

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

In the Matter of a Proposed
Rulemaking to the Missouri
Universal Service Fund

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Case No. TX-2013-0324

**COMMENTS OF THE MISSOURI SMALL TELEPHONE COMPANY GROUP
AND THE MISSOURI INDEPENDENT TELEPHONE COMPANY GROUP**

In response to the Missouri Public Service Commission's ("Commission") *Notice of Proposed Rulemaking*,¹ the Missouri Small Telephone Company Group (STCG) and Missouri Independent Telephone Company Group (MITG),² hereinafter collectively referred to as the "STCG", offer the following comments:

INTRODUCTION

The STCG is made up of thirty-five (35) small telephone companies, each serving between approximately 200 and 15,000 access lines in predominantly rural, high-cost areas within the state of Missouri. The members of the STCG are Eligible Telecommunications Carriers ("ETCs") as defined by the federal Telecommunications Act of 1996 ("the Act"),³ and are "small entities" and "small businesses" as defined by the Federal Communications Commission ("FCC") and Missouri law.⁴

The STCG companies have a long history of providing excellent telecommunications service to rural Missouri. Many of the STCG members have been providing service for over 100 years, and the STCG companies continue to aggressively build out broadband service in rural Missouri. For example, in 2007, the Missouri

¹ MISSOURI REGISTER, Vol. 38, No. 18, September 16, 2013.

² See Attachment A.

³ 47 U.S.C. §153(37) et seq.

⁴ See e.g. §§1.310.4(3) and 536.010(7) RSMo.

Broadband Report issued by Commissioners Robert Clayton III and Steve Gaw stated, “A more in-depth analysis of out-state Missouri suggests that small, rural telecommunications carriers have been more aggressive in offering broadband to customers throughout their service territories than their larger rivals.”⁵

The STCG appreciates the workshop and numerous opportunities for informal comment provided by the Commission that led up to this rulemaking. The STCG also appreciates the hard work of the Commission Staff during the informal comment period.

COMMENTS

1. The Rule Should Retain its Reference to Statutory Language Regarding High Cost Areas and High Cost Support.

A provision to allow Missouri Universal Service Fund (MoUSF) support for carriers that provide service in rural, high cost areas was expressly included in the MoUSF statute at Section 392.248.2 RSMo. Although the MoUSF does not currently provide support for carriers serving high cost rural areas, recent actions by the FCC have significantly reduced federal high-cost support and intercarrier compensation revenues for small rural incumbent local exchange carriers (ILECs).

On November 29, 2012, over seven months after this rulemaking was sent to the Department of Economic Development, the Commission opened a repository docket to evaluate the goals and purposes of the MoUSF in Case No. TW-2014-0012.⁶ In that new case, the STCG and CenturyLink have asked the Commission to consider implementing the “High-Cost” fund component of the MoUSF to ensure the continued

⁵ COMMISSIONERS’ REPORT ON MISSOURI BROADBAND AVAILABILITY, by Commissioners Robert M. Clayton, III and Steve Gaw, issued Sept. 18, 2007. This Report is available on the Commission’s web site at: <http://psc.mo.gov/CMSInternetData/Telecommunications/Broadband%20Report%202007/FINAL%20Broadband%20Report%20Sept%202018%20350pm.pdf>

provision of “reasonably comparable” service where rural ILECs have been adversely affected by the FCC’s actions.⁷ The STCG’s August 30, 2013 comments in Case No. TW-2014-0012 note that high-cost funds have been established in at least 23 other states, including the neighboring states of Arkansas, Illinois, Kansas, Nebraska, and Oklahoma.⁸

Because the question of whether the MoUSF should include support for rural high cost areas is still before the Commission as a live issue, the definitions and “general purpose” language of the rule should continue to include reference to the statutory language on high cost support.

Additionally, as both a practical and procedural matter, the “general purpose” language of the rule should track with the statute and maintain the reference to high cost support even if the specific provisions on high cost support are removed from other parts of the rule.

The STCG proposes that the Commission maintain consistency with the MoUSF statute by amending its proposed Rule revisions to retain the existing “high cost” language as follows:

4 CSR 240-31.010 Definitions. . . .

(5) Eligible Telecommunications Carrier (ETC) – is a carrier designated as such by the Missouri Public Service Commission pursuant to 47 U.S.C. 214(e) and 47 CFR Part 54 Subpart C. ETC designation allows a carrier to receive FUSF support from the high-cost and/or Lifeline programs and **Missouri-approved telecommunications carriers** to

⁶ *In the Matter of a Repository Case in Which to Gather Information About the Lifeline Program and Evaluate the Purposes and Goals of the Missouri Universal Service Fund*, Case No. TW-2014-0012, *Order Opening a Working Case*, issued July 17, 2013.

⁷ See e.g. STATE USF WHITE PAPER: NEW RURAL INVESTMENT CHALLENGES, Ballhoff and Williams, June 2013, <http://www.balhoffrowe.com/pdf/BW%20State%20USF%20White%20Paper%20June%202013.pdf>.

