

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

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

STAFF COMMENTS

COMES NOW the Staff of the Missouri Public Service Commission and respectfully submits its Comments in this rulemaking matter.

Respectfully submitted,



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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 all counsel of record this 16th day of October, 2013.



COMMENTS OF THE MISSOURI PUBLIC SERVICE COMMISSION STAFF

Overview

The proposed rulemaking pertains to universal service funding. More specifically, the affected rules are associated with requirements for Eligible Telecommunications Carriers (ETCs) and the Missouri Universal Service Fund (MoUSF). ETC status enables a company to receive federal universal service funding for the high-cost and/or Lifeline programs. The MoUSF currently offers financial support to landline companies participating in the Lifeline and Disabled programs.

The proposed rulemaking attempts to accomplish the following basic objectives:

- Consolidate within one chapter of the Missouri rules all requirements pertaining to ETCs and the MoUSF.
- Rescind high-cost support rules.
- Clarify/codify existing MoUSF Board responsibilities and procedures.
- Update and clarify Lifeline program requirements.
- Update and clarify ETC requirements.

In general, the proposed rulemaking is organized so that MoUSF-related rules are contained in 4 CSR 240-31.020 through 31.110 and rules related to the Lifeline/Disabled programs and ETC-related requirements are contained in 4 CSR 240-31.120 and 31.130, respectively. The Missouri Public Service Commission Staff (Staff) supports the Missouri Public Service Commission (Commission) approval of the proposed rules as further revised in these comments. These comments attempt to explain Staff's rationale for Commission approval of these proposed rules. Appendix A provides a list of Staff's additional revisions to this rulemaking. In addition, Appendix A describes how the proposed rules could be further revised to enable ETCs to have flexibility with the Lifeline enrollment form.

Background

A thorough review of existing Missouri Commission rules relating to ETCs and the MoUSF was long overdue. Most of the MoUSF rules have not been revised since 1998 when Chapter 31 rules were created while Missouri's ETC rules have remained unchanged for more than five years. Besides reflecting changes in terminology and state law, Missouri's rules need reconsideration based on recent changes to the federal USF and Lifeline programs.

Missouri currently has approximately seventy landline and wireless companies with ETC status. This status allows a company to receive USF funding for participation in the high-cost program and/or Lifeline program. The federal USF high-cost program provides financial support to an ETC for the provisioning of voice and/or broadband services to high-cost areas. The Lifeline program provides financial support to companies in the provisioning of discounted voice service to qualifying low-income consumers. The MoUSF provides financial support to landline companies for the provisioning of discounted voice service to qualifying low-income and disabled consumers. In 2012, Missouri ETCs received a total of \$33,859,920 in federal Lifeline funding, \$105,816,882 in federal high-cost support and \$2,339,080 in MoUSF support.

State commissions play an important role in USF-related funding. For instance, federal law gives state commissions the primary responsibility for designating ETCs in their respective states.¹ State commissions are also responsible for the annual certification process that allows ETCs to continue to receive high-cost support.² The state commissions certify that an ETC is appropriately using the funding and may continue to receive high-cost support for the subsequent year. In addition, the Lifeline program is administered by the FCC in partnership with the states.

The federal high-cost program and Lifeline program have been subject to criticism and problems. For example, in Missouri, criminal issues surfaced in 2005 regarding the operations of two companies receiving federal high-cost support.³ The issues were so severe the Missouri Commission declined to certify both companies and consequently all federal high-cost support received by both companies was ceased. High-cost support did not resume for either company until ownership and management changed for the companies. At the federal level, the FCC faced growing criticism of the high-cost program and ultimately reformed the federal high-cost fund in November 2011.⁴ Criticisms of abuse, waste and fraud within the Lifeline program started to become more vocal in 2010 ultimately resulting in the FCC issuing significant reforms to the Lifeline program in February 2012.⁵ Criticisms, reforms and other matters relating to the Lifeline program and the MoUSF are discussed in a recent Staff report (Staff Lifeline Report).⁶

States have the discretion to impose state-specific requirements on ETCs. In reforming the high-cost program the FCC states, “We clarify that the specific reporting and certification requirements adopted below are a floor rather than a ceiling for the states....” The FCC goes on to say “...so long as those additional reporting requirements do not create burdens that thwart achievement of the universal service reforms set forth in this Order.”⁷ In reforming the Lifeline program the FCC takes a similar approach. For example, states are allowed to impose additional standards on ETCs to ensure compliance with state Lifeline programs as long as those additional standards are not in conflict with federal requirements.⁸

¹ 47 U.S.C. § 214(e)(2).

² See existing FCC rule § 54.314.

³ See Case No. TC-2005-0357 *MoPSC Staff vs. Cass County Telephone Company*. See also The Staff’s August 26, 2005 *The Staff’s Report Regarding the Impact of Criminal Activities on Missouri Telecommunications Consumers*.

⁴ Report and Order and Further Notice of Proposed Rulemaking; WC Docket No. 10-90 et al, *In the Matter of Connect America Fund*; FCC 11-161; released November 18, 2011. (*FCC USF/ICC Transformation Order*)

⁵ Report and Order and Further Notice of Proposed Rulemaking; WC Docket No. 11-42 et al, *In the Matter of Lifeline and Link Up Reform and Modernization*; FCC 12-11; released February 6, 2012.

⁶ The Lifeline Program, Missouri; July 10, 2013. The Missouri PSC Staff filed this report within the Missouri Commission’s Electronic Filing and Information System in Case No. TW-2014-0012.

⁷ ¶574, FCC USF/ICC Transformation Order.

⁸ See existing FCC rule § 54.416(c).

