

**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.)

**AT&T MISSOURI’S RESPONSE TO U.S. CELLULAR’S COMPLIANCE FILING, AND
AT&T MISSOURI’S MOTION TO RECLASSIFY CERTAIN CONFIDENTIALLY-
MARKED INFORMATION OF U.S. CELLULAR FROM “HC” TO “P”**

AT&T Missouri¹ hereby submits its response to the August 11, 2006 Compliance Filing of U.S. Cellular,² in accordance with the Commission’s August 14, 2006, Order Directing Response to Compliance Filing. For the reasons explained below, AT&T Missouri should be permitted to cross-examine U.S. Cellular’s witness and to present additional evidence of its own. In a subsequent hearing, AT&T Missouri would address at least three specific aspects of U.S. Cellular’s proposed network plan: (1) U.S. Cellular’s “estimated budget amounts” for its proposed cell site construction; (2) details as to what accounting safeguards are in place, if any, to ensure that high-cost funds earmarked for Missouri will be spent only in Missouri; and, (3) the added signal coverage, if any, that will be afforded in the AT&T Missouri wire centers for which U.S. Cellular seeks ETC designation.

In addition, AT&T Missouri respectfully moves the Commission to reclassify four appendices provided in U.S. Cellular’s Compliance Filing from HC to P (i.e., from “Highly Confidential” to “Proprietary”). Materials presenting the same type of information were either filed publicly by U.S. Cellular with its April, 2005, application or were voluntarily declassified

¹ Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (“AT&T Missouri”).

² USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular (“U.S. Cellular”).

by U.S. Cellular at the October, 2005, hearing on the merits. U.S. Cellular has not explained why similar treatment should not be afforded here.

U.S. CELLULAR’S COMPLIANCE FILING SHOULD BE SUBJECTED TO CROSS EXAMINATION AND THE PARTIES SHOULD BE ALLOWED THE OPPORTUNITY TO PROVIDE EVIDENCE REGARDING ITS SUFFICIENCY.

U.S. Cellular’s application for eligible telecommunication carrier (“ETC”) designation was tried at a hearing on the merits in October, 2005, after which the parties submitted post-hearing briefs on December 6, 2005. In its March 21, 2006, Order Directing Filing of Additional Information, the Commission found that “U.S. Cellular has not presented sufficient evidence regarding how it intends to use the support it would receive from the Universal Service Fund to improve its network through improved coverage, signal strength, or capacity, in ways that would otherwise not occur without the receipt of high-cost support.”³ While the Commission recognized that it could then have “simply reject[ed] U.S. Cellular’s application,”⁴ it determined instead that it would allow U.S. Cellular “to submit additional evidence on that issue.”⁵

At the time, the Commission was considering, but had not as yet adopted, a rule governing “Requirements for Carrier Designation as Eligible Telecommunications Carriers.” That rule was subsequently adopted, is codified at 4 CSR 240-3.570, and became effective in June. (31 Mo. Reg. 790, May 15, 2006). Among other things, the rule prescribes the content of ETC applications.⁶

In its March 21, 2006, Order Directing Filing of Additional Information, the Commission noted that the rule did not yet have the “force of law.”⁷ Nonetheless, the Commission focused on

³ Order Directing Applicant to File Additional Information About Intended Use of High-Cost Support (“Order Directing Filing of Additional Information”), p. 1.

⁴ Order Directing Filing of Additional Information, p. 1.

⁵ Order Directing Filing of Additional Information, p. 2.

⁶ See, 4 CSR 240-3.570(2).

⁷ Order Directing Filing of Additional Information, p. 2.

subparts (1) through (3) of Rule 3.570(2)(A) as “the relevant portions of the as yet unpublished regulation”⁸ and determined that its requirements “regarding the proposed build out plan that must be submitted along with any application for ETC designation are a good guide for the information that U.S. Cellular will be required to submit in this case.”⁹ The Commission concluded that it would not further consider U.S. Cellular’s application until that evidence was submitted.¹⁰

The August 11, 2006 Compliance Filing of U.S. Cellular presumably is meant to provide the evidence the Commission found lacking in March. In summary, it puts forth a two-year network improvement plan which, according to U.S. Cellular, details its plans “to spend its high-cost support on significant improvements in network coverage and capacity in rural areas, *inter alia*, through the construction of 39 new cell sites.”¹¹

In its August 14, 2006, Order Directing Response to Compliance Filing, the Commission directed that the parties indicate “whether it wishes to cross-examine U.S. Cellular’s witness about the compliance filing, whether it wishes to present additional evidence of its own, and whether it wishes to present additional argument.”¹²

AT&T Missouri believes that additional discovery, cross-examination, evidence and briefing regarding U.S. Cellular’s Compliance Filing are necessary in order to provide the Commission a complete record on which this case can be decided. This needed discovery, cross-examination and evidence would focus on several subjects, including the following:

- The details underlying U.S. Cellular’s “estimated budget amounts,” as referenced in 4 CSR 3.570(2)(A)(1)¹³ – U.S. Cellular’s has not provided

⁸ Order Directing Filing of Additional Information, p. 2.

⁹ Order Directing Filing of Additional Information, p. 2.

¹⁰ Order Directing Filing of Additional Information, p. 3.

¹¹ Compliance Filing of U.S. Cellular, p. 1.

¹² Order Directing Response to Compliance Filing, P. 1.

