

DIRECT TESTIMONY
OF
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TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

Petition of USCOC of Illinois RSA #1, LLC ,
USCOC of Illinois RSA #4, LLC , USCOC of Rockford, LLC ,
and USCOC of Central Illinois, LLC
For Designation as an Eligible Telecommunications Carrier
Under 47 U.S.C. § 214(e)(2)

DOCKET NO. 04-0653

MAY 12, 2004

1 **Introduction**

2

3 **Q. Please state your name and business address.**

4 A. My name is Jeffrey H. Hoagg. My business address is 527 East Capitol
5 Avenue, Springfield, Illinois 62701.

6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed as the Principal Policy Advisor in the Telecommunications
9 Division of the Illinois Commerce Commission

10

11 **Q. Please describe briefly your educational background and work
12 experience.**

13

14 A. I graduated from Cornell University with a Master of Arts in Economics in
15 1986. I was admitted to doctoral candidacy at Cornell and completed all
16 requirements for the Ph.D. in Economics other than completion of the
17 dissertation. My major field of graduate study was Industrial Organization
18 and Regulation.

19

20 I held the positions of Telecommunications Tariffs and Rates Analyst,
21 Telecommunications Policy Analyst, and Special Assistant to the Deputy
22 Chair of the Commission at the New York Public Service Commission. I
23 performed economic and policy analyses of industry and regulatory

24 issues, and formulated recommendations for Commission members and
25 other decision-makers.

26
27 In 1993 I became Special Advisor to Commissioner Barrett of the Federal
28 Communications Commission. I provided analyses and policy
29 recommendations on a wide range of telecommunications issues, and
30 functioned as liaison with the offices of other Commissioners, the
31 Chairman and the FCC's Common Carrier Bureau. I prepared testimony,
32 speeches and presentations for delivery before Congress and various
33 regulatory and industry groups, and drafted for issuance informal and
34 formal documents, including Separate Statements and Dissents from
35 Commission Reports and Orders.

36
37 I have been employed by the Illinois Commerce Commission in the
38 Telecommunications Division from 2000 to the present. During this time,
39 I have conducted analyses and provided policy recommendations on a
40 wide range of telecommunications issues. I have provided testimony on
41 behalf of Staff of the Illinois Commerce Commission in numerous
42 docketed proceedings.

43
44
45
46

47 **Overview and Summary**

48

49 **Q. What is the purpose of your testimony?**

50 A. My testimony provides broad policy guidance and specific
51 recommendations to the Commission concerning the application of
52 USCOC of Illinois RSA #1, LLC , USCOC of Illinois RSA #4, LLC ,
53 USCOC of Rockford, LLC , and USCOC of Central Illinois, LLC (“US
54 Cellular”) for eligible telecommunications carrier (“ETC”) status. I address
55 appropriate requirements that should be met by US Cellular in order to
56 qualify for ETC status. I also address the appropriate public interest
57 analyses the Commission should undertake to evaluate US Cellular’s ETC
58 application.

59

60 In addition to my testimony, testimony is being submitted on behalf of Staff
61 by Mr. Hanson addressing local calling plan and rate issues; Mr.
62 McClerren addressing service quality requirements and required
63 functionality in emergency situations; Dr. Zolnierek concerning potential
64 cream-skimming and service area redefinitions; and Ms. Schroll
65 concerning 911 emergency calling issues.

66

67 Mr. Hanson examines issues associated with local rate plan comparability
68 and certain requirements associated with the provision of Lifeline and
69 Linkup service. Mr. Hanson does not believe it necessary that US
70 Cellular provide an unlimited local calling rate plan to be considered

71 eligible for ETC status. He provides analyses designed to determine the
72 comparability of US Cellular's offerings to those of the incumbent carriers,
73 both in terms of usage and price. Mr. Hanson concludes that US Cellular
74 has not met its burden of proof of rate plan comparability with respect to
75 price. He also concludes that US Cellular has not provided adequate
76 detail with respect to certain issues associated with the offering of Lifeline
77 and Linkup plans. At this point, he cannot recommend to the Commission
78 that US Cellular has met the rate related requirements necessary to be
79 granted an ETC designation.

80

81 Dr. Zolnierек examines creamskimming issues related to U.S. Cellular's
82 proposal to redefine the service areas of five rural local exchange
83 carriers. He finds no evidence of the potential for creamskimming with
84 respect to the redefinition of Citizens, Frontier/Midland, or Odin service
85 areas, but does find some evidence of the potential for creamskimming
86 with respect to the redefinition of Verizon South and Wabash serving
87 areas.

