

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

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

**RESPONSE OF U.S. CELLULAR TO THE  
COMMENTS OF THE STAFF OF THE  
MISSOURI PUBLIC SERVICE COMMISSION**

USCOC of Greater Missouri, LLC d/b/a U.S. Cellular (“U.S. Cellular” or “Company”) submits the following response to the Comments of the Staff with regard to proposed Rule 4 CSR 240-3.570 (“Proposed Rule”):

Staff continues to move in the right direction, away from imposing ILEC wireline regulation upon wireless carriers. However, as detailed below, there are still a number of important areas where Staff has failed to recognize that the Proposed Rule impose wireline regulations on wireless carriers with no adjustment for technology and without regard for federal law. As a result, there are still serious problems with certain sections of the Proposed Rule that make it likely that a federal court would find that its provisions are pre-empted. See Cellco Partnership v. Hatch, \_\_\_\_ F. 3<sup>rd</sup> \_\_\_\_, 2005 WL 336327 (8<sup>th</sup> Cir., Dec. 9, 2005) (Minnesota statute requiring 60-day notification before effective date of wireless rate increase was permanently enjoined as impermissible state rate regulation that is pre-empted by the Communications Act, 47 U.S.C. § 332(c)(3)(A) ).

## **I. Analysis of Staff Comments<sup>1</sup>**

### **1. Section (2): Request for ETC Designation.**

U.S. Cellular supports Staff's recommendation that a two-year plan be submitted with ETC requests to demonstrate how high-cost universal service funding will be used to support services and facilities. However, this Section continues to require ETCs to certify that they spend support "only . . . to improve coverage, service quality or capacity in the Missouri service area in which ETC designation is requested [emphasis added] ...." As U.S. Cellular stated in its original Comments, the statute governing the federal Universal Service Fund (USF) program permits broader uses, allowing ETCs to spend high-cost support on the "provision, maintenance and upgrading" of supported services and facilities. See 47 U.S.C. § 254(e). Accordingly, both incumbents and competitors may use a portion of their support for the operation and maintenance of existing facilities, not just for new construction and upgrades. Moreover, as more cell sites are built, high-cost support will be needed to operate and maintain those facilities. Such efforts should not be prohibited by Missouri regulations.

### **2. Section 5: Comparable Local Usage Plans.**

This Section, which Staff proposes to re-number as new "Section 6," appears to require comparability in terms as well as rates. This ignores the fact that many competitive companies, such as wireless and satellite telephone service providers, employ technologies that are different from wireline telephone service. Since ILECs do not offer mobility or wide local calling scopes, it is difficult to compare wireline rates and terms with those of wireless companies. Moreover, the point of competitive entry is to offer consumers more choices, not to create a duplicate of the incumbent. A requirement to match an ILEC plan would result in less value for consumers, who

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<sup>1</sup> All references to Sections refer to the particular Sections of Proposed Rule 4 CSR 240-3.570, i.e., Section (2) refers to 4 CSR 240-3.570(2).

can already choose ILEC service if they prefer fixed service and the ability to make unlimited calls within a small area. Therefore, comparability should not be judged by rates or terms, but rather by value, i.e., whether the combination of minutes, local calling area, mobility, vertical features and other service elements offer consumers a total value that is comparable to wireline service.

The Commission's Rule should reflect the recent ETC Report and Order, where the FCC spoke of local usage plan comparability in terms of overcall consumer value. It specifically noted that "an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area." See ETC Report and Order, 20 FCC Rcd. 6371 ¶ 33 (Mar. 17, 2005). As such, any suggestion by Staff or the Office of the Public Counsel that local calling scopes or extended area service calling plans must be duplicated by wireless ETCs is contrary to the ETC Report and Order.

3. Section (7): Equal Access.

U.S. Cellular continues to have the same concerns as expressed in its Comments. Both Section (7) and Section (11) contain conflicting provisions on equal access and appear to ignore 47 U.S.C. § 332(c)(8) which requires that the FCC make the determination that equal access must be provided by an ETC.

4. Section (10): Service Provision and Commitment.

There are nine supported services that an ETC must support in order to be eligible for universal service funding. See 47 C.F.R. § 54.101(a). However, the proposed Rule as endorsed by Staff continues to require an ETC to provide services which are not supported. Section

(10)(A)(7) requires access “to telecommunications relay services by dialing 711” [Staff has now re-designated this as Section (12)(A)(6)]. However, there is no basis to require a carrier to provide a service when USF funds cannot be used to support such service. The Commission has no authority to expand the federal list, unless it proposes to provide state money to enable carriers to provide the service.

