

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

In the Matter of Staff's Investigation into the)	
Practices and Procedures of Companies Offering)	File No. TO-2012-0364
Low Income (Lifeline) or Disabled Universal)	
Service Fund Discounts in the State of Missouri)	

Further Comments of T-Mobile Central, LLC
on Staff Draft Rulemaking Proposals

Comes Now T-Mobile Central, LLC (T-Mobile or Company) and for its Further Comments on Staff Draft Rulemaking Proposals, states:

1. On August 14, 2012, the Staff of the Missouri Public Service Commission ("Staff") filed a "Draft Rule Proposal" which included a set of proposed revisions to Chapter 31 of 4 CSR 240, concerning the federal and Missouri Universal Service Funds. The Staff requested that interested parties submit comments on the draft rule changes in the repository docket above by September 7, 2012, which was subsequently changed to September 14th.

2. On August 29, 2012, Staff conducted a workshop during which T-Mobile and other telecommunications providers and associations representing providers provided oral comments and asked clarifying questions of Staff. Staff supplied revised rule modifications after the workshop. T-Mobile's Further Comments are based on the assumption that the post-workshop revisions circulated by Staff represent the operative Staff rule proposals at this time.

3. These written comments supplement oral comments previously provided by T-Mobile, and will focus almost exclusively on proposed rule changes to 4 CSR 240 - 31.120 and 31.130. Attached as Exhibit A are proposed modifications to the Staff proposed rewrite of those rules.

4. In its May 7, 2012 Motion, the Staff noted that the purpose of its proposed updates to the Commission's rules governing ETC designation and Universal Service Fund ("USF") programs, including the Missouri USF, are "designed to combat potential fraudulent activity and to comply with the changes brought about by the FCC's USF reform Order." Staff Draft Rule Proposal, para. 7.

5. As expressed by several providers during the workshop, many of the Staff proposed rules that reference the Federal Communications Commission ("FCC") rules attempt to restate those rules and result in some ambiguity in Staff's proposed rules. T-Mobile believes a simpler starting point for many of the proposed changes is merely to reference the FCC rules, and only expand on those rules to the extent the Missouri rules would include additional requirements, or specifically identify particular Missouri program requirements.

6. For example, Staff Proposed Rule 240-31.120(1)(A) properly notes that the Lifeline eligibility criteria is set forth in 47 C.F.R. 54.409(a)(1)-(2). However, the Staff proposed rule lists the current federal programs already listed in the referenced FCC rule in addition to naming the Missouri Medicaid program equivalent. Other than identifying Missouri Healthnet, the listing of the programs already set forth in the FCC rules appears redundant.

7. Practically speaking, the approach of merely referencing the FCC rules would render further Missouri rulemaking unnecessary were the FCC to modify its Lifeline eligibility criteria, such as adding a new qualifying program to or deleting a program from the list, as is currently under consideration. The revised Staff proposal represents an improvement over the original because it contemplates the addition of new qualifying programs under the FCC rules.

8. T-Mobile's suggestions with respect to specific provisions proposed by Staff are as follows:

A. 4 CSR 240-31.120(1)(B).

Staff's original proposed rule reads as follows:

(B) The Lifeline program is funded by the FUSF and the MoUSF. An ETC participating in the Lifeline program shall comply with *this* rule even if it solely receives only federal support.

1. The FUSF Lifeline funding is \$9.25 per month or as otherwise specified in 47 CFR 54.403. This funding is available to all designated ETCs.

2. The MoUSF Lifeline funding is \$3.50 per month per Lifeline subscriber; however, MoUSF support is limited to certificated telecommunications companies and registered IVoIP providers. MoUSF support is not available to wireless carriers.

(emphasis added).

The revised Staff proposal substantially cleans up the language.

(B) The Lifeline program is funded by the FUSF and the MoUSF. An ETC participating in the Lifeline program shall comply with this rule even if it solely receives only federal support.

1. The FUSF Lifeline funding is specified in 47 CFR 54.403. This funding is available to all designated ETCs.

2. The MoUSF Lifeline funding is \$3.50 per month per Lifeline subscriber for ETCs certificated as a telecommunications company or registered as an IVoIP provider.

T-Mobile believes this modified version adequately addresses its concern that the original Staff proposal could have been interpreted as requiring a federal Lifeline only provider such as T-Mobile to comply with subsection 2, which would have required T-Mobile to apply \$3.50 MoUSF to a federal lifeline only subscriber.

B. 4 CSR 240-31.120(1)(C).

Staff's proposed rule on eligibility recertification reads as follows:

C) An ETC shall annually recertify a subscriber's continued eligibility for participation in the Lifeline program. A subscriber shall submit proof of eligibility at least once every two years unless an ETC has an automated means of verifying subscriber eligibility or alternatively a carrier's annual recertification process is administered by the FUSFA.