88

89 Mr. McClerren examines various service quality, emergency situation
90 functionality and consumer protection issues. He is unable to recommend
91 that the Commission approve US Cellular's petition at this time. He
92 concludes there is a great deal of information missing in the record about
93 how US Cellular is actually performing relative to service quality. He also
94 finds that US Cellular's positions are unclear on several significant

95 emergency situation, consumer protection, and service quality issues
96 (particularly as these are prescribed by Code Parts 730 and 735).

97

98 Ms. Schroll examines U.S. Cellular's application for compliance with 9-1-1
99 requirements. She believes that U.S. Cellular has been provisioning 9-1-
100 1 service according to FCC regulations, and is satisfied the company will
101 continue to do so. However, in order for Ms. Schroll to recommend that
102 the Commission grant U.S. Cellular's ETC application, she believes U.S.
103 Cellular should also be able to declare that it is complying with Illinois
104 wireless legislation and regulations.

105

106 **Q. Please summarize your testimony.**

107 A. I conclude the Commission should, in large measure, apply requirements
108 similar to those set forth in the FCC's March 17, 2005 Report and Order in
109 C.C Docket 96-45 ("ETC Order").¹ This order enumerates the
110 requirements the FCC will apply to any application for ETC status that
111 comes before it. The requirements of the ETC Order are "permissive" and
112 are not binding upon this Commission in its evaluation of any application
113 for ETC status. However, the FCC strongly encourages states to utilize
114 the analyses and requirements contained in the ETC Order. Among other
115 things, this would achieve a reasonable level of consistency in treatment
116 of ETC applications across the nation. This argument, and others raised

¹ Federal Communications Commission, Report and Order ("ETC Order"), CC Docket No. 96-45, FCC 05-46, Released March 17, 2005.

117 by the FCC in support of state utilization of its ETC Order requirements
118 are, in my opinion, persuasive. In my opinion, the FCC requirements are,
119 for the most part, appropriate and reasonable. Had the FCC not issued its
120 ETC Order, I believe the Commission should have and would have
121 determined to apply standards and requirements similar to those set forth
122 in the ETC Order.

123

124 **Q. Please summarize your overall recommendation concerning US**
125 **Cellular's ETC application.**

126 In my opinion, based on the record in this proceeding to date, US Cellular
127 has not met its burden of proof to demonstrate that a Commission grant of
128 ETC status would be in the public interest. In order to do so, US Cellular
129 must demonstrate that it meets the requirements set forth in the ETC
130 Order, as endorsed or modified in the direct testimony of staff witnesses.
131 Alternatively, where US Cellular believes that a modification of these
132 requirements is consistent with the public interest, it should set forth
133 reasons for a departure from the suggested criteria of the FCC. It has not
134 done so.

135

136 **Standards and Requirements for ETC Designation**

137

138 **Q. What fundamental requirements are imposed directly upon ETCs by**
139 **the 1996 Act?**

140 A. These fundamental requirements are:

141 A common carrier designated as an ETC must offer the
142 services supported by the federal universal service
143 mechanisms throughout the designated service area. The
144 ETC must offer such services using either its own facilities or
145 a combination of its own facilities and resale of another
146 carrier's services. The ETC must also advertise the
147 supported services and the associated charges throughout
148 the service area for which designation is received, using
149 media of general distribution. In addition, an ETC must
150 advertise the availability of Lifeline and Link Up services in a
151 manner reasonably designed to reach those likely to qualify
152 for those services.²
153

154 In addition, the 1996 Act requires that either the FCC or a state
155 commission must determine that an ETC designation serves the public
156 interest, convenience and necessity before granting ETC status.

157

158 **Q. What standards should be applied by the Commission to determine if**
159 **granting US Cellular's ETC application is in the public interest?**

160 A. These standards may be determined broadly at the discretion of the
161 Commission, consistent with Section 214(e) of the 1996 Federal
162 Telecommunications Act, and all other applicable state and federal law. I
163 recommend that the Commission utilize the basic requirements and
164 analyses of the FCC's ETC Order as a "baseline" from which to conduct
165 the Commission's own analyses. The Commission can and should depart
166 from these requirements if and where, in its judgment, such departures
167 would further the public interest in Illinois.

168

169 I believe the Commission should relax, modify or potentially omit a
170 requirement of the ETC Order if an ETC applicant demonstrates
171 persuasively that to do so would best serve the public interest in Illinois.

