

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1084

In the Matter of

UNITED STATES CELLULAR
CORPORATION.

Application for Designation as an Eligible
Telecommunications Carrier, Pursuant to the
Telecommunications Act of 1996, (UM 1084)

STAFF'S FURTHER CLOSING BRIEF

Administrative Law Judge Christina Smith

Staff respectfully submits this Further Closing Brief:

Issue 1: Is it in the public interest to grant federal Eligible Telecommunications Carrier (ETC) status to United States Cellular Corporation (USCC) in rural service areas? After performing its analysis of the facts, including analysis consistent with the FCC's *Highland Cellular* analysis, Staff has determined the evidence demonstrates designating USCC as a federal ETC in the identified¹ wire centers of rural telephone companies serves the public interest and furthers the goals of universal service.² In order to ensure USCC remains committed to the goals of universal service, Staff recommends additional recertification requirements be imposed as outlined below. These additional requirements include demonstrating advertising across the entirety of the granted area, including portions where service is provided by resale, as well as evidence establishing a good faith effort to provide service to all parties requesting it, even in areas where service is provided through resale.

¹ Staff refers to the wire centers identified in Attachment A, Table 1, revised May 24, 2004, to the Supplemental Filing of United States Cellular Corporation Regarding Updated List of Wire Centers and Population Density Data (USCC's Supplemental Filing).

² Staff also recommends granting ETC designation in the non-rural wire centers of Verizon and Qwest although the wire centers are not listed in Attachment A to USCC's Supplemental Filing. Staff recommends USCC again supplement Attachment A to include such wire centers.

Issue 2: Do the commercial mobile radio services of USCC comply with the requirements of 47 C.F.R. §54.101? The evidence demonstrates USCC, a commercial mobile radio service (CMRS) carrier, has satisfied the requirements of 47 C.F.R. §54.101. The additional reporting requirements will insure USCC continues to meet these obligations. These factors were addressed in Staff's earlier briefings and the *Highland Cellular* decision does not require additional analysis.³ Staff, however, recommends additional requirements be imposed to ensure USCC complies with its obligation to advertise and provide service throughout its designated ETC area, including those areas where service may only be achieved through resale.

Issue 3: Issues associated with the potential redefinition of rural incumbent local exchange carrier service areas caused by granting USCC ETC status in rural areas. Staff recommends the Commission grant USCC's request to be designated as an ETC throughout its proposed federal ETC service area.⁴ In the study areas of Century Tel, Cascade Utilities and Oregon Tel, it is recommended that the Commission grant USCC's request for service area redefinition contingent upon RCC providing the maps and other information necessary to accomplish such redefinition.⁵

³ Staff recognizes that this Commission is not legally bound by the FCC's decision in *Highland Cellular*. Staff, however, continues to believe following the guidance of the FCC in matter pertaining to the federal Universal Service Fund is a prudent course to pursue.

⁴ Staff refers to the wire centers identified in Attachment A, Table 1, revised May 24, 2004, to USCC's Supplemental Filing as well as the non-rural wire centers of Verizon and Qwest.

⁵ Staff understands USSC may be withdrawing its Application as to the Pine Telephone study area. In the event USSC does not withdraw its Application as to the Pine Telephone study area, Staff recommends denial of the Application for the Pine Telephone study area without prejudice. Staff does so because while USSC proposes to completely serve the Granite and Oxbow wire centers, in reality only a portion of the Granite wire center is covered by USCC's proposed service area while the Oxbow wire center lies completely outside USCC's proposed service area. Hence out of the three wire centers in the Pine Telephone study area (Stices Gulch is not a separate wire center in the Pine Telephone study area), USCC would be serving only a small portion of a single wire center. The FCC in *Highland Cellular* determined incomplete service of a wire center was not in the public interest.

