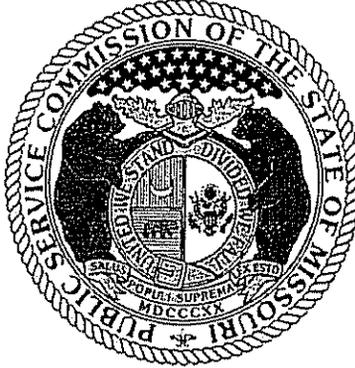


**APPENDIX B**

**COPY OF MISSOURI PUBLIC SERVICE COMMISSION ORDER**

**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 the Telecommunications Act of 1996 )

**Case No. TO-2005-0384**

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**REPORT AND ORDER**

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**Issue Date: May 3, 2007**

**Effective Date: May 13, 2007**

**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 )

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**Appearances**

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and

**David A. LaFuria and Steven M. Chernoff**, Lukas, Nace, Gutierrez & Sachs, Chtd., 1650 Tysons Boulevard, Suite 1500, McLean, Virginia 22101

for USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular.

**Charles Brent Stewart**, Stewart & Keevil, L.L.C., 4603 John Garry Drive, Suite 11, Columbia, Missouri 65203, for Spectra Communications Group, LLC, d/b/a CenturyTel and CenturyTel of Missouri, LLC.

**Robert Gryzmala**, Senior Counsel, One SBC Center, Room 3516, St. Louis, Missouri 63101, for Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri.

**W.R. England, III and Brian T. McCartney**, Brydon, Swearngen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for the Small Telephone Company Group.

**Michael F. Dandino**, Senior Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the Public.

**William K. Haas**, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGE:** Morris L. Woodruff, Deputy Chief Regulatory Law Judge

## **REPORT AND ORDER**

Syllabus: This Report and Order finds that U.S. Cellular has met all requirements of federal and state law and designates it as an eligible telecommunications carrier throughout its Missouri service area.

### **FINDINGS OF FACT**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

### **Procedural History**

On April 22, 2005, USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, filed an application asking to be designated as an Eligible Telecommunications Carrier (ETC), pursuant to federal law. As an ETC, U.S. Cellular asks to be designated as eligible to receive all available support from the federal Universal Service Fund, including support for rural, insular, and high cost areas, and low-income customers.

On April 26, 2005, the Commission directed that notice of U.S. Cellular's application be given to all incumbent and competitive local exchange carriers certificated to provide service in Missouri, as well as to the news media and the members of the General Assembly. The Commission established May 16, 2005, as the deadline for submission of

requests to intervene. Thereafter, on May 27, 2005, the Commission granted applications to intervene filed by Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (AT&T Missouri);<sup>1</sup> Spectra Communications Group, LLC, d/b/a CenturyTel, and CenturyTel of Missouri, LLC (collectively CenturyTel); and the Small Telephone Company Group (STCG).<sup>2</sup>

Each of the parties offered prefiled testimony. An evidentiary hearing was held on October 26 and 27, 2005. After considering the evidence that was offered at the hearing, the Commission found that U.S. Cellular had 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 not otherwise occur without the receipt of high cost support. Rather than reject U.S. Cellular's application, the Commission issued an order on March 21, 2006, that allowed U.S. Cellular an opportunity to submit additional evidence on that issue. The Commission indicated that it would not further consider U.S. Cellular's application until that additional evidence was submitted.

U.S. Cellular submitted additional evidence regarding its plans on August 11, 2006. Thereafter, the Commission established a procedural schedule that allowed all parties an

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<sup>1</sup> Southwestern Bell Telephone, L.P. is now doing business as AT&T Missouri and will be referred to as such in this report and order.

<sup>2</sup> The members of the Small Telephone Company Group are as follows: BPS Telephone Company; Choctaw Telephone Company; Craw-Kan Telephone Cooperative, Inc.; Ellington Telephone Company; Farber Telephone Company; Fidelity Telephone Company; Goodman Telephone Company; Granby Telephone Company; Grand River Mutual Telephone Corporation; Holway Telephone Company; IAMO Telephone Corporation; Kingdom Telephone Company; Le-Ru Telephone Company; Mark Twain Rural Telephone Company; Mid-Missouri Telephone Company; Miller Telephone Company; New Florence Telephone Company; New London Telephone Company; Northeast Missouri Rural Telephone Company; Orchard Farm Telephone Company; Peace Valley Telephone Company, Inc.; Seneca Telephone Company; Steelville Telephone Exchange, Inc.; and Stoutland Telephone Company.

opportunity to file responsive testimony. An additional hearing was held on December 18 and 19, 2006. The parties submitted post-hearing briefs on January 31, 2007.

### **The Federal Universal Service Fund**

The federal Universal Service Fund was established in the Telecommunications Act of 1996. The stated purpose of the fund is to ensure that telephone customers in rural and high cost areas, as well as low-income customers, have access to quality telecommunications services at reasonable and affordable rates.<sup>3</sup> To meet that goal, the Universal Service Fund redistributes money paid into the fund by telecommunications customers to telecommunications service providers who serve rural and high cost parts of the country.

Before a telecommunications service provider is eligible to receive funding from the Universal Service Fund, it must be designated as an Eligible Telecommunications Company, referred to by the acronym ETC. Various incumbent local exchange carriers in rural parts of Missouri, competitive local exchange carriers serving those areas, and wireless telecommunications carriers have already been designated as an ETC, and currently receive funding from the federal Universal Service Fund. U.S. Cellular, a provider of wireless telecommunications service,<sup>4</sup> has now applied for designation as an ETC in its service area.

### **The Requirements for Designation as an ETC**

The Telecommunications Act established two factual criteria for determining whether an applicant may be designated as an ETC. First, the applicant must offer the services that

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<sup>3</sup> 47 U.S.C. 254(b)

<sup>4</sup> As a provider of wireless service U.S. Cellular can be described as a commercial mobile radio service (CMRS) provider.

are supported by the Universal Service Fund throughout the service area for which the designation is received. The applicant can offer those services either through its own facilities, or a combination of its own facilities and the resale of another carrier's services. Second, the applicant must advertise the availability of such services and the charges therefore using media of general distribution.<sup>5</sup>

The Federal Communications Commission has designated, by regulation, nine services that are supported by the Universal Service Fund.<sup>6</sup> The nine services designated for support are as follows: (1) Voice grade access to the public switched network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party service or its functional equivalent; (5) Access to emergency services; (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualifying low-income consumers.

U.S. Cellular represents in its application that it is a "full-service wireless carrier, which offers all of these services within the State of Missouri".<sup>7</sup> Testimony presented by U.S. Cellular's witness, Kevin Lowell, established that U.S. Cellular offers the nine designated services in Missouri.<sup>8</sup> U.S. Cellular also represents that if it is granted ETC status it will immediately advertise the availability of its services throughout its service

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<sup>5</sup> 47 U.S.C. 214(e)(1).

<sup>6</sup> 47 CFR 54.101(a).

<sup>7</sup> *Application of USCOC of Greater Missouri, LLC ("U.S. Cellular") for Designation as an Eligible Telecommunications Carrier*, page 5.

