BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

REPLY OF THE SMALL TELEPHONE COMPANY GROUP TO APPLICATION FOR REHEARING OR, IN THE ALTERNATIVE, REQUEST FOR CLARIFICATION OF USCOC OF GREATER MISSOURI, INC.

The Small Telephone Company Group ("STCG") files this Reply to the Application for Rehearing or, in the Alternative, Request for Clarification of USCOC of Greater Missouri, LLC d/b/a U.S. Cellular ("U.S. Cellular") of the Missouri Public Service Commission's ("Commission") Report and Order ("Order") issued May 3, 2007 in the above-referenced case.

U.S. Cellular primarily objects to the Commission's imposition of a "base line" spending requirement upon U.S. Cellular in its Order. U.S. Cellular seems to believe that the receipt of the federal Universal Service Fund ("USF") funds is an entitlement which the Commission is required to grant it without condition. U.S. Cellular forgets that pursuant to both federal and state law, the Commission is required to certify that the company is eligible to receive these funds (which are based on the incumbent local exchange companies' costs) and may impose conditions as it sees fit to ensure that these funds are used for the purposes for which USF support is intended. Thus, receipt of federal USF support is a privilege, not an entitlement. U.S. Cellular is not being "told to do anything." It is simply being put on notice that this is what is expected of the company in order to be eligible to receive USF support. U.S. Cellular is free to not comply with the Commission's conditions if it so chooses and forego receipt of the funds.

U.S. Cellular argues that the base line investment condition is a new rule which was not adopted pursuant to rulemaking procedures. The base line investment condition is not a new rule, but is simply part of the Commission's requirement found in 4 CSR 240-3.570.(2)(A)2 that the applicant for eligible telecommunications company ("ETC") status must submit 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." Section 3.G of the same rule further states that an applicant must include in its two-year plan, "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**." (Emphasis added.)

While the term "baseline" may have been used for the first time in the Commission's Order, the concept is certainly not new or unique. Commission Rule 4 CSR 240-3.570(2)(A)3.G clearly requires a competitive eligible telecommunication carrier's two-year plan to include "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…" In the present case U.S. Cellular could not, or would not, provide Missouri specific information regarding its annual level of expenditures on either a historic or budgeted basis. (Tr. 749-753) Accordingly, the Commission was left to ferret out that information on its own. Once the Commission was able to determine that U.S. Cellular was expending, on average, approximately $15 million a year in the rural areas of the state (at least those areas outside of St.

Louis and Joplin), it was then able to establish a threshold or "baseline" level of expenditures that U.S. Cellular could reasonably be anticipated to incur absent the receipt of high cost funds. The next obvious step for the Commission was to ensure that U.S. Cellular could not use high-cost funds to fund its "normal" level of expenditures, but instead condition U.S. Cellular's eligible telecommunications carrier ("ETC") designation (receipt of high-cost monies) on a commitment by the company to continue to invest approximately $15 million in rural Missouri.

The fact that a baseline level of expenditures was not discussed in the Commission's prior orders granting ETC status to Northwest Missouri Cellular and Missouri RSA No. 5 Partnership is a distinction without a difference. In those cases, the Commission had specific financial information regarding those companies' historic and budgeted levels of expenditures that they would normally make absent receipt of USF funds. Accordingly, in those cases, the Commission simply had to ensure that monies received from the Universal Service Fund would be spent in addition to those "normal" expenditures. The following quote from the Commission's Order in the Northwest Missouri Cellular case is illustrative.

> The Commission also found that NWMC will be spending USF support only on improvements that it would not have made without receiving such support. NWMC's Appendices M and P included budgets for unsupportable items and expenses that it would make regardless of the ETC designation. When those items are removed, the remaining amounts in the first two years of the budget do not add up to the expected $1,468,614 in USF support. However, the testimony clarified that NWMC will make the USF supportable improvements as laid out in the five year plan as necessary so that it spends funds on cell towers and services that it would not have otherwise spent without the USF funds. The Commission concludes, based on the five-year plan and the testimony, that NWMC intends to spend all of its USF support on supportable services in the next two years and that the improvements would not be made without USF support.

> As a condition of its ETC designation, the Commission will require NWMC to provide a new two-year budget which excludes the improvements and upgrades the company would have made regardless of USF support and in compliance with 4 CSR 240-3.570(2)(A)2.A as specified above.[1]

Thus, the establishment of a baseline expenditure requirement in the U.S. Cellular case is no different from the requirement imposed on Northwest Missouri Cellular and Mo. RSA No. 5 that any high cost support shall be used "in addition to any expenses the ETC would normally incur."