This proposed rulemaking has been in development for several years with input from the industry and other interested stakeholders.⁹ An initial workshop was held on August 22, 2011. At that time the primary recommendation was to delay the rulemaking because the FCC was on the verge of making significant reforms to both the federal USF and Lifeline programs. Stakeholders wanted to review the FCC's reforms before proceeding with a proposed rulemaking. The rulemaking process was resurrected in the spring of 2012 and a second workshop was held August 29, 2012, to review a draft of the proposed rulemaking and obtain feedback. Staff made further adjustments to try and address feedback. Tangentially related feedback has also been recently received on a variety of issues relating to the MoUSF and the Lifeline program in Docket No. TW-2014-0012.¹⁰

Overall the requirements proposed in this rulemaking attempt to provide relevant information for the Missouri Commission in its oversight responsibilities of USF-related funding. A basic premise contained in this proposed rulemaking is any company desiring to receive, or receiving, government funding for the provision of a service should expect accountability. Any company should be required to provide relevant information as well as ensure service is adequately provided. Two portions of the proposed rulemaking deserve special mention. Proposed section 4 CSR 240-31.130(1) attempts to strengthen and clarify ETC application requirements. This section of the rule proposes to require ETC applicants to submit relevant information so that the Missouri Commission is adequately informed about the company prior to designating it as an ETC. Section 4 CSR 240-31.31.130(3) proposes non-burdensome annual filing requirements for all ETCs including an ETC solely receiving federal USF support. The proposed annual filing requirements are designed to ensure a company is adequately complying with program requirements and ensure service is being provided in a responsible manner and to provide the Commission the information it needs to make a determination that ETCs should continue to receive funding, whether high-cost or Lifeline.

Concerns Stakeholders Have Raised Regarding the Proposed Rulemaking

During the informal process, an attempt was made to try and revise the proposed rulemaking to adequately address feedback received from various stakeholders; however, differences remain. Staff provides the following responses to concerns raised during the informal process related to language that was not revised in the proposed rulemaking.

Rescinding MoUSF high-cost support rules.

A few stakeholders have expressed concerns about rescinding all rules relating to a MoUSF high-cost support fund. In general, these stakeholders take the position Missouri may eventually

⁹ Feedback regarding prior drafts of this rulemaking can be found in Case No. TO-2012-0364 and Case No. TW-2012-0012.

¹⁰ See July 26, 2013 Notice of Opportunity to Comment; Case No. TW-2014-0012; *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*. Comments were filed by eleven different companies/groups.

want to have a MoUSF high-cost fund and rescinding these rules will unnecessarily complicate or delay this effort.

Staff recommends the Commission rescind all rules relating to MoUSF high-cost support for the following reasons:

- The rules are outdated. The rules were implemented in 1998. Subsequently, there were multiple hearings related to implementation of the rules, but a high-cost fund has never been established.
- At this time, there is no evidence to demonstrate a need for high-cost funding. A new proceeding to obtain evidence based on current conditions and funding requirements is necessary to determine whether a state high-cost fund is needed.
- If the Commission determines a need exists to establish a state high-cost fund, implementing such a fund will take a considerable length of time. For example:
 - A subsequent rulemaking will be necessary to establish rules related to how the high-cost fund will operate. (The subsequent rulemaking will be needed whether the current rules are rescinded in their entirety or modified, although Staff maintains a “new” rulemaking will be cleaner and more efficient than “amending” the existing rules for changed circumstances.) Rules will need to be developed to determine if/how a company qualifies for MoUSF high-cost support and, how much support will be provided.
 - A Request for Proposal will need to be issued in order to award a contract to administer the MoUSF and additional duties associated with a high-cost fund.
 - The MoUSF assessment will need to be examined and increased. Companies will need time to adjust billing systems and collect/remit MoUSF revenue in order to develop sufficient funding for a high-cost fund.

Retaining the existing MoUSF high-cost rules will not save any time in this process. Modifying the existing MoUSF high-cost rules might even be counter-productive because it may prevent a fresh perspective on how a high-cost fund might operate. It is also likely that statutory changes will be necessary before implementing a high-cost fund since the existing statute was written based on technology and need almost 20 years ago.

Access to certain services may no longer be provided.

Proposed 4 CSR 240-31.010(5) changes the definition for “essential local telecommunications services” by adopting a definition and term used at the federal level.¹¹ The significance of this proposal is that it alters the services an ETC must provide in order to draw MoUSF support.

Section 214(e) of the Telecommunications Act of 1996 (Act) outlines the provisions for universal service as they related to ETCs. Specifically, and on point, Section 214(e)(1)(A) states that a common carrier designated as an ETC “shall be eligible to receive universal service

¹¹ The proposal is to make the term “essential telecommunications services” synonymous with the term “voice telephony service”. The proposed definition in 4 CSR 240-31.010(18) for voice telephony service is from FCC rule § 54.101(a).

support in accordance with section 254 and shall, throughout the service area for which the designation is received - -

(A) offer the services that are *supported by Federal universal service support mechanisms under section 254(c)*, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier) (emphasis added)

Section 254(c) defines universal service as “an evolving level of telecommunications services that the [FCC] shall establish periodically under this section, *taking into account advances in telecommunications and information technologies and services*. The Joint Board in recommending, and the [FCC] in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services –

- (A) are essential to education, public health, or public safety;
- (B) have, through the operation of market choices by customer, been subscribed to by a substantial majority of residential customers;
- (C) are being deployed in public telecommunications networks by telecommunications carriers; and
- (D) are consistent with the public interest, convenience, and necessity.” (emphasis added)

Consistent with the provisions of the Act, the FCC changed the definition for voice telephony service which also has ancillary implications related to the requirement for an ETC to be a facility-based carrier.¹² The federal definition, no longer requires ETCs to provide access to directory assistance services, operator services and interexchange services. The definition in the proposed rulemaking is consistent with this federal definition.

