

**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 Telecommunications Carrier pursuant to ) Case No. TO-2005-0384  
The Telecommunications Act of 1996. )

**BRIEF OF INTERVENORS  
SPECTRA COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL  
AND CENTURYTEL OF MISSOURI, LLC**

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COME NOW Intervenors, Spectra Communications Group, LLC d/b/a CenturyTel (“Spectra”) and CenturyTel of Missouri, LLC (“CenturyTel”) and respectfully submit the following post-hearing brief in the above-captioned case.

**I. SIGNIFICANCE OF THIS CASE**

This case, initiated by wireless carrier USCOC of Greater Missouri, LLC (“US Cellular”), is the second in a series of recent cases wherein this Commission has been asked to grant eligible telecommunications carrier (“ETC”) status to a wireless or non-incumbent wireline company in areas already being served by an incumbent ETC local exchange carrier. This case, however, is not just another ETC case among the many. US Cellular’s Application is unique on its face in terms of its geographic and financial scope. It also is unique in that the analysis used and the decision ultimately reached by the Commission in this proceeding will clearly affect, for good or ill, all other now pending and subsequently filed ETC cases as well as the Commission’s currently pending ETC rulemaking proceeding.

**A. Geographic Area Requested**

US Cellular’s ETC request by far involves a much larger geographic ETC service area than that at issue in any past or currently pending ETC case. US Cellular’s

requested ETC service area is depicted in US Cellular Exhibits 1, 2 and 3. These Exhibits also confirm, support, and form the basis of Spectra and Century Tel witness Brown's more detailed Schedules GHB 1-7 and 8-9 HC, attached to Exhibits 13 and 11 HC (Brown Rebuttal). If US Cellular's ETC service area request is granted as submitted, US Cellular's ETC service area will cover almost the entire state of Missouri, although the "propagation analysis" evidence offered by witness Brown indicates that, even with US Cellular's additional new 16 cell towers, US Cellular still will not be able to provide signal coverage to a significant portion of its requested Missouri ETC service area and any improvements to its current signal coverage will be minimal.<sup>1</sup>

As a threshold matter, the Commission should recognize that the so-called "white areas" shown on Exhibits 1, 2, and 3 only indicate areas of the state where *US Cellular* does not currently have facilities or provide service, not areas of the state which have no wireless service alternatives to incumbent services available at all (Tr. 403-404; "there's relatively few areas of the state where there isn't any cell service", Tr. 406, Schoonmaker). In fact, according to US Cellular at least eight other wireless providers compete with US Cellular in its licensed service area.<sup>2</sup>

The Commission also should recognize that US Cellular justifies its public interest showing in large part based on the benefits that wireless service provides customers in terms of health, safety and mobility (Tr. 146-147, Wright). Even US Cellular admits, however, that obviously such benefits do not and cannot exist in areas where there is no wireless signal coverage (Tr. 147, Wright). The significance of this

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<sup>1</sup> The record reflects that US Cellular's two senior management witnesses did not contest, and admitted they did not even review, Mr. Brown's propagation analysis and testimony (*see, e.g.* Tr. 59-60). Likewise, neither US Cellular's outside consultant nor the Commission Staff contested the accuracy of Mr. Brown's propagation analysis and related coverage statistics testimony.

<sup>2</sup> *See*, Exhibit 5, p. 11, Wright Direct; Tr. 133-135 Wright.

lack of signal coverage and why it is important to the Commission's ETC public interest analysis are discussed below and more fully set forth in Exhibit 11 HC, pp. 4, 25-34, 38-41 (Brown Rebuttal) and Exhibit 12, pp. 4-6 (Brown Surrebuttal).

US Cellular's expansive service area request also and necessarily means that US Cellular's proposed ETC service area, if granted, will overlap not only those ETC service areas already being served by incumbent ETC carriers,<sup>3</sup> but also will overlap the proposed requested ETC service areas of other non-incumbent carriers whose cases are currently pending or which no doubt eventually will be filed. Clearly such is the case with Mid-Missouri Cellular's currently pending ETC request (Tr. 256-257). At least one witness in this case has concluded that on a comparative basis "US Cellular's application in general is not nearly as strong, for example, as Mid-Missouri's application is, where they provide substantially better service throughout their service area" (Tr. 405, Schoonmaker). Regardless of witness Schoonmaker's qualitative assessment, the record evidence is uncontested that Mid-Missouri Cellular has now submitted a five-year build-out plan to show the Commission exactly how it intends to provide and improve service throughout its requested ETC service within a reasonable time frame area whereas US Cellular clearly has not (Tr. 258, 267 McKinney).<sup>4</sup> The "plan" referred to by USC Cellular's counsel in opening statements is an eighteen month plan, not the FCC's five-year plan (Tr. 16).

The Commission in the future most certainly will be faced with the difficult policy issues and implications of granting competing, multiple ETC designations to

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<sup>3</sup> No party, including US Cellular, has suggested that there are any areas where USF-supported services are not available from an incumbent ETC (Tr. 133, Wright).

<sup>4</sup> The fact that MMC has requested a temporary suspension of its procedural schedule due to the possible sale of MMC only affects the timing of its ETC case, not its substance or relevance here.

wireless and competitive wireline carriers for the same geographic rural areas. That the public generally and Missouri ratepayers specifically can be harmed if this is not done properly is discussed below by witness Brown in Exhibit 11 HC, pp. 19-24, 46-48 (Brown Rebuttal).

In this case, the Commission therefore is being asked to address some fundamental policy questions. Should the Commission grant multiple ETC designations to non-incumbent carriers for the same geographic area without regard for the comparative level of infrastructure commitment and resulting public benefits to be obtained from the respective ETC applicants? If some form of comparative approach among competing ETC applicants somehow is not desirable or otherwise not workable, should not the Commission at least up front attempt to “set the bar” higher rather than lower as a matter of sound policy?