<sup>8</sup> Lowell Direct, Ex. 4, pages 2-4.

area.<sup>9</sup> Staff's witness, Adam McKinnie, confirmed that U.S. Cellular offers the nine-designated services.<sup>10</sup>

The parties that challenge U.S. Cellular's application do so by arguing that U.S. Cellular fails to offer its services *throughout* the territory for which it seeks ETC designation. U.S. Cellular requests that it be given ETC designation throughout a large portion of Missouri, excluding only the west central portions of the state, centering on the Kansas City area. The proposed ETC designation would include the exchanges served by many incumbent local exchange companies (ILECs). The parties opposing U.S. Cellular's application offered extensive testimony demonstrating that U.S. Cellular is not capable of providing facilities-based wireless service in many of the ILEC study areas for which it is seeking ETC status.

U.S. Cellular concedes that its present facilities cannot provide wireless service to all of the ILEC study areas for which it is seeking ETC designation. For those areas that it cannot reach with its own facilities, U.S. Cellular proposes to serve any customer who requests service through what it described as a six-step process.

Under the six-step process, U.S. Cellular commits to provide service to a requesting customer within a reasonable period of time if service can be provided at reasonable cost by:

- (1) modifying or replacing the requesting customer's equipment;
- (2) deploying a roof-mounted antenna or other equipment;
- (3) adjusting the nearest cell tower;
- (4) adjusting network or customer facilities;
- (5) reselling services from another carrier's facilities to provide service; or

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<sup>9</sup> Wright Direct, Ex. 5, page 5, lines 16-22.

<sup>10</sup> McKinnie Rebuttal, Ex. 9, page 3, lines 18-20.

(6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.<sup>11</sup>

The maps showing U.S. Cellular's current wireless coverage reveal that the company will be able to serve many potential customers only by reselling wireless service from other wireless companies. U.S. Cellular would serve those customers through roaming agreements that it has in place with other wireless carriers.<sup>12</sup> Even though they would be served through facilities owned by another carrier, such customers would pay for service based on U.S. Cellular's rate plans.<sup>13</sup> If providing service to a customer through a roaming agreement costs more than U.S. Cellular could recover from the customer under its rate plan, U.S. Cellular would absorb the extra cost.<sup>14</sup>

The STCG, CenturyTel, AT&T Missouri, and Public Counsel contend that offering service only by resale in large portions of its proposed ETC territory does not allow U.S. Cellular to meet the requirements for certification. In particular, the STCG points to 47 CFR §54.201(i), which states that a state commission cannot designate as an ETC a carrier that offers the supported services "exclusively through the resale of another carrier's services." On the basis of that regulation, the STCG argues that U.S. Cellular cannot be designated as an ETC in those portions of its requested service area for which it cannot currently offer services using its own facilities.

The Commission rejects the interpretation of the regulation proposed by the STCG. Such an interpretation conflicts with the clear language of 47 U.S.C. 214(e)(1), which

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<sup>11</sup> Wright Direct, Ex. 5, page 8, lines 4-9.

<sup>12</sup> Transcript, page 544.

<sup>13</sup> Transcript, page 545.

<sup>14</sup> Transcript, page 546.

specifically allows for the designation of a carrier that offers the supported services using a combination of its own facilities and resale of another carrier's services. There is nothing in that statute that would require the Commission to examine U.S. Cellular's current ability to provide facilities-based wireless service in each exchange before granting it designation in a larger service territory.

In support of its argument that would preclude designating U.S. Cellular as an ETC in ILEC study areas in which it does not currently provide signal coverage, the STCG refers to decisions made by this Commission in earlier cases. The first case cited by the STCG is a 2001 decision designating ExOp of Missouri as an ETC in the Kearney, Missouri exchange.<sup>15</sup> ExOp was a wireline service provider that offered service using its own facilities only in the Kearney exchange. There was no indication that ExOp offered services in any other exchange by resale. Nevertheless, ExOp sought designation as an ETC in all 184 exchanges in which it held a certificate to provide service. The Commission limited its designation of ExOp as an ETC to the Kearney exchange, finding that the Telecommunications Act "requires that a carrier both offer and advertise the services in question throughout its designated service area *upon designation*."<sup>16</sup>

The STCG also cites a more recent ETC decision regarding the application of Missouri RSA No 5 Partnership.<sup>17</sup> In that case, the Commission excluded a particular wire

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<sup>15</sup> *In the Matter of the Application of ExOp of Missouri, Inc. for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support*, Commission Case No. TA-2001-251, Order Granting Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996, issued May 15, 2001.

<sup>16</sup> *Id.* (emphasis in original).

<sup>17</sup> *In the Matter of the Application of Missouri RSA No. 5 Partnership for ETC Designation*, Case No. TO-2006-0172, Report and Order, issued September 21, 2006.

center from the company's designated ETC area when it found that the company could not provide wireless service to that exchange.

The Commission's decision in both the ExOp and Missouri RSA No. 5 Partnership cases can be distinguished from this case. In the ExOp case, the Commission specifically found that ExOp had "not shown that it will both offer and advertise the services in question in a larger area upon designation."<sup>18</sup> ExOp had installed wires in only one exchange and it did not demonstrate an intention to provide service by resale in other exchanges. Similarly, in the Missouri RSA No. 5 Partnership case, the Commission specifically found that the applicant "admitted that it would most likely have to report to the Commission that it could not serve those customers outside its service area if they requested service."<sup>19</sup> By contrast, in this case, U.S. Cellular has demonstrated the ability and the intention to offer services throughout the proposed area either using its own wireless signal or through resale.

U.S. Cellular has met the requirements of 47 U.S.C. 214(e)(1), which do not require U.S. Cellular to demonstrate its ability to provide *facilities-based* service in every exchange in which it requests designation as an ETC. The Commission will not attempt to impose a requirement that is not imposed by the controlling statute.

As a practical matter, the designation of U.S. Cellular as an ETC in exchanges in which it currently does not offer facilities-based service does not provide an unfair advantage to U.S. Cellular, nor does it unfairly disadvantage any of its competitors. This is true because, as an ETC, U.S. Cellular will receive universal service support only for those

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<sup>18</sup> Id.

<sup>19</sup> Id.

customers whom it serves over its own wireless network. It does not receive such support for customers it serves by resale of the services of other carriers.<sup>20</sup> In other words, U.S. Cellular cannot receive support from areas in which it does not have wireless coverage. Therefore, U.S. Cellular has a strong and appropriate incentive to expand its wireless coverage area to obtain more support.

By contrast, restricting U.S. Cellular's designation as an ETC to areas where it already provides facilities-based service would be unfair to U.S. Cellular and would impose an unnecessary administrative burden on the Commission and its Staff. If the Commission were to limit the ETC designation in that way, U.S. Cellular would have to come back to the Commission every time it was ready to expand its wireless coverage area into a new, previously undesignated exchange, resulting in the relitigation of the same issues over and over again.<sup>21</sup> Furthermore, U.S. Cellular can only offer its Lifeline services to low-income customers in an area if it has been designated as an ETC for that area. Therefore, designating U.S. Cellular as an ETC in an area may provide a benefit to the low-income residents of that area, even if U.S. Cellular cannot serve that customer over its own network.

#### **Is U.S. Cellular's Application Consistent with the Public Interest?**

Section 214(e)(2) of the Telecommunications Act requires that before designating an additional carrier as an ETC for an area served by a rural telephone company, the State Commission is required to find that the designation is in the public interest. Similarly, the Commission's regulation provides that the applicant for ETC designation must demonstrate

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<sup>20</sup> Transcript, page 216, lines 4-6.

<sup>21</sup> Transcript, page 784, lines 14-22.