¹³ This rule requires that an ETC application include, among other things, the “[i]ntended use of the high-cost support, including detailed descriptions of any construction plans with . . . estimated budget amounts.”

details underlying these amounts and additional discovery, cross examination and presentation of evidence should be permitted.

- Details as to what accounting safeguards are in place to ensure that funds earmarked for Missouri will only be spent in Missouri – U.S. Cellular’s Compliance Filing does not provide any assurances that U.S. Cellular has put into place the necessary tracking and other accounting-related safeguards meant to ensure that high-cost funds earmarked for rural Missouri won’t be spent elsewhere. AT&T Missouri should be permitted to address this issue through discovery, cross examination and presentation of additional evidence.
- The added signal coverage, if any, that will be afforded in the AT&T Missouri wire centers for which U.S. Cellular seeks ETC designation, as referenced in 4 CSR 3.570(2)(A)(3)¹⁴ – In the prior hearing, one of the issues addressed was whether U.S. Cellular’s then planned 16 towers would provide any additional coverage in AT&T Missouri’s territory. A similar issue is presented by U.S. Cellular’s Compliance Filing. . The parties should be permitted to address the impact of U.S. Cellular’s planned network improvements.

In sum, AT&T Missouri should be permitted to engage in discovery and cross-examination concerning U.S. Cellular’s compliance filing, and to present additional evidence of its own on at least these subjects. These matters are integral to determining whether U.S. Cellular’s evidence is sufficient for purposes of compliance with the Missouri ETC rule and federal law including whether the grant of the application would be “consistent with the public interest, convenience and necessity.”¹⁵ A pre-hearing conference should be set so as to establish a suitable procedural schedule to accomplish them.

¹⁴ This rule requires that an ETC application include, among other things, “a demonstration that universal service support shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the Missouri service area for which the requesting carrier seeks ETC designation[.]”

¹⁵ 47 C.F.R. §214(e)(2).

**APPENDICES 1, 2, 4 AND 5 OF U.S. CELLULAR'S COMPLIANCE
FILING SHOULD BE RECLASSIFIED.**

U.S. Cellular agrees that much of the network improvement plan conveyed in its Compliance Filing can be treated as a public document.¹⁶ Nonetheless, it has designated all of its five appendices to its plan as “HC” (i.e., “Highly Confidential”), even though most are similar to information that was either filed publicly by U.S. Cellular earlier or was voluntarily reclassified by U.S. Cellular at the October, 2005, hearing on the merits. U.S. Cellular has not explained why the information attached to its Compliance Filing should be accorded a different level of protection. Accordingly, AT&T Missouri respectfully moves the Commission to reclassify the following four appendices from HC to public, or at a minimum, to “P” (i.e., “Proprietary”):

- Appendix 1 (entitled “List of Proposed Sites and Approximate Start and Completion Dates”) – The listing of proposed sites identified in this appendix is the same type of information as was filed publicly as Exhibit E to U.S. Cellular’s April 22, 2005, application (entitled “Proposed Sites for Initial Build-out With Use of High-Cost Support”). Appendix 1 lists each “Site Name” and adds construction “start” and “end” dates next to each, as required by the ETC rule. 4 CSR 240-3.570(2)(A)(1). AT&T Missouri is not asking that the entirety of Appendix 1 be declassified, only that the column reflecting site names be reclassified to P. This is the same type of information that U.S. Cellular has regarded as public information, and U.S. Cellular provides nothing in its Compliance Filing suggesting that more guarded handling is somehow now required.
- Appendix 2 (entitled “U.S. Cellular Proposed Cell Sites and Wire Centers Receiving Improved Coverage in Missouri”) – This provides the same type of information as U.S. Cellular filed publicly with its application. The list of cell sites on the document was earlier filed publicly (as shown above). The list of ILEC wire centers sought to be designated for ETC status, and the name of the serving ILEC, were filed publicly as Exhibits C and D to the application (entitled “Nonrural/Rural ILEC Wire Centers For Immediate Designation”).
- Appendix 4 (entitled “U.S. Cellular Existing Coverage”) and Appendix 5 (entitled “ U.S. Cellular Proposed cell Sites and Coverage Using USF Support”) – These “existing” versus “proposed” coverage maps simply

¹⁶ U.S. Cellular’s Notice, August 17, 2006, p. 1.


update the maps that were fully declassified and admitted into evidence as Hearing Exhibits 1 and 2, known as “the existing cell and proposed cell propagation maps.”¹⁷ Appendices 3 and 4 here go to the central issue of the extent to which U.S. Cellular intends to provide service throughout the area for which it seeks ETC designation. U.S. Cellular has not demonstrated why the updated information provided in its Compliance Filing is entitled to a different level of protection. Given that the foregoing information should be regarded as public, the reclassification AT&T Missouri requests is certainly modest in its scope. That is, AT&T Missouri simply asks that it be afforded, on a Proprietary basis, access to information of the same type as was previously treated as public information.

CONCLUSION

AT&T Missouri respectfully submits that AT&T Missouri should be permitted to engage in discovery and cross-examination and to present additional evidence and arguments relating to U.S. Cellular’s Compliance Filing. AT&T Missouri further requests that the Commission set a pre-hearing conference at which the parties can agree upon an acceptable procedural schedule to address these matters. AT&T Missouri also respectfully moves the Commission for an order reclassifying Appendices 1, 2, 4 and 5 of U.S. Cellular’s Compliance Filing to “P” for the reasons stated above.

Respectfully submitted,

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¹⁷ Transcript of October 26, 2005, p. 6.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on August 31, 2006.


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