

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

In the Matter of Proposed Amendments to)
the Missouri Universal Service Fund)
Rules

Case No. TX-2005-0460

MOTION FOR A NOTICE FINDING NECESSITY FOR RULEMAKING

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through its Office of General Counsel, pursuant to Section 536.016 RSMo. (2000), and submits the attached affidavit to support a finding that it is necessary to amend the rules governing the Missouri Universal Service Fund at 4 CSR 240-31.010, 4 CSR 240-31.030, 4 CSR 240-31.050, 4 CSR 240-31.060 and 4 CSR 240-31.080. This rulemaking is necessary to carry out the purposes of Sections 386.250, 392.185, and 392.248 RSMo. (2000), as well as Section 392.200 RSMo. (Supp. 2004). The Staff hereby moves that the Commission to issue a notice finding a necessity for a rulemaking in this matter.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ David A. Meyer

David A. Meyer
Senior Counsel
Missouri Bar No. 46620

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the Office of the Public Counsel this 29th day of June 2005.

/s/ David A. Meyer

David A. Meyer

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STATE OF MISSOURI)
) ss
COUNTY OF COLE)

AFFIDAVIT OF NATELLE DIETRICH

Natelle Dietrich, of lawful age, on her oath states:

1. I am employed by the Missouri Public Service Commission as Staff Regulatory Economist III.

2. This affidavit supports proposed amendments to the Commission's rules governing the Missouri Universal Service Fund.

3. Section 536.016 RSMo. (2000)¹ provides that a state agency shall propose rules based upon "a finding by the agency that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority."

4. The Federal Communications Commission issued a *Report and Order* in WC Docket 03-109 (*In the Matter of Lifeline and Link-Up*) on April 29, 2004 that modified its Lifeline and Link-up eligibility requirements and created verification and reporting requirements for local exchange carriers in an effort to minimize potential abuse of the programs.

5. The FCC also promulgated rules to put the findings in its *Report and Order* into effect. The modified eligibility requirements are contained in amendments to 47 C.F.R.

¹ All references are to RSMo. (2000) unless otherwise specified.

54.409(b). These requirements went into effect on June 22, 2004. The proposed amendments to 4 CSR 240-31.010 address these changes, and additionally clarify that if customers who request or receive residential essential local telecommunications service have disabled dependents in their household, those customers are eligible to receive Missouri Universal Service Fund support. These changes have already been implemented on a temporary basis by the emergency rule promulgated in Case No. TX-2005-0437.

6. The federal verification and reporting requirements were promulgated in amendments to 47 C.F.R. 54.410, 54.416, and 54.417. These rules were subject to the information collection requirement approval by the Office of Management and Budget. The Office of Management and Budget approved the rules May 26, 2005. Regardless of this delay, the FCC stated in its *Report and Order* that:

37. States and ETCs will be required ... to implement measures to verify continued eligibility for Lifeline/Link-Up under any criteria within one year from the publication of this Order in the Federal Register. Given the flexibility afforded states to develop certification and verification procedures, we conclude that one year should provide more than enough time to come into full compliance with the rules we adopt today. Indeed, we encourage states and ETCs to implement certification and verification measures as quickly as possible, but no later than one year.

The FCC's *Report and Order* was published in the Federal Register on June 22, 2004. The rules in the Federal Register contained the time reference "by one year from the effective date of these rules," but the FCC subsequently issued an Erratum that substituted the phrase "On June 22, 2005" for that language. The proposed amendments to 4 CSR 240-31.050 address these changes, which have already been implemented on a temporary basis by the emergency rule promulgated in Case No. TX-2005-0437.

7. The proposed amendment to 4 CSR 240-31.030 simply clarifies that company-specific information provided to the Fund Administrator is not an open record unless the

Universal Service Board authorizes its release. This principle ensures a balance between the interest of the companies submitting information who may wish to keep their financial information private, and the role of the Fund Administrator who is required to make its books public.

8. The proposed amendment to 4 CSR 240-31.060 eliminates any confusion that may result by the use of the term “telecommunications companies,” as the term “applicable carriers” is defined within this chapter, has a slightly different definition than that of “telecommunications companies,” and is the most accurate phraseology. This amendment also clarifies the relationship between the Commission and the Universal Service Board regarding the approval process for changes to the percentage assessment.

9. The proposed amendment to 4 CSR 240-31.080 eliminates antiquated cross-references; establishes a requirement that the forms prepared by the Fund Administrator contain a statement that “any intentional false statement or declaration shall be referred for prosecution pursuant to Section 575.060 RSMo. (Supp. 2004);” and requires that applications by the Fund Administrator to be reimbursed out of the Universal Service Fund be subscribed and verified.

10. The Commission’s authority to promulgate these amendments under state law is found in Sections 386.250, 392.185, and 392.248, as well as 392.200 RSMo. (Supp. 2004). In particular, Section 392.248(2) authorizes the Commission to adopt and enforce rules to be implemented by the Universal Service Board governing the system of funding and disbursing funds from the universal service fund in a manner that does not grant a preference or competitive advantage to any telecommunications company or subject a telecommunications company to prejudice or disadvantage.

Natelle Dietrich

**Natelle Dietrich – Regulatory Economist III
Telecommunications Department
Utility Operations Division**

Subscribed and sworn to before me this 25th day of June 2005.

Carla K. Schnieders
Notary Public

My Commission Expires:

June 7, 2008