“that the commission’s grant of the applicant’s request for ETC designation would be consistent with the public interest, convenience and necessity.”<sup>22</sup> Therefore, the Commission must determine whether granting U.S. Cellular ETC status is in the public interest.

U.S. Cellular contends that designating it as an ETC would serve the public interest by: 1) advancing universal service in Missouri by increasing the choices available to consumers; 2) offering affordable service; 3) improving service quality; 4) expanding the health and safety benefits that accompany cell phone service; 5) delivering economic development benefits to rural Missouri; and 6) stimulating a competitive response from the existing rural ILECs. In addition, U.S. Cellular contends that designating it as an ETC would not increase the existing burden on the federal universal service support mechanism.

U.S. Cellular has put together a list of benefits that would result from an expansion of cell phone service that could follow if it is designated as an ETC. Clearly, expansion of cell phone service would benefit consumers by giving them an additional option for phone service, by allowing them additional mobility, and by affording them increased safety while on the road or otherwise away from the end of a telephone wire. Indeed, most of the benefits U.S. Cellular describes are self-evident. The other parties do not disagree with the general idea that expanding the availability of cell phone service in rural Missouri would be a good thing. However, they argue, for various reasons, that designating U.S. Cellular as an ETC would not be in the public interest.

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<sup>22</sup> 4 CSR 240-3.570(2)(A)5.

### **Is Competition a Good Thing? And Does Effective Competition Already Exist?**

Several parties argue that effective competition for wireless service already exists in rural areas of the country, and indeed, U.S. Cellular concedes that it currently faces wireless competition in all areas that it serves in Missouri.<sup>23</sup> Furthermore, they argue that while increased competition may be desirable in the abstract, increased competition in a high cost rural area that is subsidized by universal service funding may not ultimately benefit consumers. The concern is that the federal universal service fund would be required to support multiple ETCs in a fixed cost market, causing the cost of service to increase for each of the providers on a per customer basis.<sup>24</sup> In other words, the cost of providing telecommunications services to a high cost area would remain the same, but the customers from whom those costs could be recovered would be split between competing providers, reducing the amount that could be recovered by each competitor.

The arguments against encouraging competition in rural areas are interesting, but not persuasive. The Commission certainly expects that competition and support from the federal USF will encourage wireless carriers to expand into underserved and non-served portions of rural Missouri. But most importantly, the idea of excluding wireless carriers from ETC designation with the intent to block competition in rural areas is inconsistent with the Telecommunications Act of 1996. Section 253(b) of that Act provides that a state may impose requirements necessary to preserve and advance universal service and protect the

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<sup>23</sup> Transcript, Page 64, lines 5-8.

<sup>24</sup> Schoonmaker Direct, Ex 15, Page 54, lines 12-17.

public welfare, but may do so only “on a competitively neutral basis.”<sup>25</sup> Therefore, the Commission may not reject U.S. Cellular’s application in an effort to stifle competition.

### **Is U.S. Cellular Really Expanding the Area It Serves?**

Some parties argue that the areas in which U.S. Cellular proposes to build additional cell towers using USF funding are mostly areas in which it currently provides service, not more rural areas that are not currently served.<sup>26</sup> In other words, they contend that U.S. Cellular is merely trying to improve the service it currently provides, and will not benefit customers who are not already served.

However, U.S. Cellular’s proposed new cell sites will provide coverage to some areas that currently do not receive any coverage and will provide improved coverage to areas that need it.<sup>27</sup> All new cell sites are located in rural areas that are relatively low in population density.<sup>28</sup> As U.S. Cellular’s witness explained, a wireless carrier cannot simply place a new cell tower in the midst of a large unserved area without regard to coverage, capacity, hand-off capabilities and back-haul requirements. Rather, U.S. Cellular’s expansion plan is an attempt to responsibly expand its footprint, while using a sound wireless network design.<sup>29</sup>

### **Are U.S. Cellular’s Offerings Affordable?**

Some parties argue that the rates that U.S. Cellular has proposed to offer, particularly its Lifeline offerings, are not as affordable as the rates and Lifeline offerings of

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<sup>25</sup> 47 U.S.C. 253(b)

<sup>26</sup> Brown Supplemental Rebuttal, Ex. 30, page 6, lines 23-27; Stidham Supplemental Rebuttal, Ex. 32, page 3, lines 18-21.

<sup>27</sup> Johnson Supplemental Surrebuttal, Ex. 26, page 4, lines 14-17.

<sup>28</sup> *Id.*, page 7, lines 8-11.

<sup>29</sup> *Id.*, pages 4-5, lines 24-25, 1-3.

the incumbent wireline LECs. Of course, U.S. Cellular is offering a competitive service in a competitive market so this Commission does not need to be concerned about the affordability of its rates in general. If it prices the services it offers above the price set by the market, it will not attract customers. If it does not gain customers, it will not receive support from the universal service fund.<sup>30</sup> In any event, this Commission is preempted by federal law from regulating the rates charged for wireless service.<sup>31</sup> The question of the affordability of U.S. Cellular's Lifeline offerings is more interesting.

Federal regulations require an ETC to make Lifeline service available to qualifying low-income consumers.<sup>32</sup> The ETC is also required to effectively advertise the availability of its Lifeline service.<sup>33</sup> Low-income consumers who receive Lifeline service pay reduced charges for basic telecommunications services.<sup>34</sup>

U.S. Cellular has committed to offer a \$25 per month, 400 minutes of anytime usage plan as its least expensive Lifeline service offering.<sup>35</sup> That plan has a nation-wide calling scope, excluding Alaska and Hawaii, subject to roaming charges and a two-year service commitment.<sup>36</sup> Calls made to anywhere in the lower 48 states would not be subject to additional toll charges.<sup>37</sup> Lifeline customers may also subscribe to any other calling plan

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<sup>30</sup> Transcript, pages 209-210, lines 18-25, 1.

<sup>31</sup> 47 U.S.C. 332(c)(3).

<sup>32</sup> 47 C.F.R. 54.405(a).

<sup>33</sup> 47 C.F.R. 54.405(b).

<sup>34</sup> 47 C.F.R. 54.401(a)(2).

<sup>35</sup> Transcript, page 532, lines 17-25.

<sup>36</sup> Transcript, page 534, lines 4-18.

<sup>37</sup> Transcript, page 110, lines 2-3.

that U.S. Cellular offers and receive an \$8.25 per month discount.<sup>38</sup> U.S. Cellular reports that its most popular plan among Lifeline customers is a \$39.99 plan that offers greater access.<sup>39</sup>

The incumbent wireline LECs offer less expensive basic service plans that offer unlimited local calling.<sup>40</sup> However, the plan offered by U.S. Cellular is fundamentally different than the basic plans that are offered by its wireline competitors. The basic plans offered by wireline companies offer unlimited local calling, but the number of lines that can actually be reached without incurring toll charges may be very limited. For example, residential customers of Holway Telephone Company pay a base rate of \$13.00 per month for a local calling area that includes only two exchanges with 495 residential and 54 business customers.<sup>41</sup> If those customers want to call a number outside those small areas, they must pay toll charges. In contrast, a customer who chooses to purchase a basic plan from U.S. Cellular can make calls outside their own community, to the next town, or coast to coast, without incurring additional toll charges. When the expanded calling area provided by the wireless plans is considered, the basic rates offered by U.S. Cellular are at least as affordable as the basic offerings of the competing incumbent LECs. Giving consumers a greater choice in the type of telephone service they can purchase at affordable prices is a good result and clearly is in the public interest.