⁸ See e.g. SURVEY OF STATE UNIVERSAL SERVICE FUNDS 2012, National Regulatory Research Institute, July 2012, <https://prodnet.www.neca.org/publicationsdocs/wwpdf/72012nrriusf.pdf>.

receive MoUSF support from the high-cost, Lifeline, or Disabled programs.

. . .

(8) Federal Universal Service Fund (FUSF) – The federal program that, among other things, provides funds to companies that provide service in high cost rural areas and/or offer free or reduced-price voice telephony service to low-income households.

. . .

(14) MoUSF-- refers to the Missouri Universal Service Fund, ~~The various purposes for the MoUSF are~~ which was established by section 392.248, RSMo 2000 ~~The MoUSF is currently~~ to be used for the following purposes:

(A) To ensure the provision of reasonably comparable essential local telecommunications service, as defined in this rule, throughout the state including high cost areas, at just, reasonable, and affordable rates;

(B) to assist low-income customers and disabled customers in obtaining affordable essential telecommunications services; and

(C) to pay the reasonable, audited costs of administering the MoUSF.

The STCG specifically recommends that the word “currently” be stricken from 31.010(14)’s definition of MoUSF and the existing subheadings (A), (B), and (C) be retained so that the rule continues to track with its authorizing statute. With these changes, the rule would continue to mirror the statute rather than abbreviating it.

The STCG does not object to the rescission of subsequent specific language about the High Cost Fund (such as in 31.040). These provisions were created over sixteen (16) years ago and have little, if any, applicability to the current environment given the FCC’s November 2011 *Universal Service and Intercarrier Compensation*

Transformation Order.⁹ Accordingly, it may be most efficient for the Commission to make a fresh start with any High Cost rules that arise from TW-2014-0012.¹⁰

2. Toll Limitation Should Be Defined and the Definitions for Toll Blocking and Toll Control Should Be Retained.

The proposed rule adds language regarding “Toll Limitation” service at 31.010(18) but does not define “Toll Limitation” service. The proposed rule would also delete the existing definitions for “Toll Blocking” and “Toll Control”. Because these terms are all defined in the FCC’s rules, the STCG recommends that the current definitions for “Toll Blocking” and “Toll Control” be retained and a definition for “Toll Limitation” consistent with the FCC rules be added.

Specifically, the STCG recommends that the definition of “Toll Blocking” be retained and numbered as 31.010(18) and the definition of “Toll Control” be added and numbered as 31.010(19). The STCG further recommends that the following definition of “Toll Limitation” service be added as 31.010(20):

Toll limitation – “Toll limitation service” denotes either toll blocking service or toll control service for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, “toll limitation” service denotes both toll blocking service and toll control service.”

This definition is consistent with the FCC’s definition at 47 CFR §54.400(d), and the addition of this definition will add clarity to the rule because “Toll Limitation” is otherwise undefined.

⁹ *In the Matter of Connect America Fund and A National Broadband Plan for Our Future*, WC Docket No. 10-90, GN Docket No. 09-51 et al., *Report and Order and Further Notice of Proposed Rulemaking*, released November 18, 2011.

¹⁰ *In the Matter of a Repository Case in Which to Gather Information About the Lifeline Program and Evaluate the Purposes and Goals of the Missouri Universal Service Fund*, Case No. TW-2014-0012, *Order Opening a Working Case*, issued July 17, 2013.

3. The Commission May Want To Consider More Flexibility for Board-Approved Forms in 4 CSR 240-31.020(9).

The STCG members find value in a Board-approved MoUSF end-user enrollment form. Many of the STCG members operate in Missouri only, and having a Board-approved form for end-users simplifies efforts to enroll customers in the Disabled and Lifeline programs. However, some of the STCG members do operate in other states, so the Commission may wish to consider giving carriers the flexibility to tailor their own form to present for Board approval.

4. Typographical Error in Definition of Eligible Telecommunications Carrier at 240-31.090(1).

The word “Center” should be replaced with the word “Carriers” in the first line of 31.090(1) so that it reads, “Only Eligible Telecommunications Carriers (ETCs) . . .” The inclusion of the word “center” appears to be a typographical error that arose during processing at the Secretary of State’s Office. The Commission’s *Order of Rulemaking* uses the term “ETC”.

5. The Commission Should Harmonize the Lifeline Program and Disabled Program Definitions in 31.120.

The proposed Rule’s definition of the Lifeline program at 31.120(B)2 specifies that MoUSF funding is limited to ETCs that are certified telecommunications companies or registered IVoIP providers. However, the Rule’s definition of the Disabled program at 31.120(C) does not specify that funding is limited to ETCs that are certified telecommunications companies or registered IVoIP providers. The definitions should be harmonized by revising proposed Rule 31.120(C)2 as follows:

The MoUSF provides \$3.50 per month per disabled subscriber; however, MoUSF support is limited to **certificated** telecommunications companies and **registered** interconnected VoIP providers **that have been designated as ETCs**.

This revision should clarify and improve the internal consistency of the rule.