Section 254(b) of the Act sets forth the principles of universal service. Those principles include:

- (1) Quality services should be available at just, reasonable, and affordable rates.
- (2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.
- (3) Consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas, *should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas* and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas...
- (7) Such other principles as the Joint Board and the [FCC] determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act. (emphasis added)

¹² ¶78-79 of FCC USF/ICC Transformation Order. See also FCC's Order on Reconsideration, WC Docket No. 10-90 et al, *In the Matter of Connect America Fund*, FCC 11-189, released December 23, 2011 for a thorough discussion about the ancillary implications of defining voice telephony service.

The proposed rulemaking is applicable to ETCs serving both rural and urban areas, so service would remain reasonably comparable. Further, Staff does not anticipate this proposal will result in a lower standard of voice service in Missouri.

Finally, Section 392.248.2 RSMo mandates that the commission shall 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. Having a definition of “essential telecommunications services” or “local voice service” that is different than the federal definition will potentially result in a competitive disadvantage for basic local telecommunications providers who would have to offer services not required of the wireless providers subject to the federal definition.

Staff recommends the Commission incorporate the FCC’s definition. Other provisions within the proposed rulemaking will enable the Commission to monitor the effect of this decision. For example, proposed 4 CSR 240-31.130(1)(B)14 requires any new ETC applicant to describe whether the applicant will provide access to directory assistance services, operator services and interexchange services. The proposed annual filing requirement in 4 CSR 240-31.130(3)(A)1.H requires existing ETCs to include a statement as to whether the company offers access to these services. The Commission will be able to adequately monitor this concern on a case-by-case basis, and interested stakeholders will have opportunity to raise concern about a specific carrier in the context of its original or annual filings.

If the Commission maintains the existing definition for essential local telecommunications services, then the Commission should be aware the existing definition is outdated. For example, the existing definition uses terminology solely applicable to traditional landline carriers. A technologically neutral approach that better accommodates other forms of technology such as wireless and IVoIP should be incorporated in the proposed rules if the FCC’s definition is not used.

Consumer Lifeline enrollment form.

The proposed rulemaking maintains the requirement for companies to use a MoUSF Board approved Lifeline enrollment form. The MoUSF Board currently allows personalization of certain company-specific information such as name, logo, contact information and description of customer Lifeline or Disabled service offerings; however, ETCs want greater flexibility in the design and development of their own form.

Staff supports the requirement for all ETCs to use a standardized Lifeline enrollment form. The current form incorporates feedback from ETCs as well as FCC Staff.¹³ The requirement provides a uniform, readily identifiable format, no matter the provider or the potential qualifying customer. The requirement also provides continuity and is a transparent, efficient way for

¹³ The current form is actually two forms whereby one form applies to ETCs participating in the Lifeline and Disabled programs while the other form applies to ETCs solely participating in the Lifeline program. The Missouri USF Board approved these forms on May 30, 2013. The forms are posted at http://psc.mo.gov/Telecommunications/Missouri_Universal_Service_Fund and <https://www.missouriusf.com/>.

entities such as the Missouri Department of Health and Senior Services and Consumer Action Agencies to assist in promoting the Lifeline and Disabled Programs and identifying as many qualifying individuals as necessary - the ultimate goal of both the Board and the FCC.

The MoUSF Board has previously attempted to accommodate requests to modify the form but the process has been time-consuming and cumbersome, especially as more and more providers receive designation and want company-specific modifications. During the May through July 2013 time period Staff received requests to modify the form from approximately 13 companies. The requests varied from making slight changes to the form to inserting extensive consumer liability language and advertising within the forms. Over the two-three month period, Staff estimated it spent approximately 200 hours handling issues related to the Missouri forms and company-specific requests. It became increasingly difficult to draw a line to distinguish acceptable versus non-acceptable requests and consequently the MoUSF Board did not approve any requests. It should be noted, the proposed rule language provides the Board the option to approve modifications to the approved-forms, and Staff will do all it can to make the uniform forms as acceptable and customizable as possible without jeopardizing the integrity of the Lifeline Program. Staff continues to spend great time conducting audits of ETCs. Such audits reveal some companies continue to use a form not approved by the Board. Staff continues to work with ETCs to correct inconsistencies and has pursued corrective action as necessary.

Staff recommends the Commission further revise the proposed rules for 31.020(9) and 31.120(5) to reflect other electronic enrollment methods used by ETCs and to provide better clarity.¹⁴ Some of the methods may cause an applicant to not actually see the full form unless it is printed out at the end of the process. For instance some ETCs use an agent or company representative to electronically enter information on the applicant's behalf and simply read required information to the applicant. Some ETCs also offer an on-line enrollment method whereby a Lifeline applicant responds to a series of screen prompts in order to apply to the Lifeline program. These additional revisions are discussed in Staff's comments for those respective rules.

In summary, Staff continues to support the standardized, uniform Lifeline enrollment form; however, if the Commission decides to provide companies with more flexibility in developing the consumer Lifeline enrollment form, then Staff recommends the Commission make adjustments to various rules. These recommended adjustments are fully described in Appendix A, and are designed to make clear that neither the Commission nor the Board, are endorsing or approving the company-specific form. The adjustments further clarify that if concerns are identified by Board Staff regarding a company-specific form, then the ETC shall use best efforts to resolve those concerns and if resolution cannot be reached, then the Board Staff presents the company-specific form to the Board for resolution.

Staff Comments Regarding Specific Proposed Rules

Each proposed rule is separately discussed. An attempt is made to try and summarize the proposals contained in the rule and why the Commission should approve the rule. Staff has not

¹⁴ Various Lifeline enrollment methods are described in Staff's Lifeline Report.

attempted to explain each provision contained within a proposed rule. As previously pointed out, the proposed requirements contained in this rulemaking are designed to ensure the Commission has adequate information in performing oversight responsibilities without being unduly burdensome.

