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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Rulemaking Hearing

October 21, 2013

Jefferson City, Missouri

Volume 1

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

MORRIS L. WOODRUFF, Presiding,  
CHIEF REGULATORY LAW JUDGE

DANIEL HALL,  
COMMISSIONER

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Good morning everyone.

3 Welcome to this comment hearing regarding the rulemaking  
4 proposed by the Public Service Commission.

5 Our file number is TX-2013-0324 and it  
6 concerns Missouri Universal Service Fund and various  
7 amendments to that.

8 Parties have already filed written comments,  
9 and so the purpose of this hearing is to take oral  
10 comments, and if anyone wishes to make any further  
11 comments, you can certainly respond to the comments that  
12 were filed earlier by the other interested entities and  
13 we'll give you a chance to say what you want to say.

14 I have no set order in which people are going  
15 to testify or to offer their comments because this is  
16 not formal testimony. I'm not going to swear in any  
17 witnesses, that sort of thing.

18 I will propose to leave Staff for last, so  
19 that the Commission can have the benefit of their  
20 response to everybody else.

21 We'll go ahead and get started.

22 Anyone want to volunteer to go first?

23 Public Counsel, raising your hand.

24 Why don't you come on forward to the table  
25 here, if you would.

1                   And for the benefit of the court reporter, if  
2   you would identify yourself.

3                   MS. BAKER: Christina Baker, Deputy Public  
4   Counsel.

5                   JUDGE WOODRUFF: Okay.

6                   MS. BAKER: And with me I have Barbara  
7   Meisenheimer.

8                   And basically Public Counsel filed comments  
9   in the previous workshop case, TW-2012-0012, and those  
10   comments still hold, so we would ask that the Commission  
11   take notice of those comments, but Ms. Meisenheimer is  
12   here just to give a little bit of an overview of some of  
13   those comments as well.

14                  JUDGE WOODRUFF: Which case did you say those  
15   were in?

16                  MS. BAKER: TW-2012-0012.

17                  JUDGE WOODRUFF: Okay.

18                  My concern about taking notice of those is  
19   some of those comments might be irrelevant to what the  
20   final product was here.

21                  MS. BAKER: Okay. I can file new comments in  
22   this one, if you will let us, or I have a memorandum  
23   here, basically her comments today, that I can hand out.

24                  JUDGE WOODRUFF: Okay. The reason I'm  
25   concerned is, of course, I have to file a response to

1 every comment I receive. So if I'm letting in all kinds  
2 of comments that are not particularly relevant here, it  
3 creates a lot of problems for me when I'm starting to  
4 write the Order and for the Commission when they're  
5 reviewing it.

6 MS. BAKER: I think Ms. Meisenheimer can just  
7 give some of the pertinent comments today then.

8 JUDGE WOODRUFF: Okay. And if you have a  
9 written document, we can receive that as an exhibit.

10 MS. BAKER: All right. That would be fine.

11 JUDGE WOODRUFF: Ms. Meisenheimer.

12 MS. MEISENHEIMER: You don't want to swear me  
13 in for this?

14 JUDGE WOODRUFF: No, you don't need to be  
15 sworn in.

16 MS. MEISENHEIMER: Can I sit or should I  
17 stand?

18 JUDGE WOODRUFF: You can sit here if you  
19 like.

20 MS. MEISENHEIMER: My name is Barbara  
21 Meisenheimer. I've been with the Missouri Office of  
22 Public Counsel since 1996. I have participated in every  
23 round of the universal service proceedings to establish  
24 the rules, to establish -- or the cases where we  
25 reviewed what should be included in the definitions of

1 universal service, how the fund mechanism should work at  
2 the State level.

3 I also have been a past member of the  
4 Universal Service Board at the Federal level. At one  
5 time the Missouri Public Counsel sat on the Federal  
6 Universal Service Board, Martha Hogerty, and I was one  
7 of her -- one of her staff members to that board.

8 Generally the comments that I'd like to  
9 make -- and they're included in the written comments --  
10 is that we should not lose sight of the fact that the  
11 State has a responsibility separate from the Federal  
12 level to preserve and advance universal service, and in  
13 the comments that we provided I set out on pages 2 and 3  
14 a description of that requirement.