172 As a purely hypothetical example: suppose an applicant such as US
173 Cellular believes it could better comply with the underlying intent of the
174 five year investment plan by filing two three-year plans – one at the time of
175 initial application and one three years from that date. If the applicant could
176 persuasively show this would serve the public interest in Illinois, in my
177 opinion the Commission should accept such a proposal. I stress that any
178 such relaxation or deletion of “baseline” requirements should be fully
179 supported and justified by the applicant on the record of the pertinent
180 docket. On the other hand, the Commission may find that, in some issue
181 areas, imposing more stringent obligations than those of the FCC ETC
182 Order would serve the public interest in Illinois. It is, of course, free to do
183 so. I note that the ETC Order recognizes the unique knowledge and
184 familiarity with local conditions possessed by state commissions.

185

186 **Q. Please explain further why the Commission should utilize the ETC**
187 **Order requirements as the appropriate “baseline” to apply to new**
188 **ETC applications.**

189 A. I believe the analytical framework and requirements contained in the ETC
190 Order reflect an appropriate balancing of several competing
191 considerations. Very generally, it balances the potential benefits to

² ETC Order, par. 17

192 consumers of additional competitive entry in rural areas with consumer
193 protections that reflect the unique nature of these rural service territories.

194

195 It should be noted that the ETC Order represents the combined best
196 judgments of a number of state and federal regulators. The Federal-State
197 Universal Service Joint Board, composed of both FCC and state members
198 (and federal and state staff members) conducted an investigation with
199 input from interested parties. The FCC then conducted its own notice and
200 comment process concerning the of the Joint Board. As a result, the FCC
201 approved the Joint Board recommendations concerning requirements for
202 ETC designation with few changes. I also note it seems fair to say that
203 the FCC, as currently populated, does not give short shrift to the benefits
204 of competition and competitive entry, and does not treat such benefits
205 lightly.

206

207 In my opinion there are two overarching reasons to impose upon new ETC
208 applicants obligations identical or similar to those imposed by the FCC.
209 The first is to achieve better “targeting” of universal service support. The
210 ETC Order requirements will help ensure that universal service support
211 flows to uses that will directly benefit customers in these rural areas. This
212 is the essence of the FCC’s “five year plan” requirement, which is intended
213 to ensure that universal service support received by a newly designated
214 ETC is invested to upgrade, improve or extend facilities in ways that will
215 directly benefit customers. I consider such a five-year investment plan, or

216 an acceptable alternative, an essential “bedrock” requirement for ETC
217 designation for any new entrant.

218

219 The second compelling rationale is that these requirements will help
220 ensure that customers in rural areas continue to have protections
221 reflecting their unique circumstances, even as increased competitive entry
222 is facilitated through new ETC designations. It is virtually axiomatic that
223 competitive entry into the serving territories of existing ILECs will
224 financially weaken these incumbent carriers to some (unknown) extent.

225 The Commission must recognize that this is a largely unavoidable
226 corollary to receipt of universal service funding by new entrants. This
227 funding will facilitate new entrants’ efforts to win customers from
228 incumbent ILECs. In contrast to larger incumbent carriers, rural
229 incumbent carriers generally have fewer resources to draw upon to offset
230 such customer losses. Thus, increased competitive entry ultimately is
231 accompanied by some danger that some incumbent rural carriers will not
232 be able to fully maintain their traditional provider of last resort (POLR)
233 status. The Commission thus should ensure that new entrant ETCs are
234 reasonably well positioned to step into the role of POLR.

235

236 I would not suggest that new entrants must be in a position to do so from
237 day one of receiving universal service support. Rather, ETC obligations
238 should be formulated, at least in part, to assist the newly designated ETC
239 to generally prepare to undertake POLR obligations if needed in the

240 future. I believe this is a fundamental objective of obligations contained in
241 the FCC's ETC Order. This Commission's ETC requirements also should
242 be designed to advance this basic objective.

