BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Rulemaking	)	
to the Missouri Universal Service Fund	)	**File No. TX-2013-0324**

COMMENTS OF THE MISSOURI CABLE TELECOMMUNICATIONS ASSOCIATION

Comes now the Missouri Cable Telecommunications Association (the "MCTA") and submits these Comments in response to the Missouri Public Service Commission's (the "Commission" or "MoPSC") proposed revisions of the Commission's Chapter 31 rules, 4 CSR 240-31.010 *et seq.*

I. MCTA Generally Supports the Commission's Efforts to Revise the Chapter 31 Rules

The MCTA supports the Commission's proposal to delete references in the rules to the high-cost component of the Missouri Universal Service Fund (the "MoUSF"). The MoUSF currently subsidizes only the state lifeline and disabled telephone service programs. The Commission has appropriately concluded that it is unlikely that a state high-cost program will be created.

In addition, the MCTA appreciates the Commission's efforts to implement recent Missouri statutory enactments and the Federal Communications Commission's lifeline reform directives. Those federal and state developments support the Commission's efforts to change references in the rules from "telecommunications companies" to "certificated telecommunications companies" and "interconnected VoIP service providers" ("IVoIP service providers"), to more accurately define those providers that contribute to the MoUSF and/or that may be designated as eligible telecommunications carriers ("ETCs"). The proposed rules

appropriately recognize that IVoIP service providers, which by law must contribute to the MoUSF, may seek designation as ETCs for the purpose of receiving both federal and state universal service subsidies.

With respect to identifying other providers entitled or obligated to participate in the MoUSF, while the Commission does not propose to require CMRS carriers to contribute to the MoUSF,[1] the Commission also does not propose that CMRS carriers will receive subsidies from the MoUSF.[2] The MCTA takes no position at this time whether the Commission has the authority to designate CMRS carriers as ETCs or direct CMRS carriers to contribute to the MoUSF. However, it would not be fair to allow CMRS carriers to receive subsidies from the MoUSF without also contributing to the MoUSF.[3]

As discussed below, the MCTA recommends that several of the proposed revisions to the Chapter 31 rules be further modified. Other aspects of the proposed revisions raise issues that, while not the subjects of extended discussion in these Comments, the Commission should also consider.[4]

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[1] *See* proposed 4 CSR 240-31.010(1):

> Assessable carrier-All registered interconnected VoiP providers and certificated telecommunications companies except: pay telephone providers, shared tenant services (STS) providers, and those companies with annual net jurisdictional revenue below a de minimis level of twenty-four thousand dollars ($24,000).

[2] *See* proposed 4 CSR 240-31.090(1): "Only ETCs certificated as a telecommunications company or registered as a IVoiP provider are eligible to seek disbursements from the MoUSF . . ."

[3] Section 392.248.2 RSMo requires the MoUSF to be governed "in a manner that does not . . . subject a telecommunications company to prejudice or disadvantage." The providers that contribute to the MoUSF – telecommunications companies regulated by the Commission and IVoIP service providers registered with the Commission – would be prejudiced and disadvantaged if the Commission were to allow CMRS carriers to receive subsidies from the MoUSF, but not require such carriers to contribute to the MoUSF.

[4] MCTA notes that HB 331, as enacted, sets forth new section 392.611 RSMo, which generally establishes that telecommunications companies are no longer subject to any rule or order of the Commission under Chapters 386 and 392 that impose duties, obligations, conditions, or regulations on retail telecommunications services provided to end user customers. Under section 392.611 RSMo, carrier of last resort ("COLR") obligations presumably would no longer exist in Missouri. However, as the Commission is aware, HB 331 has not yet gone into effect. Therefore, COLR obligations have not yet been abolished in the state. Moreover, an exception to retail deregulation under HB 331 would be an ILEC's "elect[tion] to remain subject to certain statutes, rules, or orders by notification to the commission," which election could include remaining subject to continuing COLR obligations. In such event,

II. The Definition of "Net Jurisdictional Revenue" Should Be Clarified (4 CSR 240-31.010 Definitions)

The current definition of the "net jurisdictional revenues" subject to assessment is:

> Net jurisdictional revenue shall include all revenues received by an applicable carrier from retail customers resulting from the provision of intrastate regulated telecommunications services, but shall not include revenue from payphone operations, taxes, and uncollectibles. The revenues received from another provider of telecommunications services for the provision of switched and special exchange access services and for the provision of unbundled network elements and resold services shall not be considered retail revenues.