15 The 1996 Federal Act established that  
16 consumers in all regions of the nation, including low-  
17 income consumers and those in rural, insular and high  
18 cost areas, should have access to telecommunications and  
19 information services, including interexchange services  
20 and advanced telecommunications and information services  
21 that are reasonably comparable to those services  
22 provided in urban areas and are available at rates that  
23 are reasonably comparable to rates charged for similar  
24 services in urban areas.

25 And this applies to both the Federal and

1 State level. It says that there should be specific  
2 predictable and sufficient Federal and State mechanisms  
3 to preserve and advance universal service.

4 And then the last point that I wanted to make  
5 just as background is that the State has its own  
6 separate responsibility regarding -- and a lot of  
7 discretion in how it will preserve and advance universal  
8 service.

9 The law states, the state may adopt  
10 regulation not inconsistent with the Commission's rules  
11 to pre-- that's the FCC's rules to preserve and advance  
12 universal service.

13 A State may adopt regulation to provide for  
14 additional definitions and standards to preserve and  
15 advance universal service within the state, only to the  
16 extent that such regulation adopt additional specific  
17 predictable and sufficient mechanisms to support such  
18 definitions or standards that do not rely on or burden  
19 the Federal universal service support mechanism.

20 That is exactly that what we did in the state  
21 of Missouri. We adopted Universal Service Funds within  
22 the state of Missouri that collects money from  
23 ratepayers in the state of Missouri and redistributes  
24 that in a manner that allows for a discount on basic  
25 services to low-income consumers, and it also envisioned



1 that we might one day have a State high cost fund to  
2 help with ensuring services available in high cost  
3 areas.

4 That, however, never fully came about. It's  
5 still anticipated by State law and there may come a time  
6 when the Commission revisits that issue.

7 JUDGE WOODRUFF: If I could interrupt for a  
8 moment, Ms. Meisenheimer.

9 MS. MEISENHEIMER: Yes.

10 JUDGE WOODRUFF: Does Public Counsel  
11 recommend the creation of a high cost program?

12 MS. MEISENHEIMER: I testified in numerous  
13 rounds. Most of that information is very dated however.  
14 We did those cases years ago, and there may be cause for  
15 the Commission to reexamine whether high cost areas are  
16 truly receiving comparable services at comparable  
17 rates --

18 JUDGE WOODRUFF: Okay.

19 MS. MEISENHEIMER: -- to those in urban  
20 areas. I think that's an ongoing responsibility that  
21 the Commission has.

22 JUDGE WOODRUFF: So you're saying that the  
23 Commission should keep its options open?

24 MS. MEISENHEIMER: I think it should.

25 And there is a piece of language that was

1 negotiated. Originally in the comments I had raised  
2 concern about that we were taking out all -- all of the  
3 portions of the rule that referenced a high cost fund  
4 and how a high cost fund would operate.

5 And, in fact, at one point the proposal in  
6 the workshop was to just entirely remove reference to  
7 high cost in the rules, and I don't think that was  
8 appropriate.

9 We discussed the issue, and eventually the  
10 Staff included language, and I guess now the Commission  
11 has sent you the Secretary of State language that would  
12 be sort of a compromise, in that it still references the  
13 Section 392.248 as being the place to look for what a  
14 Universal Service Fund in the state is intended to do.

15 So from my perspective that was a compromise.  
16 I do believe, however, that the State still has -- or  
17 the Commission, according to the State law, still has  
18 the responsibility to determine whether high cost  
19 support is necessary.

20 Back to the general comments.

21 If you're accepting the written comments,  
22 then I won't go into each and every piece. I'll just  
23 hit the highlights. And there are primarily two areas  
24 that are of most concern to me and our office.

25 One of them has to do with the definitions of

1 what is supported at the State level by universal  
2 service funding.

3 This proposed rule, what it would do is it  
4 would change the services that are currently supported  
5 by the State fund.

6 The State fund includes some additional items  
7 that have traditionally been supported, and those  
8 include access to basic operator services, access to  
9 basic local directory assistance, equal access to  
10 interexchange carriers, meaning the customer isn't just  
11 funneled into their telephone company's affiliate.

12 Instead, the customer has choices about who  
13 they can -- or they at least have option to have choices  
14 of what carrier can carry their long-distance calls,  
15 their interexchange calls.