**B. Amount of USF Funding At Issue**

The total amount of federal Universal Service Fund (“USF”) support at issue in this case is significantly larger than the amount of USF support at issue in any past or any other now pending Missouri ETC case. The instant case involves potential annual USF funding to US Cellular ranging from a minimum of \$8 million to perhaps as much as \$13 million *per year* (*see, e.g.*, Tr. 118-119, 138, 178 Wright; Tr. 348 Brown; Exhibit 18, p. 6 Stidham Surrebuttal). For comparison, the Commission’s official records will reflect that the first previously litigated Mid-Missouri Cellular ETC case involved annual universal service support of only approximately \$1.8 million per year.

The uncontested record in this case reflects that the amount of USF funding US Cellular will receive if its Application is granted will *significantly* exceed the estimated

costs of its current Missouri infrastructure commitment of the 16 new cell towers contained in its “18 month” plan (*see, e.g.*, Exhibit 14, p. 36-38 Schoonmaker Rebuttal; Exhibit 18, p. 6 Stidham Surrebuttal). Even the Staff admits this (Tr. 271-272). When asked whether US Cellular had only demonstrated how approximately one-third to one-half of its expected USF funds would be used, Staff witness McKinney agreed (Tr. 272).

At one point during this proceeding, US Cellular indicated it would amend its proposed 18 month build-out plan commitment to account for these additional USF revenues. The record reflects that it never did so, chose not to, and as of the time of hearing had not submitted any firm plans with respect to construction of facilities beyond the initial 16 cell towers (Tr. 120, 138-143, Wright). US Cellular did, however, change its initial cost estimates contained in its direct testimony by the time it filed its surrebuttal testimony by 50%; when asked at hearing US Cellular witness Wright could not explain this increase (Tr. 171).

Rather than submitting a revised or expanded build-out plan, at hearing US Cellular’s witnesses simply assured the Commission that it would use the additional funds for appropriate, but still unspecified, ETC purposes and argued that if the Commission had a problem with the way US Cellular was using its Missouri ETC funds the Commission could simply de-certify US Cellular in a subsequent year. US Cellular’s proposed regulatory remedy for possible malfeasance, of course, would occur only after the fact, after US Cellular had the cash in hand, and would apply only to future, on-going additional USF funds.

For this, but perhaps even more importantly for future ETC cases, the Commission at the outset therefore should ask whether US Cellular’s type and level of

commitment provides sufficient public accountability for scarce public funds. Does an after-the-fact review and possible de-certification remedy after the funds are already gone (and most likely unrecoverable) provide the Commission with sufficient regulatory oversight to insure the funds are truly spent for USF purposes in Missouri?

US Cellular's senior management witnesses testified at hearing that US Cellular does not have a state-specific budget nor does it compile or maintain historical capital expenditure data by state but that such matters were instead handled on a regional basis (Tr. 82, Lowell; Tr. 127, 163-164, Wright). When asked what assurances he could give that Missouri ETC dollars would not be spent outside Missouri, all US Cellular witness Wright testified was that "I guess what I would reference is the relationships and the credibility that we have with the other three states within our region" (Tr. 143-144). When asked what assurances he could give that rural area Missouri ETC dollars would not be spent in urban St. Louis, he likewise could only offer that it would be "up to our teams in Chicago" but did offer that US Cellular would provide some sort of after-the-fact annual reports (Tr. 143; *see also*, Tr. 161).

Historically, the Commission has never allowed the type of "pay me first and regulate me later" approach advocated by US Cellular with respect to ratepayer funding of new plant construction by Commission-regulated utilities. The Commission's ratemaking denial of telecommunications plant under construction ("TPUC") during the telecommunications modernization cases, and the statutory prohibition of allowing electric plant construction costs into rates before construction is completed, quickly come to mind. That this new approach is being advocated by a wireless company over which the Commission otherwise has virtually no regulatory jurisdiction at least should give the



Commission some pause. The ability of the Commission and its Staff to adequately and meaningfully monitor and enforce even basic public interest regulatory requirements over a wireless ETC after it received ETC status was a stated concern in Missouri's first ETC case and since that time the Commission's statutory authority over wireless carriers has not changed (Tr. 261-264).

## **II. EVOLVING ETC STANDARDS**

The Commission necessarily must determine whether the overall evidentiary showing and "commitments" made by US Cellular in this case are sufficient to support a favorable public interest finding by the Commission in this particular case. As discussed below, with the exception of US Cellular, all parties (at least to varying degrees) have suggested that the Commission conduct its required public interest analysis in light of past Missouri Commission precedent, the most recent and still evolving more rigorous FCC guidelines, and the Commission's upcoming ETC rulemaking. US Cellular, on the other hand, suggests that "[t]he better course here is to designate with a minimum number of conditions, finish that rulemaking, and understand that US Cellular has committed to follow whatever rules the Commission puts in place" (Tr. 16).

If the Commission ultimately grants US Cellular's Application as currently submitted, does that mean that US Cellular's approach is the appropriate new threshold, baseline standard for Missouri ETC applications? Is the Commission satisfied with vague commitments by US Cellular to "do the right thing" in lieu of requiring specific, up-front and state-specific build-out plans and budgets where the record evidence is uncontested that a significant portion of the requested ETC service area will remain unserved for an indefinite period after ETC designation? Is the Commission convinced that

US Cellular’s commitments--and more importantly, the Commission’s ability to subsequently and meaningfully enforce those commitments—are adequate with respect to US Cellular’s service plan offerings, customer billing issues and other quality of service-type issues for this and future ETC applications?

In a perfect regulatory world, Missouri already would have in place competitively neutral, hopefully vigorous up-front eligibility standards, and truly enforceable conditions which would be applicable to all ETC applicants. Missouri is not at that point yet, although it hopefully will be at the conclusion of the Commission’s upcoming ETC rulemaking proceeding. The next best thing would be for the Commission to determine where the Commission basically wants to end up with respect to ETCs generally and move toward that goal in this and in the other pending cases.

