude those rural areas where U.S. Cellular does not offer adequate service and has provided no plans to do so.

Second, U.S. Cellular's two-year plan does not comply with the Missouri PSC's ETC designation rules. For example, U.S. Cellular's two-year plan does

not offer baseline budget and expense information that would allow the Commission to determine whether U.S. Cellular's anticipated federal Universal Service Fund (USF) support will be spent "in addition to any expenses [U.S. Cellular] would normally incur," as required by the Missouri PSC's rule.

Third, U.S. Cellular has failed to show that granting its application is in the public interest. Instead, U.S. Cellular has provided a two-year plan that will simply shore up its wireless service in areas that are already served by U.S. Cellular (and other wireless carriers). The two-year plan proposes no significant improvements in many of the rural areas where it does not presently offer service.

Fourth, U.S. Cellular seeks ETC designation in two parts of Missouri that are already served by wireless carriers that have been designated as ETCs. Specifically, the areas already served by Chariton Valley Wireless and Northwest Missouri Cellular already have access to wireless service, including Lifeline and Link-Up discounts for customers that qualify. Thus, competition for primary telephone service in remote areas has already been enhanced by a grant of ETC designation to these two wireless carriers, and there is little or no incremental benefit in designating a second wireless ETC in these areas. On the other hand, the incremental costs associated with granting ETC designations to multiple wireless carriers in high cost areas is quite high and has been recognized by the FCC as a growing problem. In this case, the costs outweigh the benefits, so the Commission should specifically exclude those areas already served by Chariton Valley Wireless and Northwest Missouri Cellular.

II. ISSUES

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?

No. U.S. Cellular does not meet the requirements of Section 214 of the Act throughout the service area for which it seeks ETC designation. It is U.S. Cellular’s burden to demonstrate that it will provide the supported services throughout the service territory of each separate incumbent LEC (ILEC) study area. U.S. Cellular has failed to meet this burden of proof. In this case, there are wire centers where there will be no signal coverage either before or after a potential U.S. Cellular ETC designation, even with the addition of the new cellular towers proposed in U.S. Cellular’s two-year plan.

The information on service coverage and service quality discussed in the testimonies of Mr. Brown and Mr. Schoonmaker show that U.S. Cellular’s actual coverage area is much smaller than the area for which it is requesting ETC status. Clearly, U.S. Cellular does not provide service to the entire service territory (i.e. “throughout the study area”) of many companies, and U.S. Cellular provides no service at all in many of the study areas for which it has requested ETC status.¹

¹ Schoonmaker Supplemental Rebuttal, pp. 18-21, 30.

Specifically, U.S. Cellular has either no coverage or insufficient service in the study areas of:

BPS Telephone Company
Ellington Telephone Company
Fidelity Telephone Company
Goodman Telephone Company
Grand River Mutual Telephone Corporation
Holway Telephone Company
IAMO Telephone Company,
Mid-Missouri Telephone Company
Orchard Farm Telephone Company
Seneca Telephone Company
Steelville Telephone Company.²

Because U.S. Cellular does not provide service at all or only offers service to a limited and insufficient extent in these areas, the Commission should deny or exclude ETC status in these study areas.

There also are a number of other study areas where the adequacy of service is questionable, so the study areas served by the following companies should be carefully reviewed by the Commission:

Kingdom Telephone Company
Le-Ru Telephone Company
Mark Twain Rural Telephone Company
Northeast Missouri Rural Telephone Company
Peace Valley Telephone Company, Inc.
Stoutland Telephone.³

The Commission must perform its public interest analysis and make its ETC determinations for each individual company's study area, so the Commission must decide whether or not U.S. Cellular's coverage in these company study areas satisfies the "throughout the service area" test.

² *Id.*

³ *Id.*

U.S. Cellular's application is deficient because it seeks ETC status for a number of areas where U.S. Cellular does not presently provide service or have any immediate plans to provide service. This violates the Commission's holding in the *ExOp ETC Order* that requires an ETC applicant to "both offer and advertise the services in question throughout its designated service area **upon designation**."⁴

Excluding certain small company rural service areas from U.S. Cellular's proposed ETC area would be consistent with the Commission's recent decision to exclude the rural Winigan exchange in the Chariton Valley Wireless ETC case:

The ETC rule provides what the company must do to provide service if requested in an area where coverage does not exist. With regard to the Winigan exchange, MO5 admitted that it would most likely have to report to the Commission that it could not serve those customers outside of its service area if they requested service. The Commission concludes that because of the number of customers served relative to the number outside the service area, the fact that MO5 will not be able to serve those customers outside its service area, and that this is the only wire center of Northeast for which service is requested, **it must exclude the Winigan wire center from MO5's designated ETC area**.⁵

The Commission should reach the same conclusion in this case and exclude those areas where U.S. Cellular does not presently offer service.