I. USCC HAS MET THE HIGHLAND CELLULAR REQUIREMENTS.

USCC has modified its request for Federal ETC designation such that it will cover the complete study areas of the rural ILECs listed on Attachment A, revised May 24, 2004, with the exception of Century Tel, Cascade Utilities and Oregon Tel. Staff's analysis of the wire centers USCC proposes to serve in these study areas shows there is no cream-skimming effect, intentional or otherwise, and that the *Highland Cellular* requirements have been met.

A. Coverage Over the Entire Study Area.

Staff has fully addressed the public interest analysis for the areas where USCC has committed to serving the entire study areas of the rural ILECs. The FCC has granted ETC designations where the entire study area is covered, and the *Highland Cellular* decision does not require additional analysis.⁶

B. Granting USCC's Federal ETC Application for Certain Wire Centers in the Century Tel Study Area is in the Public Interest, Even Under the Scrutiny of a Highland Cellular Type of Analysis.

USCC proposes to completely serve 34 of the 56 wire centers in the Century Tel study area.⁷ Staff has performed an analysis of the Century Tel study area consistent with the FCC's approach in *Highland Cellular* and recommends the Commission grant USCC's application as to these 34 wire centers in the Century Tel study area.

In *Highland Cellular*, the applicant's licensed service area completely covered six of the thirteen wire centers in the rural study area of Verizon South. However, the FCC

⁶ *Highland Cellular*, ¶ 33 and note 102. See also *Federal-State Joint Board on Universal Service, Virginia Cellular, LCC Petition for Designation as an Eligible Telecommunications Carrier for the State of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, ¶ 37 (rel. Jan. 22, 2004) (*Virginia Cellular*).

⁷ Technically, there are only 55 wire centers in the Century Tel study area as the Pilot Rock and Starkey wire centers are actually but a single wire center. However, since the parties have been referring to them individually and have provided separate information for Pilot Rock and Starkey, Staff also will refer to them separately to avoid any confusion.

denied ETC status to Highland Cellular in the rural study area of Verizon South after the FCC concluded Highland Cellular would be serving only the low-cost customers in the study area. Even though two of the wire centers served by Highland Cellular had population densities of 18 and 22 persons per square mile, the FCC concluded that the other four wire centers served by Highland Cellular were the four highest density “and thus presumably lowest-cost wire centers in Verizon South’s study area.” The FCC determined “94 percent of Highland Cellular’s potential customers in Verizon South’s study area would be located in [four of the six wire centers served by Highland Cellular].” The FCC denied the application as to all six wire centers in the Verizon South study area.⁸

As mentioned in Note 85 of the *Highland Cellular* Order, Verizon South had 13 wire centers. In paragraph 31 of the *Highland Cellular* Order, the FCC noted that 94% of Highland Cellular’s potential customers were located in the four highest density, and presumably lowest cost, wire centers in Verizon South’s study area. Using the same analysis,⁹ Staff determined it must determine the percentage of potential customers for the 17 most dense wire centers in Century Tel’s study area.¹⁰ Staff found that USCC intends to serve only six of the seventeen highest density wire center in the Century Tel study area.¹¹ Therefore, of the 29,266 access lines in the 17 highest density wire centers in the Century Tel study area, USCC will serve only 10,635 access lines, or 36% -- a far cry from the 94% in *Highland Cellular*.

⁸ *Highland Cellular*, ¶ 31.

⁹ The 4 highest density wire centers divided by the total 13 wire centers in Verizon South’s study area equals 30 percent.

¹⁰ 56 wire centers multiplied by 30 percent equals 17 wire centers.

¹¹ John Day wire center (8th highest density with 2,356 access lines), Burns wire center (9th highest density with 3,410 access lines), Drain wire center (12th highest density with 1179 access lines), Merrill wire center (13th highest density with 966 access lines), Malin wire center (16th highest density with 663 access lines) and Glide wire center (17th highest density with 1635 access lines).