4 CSR 240-3.570 (Requirements for Carrier Designation as Eligible Telecommunications Carriers)

ETC requirements are currently contained in 4 CSR 240-3.570, while MoUSF and Lifeline program requirements are contained in 4 CSR 240-31. This arrangement can cause confusion regarding applicability. Consolidating all ETC requirements and Lifeline program requirements into the same chapter of the Commission's rules is intended to help minimize confusion; therefore, this rulemaking proposes to rescind 4 CSR 240-3.570 in its entirety. Subject matter from existing 4 CSR 240-3.570 is updated and consolidated into various locations of proposed Chapter 31. For example, the subject matter of ETC application requirements, ETC service requirements and annual ETC filing requirements will move from 4 CSR 240-3.570(2), (3) and (4) to 4 CSR 240-31.130 (1), (2) and (3), respectively.

Staff recommends the Commission rescind 4 CSR 240-3.570.

4 CSR 240-31.010 (Definitions)

This amendment proposes to clarify terms used within proposed 4 CSR 240-31. Staff recommends the Commission further revise the definition for the federal universal service fund in 4 CSR 240-31.010(8). Currently the proposed definition only references what is commonly referred to as the "Lifeline program"; however, this definition should also reference the high-cost program. Staff recommends 4 CSR 240-31.010(8) to be revised as follows:

(8) Federal Universal Service Fund (FUSF) – The federal fund that provides funding to companies for the high-cost program and the Lifeline program.

Staff recommends the Commission approve the proposed revisions, as amended, for 4 CSR 240-31.010.

4 CSR 240-31.020 (Organization, Powers and Meetings of the Board)

This rulemaking proposes to codify existing practices of the MoUSF Board such as:

- the timing of the annual election for Board officers,
- the Board's delegation of certain responsibilities to Board staff,
- the ability of Board members to participate in Board meetings via telephone,
- the requirement for the Board to follow a competitive bid process for fund administration, independent auditing and tax preparation services,
- the minimum number of Board meetings each year, and
- the Board's establishment of a form for ETCs to use to enroll consumers into the Lifeline or Disabled programs.

The rulemaking also removes outdated language.

Staff recommends the Commission further revise this proposed rulemaking in order to provide greater clarity regarding the requirement for ETCs to use the same enrollment form. Specifically Staff recommends some of the information about this requirement contained in 4 CSR 240-31.020(9) might be more appropriately placed in 4 CSR 240-31.120. Consequently Staff recommends the Commission revise 4 CSR 240-31.020(9) to simply read:

(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.

Staff recommends the Commission approve the proposed rulemaking as revised.

4 CSR 240-31.030 (The MoUSFA)

This rulemaking proposes minor revisions to qualifications and responsibilities of the MoUSF fund administrator. The rulemaking proposes to replace the term “Fund Administrator” with “MoUSFA”. The rulemaking adds “...IVoIP company, wireless carrier or any other provider of voice telephony service” to the list of providers in which the MoUSFA cannot have a financial interest. The rule also proposes to codify the existing practice of MoUSFA to submit monthly reports to the MoUSF Board.

Staff recommends the Commission approve the proposed rulemaking.

4 CSR 240-31.040 (Eligibility for Funding-High Cost Areas)

The MoUSF does not currently provide high-cost support and is not expected to provide such funding in the foreseeable future. Staff anticipates a few stakeholders may raise concerns about rescinding this rule.

Staff supports rescinding all rules relating to MoUSF high-cost support for the reasons previously stated in these comments.

4 CSR 240-31.050 (Eligibility for Funding---Low-Income Customers and Disabled Customers)

All Lifeline and Disabled program requirements are updated and consolidated in proposed rule 4 CSR 240-31.120.

Staff supports rescinding this rule.

4 CSR 240-31.060 (The MoUSF Assessment)

This rulemaking proposes to consolidate requirements from three existing rules: 4 CSR 240-31.060 (Assessments for MoUSF Funding), 4 CSR 240-31.065 (Collection of MoUSF Surcharge from End-User Subscribers) and 4 CSR 240-31.070 (Receipt of MoUSF Funds). The proposed

consolidation is attempting to simplify the Commission's rules so that all requirements relating to the MoUSF assessment are within one rule.

Requirements have also been updated to try and clarify existing practice. Most notably these updates attempt to provide greater detail about how the assessment level is determined for the MoUSF. The proposed rule identifies the Board's target fund balance range along with the requirement that carriers will be given at least sixty days advance notice of any change in the assessment. The proposed rule recognizes two methods currently used by carriers to remit MoUSF assessments. The proposed rule attempts to respond to a commonly asked question about one of the methods and states no refunds will be given if a carrier using that method subsequently finds it remitted more than it collected.

Staff recommends proposed 4 CSR 240-31.060(4)(A) be further modified to address when a carrier with less than \$24,000 in annual net jurisdictional revenues needs to begin billing and collecting the MoUSF assessment. Staff proposes to add a sentence to this subsection as follows:

- (A) All assessable carriers shall place on each retail end-user customer's bill, a surcharge equal to the percentage assessment ordered by the commission. A company with de-minimis revenues shall begin assessing the surcharge within sixty days of meeting the \$24,000 net jurisdictional revenue threshold.

4 CSR 240-31.065 (Collection of MoUSF Surcharge from End-User Subscribers)

Requirements from this rule are consolidated into proposed rule 4 CSR 240-31.060. See Staff comments for 4 CSR 240-31.060.

Staff supports rescinding this rule.

4 CSR 240-31.070 (Receipt of MoUSF Funds)

Requirements from this rule are consolidated into proposed rule 4 CSR 240-31.060. See Staff comments for 4 CSR 240-31.060.

Staff supports rescinding this rule.