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<sup>38</sup> Transcript, page 536, lines 9-12.

<sup>39</sup> Transcript, page 536, lines 13-16

<sup>40</sup> Exhibit A to Wood Supplemental Surrebuttal, Ex. 27, is a chart showing the basic phone service offerings of the various ILECs that are competing in the area served by U.S. Cellular.

<sup>41</sup> Wood Supplemental Surrebuttal, Ex. 27, Exhibit A.

### **Would U.S. Cellular Make Improvements Even without USF Funding?**

Some parties argue that granting U.S. Cellular's application is not in the public interest because U.S. Cellular has not demonstrated that the network improvements it has proposed would not occur absent the receipt of high cost support.

In its initial application, U.S. Cellular indicated that it would use the high cost support it received to build new wireless cell sites and other facilities in sixteen specified high cost areas that were in need of improved signal coverage.<sup>42</sup> It committed to build these new facilities within 18 months after it was designated as an ETC.<sup>43</sup> After the initial hearing, the Commission found that U.S. Cellular had not presented sufficient evidence to show how it intended to use the support it would receive from the Universal Service Fund to improve its network. In an order issued on March 21, 2006, the Commission ordered U.S. Cellular to submit additional information on how it would use the funds it would receive if granted ETC status.

After March 21, 2006, a new Commission rule establishing filing requirements for applications to be designated as an ETC went into effect. A portion of that new rule, 4 CSR 240-3.570(2)(A)2, requires an applicant for designation as an ETC to submit a two-year plan "demonstrating with specificity, that high-cost universal service support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted." On August 11, 2006, U.S. Cellular submitted a new two-year build-out plan to comply with the Commission's ETC rule, as well as the Commission's March 21, 2006 order.

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<sup>42</sup> Exhibit E to Application filed April 22, 2005.

<sup>43</sup> Transcript, page 120, lines 8-10.

In its new build-out plan, U.S. Cellular commits to build 39 new cell towers in the first two years following the granting of ETC status. U.S. Cellular will also use USF funds to operate and maintain the new cell sites, as well as upgrade switching infrastructure needed to support the new cell sites.<sup>44</sup> U.S. Cellular explains that it maintains a list of cell sites that will need to be constructed in the future as its cellular network expands. Those cell sites are first prioritized and then U.S. Cellular determines which sites can be built consistent with the company's business plan. It refers to those sites as being above the line because they can be built without support from the USF. The sites that fall below the line cannot be economically built without USF support. U.S. Cellular represents that it will use USF funding to build those below-the-line cell sites.<sup>45</sup>

U.S. Cellular's critics, including the Commission's Staff, contend that U.S. Cellular has failed to prove that the 39 cell sites it proposes to build with USF funds would not otherwise be built with U.S. Cellular's own funds. Indeed, it would not be in the public interest to allow U.S. Cellular to spend USF funds, rather than its own funds, while not increasing the number of sites that it will construct. Such a result would simply enrich U.S. Cellular's shareholders without any benefit to its Missouri customers.

U.S. Cellular's plans are problematic because the company is unable to draw a clear distinction between cell sites that can be built without support and those that can be built only with such support. It does not, and realistically cannot, maintain separate lists of sites

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<sup>44</sup> Compliance Filing of U.S. Cellular, August 11, 2006.

<sup>45</sup> Transcript, page 587, lines 7-11.

that can be built with or without USF support.<sup>46</sup> As U.S. Cellular's witness, Nick Wright, explains:

U.S. Cellular is going to build some facilities in Missouri, irrespective whether it receives high-cost support. But it is not going to build facilities out to rural areas of Missouri nearly as fast as it would if it does receive high-cost support. If a community would most likely not see new or improved wireless coverage in the next 4 to 5 years, then using high-cost support next year to expedite service to that area will be enormously beneficial to that community.<sup>47</sup>

If all or most sites are going to be built eventually with or without USF support, it will be difficult for the Commission to determine whether U.S. Cellular is appropriately spending the support it receives, or whether it is using the money to build cell sites in low-cost areas such as St. Louis, or, simply pocketing the money for the benefit of its shareholders, while building cell sites that it would have built anyway.

U.S. Cellular nicely illustrated this problem by its actions between the time it filed its initial application and the time it filed its new two-year build-out plan. In its initial application, U.S. Cellular indicated an intention to use USF funds to build sixteen cell sites, while representing that none of these sites could economically be constructed without high-cost support. By the time it filed its two-year build-out plan a year and a half later, four of those sixteen sites had in fact already been built, without the benefit of USF support.<sup>48</sup>

U.S. Cellular explained that it needed to build the four new cell sites earlier than planned because they had to be pushed up the priority list to shorten existing microwave hops, or because of a need to meet changing competitive conditions and to provide better

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<sup>46</sup> Transcript, page 585, lines 8-22.

<sup>47</sup> Wright Supplemental Surrebuttal, Ex. 25, page 4, lines 6-10.

<sup>48</sup> McKinnie Supplemental Rebuttal, Ex. 29, page 12, lines 23-25.

service to its customers.<sup>49</sup> There is no reason to doubt U.S. Cellular's explanation of why those four sites were built. But the building of those sites brings into focus the problem with U.S. Cellular's two-year build-out plan. It will be very difficult for the Commission to determine whether a particular cell site would have been built anyway, even without USF support.

U.S. Cellular already builds new cell sites throughout urban and rural portions of Missouri without receiving USF support. If it were known how much U.S. Cellular currently spends without USF support, the Commission could establish that level of spending as a base line and require U.S. Cellular to spend the funds it receives from the USF in addition to its base line spending. U.S. Cellular's witness, Alan Johnson, was able to testify to U.S. Cellular's average capital expenditures for construction of cell sites in its Missouri market, excluding St. Louis and the Joplin area, since 2003. Later, another U.S. Cellular witness, Nick Wright, testified that U.S. Cellular is spending an average of \$15-16 million on construction of cell sites each year.<sup>50</sup> However, the level of expenditures has fluctuated a great deal from year to year.<sup>51</sup> Wright did, however, testify that U.S. Cellular would commit to spending any USF funding that it receives dollar for dollar over and above what it would otherwise spend.<sup>52</sup>

One solution to the problem of ensuring that U.S. Cellular spends USF funding in addition to, rather than instead of its own investment money would be to establish an investment base line to ensure that U.S. Cellular spends its USF funding appropriately.

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<sup>49</sup> Johnson Supplemental Surrebuttal, Ex 26, page 13, lines 3-16.

<sup>50</sup> Transcript, page 758, lines 19-20.

<sup>51</sup> In-Camera Transcript, pages 732-733. The amount of dollars spent each year is highly confidential.

<sup>52</sup> Transcript, page 758, lines 6-7.

However, the establishment of a reliable base line is difficult because a wireless carrier's capital budget can vary greatly from year to year.<sup>53</sup> Indeed, U.S. Cellular's capital budget has shown such variation in recent years.<sup>54</sup> Nevertheless, if the Commission is to ensure that U.S. Cellular is spending its USF funding appropriately, it will need to establish such a base line.

