

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

In the Matter of a Proposed Rulemaking to)	
Amend 4 CSR 240-3.570, Eligibility for)	Case No. TX-2008-0122
Funding -- Low-Income Customers and)	
Disabled Customers)	

AT&T MISSOURI'S COMMENTS

AT&T Missouri¹ respectfully submits these comments in response to the Commission's proposed amendments to its Missouri Universal Service Fund ("MoUSF") eligibility rules applicable to low-income and disabled customers. 33 Mo. Reg. 26-29 (January 2, 2008).

SUMMARY

The Commission's current low-income and disabled support eligibility rules require that an applicant self-certify, in writing and under penalty of perjury, that he or she is eligible for support. They also provide an audit mechanism to validate an applicant's participation in a qualifying program. These rules have been in place for almost six years, and there is no support in the record for concluding that changed circumstances warrant placing further obligations upon applicants for support. Even if it were appropriate to further validate an applicant's eligibility, it would be sufficient to simply require that the applicant authorize, in writing, his or her benefit program to confirm actual program participation to the Commission or its Staff. That authorization and confirmation, without more, would provide a sufficient auditable "validation" of program participation.

Given the lack of record support to alter the current rules, and further given the availability of the proposed "authorization in writing" alternative, the Commission should reject Staff's further proposal to require that a low-income or disabled applicant also provide his or her telecommunications company actual "documentation of participation" in the benefit program.

¹ Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T Missouri").

The proposal is unwarranted by any facts reflected in the record and would be unfairly burdensome in both time and expense to both low-income and disabled applicants and telecommunications companies. At a minimum, it would place an obstacle in the way of an individual otherwise qualified for MoUSF support, a particularly unwelcome development given the current difficult economic environment. For these reasons, the Commission should reject the proposed “documentation of participation” requirements, as has the FCC.

Finally, there is no need for applications used by telecommunications companies to be “board-approved.” In all events, since each company has its own internal channels which address applicants’ questions and accept completed applications, and each has different (often automated) document preparation systems, the board should not impose a single application form on all companies. Rather, each company should be permitted to prepare its own form (containing company-specific phone and other contact information) and submit it to the board for its approval with respect only to the form’s substantive content.

ANALYSIS

1. The Commission Instituted the Current Self-Certification Rules Almost Six Years Ago After Careful Study.

Several years ago, the Commission established the low-income/disabled fund, following much work done by the Staff, a technical committee and multiple parties. This work came to fruition in the Commission’s March 21, 2002, Report and Order Establishing Low-Income Disabled Fund.² Among other things, the Report and Order put in place two rules, one directed to what applicants must submit in support of their request for support, and the other directed to audit procedures designed to validate applicants’ eligibility for support.

² In the Matter of an Investigation into Various issues related to the Missouri Universal Service Fund, Case No. TO-98-329, Report and Order Establishing Low-Income Disabled Fund, March 21, 2002 (“Report and Order”).

The first rule, which is still in place today (4 CSR 240-31.050(3)(D)), states that the applicant “shall certify in writing” that he or she is eligible for support and must “certify under penalty of perjury that the individual receives benefits from one of the qualifying programs and identify the program or programs from which that individual receives benefits.” However, due to “considerable discussion regarding the potential implications for error that could result from the self-certification rule and how these errors could be minimized[,]”³ a second rule was adopted. That rule, which is also still in place today (4 CSR 240-31.050(3)(H)), authorizes the Fund Administrator “to conduct audits of individual self-certification using records that can be lawfully made available from the administrators of qualifying programs.” The Commission concluded that this rule could “effectively address the issue.”⁴ Most importantly for present purposes, nothing in the record of this particular proceeding suggests that the rule has not done so.

Telecommunications companies have accepted “self-certification” applications since 2002. The record does not reflect whether the Fund Administrator has actually sought to exercise the audit authority provided it by the Commission’s rule. These circumstances notwithstanding, the newly proposed rules mark a dramatic departure from the current rules.