243

244 **Q. In your opinion, is the FCC's ETC Order consistent with the intent of**
245 **the 1996 Act with respect to new entrant ETC designations?**

246 A. Yes. I believe this is generally demonstrated by Section 241(e) of the
247 Act:

248 A State commission shall permit an ETC to relinquish its
249 designation as such a carrier in any area served by more
250 than one ETC. Any ETC that seeks to relinquish its ETC
251 designation for an area served by more than one ETC shall
252 give advance notice to the State commission of such
253 relinquishment. Prior to permitting a telecommunications
254 carrier designated as an ETC to cease providing universal
255 service in an area served by more than one ETC, the State
256 commission shall require the remaining ETC or ETCs to
257 ensure that all customers served by the relinquishing carrier
258 will continue to be served, and shall require sufficient notice
259 to the remaining ETC or ETCs to permit the purchase or
260 construction of adequate facilities by any remaining ETC.
261 The state commission shall establish a time, not to exceed
262 one year after the State commission approves such
263 relinquishment under this paragraph, within which such
264 purchase or construction shall be completed.³
265

266 This illustrates a basic precept of the 1996 Act concerning ETC status that
267 is advanced by the FCC ETC Order. Accepting ETC designation is a
268 weighty commitment. ETC designation is about more than simply
269 receiving universal service funds if a carrier can show that it will provide
270 rural customers with more choice in services. Section 214(e) effectively

³ 47 USC, Section 214(e)(4).

271 conveys the following message: once you're in, you can't simply opt out,
272 as in a competitive market devoid of universal service support. Section
273 214(e) reflects the fact that rural customers require special consideration
274 and requires that regulators should ensure they get it.

275

276 **Q. What fundamental obligations, beyond the minimal requirements**
277 **specifically enumerated in the 1996 Act, has the FCC determined are**
278 **appropriate for ETCs?**

279

280 A. The FCC determined that an ETC must demonstrate:

281 (1) a commitment and ability to provide services, including
282 providing service to all customers within its proposed service
283 area; (2) how it will remain functional in emergency
284 situations; (3) that it will satisfy consumer protection and
285 service quality standards; (4) that it offers local usage
286 comparable to that offered by the incumbent LEC; and (5) an
287 understanding that it may be required to provide equal
288 access if all other ETCs in the designated service area
289 relinquish their designations pursuant to section 214(e)(4) of
290 the Act.⁴

291

292

293 **Q. Briefly summarize how the FCC requires ETCs to satisfy these**
294 **general obligations.**

295 A. The ETC must satisfy the first item:

296

297 (1) by providing services to all requesting customers within
298 its designated service area; and (2) by submitting a formal
299 network improvement plan that demonstrates how universal
300 service funds will be used to improve coverage, signal

⁴ ETC Order, par. 20

301 strength, or capacity that would not otherwise occur absent
302 the receipt of high-cost support.⁵

303
304 The ETC must satisfy the second item by showing:

305
306 it has a reasonable amount of back-up power to ensure
307 functionality without an external power source, is able to
308 reroute traffic around damaged facilities, and is capable of
309 managing traffic spikes resulting from emergency situations.⁶

310
311 With respect to the third item, the ETC must:

312
313 make a specific commitment to objective measures to
314 protect consumers.... In addition, an ETC applicant, as
315 described *infra*, must report information on consumer
316 complaints per 1,000 handsets or lines on an annual basis.⁷

317
318 Concerning the fourth item, the ETC must:

319 demonstrate that it offers a local usage plan comparable to
320 the one offered by the incumbent LEC in the service areas
321 for which the applicant seeks designation.⁸

322
323 For the final item, the ETC must acknowledge it may be required:

324
325 to provide equal access to long distance carriers in their
326 designated service area in the event that no other ETC is
327 providing equal access within the service area.⁹

328
329
330
331 **Q. Please briefly describe reporting obligations the FCC determined to**
332 **be appropriate requirements for ETC designation.**

333 A. All ETCs currently must certify annually that universal service support is
334 used for its intended purposes. The FCC additionally now requires the
335 following annual filings:

⁵ ETC Order, at par. 21.

⁶ Id. at par. 25.

⁷ Id. at par. 28.

⁸ Id. at par. 32.

⁹ Id. at par 35.