Moreover, the requirement of “unlimited local calling for Lifeline subscribers within its service area” is not competitively neutral and also not found in the federal regulations. See Section (10)(A)11 [re-designated by Staff as Section (12)(A)(10)]. Federal law prohibits states from “specify[ing] which among the CMRS services provided can be subject to charges by CMRS providers.” See Southwestern Bell Mobile Systems, Inc., 14 FCC Rcd. 19898, 19907 (1999), cited in Cellco Partnership v. Hatch, \_\_\_\_ F. 3<sup>rd</sup> \_\_\_\_, 2005 WL 3336327 at 4 (8<sup>th</sup> Cir., Dec. 9, 2005). An unlimited local calling requirement, which would prohibit a CMRS carrier from charging for the usage component of a rate plan, falls squarely within the type of state action subject to federal pre-emption.

##### 5. Section (11): Quality of Service.

In its Comments Staff has recognized that it makes no sense to impose wireline quality of service regulations upon wireless carriers. However, its current proposal to simply replace “basic local” or “telecommunications” with “CMRS” [commercial mobile radio service], and to replace all references to “wireline services, facilities and/or equipment” with “the equivalent CMRS service, facility and/or equipment” is a futile attempt to turn a frog into a prince by the wave of a magic wand. For example, one of the service level objectives to be measured is whether “orders” for service “installation” are filled within five days. It would be impossible to substitute a meaningful CMRS equivalent for this rule because wireless customers typically

obtain their service by walking into a store, placing an order, and walking out with a working phone in a matter of minutes. Service is not “installed.” Imposing these and other wireline regulations on CMRS carriers also ignores the severe burdens that would be involved with a nationwide wireless carrier being required to change its billing, employee training and network monitoring systems to suit the rules employed by each state where it does business.

Instead of attempting to regulate wireless carriers as if they were wireline carriers, the Commission should monitor the build-out plans of wireless companies and scrutinize how funds are used to provide, maintain and upgrade service.

6. Section (20): Annual Reports.

U.S. Cellular agrees with the Staff’s recommendation to delete Section (20), which had proposed that an annual report to be filed on April 15. The reports and certifications proposed in Sections (23)-(24) are adequate for such purpose, even though, as noted below, the level of reporting is burdensome.

7. Section (24): August 15 Report.

Certain information required for the annual report in this Section, as part of the annual certification process called for by Section (23), appear to be reasonable. The Commission should require status reports on the use of federal funds to benefit customers, service outages, failures to provide service, and the ability to function in emergency situations.

However, Staff’s Comments indicate that it expects ETCs to provide it with information concerning taxes, depreciation and amortization. See Staff Comments at 19. There is no reason why a competitive wireless company not subject to rate of return regulation should be required to open its financial and business records in this manner. The focus should be on the build-out plans, the expenditures made pursuant to those plans, and the services that are being provided in

accord with those plans. There is simply no justification for requiring a competitive company to provide information that is more relevant to companies that are the subject of traditional regulation.

Additionally, U.S. Cellular notes again that Section (24)(D) only contemplates the use of high-cost support “to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted [emphasis added] ....” Section 254(e) of the Communications Act permits the use of support for new construction and improvements, as well as the necessary operation and maintenance of both new and upgraded facilities.

### **CONCLUSION**

While Staff’s Comments recognize that certain changes must be made to the Proposed Rule, there are still a number of areas that require substantial rewriting. The goal of the Commission’s rulemaking should be to adopt rules that are in the best interests of Missouri consumers which recognize the new technologies being developed by wireless and other competitive carriers.

Having studied regulatory proposals in many states, U.S. Cellular recommends that this Commission consider the draft rules that are currently the subject of an ETC rulemaking proceeding before the Washington Utilities and Transportation Commission in Docket No. UT-053021. These rules would serve as an appropriate initial set of regulations for Eligible Telecommunications Carriers that are consistent with the FCC’s ETC Report and Order. They are attached as Exhibit A.

Respectfully submitted,

/s/ Karl Zobrist

Karl Zobrist, Mo. Bar # 28325  
Roger W. Steiner, Mo. Bar # 39586  
Sonnenschein Nath & Rosenthal LLP  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
Telephone: (816) 460-2400  
Facsimile: (816) 531-7545  
[kzobrist@sonnenschein.com](mailto:kzobrist@sonnenschein.com)  
[rsteiner@sonnenschein.com](mailto:rsteiner@sonnenschein.com)

David A. LaFuria  
Steven M. Chernoff  
Lukas, Nace, Gutierrez & Sachs, Chtd.  
1650 Tysons Boulevard  
McLean, Virginia 22102  
Telephone: (703) 584-8678  
Facsimile: (703) 584-8694  
[dlafuria@fcclaw.com](mailto:dlafuria@fcclaw.com)  
[schernoff@fcclaw.com](mailto:schernoff@fcclaw.com)

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

### Certificate of Service

I hereby certify that copies of the foregoing document were served upon all parties by email or hand-delivery on January 10, 2006.