2. The Notices of Finding of Necessity and Proposed Rulemaking Are Deficient.

Missouri statutes require that the basis of a proposed rulemaking be explained in a manner that permits meaningful comment. Section 536.016.1, RSMo⁵ requires “a finding that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority.” Section 536.021.2 requires that a notice of proposed rulemaking contain an

³ Report and Order, p. 7.

⁴ Report and Order, p. 7.

⁵ All statutory references herein are intended to refer to the Revised Statutes of Missouri (“RSMo”).

explanation of any proposed rule or change to an existing rule, as well as “the reasons therefor[.]” Neither statutory requirement has been met here.

The Commission’s December 3, 2007, Notice of Finding and Necessity (“Notice”) recites that the proposed amendment “is necessary in that it establishes a clear mechanism whereby the Commission can ensure that support for low-income customers is properly given.”⁶ It refers to the Staff’s October 24 Motion for Final Order of Rulemaking (“Motion”) in which Staff recites that “[a]n audit of the Missouri USF program, completed by McBride Lock and Associates, indicated that greater assurances of participant eligibility would be desirable to better ensure the appropriate disbursement of USF monies.”⁷ The January 2, 2008, Notice of Proposed Rulemaking (“NPRM”) states that the purpose of the proposed rules is to establish an audit process “in response to a recommendation of the [MoUSF] external auditor.”⁸

Although the basis for the proposed rules rests upon an audit report, no audit report is contained in the record, nor does the record contain its findings or underlying analysis. Thus, the Notice is deficient in that it is not accompanied by an adequate finding that the rule is “necessary” to carry out permissible statutory purposes, and the NPRM is deficient in that the reason for the proposed rules, i.e., a “recommendation” of an “external auditor,” is not contained in the record.

AT&T Missouri is aware of a September 19, 2006 report issued by McBride Lock and Associates (over a year before Staff’s Motion was filed), but even if this is the report which precipitated this proceeding, it does not cure the above deficiencies. Rather, it merely amplifies them. The report suggests that “1% of the customers eligible for the program should be

⁶ Notice, p. 1. The notice does not reference disabled customers, though the proposed rules are expressly directed to both low-income and disabled customers.

⁷ Motion, p. 1.

⁸ 33 Mo. Reg. at 26.

validated annually[,]" but its basis for this is limited to assertions that "no validation of the customers [sic] eligibility has been performed" and that such a requirement, among others, "are contractual requirements of the Fund Administrator as directed by the Board."

The report does not explain why the present "self-certification under penalty of perjury" requirement and the Fund Administrator's audit authority are inadequate to validate an individual's eligibility (or even that the auditor was even aware of their existence). Nor does the report at all explain why the Fund Administrator performed "no validation," though the current rules clearly confer such authority. Moreover, there is no analysis of other available, and more measured, validation approaches short of requiring an applicant to provide "documentation of participation" -- such as merely requiring the applicant to authorize his or her benefit program to directly confirm program participation to the Commission's Staff. Finally, although the report suggests that a validation process is called for by "requirements of the Fund Administrator as directed by the Board," no such authority appears in the Commission's rules directed to either the Board (4 CSR 240-31.020) or the Fund Administrator (4 CSR 240-31.030).

In sum, the record is not sufficient to permit meaningful comment on, much less adoption of, any of the proposed rules. Rather, each of the above concerns needs to be squarely addressed. The report on which the Commission relied in issuing its Notice and NPRM should be made a matter of public record. Its author should provide an opinion, supported by analysis, as to whether the Commission's self-certification and audit rules adopted almost six years ago remain (or are no longer) a sufficient form of validation. If the opinion is that the present rules are not sufficient, then the auditor should provide an opinion, again supported by analysis, as to whether measures short of requiring documentation of participation, such as merely requiring authorizations of consent to confirm, would permit sufficient validation of an individual's

program participation and, if not, why not. Only then can the Commission begin to formulate a reasoned decision, based upon substantial evidence on the record as a whole, whether these and other facts and circumstances warrant any rule changes.