⁴ *In the Matter of the Application of ExOp of Missouri, Inc., 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. TA-2001-251, *Order Granting Designation*, issued May 16, 2001 (emphasis added).

⁵ *In the Matter of the Application of Missouri RSA No. 5 Partnership for ETC Designation*, Case No. TO-2006-0172, *Report and Order*, pp. 34-35 (emphasis added).

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)?

No. The federal Telecommunications Act states, "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." 47 U.S.C. § 214(e)(2) (emphasis added). Likewise, the Missouri PSC rule requires a demonstration that the grant of ETC designation is consistent with the public interest, convenience, and necessity. 4 CSR 240-3.570(2)(A)(5). U.S. Cellular has failed to meet its burden of proof to show that granting ETC status to U.S. Cellular is in the public interest, convenience, and necessity.

The Federal Communications Commission ("FCC") has established a rigorous set of minimum public interest requirements that it will apply in ETC cases.⁶ The FCC believes that "because these requirements create a more rigorous ETC designation process, their application by the [FCC] and state

⁶ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, released March 17, 2005 ("the ETC Order").

commissions will improve the long-term sustainability of the universal service fund.”⁷ The FCC’s *ETC Order* identifies a number of public interest concerns that a state commission should consider in reviewing ETC designation requests. These concerns include an examination of: (1) the benefits of increased consumer choice; (2) the unique advantages and disadvantages of the ETC applicant’s service offerings; and (3) the impact on the federal USF.⁸

The characteristics of many rural carrier service areas also support a more rigorous standard of eligibility because rural carriers’ service areas have low customer densities and high per-customer costs. These circumstances indicate that state commissions should apply a particularly rigorous standard to applicants seeking ETC designation in rural carrier service areas. Indeed, numerous statements by the FCC and individual commissioners indicate serious doubts about funding more than one ETC in rural areas.

A. Competitive Choice

U.S. Cellular claims that ETC designation and “competitive entry” will bring the benefits of competition to end users in Missouri.⁹ However, in its *Virginia Cellular Order*, the FCC stated, “We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”¹⁰ U.S. Cellular’s reliance on competition as a rationale for granting its ETC status is flawed for a number of reasons.

⁷ *Id.* at ¶2.

⁸ *ETC Order*, ¶¶44, 54.

⁹ Wood Direct, pp. 7-9, Supplemental Surrebuttal, p. 27.

¹⁰ *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004), ¶4 (“*Virginia Cellular Order*”).

First, the FCC has found that there is “effective” competition in the wireless market in rural areas.¹¹ For example, the FCC found that counties with 100 residents per square mile or less have an average of 3.7 mobile competitors.¹² Thus, many of the areas where U.S. Cellular serves already have wireless competition. It is unclear how granting ETC status to U.S. Cellular will increase competition when U.S. Cellular is already providing service.

Second, the introduction of a competitor in a rural environment does not necessarily lead to lower costs or higher quality of service. A high-cost market, by definition, is still a high-cost market even after the introduction of competition, and U.S. Cellular observes that without federal high-cost support “it is doubtful that many rural areas would have wireline telephone service even today.”¹³ U.S. Cellular appears to concede that it is not economical to provide wireline telephone service to many rural areas, yet U.S. Cellular proposes to introduce another subsidized competitor in these same areas.

Third, in Missouri, the introduction of subsidized competition could actually increase the cost for each carrier because the federal USF would then support multiple entrants with limited financial resources. Since costs of a telecommunications network are relatively fixed, the splitting of a rural market between two or more providers generally causes the cost of service to increase for each of the providers on a per customer basis.

¹¹ *In the Matter of the Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, *Tenth Report*, released Sept. 30, 2005, ¶95.

¹² *Id.* at ¶94.

¹³ U.S. Cellular Application, p. 20.

B. Unique Advantages and Disadvantages

U.S. Cellular cites advantages such as mobility and “toll-free” calling,¹⁴ but these advantages are not unique to U.S. Cellular. Rather, they are offered by all of the wireless carriers operating in Missouri. One distinct disadvantage of U.S. Cellular’s proposed two-year plan is that it does not allow the Commission to determine whether those funds would be spent in addition to what U.S. Cellular would have spent otherwise. For example, US Cellular has already built a number of the cell sites that it previously claimed would not be completed without high cost support. Moreover, the lack of information about financial safeguards and accounting mechanisms make it difficult for the Commission to ensure that the USF support will all be spent in rural areas of Missouri as opposed to urban areas. In other words, there is insufficient evidence in this record to support the allegations that ETC designation will bring any increased investment in rural markets beyond that which U.S. Cellular is already providing.