In exercising its broad public interest powers over this and other ETC applications, the Commission should reject arguments by US Cellular that the Commission somehow is prohibited in applying the most recent FCC ETC guidelines because they are not yet applicable at the federal level or that the Commission can lawfully apply virtually *no* additional public interest standards (except those minimal standards urged by US Cellular) unless and until the Commission formally adopts an ETC rule.

The FCC has confirmed that Congress under “Section 214(e)(2) of the Act provides *state* commissions with the *primary* responsibility for performing ETC designations”<sup>5</sup> (emphasis supplied), that Congress intended for states to evaluate local

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<sup>5</sup> ETC Designation Order, para. 8, further citing, *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of

situations and exercise discretion in making public interest determinations, and that state regulators are free to impose their own state-specific ETC eligibility requirements in addition to those contained in Section 214(e) of the Act.<sup>6</sup>

The Commission should not feel restricted or pressured in any way by the mere timing and date of filing of US Cellular's ETC application, which: 1) was entirely under the control of US Cellular; 2) also just happens to correspond with US Cellular's roll-out of its new second largest and predominately urban "St. Louis Market" (*see*, Tr. 135-138 Wright); and 3) was filed in Missouri before the Federal Communications Commission's ("FCC's") more clearly more rigorous ETC eligibility criteria and reporting rules will become legally binding at the federal level.

In making its own Missouri-specific public interest ETC determinations, this Commission is free to apply, consistent with applicable federal law, whatever ETC eligibility tests, standards and conditions that it deems most appropriate for Missouri. The most logical starting point would be to look at the Commission's own precedent in a contested ETC case decided by the Commission prior to filing of this case and without the benefit of a formal ETC rule.

**A. Case No. TO-2003-0531**

On November 30, 2004, several months prior to US Cellular filing its ETC Application in Missouri, the Commission denied the first ETC application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular ("MMC"). In denying MMC's first Application, the Commission unanimously concluded that Applicant MMC,

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Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (Twelfth Report and Order); *see also*, *Id.*, at para. 61.

<sup>6</sup> ETC Designation Order, para. 61, *citing*, *Texas Office of Public Utility Council v. FCC*, 183 F.3d at 418, 393 at 418 (5<sup>th</sup> Cir. 1999).

which had the burden of proof, had not met its burden to show by competent and substantial evidence that a grant of ETC status to an additional carrier in the areas already being served by the rural incumbent carriers would be in the public interest. A majority of the Commission also concluded that MMC had not met its burden to show, in those areas served by non-rural incumbent carriers, that MMC's request was "consistent with the public interest, convenience and necessity" as required under 47 U.S.C. Section 214(e)(2) of the Act.<sup>7</sup> In its Amended Report and Order in that case, the Commission stated:

"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."<sup>8</sup>

During opening statements in the US Cellular case, counsel for the Small Telephone Company Group suggested that "in each of these statements you could substitute US Cellular for MMC and the finding would be appropriate for purposes of this record" and further noted that "this order was issued a year ago before the

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<sup>7</sup> *In the Matter of the Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular*, Case No. TO-2003-0531, *Amended Report and Order* Issued November 30, 2004. MMC's circuit court challenge to the Commission's decision was ultimately withdrawn and MMC has since filed a new ETC application which is now pending before the Commission in Case No. TO-2005-0325.

<sup>8</sup> *In re: Mid-Missouri Cellular*, *Amended Report and Order*, page 28.

FCC issued its more rigorous standards in March of this year” (Tr. 31). Spectra and CenturyTel agree with counsel’s assessment and suggest that if the Commission solely applies the basic tests used to analyze Mid-Missouri Cellular’s first ETC request, US Cellular’s application should be denied. As already noted, Mid-Missouri Cellular has since returned to the Commission with a new, specific 5-year plan which is intended to show how its wireless coverage will be improved throughout its requested area; something that US Cellular will do only “if required”.

### **B. March 2005 FCC Order**

The FCC on March 17, 2005 released its most comprehensive decision to date dealing with the ETC designation process. This March 17, 2005 Report and Order (“ETC Designation Order”)<sup>9</sup> was issued in response to earlier recommendations made by the Federal-State Joint Board on Universal Service (“Joint Board”) and confirms and supports the basic two step approach this Commission took earlier in analyzing and deciding the earlier MMC case; namely, first looking to see if the ETC applicant met the threshold requirements of Section 214(e)(1), and if so, next proceeding to apply a cost/benefit test and public interest analysis under Section 214(e)(2).

In marked departure from the earlier federal and state precedent relied upon by US Cellular, the FCC also has now adopted *mandatory minimum* eligibility requirements<sup>10</sup> and public interest tests, designed to “create a more rigorous ETC designation process”<sup>11</sup> and “improve the long-term sustainability of the universal service

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<sup>9</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC Rcd 6371 (2005). Other parties in the instant proceeding also refer to this Report and Order as the “ETC Report and Order”, the “2005 USF Order”, and simply as the “Report and Order” but to remain consistent with its prefiled testimony Spectra and CenturyTel will continue to refer to it as the “ETC Designation Order”.

<sup>10</sup> *Id.*, at para 20.

<sup>11</sup> ETC Designation Order, para. 2.

fund”<sup>12</sup> for all ETC requests filed before the FCC. The FCC strongly encouraged state regulators to apply these same minimum, threshold requirements and public interest tests in state ETC proceedings,<sup>13</sup> and has clarified, consistent with this Commission’s earlier decision in the earlier MMC case, that a public interest showing--above and beyond the mere offering and advertising the nine supported services as outlined in Section 214(e) of the Act--is required regardless of whether the ETC applicant seeks designation in an area served by a rural or non-rural carrier,<sup>14</sup> with a rigorous cost/benefit and public interest test especially being required for areas served by rural ETCs.<sup>15</sup>

All the parties to this case, with the exception of US Cellular, have urged the Commission in this case to apply the FCC’s ETC Designation Order guidelines in the instant case.<sup>16</sup> As discussed below, one of the FCC’s guidelines requires the up-front submission of a five-year build out plan in order to provide a tangible demonstration of a company’s capability and commitment to bringing high-quality, urban-like service to the more rural, high-cost, insular areas of its requested ETC service area. An important goal of the Act, found in Section 254(b)(3), is to encourage high-quality urban-like service and rates in high-cost, rural areas.<sup>17</sup> This Commission and its Staff have since been

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<sup>12</sup> *Id.*

<sup>13</sup> ETC Designation Order, para. 1, 58-61.

