MTIA

Missouri Telecommunications Industry Association

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President

October 31, 2007

The Honorable Cully Dale
Secretary, Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102

**RE: Case No. TX-2008-0007**
**4 CSR 240-3.570**

Dear Judge Dale:

Thank you for the opportunity to provide comments regarding the Commission's proposed changes to its Eligible Telecommunications Carrier (ETC) rule. As you know, members of the Missouri Telecommunications Industry Association (MTIA) participated in a number of industry-staff meetings as well as meetings with the individual Commissioners to review and discuss various provisions of this proposed rule during its development. The MTIA appreciates this process and thanks the Commissioners and Staff for their willingness to meet to discuss the rule. Although some changes have been made to make the current draft less onerous on incumbent local exchange carriers (ILECs), the MTIA still has the following concerns.

First, as a threshold matter, the MTIA is concerned that imposing new rules on ILECs is a step in the wrong direction at this time. The Commission is currently in the process of evaluating its rules of procedure generally and its rules for telecommunications carriers specifically. In fact, the telecommunications department is examining its present rules to determine whether many of its telecommunications rules can be streamlined or withdrawn altogether. The existing ILEC certification process with Staff is working, and it allows for flexibility at a time when issues surrounding the federal USF are very much in flux. A better approach would be to continue the existing process with Staff. In sum, the proposed rule is unnecessary and runs counter to the Commission's efforts to streamline its rules of procedure and rules for telecommunications companies.

Second, the MTIA objects to the provisions in proposed rule 4 CSR 240-3.570(C) because the new requirements that the proposed rule would impose on ILECs

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are subjective and inconsistent with federal requirements. For example, the proposed rule 4 CSR 240-3.570(C)(2) would require companies to "submit a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ILECs service area access to telecommunications and information services that are reasonably comparable to those in urban areas." The "no greater than necessary" language in this proposed rule would establish a standard that is both subjective and inconsistent with federal requirements. The federal Telecommunications Act and the FCC have already established the framework for use in assessing the reasonableness of expenditures, and that framework requires a determination of whether the money spent is appropriate – not necessary – under the federal standards. Therefore, this provision could lead to disputes or misunderstandings between the companies and Staff over a "necessary" standard that is not clearly defined. Also, this requirement unnecessarily duplicates the federal process whereby ILECs specifically demonstrate that they have complied with the federal standards by submitting detailed costs studies pursuant to FCC accounting rules. In short, the result will be regulatory uncertainty and unnecessary regulatory burdens.

Third, the proposed rule 4 CSR 240-3.570(C)(3) would require ILECs to "submit a demonstration that the receipt of high cost funding was used only for the provision, maintenance, and upgrading of facilities and services for which support is intended in the Missouri service area in which ETC designation is granted." The problem here is that ILECs are already required to do this at the federal level in order to receive federal USF support. By submitting detailed studies of actually-incurred costs, the ILECs have already demonstrated that the investments have been made for the appropriate facilities and services. Layering a state-specific rule containing differing definitions and provisions over this existing federal procedure could require duplication of efforts or, even worse, inconsistent requirements. This is especially true in light of the current uncertainty involving the federal requirements for the USF fund. As a result, the proposed rules will cause carriers difficulty and uncertainty in following both sets of requirements. The limited management resources of small carriers will be taxed, and carriers operating in several states are likely to see steep compliance costs.

Fourth, the proposed rule's requirements for ETCs are somewhat confusing in their treatment of alternative local exchange carriers ("CLECs"), commercial mobile radio service providers ("CMRS" or "wireless carriers"), and ILECs. Currently, 4 CSR 240-3.570(1)(C) states that the term "Eligible Telecommunications Carrier" shall refer to alternative local exchange carriers and commercial mobile radio service providers, but does not include incumbent local exchange carriers "unless otherwise specified". Subsequent provisions of the rule apply to ILEC ETCs only if the words "including incumbent local exchange telecommunications carriers" appear in specific provisions. As a consequence, the only provisions of the rule that apply to ILEC ETCs are Section

4(A) Annual Affidavit, Section 4(H) assisting in rural/urban rate comparison, Section 5(C) prohibiting false record entries, and Section 5(E) non-certification for non-compliance.

The proposed changes to the rule make the ETC rule's distinctions between competitive ETCs and ILEC ETCs less clear and more confusing. This is particularly true of Section 4, the Annual Filing Requirements for ETCs. Each subsection of Section 4 must be reviewed to determine that only subsections A and H apply to ILEC ETCs. When reviewing the proposed amendments to Section 4 for purposes of preparing these comments, this lack of separation created confusion as to the applicability of differing provisions of proposed Sections 4 and 5. This confusion arose even though ILEC annual ETC filings were made very recently. Confusion will likely continue unless the structure of the rule is changed. Therefore, if the Commission does choose to make modifications to it ETC rule, then the MTIA respectfully suggests that the rule be modified and restructured by placing all obligations applicable only to competitive ETCs in one part of the rule, all obligations applicable only to ILEC ETCs in a second part of the rule, and the obligations applicable to both in a third part of the rule.

In summary, the MTIA respectfully requests that the Commission reconsider its proposed rule and refrain from adopting the rule at this time. First, no showing has been made of any need to adopt the rule, and the existing process is working well. Moreover, the Commission is presently in the process of examining and attempting to streamline its existing rules of procedure and rules for telecommunications companies, so the proposed rule additions are a step in the wrong direction. Second, the proposed new requirements for ILECs are vague and subjective, and they will lead to regulatory uncertainty and unneeded regulatory burdens. Third, the rules may lead to unnecessary duplication of efforts or inconsistency between state and federal requirements. Fourth, the rule's various definitions of and provisions related to ILECs, CLECs, and CMRS providers seeking ETC certification are confusing and unclear, and they should be clarified in the event that the Commission does choose to amend its ETC rule. Accordingly, the MTIA respectfully requests that the Commission refrain from adopting the rule at this time.

Sincerely,

Richard Telthorst, CAE
President

cc: Commissioners and Advisors