16 And also we have historically in the state  
17 required that landline providers provide customers with  
18 a white page directory listing for their phone service,  
19 for their basic local phone service.

20 The new definition that is proposed I am  
21 concerned would eliminate these aspects of what is  
22 supported by the State program.

23 I am not in any way suggesting that we can  
24 determine what the Federal level should support.  
25 However, at the State level we have a funding mechanism.

1 These are additional services that are of great benefit  
2 to Missouri consumers.

3 I have not been involved in any case yet that  
4 indicates that these things are no longer needed by  
5 Missouri consumers or that competition in all areas of  
6 the state has sufficiently provided for all of these  
7 elements of service without specific mandate to provide  
8 it.

9 And keep in mind that this is a supplement  
10 given to carriers to provide services that we in the  
11 state think are important.

12 We're not asking them to pick up the tab for  
13 this. Consumers in the state of Missouri pay for this  
14 service, pay for these services to be available to all.

15 So I'm concerned about changing the  
16 definition of universal service to mirror the Federal  
17 level. I don't think we should do it. And if we're  
18 going to do it, I think that we should at least before  
19 we do it review whether we believe each of these  
20 elements that are going to be eliminated from supported  
21 services should be reviewed to ensure that they are  
22 available to consumers statewide before we do.

23 The second area that I wanted to discuss has  
24 to do with the operation of the Universal Service Board  
25 in the state.

1 I have been a staff member of that board  
2 since the board was created, and we -- we have had many  
3 processes for how the board would operate, how we would  
4 do bids for -- like, we have an auditor. We also have  
5 an administrator.

6 Those functions in the past, we have had  
7 different ways of determining the bid process and  
8 determining who would -- who would win that bid.

9 And where we have finally come to is that we  
10 generally rely on OA, the Office of Administration, to  
11 send those bids out for us to review the submissions and  
12 to give us kind of a rating process by which we  
13 determine ultimately -- or the Board determines  
14 ultimately who is going to be the fund administrator and  
15 who will be -- who will win the award for the auditing  
16 services.

17 And I support that. I think it's working  
18 very well. The difficulty I have is that the new  
19 proposals in Section 4 CSR 240-31.020, Part 5, and  
20 4 CSR 240-31.020, Part 6, are now going to make it where  
21 it is mandatory for the Board to rely on OA for this and  
22 must adopt OA's procedures.

23 And I don't think that the Universal Service  
24 Board in the state of Missouri needs to take the extra  
25 step of saying that they will abide by this in all cases

1 going forward.

2 Historically there was some question about  
3 whether OA was even required to perform these services  
4 for the board. So I could envision that we could get  
5 into trouble if later OA changes its mind and says, no,  
6 we're not -- we're not obligated to do that. We don't  
7 want to do that anymore.

8 We wouldn't want to be left with the Board  
9 requiring -- or being required to follow a policy  
10 without OA's agreement and cooperation.

11 So I just don't think that we need to codify  
12 this. We can certainly continue to follow it. I think  
13 it's a good policy for now, but I don't believe that we  
14 need to codify and make it mandatory for the Board to  
15 follow.

16 I have also reviewed comments by other  
17 parties that were filed in this case, and I've already  
18 talked about the reference to high cost being supported  
19 under the State fund.

20 The only other issue -- and Public Counsel  
21 has commented on this in the past -- relates to whether  
22 we use a common form for universal service in the state  
23 or whether we let each company to have its own form.

24 And my primary concern in this area is that  
25 having a common form I view as a great benefit, in that

1 it means that we can have this form available at Social  
2 Service agencies throughout the state. It will be a  
3 form that the Social Service agencies can easily become  
4 familiar with. It will take less of their time to  
5 become familiar with a single uniform form that's being  
6 used rather than becoming familiar with all of the forms  
7 that might be available from companies that provide  
8 service in the areas that the Social Service agencies  
9 serve.

10 So I think that it just improves the consumer  
11 access to universal service by having a uniform form and  
12 I think it improves efficiency. It means it's less  
13 forms than Social Service agencies and other entities  
14 that help low-income consumers find the services  
15 available to them.