3. Applicants Should Not Be Required to Provide “Documentation of Participation.”

The Commission’s present rules, or even a more limited rule change than that proposed by the Commission, would sufficiently ensure that only qualified individuals receive MoUSF low-income or disabled support without unnecessarily imposing an additional obstacle to eligible individuals. Applicants should not also be required to provide “documentation of participation” to their telecommunications service provider.

First, as noted earlier, the Commission’s present self-certification and audit rules already provide a methodology by which to validate an individual’s eligibility for low-income or disabled support. Stated another way, these rules already establish “a clear mechanism whereby the Commission can ensure that support for low-income customers is properly given.”⁹ AT&T Missouri is unaware of any facts (and none are reflected in the record) suggesting that these rules are ineffective in ensuring that only those actually qualified for low-income or disabled support receive such support. Absent such facts, there is no sufficient basis for placing greater obligations upon applicants for support than already exist.

Second, one of the Commission’s proposed rules, if adopted, would adequately meet the purported need to validate an applicant’s eligibility without also requiring him or her to provide documentation of participation. The proposed rule would require the applicant to sign an authorization that would allow that individual’s receipt of program benefits to be directly

⁹ Notice, p. 1. The notice does not reference disabled customers, though it is clear on their face that the proposed rules are directed to both low-income and disabled customers.

confirmed by the appropriate benefit program to the Commission or its Staff. Specifically, proposed rule 31.050(3)(D)1(C) would require an applicant to:

Sign an authorization allowing, for the duration of the applicant's participation in the low-income or disabled support program, the appropriate federal, state or local agency to confirm to the commission or its staff that the individual or a dependent residing in the individual's household participates in the qualifying program(s) at the time the application is made, and subsequently deemed necessary for purposes of annual verification or other examination of eligibility[.] (emphasis added)

Though the need for such an authorization is not supported by any evidence in the record known to AT&T Missouri, the Commission's adoption of such a rule would provide even greater assurances of eligibility than the rules allow for today, but without the additional, and more onerous, step of requiring applicants to provide various types of documentation demonstrating participation in a qualifying program. The "authorization" contemplated by such a rule could be embedded within the MoUSF low-income/disabled self-certification application form that telecommunications companies provide their customers.

Upon the Commission's or its Staff's request, companies could provide a sample (for example 1%) of the names of applicants who have submitted an application and the benefit program for which each self-certified when filling out and signing the application for support. Alternatively, if the applications themselves were produced, the benefit program identified by the applicant would be readily ascertainable, as it appears on AT&T Missouri's pre-printed single-page form application (in a "check-the-box" format). The Commission or Staff could use the data provided to verify eligibility by working directly with the appropriate federal, state or local

agency,¹⁰ which could definitively confirm actual program participation. This process would proceed without any need for telecommunications companies to collect, process or otherwise handle documentation of participation in various benefit programs, or to participate in a related audit, having nothing to do with their business of providing telecommunications services to the public.

AT&T Missouri knows of no reason (and certainly none presently appears in the record) as to why this form of validation process would fall short of ensuring that only qualified individuals receive MoUSF low-income or disabled support. This validation process also would require less administration and maintenance than the proposed amendment and would be less burdensome on the individual applicant.

Third, the Commission's proposed "documentation of participation" rules are directly at odds with the FCC's own rules applicable to program-based Lifeline qualification, which do not require any sort of "documentation of participation." To the contrary, the FCC agreed with the Joint Board that "the current certification procedures for program-based qualification are sufficient. Current rules require self-certification, under penalty of perjury, for the federal default states." WC Docket 03-109, Report and Order, 19 FCC Rcd 8302 (2004), para. 27. Its reasoning is sound, straightforward, and equally applicable to this proceeding:

We agree with the Joint Board that the ease of self-certification encourages eligible consumers to participate in Lifeline/Link-Up. In addition, self-certification imposes minimal burdens on consumers. Finally, we agree with the Joint Board that participation in need-based programs is easily verified. Accordingly, we conclude, consistent with the views of the Joint Board, that