Staff did not modify its proposed rule in its post workshop version of its proposed rules. T-Mobile believes the Staff proposed rule is not on all fours with the FCC rule at 47 C.F.R. 54-54.410(f). FCC rule 47 C.F.R. 54-54.410(f)(2)(i-iii) allows an ETC to annually recertify using one of three options:

- Querying an appropriate eligibility database to confirm the subscriber still meets program-based eligibility requirements, and documenting the query results;
- Querying an appropriate income database to confirm the subscriber still meets income-based eligibility requirements, and documenting the query results; or
- Obtaining a signed certification from the subscriber that meets certain certification requirements.

If a carrier does not use either of the first two options to query databases,¹ then the FCC rules would require the ETC to have a signed certification from the customer each year. However, it would appear that the Staff proposed rule allows this option to be done on a biannual rather than annual basis. T-Mobile believes it may be simpler to merely refer to FCC rules on eligibility recertification rather than restate them in Missouri rules to make sure the requirements remain consistent.

¹ While one would expect that larger, more sophisticated ETCs would automate such database queries, it is possible that smaller ETCs may, in fact, have employees manually query the databases. Historically, based on disputes involving RBOC Operational System Support ("OSS"), the view of a competitive provider is that any time a person is physically involved in a process, that process is not considered an "automated" process. Instead, that would be considered a "manual" process even if that person is interacting with a database on the ILEC's system. An "automated process" is one where a system is programmed to run a query and use the query results in the next step in the process without human intervention. Thus, the use of the term "automated means" in the Staff proposed rule needs further definition. Simply referencing the FCC rules avoids this issue.

C. 4 CSR 240-31.120(2)(D).

Staff's proposed rule on de-enrollment was substantially modified in the post-workshop draft to read as follows:

(D) De-enrollment for failure to re-certify. If a Lifeline or Disabled subscriber fails to respond to the ETC's attempts to obtain applicable re-certifications then the ETC shall provide the subscriber with written notification of impending termination. The notification shall be in clear, easily understood language separate from the subscriber's monthly bill, if one is provided. Notice shall be provided if the subscriber fails to meet any of the following re-certifications:

1. The subscriber fails to respond to applicable annual re-certification of the subscriber's continued eligibility.

2. A subscriber fails to provide the annual one-per-household re-certification as required by 47 CFR 54.410(f).

3. A subscriber who relies on a temporary address and fails to respond to the ETC's address re-certification attempts pursuant to 47 CFR 54.410(g).

A subscriber shall be allowed 30-days following the date of the impending termination notification to appropriately respond. If a subscriber fails to appropriately respond then the ETC shall de-enroll the subscriber within five business days after the expiration of 30-day response period.

The revised Staff rule proposal more closely follows the FCC's rule, which remedies several T-Mobile concerns with the original proposal. However, one concern remains unresolved. The FCC rules require an ETC to provide "written" notice of the impending de-enrollment if state dispute procedures governing Lifeline require written notice. CMRS providers are not subject to the Commission's rules governing telecommunications services in 4 CSR 240-33.080. Further, there appears to be no separate rule governing Lifeline disputes between ETCs and consumers. Thus, requiring CMRS providers to provide a "written" notice of impending de-enrollment exceeds the requirements of the federal rules.

T-Mobile prefers to have the option to use electronic means to communicate the notice of impending de-enrollment. The Missouri rules contemplate that communicating electronically to

consumers is an acceptable means of communicating with consumers. *See*, 4 CSR 240-33.070(8).

D. 4 CSR 240-31.130(1)(C)(3).

Staff's proposed rule requires an ETC applicant to:

3. Provide the details of any matter brought in the last ten years by any state or federal regulatory or law enforcement agency against the applicant, any person or entity that holds more than a 10% ownership interest in the applicant, any affiliated company (any company under common management ownership or control or that, by contract or other agreement performs any of the functions necessary to the applicant's Lifeline Service) that involves any aspect of state or federal Universal Service funds and programs or any matter involving fraud, deceit, perjury, stealing or the omission or misstatement of material fact in connection with a commercial transaction. Such matters include, but are not limited to, formal or informal notices of investigation, indictment, the filing of a complaint, a civil lawsuit, revocation or suspension proceeding, action for penalties or damages, or criminal charges. Such details include, but are not limited to, copies of complaints or other such pleadings and the filed responses thereto, as well as any orders, decisions or other determinations of culpability, including those that exonerate the subject of any wrongdoing.

T-Mobile believes the proposed rule is overly broad and will be unduly burdensome for ETC applicants.

The telecommunications industry has experienced, and will likely continue to experience, consolidation. Thus, an ETC applicant may be comprised of several combined telecom entities, each with their own history of litigation, complaints, etc. If that is the case, it is very likely that ETC applicant would be unable to produce the required data since the Applicant would likely not have secured this information from an acquired entity.

Typically, an acquiring carrier performs due diligence to ensure that it is not acquiring unknown risks, including such items as litigation or regulatory compliance. However, due diligence is invariably limited by reasonable parameters such as a maximum look back time

period and a materiality threshold. The Staff proposed rule proposes a look back period of ten years, but it does not have a materiality threshold.