16 I just think it improves efficiency. And the  
17 fund has -- over time we're seeing lower and lower  
18 subscribership, which, you know, many attribute to the  
19 fact that consumers are transitioning from landline  
20 phones to wireless phones, and that may be true to a  
21 large extent, but also we don't want to create obstacles  
22 to consumers being able to be aware that the service is  
23 available and to obtain the service.

24 And forms being uniform and widely available  
25 throughout the state I think enhances the likelihood

1 that consumers will subscribe to universal service in  
2 the event that they qualify for it.

3 And those are the comments that I'd like to  
4 give today. I appreciate you taking them into  
5 consideration.

6 JUDGE WOODRUFF: All right.

7 The documents you gave me I'm going to mark  
8 as Exhibit 1, and we'll receive it into the record.

9 (EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION  
10 AND RECEIVED INTO EVIDENCE.)

11 JUDGE WOODRUFF: Commissioner Hall, do you  
12 have any questions?

13 COMMISSIONER HALL: I do not.

14 JUDGE WOODRUFF: Okay. Thank you.

15 Do we have a volunteer to go next?

16 I'll go down the list then of the prefiled  
17 comments and see if there is someone here from the  
18 entity that wants to speak again.

19 First was the Missouri Cable  
20 Telecommunications Association.

21 MS. BELL: We need to dial in. Is that all  
22 right?

23 JUDGE WOODRUFF: Sure.

24 MS. BELL: Ken, are you on the phone?

25 MR. WOODS: Yes, I am.



1 MS. BELL: Okay. Hold on one moment.

2 Chuck, are you on the phone?

3 MR. SIMINO: Yes.

4 MS. BELL: All right. Go ahead.

5 MR. SIMINO: Okay. Good morning. This is

6 Chuck Simino, Missouri Cable Telecommunications

7 Association. I am the president of the association.

8 We are not going to make any comments this

9 morning. We are going to make -- we have Ken Woods, who

10 is on the phone, he is with the law firm of Friend,

11 Hudak and Harris out of Atlanta, Georgia. He is

12 registered to practice law in Missouri. And we are

13 making Ken available to answer any questions that you

14 may have. And I apologize that I cannot be there in

15 person.

16 So with that we will open it up for any

17 questions anyone may have.

18 JUDGE WOODRUFF: Okay.

19 First of all, Stephanie, could you identify

20 yourself?

21 MS. BELL: Sure. Stephanie Bell with Blitz,

22 Bardgett and Deutsch.

23 JUDGE WOODRUFF: And the person on the

24 telephone is Ken?

25 MS. BELL: Ken Woods.

1 JUDGE WOODRUFF: Ken Woods. Okay.

2 MS. BELL: Yes.

3 JUDGE WOODRUFF: Mr. Woods, what would you  
4 like to tell us?

5 Mr. Woods?

6 MR. WOODS: Yes, sir.

7 JUDGE WOODRUFF: Was there any statement you  
8 wish to make?

9 MR. WOODS: No, sir, unless the PSC has any  
10 questions.

11 JUDGE WOODRUFF: Okay.

12 Commissioner Hall, did you have any  
13 questions?

14 COMMISSIONER HALL: I do not.

15 MS. BELL: And I believe it was Ken's  
16 intention to just stay on the phone. That way if any  
17 questions come up, he'd be available throughout for any  
18 questions.

19 JUDGE WOODRUFF: Okay. That will be fine.

20 We apparently don't have any questions at the  
21 moment for you, Mr. Woods. If anything comes up, we'll  
22 let you know.

23 MR. WOODS: Thank you very much.

24 JUDGE WOODRUFF: Thank you.

25 Okay. AT&T.

1 MR. GRYZMALA: Good morning, Your Honor.  
2 Commissioner Hall. My name is Bob Gryzmala. I  
3 represent Southwestern Bell Telephone Company and we do  
4 business as AT&T Missouri.

5 We will have just a few comments, Your Honor,  
6 and Commissioner Hall.

7 I want to first thank you, members of the  
8 Staff, for all of the hard work that they have done in  
9 this -- in prior rulemakings leading up to this.

10 Ms. Meisenheimer referred to the 0012 case,  
11 and there have been others in the last year or so in  
12 which Natelle Dietrick, John VanEschen and Cully Dale  
13 sat with us at AT&T and members of the industry with an  
14 eye toward bringing these rules up to the modern era and  
15 have done a great job. They really have done a really  
16 good job.