In recognition of the variability of U.S. Cellular's investment spending, the Commission will establish a two-year average base line of \$15 million per year, which is the amount that U.S. Cellular currently invests for construction of cell sites in its Missouri market, excluding St. Louis and the Joplin area, without wireless support. If U.S. Cellular invests less than \$15 million in the first year, it will need to increase its spending in the second year to bring the average for the two years up to the base line amount. If U.S. Cellular fails to comply with the base line investment requirement, the Commission will refuse to recertify U.S. Cellular to receive further USF funding and may seek the return of funds previously paid. In addition, the Commission may seek penalties against U.S. Cellular under Section 386.570, RSMo 2000, for violation of the Commission's order.

Telephone customers in rural Missouri will benefit from the designation of U.S. Cellular as an ETC. If, because of a fear of uncertainty, the Commission simply refuses to designate U.S. Cellular as an ETC, those benefits would be denied to rural Missourians. On balance, the Commission finds that the detailed, after-the-fact, demonstration of how it spent USF funding, along with the establishment of an investment base line, will be sufficient to ensure that U.S. Cellular spends its USF funds appropriately.

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<sup>53</sup> Johnson Supplemental Surrebuttal, Ex. 26, page 16-17, lines 18-27, 1.

<sup>54</sup> In-Camera Transcript, pages 732-733.

### Would Designating U.S. Cellular as an ETC Create a Burden on the USF System?

Some of the parties argue that designating U.S. Cellular as an ETC would not be in the public interest because designating yet another company as an ETC would create a burden on the USF system.

There is concern that the USF is rapidly expanding and that ultimately it could be forced to limit payments to the various ETCs.<sup>55</sup> The amount of USF funding that U.S. Cellular would receive in Missouri is only a small percentage of the very large amount of funding that is disbursed nationwide through the USF. Therefore, granting ETC status to U.S. Cellular in Missouri would not have an appreciable impact on the USF system as a whole. But each state's decision to grant ETC status to a new carrier does have an impact on the total usage of the system, and the Commission should consider the impact on the total system as it considers U.S. Cellular's application.

Fortunately, U.S. Cellular's impact on the overall USF system is limited by the manner in which the support paid to a competitive ETC, such as U.S. Cellular, is measured. U.S. Cellular will receive support payments on a per customer basis only for those customers that it actually serves on a non-resale basis.<sup>56</sup> If it does not serve the customers, U.S. Cellular will not collect support payments. Furthermore, in the areas served by a Tier I carrier, such as AT&T Missouri, when a competitive ETC takes a customer away from the incumbent carrier, it also takes the incumbent's support payment, resulting in no net increase in the amount of support paid by the fund.<sup>57</sup> Overall, there is

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<sup>55</sup> Transcript, page 789, lines 11-19.

<sup>56</sup> Transcript, page 208, lines 15-16.

<sup>57</sup> Transcript, page 208, lines 17-18.

no reason to believe that designating U.S. Cellular as an ETC will unduly burden the USF system.

After considering the evidence and arguments of the parties, the Commission concludes that designating U.S. Cellular as an ETC is in the public interest.

**Has U.S. Cellular Complied with the Commission's ETC Rule?**

The Commission has recently promulgated a new rule – 4 CSR 240-3.570 – governing the decision to grant an application for ETC designation. Various parties contend that U.S. Cellular has failed to comply with one or more provisions of that rule. Some of the questions about compliance with the rule overlap with issues that the Commission has previously addressed in deciding that designating U.S. Cellular as an ETC is in the public interest. Those overlapping issues will be briefly addressed as they relate specifically to the rule.

In considering U.S. Cellular's compliance with the detailed requirements of its rule, the Commission emphasizes that the purpose of the rule is to guide applicants and the Commission in making a determination of whether it is appropriate to designate an applicant as an ETC. The Commission does not intend to use the rule to ensure that a wireless carrier can never be designated as an ETC.

Some parties contend that U.S. Cellular has failed to comply with Commission rule 4 CSR 240-3.570(2)(A)3G, which requires an applicant for ETC designation to make "a statement as to how the proposed plan would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur." That issue has already been addressed when the Commission

found that designating U.S. Cellular as an ETC is in the public interest. It need not be addressed again.

Commission rule 4 CSR 240-3.570(2)(A)5 requires an applicant for ETC designation to demonstrate that "the commission's grant of the applicant's request for ETC designation would be consistent with the public interest, convenience and necessity." The Commission has already found that designating U.S. Cellular as an ETC is in the public interest, but the STCG's brief suggests that because U.S. Cellular is already providing service without USF support, the Commission must consider whether ETC designation will result in any additional competition or increased benefits for customers in rural Missouri.<sup>58</sup>

That section of the rule simply requires a consideration of the impact on the public interest of the granting of the applicant's request for designation as an ETC. It does not require any specific finding of additional competition or increased benefits. The Commission has previously found that U.S. Cellular has demonstrated that its request for ETC designation is consistent with the public interest. No further consideration is required.

Commission Rule 4 CSR 240-3.570(2)(A)10 requires an applicant for ETC designation to make a commitment to offer a local usage plan comparable to the local usage plan offered by the ILEC in the areas the applicant seeks to serve. The Commission has already addressed this issue as it relates to the affordability of the services, including Lifeline services offered by U.S. Cellular. However, the STCG points out that the wireline ILECs offer a local usage plan that allows a customer to make unlimited local calls for a flat monthly rate. Since U.S. Cellular does not offer such a plan, the STCG argues that its local

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<sup>58</sup> January 31, 2007, Post Hearing Brief of the Small Telephone Company Group, page 22.

usage plan is not comparable to those offered by the ILEC and thus does not comply with the regulation.

As the Commission has previously found, many ILECs offer unlimited local calling, but only to a few exchanges. In contrast, U.S. Cellular offers a limited number of minutes of use for a fixed fee but allows a customer to make calls to locations in most of the country. Some customers will benefit from the plan offered by the ILECs while others will benefit from the plan offered by U.S. Cellular. The customers can choose for themselves which plan they prefer. The Commission's rule does not require a wireless provider to become a wireline provider and it does not require U.S. Cellular to offer the same local usage calling plan as that offered by the ILECs. The rule requires only that their local usage calling plans be comparable. The Commission finds that the local usage plan offered by U.S. Cellular is comparable to the local usage plan offered by the ILECs and complies with the Commission's regulation.

Commission rule 4 CSR 240-3.570(2)(A)3 requires an applicant for ETC designation to submit a two-year plan demonstrating that USF funding will 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. . . ." Several parties contend that because U.S. Cellular's plan does not propose to "improve coverage, service quality or capacity" in every wire center in which it seeks ETC designation, it does not comply with the rule.

U.S. Cellular agrees that improved network coverage is needed in every wire center for which it seeks ETC status and intends to continue to use the support it receives to

improve coverage in additional areas.<sup>59</sup> The coverage maps that U.S. Cellular submitted as part of its application show many areas in Missouri in which it cannot currently provide service over its own facilities. The two-year plan that U.S. Cellular submitted along with its application would bring additional coverage to some of those areas but it does not eliminate the areas without coverage. U.S. Cellular's initial two-year plan is a start toward improving coverage, but it is only a start. Fortunately, additional two-year plans will follow because an ETC is required to annually seek recertification to continue to receive USF funding, and Commission rule 4 CSR 3.570(4)(B)1 requires that when seeking recertification, an applicant is required to submit an updated two-year improvement plan.