4 CSR 240-31.080 (Applications for MoUSF Funds)

Subsection (1) (A) and Section (3) of 4 CSR 240-31.080 pertain to application requirements for carriers seeking high-cost support. Such requirements should be deleted from the Commission rules until a high-cost fund is actually established and becomes operational. Subsection (1)(B) of existing 4 CSR 240-31.080 pertains to application requirements for low-income and disabled support. These requirements have been reworded to better clarify existing practice and have been inserted into proposed rule 4 CSR 240-31.090. Section (2) of existing rule 4 CSR 240-31.080 pertains to outdated application requirements for MoUSF support by the fund administrator and independent auditor. The fund administrator and independent auditor are reimbursed according to a contractual agreement derived through the Request for Proposal process.

Staff supports rescinding this rule.

Revise 4 CSR 240-31.090 (Disbursements of MoUSF Funds)

This rulemaking proposes to revise the requirements for disbursements of MoUSF funds to reflect existing practices. The initial section of this rule codifies the existing practice of how a company applies for MoUSF support; however, this section proposes a new provision to limit the fund's liability if a company delays seeking support for service provided to a Lifeline or Disabled customer. This proposal limits the fund's liability of providing support to the amount requested or \$350 (whichever is less) if a company's application for MoUSF support is filed over 3 months from provisioning service.

This rule also explains that in order to be eligible for MoUSF disbursements an ETC must be compliant with all MoUSF assessment obligations and requirements. This concept is contained in existing rule 4 CSR 240-31.070(5)(B), but it has been revised to more clearly describe this expectation. This section also establishes that an ETC must be compliant with all Lifeline and/or Disabled program requirements. If an ETC's compliance is in question then the company's MoUSF disbursements will be held in abeyance until all compliance issues are adequately resolved.

Staff recommends the Commission make a correction in 4 CSR 240-31.090(1). The acronym ETCs should refer to Eligible Telecommunications Carriers rather than Eligible Telecommunications Center. Therefore the word "Center" should be replaced with the word "Carriers".

Staff supports the proposed rule as amended.

Rescind 4 CSR 240-31.100 (Review Procedures for Support Payments)

This rulemaking proposes to rescind this rule because it solely contains requirements associated with a high-cost fund. Staff supports rescinding rules related to a high-cost fund for the reasons previously stated in these comments.

Revise and rename 4 CSR 240-31.110 (Review of Board and MoUSFA Activities)

This rulemaking proposes to make minor and somewhat insignificant revisions to the existing rule regarding the appeal of any decisions issued by the MoUSF Fund Administrator or the MoUSF Board. The rulemaking proposes to replace the term "Fund Administrator" with "MoUSFA" and update a statutory reference. A new section is added enabling the waiver of various deadlines contained in this rule for good cause. Staff supports the proposed rulemaking.

4 CSR 240-31.120 (Lifeline Program and Disabled Program)

This proposed new rule has five sections relating to basic requirements for the Lifeline program and the Disabled program. Each section is separately discussed.

Section (1) provides basic information regarding the Lifeline and Disabled Programs. Consumer eligibility criteria for these programs are identified whereby Lifeline eligibility criteria are the same criteria mandated by the FCC. The proposed rule includes a provision allowing for

the expansion of Lifeline eligibility criteria in the event the FCC determines other eligibility criteria shall be applicable in all states. Eligibility for the Disabled program is also identified.

Staff recommends deleting “Federal Supplemental Security Income” from the eligibility criteria for the Disabled program contained in 4 CSR 240-31.120(1)(C)1.F of the proposed rule. The Lifeline program also contains Supplemental Security Income as an eligibility criterion. Deleting this criterion will ensure a consumer qualifying using the Supplemental Security Income criterion is enrolled in the Lifeline program and consequently will receive a larger discount than offered within the Disabled program.

This proposed rule specifically indicates an ETC participating in the Lifeline program shall comply with this rule even if it solely receives federal support. This proposed provision is intended to ensure all ETCs comply with the same requirements in offering Lifeline service within Missouri.

Staff supports this proposed section as amended.

Section (2) identifies various requirements for carriers in order to participate in the Lifeline and Disabled programs. One of the provisions within this section requires ETCs to annually recertify a subscriber’s participation in the Lifeline and Disabled programs. This requirement is one of the FCC’s reforms to the Lifeline program while the Disabled program has never previously required recertification. The proposed rulemaking goes beyond FCC requirements by requiring a Lifeline subscriber to submit proof of eligibility 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. Beginning in 2013, carriers have the option to have the FUSFA administer the company’s annual recertification process and FUSFA will not require subscribers to submit proof of eligibility.¹⁵

Staff recommends the Commission further revise proposed 4 CSR 240-31.120(2)(D). This subsection pertains to the annual recertification requirement for the Disabled program. Staff recommends deleting the reference to subsection (C) because there is no need to ask a Disabled participant to submit proof of eligibility every two years. In addition, there is not a database to verify a disabled consumer’s eligibility; nor will FUSFA recertify disabled program participants. Staff recommends 4 CSR 240-31.120(2)(D) be revised as follows:

(D) An ETC shall annually conduct an inquiry for any household participating in the disabled program if the qualifying disabled customer is not listed as the voice telephony subscriber. The inquiry shall be limited to whether the qualifying disabled customer remains within the household.

Staff supports this proposed section as amended.

Section (3) ensures a consumer completes an application form approved by the Board. This proposed section further clarifies a Board-approved application form shall be required even if a

¹⁵ Public Notice; Wireline Competition Bureau Provides Guidance Regarding the 2013 Lifeline Recertification Process; WC Docket No. 11-42; DA 13-1188; released May 22, 2013.

carrier only seeks federal Lifeline support. This section indicates Lifeline or Disabled service is limited to one per household and a consumer cannot receive both benefits. This section describes how subscriber participation in these programs shall be denied or discontinued if the subscriber submits incorrect or false information.

Staff supports this section.

