

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

In the Matter of Proposed Amendments to)	
4 CSR 240-3.570 Regarding Eligible)	Case No. TX-2008-0007
Telecommunications Carrier Designations)	
For Receipt of Federal Universal Service)	
Fund Support)	

COMMENTS OF U.S. CELLULAR

USCOC of Greater Missouri, LLC d/b/a U.S. Cellular (“U.S. Cellular” or “Company”) hereby submits its Comments in accordance with the schedule set forth in the publication of proposed rule 4 CSR 240-3.570 (the “Proposed Rule”) in the Missouri Register on October 1, 2007.¹

I. INTRODUCTION

U.S. Cellular supports the Commission’s ongoing efforts to examine rules and oversight procedures that will ensure transparency and accountability among all eligible telecommunications carriers (“ETCs”) in Missouri. As an ETC in nine states, U.S. Cellular has extensive experience accounting for and reporting the use of federal high-cost support and working with state commissions to ensure that they are able to certify to the FCC that support is being used for the intended purposes. Having recently been designated as an ETC by this Commission, U.S. Cellular is acutely interested in how this Commission evaluates the use of universal service support by all carriers so that consumers see the benefits that the program was intended to deliver.

U.S. Cellular believes the Commission’s Draft Rule generally promotes the FCC’s objective of establishing a uniform set of criteria resulting in a predictable universal service

¹ Vol. 32, No. 19, p. 1910.

support mechanism for both incumbents and competitors. In this regard, U.S. Cellular offers only very limited suggestions for clarification or modification.

II. DISCUSSION

A. The Proposed Certification Rules Appropriately Require Both Incumbents and Competitors to Report ETC Investment Data.

We note that the FCC encouraged state commissions, in considering their own ETC standards and requirements based on the March 17, 2005, *FCC ETC Order*, to apply any new compliance conditions and reporting requirements “to all ETCs, not just competitive ETCs.”² It is critical that all ETCs, regardless of technology or competitive classification, be required to demonstrate their use of high-cost support for the purposes intended by law. By requiring USF investment data from all ETCs, the proposed verification process will be an important tool for the Commission to evaluate the use of high-cost support by all recipients. It is particularly important to ensure accountability for the use of support by Missouri’s ILECs, who receive approximately \$80 million per year in USF support.

Other states have similarly concluded that both incumbents and competitors should be subject to ETC expenditure reporting requirements. For example, in an order released last year,³ the Washington Utilities and Transportation Commission (“WUTC”) adopted a set of rules requiring, *inter alia*, that both incumbents and competitors provide “a substantive description of investments expenses” for the WUTC’s use in evaluating each carrier’s ETC activities.⁴ In

² *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371, 6402, para. 71 (2005) (“*FCC ETC Order*”).

³ In the Matter of Amending WAC 480-120-399, and Adopting WAC 480-123-020 through WAC 480-123-080, and WAC 480-123-199, Relating to Designation and Certification of Eligible Telecommunications Carriers (ETCs), Docket No. UT-053021, General Order No. R-534 (June 27, 2006) (“*WUTC Order*”).

⁴ WAC 480-123-070(1).

adopting those rules, the WUTC emphasized: “[W]e require reporting from all ETCs on all federal support so that we will have a complete understanding of the use of federal support in Washington. We consider it necessary to collect this information in order to fulfill our oversight role.”⁵ U.S. Cellular is also aware that West Virginia and New Mexico require USF investment reporting from both incumbents and competitors.⁶

B. Comments on Specific Provisions.

1. Annual Rate Comparability Review (4 CSR 240-3.570(4)(A)(2)).

As a preliminary matter, the Commission should strike the phrase, “in non-rural areas of Missouri”, because the FCC’s rule in fact requires the comparison of rates in *rural* areas served by non-rural telephone companies to non-rural rates nationwide. 47 C.F.R. § 54.316. The inclusion of this phrase is inconsistent with the FCC’s rule and is misleading given the rural nature of many areas served by non-rural ILECs in Missouri.

In addition, the Commission should clarify that this Draft Rule provision does not require competitive ETCs (“CETCs”) to submit rate plans that are comparable to a specific benchmark or otherwise subject to Commission approval. The Commission is required to undertake an annual rate comparability review under 47 C.F.R. § 54.316 to demonstrate that rates in rural areas served by non-rural ILECs in the state are comparable to an annually adjusted nationwide average urban rate benchmark. This process was established to enable the FCC, for purposes of

⁵ WUTC Order at Appendix A, p. 9.

⁶ General Investigation Regarding Certification of Federal Universal Service Funding for Eligible Telecommunications Carriers in West Virginia, Case No. 06-0953-T-GI (July 25, 2006); In the Matter of the Certification of Eligible Telecommunications Carriers to the Federal Communications Commission, Case, No. 05-00359-UT (N.M. PRC, June 12, 2006). Although the New Mexico rules have not been formally adopted, the PRC applied them for purposes of certifying ILECs and CETCs in advance of October 1, 2006.

the federal high-cost mechanism for non-rural carriers, to “identify those states that do not have the resources within their borders to support all of their high-cost lines.”⁷ In adopting the comparability review requirement, the FCC concluded that “the states should continue to have primary responsibility for ensuring reasonably comparable rural and urban rates.”⁸ This primary responsibility, the FCC concluded, “is consistent with state ratemaking authority under the Act. The states, not the Commission, set intrastate rates.”⁹ Put simply, the intent of the rule is to ensure the state’s existing system of rate regulation is resulting in comparability of non-rural ILEC rates to urban rates nationwide.