<sup>14</sup> 47 U.S.C. Section 214(e)(2)(6); ETC Designation Order, para. 3, 40, 42, and 61.

<sup>15</sup> ETC Designation Order, para. 59.

<sup>16</sup> While ultimately recommending approval, the Staff claims to be applying these FCC guidelines and agrees with Spectra and CenturyTel that US Cellular does not meet the five year plan/improved coverage criteria (Exhibit 12, p. 4 Brown Surrebuttal; Exhibit 9, pp. 6-8 McKinney Rebuttal). US Cellular witness Wood claimed at hearing in response to questions from Commissioner Appling that “It’s the FCC’s plan that the company’s committing to do” (Tr. 365) but that is clearly contradicted by US Cellular’s own prefiled testimony and prehearing brief as well as Mr. Wood’s admission on re-cross examination that US Cellular has not in fact submitted a five year plan (Tr. 383-384).

<sup>17</sup> 47 U.S.C. 254(b)(3) provides: “Consumers in all regions of the Nation, including low-income consumers and those in *rural, insular, and high cost areas*, should have access to telecommunications and information services...that *are reasonably comparable* to those services provided in *urban areas* and that are available at rates charged for similar services in urban areas”.

working toward the promulgation of a new Missouri-specific ETC rule<sup>18</sup>, based in large part on the requirements set forth in the ETC Designation Order, which includes a 5 year build-out plan.

To the extent the Commission is faced with the task of deciding how to award finite USF resources to multiple requesting carriers, as a matter of policy, preference should be granted only to those carriers who--in the case of wireless providers--can demonstrate they can serve throughout their requested rural service areas with a signal strength, type and quality of service, and rates comparable to the service and rates offered in urban areas. Contrary to assertions made by US Cellular, the record will reflect that Spectra and CenturyTel have *not* here suggested that US Cellular is somehow required to serve throughout its requested ETC service area at the time it makes its ETC application, but rather that US Cellular has failed to adequately demonstrate and submit to the Commission the necessary plans to show how US Cellular will meet its service area obligations as required under the FCC's guidelines.

Spectra and CenturyTel share the FCC's stated concerns about the long term sustainability of the universal service fund and the negative impact that increasing demands placed on the fund will have on the availability of universal, high quality service in high-cost, low-density rural areas. This Commission's basic approach taken in the MMC case, and the FCC's recent decisions in the case of Virginia Cellular<sup>19</sup> and in the 2005 ETC Designation Order, hopefully have signaled the beginning of a new era with respect to a more careful and thoughtful approach to the eligibility requirements and

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<sup>18</sup> Case No. TX-2006-0169, proposed new rule 4 CSR 240-3.570 "*Requirements for Carrier Designation as Eligible Telecommunications Carriers*", last informal draft circulated on or about October 4, 2005.

<sup>19</sup> *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 ("*Virginia Cellular*").

designation of multiple ETCs and should form the *minimum* standards used by the Commission in this and other proceedings.

### **III. SUMMARY OF SPECTRA/CENTURYTEL'S EVIDENCE**

Spectra and CenturyTel believe that this Commission should establish and enforce *high* standards for ETC designations, with the requirements and public interest tests set forth by the FCC in its ETC Designation Order being the *minimum* required by sound public policy, and that whatever standards the Commission ultimately adopts should be fair, competitively neutral, and rigorously and uniformly applied to all ETC applicants. With the exception of intentionally (or even unintentionally) encouraging the use of and reliance upon resale arrangements to meet the statutory requirement of an ETC providing service throughout its designated service area (discussed below), Spectra and CenturyTel generally support the additional public interest protection criteria set forth in this case by Office of the Public Counsel witness Meisenheimer (*see*, Exhibit 12, Brown Surrebuttal, at pp. 9-11). These are what Commissioner Clayton referred to at the hearing as the appropriate “strings to be attached” in Missouri ETC cases.

More specifically with respect to US Cellular’s particular request, Spectra and CenturyTel have presented record evidence (Exhibits 11 HC, 12) that shows:

1. US Cellular has not in its Application nor in its testimony carried its burden of proof to demonstrate that it complies with the minimum statutory requirements of Section 214(e)(1) of the Act nor has it therein made a showing that can qualify as competent and substantial evidence to demonstrate that granting it ETC status in its requested ETC service area is in the public interest under Section 214(e)(2).



2. Designation of US Cellular as an additional ETC in its requested ETC service area will create significant new public costs and deliver relatively few incremental public benefits, and as such, US Cellular's request does not pass the cost/benefit test outlined in *Virginia Cellular* nor the minimum public interest tests of the ETC Designation Order.

3. US Cellular has failed (and in fact has refused) to provide up-front the necessary "fact specific" data specified in the ETC Designation Order and in 47 C.F.R. Section 54.202, which the FCC has specifically encouraged the states to review as part of the state Commission's public interest analysis, and has thus made any finding the Commission might make in favor of US Cellular contrary to the minimum public interest criteria most recently set forth by the FCC.

4. US Cellular's Application fails to meet the minimum statutory and FCC requirements in that US Cellular makes no firm commitment or demonstration up-front that it will add new facilities or improve its existing facilities to provide high quality wireless signal coverage *throughout* its requested ETC service area in order to receive ETC status. In order to receive ETC status, US Cellular should have clearly demonstrated through the submission of a five year build-out plan that it will use public USF support to provide or at least improve its signal quality in every exchange in which it has requested ETC designation.