Marc D. Poston  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
[marc.poston@psc.mo.gov](mailto:marc.poston@psc.mo.gov)  
[genCounsel@psc.mo.gov](mailto:genCounsel@psc.mo.gov)

W.R. England, III  
Sondra B. Morgan  
Bryon, Swearngen & England P.C.  
P.O. Box 456  
Jefferson City, MO 65102  
[smorgan@brydonlaw.com](mailto:smorgan@brydonlaw.com)  
Attorneys for Small Telephone Company  
Group

William D. Steinmeier  
Mary Ann (Garr) Young  
William D. Steinmeier, P.C.  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City, MO 65110-4595  
[wds@wdspc.com](mailto:wds@wdspc.com)  
Attorneys for Alltel Communications, Inc.

Michael Dandino  
Office of the Public Counsel  
P. O. Box 7800  
Jefferson City, MO 65102  
[mike.dandino@ded.mo.gov](mailto:mike.dandino@ded.mo.gov)  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Charles Brent Stewart  
Stewart & Keevil, L.L.C.  
4603 John Garry Drive, Suite 11  
Columbia, MO 65203  
[stewart499@aol.com](mailto:stewart499@aol.com)  
Attorney for Century Tel

Paul G. Lane  
Robert J. Gryzmala  
Southwestern Bell Telephone, L.P. d/b/a  
AT&T Missouri  
One SBC Center, Room 3516  
St. Louis, MO 63101  
[robert.gryzmala@att.com](mailto:robert.gryzmala@att.com)

/s/ Karl Zobrist  
Attorney



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**DRAFT RULES**  
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**NEW SECTION**

**WAC 480-123-0010 Definitions.** As used in sections 0020 through 0070:

“Eligible Telecommunications Carrier” and “ETC” mean a carrier designated by the commission as eligible to receive support from federal universal service mechanisms in exchange for providing services supported by federal universal service mechanisms.

“Facilities” means any physical components of the telecommunications network that are used in the transmission of or routing of the services that are supported by federal universal service mechanisms.

“.shp format” means the format used for creating and storing digital maps composed of shape files capable of being opened by the computer application ArcGIS.™

“Service outage” means a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider’s network.

“Substantive” means sufficiently detailed and technically specific to permit the Commission to evaluate whether federal universal service support has had, or will have, specific benefits for customers. Examples of information that will permit an evaluation is information about investments and expenses that will increase service quality, increase signal coverage, or increase network capacity, in conjunction with information about the number of customers that have or will benefit, and how they will benefit.

## **NEW SECTION**

### **WAC 480-123-0020 – Contents of Petition for Eligible Telecommunications**

**Carriers.** (1) Petitions for designation as an ETC must contain:

- (a) a description of the area or areas for which designation is sought;
- (b) a statement that the carrier will offer the services supported by federal universal service support mechanisms throughout the area for which it seeks designation, 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 ETC);
- (c) a description of how it will provide each supported service;
- (d) a substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers;
- (e) a statement that the carrier will advertise the availability of services supported by federal universal service mechanisms, including advertisement of telephone assistance programs that is reasonably calculated to reach low-income consumers not receiving discounts;
- (f) a general description, including a map in .shp format, of the area where the carrier has customers, plant and equipment, and, for wireless carriers, provides commercial mobile radio service;
- (g) information that demonstrates its ability to remain functional in emergency situations including a description of how it complies with WAC 480-120-411 or, for a wireless carrier, information that demonstrates it has at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch; and
- (h) information that demonstrates that it will comply with the applicable consumer protection and service quality standards of Chapter 480-120 WAC or, for a wireless carrier, a commitment to comply with the Cellular

Telecommunications and Internet Association's Consumer Code for Wireless Service as released Sept. 9, 2003.

(2) The petition must be submitted by a company officer in the manner required by RCW 9A.72.085.

#### **NEW SECTION**

**WAC 480-123-0030 – Approval of Petitions for Eligible Telecommunications Carriers.** The commission will approve a petition for designation as an ETC if the petition meets the requirements of WAC 480-123-0020 and if designation is in the public interest.

#### **NEW SECTION**

**WAC 480-123-0040 – Revocation of Eligible Telecommunications Carrier Designation.** The Commission may modify, suspend, or revoke the designation of an ETC if it determines that the ETC is not in compliance with its designation order or this chapter, or is not operating in a manner that is consistent with the public interest.