As previously mentioned, the FCC has reasoned that population and telecommunication costs are inversely proportional, meaning: areas with a higher population will be lower cost areas while, conversely, sparsely populated areas will have higher telecommunications costs. In this case, the 34 wire centers in the Century Tel study area which USCC proposes to serve contain an average 2.37 access lines per square mile while the remaining 22 wire centers in the Century Tel study area have an average 3.67 access lines per square mile.¹² Thus, the wire centers in the Century Tel study area which USCC proposes to serve are significantly less dense (and, therefore, more costly) than the remaining wire centers in the Century Tel study area. Indeed, the seven most dense wire centers in Century Tel's study area are outside of USCC's proposed service area.¹³

The available data in this case shows the average cost per Century Tel access line in the wire centers RCC proposes to serve is \$68.88 compared to an average cost for the remaining Century Tel access lines of \$45.38.¹⁴ Which means the wire centers RCC proposes to serve are 51% more costly than the rest of the wire centers in the Century Tel study area. Moreover, using the information presented in Attachment B-2 to USCC's Supplemental Filing, USCC seeks to serve only 38.6% of Century Tel's access lines (29,266/75,882). However, these access lines represent 49% of the aggregate monthly cost (\$2.112M/4.323M), demonstrating USCC is seeking to serve low density and high-cost wire centers.¹⁵ There is no cream-skimming effect here, and no reason to deny the Application as to the 42 wire centers in the Century Tel study area.

¹² Exhibit OTA/25, Exhibit RCC/44 and Attachment B to USCC's Supplemental Filing.

¹³ *Id.*

¹⁴ Exhibit OTA/44 and Attachments C-1 and C-2 to USCC's Supplemental Filing.

¹⁵ *Id.*

C. Granting USCC's Federal ETC Application for Certain Wire Centers in the Cascade Utilities Study Area is in the Public Interest, Even Under the Scrutiny of a *Highland Cellular* Type of Analysis.

USCC proposes to completely serve 4 of the 10 wire centers in the Cascade Utilities study area. Staff has performed an analysis of the Cascade Utilities study area consistent with the FCC's approach in *Highland Cellular* and recommends the Commission grant USCC's application as to these 4 wire centers in the Cascade Utilities study area.

The evidence reveals USCC is proposing to serve less dense and, therefore, higher cost wire centers within the Cascade Utilities study area. The information provided in Attachments F-1 and F-2 to USCC's Supplemental Filing shows the average density of the wire centers USCC will serve is 4.67 persons/sq. mile compared to 13.23 persons/sq. mile in the wire centers USCC will not be serving.¹⁶ Staff concludes there is no cream-skimming effect, and no reason to deny the Application as to the 4 wire centers in the Cascade Utilities study area.

D. Granting USCC's Federal ETC Application for Certain Wire Centers in the Oregon Tel Study Area is in the Public Interest, Even Under the Scrutiny of a *Highland Cellular* Type of Analysis.

USCC proposes to completely serve 3 of the 5 wire centers in the Oregon Tel study area. Staff has performed an analysis of the Oregon Tel study area consistent with the FCC's approach in *Highland Cellular* and recommends the Commission grant USCC's application as to the 3 wire centers in the Oregon Tel study area.

The evidence reveals all the wire centers in Oregon Tel's study area have very low densities ranging from 0.3 households/sq. mile to 3.1 households/sq. mile.¹⁷ Staff

¹⁶ See also Exhibit OTA/15 and Brown/115. Attachments E-1 and E-2 contain information provided by OTA witness Brown. Staff notes that this less complete information also supports grant of the Application by showing USCC intends to serve less dense areas of the study area.

¹⁷ Attachment G-1 and G-2 to USCC's Supplemental Filing, Exhibit OTA/15 and Brown/115.

determined that the households in the two highest density wire centers USSC proposes to serve represent 79% of the total households USSC intends to serve in the Oregon Tel study area,¹⁸ significantly lower than the 94% found in the *Highland Cellular* case. Moreover, as Staff has stressed throughout this docket, disaggregation remains a viable option for Oregon Tel and other rural ILECs who believe substantial cream-skimming exists. Staff concludes there is no reason to deny the Application as to the 3 wire centers in the Oregon Tel study area.