Section (4) identifies de-enrollment procedures for a variety of situations. The wording of the proposed rule reflects a slightly abbreviated version of the de-enrollment language contained in FCC rule § 54.405 but the intent of the proposed rule is to convey the same meaning. These de-enrollment procedures are applicable to both the Lifeline and Disabled programs. A simpler alternative to this proposed section is to delete this section; re-number section (5) as section (4); and add subsection (G) as shown below to proposed 4 CSR 240-31.120 (2):

(G) An ETC shall comply with de-enrollment requirements identified in 47 CFR §54.405 for the Lifeline program and Disabled program.

Staff recommends the Commission approve this proposed rule as amended for it simplifies and clarifies de-enrollment requirements.

Section (5) pertains to arrangements whereby a non-ETC is reselling an ETC's Lifeline or Disabled service. Such arrangements within the Lifeline program are contemplated by the FCC; however, a non-ETC does not directly receive USF support. Currently no rules exist at the federal level regarding these arrangements. This proposed section attempts to ensure a non-ETC offering Lifeline or Disabled service complies with the rules within this chapter.

A non-ETC reselling Lifeline or Disabled service must provide certain information on a timely basis to the manager of the Commission's Telecommunications Unit. Initial information includes:

- An affidavit certified by an officer of the company that the company will comply with all requirements.
- Contact information.
- A copy of the consumer application enrollment form.
- Full and complete responses to certain information typically gathered about a company in the ETC application process.

This section also requires a non-ETC to make an annual filing and go through the annual recertification process contemplated by 4 CSR 240-31.130(3)(A).

Staff recommends this section be re-numbered as section (4).

Staff further recommends information regarding Lifeline and Disabled application form requirements previously proposed in 4 CSR 240-31.020(9) be inserted into a new section numbered as section (5). Such information would be better suited for this rule pertaining to requirements associated with the Lifeline and Disabled programs versus the rule pertaining to the organization, powers and meetings of the Missouri USF Board. This arrangement should help

ensure all ETCs understand requirements associated with Lifeline and Disabled application forms. In addition, a requirement is added to ensure any enrollment method used by an ETC will enable an applicant to view the completed application form using the format established by the board. Staff recommends the proposed language for this new section (5) as follows:

(5) Requirements for Lifeline and Disabled Application Forms

(A) All ETCs shall use a form established by the board. An ETC shall ensure any enrollment method used by the ETC will enable an applicant to view the completed application form using the format established by the board.

(B) If a company provides additional information for the applicant then a company may be permitted to attach an additional sheet(s) to the form using the following procedure:

1. At least one business day prior to use, the ETC shall electronically submit a copy of such additional sheet(s) to the board staff. If the additional sheet(s) is changed, the ETC shall electronically 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).

Staff recommends the Commission approve this proposed rules as amended.

4 CSR 240-31.130 (Eligible Telecommunications Carrier Requirements)

This proposed new rule is comprised of four sections relating to requirements for ETCs. Each section is separately discussed. Staff will be recommending further revisions for Sections (2) and (3).

Section (1) identifies application requirements for status as an ETC. An attempt has been made to organize ETC application requirements to more clearly identify application requirements for applicants seeking ETC status for different purposes. For example, many companies seek ETC status solely for Lifeline purposes while other companies seek ETC status for Lifeline and high-cost support purposes. This section attempts to clearly identify the requirements for both types of applicants.

The ETC application requirements have been greatly expanded from the existing ETC application requirements contained in 4 CSR 240-3.570(2). The proposed ETC application requirements require ETC applicants to make various commitments and provide various descriptions and explanations about the company's service. Company ownership/management must also be revealed along with any disciplinary action against the company or individuals associated with the company. The proposed section codifies expanded requirements that are already being implemented.

Staff supports this proposed section.

Section (2) identifies compliance requirements for an ETC. Some of the more noteworthy provisions are: an ETC cannot self-certify to the FUSFA and an application for ETC designation shall be deemed acceptance of Missouri Commission jurisdiction over any matter relating to

ETC status and USF funding. Such provisions are intended to clarify requirements for wireless ETCs who sometimes question whether Missouri rules are applicable to them.

A provision worth mentioning is an ETC must conduct business using the name under which the Commission granted ETC status. This provision differs from FCC expectations; however, it is intended to minimize confusion by preventing an ETC from arbitrarily using a name that is not formally recognized by the Commission. This section also identifies name change requirements for ETCs.

An ETC is required to maintain a current list of company contacts within the Commission's Electronic Filing and Information System. Likewise, ETC's shall not make any false statement to the Commission, FUSFA or the FCC.

Some of the ETC requirements within this section are intended to keep Staff informed of relevant activities. For example, an ETC is required to notify the manager of the Commission's Telecommunications Unit of any proceeding initiated by a state or federal regulatory authority alleging the ETC is violating any state or federal USF program requirements. This notice also includes allegations of fraud, tax evasion or a commitment of a felony by owners or management of the ETC. An ETC is also required to submit to Staff a copy of audit results conducted by FUSFA or an independent auditor regarding the company's compliance with USF program requirements.

The proposed section codifies current Missouri practices; however, to clarify applicability, Staff recommends the Commission further revise 4 CSR 240-31.130(2)(C) as follows:

(C) An ETC receiving universal service funding for the provisioning of voice telephony or Lifeline services shall make such services available to all subscribers in the ETC's service area upon reasonable request.

Staff supports the proposed section as amended.

Section (3) of the proposed rule requires all ETCs to make an annual filing by July 1st to provide relevant information and reaffirm certain commitments to the Commission in order to continue to receive support. This type of filing has been made for years by ETCs receiving high-cost support; however, this requirement will be new for ETCs solely receiving Lifeline support. The annual filing requirement ensures Lifeline-only providers continue to comply with ETC requirements and is not expected to be burdensome; however, this section of the proposed rule does have a fiscal note.