5. Designation of US Cellular as an additional ETC in its requested rural telephone service areas will cause significant harm to the existing rural ETC carriers and the rural customers they serve.

6. US Cellular is seeking to avoid public accountability for its use of scarce public support funds; US Cellular's purported offer to comply with any future

Commission requirements—provided it receives ETC designation and funding first—is unsound regulatory policy and does not even meet the *lower* legal standard traditionally used by this Commission in a variety of other types of Commission cases, that of being “*not detrimental to the public interest*”.<sup>20</sup>

#### **IV. ISSUE LIST DISCUSSION**

**Issue 1.** Telecommunications companies seeking eligible telecommunications (“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 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 US Cellular meet the requirements of Section 214(e)(1) throughout the service area for which US Cellular seeks ETC designation?

##### **A. ETC Service Area Coverage**

Section 214(e) (1) requires that an ETC applicant offer (and advertise) the services supported by universal service support mechanisms “*throughout the service area for which the designation is received*”. The FCC has interpreted this statute to require the ETC applicant to show 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

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<sup>20</sup> See, e.g., *State ex rel. City of St. Louis v. PSC*, 73 S.W.2d 393 (Mo. Banc 1934); *In the Matter of the Joint Application of Missouri Gas Energy et al.*, 3 Mo.P.S.C. 3d 216 (1994).

designation and expects to receive universal service support.<sup>21</sup> While a competitive carrier is not necessarily required to be providing the supported services throughout its requested ETC area before obtaining ETC status, a clear plan and enforceable commitment to do so is required and US Cellular's evidence is woefully deficient in this important regard.

In order to analyze whether US Cellular has met this fundamental threshold requirement, Spectra and CenturyTel witness Brown conducted an independent "propagation analysis" of US Cellular's existing and projected wireless signal coverage in its requested ETC service area (Exhibit 11 HC, pp. 25-41, Brown Rebuttal, and attached schedules GHB 1-9; *see also*, Exhibit 15, Schoonmaker Rebuttal HC). Mr. Brown's analysis and ultimate conclusion that US Cellular has failed to meet this requirement is based on data and information provided by US Cellular in its Exhibits 1, 2 and 3,<sup>22</sup> and as noted above, the accuracy of Mr. Brown's propagation analysis and signal coverage data was uncontested by any party at hearing.

Although not conducting its own independent propagation analysis, and while suggesting that the requirement to serve or improve service in every wire center should be ignored in the interest of "administrative simplicity", the Staff at least has concurred with Mr. Brown that:

1) "US Cellular does not break down how high cost universal support will be used to 'improve its coverage, service quality, or capacity in every wire center' where US Cellular requests ETC designation" (Exhibit 9, p. 6, McKinney Rebuttal);

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<sup>21</sup> ETC Designation Order, para. 2.

<sup>22</sup> US Cellular witness Lowell, the company's Senior Director of Network Operations and Engineering, attested to the accuracy of Exhibits 1, 2, and 3 upon which Mr. Brown based his independent analysis (Tr. 57) and when asked could not take issue with Mr. Brown's analysis (Tr. 59-60).

2) “[i]nformation is also not provided for areas in US Cellular’s proposed ETC area that will have no cellular service from US Cellular either before or after the potential approval of the instant ETC application” (*Id.*);

3) “...there is no information provided in the maps, the Application, or in the testimony of the three US Cellular witnesses on how these [16 proposed] additional cell towers would improve coverage, service quality or capacity in every wire center where US Cellular requests designation” (*Id.*); and finally

4) “...it does appear that there will be wire centers where there will be no signal coverage before or after a potential US Cellular designation, even with the addition of the new cellular towers proposed in the application” (Exhibit 9, p. 8, McKinney Rebuttal).

Office of the Public Counsel witness Meisenheimer also agrees that US Cellular “should provide more evidence that it can reasonably serve ubiquitously and on a timely basis throughout the requested designated areas including areas currently subject to ‘spotty’ service” (Exhibit 10, p. 4 Meisenheimer Rebuttal).

The uncontested signal coverage data and propagation analysis submitted by witnesses Brown and Schoonmaker shows that there are substantial portions of the requested ETC service area (including significant portions of major highways) where US Cellular does not currently provide service. US Cellular witness Lowell agrees that it is important for US Cellular to provide service along major highways because mobility is an important benefit of wireless service (Tr. 51, Lowell). However, US Cellular witness Lowell’s testimony that US Cellular has built out its network to cover the major highways and major towns and that it is expanding in the small towns and rural areas (Tr.

49, Lowell) is directly contradicted by the propagation and signal coverage evidence offered by Mr. Brown.

While agreeing during the hearing that it would submit a five-year build-out plan but only “if required”, US Cellular still has offered the Commission no firm commitment, and certainly not as part of its pre-filed case, that it will serve throughout the service area requested in any reasonable time frame. In fact, at hearing US Cellular witnesses continued to resist complying with the most recent FCC requirements that it provide a five-year plan indicating how it intends to use USF support to do so.

Section 254(b)(3) of the Act speaks of parity between rural and urban customers in terms of services offered, quality of service and rates. Most urban wireless customers use conventional handheld cellular phones. To the extent US Cellular intends to utilize rooftop Yagi antennas and high-power customer equipment to attempt to meet its signal coverage requirements, this at the very least should be considered to be a disadvantage in the required public interest and cost/benefit analysis under Section 214(e)(2).