The amount of support that U.S. Cellular will receive from the USF could not conceivably allow it to completely build out its network to achieve that goal in just two years, and that result is not required by the Commission's rule. Neither does the rule require U.S. Cellular to provide a detailed plan about how it will ultimately complete the build out of its network. Too many facts are still unknown, and unknowable, to allow such a plan to be anything but fantasy and guesswork.

U.S. Cellular has committed to construct facilities to provide network coverage in every wire center within its Missouri service area that qualifies for high-cost support.<sup>60</sup> The company will explain precisely how it intends to accomplish that task in subsequent two-year plans that it will file for Commission approval each year when it seeks recertification to receive USF funding. That is all that is required by the Commission's rule, and that is all that the Commission will require of U.S. Cellular.

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<sup>59</sup> Johnson Supplemental Surrebuttal, Ex. 26, page 4, lines 3-5.

<sup>60</sup> Transcript, page 643, lines 2-6.

Commission rule 4 CSR 240-3.570(2)(A)3A indicates that an initial two-year plan shall include "a detailed map of coverage area before and after improvements and in the case of CMRS providers, a map identifying existing tower site locations for CMRS cell towers." As a sub-issue to its challenge to the sufficiency of U.S. Cellular's two-year plan, CenturyTel argues that the coverage maps that U.S. Cellular submitted as part of its initial two-year plan are not sufficiently detailed.

As part of its two-year plan, U.S. Cellular submitted statewide maps showing its existing coverage and the areas that would receive improved coverage when additional cell towers are built under its plan.<sup>61</sup> These maps provide a statewide overview and do not provide wire center-by-wire center details of the sort that are shown in the maps submitted by CenturyTel's witness Glenn H. Brown and the STCG's witness Robert Schoonmaker.

Certainly, the maps submitted by U.S. Cellular do not provide precise details about existing and expanded coverage on a wire center-by-wire center basis. But the rule does not require that level of detail. The purpose of the rule's map requirement is to provide the Commission and the Commission's Staff with the information they need to determine whether the two-year plan meets the other requirements of the rule. The witness for the Commission's Staff, Adam McKinnie, although he testified that U.S. Cellular's two-year plan is deficient in other respects, did not testify to any concern about the adequacy of the submitted maps. Furthermore, the Commission has found the maps submitted by U.S. Cellular to be sufficient for its review. On that basis, the Commission finds that the maps submitted by U.S. Cellular satisfy the requirements of its regulation.

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<sup>61</sup> August 11, 2006, Compliance Filing of U.S. Cellular, Appendices 4 and 5. See also, Johnson Supplemental Surrebuttal, Ex. 26, Attached Proprietary Exhibits A, B, and C.

As previously indicated, the Commission's Staff found that U.S. Cellular's two-year plan failed to comply with the Commission's rule in one respect. Commission Rule 4 CSR 240-3.570(2)(A)3D requires a two-year plan to include "the estimated amount of investment for each project that is funded by high-cost support." Staff is concerned that U.S. Cellular has presented only aggregated budgetary information for the projects it will build instead of specific estimated costs for each proposed project.<sup>62</sup> Indeed, the estimated costs projected by U.S. Cellular simply contain a total amount of capital expenditures per year and a number of cell sites to be built in each year. U.S. Cellular does not attempt to break down the amount anticipated to be spent on each individual cell site.

Staff's interpretation of the regulation would require U.S. Cellular to offer a detailed estimate of the cost of constructing each individual cell tower site. Yet the costs associated with constructing each individual cell site can vary greatly, and cannot be known with any certainty until that site is completed.<sup>63</sup> The Commission does not interpret its regulation to require U.S. Cellular to use a crystal ball to make an estimate of the cost of cell sites that are likely still very early in the planning stages. After the individual cell sites are constructed, U.S. Cellular will be in a position to tell the Commission exactly how much it spent on each cell site as part of its annual recertification request. At that time Staff will be able to review actual numbers rather than mere guesses when it determines whether U.S. Cellular has properly spent the USF funds it receives. For that reason, the Commission interprets its regulation as allowing U.S. Cellular's two-year plan to include aggregate cost estimates for the construction of projects using USF funding.

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<sup>62</sup> McKinnie Supplemental Rebuttal, Ex. 29, page 8, lines 17-19.

<sup>63</sup> Johnson Supplemental Surrebuttal, Ex. 26, pages 14-15, lines 23-29, 1-4.

The Commission's regulation imposes various additional requirements on an applicant for designation as an ETC. The evidence presented indicates that U.S. Cellular has complied with those other requirements of the rule<sup>64</sup> and no party has presented any contrary evidence. As a result, those requirements will not be further addressed.

The Commission finds that U.S. Cellular has complied with all applicable requirements of the Commission's ETC rule.

**May U.S. Cellular Use USF Support to Make Network Improvements in AT&T Missouri's Wire Centers?**

AT&T Missouri raises the issue of whether U.S. Cellular can use USF high-cost support to make network improvements in areas in which AT&T Missouri is the ILEC. AT&T Missouri provides phone service in most of Missouri's large cities, including St. Louis and Springfield, urban areas that are within U.S. Cellular's Missouri service area. But AT&T Missouri also provides phone service in many Missouri wire centers that are undeniably rural in character. However, as of July 1, 2006, as a Tier I carrier, AT&T Missouri receives no federal USF support for any of its wire centers; neither rural nor urban.<sup>65</sup> Hence, by definition, all of AT&T Missouri's wire centers are considered to be non-high cost. That also means that U.S. Cellular cannot receive support for any customers it serves in an AT&T Missouri wire center.<sup>66</sup>

Both Federal law<sup>67</sup> and the Commission's regulation<sup>68</sup> require that U.S. Cellular spend any USF support it receives for "the provision, maintenance and upgrading of

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<sup>64</sup> McKinnie Supplemental Rebuttal, Ex. 29, pages 5-13.

<sup>65</sup> Stidham Supplemental Rebuttal, Ex. 32, page 5, lines 11-12.

<sup>66</sup> Transcript, page 682, lines 4-8.

<sup>67</sup> 47 U.S.C. §254(e).

<sup>68</sup> 4 CSR 240-3.0570(2)(A)2.

facilities and services for which the support is intended.” All parties, including U.S. Cellular, agree that U.S. Cellular cannot use USF support to construct facilities in urban low-cost areas, such as St. Louis, because such spending would not be an “intended” use of the support. AT&T Missouri, however, contends that U.S. Cellular should also be precluded from spending USF funds to build any facility in any AT&T Missouri wire center, even if that wire center is entirely rural.

Under the FCC’s rules, AT&T Missouri is not allowed to receive high-cost support to improve its facilities in those rural wire centers that are, in fact, if not in law, costly to serve. AT&T Missouri argues that allowing U.S. Cellular to spend the high-cost support dollars to build facilities in AT&T wire centers, which are defined by law as non high-cost wire centers, would place AT&T Missouri at a competitive disadvantage, and would violate the Telecommunications Act’s principle of competitive neutrality.

AT&T Missouri’s competitive neutrality argument must be rejected because U.S. Cellular will have an obligation to serve throughout its ETC service area, including AT&T Missouri’s rural wire centers, regardless of whether it will be allowed to receive high-cost support for those customers. Those rural customers, who currently pay into the USF like all other phone customers, should not be denied the benefits of improved telecommunications service that the USF was intended to deliver.