The ten year look back exceeds by several years a typical due diligence period. Thus, an ETC applicant will likely never have received information from an acquired entity concerning their history with state or federal Universal Service funds and programs or any matter involving fraud, deceit, perjury, stealing or the omission or misstatement of material fact in connection with a commercial transaction. The reason being that such dated activity has very little relevance. The management responsible for activities that far back may be completely different than current management, and therefore, is not evidence that such transgressions would occur in the future.

Similarly, the lack of a materiality criteria means that an applicant would have to report absolutely every litigation or complaint, regardless of how much was at stake. Thus, if a customer complained about a \$10 overcharge on their bill alleging fraud or deceit, the proposed rule would require an ETC applicant to provide detailed information about all such minor billing disputes. Again, it is extremely unlikely that an ETC applicant would have ever gathered information about such miniscule events that far back in time in their due diligence process. The amount in question is simply too small to be relevant for risk evaluation purposes, and the lack of a materiality floor is equally problematic in this instance.

For national carriers, this kind of open ended reporting requirement regarding litigation involving alleged “fraud, deceit, perjury, stealing or the omission or misstatement of material fact in connection with a commercial transaction” without a materiality threshold would be an extraordinary burden. Large carriers are subject to literally hundreds of lawsuits. Someone would have to review every filed lawsuit that to determine if any of these allegations were

present for the prior ten years, irrespective of whether the lawsuits being reviewed had merit and were dismissed.

The breadth of proceedings for which an Applicant would be required to provide details by the proposed rule is also overbroad. "Any matter ... that involves *any* aspect of state or federal Universal Service funds and programs" could be construed to mean that an applicant would have to disclose the details of a USF audit related to reporting of revenues for USF assessment purposes. T-Mobile does not believe that audits of revenue reporting have any bearing on whether an applicant is a worthy candidate for ETC status.

The goal of having an ETC applicant disclose relevant problem areas is reasonable. However, the proposed rule is so broad that compliance may be impossible, or will make it so difficult that potential applicants will be discouraged to apply for ETC status in Missouri, which could negatively impact Missouri consumers. The proposed rule should be significantly narrowed to make require a more reasonable level of disclosure about an applicant's compliance and complaint/litigation history.

E. 4 CSR 240-31.130(3)(A)(1)(D).

Staff's proposed rule provides that an officer of the ETC must certify that:

D. The company complies with all requirements associated with the National Lifeline Accountability Database as identified in 47 CFR 54.404.

It may be prudent to include qualifying language in the rule (*e.g.* "when implemented") to account for the possibility that the national database may not be operational in time in 2013 for an ETC officer to swear the ETC is in compliance with all requirements.

F. 4 CSR 240-31.020(9).

Staff's proposed rule reads as follows:

(9) The board may establish a form for ETCs to use to enroll end-users in the Lifeline or Disabled programs and shall post a generic acceptable form on its web site. All ETCs shall use the form established by the board. If a company wants to provide additional information for the applicant, such as that information which is interpreted by the company as required by an FCC compliance order, then a company may be permitted to attach an additional sheet(s) to the form. At least one business day prior to use, the ETC shall submit a copy of such additional sheet(s) to the board staff. If the additional sheet(s) is changed, the ETC shall submit a copy of that additional sheet(s) to the board staff with the changes highlighted, at least one business day prior to the use of the changed form. There is no obligation on the board or its staff to review or approve such sheet(s).

Despite nearly uniform opposition expressed by carriers at the workshop, Staff did not make any material change to its proposed rule.

The Staff justification for mandating use of a Missouri USF Board approved application form is that Staff does not have adequate resources to review and approve use of non-standard forms. That justification assumes that there is a need for an approval process involving Staff and the MO USF Board. Lifeline ETCs already have an adequate incentive to use a Lifeline Application form that fully complies with the requirements of the FCC's rules. If an application form is found to be deficient, then the ETC may be subject to potential forfeitures of USF funds.

The requirement for an ETC to use the MO specific form will also make it more complex and costly for a national ETC to make its Lifeline Application form available in electronic format to be completed via the world wide web. That result may harm a number of prospective eligible Lifeline customers that have difficulty finding transportation to an ETC's retail outlet. Moreover, the requirement advantages ETCs with a larger number of retail outlets over those that have fewer outlets where the Missouri approved form would be available.

Finally, T-Mobile continues to have substantive concerns with the MO USF Board approved form itself. The form requires the customer to acknowledge the following:

I will be de-enrolled from the Lifeline program and my service deactivated if my service fails to be used for a 60-day time period. Using the service includes completion of an outbound call, purchase of additional usage, or answering an incoming call from a party not affiliated with this company.

This statement is untrue for Lifeline subscribers to T-Mobile because it assesses and collects a monthly fee for all of its Lifeline service offerings. The misleading statement may unnecessarily confuse eligible Lifeline customers interested in T-Mobile's Lifeline service offerings.

The Missouri Lifeline Application form is also specific to voice offerings. The revised FCC rules make it clear that ETCs may offer a Lifeline discount on voice, data or bundled offerings. ETCs that seek to offer data or bundled offerings in Missouri will be required to use a separate application form. The Lifeline Application form that T-Mobile uses in all other states addresses both voice and data service offerings on the same form.

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Respectfully submitted,

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