### **B. Reliance on Resale**

While Section 214(e)(1) technically permits an ETC to offer USF supported services thru resale, rather than thru investment in its own facilities, an excessive reliance on resale to meet its ETC service area requirement should *at least* be considered as a negative factor in the required public interest analysis for the designation of multiple ETCs in rural areas. One of the primary goals of public universal service funding is to incent investment in rural telecommunications infrastructure.<sup>23</sup> Particularly as multiple

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<sup>23</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Rural Task Force Recommendations to the Federal-State Joint Board on Universal Service, Released September 29, 2000, at p. 14. “The Task Force reached agreement that a primary purpose of universal service support is to promote investment by both ILECs and CLECs in rural America’s telecommunications infrastructure”.

carriers (including multiple wireless carriers) compete for a limited pool of high-cost support funds, preference should be given to those carriers who meet their ETC obligations through investment in rural telecommunications infrastructure. (Exhibit 12, pp. 9-11, Brown Surrebuttal). This policy is consistent with the FCC’s statement that “[a]n entity that offers the supported services exclusively through resale shall not be designated as an ETC”.<sup>24</sup> Simply put, the heavier the reliance on resale, the less the proposed ETC designation fulfills the purposes and goals of the Act.

US Cellular throughout this case has touted “resale” as the answer to charges of sparse or nonexistent network coverage throughout major portions of the rural exchanges of US Cellular’s rather large requested ETC service area. In addition, a significant part of US Cellular’s proposed “six step process”—the method in which it will respond to reasonable requests for service in those areas where US Cellular does not currently provide or have the capability to provide service--is to rely on resale arrangements with other carriers.

US Cellular’s heavy reliance on resale is summarized in the following exchange between US Cellular’s counsel and Small Telephone Company Group witness Schoonmaker:

Q. Is it a fair characterization of US Cellular’s position in this case that what it wants to do is to get funds to help it build out in those emerald areas and beyond, to get out there, and if it can’t get there immediately in those white areas, it will do its best and use resale to get there in the meantime until it can build? Is that a fair characterization of US Cellular’s position? Do you agree with that?

A. That’s basically what you’ve said, yes. (Tr. 409, Schoonmaker).

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<sup>24</sup> ETC Designation Order, footnote 40, *citing*, 47 C.F.R. Section 54.101(a)(5).

Notwithstanding its heavy reliance on resale, it should be noted that US Cellular currently has no resale arrangements in place with any other carrier (Exhibit 5, pp. 8-9, Wright Direct; Tr. 132-133) and such resale or roaming arrangements, to the extent they eventually could be obtained, could easily end up costing customers 30 cents per minute (Tr. 408-409).

### **C. Local Usage**

As interpreted by the FCC, Section 214(e)(1) of the Act also requires the additional ETC to provide “local usage”, which if not identical to, must at least be comparable to the local usage provided by incumbent provider.<sup>25</sup> Spectra and CenturyTel offer unlimited local calling for both originating and terminating local calls; US Cellular does not (Exhibit 13, p. 44Brown Rebuttal; Exhibit 12, p. 5, Brown Surrebuttal). Local usage also contemplates high quality, two-way communications. As part of its “case by case” analysis of the local usage comparability issue, this Commission clearly has the authority to prescribe a minimum amount of local usage<sup>26</sup> and quality of service standards<sup>27</sup> as a prerequisite condition to granting ETC status and Spectra and CenturyTel would respectfully suggest that it would be in the public interest to do so.

Even if the Commission decides that US Cellular meets the statutory minimum requirement with respect to “comparable” local usage and declines to impose minimum local usage and quality of service requirements similar to those currently imposed on incumbent ETCs, the Commission can and should at least consider--as part of its cost/benefit and public interest analysis under Section 214(e)(2)--whether US Cellular’s

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<sup>25</sup> ETC Designation Order, para. 32, 34.

<sup>26</sup> *Id.*, para. 34 (“there is nothing in the Act, Commission rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status”).

<sup>27</sup> *Id.*, para. 30-31.

“comparable” local service offering, on balance, provides the same public benefits and quality of service already being provided by the incumbent ETC carrier under carrier of last resort obligations and this Commission’s quality of service rules. (Exhibit 14, pp. 28-29, Schoonmaker Rebuttal).

**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 US 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 (“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 US 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 US Cellular consistent with the public interest, convenience and necessity in areas served by non-rural carriers?



### **A. Burden of Proof**

It should be uncontested that the burden of proof in this case clearly rests upon US Cellular.<sup>28</sup> That US Cellular has failed to meet its burden is discussed above with respect to the requirements of Section 214(e)(1), and below with respect to the public interest test of Section 214(e)(2).

### **B. This Commission's Broad Public Interest Powers**

State law grants this Commission broad powers, discretion and authority in making public interest determinations over a wide variety of issues respecting public utilities; in some instances setting the lower legal standard as something being “not detrimental to the public interest” and in others setting the higher legal standard as something being “in the public interest”. Current state law still gives this Commission broad public interest discretion and authority (e.g. among other things, quality of service issues, certification of new entrants) in inquiring into and making public interest determinations with respect to telecommunications. As noted above, this Commission properly exercised its broad public interest authority in the previous MMC ETC case, where the higher legal standard of “in the public interest” was required, and is here again called upon to do the same.

Nothing in the Act or actions by the FCC with respect to ETC designations changes this Commission's broad public interest authority. In fact, not only has Congress and the FCC made it clear that *state* commissions have *primary* authority over ETC designations<sup>29</sup>, the FCC has strongly encouraged the states to exercise that authority through a “rigorous” ETC designation process. To that end, the FCC in its ETC

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<sup>28</sup> ETC Designation Order, para. 44. This Commission in the MMC case likewise previously has recognized that the ETC applicant bears the burden of proof.

<sup>29</sup> ETC Designation Order, para. 8.