C. Impact on Federal USF

The FCC has urged state commissions to use the FCC’s framework in a manner consistent with universal service principles and with an eye towards improving the long-term sustainability of the USF.¹⁵ To this end, the FCC has suggested that state commissions may consider limiting the number of ETCs due to the strain on the USF by examining per-line USF support received by the individual LEC on a case-by-case basis.¹⁶

¹⁴ See e.g. Wright, Supplemental Surrebuttal, p. 10.

¹⁵ ETC Order, ¶¶18-19; Ex. 13.

¹⁶ ETC Order, ¶¶55-56.

FCC Chairman Kevin Martin has expressed concerns with using federal USF support to create “competition” in rural high-cost areas:

I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all customers in a rural area, **leading to inefficient and/or stranded investment and a ballooning universal service fund.**¹⁷

Thus, it is questionable whether the subsidizing multiple competitors in high-cost rural areas will bring all of the benefits that U.S. Cellular cites.

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?

No. U.S. Cellular does not meet the requirements of the Commission’s ETC designation rules.

A. U.S. Cellular’s two-year network improvement plan is deficient.

The PSC’s rules contain detailed requirements for U.S. Cellular’s ETC application, including a two-year plan outlining with specificity how USF support would be spent over and above what the applicant would otherwise spend in Missouri. In this case, U.S. Cellular has provided no baseline budget or historical expense information that would allow the Commission to determine whether the proposals in its two-year plan are in addition to planned investments or include projects that would be completed even without USF support. This issue is particularly relevant given the fact that U.S. Cellular has already completed some

¹⁷ 2nd Report and Order and FNPRM in CC Docket No. 00-256, 15th Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, rel. Nov. 8, 2001, *Separate Statement of Commissioner Kevin J. Martin* (emphasis added).

of the projects that it previously claimed would not be completed without USF support. Based on U.S. Cellular's responses to various data requests, it also appears that U.S. Cellular would not be able to provide such information either in regards to its budgets or to its capital expenditures after they have been completed.¹⁸

Also, as discussed above in response to Issue 1, U.S. Cellular's proposed two-year plan will only serve to shore up its wireless service in areas where U.S. Cellular already serves, not in the other rural areas where it seeks ETC status. This is important because U.S. Cellular does not presently offer service in these areas, and U.S. Cellular has offered no plans to serve these areas in its two-year network improvement proposal.¹⁹

In the Northwest Missouri Cellular and Chariton Valley Cellular ETC cases, both companies operated wholly within Missouri and wholly within the area for which they requested ETC designation. Moreover, the areas they serve are only rural areas where USF funds are intended to offset the high cost of providing service. Thus, those two wireless carriers serve only in Missouri and only in rural areas. In this case, the circumstances are different. U.S. Cellular operates in a number of states, and in urban areas of Missouri such as St. Louis in addition to rural areas. Because of the concerns regarding U.S. Cellular financial reporting capabilities, it will be much more difficult and perhaps impossible for the Commission to identify whether USF funds: (1) are used within Missouri, (2) are used within the rural areas that receive ETC designation

¹⁸ See Schoonmaker Supplemental Rebuttal, pp. 24-26, Schedules 21(HC), 22(HC), and 23(HC).

¹⁹ See Brown Surrebuttal, p. 6; Schoonmaker Surrebuttal, p. 2; Stidham Surrebuttal, p. 7.

as opposed to urban areas such as St. Louis; and (3) would not have been spent absent USF support.²⁰

B. U.S. Cellular’s local usage plans are not comparable to ILEC local usage plans.

Missouri PSC Rule 4 CSR 240-3.570(2)(A)10 requires an ETC applicant to commit to offer a local usage plan comparable to the plan offered by the ILEC in the requested area. The basic local service plans of Missouri ILECs offer unlimited local calling within a Commission-defined local calling scope. None of U.S. Cellular’s plans appear to offer unlimited local usage, both originating and terminating, for a flat monthly rate. Instead, U.S. Cellular’s rate plans offer a certain number of “minutes” after which per minute charges apply.²¹ In order to be truly comparable with the ILEC rate plans, “any offering for which U.S. Cellular seeks to receive high cost support must likewise offer unlimited calling.”²² Indeed, both Chariton Valley Wireless and Northwest Missouri Cellular committed to offer plans comparable to ILEC calling plans with unlimited local calling.²³ Thus, U.S. Cellular’s local usage plans are not comparable to the ILEC service offerings.