17 At AT&T we're firm supporters of universal  
18 service. We're firm supporters of the Missouri  
19 Universal Service Fund, particularly the low-income fund  
20 that's been established since, I believe, 2005 -- or the  
21 2002 timeframe. We were there at the inception to help  
22 fashion that.

23 We bill, we collect, we remit and we are glad  
24 to be a participant in that.

25 I'll get right to the point, if I may.

1           A lot of our comments have to do with a  
2   couple of particular manners -- the manner in which  
3   we -- our interest. Let's put it that way.

4           We're a large multi-national company as you  
5   know. Our region -- our in-region turf, our in-region  
6   footprint for the provision of basic service is our  
7   22 states in the United States.

8           We are a multi-state company. We're a multi-  
9   national company.

10          We are involved in Universal Service Funds at  
11   the Federal level and at the State level across the  
12   country.

13          We are watching developments occur at the FCC  
14   that have a direct impact on what is going on in the  
15   states, including Missouri, and the Commission has  
16   recognized them as well, two in particular, the  
17   Lifeline Reform Order and the so-called CAF Order, the  
18   Connect America Fund Order.

19          And a good deal of what has been going on in  
20   Missouri has been an effort to bridge the State regime  
21   in Missouri with the Federal regime for the purposes of  
22   those two orders.

23          So, for example, a couple of good hard  
24   examples. When in the Lifeline Reform Order the FCC  
25   changed the eligibility criteria for low-income

1 individuals to add a poverty guideline component, an  
2 income-based component, which Missouri did not  
3 previously have. It was all program based.

4 Missouri moved fast and we supported it, and  
5 it brought uniformity between the two programs, so that  
6 the same eligibility criteria applied in both spheres.

7 I notice Staff also recommends that the  
8 State -- that Missouri adopt the definition that has  
9 been approved by the FCC. We support that.

10 It is uniformity and action. It's important  
11 that the jurisdictions recognize the symmetry between  
12 the State and Federal jurisdictions, easier to  
13 administer and it's the right thing. It's the right  
14 thing.

15 The Staff has also recognized, for example,  
16 that the customers who no longer warrant Lifeline and so  
17 require -- or should be de-enrolled. There are  
18 procedures for that.

19 And the FCC lays those out in its Federal  
20 rules, the manner in which you go about de-enrolling and  
21 individual for no longer qualifying or simply not  
22 responding to recertification on an annual basis.

23 Missouri Staff recommends that the State --  
24 that Missouri adopt the same decertification procedures  
25 as are indicated in the Federal rule.

1                   Why is that important? That's important to  
2   us for a couple very big reasons.

3                   Again, the administration of two separate  
4   regimes can be difficult or it can be easy. It is easy  
5   if the two separate regimes have the same rules, if  
6   Missouri has the same consistent rules as does the FCC.

7                   It is difficult if Missouri or any other  
8   state, for that matter, is inconsistent with the Federal  
9   rules, or worse yet, imposes additional rules, and that  
10   is why what is particularly important to us are a couple  
11   of developments back to the Lifeline Reform Order, the  
12   order which, among other things -- in which among other  
13   things the FCC took the bull by the horns to curb in  
14   waste, fraud and abuse.

15                  And those programs are in action. They're  
16   moving along.

17                  In the CAF Order, the Connect American Fund  
18   Order, the FCC adopted for the first time an adoption of  
19   explicit support for broadband capable networks.

20                  There's a lot to that order and I know  
21   precious little about it, but the upshot of that order  
22   is that over the next five, six years approximately  
23   \$4.5 billion are going to be invested in broadband  
24   deployment across rural America.

25                  There are lots of acronyms associated with

1 it, Phase I, Phase II. We are involved in Phase I.

2 Phase I is a program in which a pool of money  
3 is being made available to carriers on an electing  
4 basis, on a take or leave basis -- they don't have  
5 to take it. They can take it or they can walk away from  
6 it -- in order to secure a certain amount of funds for  
7 deployment in specifically identified census blocks and  
8 wire centers.

9 Missouri is one of the states in which AT&T  
10 elected to take what is called CAF Phase I incremental  
11 support funding.