II. ADDITIONAL REPORTING AND OTHER REQUIREMENTS.¹⁹

As set forth in earlier briefing, Staff has proposed a number of additional requirements be placed on USCC as a condition of granting its Application. Staff believes further requirements should be placed on USCC to ensure it meets its recently stated commitment to serve entire wire centers, even portions outside its CGSA. Specifically, Staff recommends USCC be required to demonstrate as part of its annual certification that USCC has offered and advertised the supported services throughout the designated area, including those portions outside USCC's CGSA. Additionally, Staff recommends that USCC be required to provide information on the number of requests for service received from outside its CGSA but within its ETC designated area, the disposition of such requests and, if service is not provided to persons requesting service, why service was not provided.

III. CONCLUSION.

Staff recommends USCC's application be granted for the wire centers set forth in Attachments A-1 and A-2 to USCC's Supplemental Filing, as well as the non-rural wire centers of Verizon and Qwest. Staff further recommends that USCC be ordered to

¹⁸ *Id.* There are 1235 households in the Mt Vernon (589) and Prairie City (646) wire centers. This amount represents 79% of the total 1556 households USSC intends to serve.

¹⁹ Staff intends to seek similar reporting requirements in Docket UM 1083.

prepare the documentation and maps necessary to effectuate redefinition. Finally, Staff recommends the grant be conditioned upon USCC's compliance with the following additional reporting requirements during the annual certification process. Specifically, as set forth in Staff's Reply Testimony, pp. 25:3-28:7 and this brief, Staff recommends USCC be required to provide by approximately July 15 of each year, a sworn affidavit to the Commission attesting to: (1) USCC's use of federal USF support during the previous year; (2) Line counts for federal USF supported services, itemized by rural ILEC wire center, as of December 31 of the preceding year; (3) The amount of federal USF support USCC received for operations in Oregon during the period January 1 through December 31 of the preceding year; (4) A description of how the federal USF support was used in the previous year;²⁰ (5) An estimate of the federal USF support to be received during the current year and a detailed budget of how such support is expected to be used,²¹ (6) documentation establishing USCC advertised the supported services throughout the entire designated area; and (7) as to requests for service coming from areas within USCC's designated area but outside its CSGA, a report listing the number of requests and, for requests where service was not provided, the reason(s) service was not provided.

Because Staff wants to ensure USCC fulfills its obligation to advertise and provide the supported services throughout its designated service area, even if this means through resale, Staff recommends USCC also be required to file an affidavit from an USCC company official as a part of the annual certification process that **either**: (1) USCC has resale agreements in place that cover the portions of wire centers that are within its ETC boundary but beyond the scope of its service; **or** (2) USCC has not received any requests

²⁰ For expenses such as maintenance and provisioning, the information should be segregated by major expense category. For investments, this information should be segregated by asset type and the rural ILEC wire center where the investment was made.

²¹ For expenses such as maintenance and provisioning, the information should be segregated by major expense category. For investments, this information should be segregated by asset type and the rural ILEC wire center where the investment is planned to be made.

for service in portions of wire centers that are within its ETC boundary but beyond the scope of its service that are not covered by resale agreements. If USCC has received requests for service in portions of wire centers that are within its ETC boundary but beyond the scope of its service, USCC will, as part of the annual certification process, provide: 1) a description of the steps taken by USCC to obtain a resale agreement with other telecommunications service providers in order to provide service to the requesting parties; 2) whether each party requesting service eventually received such service via USCC acting in the capacity of a reseller; and 3) USCC's estimated timeframe for negotiating a resale agreements in each wire center where it was unable to accommodate a request for service because USCC had no existing resale agreement in place. If certification of a resale agreement is made and someone challenges the existence of an agreement, Staff will conduct an *in camera* review to confirm the accuracy of the certification. USCC will be asked to provide this information with the understanding that such a review would be covered by a nondisclosure agreement or through the use of Commission subpoena and protective order to preserve the confidentiality of the resale agreement.

DATED this 28th day of June 2004.

Respectfully submitted,

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