The state’s rate regulation system does not extend to CETCs. Wireless CETCs, including U.S. Cellular, are not subject to the Commission’s ratemaking authority, and any substantive review of wireless rates by the Commission would be preempted by federal law. 47 U.S.C. § 332(c). Moreover, the rate comparability review process does not imbue the Commission with any authority to adjust wireless ETC rates to satisfy its comparability analysis. Rather, it is targeted at inducing the Commission to adjust its own system of implicit and explicit subsidies as needed to ensure comparability of non-rural ILECs’ “basic service” rates with nationwide urban rate levels. Indeed, the FCC confirmed this point, concluding that “the basic service rate template cannot necessarily be applied to the rates of competitive carriers, whose rates generally are not regulated by the Commission or the states and do not always include the rate elements

⁷ *Federal-State Joint Board on Universal Service, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 18 FCC Rcd 22559, 22570 (2003) (“FCC Remand Order”).

⁸ *Id.*

⁹ *Id.* at 22571.

specified in the template.”¹⁰ Clearly, therefore, if the Commission retains this requirement, the Commission may not directly compare wireless ETC rates to the nationwide urban benchmark, because that benchmark is based on wireline rates that cannot be directly compared to wireless rate plans whose monthly rates include wider local calling areas, mobility, and other features lacking in wireline rate plans.

Accordingly, the Commission should clarify that any final rule does not permit direct review or approval of CETC rate plans by the Commission.

2. Equal Access to Interexchange Service (4 CSR 240-3.570(4)(B)(5)).

U.S. Cellular first notes that this Draft Rule section incorrectly refers to “section 214(e)(3) of the Telecommunications Act of 1996” as a legal provision governing the relinquishment of ETC status. In fact, the federal statutory provision concerning relinquishment of ETC status is Section 214(e)(4) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

The equal access requirement in the above-cited Draft Rule section is inconsistent with federal requirements. As currently drafted, the section implies that a CMRS carrier is automatically required to provide equal access in the event all other ETCs withdraw. However, the obligation to provide equal access is governed by federal law. Before a CMRS carrier can be required to provide equal access, Section 332(c)(8) of the Communications Act of 1934, as amended, requires the FCC to make a finding that “subscribers . . . are denied access to the provider of telephone toll services of the subscribers’ choice, and that such denial is contrary to the public interest, convenience, and necessity[.]” 47 U.S.C. § 332(c)(8). Furthermore, should

¹⁰ *Id.* at 22613.

that finding be made, only the FCC, not a state commission, may require a CMRS carrier to provide equal access.

We therefore propose bringing the equal access obligation into conformity with the rule adopted in the *FCC ETC Order*, which requires an ETC to “certify that the carrier acknowledges that the [FCC] may require it to provide equal access to long distance carriers in the event that no other [ETC] is providing equal access within the service area.”

3. Submission of Information Regarding Use of Support (4 CSR 240-3.570(4)(C)(1).

It is unclear why the Draft Rule provisions requiring the submission of information regarding the use of high-cost support do not subject ILECs and CETCs to the same reporting timetable. The Draft Rule provides that CETCs “shall, no later than June 15 of each year, set up a meeting with the Telecommunications Department Staff and the Office of the Public Counsel” to discuss their plans for the use of high-cost support to improve their networks. *See* Draft Rule 4 CSR 240-3.570(4)(B)(1). The above-cited Draft Rule provision, on the other hand, would provide that ILECs “shall, no later than August 15 of each year. . . [s]ubmit a narrative discussing the use of high-cost support...” U.S. Cellular can think of no reason why CETCs must “discuss” the planned use of high-cost support with both Staff and the OPC, while ILECs simply submit the materials to the Commission without discussion. The discussion requirement should either be removed from the section applicable to CETCs, or added to the section applicable to ILECs. In addition, it makes no sense to require ILECs to file a narrative discussion of the use of support, while omitting any requirement that a CETC file such plans with the Commission. Therefore, the Commission should change the Draft Rule 4 CSR 240-3.570(B)(1) to require CETCs to submit updated two-year plans to the Commission on or before August 15 of each year, consistent with the deadline applicable to ILECs.

Additionally, it is unclear why the above-cited section permits ILECs to report high-cost support expenditures for the three purposes permitted by federal law – provision, maintenance, and upgrading – while the rule applicable to CETCs only provides for the reporting of how high-cost support is being used to “improve coverage, service quality or capacity”. 4 CSR 240-3.570(B)(1), (3). CETCs are subject to the same requirement under 47 U.S.C. § 254(e) that ETCs must use support “only for the provision, maintenance and upgrading of facilities and services for which the support is intended.” It would not be competitively neutral to prohibit CETCs from using a portion of high-cost support for the maintenance and operation of facilities that were constructed with the use of high-cost support. Many such facilities are built in areas in which customer revenue alone will not cover the ongoing costs of those facilities. In accordance with federal law, CETCs must be permitted to use high-cost support for the ongoing operation and maintenance costs of such facilities.

III. CONCLUSION

U.S. Cellular respectfully requests that the Commission reexamine its ETC rules consistent with the discussion herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 1st day of November, 2007.

/s/ Karl Zobrist

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