6. The Commission Should Eliminate the Rule's Outdated Reference to Interexchange Services, Directory Assistance, and Operator Services at 4 CSR 240-31.130(3)(A)2.

The proposed Rule contains outdated references to the FCC's prior definition of services designated for USF support. Specifically, 47 CFR §54.101(a) no longer includes "access to interexchange service", "access to directory assistance" or "access to operator services" in its definition of supported services. Accordingly, these references should be removed from the proposed Rule 31.130(3)(A)2 as follows:

~~2. A statement indicating whether the company offers access to interexchange services, directory assistance services and operator services.~~

The subsequent provisions in 31.130(3)(A) should be renumbered accordingly.

7. 4 CSR 240.31-130(3) Should be Updated to Conform with the FCC's New Reporting Requirements and Current PSC Practice.

After the Commission sent its proposed Rule to the Department of Economic Development for review, the FCC implemented an entirely new reporting regimen for ETCs that was codified in the Code of Federal Regulations. Earlier this year, the federal Office of Management and Budget approved a new standard report – Form 481 – for ETCs to comply with the FCC's reporting requirements. Moreover, the FCC's rules require ETCs to provide copies of their Form 481 filings to the Commission. In fact, the Form 481 filings were due to be filed with the Commission by October 15, 2013. The

FCC's Form 481 requires ETCs, among other things, to certify that they: (1) are in compliance with applicable quality of service and consumer protection standards, and (2) are able to function in emergency situations. See Form 481, Lines 500 and 600. Form 481 further requires ETCs to explain how they comply with these FCC rules. See Form 481, Lines 510 and 610. Because of the FCC's intervening rule changes, the language in proposed 240.31-130(3)(B) is duplicative and unnecessary and should therefore be streamlined to recognize the FCC's new reporting requirements.

The STCG recommends revising 4 CSR 240.31-130(3)(B) as follows:

(B) All ETCs receiving high-cost support shall submit, no later than July 1 of each year in order for an ETC to continue to receive high-cost support for the following calendar year, **a copy of the company's annual Form 481 report as required by 47 CFR 54.313 and 54.422** ~~the following additional information with the company's annual filing~~ to the commission's Electronic Filing and Information System. ~~4.~~—An officer of the company shall certify under penalty of perjury that ~~A.~~ all federal high-cost support provided to the company within Missouri was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

~~B. The company complies with applicable service quality standards and consumer protection rules. Wireless ETCs must also certify continued compliance with the latest edition of the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service; and~~

~~C. The company is able to function in emergency situations as contemplated by 47 CFR 54.202(a)(2).~~

~~2. A copy of the company's annual reporting information as required by 47 CFR 54.313.~~

~~3. An explanation of how the company monitors, if at all, the quality of service provided by the company for voice telephony service. This explanation shall include whether the company monitors the timeliness of providing service and remedying out-of-service conditions. The company shall provide results of its most recent consecutive three (3) months of quality of service measurements, if available.~~

~~4. Identify the applicable study area code(s) of the company's high-cost service area in Missouri.~~

Additionally, the Commission's rules, statutes, and Electronic Filing and Information System currently designate and treat annual ETC/USF filings as confidential. The existing law and practice should be acknowledged and continued in the proposed rules by revising 4 CSR 240.31-130(3)(C) as follows:

(C) **Annual Form 481 filings shall be deemed confidential by the Commission and treated accordingly. ~~[An ETC may ensure confidentiality by classifying the filing as confidential.]~~**

CONCLUSION

The STCG appreciates the opportunity comment on these proposed Rule changes. The STCG requests that the Commission retain the “purpose” language in 4 CSR 240-31.010 about the High Cost Fund in order to keep the rule consistent with the statute, and the STCG urges the Commission to revisit its investigation into a MoUSF High Cost Fund in response to recent decisions by the FCC that have drastically reduced federal USF support and intercarrier compensation revenues for small, rural carriers. The STCG also requests that the Commission adopt its other proposed changes, clarifications, and edits to the proposed Rule.

Respectfully submitted,

/s/ Brian T. McCartney

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was served electronically on this 16th day of October, 2013, to:

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/s/ Brian T. McCartney

ATTACHMENT A

STCG

BPS Telephone Company
Citizens Telephone Company of Higginsville, Mo.
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Telephone Company
Goodman Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corporation
Green Hills Telephone Corporation
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
K.L.M. Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
Mark Twain Rural Telephone Company
McDonald County Telephone Company
Miller Telephone Company
New Florence Telephone Company
New London Telephone Company
Northeast Missouri Rural Telephone Company
Orchard Farm Telephone Company
Oregon Farmers Mutual Telephone Company
Ozark Telephone Company
Peace Valley Telephone Company, Inc.
Rock Port Telephone Company
Seneca Telephone Company
Steelville Telephone Exchange, Inc.
Stoutland Telephone Company

MITG

Alma Communications Company d/b/a Alma Telephone Company
Chariton Valley Telephone Corporation
Choctaw Telephone Company
MoKAN DIAL Inc.
Otelco Mid-Missouri, LLC