In one sense, AT&T’s argument is premature. The Commission does not need to finally decide in this application case the propriety of the details of U.S Cellular’s expenditures of USF support. That process will occur later, when the Commission examines those expenditures in detail during the annual recertification process. However, for the guidance of the parties, the Commission will state that, in its opinion, there is

nothing in federal or state law that would prevent U.S. Cellular from spending USF support in the rural wire centers served by AT&T Missouri.

**Is Designating Multiple Wireless Carriers as ETCs in the Public Interest?**

CenturyTel and the STCG point out that the Commission has previously granted ETC designation to two wireless carriers – Northwest Missouri Cellular Limited Partnership<sup>69</sup> and Missouri RSA No. 5 Partnership<sup>70</sup> – in portions of the service area for which U.S. Cellular seeks such designation. They contend that the Commission must now take the existence of these other wireless ETCs into consideration when it determines whether designating U.S. Cellular's as an ETC would be in the public interest.

The STCG argues that the existing wireless carriers have already brought the benefits of wireless service, including Lifeline wireless service, to the areas for which they have been designated as ETCs. Therefore, they contend that U.S. Cellular must show that it will bring incremental benefits to those areas for which there is already a wireless carrier with ETC status. Another side of that argument is presented by CenturyTel, which contends that designating multiple competitive ETCs could make it less likely that any carrier will be able to complete the construction of a network in the high-cost areas that are to be served under the USF plan.<sup>71</sup>

The Commission has previously found that consumers in rural areas will benefit from the increased availability of wireless telecommunications services. There is no reason to believe that those benefits would not be enhanced by the presence of more than one

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<sup>69</sup> *In the Matter of Northwest Missouri Cellular Limited Partnership's Application for ETC Designation*, Case No. TO-2005-0466, Report and Order issued September 21, 2006.

<sup>70</sup> *In the Matter of Missouri RSA No. 5 Partnership's Application for ETC Designation*, Case No. TO-2006-0172, Report and Order issued September 21, 2006.

<sup>71</sup> Brown Rebuttal, Ex. 11, pages 46-47

wireless carrier. Increased competition is generally a good thing. That is particularly true for wireless service because it is offered in a competitive market with only limited regulation by the FCC. If that market is to function properly to protect consumers from high prices and poor service, there must be more than one service provider in the market. Designating more than one wireless carrier as an ETC in a market will enhance competition and therefore is in the public interest.

### **Redefinition of Rural Service Areas**

U.S. Cellular's application asks the Commission to redefine portions of the study areas of several rural telephone companies that fall outside U.S. Cellular's FCC-licensed service area.<sup>72</sup> The list of ILEC wire centers to be redefined is set forth in Exhibit F to U.S. Cellular's Application.

U.S. Cellular seeks redefinition of certain ILEC study areas because, under federal law, a competitive ETC must serve an entire rural ILEC service area, which is defined as its study area, in order to be eligible for support in any part of that area, unless the state and the FCC agree to redefine the ILEC service area.<sup>73</sup> Of course, the FCC is not a party to this case so it cannot agree to a redefinition in this case. However, this Commission can grant conditional ETC status for the areas to be redefined, to take effect automatically upon a grant of concurrence by the FCC.

A redefinition of certain ILEC study areas is necessary because wireless carriers and wireline ILECs are not licensed along identical boundary lines. The boundary lines of some

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<sup>72</sup> The Application lists the affected ILECs as: ALLTEL Missouri, Inc.; BPS Telephone Company; Chariton Valley Telephone Company; Craw-Kan Telephone Cooperative, Inc.; Le-Ru Telephone Company; Mid-Missouri Telephone Company; Spectra Communications Group, LLC; and United Telephone Company of Missouri d/b/a Sprint (now known as Embarq).

<sup>73</sup> 47 U.S.C. §214(e)(5) and 47 C.F.R. §54.207.

ILEC study areas cut across the boundary of U.S. Cellular's licensed service territory as established by the FCC. As a result, U.S. Cellular cannot provide service in the entire ILEC study area. To get around this problem, U.S. Cellular proposes that the Commission redefine, as a separate service area, each of the ILEC wire centers that are part of a large study area that crosses outside the area served by U.S. Cellular.

The FCC has indicated that a state commission must consider three factors in deciding to redefine an ILEC service area: (1) whether the proposal would result in cream skimming; (2) whether the ILEC would incur an undue administrative burden; and (3) whether the ILEC's status as a rural carrier would be affected. Cream skimming could result if a competitive ETC chose to serve only the low-cost portions of an ILEC's study area, while collecting support based on the cost of serving the entire study area, including high-cost areas. U.S. Cellular demonstrated that cream skimming would not be a problem in its proposed service area. No party challenged that assertion. Similarly, U.S. Cellular demonstrated that its proposed redefinition of the ILEC study areas would not cause any undue administrative burden on an ILEC, and that no ILEC's status as a rural carrier would be affected. No party challenged either assertion.

U.S. Cellular has justified the redefinition of ILEC study areas as proposed in its application. The Commission will grant conditional ETC status for the areas to be redefined, to take effect automatically upon a grant of concurrence by the FCC.

#### **CONCLUSIONS OF LAW**

The Missouri Public Service Commission has reached the following conclusions of law:

1. In establishing the principles that are to govern the provision of universal service support, the United States Congress, in the Telecommunications Act of 1996, set out the following principle regarding access in rural and high cost areas:

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, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>74</sup>

2. To help support that principle, Congress required that "only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support."<sup>75</sup> Congress also required that "[a] carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which support is intended."<sup>76</sup>

3. Section 214(e)(2) of the Telecommunications Act gives authority to State commissions to designate a common carrier as an eligible telecommunications carrier for a service area designated by the State commission. More than one common carrier can be designated as an eligible carrier to serve a service area. Specifically, that section provides:

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.

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<sup>74</sup> 47 U.S.C. §254(b)(3).

<sup>75</sup> 47 U.S.C. §254(e).

<sup>76</sup> *Id.*

4. Section 214(e)(1) of the Telecommunications Act requires that a designated eligible telecommunications carrier must, throughout the designated service area:

- (A) 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
- (B) advertise the availability of such services and the charges therefore using media of general distribution.

5. By regulation, the Federal Communications Commission has required that an eligible telecommunications carrier must offer each of nine designated services in order to receive federal universal service support.<sup>77</sup> The following are the nine services that must be offered:

- (1) Voice grade access to the public switched network;
- (2) Local usage;
- (3) Dual tone multi-frequency signaling or its functional equivalent;
- (4) Single-party service or its functional equivalent;
- (5) Access to emergency services;
- (6) Access to operator services;
- (7) Access to interexchange service;
- (8) Access to directory assistance;
- (9) Toll limitation for qualifying low-income consumers.<sup>78</sup>

6. A regulation of the Federal Communications Commission, 47 CFR §54.201(i) states:

A state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services.

7. Section 253(b) of the Telecommunications Act provides as follows:

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public

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<sup>77</sup> 47 CFR 54.101(b).

<sup>78</sup> 47 CFR 54.101(a)(1)-(9).

safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

8. In recognition of its obligation under the Telecommunications Act to determine whether a telecommunications provider should be designated as an eligible telecommunications carrier, the Commission has promulgated a regulation, 4 CSR 240-3.570, to guide and govern that determination.

9. Commission Rule 4 CSR 240-3.570(2) provides as follows:

(A) Each request for ETC designation shall include:

1. Intended use of the high-cost support, including detailed descriptions of any construction plans with start and end dates, populations affected by construction plans, existing tower site locations for CMRS [commercial mobile radio service] cell towers, and estimated budget amounts;

2. A two (2)-year plan demonstrating, with specificity, that high-cost universal service support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted. ...