The proposed annual filing requirement for Lifeline-only ETCs requires an officer of the company to make certain compliance certifications. In addition, the company is expected to provide certain readily available information such as Lifeline subscriber quantities, summary of any audit results, list of proceedings alleging violation of USF requirements, names of any carriers reselling the company's Lifeline service, and the company's web site address. ETCs receiving high-cost support shall provide additional information. ETCs receiving high-cost support must provide the certification statement required by FCC rules. The company is also

required to explain how, if at all, the company monitors the quality of service provided by the company as well as results for the most recent three consecutive months.

ETCs are required to submit a copy of the annual report required by FCC rules. This requirement is new and part of the FCC's reform efforts. The information contained in these annual reports is identified in FCC rule § 54.313 for ETCs receiving high-cost support and § 54.422 for ETCs receiving Lifeline support. The FCC has established Form 481 to reflect the information required by this annual report. ETCs are required to submit Form 481 to the FCC, FUSFA and relevant state commissions by July 1st of each year.

This section of the proposed rule has a projected fiscal impact of \$21,600. The projected fiscal impact is based on the feedback of one wireless carrier who currently does not make an annual filing with the Commission. As previously pointed out, most ETCs already make an annual filing with the Commission in order to continue to receive high-cost support. Consequently the \$21,600 projected fiscal impact is for 12 wireless ETCs solely receiving Lifeline support. The life of the proposed rule is projected to be three years and each company has a \$1,800 aggregate fiscal impact or \$600 estimated annual cost. Staff regularly reviews the annual submissions, and in Staff's opinion, the annual filing requirement will help increase accountability and compliance with Lifeline program requirements. Staff maintains the benefits associated with the proposed annual filing requirement of 4 CSR 240-31.130(3) (A) out-weigh the minimal estimated cost.

In an attempt to minimize the filing of duplicate information with the Missouri Commission, Staff recommends the Commission make certain revisions to this section of the proposed rules. Staff recommends the Commission delete proposed 4 CSR 240-31.130(3)(A)6 and 4 CSR 240-31.130(3)(A)7. Both requirements pertain to providing, within a company's annual filing, a list of any USF or ETC-related audits as well as a list of any proceedings alleging a company is violating universal service fund requirements. Such information should have already been submitted in a more timely manner as prescribed by proposed 4 CSR 240-31.130(2)(J) and (K). Consequently Staff recommends the company's annual filing simply certify the company has complied with such notification requirements by adding subparagraph H to proposed 4 CSR 240-31.130(3)(A) as follows:

H. The company has complied with the notification requirements of 4 CSR 240-31.130(2)(J) and (K).

In addition, Staff recommends the Commission delete proposed paragraph 4 CSR 240-31.130(3)(A)4, which requires companies to submit the results of the company's most recent annual re-certification efforts of existing Lifeline subscribers. These results are more commonly referred to as Form 555 results. The FCC requires all ETCs to file Form 555 results with the respective state commission by January 31st. In order to minimize confusion and/or to avoid ETCs from filing Form 555 results multiple times within a year, Staff recommends paragraph 4 CSR 240-31.130(3)(A)4 be deleted and the subsequent paragraphs be renumbered accordingly.

Staff also recommends the subscriber quantity information in proposed part 4 CSR 240-31.130(3)(A)5.C.1 be deleted. This information requests certain subscriber quantity information

of ETCs offering free Lifeline service. This type of information will be contained in a ETCs Form 555 results and therefore this proposed rule revision may help minimize confusion and duplicate filings. Consequently Staff recommends 4 CSR 240-31.130(3)(A)5.C read:

C. Total number of Lifeline subscribers de-enrolled during the twelve- (12-) month time period.

Finally, Staff recommends a revision to proposed 4 CSR 240-31.130(B)3 by replacing the term “voice telephony service” with “its supported services”. This proposed change will enable the Commission to know whether an ETC solely receiving high-cost support for the provisioning of broadband service is monitoring the company’s quality of service. In this respect Staff recommends 4 CSR 240-31.130(B)3 be revised as follows:

3. An explanation of how the company monitors, if at all, the quality of service provided by the company for its supported service(s). 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 months of quality of service measurements, if available.

Staff supports this proposed section, as amended.

Section (4) of the proposed rule requires that an ETC shall maintain full compliance with all rules in this chapter and the FCC’s universal service rules. This section then explains the process for addressing ETC compliance issues. This section also indicates the prospect of the Commission waiving for good cause any provision within this chapter.

Staff supports this proposed section.

Conclusion

Staff has proposed further revisions for this proposed rulemaking. These revisions are identified in Appendix A and Staff recommends the Commission approve this proposed rulemaking with the additional revisions proposed by Staff. As previously discussed, this proposed rulemaking attempts to provide relevant information for the Missouri Commission in its oversight responsibilities of USF-related funding and any company desiring to receive, or receiving, government funding for the provision of a service should expect accountability. If the Commission decides to provide ETCs with flexibility to alter the consumer Lifeline enrollment form then Appendix A also shows what adjustments need to be made to this rulemaking.

APPENDIX A		
Proposed Rule	Staff's Proposed Additional Revisions to Rulemaking	If the Commission decides to provide companies with flexibility with the Lifeline Form then these additional revisions should be made.
31.010(8)	Revise definition to read: (8) Federal Universal Service Fund (FUSF) – The federal fund that provides funding to companies for the high-cost program and the Lifeline program.	
31.020(9)	Revise section (9) to read: (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.	Revise section (9) to read: (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.
31.060(4)(A)	Revise subsection (A) to read: (A) All assessable carriers shall place on each retail end-user customer's bill, a surcharge equal to the percentage assessment ordered by the commission. A company with de-minimis revenues shall begin assessing the surcharge within sixty days of meeting the \$24,000 net jurisdictional revenue threshold.	
31.090(1)	Replace the word "Center" with "Carriers" so the acronym ETC refers to Eligible Telecommunications Carriers.	
31.120(1)(C)1.F	Delete this subparagraph so that Federal Supplemental Security Income is no longer a criterion for the Disabled program.	
31.120(2)(D)	Revise subsection (D) to read: (D) An ETC shall annually conduct an inquiry for any household participating in the disabled program if the qualifying disabled customer is not listed as the voice telephony subscriber. The inquiry shall be limited to whether the qualifying disabled customer remains within the household.	

