BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Requirements for Carrier Designation as Eligible Telecommunications Carriers.	)))	Case No. TX-2006-0169

COMMENTS OF THE SMALL TELEPHONE COMPANY GROUP

The Small Telephone Company Group ("STCG") offers the following Comments regarding the Missouri Public Service Commission's ("Commission") proposed rule 4 CSR 240-3.570 published in the Missouri Register on December 1, 2005.

The proposed rule primarily seeks to establish criteria for submission to the Commission when a "competitive" company such as a competitive local exchange company ("CLEC") or commercial mobile radio service ("CMRS" or "wireless") provider seeks designation as an eligible telecommunications carrier ("ETC") eligible to receive federal Universal Service Fund ("USF") moneys. The rule also establishes additional criteria for carriers that have previously been designated as ETCs. The STCG supports the Commission's establishment of comparable criteria for competitive companies seeking to be designated as ETCs and commends the Commission for its efforts in this regard. The STCG generally supports the Commission in this effort and offers the following comments in support of the proposed rules.

Recent Federal Communications Commission ("FCC") decisions and decisions by this Commission show an increasing concern about the impact of multiple ETC designations on the high-cost USF fund and the possible detrimental effect of this increase on rural areas. It is not simply the extra financial burden on the USF that is at issue, but also the effect on the public policy goal of universal service to provide affordable phone service to all customers.

Section 214(e)(2) of the Telecommunications Act of 1996 ("the Act") requires that before the state commission designates an additional ETC in a rural area served by a rural telephone company it <u>must</u> find that the designation is in the public interest. This statute sets a higher bar for ETC applicants in rural areas. An important public interest goal of the Act is to encourage high-quality, urban-like service and rates in high-cost, rural areas.[1]

To the extent the Commission is faced with the task of deciding how to award finite USF resources to multiple requesting carriers, the STCG believes that the Commission should develop and enforce high standards for ETC designations that protect the public interest. The introduction of a second ETC in a rural area does not necessarily lead to lower costs or higher quality of service that would be in the public interest. A high-cost market, by definition, is still a high-cost market even after the introduction of competition, and the introduction of subsidized competition could actually increase the cost for each carrier because the federal USF would then support multiple entrants with limited financial resources. FCC Chairman Kevin Martin has expressed concerns with using federal USF support to create "competition" in rural high-cost areas:

> I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.[2]

[1] 47 U.S.C. 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in *rural, insular, and high-cost areas,* should have access to telecommunications and information services . . . that *are reasonably comparable* to those services provided in urban areas and that are available at rates charged for similar services in urban areas.") (Emphasis added.)

[2] 2nd *Report and Order and FNRPM* in CC Docket No. 00-256, 15th *Report and Order* in CC Docket No. 96-45, and *Report and Order* in CC Docket Nos. 98-77 and 98-166, rel. Nov. 8, 2001, *Separate Statement of Commissioner Kevin J. Martin.*

Thus, since costs of a telecommunications network are relatively fixed, the splitting of a rural market between two or more providers generally causes the cost of service to increase for each of the providers on a per customer basis.

On March 17, 2005, the FCC issued its *ETC Designation Order* establishing an additional and more stringent set of mandatory minimum eligibility and public interest requirements that it will apply in ETC cases.[3] These eligibility requirements require that the ETC applicant:

> Provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity;
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> Demonstrate its ability to remain functional in emergency situations;
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> Demonstrate that it will satisfy consumer protection and service quality standards;
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> Offer local usage plans comparable to those offered by the incumbent local exchange carrier; and
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> Acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations.[4]

The FCC stated that "because these requirements create a more rigorous ETC process, their application by the [FCC] and state commissions will improve the long-term sustainability of the universal service fund."[5] The FCC strongly encouraged state regulators to apply these same minimum, threshold requirements and public interest tests in state ETC proceedings.[6] The FCC

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[3] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, released March 17, 2005 ("the *ETC Order*").

[4] *Id.* at ¶¶ 2 and 5.

[5] *Id.* at ¶ 2.

[6] *ETC Order at* ¶¶ 3, 40, 42 and 61.

also stated that state commissions were free to adopt criteria different from and more restrictive than the minimum guidelines adopted by the FCC. The Commission's proposed rule is consistent with these FCC requirements.

The Act defined several "Universal Service Principles" in Section 254(b). These principles include 1) quality service at affordable rates; 2) access to advanced telecommunication and information services in all regions; 3) access to all services in rural and high-cost areas; 4) equitable and non-discriminatory contributions from all providers of telecommunications services; 5) specific and predictable support mechanisms; 6) access to advanced telecommunications services for schools, health care and libraries; and 7) such other principles as the Commission determines are necessary and appropriate for the protections of the public interest, convenience and necessity.[7] Later, the FCC adopted an additional principle pursuant to 254(b)(7). The FCC adopted the principle of competitive neutrality which stated:

> COMPETITIVE NEUTRALITY – Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.[8]

It is this principle of competitive neutrality and the protection of the public interest that are of principal concern to the STCG.