12 We announced to the FCC in August that we  
13 were interested in taking incremental funding up to --  
14 not to exceed \$100 million. We identified to the FCC  
15 the states in which we propose to spend that money,  
16 driving it down to wire center and census blocks.  
17 Missouri, again, is one of them.

18 What we want to make sure of is that the  
19 rules in both regimes are the same. And there are many  
20 rules associated with the Lifeline Reform Order and in  
21 particular the CAF Order.

22 The Federal government is not giving money  
23 away without accountability in place. We attach just a  
24 very brief, short, two-page press release of the FCC to  
25 our comments, and you'll see right there the emphasis in

1 both about the Federal government's emphasis on  
2 accountability for this money.

3 What does that mean? What that means is that  
4 we're going to have to deploy broadband of a certain  
5 upstream and downstream speed. We're going to have to  
6 report. We're going to have to report on an annual  
7 basis. We're going to have to make officer  
8 certifications that we have done this, that and the  
9 other.

10 That is where there are some overlap between  
11 the Federal Rules and the State rules.

12 I just want to spend a few moments talking  
13 about a few of the points that are already in our  
14 comments.

15 What we're asking, I think, is that as you  
16 look through the comments of the parties, and AT&T's,  
17 give some thought to where we're coming from, and not  
18 perhaps only us, because we're not the only company in  
19 Missouri who has accepted on a preliminary basis CAF  
20 Phase I support funding. I believe there are a couple  
21 others.

22 And if this money isn't spent in Missouri, it  
23 can be spent elsewhere. We've already told the FCC we  
24 want to spend the money in Missouri, but it is not  
25 irrevocable. We're working to try to bring symmetry



1 between the State rules and the Federal Rules, and we're  
2 looking at those State rules.

3 There are some that give us some pause when  
4 you look at the CAF funding, and I won't cite the rules  
5 right here, unless you would like to know more, but  
6 they're in our comments.

7 There are annual filing requirements that  
8 require that we explain and identify how we have  
9 monitored service quality.

10 There are annual filing requirements that  
11 require that we provide three months of service quality  
12 data. There are application requirements that require  
13 ETC application requirements, that require how we detail  
14 our build-out plan, how we handle unusual construction  
15 and installation and, again, how we monitor service  
16 quality.

17 There are requirements in the rules, again,  
18 referenced in our comments, that require that we commit  
19 to all customers -- to provide service to all customers  
20 making a reasonable request for service.

21 There are requirements that we notify the  
22 Commission of any proceedings alleging -- and I use that  
23 virtually verbatim, not a quote -- alleging a violation  
24 of State or Federal rules.

25 These are requirements which are all above

1 and beyond the requirements that are associated with CAF  
2 support funding.

3 In a nutshell -- there are many of them, but  
4 in a nutshell we are required to report to the FCC the  
5 number of complaints per thousand. We are required to  
6 report to the FCC the number of unfulfilled requests of  
7 service that have been made by customers.

8 There are detailed outage reporting  
9 requirements. There are requirements that certify that  
10 we demonstrate how or that we can and we do function in  
11 emergency situations.

12 These are very stiff. The FCC is not going  
13 to give away money of the dimension it is giving away to  
14 companies to unleash broadband in America without being  
15 specifically held accountable for it, and we're  
16 particular to be held accountable.

17 Some of the requirements -- again, in our  
18 comments -- but some of the requirements the Missouri  
19 Commission Staff are proposing above and beyond those.

20 Why is that important?

21 That's important because we have an election.  
22 The money that is to be spent on CAF support funding in  
23 Phase I and later is important. Phase 1 is elective and  
24 we can deploy those funds in Missouri or we can deploy  
25 them elsewhere.

1           We want to be able to show when this  
2   rulemaking is completed that there is as much symmetry  
3   between the State rules and Federal Rules as there can  
4   be, that they are as consistent as they can be, that  
5   they don't deter business from making an opportune  
6   election to deploy broadband when we have these rules  
7   already at the Federal government.

8           And I want to emphasize too, the things I  
9   read to you are coming out of a Federal rule, 54.313,  
10   47 CFR 54.313. These are not tea leaves in an order.  
11   They are buried in hard-coded FCC CFR language.