¹⁰ The tools necessary to validate the genuineness of an applicant's self-certification would be provided by the Commission's proposed rule requiring an applicant to sign an authorization to confirm program participation, together with the Commission's present rule (4 CSR 240-31.050(3)(H)) permitting the Commission or its Staff to conduct audits "using records that can be lawfully made available from the agencies administering qualifying programs." AT&T Missouri is not aware of any information to the effect that a program benefit agency would refuse to honor an individual's signed authorization.

certification of qualified program participation, under penalty of perjury, serves as an effective disincentive to abuse the system at this time.¹¹

Finally, imposition of a “documentation of participation” requirement would make telecommunications companies the recipients of sensitive, private information which is neither necessary nor useful to their business of providing telecommunications service. Companies should not be required to collect such information, especially where the transfer of information from the applicant to the company, as well as the company’s processing and handling thereafter, would offer but another possible risk of unwanted disclosure or theft or loss of very sensitive personal information, thus requiring companies to institute and fund measures to minimize these possibilities.

In sum, the Commission should not adopt either of the proposed changes to rule 31.050(3)(D)2 or 31.050(3)(H). There is no evidence to suggest that the Commission’s present “self-certification” rules -- like those of the FCC -- have proven insufficient to ensure that only qualified individuals receive MoUSF low-income or disabled support. Alternatively, the Commission could require applicants to sign an authorization allowing the Commission or its Staff to confirm that individual’s actual receipt of program benefits with the benefit program itself without any involvement of telecommunications companies.

Imposition of the “documentation of participation” requirement would provide little if any added audit capability, and would add a burdensome layer of complexity. It could potentially discourage eligible individuals from obtaining the benefits of MoUSF assistance. Moreover, privacy concerns militate against erecting a process that offers the risk of personal information being compromised without a good reason.

¹¹ Although the FCC adopted procedures to “document” income-based Lifeline eligibility in default states, (id., para. 28), Missouri is not a default state and has not adopted income-based Lifeline eligibility. Equally important, the FCC specifically imposed this additional requirement on income-based Lifeline eligibility only because of its view that “[b]ecause it is easier to verify qualifying program enrollment, we share the Joint Board’s concerns that there may be a greater potential for fraud and abuse when an individual self-certifies his/her income eligibility.” Id.

4. The Application Need Not Be “Board-Approved.”

Proposed rule 31.050(3)(D) would require an applicant to complete a “board-approved” application. The Commission need not adopt this rule. To the extent that the form currently posted on the Fund Administrator’s (Central Bank) website¹² is board-approved, the form nevertheless (1) does not provide a telephone number to which questions may be addressed, (2) does not provide a fax number or mailing address for completed applications, and (3) does not provide a telecommunications company’s logo, which is appropriate for inclusion. Moreover, it does not inform applicants who are disabled customers that if they receive Supplemental Security Income (“SSI”), then they should, for example, “please instead check the ‘SSI’ box under the Lifeline program, which offers a higher discount.”¹³ Another consideration is that each company has different (often automated) document preparation systems.

For these reasons, the board should not impose a single application form on all companies. Rather, each company should be permitted to prepare its own form (containing company-specific information) and submit it to the board for its approval with respect only to the form’s substantive content.

¹² See, <https://www.missouriusf.com/mousf.nsf/LinksView/C727E6475244739486257346005943CF?OpenDocument>.

¹³ A “disabled customer” is defined as any customer “who requests or receives residential essential local telecommunications service and who meets the definition of ‘disabled’ set out in section 660.100.2, RSMo 2000 or a customer who has a dependent that meets the definition of ‘disabled’ set out in section 660.100.2 and is residing in the customer’s household.” 4 CSR 240-31.010(4). Section 660.100.2, in turn, references “federal supplemental security income benefits” (among other benefits). A “low-income customer” is defined as any customer “who requests or receives residential essential local telecommunications service and who participates or has a dependent residing in the customer’s household who participates in . . . Supplementary Security Income (SSI) [among other benefits].” 4 CSR 240-31.010(9).

CONCLUSION

AT&T Missouri appreciates the opportunity to present its views and comments on the proposed rules, and respectfully submits that the proposed rules be withdrawn or modified in light of them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on all counsel of record by e-mail on February 5, 2008


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