- 336 (1) progress reports on the ETC's five-year service quality
337 improvement plan, including maps detailing progress
338 towards meeting its plan targets, an explanation of how
339 much universal service support was received and how the
340 support was used to improve signal quality, coverage, or
341 capacity; and an explanation regarding any network
342 improvement targets that have not been fulfilled. The
343 information should be submitted at the wire center level;
- 344 (2) detailed information on any outage lasting at least 30
345 minutes, for any service area in which an ETC is
346 designated for any facilities it owns, operates, leases, or
347 otherwise utilizes that potentially affect at least ten percent
348 of the end users served in a designated service area, or
349 that potentially affect a 911 special facility (as defined in
350 subsection (e) of section 4.5 of the *Outage Reporting*
351 *Order*). An outage is defined as a significant degradation
352 in the ability of an end user to establish and maintain a
353 channel of communications as a result of failure or
354 degradation in the performance of a communications
355 provider's network. Specifically, the ETC's annual report
356 must include: (1) the date and time of onset of the outage;
357 (2) a brief description of the outage and its resolution; (3)
358 the particular services affected; (4) the geographic areas
359 affected by the outage; (5) steps taken to prevent a similar
360 situation in the future; and (6) the number of customers
361 affected;
- 362 (3) the number of requests for service from potential
363 customers within its service areas that were unfulfilled for
364 the past year. The ETC must also detail how it attempted
365 to provide service to those potential customers;
- 366 (4) the number of complaints per 1,000 handsets or lines;
- 367 (5) certification that the ETC is complying with applicable
368 service quality standards and consumer protection rules,
369 e.g., the CTIA Consumer Code for Wireless Service;
- 370 (6) certification that the ETC is able to function in emergency
371 situations;
- 372 (7) certification that the ETC is offering a local usage plan
373 comparable to that offered by the incumbent LEC in the
374 relevant service areas; and
- 375 (8) certification that the carrier acknowledges that the
376 Commission may require it to provide equal access to long

377 distance carriers in the event that no other eligible
378 telecommunications carrier is providing equal access
379 within the service area.¹⁰

380

381 **Q. The FCC found that if requirements of the ETC Order are met, a**
382 **separate demonstration of adequate financial capabilities need not**
383 **be a prerequisite for federal ETC designation. Do you agree with**
384 **this finding for Illinois?**

385 A. Yes. I believe the FCC's decision not to impose such a requirement is
386 well-reasoned. The reasoning is three-fold. First, sufficient financial
387 capabilities are a necessary condition for meeting the ETC Order's
388 requirements. Second, an ETC recipient must demonstrate, through
389 ongoing reporting requirements, that it is providing quality services
390 throughout the serving territory in question. Such showing necessarily
391 involves the prerequisite of financial capability. Third, in the case of
392 wireless carriers such as US Cellular, beginning with licensure, the FCC
393 requires a series of ongoing demonstrations of financial integrity and
394 capabilities .

395

396 Examination of financial resources primarily would elucidate an ETC's
397 ongoing ability to provide services and meet its obligations subsequent to
398 ETC designation. Demonstration of adequate financial capabilities would
399 provide this Commission with some assurance that an ETC would be
400 capable of meeting its obligations over time. I agree with the FCC that the

¹⁰ ETC Order, par. 69.

401 “operational” and reporting requirements of the ETC Order would provide
402 this Commission with effectively the same type of assurance.

403

404 I would also point to the provisions of Section 214(e)(4) that protect
405 customers in the event an ETC designee falters financially (as well as for
406 other reasons). These Section 241(e)(4) provisions do not totally eliminate
407 all risk that consumers could be negatively impacted by financial
408 deterioration and weakness of an ETC. However, when combined with
409 meaningful requirements such as those of the ETC Order, these
410 provisions should reduce risk to customers to an appropriate and
411 acceptable level. It seems clear that a higher level of such risk is inherent
412 in the policy decision to permit and facilitate increased competitive activity
413 in rural areas. This is a major reason I believe the reporting obligations
414 outlined in the ETC order also should be required by this Commission as a
415 condition for a newly granted ETC designation.

416

417 I therefore recommend that the Commission consider requiring such
418 financial analysis only if there is a reasonable question raised concerning
419 the financial soundness of a particular applicant. In such an instance, a
420 direct showing of financial adequacy might well be appropriate as a
421 condition for ETC designation. Consistent with this recommendation, and
422 in the absence of a persuasive showing otherwise, I recommend that the
423 Commission not require financial analysis as a condition of granting ETC
424 status to US Cellular.

425

426 **Q. Do the requirements of the FCC’s ETC Order apply to previously**
427 **designated ETCs?**

428 A. The FCC apparently intends to apply many of these requirements to
429 carriers that previously have been designated ETCs, including incumbent
430 rural ILECs. This Commission has not yet had an opportunity to decide
431 whether any requirements applied to new entrants seeking ETC
432 designation in Illinois rural territories (such as US Cellular) should apply to
433 existing incumbent rural ILECs. I believe the Commission has broad
434 discretion in this regard.¹¹ In any event, these issues are not before the
435 Commission in this docket, and need not be addressed in order for the
436 Commission to rule fully on US Cellular’s ETC application.

