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3 **BEFORE THE**
4 **FEDERAL COMMUNICATIONS COMMISSION**
5 **WASHINGTON, D.C. 20554**

6 In the Matter of:

7 Federal-State Joint Board on
8 Universal Service

9 Petition by United States Cellular
10 Corporation To Redefine the Service Area
11 of a Rural Telephone Company in the State
12 of Nebraska

13 Pursuant to 47 C.F.R. Section 54.207(c)

CC Docket No. 96-45

DA 08-130

14 To: Chief, Wireline Competition Bureau

15 **COMMENTS OF UNITED STATES CELLULAR CORPORATION**

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17 United States Cellular Corporation ("U.S. Cellular"), pursuant to the
18 Commission's *Public Notice* dated January 18, 2008,¹ provides comments in support of its
19 unopposed Petition seeking FCC concurrence with the Nebraska Public Service Commission's
20 ("NPSC's") decision to redefine the service area of the Hartman Telephone Company
21 ("Hartman") as provided under Section 54.207 of the Commission's rules, 47 C.F.R. Section
22 54.207.

23 U.S. Cellular filed its Petition For Commission Agreement with the NPSC in this
24 docket on October 8, 2007 ("U.S. Cellular Petition"). U.S. Cellular served a copy of the U.S.
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26 ¹ Public Notice, DA 08-130, CC Docket No. 96-45 (January 18, 2008).

1 Cellular Petition on the NPSC and the attorney who represented the ILECs in the proceeding
2 before the NPSC. On October 22, 2007, the Commission issued a Public Notice inviting
3 comment on the U.S. Cellular Petition. Notably, not one comment was filed in opposition to the
4 U.S. Cellular Petition. Since the facts and legal and policy arguments in the U.S. Cellular
5 Petition—in addition to the well-reasoned decision of the NPSC to redefine the Hartman study
6 area—stand uncontested in this docket, U.S. Cellular does not see any reason to duplicate or
7 revise its petition here. U.S. Cellular incorporates its petition by reference and provides these
8 brief further comments.

9 As noted, the NPSC did not file comments in this proceeding. There is no
10 indication that it has backed away from its order or withdrawn support for U.S. Cellular's request
11 for concurrence as expressed clearly in its order. The FCC should concur with the NPSC's
12 service area redefinition because the NPSC is in the best position to determine what is best for its
13 rural citizenry. The state's closer oversight of telephone companies under its jurisdiction and its
14 historical view of the state's telecommunications needs and infrastructure are substantial reasons
15 why Congress delegated to state commissions in the first instance authority to perform ETC
16 designations.

17 The Commission should respect the NPSC's judgment regarding whether an
18 ILEC service area should be redefined pursuant to Section 214(e)(5), especially where the matter
19 has been litigated in a hearing. Deferring to a state's expertise would be consistent with the
20 FCC's request that the Virginia Corporation Commission examine the FCC's proposed service
21 area redefinition of Virginia Cellular "based on its unique familiarity with the rural areas in
22 question."²

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25 ² *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LW, Petition for*
26 *Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket
96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 at 1582 (rel. Jan 22, 2004) ("*Virginia Cellular*").

1 As the NPSC knew, there is absolutely no risk granting the U.S. Cellular Petition
2 could allow cream skimming or have the effect of cream skimming in the Hartman service area.
3 The entire Hartman service area consists of only three wire centers. The most populous wire
4 center contains only 414 persons (not access lines, **persons**).³ The total population of all three
5 wire centers in the Hartman study area is significantly less than 1,000 persons. The two wire
6 centers that the NPSC approved U.S. Cellular to serve have populations of 117 and 247 persons,
7 respectively. The population densities of the two wire centers that the NPSC approved U.S.
8 Cellular to serve are 2.59 and 2.76 persons per square mile, compared with the excluded wire
9 center which has a population density of 1.52 person per square mile, which equals a difference
10 of only 1.07 and 1.24 persons respectively. The concept that serving two wire centers of such
11 low density and low population could be considered “cream skimming” is simply ludicrous.
12 Undoubtedly this is why the U.S. Cellular Petition has drawn no opposition.

13 Apart from the very low populations and densities of the Hartman wire centers
14 that U.S. Cellular included, the population densities of the included and excluded wire centers
15 are very nearly the same in absolute terms. The FCC has recently concluded that opportunities
16 for cream skimming do not exist where the areas to be served have “approximately the same
17 population density” as the remaining portions of an ILEC’s service area. *North Carolina RSA 3*
18 *Cellular Tel. Co.*, 21 FCC Rcd 9151, 9158 (2006) (“*Carolina West*”). In *Carolina West*, the
19 FCC concluded that no cream skimming opportunities existed where the competitor proposed to
20 serve areas with slightly higher population densities than the portions outside of its proposed
21 ETC service area with respect to Central Tel. Co. (69.21 persons per square mile inside the
22 proposed ETC service area versus 68.54 persons per square mile in the remaining portions of the
23 study area) and Surry Tel. Membership Corp. (157.00 persons per square mile inside the
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26 ³ Ironically, it is this much more populous wire center that U.S. Cellular has excluded from its ETC area.

1 proposed ETC service area versus 156.77 persons per square mile in the remaining portions of
2 the study area).

3 Prior to *Carolina West*, the FCC issued orders involving many other carriers in
4 which the FCC concurred with the redefinition of rural ILEC service areas and where the
5 disparities in population density were much greater than the 1.07 to 1.24 person disparity
6 involved U.S. Cellular's case, including:

- 7 • CenturyTel of the Midwest – Wayside: 41.9 persons per square mile inside the
8 proposed ETC service area, versus 30.5 outside, equaling a 11.4 person disparity.
9 See DA 05-3159 (rel. 12/8/05)(Wisconsin).
- 10 • Kentucky Alltel: 57.94 persons per square mile inside the proposed ETC service area,
11 versus 50.49 outside, equaling a 7.45 person disparity. See DA 05-2890 (rel.
12 11/3/05)(Kentucky).
- 13 • Ft. Randall Tel. Co.: 15.2 persons per square mile inside the proposed ETC service
14 area, versus 8.9 outside, equaling a 6.3 person disparity. See DA 06-564 (rel.
15 3/10/06)(South Dakota).
- 16 • CenturyTel of Central Wisconsin: 45.1 persons per square mile inside the proposed
17 ETC service area, versus 39.7 outside, equaling a 5.4 person disparity. See DA 05-
18 3159 (rel. 12/8/05)(Wisconsin).
- 19 • PrairieWave: 10.3 persons per square mile inside the proposed ETC service area,
20 versus 5.8 outside, equaling a 4.5 person disparity. See DA 05-2289 (rel.
21 8/16/05)(South Dakota).
- 22 • Alliance (Baltic): 11.3 persons per square mile inside the proposed ETC service area,
23 versus 8.1 outside, equaling a 3.2 person disparity. See DA 05-2289 (rel.
24 8/16/05)(South Dakota).⁴

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26 ⁴ None of the ILECs in the above proceedings had disaggregated their support.

1 **CONCLUSION**

2 The NPSC has properly and carefully considered its decision to redefine the
3 Hartman service area along wire center boundaries. FCC concurrence is entirely appropriate.
4 U.S. Cellular respectfully requests the FCC to promptly issue an order concurring with the
5 NPSC's redefinition so that rural consumers can start to benefit from high-cost support in those
6 areas at the earliest possible date.

7 Respectfully submitted, this 19th day of February, 2008.

8 **UNITED STATES CELLULAR CORPORATION**

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12 By:  _____
13 Brooks E. Harlow
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14 Its Attorneys