Designation Order has provided the states with a suggested public interest analytical framework, one which sets forth *minimum* requirements and considerations, and which clearly allows the states to consider additional public interest factors and impose additional public interest/consumer protection requirements as part of the state-specific ETC designation process.<sup>30</sup>

### **C. Public Interest Analytical Framework**

To assist the states in exercising their broad latitude and discretion in determining what constitutes a multiple ETC designation being in the public interest, the FCC has provided the states with an evolving set of minimum guidelines.<sup>31</sup> The 2004 *Virginia Cellular* order makes it clear that “competition, by itself, is not sufficient to satisfy the public interest test in rural areas”.<sup>32</sup> In that case, the FCC concluded that “the balancing of benefits and costs is a fact-specific exercise”<sup>33</sup>, that the analysis must focus on “the benefits of increased competitive choice and the impact of multiple designations on the universal service fund”<sup>34</sup>, that the ETC applicant has an “obligation to serve the designated service area within a reasonable time frame”<sup>35</sup>, and the competitive ETC must “submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the service areas it is designated as an ETC.”<sup>36</sup>

Earlier decisions, such as the ones relied upon by US Cellular, tended to focus on the issue of competition alone as the primary consideration in the public interest analysis.

Today, the FCC has made it clear the “value of increased competition, by itself, is

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<sup>30</sup> *Id.*, para 19.

<sup>31</sup> *Id.*, para. 40-41, 44, 45.

<sup>32</sup> *Virginia Cellular*, at para. 4.

<sup>33</sup> *Id.*, at para. 28.

<sup>34</sup> *Id.*, at para. 4.

<sup>35</sup> *Id.*, at para. 28

<sup>36</sup> *Id.*, at para. 46.

unlikely to satisfy the public interest test”.<sup>37</sup> Beginning in 2003, and certainly after *Virginia Cellular*, regulators began looking beyond mere technical compliance with Section 214(e) to determine how the ETC applicant intends to use high-cost support and how the grant of ETC status will sufficiently improve the availability and quality of the services that the public receives to offset the public costs that it will create (Exhibit 13, pp. 15-16, Brown Rebuttal, citing examples of recent state decisions).

### **1. *Virginia Cellular’s* Cost/Benefit Analysis**

Spectra and CenturyTel witness Brown has applied the fact-specific, cost/benefit analysis of *Virginia Cellular* to US Cellular’s Application and concludes the public costs of granting ETC status to US Cellular in its requested rural areas significantly outweigh the purported public benefits. (Exhibit 13, pp. 18-19, Brown Rebuttal). His analysis looks at how much will the choice of service offerings to rural Missouri customers be increased by US Cellular’s ETC designation; the advantages and disadvantages of particular US Cellular service offerings, including the possible benefits of mobility and larger calling areas weighed against dropped calls and poor or non-existent signal coverage; and the impact on the USF fund. All of this in the context of the need for rural/urban parity in terms of availability and quality of service under Section 254(b)(3), the fact that there has been no showing that any rural Missouri customer cannot currently obtain ETC supported services from existing ETC providers (Tr. 133, Wright), and that other wireless carriers, without ETC status, are currently operating and providing competitive services in significant portions of, if not throughout, US Cellular’s requested ETC service area (Tr. 133-135, Wright).

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<sup>37</sup> *Id.*, at para. 4; see, also, ETC Designation Order, para. 40-45.

The record reflects that US Cellular stands to receive somewhere between \$8 million to \$13 million dollars per year in USF support if designated as an ETC in Missouri. It is difficult, if not impossible, to see how Missouri consumers will receive incremental public benefits anywhere near this level. US Cellular commits use this funding to construct sixteen (16) new towers, predominantly in the lower-cost areas of its requested ETC service area where US Cellular currently serves, rather than expanding its coverage into the high-cost, low-density rural exchanges where it currently does not serve. These new towers will result in a negligible increase in US Cellular's current network coverage and will still leave significant portions of major highways in the requested ETC service area without any wireless signal coverage (Exhibit 11 HC, pp. 33-34, 38-41, Brown Rebuttal and attached Schedule GHB-8HC). On balance, therefore, Missouri customers would experience significant additional cost with negligible incremental benefits from US Cellular's designation as an additional ETC in its requested ETC service area. Moreover, granting US Cellular's ETC Application could result in additional harm to Missouri customers given the economics of multiple ETCs in high-cost, low-density rural areas (Exhibit 13, pp. 20-24, 46-49, Brown Rebuttal).

Thus, even if the Commission agrees with US Cellular that the more stringent public interest requirements contained in the more recent ETC Designation Order should be ignored, US Cellular has failed to pass the earlier cost/benefit test of *Virginia Cellular*.

## **2. Applying the ETC Designation Order Criteria**

The ETC Designation Order builds upon the cost/benefit test of *Virginia Cellular* and then beyond that adopts minimum, but mandatory, requirements for an applicant to

be designated as an ETC by the FCC.<sup>38</sup> The notion that the ETC Designation Order and the rules promulgated thereunder may *not* have been be “technically” binding on US Cellular if this request had been filed with the FCC in April 2005, does not in any way preclude this Commission from considering and applying these minimum (or for that matter additional) requirements in this case. US Cellular certainly was at least aware or should have been aware of the ETC Designation Order, and this Commission’s decision in the first MMC case, prior to the time it filed its ETC request in Missouri. Indeed, its Application acknowledges the ETC Designation Order and addresses the FCC’s analysis in the event this Commission applies part or all of it to US Cellular’s Application.<sup>39</sup> The reasons that this Commission *should* apply the ETC Designation Order criteria in this case are discussed below under Issue 3. It should be undisputed that these new criteria “create a more rigorous ETC designation process” and that their application by both the FCC and state regulators are intended to “improve the long term sustainability of the universal service fund”<sup>40</sup> while still promoting the goals, policies and mandates of the Act.

There is no dispute by any party to this case that pursuant to the ETC Designation Order, in considering whether a common carrier has satisfied its burden of proof necessary to obtain ETC designation, the applicant must:

1. Provide a five-year plan “describing with specificity” and demonstrating how high-cost universal service support will be used to improve its coverage, service

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<sup>38</sup> ETC Designation Order, at para. 1, 20, 47.

<sup>39</sup> US Cellular’s Application, p. 11.