437

438 **Public Interest, Convenience and Necessity**

439

440 **Q. How will the FCC conduct its public interest analyses to determine**
441 **whether an ETC application should be granted?**

442 A. First, all explicit requirements of the ETC Order must be satisfied for a
443 “positive” public interest finding. Second, if the ETC applicant seeks
444 designation below the study level area of the incumbent rural ILEC, a
445 “cream-skimming analysis” must show that any cream skimming potential
446 that might exist does not render ETC designation contrary to the public

447 interest. Third, the burden to prove that ETC designation is in the public
448 interest is placed solely upon an applicant seeking ETC designation.
449 Finally, the FCC conducts a primarily qualitative cost-benefit analysis that
450 includes the following:

451 Consumer Choice: The Commission takes into account the
452 benefits of increased consumer choice when conducting its
453 public interest analysis. In particular, granting an ETC
454 designation may serve the public interest by providing a
455 choice of service offerings in rural and high-cost areas. The
456 Commission has determined that, in light of the numerous
457 factors it considers in its public interest analysis, the value of
458 increased competition, by itself, is unlikely to satisfy the
459 public interest test.

460 Advantages and Disadvantages of Particular Service
461 Offering: The Commission also considers the particular
462 advantages and disadvantages of an ETC's service offering.
463 For instance, the Commission has examined the benefits of
464 mobility that wireless carriers provide in geographically
465 isolated areas, the possibility that an ETC designation will
466 allow customers to be subject to fewer toll charges, and the
467 potential for customers to obtain services comparable to
468 those provided in urban areas, such as voicemail, numeric
469 paging, call forwarding, three-way calling, call waiting, and
470 other premium services. The Commission also examines
471 disadvantages such as dropped call rates and poor
472 coverage.¹²

473 In addition, the public interest analysis may consider the impact of ETC
474 designation upon the federal high cost fund. As with virtually all other
475 aspects of the ETC Order, the FCC encourages states to conduct similar
476 analyses. It notes, specifically with respect to the high cost universal
477 service fund:

¹¹ For example, the Commission might determine all ETCs should be subject to essentially identical requirements, or it might find it would better serve the public interest to impose different obligations upon new entrant ETCs and existing incumbent ETCs.

¹² ETC Order, par. 44.

478 [O]ne relevant factor in considering whether or not it is in the
479 public interest to have additional ETCs designated in any
480 area may be the level of per-line support provided to the
481 area. If the per-line support level is high enough, the state
482 may be justified in limiting the number of ETCs in that study
483 area, because funding multiple ETCs in such areas could
484 impose strains on the universal service fund.¹³
485

486 I recommend that the Commission proceed with its public interest
487 analyses broadly along the same lines applied by the FCC. I note that
488 IITA witness Schoonmaker effectively contends that the public interest
489 requires - or at least is best served by - fact specific analyses at the
490 individual study area level.¹⁴ Study area level analyses appears to be
491 consistent with the 1996 Act and state and federal requirements. I
492 recommend that the Commission consider this approach to its public
493 interest analyses unless US Cellular makes a persuasive showing to the
494 contrary.

495

496 **US Cellular's Application for ETC Designation**

497

498 **Q. Has US Cellular demonstrated that it meets requirements set forth in**
499 **the FCC's ETC Order, or a comparable set of such requirements?**

500 A. In my opinion, no. Nor has US Cellular demonstrated in a detailed or
501 systematic manner that such requirements need not be met in order for
502 the Commission to find that US Cellular ETC designation would be in the
503 public interest. I believe it is entirely US Cellular's burden to do so.

¹³ ETC Order, par. 55.

504 Unless and until US Cellular seriously addresses and accomplishes these
505 tasks, the Commission has insufficient basis to conclude that ETC
506 designation for US Cellular would be in the public interest. Given the
507 current record in this proceeding, the Commission should not grant US
508 Cellular's application.

509

510 **Q. Please provide examples of US Cellular's failure to make crucial**
511 **required showings.**

512 A. I will briefly address issues concerning US Cellular's commitment and
513 ability to provide supported services, and issues surrounding equal access
514 offerings. I do not intend this as a comprehensive review. As previously
515 mentioned, Mr. McClerren addresses service quality and emergency
516 situation functionality issues; Mr. Hanson addresses local usage plans and
517 rate issues; Dr. Zolnierек addresses creamskimming issues; and Ms.
518 Schroll addresses 911 calling issues.

519

520 I consider requirements concerning commitment and ability to provide
521 supported services - particularly the five year investment/ spending plan -
522 crucial to US Cellular's ETC application. US Cellular has not
523 demonstrated that rates for its service are low enough to bring direct
524 benefits (in the form of lower bills) to consumers in the proposed ETC
525 serving areas. This focuses attention directly on how US Cellular would

¹⁴ IITA Exhibit 1.0, lines 407-416, 1028-1039.