The definition of "net jurisdictional revenues" the Commission proposes in this proceeding is:

> Net jurisdictional revenue shall include all retail revenues resulting from the provision of intrastate regulated telecommunications and IVoiP services, but shall not include revenue from payphone operations, taxes, and uncollectibles. Wholesale revenues received from another provider of voice telephony service for the provision of switched and special exchange access services and for the provision of unbundled network elements and resold services shall not be considered retail revenues.

The MCTA does not disagree with the Commission's concept of basing "net jurisdictional revenue" on retail *revenues* rather than retail *customers*. A revenue-based definition is consistent with the requirement of section 392.248.3 RSMo that MoUSF assessments be based on "Missouri jurisdictional telecommunications services revenue and other nondiscriminatory factors as determined by the commission." However, language excluding wholesale revenues

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section 392.248.5 RSMo ("[i]n local exchange areas subject to competition for essential local telecommunications service, the incumbent local exchange telecommunications company shall be designated as a carrier of last resort for essential local telecommunications service") would continue to require COLR designations for the ILEC. For these reasons, MCTA suggests that the Commission consider not repealing at this time the requirement in 4 CSR 240-31.040 requiring ILECs to be designated as COLRs.

In addition, 4 CSR 240-31.020(E) and (F) appear to create possible conflicts of interest for Commission employees. The Missouri Universal Service Board (the "Board") consists of Commissioners and the Public Counsel. Section 392.248.1 RSMo. 4 CSR 240-31.020(E) provides that Commission Staff, which includes the Commission's General Counsel and other attorneys employed by the Commission, or the Public Counsel (which represents the public and the interests of utility customers in proceedings before the Commission pursuant to section 386.700 RSMo *et seq.*) will be designated to serve as the Board's general counsel. 4 CSR 240-31.020(F) provides that the Board may designate one or more members of the Commission Staff to serve as the Board's staff. Conflicts of interest regarding the Commission Staff's duties may arise when the Commission reviews the actions of the Board pursuant to 4 CSR 240-31.110(3).

from net jurisdictional revenues in the proposed definition could cause questions to arise in administering the rule because the exclusionary language does not encompass *all* revenues *other than* retail revenues. Specifically, by referring *only* to wholesale revenue relating to "voice telephony service" the proposed rule creates uncertainty regarding the regulatory treatment of wholesale revenue relating to *non-voice* services. The proposed rule would be clearer if it were amended as follows:

> Net jurisdictional revenue shall include all retail revenues resulting from the provision of intrastate regulated telecommunications and IVoiP services, but shall not include revenue from payphone operations, taxes, and uncollectibles. Wholesale revenues received from another provider of [voice] telephony service, including for the provision of switched and special exchange access services and for the provision of unbundled network elements and resold services, shall not be considered retail revenues.[5]

In addition, the Commission in its order approving the revisions to the Chapter 31 rules should expressly recognize that a "safe harbor" may be used consistent with a provider's compliance with the federal universal service program. Some certificated telecommunications companies and IVoIP service providers may not be able to determine actual net jurisdictional revenues. If a telecommunications provider is reporting interstate communications and international communications revenues for assessment for the federal universal service fund based on a percentage determined by an FCC safe-harbor, traffic study, or other accepted means for reporting assessable revenues, then the telecommunications provider should be able to apply the inverse of that percentage to its Missouri services receipts.

[5] Additional terms proposed by the MCTA in these Comments are set forth as underlines. Language that the MCTA proposes be deleted is set forth in [brackets].

III. The Proposed Rules Should Not Mandate Surcharges on End User Customers (4 CSR 240-31.060 The MoUSF Assessment)

As is the case in the existing rules, the proposed rules state that an end user surcharge "shall [be] place[d] on each retail end-user customer's bill."[6] The MCTA assumes that the Commission intends no change to the existing requirement that a surcharge be imposed in addition to the end user's service charges. However, the MCTA respectfully suggests that an end user surcharge should be an option, *not* a requirement. Section 392.248 RSMo, the statute establishing the MoUSF, does not require that assessments for the MoUSF be in the form of a surcharge that is imposed in addition to the end user's service charges. Indeed, section 392.248.3 RSMo expressly addresses telecommunication carrier assessments, not surcharges. Moreover, although section 392.550 RSMo, in reference to IVoIP, refers to MoUSF "surcharges," the operative phrase in that statute merely requires IVoIP service providers to collect and remit "fees and surcharges in the same manner as are charged and collected upon end-user customers of local exchange telecommunications service and remitted by local exchange telecommunications companies." Section 392.550 RSMo does not dictate the manner of collection, other than that IVoIP service providers and telecommunications companies be treated the same for the collection and remittance of certain enumerated taxes, fees and surcharges. §392.550.3(5) RSMo. In short, the reference in the statute is to "*fees and* surcharges" (emphasis added), which contemplates that collections of funds for the Commission's programs are not limited as a matter of law to customer surcharges.