FCC Rules require ETCs to offer Lifeline service.²⁴ U.S. Cellular’s basic Lifeline plan only includes 400 minutes of calling for \$25 per month (\$16.75 after Lifeline discounts) with additional usage costing **\$0.40 per minute**.²⁵ Thus, if a

²⁰ Schoonmaker Supplemental Rebuttal, pp. 27-29.

²¹ Schoonmaker Rebuttal, p. 29.

²² Brown Surrebuttal, p. 5.

²³ Schoonmaker Supplemental Rebuttal, p. 10.

²⁴ 47 C.F.R. §54.405.

²⁵ See Schoonmaker Rebuttal, p. 24; Wright Direct, p. 6, Surrebuttal, p. 11, and Supplemental Surrebuttal, p. 8 and Ex. A.

customer exceeds the 400 minute allowance of incoming and outgoing calls, then the cost of service escalates very quickly.

Issue 4. 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).

The STCG takes no position on this issue.

Issue 5. 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 US 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?

The Commission previously approved ETC applications from Northwest Missouri Cellular and Chariton Valley Cellular in their requested service areas. U.S. Cellular's application includes requests for ETC designation in the same study areas where Northwest Missouri Cellular and Chariton Valley Cellular have previously received that designation. The public policy question that the Commission is faced with for the first time with U.S. Cellular's application is the question of whether it is an appropriate use of universal service funds to support multiple wireless carriers in the same service area. The Commission must now answer the question as to whether it serves the public good to support competition by multiple carriers in the same high cost area for "universal service" purposes.

In applying the public interest test in the Northwest Missouri Cellular ETC case, the Commission found that:

Granting NWMC an ETC designation will benefit the public by enabling NWMC to bring wireless service, including E911 (specifically in Worth County) and CDMA, to many remote locales and by increasing competition for primary telephone service in remote areas. In addition, Lifeline and Link-up customers will have access to service that would otherwise be unavailable to them. (Footnote omitted). The Commission concludes that the benefits to the public in rural Missouri of granting NWMC ETC status will outweigh the potential detriments to the USF.²⁶

The Commission made similar findings in the Chariton Valley Cellular case.²⁷

In the instant case, the Commission must determine if there is any incremental benefit to granting an ETC designation to U.S. Cellular in those areas where it has previously granted ETC designations to Northwest Missouri Cellular and Chariton Valley Cellular.

Based on the Commission's analysis in the Northwest Missouri Cellular and Chariton Valley Cellular cases, it would appear that this is not the case. Competition for primary telephone service in remote areas has now been enhanced by a grant of ETC designation to Northwest Missouri Cellular and Chariton Valley Cellular. Lifeline and Like-up customers will now have access to wireless service that was previously unavailable to them. Thus, a grant of ETC designation to U.S. Cellular in areas where Northwest Missouri Cellular and Chariton Valley Wireless currently serve will not result in any additional benefits

²⁶ *In the Matter of Northwest Missouri Cellular's Application for ETC Designation*, Case No. TO-2005-0466, *Report & Order*, issued Sept. 21, 2006, pp. 30-31.

²⁷ *In the Matter of Chariton Valley Wireless (MO5) Application for ETC Designation*, Case No. TO-2006-0172, *Report & Order*, issued Sept. 21, 2006, pp. 33-34.

in these areas that have not already been achieved as a result of the Commission's decision to award ETC designation to Northwest Missouri Cellular and Chariton Valley Cellular.

On the other hand, incremental costs will be incurred as U.S. Cellular will be eligible for USF support in addition to that being received by the underlying ILECs, Northwest Missouri Cellular, and Chariton Valley Cellular. So, applying a public interest test to areas where the Commission has already granted an additional ETC designation to a wireless carrier, the incremental benefits of granting ETC designation to U.S. Cellular will not outweigh the incremental costs. Thus, the Commission should decline to grant U.S. Cellular ETC status in those areas where it has previously granted ETC designation to other wireless carriers.

III. CONCLUSION

U.S. Cellular has failed to demonstrate that it meets the requirements of state and federal law throughout the areas for which it seeks ETC designation. Rather, U.S. Cellular does not offer service in many of the areas where it seeks ETC status, and its two-year build-out proposal offers no plans to offer service in many parts of rural Missouri. U.S. Cellular has also failed to demonstrate that a grant of ETC status is in the public interest, particularly in those areas that are already served by wireless ETCs. U.S. Cellular's two-year plan does not demonstrate that USF support will be spent on projects over and above what it would otherwise spend. Therefore, U.S. Cellular has failed to provide the Commission with enough evidence to issue a decision granting ETC status, and the Commission should deny the application.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or via electronic mail, or hand-delivered on this 11th day of December, 2006, to the following parties:

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