526 use universal service funding to directly benefit customers with improved
527 service quality and expanded availability.

528

529 In my view, US Cellular has not met its burden of proof concerning its
530 commitment and ability to provide supported services. While it might have
531 the requisite abilities to provide the supported services, at minimum it has
532 not demonstrated the commitments necessary to warrant Commission
533 approval of its ETC application.

534

535 With respect to its use of universal service support funding (a key
536 component of ability and commitment to provide supported services), US
537 Cellular offers the following in its application:

538

539 U.S. Cellular commits to use available high-cost support
540 to improve service in areas it would not otherwise invest
541 in... U.S. Cellular hereby commits to use high-cost
542 support in its service area to improve coverage and
543 channel capacity to improve system performance when
544 needed. U.S. Cellular also commits to comply with the
545 CTIA Code.¹⁵

546

547 It also offers the following in Mr. Hunter's testimony:

548 Exhibit G to our Petition sets forth 10 communities that will
549 be served by the cell sites we intend to build within the first
550 15 months of receiving high-cost support. Beyond that initial
551 commitment, U.S. Cellular will use its support to build out
552 additional sites in the future. U.S. Cellular will also install
553 additional channel capacity in order for its overall system to
554 meet customer demand, as well as new T-1 and microwave

¹⁵ USCOC of Illinois RSA #1, LLC, USCOC of Illinois RSA #4, LLC, USCOC of Rockford, LLC, and USCOC of Central Illinois, LLC, Petition for Designation of Eligible Telecommunications Carrier, Docket No. 04-0653 ("Petition") at ¶ 31.

555 facilities to connect to its network. In addition, U.S. Cellular
556 will obtain the facilities needed to provide E-911 in rural
557 areas, as required by the FCC.¹⁶
558

559 The sentiments expressed in these statements seem generally laudable
560 and appropriate. What is missing, however, is the required level of detail
561 and rigor to give sufficient force to these expressions of intent. Among
562 other things, as outlined in the ETC order, US Cellular should:

563 submit a five-year plan describing with specificity its
564 proposed improvements or upgrades to the applicant's
565 network on a wire center-by-wire center basis throughout its
566 designated service area. The five-year plan must
567 demonstrate in detail how high-cost support will be used for
568 service improvements that would not occur absent receipt of
569 such support. This showing must include: (1) how signal
570 quality, coverage, or capacity will improve due to the receipt
571 of high-cost support throughout the area for which the ETC
572 seeks designation; (2) the projected start date and
573 completion date for each improvement and the estimated
574 amount of investment for each project that is funded by high-
575 cost support; (3) the specific geographic areas where the
576 improvements will be made; and (4) the estimated
577 population that will be served as a result of the
578 improvements.¹⁷
579

580 Further, US Cellular should commit to provide the following information to
581 the Commission annually:

582 coverage maps detailing the amount of high-cost support
583 received for the past year, how these monies were used to
584 improve its network, and specifically where signal strength,
585 coverage, or capacity has been improved in each wire center
586 in each service area for which funding was received. In
587 addition, an ETC applicant must submit on an annual basis a
588 detailed explanation regarding why any targets established
589 in its five-year improvement plan have not been met.¹⁸
590

¹⁶ Direct Testimony of Conrad J. Hunter, February 10, 2005, lines 165-171.
¹⁷ ETC Order, par. 23.

591 US Cellular's filing falls far short of these marks. It is my opinion that the
592 ETC Order's required showings for the "five-year plan" contain the degree
593 of specificity this Commission should seek from US Cellular when
594 determining if the granting of ETC designation is in the public interest.

595

596 **Q. Please comment on US Cellular's commitments concerning the ETC**
597 **obligation to provide service (upon reasonable request) to any**
598 **customer in the serving area.**

599 A. US Cellular's commitments in this regard, as detailed in lines 116-141 of
600 Mr. Borner's testimony, are appropriate, but are not sufficient to satisfy
601 the public interest concerning this issue. First, I agree with the FCC's
602 determination that a rigorous reporting regime is required to track and
603 illuminate instances where service is not provided upon request (for
604 whatever reason):

605 If an ETC applicant determines that it cannot serve the
606 customer using one or more of these methods, then the ETC
607 must report the unfulfilled request to the Commission within
608 30 days after making such determination.¹⁹
609

610 Further, with respect to annual reporting requirements, a new ETC should
611 file:

612 the number of requests for service from potential customers
613 within its service areas that were unfulfilled for the past year.
614 The ETC must also detail how it attempted to provide service
615 to those potential customers²⁰
616

¹⁸ ETC Order at par. 23.