Under current FCC rules, competitive companies receive the identical amount of federal USF support per line as the incumbent local exchange carrier ("ILEC"), while a rural ILEC receives support based on its actual embedded costs of providing the service and making

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[7]47 C.F.R. § 254(b).

[8]*Report and Order*, CC Docket No. 96-45, FCC 97-157 issued May 8, 1997.

investments necessary to provide the service in its area. This support is based on actual cost studies prepared by the ILEC to reflect its costs and submitted to the Universal Service Administration Corporation ("USAC"). These cost study results are verified by both USAC and the National Exchange Carrier Association ("NECA").

A competitive ETC, on the other hand, merely reports the number of customers it is serving in its designated ETC area and then is eligible to receive the same amount of support per line as the ILEC without any verification of its costs or any consideration of the underlying need for the support being made by any regulatory or administrative entity. There is certainly a question as to whether this unfairly favors the competitive carriers to the disadvantage of the rural ILECs, and it thus calls into question the principle of competitive neutrality and the issue of the public interest.

Proposed rule 4 CSR 240-3.570(2) requires an applicant for ETC designation to provide a description of the intended use of the high-cost support with detailed construction plans and estimated budget amounts. The rule also requires that the applicant provide a five (5) year plan demonstrating how the high-cost support will be used to improve coverage and service quality as well as a statement as to how the proposed improvements would not otherwise occur absent the receipt of the high-cost support. The rule also requires a demonstration that the receipt of high-cost support will only be used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation is requested and that such support is in addition to any expenses the competitive carrier would normally incur. The applicant must also demonstrate its ability to remain functional in emergency situations. These requirements are consistent with the FCC's decision in its March 2005 *ETC Report and Order*. The STCG believes that these provisions are necessary in light of the fact that the CLEC and CMRS providers seek to receive future support based on the amount of support the ILECs already receive that is, in turn, based on the costs those ILECs have already incurred in order to be able to provide services in the same area. The proposed rule thus advances the concept of competitive neutrality between the incumbents already receiving support and the new entrants.

Another of the costs of providing service for the ILEC is the regulatory cost of complying with the Commission's rules and regulations. The proposed rule requires competitive ETCs, including CMRS providers, to comply with certain of the same rules and regulations as the ILECs are required to follow such as Chapter 32, Telecommunications Service, and other reporting and informational filings. The STCG believes that this is only fair since the competitive ETCs will be receiving funds based on the costs incurred by the incumbent companies that include the cost of regulation. In fact, the STCG believes that the Commission's proposed rule should go further and also require the CLEC and CMRS ETCs to comply with Chapter 33, Service and Billing Practices. The CLECs and the CMRS providers that are granted ETC designation should be regulated on the same basis and to the same extent as the ILEC.

The Commission has the authority to regulate CLECs pursuant to Missouri statute, and the FCC has stated that Section 332(c)(3) specifically allows states to regulate CMRS terms and conditions, not dealing with rates and entry, in order to preserve and advance universal service.[10] Thus, the Commission has the authority to impose requirements that ensure consumer protection and service quality, particularly when this requirement is only imposed in situations where

[10] *ETC Order* at ¶ 31.

CLECs and CMRS providers request USF monies.[11] The Commission's proposed rule will insure that these carriers provide quality service and are responsive to their customers and the Commission when there are customer complaints.

The STCG also supports the Commission's proposed rule 4 CSR 240-3.570(5) that requires the applicant for ETC designation to commit to offer a local usage plan comparable to those offered by the ILEC in the area for which the carrier seeks designation. Since the new ETC will receive the same support per access line as the incumbent carrier, it is only fair and competitively neutral for that new entrant to be required to provide comparable service plans.

In conclusion, the STCG commends the Commission for the promulgation of its proposed rule 4 CSR 240-3.570 relating to eligible telecommunications carrier applicants and supports the rule.

Respectfully submitted,

Sondra B. Morgan____________________
W.R. England, III Mo. Bar 23975
Sondra B. Morgan Mo. Bar 35482
Brydon, Swearengen & England P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
(573) 635-7166
(573) 634-7431 (fax)
smorgan@brydonlaw.com (E-mail)

Attorneys for The Small Telephone Company Group

[11] *ETC Order* at ¶ 30.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic submission, hand-delivered or sent by U.S. Mail, postage prepaid, this 29th day of December, 2005 to:

Mr. Mike Dandino
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

Mr. Dan Joyce, General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

_ Sondra B. Morgan_________________
Sondra B. Morgan