#### **NEW SECTION**

**WAC 480-123-0050 Annual certification of eligible telecommunications carriers.** (1) Each ETC seeking certification by the commission of the ETC's use of federal high-cost funds pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314 must request certification by July 31 each year. The ETC must, as a part of the request, certify that it will use federal high-cost universal service fund support only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended. The certification must be submitted by a company officer in the manner required by RCW 9A.72.085

(2) The commission will certify an ETC's use of federal high-cost universal service fund support, pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314 only if the ETC complies with the requirements in WAC 480-123-0060, and the ETC demonstrates that it will use federal high-cost funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended through the requirements of WAC 480-123-0070.

### **NEW SECTION**

**WAC 480-123-0060 Annual certifications and reports.** Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must certify or report as described in this section. The certifications and reports are for activity in the period January 1 through December 31 of the previous year. Certifications must be submitted by a company officer in the manner required by RCW 9A.72.085.

(1) **Report on use of federal funds and benefits to customers.**

(a) The report must provide a substantive description of investments made and expenses paid with federal support, or, for ETCs that receive support based on filings made with the National Exchange Carrier Association (NECA) in its role as a contractor for the Universal Service Administrative Company, the report may consist of copies of all material supplied to NECA to obtain the support received for the relevant twelve-month period in lieu of the substantive description.

(b) In addition to the information required in subsection (1)(a) of this subsection, every ETC must provide a substantive description of the benefits to consumers that resulted from the investments made and expenses paid with federal support.

(2) **Service outage report.** The report must include detailed information on every outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated

service area, or that potentially affect a public safety answering point as defined in WAC 480-120-021. The report must include:

- (a) The date and time of onset of the outage;
- (b) A brief description of the outage and its resolution;
- (c) The particular services affected;
- (d) The geographic areas affected by the outage;
- (e) Steps taken to prevent a similar situation in the future; and
- (f) The number of customers affected.

(3) Report on failure to provide service. The report must include detailed information on the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also describe in detail how it attempted to provide service to those potential customers.

(4) Report on complaints per 1,000 handsets or lines. The report must provide separate totals for the number of complaints that the ETC's customers made to the ETC, the commission, the federal communications commission, and the Washington attorney general. These totals must be further divided into at least the four categories of complaints: (i) no dial tone and other connection problems; (ii) billing for services not ordered; (iii) inaccurate amounts on bill; and (iv) failure to provide service in a timely fashion. The report must also generally describe the nature of the complaints within each category and the carrier's efforts to resolve the complaints.

(5) Certification of compliance with applicable service quality standards. Certify that it met the applicable service quality standard found in WAC 480-123-0020(1)(h).

(6) Certification of ability to function in emergency situations. Certify that it had the ability to function in emergency situations based on continued adherence to the standards found in WAC 480-123-0020(1)(g).

(7) Advertising certification; safe harbor, including advertisement on Indian reservations. Certify it has provided the required advertisement,

including advertisements reasonably calculated to reach low-income individuals not already receiving discounted services.

(a) An ETC will be considered to meet the advertisement requirements if at a minimum it:

- (i) sends to all customers at least one annual bill insert explaining its services and charges available to low-income customers;
- (ii) displays a notice of services and charges available to qualified low-income consumers at its payment agencies and its offices open to the public;
- (iii) places a notice in the telephone book published by (or on behalf of) the ETC at least  $\frac{1}{4}$  page in size containing information about the services and charges available to qualified low-income consumers;
- (iv) advertises its services and charges available to low-income consumers:

(A) by placing a display ad in a daily newspaper, one-sixteenth page in size or larger, on four or more occasions in each calendar quarter; or

(B) by placing an ad on a local radio station or television station that runs at least five times a day in general rotation for seven consecutive days in each calendar quarter; and

(v) for an ETC with a geographic service area that includes a reservation or portion of a reservation of a federally recognized Indian tribe, by placing an ad containing information about the services and charges available to qualified low-income consumers living on a reservation in the tribal newsletter, tribal newspaper, or similar publication on two or more occasions in each calendar quarter.

## **NEW SECTION**

### **WAC 480-123-0070 Annual plan for universal service support expenditures.**

(1) Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must report on the expected use of federal support that will be received during the period October 1 of the current year through the following September.

(2) The report must include a substantive plan of the investments and expenditures to be made with federal support and a substantive description of how those investments and expenditures will benefit customers.

(3) As part of the filing required by this section to be submitted in 2007, and at least once every three years thereafter, the report must include a map in .shp format that shows the general location of customers, plant and equipment, and, for wireless carriers, where it provides commercial mobile radio service.

**In Addition:** Amend WAC 480-120-399 (formerly WAC 480-120-311) by deleting WAC 480-120-399(2).