

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

In the Matter of the Application for Temporary)	
Waiver of the 4 CSR 240-31.120(1)(A) State)	<u>File No. IO-2017-0120</u>
Lifeline Program Eligibility Criteria)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation states:

1. On October 25, 2016, a large group of telecommunications companies filed a joint application asking the Commission to temporarily waive application of the Commission's state Lifeline Program eligibility criteria when upcoming changes to the federal Lifeline Program eligibility criteria become effective, so that only those state requirements consistent with the revised federal criteria will apply until the Commission updates its rules to again mirror the federal criteria.

2. As the attached Memorandum describes, the Staff generally supports the Commission granting the requested waivers, with certain limitations. Those are:

a. That the waivers go into effect on December 2, 2016, unless the FCC waives application of its new rules in Missouri prior to that date. If the FCC does grant such a waiver, then these waivers should go into effect at the expiration of the FCC's waiver, without requiring further action by the telecommunications companies.

b. That the waivers will be in effect until the Commission amends its rules to comport with the federal changes to the Lifeline eligibility criteria.

c. That the waivers shall apply to all Missouri Eligible Telecommunications Companies. If the Commission determines that it is unable to so generally waive its rules, then it should establish an expedited procedure whereby an ETC may elect the waiver by filing a Notice with the Commission.

3. The Staff supports granting the requested waivers of 4 CSR 240-31.120(1)(A)(4, 6 and 7).

4. The Staff does not support granting the requested waiver of 4 CSR 240-31.130(2)(C), because it does not believe that the rule, as it presently is written, conflicts with the FCC's Lifeline Port Freeze Rule. The Missouri rule requires that service be extended in compliance with all federal Lifeline requirements, which would necessarily require compliance with the Lifeline Port Freeze Rule. In addition, the rule to be waived is far broader than the Port Freeze Rule, the request for waiver has not been narrowed to the perceived conflict and is, therefore, overbroad.

WHEREFORE, Staff recommends that the Commission grant the requested waivers of 4 CSR 240-31.120(1)(A)(4, 6 and 7) and deny the requested waiver of 4 CSR 240-31.130(2)(C).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 8th day of November, 2016.

A handwritten signature in black ink, appearing to be "C. M. Daly", is written over the text of the certificate.

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. IO-2017-0120

From: Kari Salsman
John Van Eschen
Telecommunications Department

Subject: Staff's Recommendation for the Application of a Temporary Waiver of State Lifeline Program Eligibility Criteria

Date: November 3, 2016

On October 24, 2016 a group of incumbent Eligible Telecommunication Carriers (ETCs) requested a temporary waiver of certain Missouri Lifeline Program rules. This request was made on the basis that Missouri rules will not be consistent with the Federal Communications Commission's (FCC's) new federal rules set to go into effect December 2, 2016. Specifically, the applicant is requesting a waiver of 4 CSR 240-31.120(1)(A)(4, 6, and 7) and 4 CSR 240-31.130(2)(C), stating granting the waivers will help minimize customer confusion, avoid conflicts between state and federal Lifeline eligibility rules, and relieve administrative burdens that would arise from program inconsistencies.

In general, Staff supports the request to waive 4 CSR 240-31.120(1)(A)(4, 6, and 7).¹ Missouri is in the early stages of the rulemaking process to revise rules applicable to the Lifeline program.² Missouri's rules will not be revised by the date new federal Lifeline eligibility criteria go into effect. Consequently Missouri's rules relating to Lifeline eligibility criteria will be inconsistent with federal rules on and after December 2, 2016.

A waiver of existing state or new federal rules applicable to Lifeline eligibility criteria is needed to avoid inconsistencies at the state and federal level. One complicating factor is the FCC is considering a pending petition by the United States Telecom Association (US Telecom) to temporarily waive the new federal Lifeline eligibility criteria rules from going into effect if certain conditions are met.³ If the FCC grants this petition then the pending application with the Missouri Commission to waive 4 CSR 240-31.120(1)(A)(4,6, and 7) is unnecessary. On the other hand if the FCC fails to grant US Telecom's petition then Staff recommends the Commission waive 4 CSR 240-31.120(1)(A)(4, 6, and 7).⁴ Staff recommends the Missouri

¹ The FCC is eliminating three existing eligibility criteria: Low-Income Home Energy Assistance Program (LIHEAP), National School Lunch Program's Free Lunch Program (NSLP), and Temporary Assistance for Needy Families (TANF)

² Case No. TW-2017-0078.

³ The Missouri Commission recently filed comments in October 2016 supporting US Telecom's petition. See WC Docket No. 11-42; In the Matter of Lifeline and Link Up Reform and Modernization.

⁴ The FCC is adding the Veterans and Survivors Pension Benefit program as new Lifeline eligibility qualifying criteria. Existing rule 4 CSR 240-31.120(1)(A)8 contemplates Lifeline eligibility criteria will include any other eligibility criteria as determined by the FCC. Therefore, this new eligibility criteria will apply to Missouri ETCs even if the Missouri Commission waives 4 CSR 240-31.120(1)(A)(4, 6, and 7).

Commission grant the request to waive 4 CSR 240-31.120(1)(A)(4, 6, and 7) with the following three conditions:

- The Missouri Commission's waiver goes into effect December 2, 2016 unless the FCC waives the new federal Lifeline eligibility criteria from going into effect for Missouri.
- The Missouri Commission's waiver is temporary and remains in effect until Missouri Commission rules are revised to be consistent with the new federal Lifeline eligibility criteria.
- The Missouri Commission's waiver of 4 CSR 240-31.120(1)(A)(4, 6, and 7) shall be applicable for all ETCs.

If granted, Staff recommends the Commission send a notice of its decision to all Missouri ETCs.

Staff does not support the request to waive 4 CSR 240-31.130(2)(C). This rule requires a company to offer voice telephony service to all subscribers in the ETC's service area upon reasonable request. The applicant states the new FCC Lifeline port freeze rule may conflict with this rule. The FCC's port freeze rule requires Lifeline subscribers to remain with their service provider for a minimum period before they can transfer their benefit to another provider. In Staff's opinion, the new FCC port freeze rule does not conflict with 4 CSR 240-31.130(2)(C) when weighed with existing Missouri rule 4 CSR 240-31.130(2)(F). This Missouri rule requires companies to comply with all federal Lifeline requirements which in Staff's opinion includes the FCC's new port freeze rule. From this standpoint waiving 4 CSR 240-31.130(2)(C) is unnecessary in order for an ETC to comply with the FCC's new Lifeline port freeze requirements.