<sup>40</sup> ETC Designation Order, at para. 2.

quality or capacity in every wire center for which it seeks designation and expects to receive universal service support;<sup>41</sup>

2. Demonstrate its ability to remain functional in emergency situations;<sup>42</sup>
3. Demonstrate that it will satisfy consumer protection and service quality standards;<sup>43</sup>
4. Offer local usage plans comparable to those offered by incumbent local exchange carriers in the areas for which it seeks ETC designation;<sup>44</sup> and
5. Acknowledge that it may be required to provide equal access if all other ETC's in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act.<sup>45</sup>

Not only has US Cellular failed (and in fact has refused) to submit a five-year plan, it has failed to provide any of the fact-specific data required to demonstrate how it will “provide service throughout the ETC service area in a reasonable period of time” or that it will “improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support”. This critical data is necessary to properly conduct the cost/benefit analysis of whether the projected expenditure will provide increased public benefits commensurate with the increased public costs (Exhibit 13, p. 42, Brown Rebuttal). Even the Staff, which for purposes of “administrative simplicity” supports the granting of US Cellular’s Application, agrees that US Cellular had failed to meet the first test set forth in the ETC Designation Order.

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<sup>41</sup> *Id.*, at para 23 (“[t]he five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support”).

<sup>42</sup> *Id.*, at para. 25-27.

<sup>43</sup> *Id.*, at para 28-31.

<sup>44</sup> *Id.*, at para. 32-34.

<sup>45</sup> *Id.*, at para. 35-36.

Spectra and CenturyTel further believe that US Cellular has failed to demonstrate that it offers “comparable local usage plans” to those offered by the incumbent (Exhibit 13, p. 44, Brown Rebuttal).

With respect to the remaining criteria, the Commission will need to address whether US Cellular’s level of commitment is sufficient to meet the specified criteria, especially with respect to the extent of its reliance on “resale arrangements” to meet its service requirements and the “comparability” of its “local usage” plans (see discussion under Issue 1 above).

In addition to meeting these five mandatory minimum criteria, the ETC Designation Order requires the Commission to “determine that an ETC designation is consistent with the public interest, convenience and necessity.”<sup>46</sup> Included in this public interest analysis is the cost/benefit analysis as described above.

Spectra and CenturyTel witness Brown has submitted extensive testimony and analysis on what is and is not in the public interest in this case. In his Rebuttal testimony, he also referenced a White Paper he authored in March 2005 entitled “*Universal Service, Rural Infrastructure at Risk*”, which provides additional policy background and support with respect to the current universal service situation faced in high-cost, low-density rural areas across the nation and which was attached Spectra and CenturyTel’s Pre-Hearing Brief by reference. Also attached thereto by reference, since US Cellular cited it in its Surrebuttal Testimony out of context<sup>47</sup>, is a complete copy of Mr. Brown’s June 2002 paper entitled “USF Portability—Getting it Right”.

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<sup>46</sup> ETC Designation Order, at para. 40.

<sup>47</sup> Wood Rebuttal Testimony at p. 16.

**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 US Cellular?

Spectra and CenturyTel agree with SBC witness Stidham in his Rebuttal testimony where he states that the Commission should apply the ETC Designation Order guidelines in this case because: 1) “Missouri’s use of these guidelines will contribute to a rational, comprehensive, national policy to promote the advancement and preservation of universal service”; 2) “[t]he guidelines are fully consistent with the requirements of the federal Telecommunications Act of 1996 (‘the Act’) and the recommendations of the Joint Board on Universal Service, which spent considerable time analyzing the issue”; 3) use of the “requirements embodied in the Guidelines will result in a ‘more rigorous ETC designation process’, ‘will allow for a more predictable ETC designation process’, “and will” ‘ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service’”. (Exhibit 17, p. 6, Stidham Rebuttal, footnotes omitted).<sup>48</sup>

As noted above, the ETC Designation Order criteria are *minimum* requirements<sup>49</sup> and thus far appear to be echoed in the Commission’s proposed upcoming ETC rulemaking. The FCC has encouraged state commissions to use these criteria and

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<sup>48</sup> See, also, ETC Designation Order, at para. 5.

<sup>49</sup> *Id.*, at para 1.



analytical guidelines<sup>50</sup> as a baseline in analyzing what does and does not meet the overall public interest based on the unique circumstance in each state and this Commission certainly should do so. The Office of the Public Counsel has suggested additional requirements (or “strings”), with which Spectra and CenturyTel concur (with the one exception noted above regarding the resale issue).

However, as already recognized in the earlier MMC case, and confirmed by US Cellular’s positions taken in this case, this Commission by Missouri law has little, if any, real regulatory authority, discovery, or enforcement powers over wireless carriers. (“While MMC has verbally made general system improvement and customer service commitments the record is unclear as to the extent of the Commission’s legal authority and practical ability to enforce such commitments if MMC’s request is granted”).<sup>51</sup> For this reason the Commission therefore should be careful and cautious in conditioning ETC designations on an applicant’s commitments (or even Commission rules) which may well prove difficult to enforce, if not outright unenforceable, after ETC status is granted and USF funds are expended.

## **V. CONCLUSION**

The Commission in its overall public interest analysis needs to keep in mind that goals of universal service have been, and must continue to be, that all consumers, particularly those in rural, insular and high-cost areas, have access to at least one Carrier of Last Resort providing access to high-quality and affordable basic and advanced telecommunications services. If US Cellular’s Application passes muster in this precedent setting case, based on this record evidence and based on US Cellular’s “just

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<sup>50</sup> Id., at para. 1, 41, 58-61.

<sup>51</sup> *In re: Mid-Missouri Cellular*, at p. 17.

rust me” approach to ETC certification requirements, then the Commission might as well just withdraw its proposed new rule and for the first time in its history learn how to use a rubber “APPROVED” stamp.

Respectfully submitted,

**/s/ Charles Brent Stewart**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent to counsel for all parties of record in Case No. TO-2005-0384 by electronic transmission this 6<sup>th</sup> day of December, 2005.

**/s/ Charles Brent Stewart**

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