10. Commission Rule 4 CSR 240-3.570(2)(A) further provides as follows:

3. The two (2)-year plan shall include 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 including;

A. A detailed map of coverage area before and after improvements and in the case of CMRS providers, a map identifying existing tower site locations for CMRS cell towers;

B. The specific geographic areas where improvements will be made;

C. The projected start date and completion date for each improvement;

D. The estimated amount of investment for each project that is funded by high-cost support;

E. The estimated population that will be served as a result of the improvements;

F. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding would otherwise be used to further the provision of supported services in that area; and

G. A statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur;

4. A demonstration of the carrier's ability to remain functional in emergency situations, including a demonstration that the carrier has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations;

5. 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;

6. A commitment to advertise the availability of services and charges therefore using media of general distribution throughout the ETC service area;

7. A commitment to provide Lifeline and Link Up discounts consistent with 47 CFR 54.401 and 47 CFR 54.411. Each request for ETC designation shall include a commitment to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service consistent with 47 CFR 54.405;

8. A statement that the carrier will satisfy consumer privacy protection standards as provided in 47 CFR 64 Subpart U and service quality standards as applicable;

9. A statement that the requesting carrier acknowledges it shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designation pursuant to section 214(e) of the Telecommunications Act of 1996; and

10. A commitment to offer a local usage plan comparable to those offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. Such commitment shall include a commitment to provide Lifeline and Link Up discounts and Missouri Universal Service Fund (MoUSF) discounts pursuant to 4 CSR 240-31, if applicable, at rates, terms and conditions comparable to the Lifeline and Link Up offerings and MoUSF offerings of the incumbent local exchange carrier providing service in the ETC service area.

11. U.S. Cellular is a commercial mobile radio service (CMRS) provider as that term is used in 4 CSR 240-3.570.

### **DECISION**

After applying the facts as it has found them to the applicable law, the Commission has reached the following decisions.

U.S. Cellular has met all requirements of federal and state law and may be designated as an eligible telecommunications carrier throughout its Missouri service area.

**IT IS ORDERED THAT:**

1. USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, is designated as an Eligible Telecommunications Carrier for the wire centers listed in Exhibits C and D attached to its Application, and is designated as eligible to receive all available support from the federal Universal Service Fund, including support for rural, insular, and high-cost areas, and low-income customers. Exhibits C and D are attached to and incorporated in this order.

2. USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, is designated as an Eligible Telecommunications Carrier for the wire centers listed in Exhibit F attached to its Application, and is designated as eligible to receive all available support from the federal Universal Service Fund, including support for rural, insular, and high-cost areas, and low-income customers. Exhibit F is attached to and incorporated in this order.

3. USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular's designation as an Eligible Telecommunications Carrier for the wire centers listed in Exhibit F attached to its Application is conditional upon the redefinition of those wire centers as permitted by 47 U.S.C. §214(e)(5) and 47 C.F.R. §54.207, with the designation to take effect automatically upon a grant of concurrence by the FCC.

4. USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular's designation as an Eligible Telecommunications Carrier for the wire centers listed in Exhibits C, D and F attached to its Application is conditioned upon it meeting a base line investment requirement of a two-year average of \$15 million per year in capital expenditures for

construction of cell sites in its Missouri market, excluding St. Louis and the Joplin area, in addition to any funding it receives from the federal Universal Service Fund. In addition, USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular's designation as an Eligible Telecommunications Carrier is conditioned upon it spending all funds received from the federal Universal Service Fund in rural areas of Missouri in a manner consistent with all requirements of federal and state law.

5. The wire centers listed in Exhibit F attached to USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular's Application are redefined as separate service areas as requested.

6. USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, shall file with the Commission a copy of its petition to the Federal Communications Commission seeking concurrence in the redefinition of its service areas.

7. The Commission finds that USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, has met the high-cost certification requirement and is entitled to begin receiving high-cost support as of the effective date of this order.

8. The Commission certifies to the Federal Communications Commission that USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular, will use such high-cost support for its intended purpose.

9. A copy of this Report and Order shall be served upon the Federal Communications Commission and the Universal Service Administration Company.

10. This Report and Order shall become effective on May 13, 2007.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., and Gaw, C., concur;  
Murray, C., concurs with concurring opinion attached;  
Clayton, C., dissents with dissenting opinion to follow;  
Appling, C., dissents;  
and certify compliance with the provisions  
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 3rd day of May, 2007.

**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 )

**CONCURRING OPINION OF COMMISSIONER CONNIE MURRAY**

I write separately to indicate my concern with the establishment of a base line spending level for U.S. Cellular.

In deciding to promulgate its rule in its existing form, the Commission decided that it would not require a detailed demonstration of how high-cost support would be used to provide services that would not be provided in the absence of that support as part of the application for ETC status. There is no reason to treat U.S. Cellular's application any differently. The requirement that U.S. Cellular file annual reports providing detail of how it has spent those funds will provide the Commission with sufficient assurance that the USF funding is being well spent. If the Commission is not satisfied with the answers U.S. Cellular provides, it can turn off the flow of money by refusing to recertify the company.

The establishment of a reliable base line is not practical because a wireless carrier's capital budget can vary greatly from year to year, as U.S. Cellular's has done. Imposing a rigid base line requirement could limit the Commission's ability to fairly evaluate the company's actual spending decisions and could lead to incorrect conclusions about the company's spending.

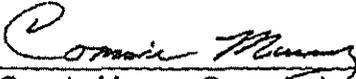
For example, the Commission has set an investment base line level at \$15 million per year and if the company received \$10 million per year in USF funding, the Commission would

expect the company to spend \$25 million per year on capital expenditures. However, in a particular year, for various reasons, perhaps interest rates spike, or a recession decreases demand for services, a company might decide that it can only justify \$10 million in capital spending. Adding the \$10 million it receives from USF funding, the company then spends \$20 million for the year and falsely appears to be misspending the USF funding. Further, to avoid not being recertified and being subject to penalties, the company would have to spend an additional \$5 million the following year in addition to the \$15 million base line and \$10 million USF funding. On the other hand, in a particular year, the company might decide to spend \$20 million of its own funds for capital improvements. In that circumstance the company could be tempted to spend only \$5 million of the \$10 million it receives from USF funding, pocket the other \$5 million, and appear to be handling the USF funds appropriately. Under these real life circumstances, the imposition of an investment base line might obscure rather than illuminate U.S. Cellular's actual spending practices. As a result, the Commission would be better able to evaluate U.S. Cellular's compliance without establishing an investment base line.

As I pointed out, the Commission's rules regarding designation of a competitive ETC do not require the establishment of an investment base line to assure that a company's spending of USF funding is incremental to what it would otherwise spend. Instead, 4 CSR 240.3.570(2)(A)3.G. simply requires the applicant to offer "a statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur." The Commission's rule requires the company to make a detailed demonstration of its compliance with that requirement only as part of its annual report of how it spent USF funding.

Although I have great concern with the establishment of a baseline spending level for a single company, I acquiesce on this issue in order to obtain a majority for this Report and Order.

Respectfully submitted,

  
\_\_\_\_\_  
Connie Murray, Commissioner

Dated at Jefferson City, Missouri  
on this 3rd day of May 2007.