APPENDIX A		
Proposed Rule	Staff's Proposed Additional Revisions to Rulemaking	If the Commission decides to provide companies with flexibility with the Lifeline Form then these additional revisions should be made.
31.120(2)(G)	Insert new subsection (G): (G) An ETC shall comply with de-enrollment requirements identified in 47 CFR §54.405 for the Lifeline program and Disabled program.	
31.120(3)(A)		Revise subsection (A) to read: (A) All consumers shall complete an application form and submit adequate proof of eligibility.
31.120(4)	Delete section (4) regarding de-enrollment procedures.	
31.120(5)	Renumber section (5) to section (4).	
31.120(5)	<p>Insert new section (5) to read:</p> <p>(5) Requirements for Lifeline and Disabled Application Forms</p> <p>(A) All ETCs shall use a form established by the board. An ETC shall ensure any enrollment method used by the ETC will enable an applicant to view the completed application form using the format established by the board.</p> <p>(B) If a company provides additional information for the applicant then a company may be permitted to attach an additional sheet(s) to the form using the following procedure:</p> <ol style="list-style-type: none"> 1. At least one business day prior to use, the ETC shall electronically submit a copy of such additional sheet(s) to the board staff. If the additional sheet(s) is changed, the ETC shall electronically 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). 	<p>Insert new section (5) to read:</p> <p>(5) Requirements for Lifeline and Disabled Application Forms</p> <p>(A) The board will provide sample Lifeline and Disabled application forms (sample forms) to be placed on the commission's website and the MoUSFA website.</p> <p>(B) ETCs may use the sample forms or may use their own company-specific Lifeline and Disabled application form (company-specific form).</p> <p>(C) If a company uses a company-specific form, the following requirements shall apply:</p> <ol style="list-style-type: none"> 1. The company-specific form shall comply with all requirements of 47 CFR 54.410(d) and this rule. 2. The company-specific form shall comport with any FCC-approved compliance plan applicable to that company. 3. The company-specific form shall clearly delineate all customer obligations and provisions and

APPENDIX A		
Proposed Rule	Staff's Proposed Additional Revisions to Rulemaking	If the Commission decides to provide companies with flexibility with the Lifeline Form then these additional revisions should be made.
		<p>all acknowledgements that must be provided subject to penalty of law.</p> <p>A. Customer obligations, provisions and acknowledgements shall be in a font that is at least as large as the font used in the majority of the company-specific form.</p> <p>B. Customer obligations, provisions and acknowledgements shall receive no less emphasis of importance than is provided for the majority of the language in the company-specific form.</p> <p>4. The ETC shall provide a method, whether on the form or in another format, to allow commission staff, upon request, to easily verify that the customer is providing, and the ETC is reviewing appropriate documentation of customer eligibility.</p> <p>5. Neither the commission nor the board, shall be considered as endorsing or approving the company-specific form.</p> <p>6. If concerns are identified by board staff regarding a company-specific form then the ETC shall use best efforts to resolve any identified concerns. If a resolution cannot be reached then board staff shall present the company-specific form to the board for a decision. Notwithstanding any provision to the contrary elsewhere in this chapter, the board's decision shall be final, and the ETC shall change its company-specific form accordingly.</p> <p>7. Nothing in this Section shall preclude the staff or the Office of Public Counsel from filing a</p>

APPENDIX A		
Proposed Rule	Staff's Proposed Additional Revisions to Rulemaking	If the Commission decides to provide companies with flexibility with the Lifeline Form then these additional revisions should be made.
		complaint related to the Lifeline and Disabled application form used by any ETC.
31.130(1)(D)7		Revise paragraph 7 to read: 7. A copy of the Lifeline and/or Disabled Application form(s) to be used by the applicant:
31.130(2)(C)	Revise subsection (C) to read: (C) An ETC receiving universal service funding for the provisioning of voice telephony or Lifeline services shall make such services available to all subscribers in the ETC's service area upon reasonable request.	
31.130(3)(A)1.C		Delete subparagraph C and renumber the remaining subparagraphs within paragraph 1.
31.130(3)(A)1.H	Insert new subparagraph H. This new subparagraph should read: H. The company has complied with the notification requirements of 4 CSR 240-31.130(2)(J) and (K).	
31.130(3)(A)4	Delete paragraph 4 regarding the submission of 47 CFR 416(b) Lifeline recertification results (<i>a.k.a Form 555 results</i>).	
31.130(3)(A)5	Renumber paragraph 5 to 4. In addition delete Part I from subparagraph C. Subparagraph C should simply read: C. Total number of Lifeline subscribers de-enrolled during the twelve- (12-) month time period.	
31.130(3)(A)6	Delete paragraph 6 regarding a summary of any USF or ETC-related audits.	
31.130(3)(A)7	Delete paragraph 7 regarding a list of any proceedings alleging the company is violating USF requirements.	
31.130(3)(A)8	Renumber paragraph 8 to 6.	
31.130(3)(A)9	Renumber paragraph 9 to 7.	

APPENDIX A		
Proposed Rule	Staff's Proposed Additional Revisions to Rulemaking	If the Commission decides to provide companies with flexibility with the Lifeline Form then these additional revisions should be made.
31.130(3)(A)8		Insert new paragraph 8 that reads: 8. A copy of the Lifeline and/or Disabled Application form(s) the ETC uses in Missouri.
31.130(3)(B)3	Revise paragraph 3 to read: 3. An explanation of how the company monitors, if at all, the quality of service provided by the company for its supported service(s). 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 months of quality of service measurements, if available.	