The base line condition established by the Commission in this case is the Commission's way of ensuring that U.S. Cellular complies with 4 CSR 240-3.570(2)(A)2.A and determining that the support will be used appropriately. In the other cases where the Commission has considered the grant of ETC status to wireless companies, the wireless companies have only provided service within the state, and the companies were able to present historical and budget information and plans to the Commission showing the amounts currently being spent within the state and the plans for the use of the support that would be in addition to the expenses that the companies would normally incur. Though U.S. Cellular had ample opportunity to submit such information in response to data requests earlier in the proceeding, it professed to not having such information until it was offered by U.S. Cellular witnesses Johnson and Wright on cross-

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[1] *In the Matter of the Application of Northwest Missouri Cellular Limited Partnership for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to § 254 of the Telecommunications Act of 1996,* Case No. TO-2005-0466, issued September 21, 2006, page 24. (See also a discussion of a similar condition in *In the Matter of the Application of Missouri RSA No. 5 Partnership for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to § 254 of the Telecommunications Act of 1996,* Case No. TO-2006-0172, issued September 21, 2006, pages 23 and 24.)

examination during the hearing. (Tr. 749-753) U.S. Cellular was either not able to provide the same information to the Commission or chose not to provide sufficient financial information for the Commission to make this determination. Thus, the Commission chose to impose the base line condition. This condition is not new, and neither does it discriminate against U.S. Cellular. It is part of the Commission's current rules, and was a condition of the Commission's approval of ETC status for the other wireless companies that have sought ETC status in Missouri.

U.S. Cellular's own witnesses' testimony supports the Commission's imposition of the $15 million base line spending requirement. The language from the transcript that is set out on pages 10-11 of the Application shows that through its questioning of the witnesses the Commission was trying to determine U.S. Cellular's current expenditures within the state so that the base line can be established in order to ensure compliance with 4 CSR 240-3.570. U.S. Cellular witness Wright stated that the company has been spending "about $15, $16 million a year in Missouri," that "we would invest dollar to dollar ETC money over and above what we have been spending." (Tr. 757-59) While Mr. Wright did not specifically commit that U.S. Cellular would accept such a condition, that does not preclude the Commission from imposing the condition. U. S. Cellular can now make a determination whether to accept the condition, and the USF funds that will flow if it does, or reject the condition and decline to accept USF funding. U.S. Cellular cannot now complain that the Commission's imposition of this base line spending requirement is inappropriate or unsupported by the evidence.

U.S. Cellular states that "base line spending amounts do not exist in the Commission's current rules," but as was discussed above, the applicant's spending plan required by 4 CSR 240-3.570 must include a "base line" of the company's current spending in order for the Commission to determine that the company's plan to spend the USF funds will be for expenses it would not normally incur. Common sense dictates that the Commission must know current company expenses in order to determine if the applicant is in compliance with the rule. The "base line" determination is nothing new. The only difference is that because U.S. Cellular chose not to provide Missouri specific financial information, the Commission was forced to establish the base line from the evidence presented in the case.

U. S. Cellular is also in error when it argues that the Commission's imposition of the base line spending requirement is not competitively neutral. As was stated above, the Commission has considered a base line spending requirement in all of the wireless ETC cases it has considered. U.S. Cellular would not be the only company in Missouri to have a base line spending requirement. And, the situation of the incumbent local exchange carriers ("ILECs") that have been designated as ETCs is entirely different. The incumbent companies only receive USF funds for monies already expended. There is no need to establish a base line for these companies as there is for the wireless companies who simply receive funds based on the costs of the incumbents. The Commission established 4 CSR 240-3.570 in order to ensure that the competitive and wireless companies who receive funds based on what the incumbents receive will use the funds for the purposes intended and "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."[2] It is only these competitive and wireless carriers that must show that the funds will be used for expenses in addition to expenses they would normally incur creating the necessity of establishing a base line. Incumbent carriers that are

[2] 4 CSR 240-3.570.3

reimbursed for a portion of the monies already spent, as identified by federal formulas in the FCC's rules, do not need to show the Commission that the funds are expended for the intended purposes since they would not receive funds unless these purposes had been met. Because of these substantial differences in the method of receiving USF funding, U.S. Cellular cannot argue that requiring a base line spending requirement for competitive and wireless companies is not competitively neutral. A recent decision by the Joint Board recommends that the FCC put commercial mobile radio service ("CMRS") providers on notice that they will likely not receive funds in the future based on the incumbents' costs rather than their own suggests that if there is a competitive neutrality issue, it is the fact that the current system provides CMRS providers USF support based solely on the support received by the incumbent.[3]

U. S. Cellular argues that the imposition of the base line investing requirement by the Commission is prohibited entry and rate regulation. Again, the STCG would remind U.S. Cellular that it is not required to comply with the Commission's condition, and can simply decline to accept the USF monies if it does not agree. By filing its application requesting ETC designation, U.S. Cellular has submitted to the jurisdiction of the Missouri Commission at least for purposes of the ETC designation. The Commission has authority to determine if the applicant meets the federal and state criteria for that designation. The Missouri Commission has determined through rulemaking and decision that the grant of ETC designation is only appropriate so long as U.S. Cellular agrees to expend the USF monies for the intended purposes and that the monies are spent over and above any expenses it would normally incur while

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[3]*Federal-State Joint Board on Universal Service,* WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (released May 1, 2007).

providing service within the state of Missouri. U. S. Cellular does not have to submit to the jurisdiction of the Missouri Commission, but if it wishes to receive USF funding, it must comply with the conditions imposed by that body.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or via electronic mail, or hand-delivered on this 21st day of May, 2007, to the following parties:

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