

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Proposed New Rule)	
4 CSR 240-3.570 Regarding Eligible)	
Telecommunications Carrier Designations)	Case No. TX-2006-0169
for Receipt of Federal Universal Service)	
Fund Support)	

Motion for Clarification or Rehearing

USCOC of Greater Missouri, LLC, d/b/a U.S. Cellular (“U.S. Cellular”), pursuant to 4 C.S.R. 240-2.160 and R.S.Mo. § 386.500, states the following as its motion for clarification or rehearing of the Commission’s Requirements for Carrier Designation as Eligible Telecommunications Carriers Rule:

Although U.S. Cellular believes the Commission’s rule has been substantially improved through the comments and hearing process, clarification on one item is necessary. U.S. Cellular believes that the rule could be interpreted in a manner that is unlawful, unjust and unreasonable, and therefore clarification or rehearing is warranted.

Section (3)(C)3 states that ETCs “shall extend their networks to serve new customers upon a reasonable request.” It further provides that ETCs “shall take the following steps, as applicable, to respond to all such reasonable requests for service within its ETC service area.”

Subsection B of Section (3)(C)3 states:

If a request comes from a customer residing within the ETC service area where the ETC does not already provide service, the ETC shall take reasonable steps to provide acceptable service at no cost to the customer, including: modifying or replacing customer equipment; deploying a roof-mounted antenna or other network equipment at the premises; making adjustments at the nearest cell site or to other network or customer facilities; employing, leasing or constructing an additional cell site, a cell-extender, repeater or other similar equipment; or offering resold service of other carriers that have facilities available to that premises. [Emphasis added]

During the proceeding that led to the adoption of the Rule, the draft rules circulated by Staff contained a sentence that placed an important limitation on this obligation. Specifically, the sentence provided that, in considering a request for service, the ETC shall “[e]valuate the costs and benefits of using high-cost universal service support to serve the number of customers requesting service.” This sentence reflected the federal requirement that all ETCs must provide service upon “reasonable request,” and that no carrier has an *absolute* obligation to construct facilities in response to a consumer’s request.¹

In the published rule, this critical sentence was deleted without explanation. As a result, Section (3)(C)3.B of the Rule can be interpreted as requiring a competitive carrier to construct facilities when there is no reasonable possibility of recovering its investment. For example, we do not believe the Commission intended to require a wireless carrier to construct a new cell site for a single requesting customer at no charge. U.S. Cellular believes that a proper reading of the rule is that the carrier must do all that is reasonable which could include constructing a new cell site, but that constructing such a new cell site without charge is not necessarily required.

If the rule, as currently phrased, is interpreted to require network construction at no charge, the rule would violate the federal statutory requirement that state ETC rules be competitively neutral.² Specifically, the rule could be read to require a wireless ETC to construct

¹ See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168, 15174-75 (2000) (“*South Dakota Preemption Order*”) (“As an ETC, the incumbent LEC is required to make service available to all consumers upon request, but the incumbent LEC may not have facilities to every possible consumer. We believe the ETC requirements should be no different for carriers that are not incumbent LECs. A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. We find, therefore, that new entrants must be allowed the same reasonable opportunity to provide service to requesting customers as the incumbent LEC, once designated as an ETC.”) (footnote omitted).

² 47 U.S.C. Section 253(b) (preserving state authority “to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service. . .”).

a cell tower, at a cost of several hundred thousand dollars, in response to one consumer's request for service without receiving the equivalent of a line extension charge or a draw from the universal service fund for that construction. The federal universal service system does not provide competitors with the assurance of cost recovery that is provided to ILECs. Accordingly, such an interpretation would render the rule inconsistent with the federal scheme for providing universal service support.

Accordingly, U.S. Cellular proposes the following clarifications:

(1) that a period be placed at the end of the third line of Section (3)(C)3.B after the phrase "at no cost to the customer.";

(2) that the remaining clause of Section (3)(C)3.B be converted into an independent sentence which states: "Such reasonable steps may include, upon consideration of the customer's specific facts and circumstances, as well as the cost to the ETC, the following:" The sentence would continue with the six options currently stated at the end of Section (3)(C)3.B, beginning with "modifying or replacing customer equipment" and concluding with the "offering resold service" option;

(3) that the sentence deleted from a prior version be reinserted into the beginning of Section (3)(C)3.D so that the subsection reads as follows: "Evaluate the costs and benefits of using high-cost universal service support to serve the number of customers requesting service. If there is no possibility of providing service to the requesting customer, the ETC shall notify the customer and include such information in its annual certification documentation to the Commission."

Conclusion

Although the Commission's rule has been substantially improved and refined over the course of the comment and hearing process, U.S. Cellular respectfully requests that the

Commission clarify the above issue or grant reconsideration and rehearing with respect to the matters set forth above.

Respectfully submitted,

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