It is noteworthy that the Commission proposes to revise subpart (5) of 4 CSR 240-31.060 to allow carriers to "remit all funds received via the surcharge" *or* to "remit an amount based solely on applying the percentage assessment to the carrier's Missouri net jurisdictional

[6] The relevant provisions of 4 CSR 240-31.065 would be subsumed by 4 CSR 240-31.060.

revenue." Thus, the Commission appears to recognize, consistent with the Federal Communications Commission's (the "FCC") administration of the federal universal service fund, that surcharges are *not* required in order for carriers to appropriately identify and remit funds to the MoUSF administrator. 47 CFR § 54.712(a) (Contributor recovery of universal service costs from end users) provides:

> Federal universal service contribution costs *may* be recovered through interstate telecommunications-related charges to end users. If a contributor *chooses* to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

(Emphasis added.) Uniformity in such respect between the MoUSF and the federal universal service fund would be beneficial to carriers, which must assess and remit revenues for universal service and other public programs nationally.

In addition, MCTA suggests that subpart (5)(B) of 4 CSR 240-31.060 as proposed be further revised to retain the language of the present rule that allows quarterly remittances to the fund administrator as an option to monthly remittances. This option is important to those companies for which monthly remittances are impracticable or would be subject to errors in calculation based on the timing of collections and calculations of collected amounts.

Accordingly, the MCTA recommends amending proposed 4 CSR 240-31.060 in the following respects:

> (4) Collection of MoUSF assessment from customers.
> [(A)] If an[All] assessable carrier[s] chooses to recover its MoUSF assessment through a line item [shall place] on a[each] retail end-user customer's bill, then:
> (A) [a]The surcharge shall equal [to] the percentage assessment ordered by the commission.
> (B) The surcharge shall be [appear as a separate line item] detailed as 'Missouri Universal Service Fund[.]' or otherwise identified as a state regulatory fee or charge on the customer's bill.

(C) The surcharge percentage shall be applied to each customer's total charges associated with the carrier's net jurisdictional revenues.
[(D) A carrier shall not recover its MoUSF assessment in any way other than through this surcharge.]

(5) Remitting MoUSF assessment.
(A) All assessable carriers shall remit in either of the following methods:
1. A[The] carrier may remit all funds received as a result of the application of the [MoUSF] surcharge as provided in (4) above, in full satisfaction of the[a] carrier's annual percentage assessment, or
2. A[the] carrier may remit an amount based solely on applying the percentage assessment to the carrier's Missouri net jurisdictional revenue. If this method is used, no refunds shall be given if a carrier subsequently finds it remitted more than it collected.
(B) The MoUSFA shall publish on the MoUSF web site remittance procedures and deadlines for remitting payments. Remittances shall generally be made on a monthly basis; however, quarterly payments may be allowed as described on the MoUSF web site.
(C) Failure to submit payments in a timely manner shall result in late payment fees as determined by the board. Waiver of such late payment fees may be considered if an explanation of why a waiver should be granted is submitted in writing to the MoUSFA within thirty days of being notified of the initial late payment fee. Waivers shall only be granted by the board or as delegated by the board to its staff.

The foregoing changes recommended by the MCTA are consistent with 392.248 RSMo and the Commission's policies in administering the MoUSF.

IV. The proposed rules should restore a provision recognizing a competitor's ability to object to disbursements to other carriers (4 CSR 240-31.090 Disbursements of MoUSF Funds)

The rule revisions propose to delete the following requirement from the current rules: "Any interested entity that objects to a disbursement from the MoUSF by the Fund Administrator may seek review of that disbursement by the board and/or the commission pursuant to 4 CSR 240-31. 110 of these rules." This provision ought to be restored to assure that interested entities may object to and seek review of MoUSF disbursements.

Respectfully submitted,

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