¹⁹ Id. at par. 22.

617 US Cellular should commit to undertake these actions as a requirement
618 for ETC designation. Moreover, in my opinion, the Commission should
619 require US Cellular to propose and commit to a specific mechanism to
620 ensure that all customers in US Cellular's proposed ETC serving area
621 have reasonable notice that US Cellular is obligated to provide service to
622 any customer upon reasonable request. I believe this should be a
623 precondition for Commission grant of ETC designation, as this clearly
624 would be in the public interest.

625

626 **Q. Please comment on ETC obligations to provide customers with equal**
627 **access to interexchange carriers.**

628 A. Equal access is another issue where I agree with the FCC's
629 determinations. From a public policy perspective, the FCC properly
630 balances the competing considerations of more choice for customers in
631 rural high cost areas with recognition that adequate ongoing protections
632 must be provided for these customers. The ETC Order concludes as
633 follows:

634 Although we do not impose a general equal access
635 requirement on ETC applicants at this time, ETC applicants
636 should acknowledge that we may require them to provide
637 equal access to long distance carriers in their designated
638 service area in the event that no other ETC is providing
639 equal access within the service area.²¹
640

641 I believe such acknowledgement by US Cellular is an appropriate

²⁰ ETC Order at par 69.

²¹ Id. at par. 35.

642 precondition for ETC designation. To my knowledge, it has not yet
643 proffered such an acknowledgement.

644

645 As mentioned previously, I believe a major objective of proper
646 Commission policy concerning any new ETC designations should be to
647 require the applicant to prepare for POLR responsibilities if needed in the
648 future. The FCC's approach concerning equal access responsibilities is
649 consistent with this. At the same time, where two ETCs compete in the
650 same area, the Commission can rely, to at least some extent, upon the
651 workings of customer choice. Equal access may be a good example of
652 this. If granted ETC status, US Cellular apparently would not offer equal
653 access to interexchange carriers on a presubscribed basis, as do
654 incumbent ILECs. If the choice of presubscribed interexchange carrier is
655 important to a consumer, US Cellular is unlikely to gain that customer, and
656 thus would not receive the associated universal service support.
657 Conversely, if free choice in a presubscribed interexchange carrier is not
658 important to a customer (or the lack thereof is outweighed by other
659 aspects of US Cellular's service), he or she might subscribe to US
660 Cellular's service. Customers generally will not take service from a newly
661 designated ETC unless they find it beneficial and in their own interest to
662 do so.

663

664 **Q. Please comment on the principle of overall competitive neutrality or**
665 **“parity” as applied to ETCs.**

666 A. The FCC has promulgated the following principle concerning competitive
667 neutrality and universal service support:

668 Universal service support mechanisms and rules should be
669 competitively neutral. In this context, competitive neutrality
670 means that universal service support mechanisms and rules
671 neither unfairly advantage nor disadvantage one provider
672 over another, and neither unfairly favor nor disfavor one
673 technology over another.²²

674
675 This can be expressed as follows: there should be a “level playing field”
676 upon which ETCs compete. The equal access example aptly illustrates
677 proper application of this principle. In my opinion, the Commission need
678 not and should not apply an absolute “parity” principle to each individual
679 attribute or ETC obligation or requirement. As with the equal access
680 example, variation between carriers can and should be allowed. Such
681 variation is wholly consistent with overall competitive neutrality. It clearly
682 would not serve the public interest to require absolute uniformity between
683 carrier offerings. Similarly, it would not serve the public interest to require
684 absolute uniformity in regulatory requirements applied to different types of
685 carriers, or carriers in differing competitive positions. I believe the public
686 interest requires that the Commission ensure that, when taken together
687 and considered in aggregate, its ETC rules and requirements are
688 competitively neutral overall, and overall do not unfairly disadvantage or
689 advantage specific providers, types of providers or technologies.

690

691 **Q. Do you have any concluding remarks?**

692 A. Yes. I believe that Staff's direct testimony demonstrates serious
693 deficiencies in US Cellular's application for ETC designation. In sum,
694 based on the current record, Staff recommends rejection of US Cellular's
695 application.

696

697 **Q. Does this conclude your testimony?**

698 A. Yes.

²² Federal Communications Commission, Report and Order, CC Docket No. 96-45, Released May 8, 1997 at par. 47.