12           The other thing to keep in mind is this data  
13   has to be reported to the relevant State commissions.  
14   That's what the FCC's rule says. This data must be  
15   reported to relevant State commissions.

16           Our position would be that if we're spending  
17   money for broadband deployment in Missouri, Missouri is  
18   a relevant State commission. You will have those  
19   reports.

20           Just a couple of other things to keep in mind  
21   when we look at those sorts of reporting obligations.

22           I think that there has been a comment made by  
23   Ms. Meisenheimer, and I believe Staff also mentioned it  
24   in their comments, that the State has the opportunity to  
25   generate rules that are not inconsistent with the

1 Federal regime, and to an extent that's true.

2 But they're testing the outer limits if they  
3 run into rules and statutes in Missouri that should give  
4 you pause, and there are -- there was legislation in  
5 2008. There was legislation in 2011.

6 The upshot of which is that the Missouri  
7 Legislature has decided that for certain companies,  
8 including so-called competitive companies, of which AT&T  
9 is one, numerous rules will no longer apply, service  
10 quality standards and reporting requirements, rules  
11 regarding how we go about installation, provisioning and  
12 maintenance of service.

13 These are rules that the Missouri Legislature  
14 has decided not once but twice over in HB 1779 in 2008  
15 and HB 338 in 2011 should not apply to competitive  
16 companies like AT&T.

17 That should give the Commission some pause  
18 also in taking Staff's and OPC's comments at face value.

19 At the end of the day --

20 COMMISSIONER HALL: Excuse me.

21 JUDGE WOODRUFF: Mr. Gryzmala, Commissioner  
22 Hall has a question.

23 MR. GRYZMALA: Yes, sir.

24 COMMISSIONER HALL: I'm not following. Why  
25 should that give us some pause to --

1 MR. GRYZMALA: I think it should give pause  
2 in part because of the answer I do not know.

3 I think that there is sufficient rulings to  
4 the effect that, as was pointed out, states have the  
5 authority to generate rules and procedures that are not  
6 inconsistent with the Federal rules and procedures.

7 But I don't know that those statutes and  
8 rules have been applied in a situation where a State  
9 regulatory agency's authority and powers have been  
10 limited and lessened by the Legislature to whom it owes  
11 its agency's authority.

12 So that in HB 1779 the Legislature said we're  
13 going to constrict the obligation of certain telephone  
14 companies. And it's not just AT&T. It's many others.

15 And in 2011 additional restrictions on what  
16 our obligations are given the competitive environment  
17 for telecommunications. That is the thing that I would  
18 suggest might give pause, because the wrinkle here is  
19 that while there is general law and general regulatory  
20 authority for the proposition that the State can  
21 implement some rules, we have a situation here where the  
22 Missouri Legislature has definitively determined that  
23 there should be limits on that authority.

24 JUDGE WOODRUFF: So your concern --

25 MR. GRYZMALA: That's the only thing I'm

1 pointing out.

2 JUDGE WOODRUFF: So your concern is that some  
3 of the provisions in the proposed regulation would  
4 reimpose some of these requirements --

5 MR. GRYZMALA: There is no question about it.  
6 There is no question about it.

7 JUDGE WOODRUFF: And that's mentioned in your  
8 written comments?

9 MR. GRYZMALA: Yes.

10 I'll give you one good example.

11 32.130. There's a piece in there regarding  
12 the annual filing requirements. I think it's Subpart 3  
13 and it's, like, (b)(3).

14 And it says that in your annual filing -- in  
15 your annual filing as a high cost recipient, you must  
16 demonstrate or identify how you monitor service quality  
17 data.

18 And it also says that the company shall  
19 provide results of its most recent consecutive three  
20 months of service -- I'm sorry -- three months of  
21 quality of service measurements if available.

22 I would submit to you that that would be  
23 absolutely precluded under the legislation that I  
24 referred to, and we cite that in our comments. That was  
25 the whole point of a portion of that legislation.

1           There was price competitiveness, so pricing  
2   is relaxed, and some other things I just talked about.

3           COMMISSIONER HALL: So are you going as far  
4   as to say that this proposed rule violates the statute  
5   or are you simply saying it's inconsistent with the  
6   statutory scheme?

7           MR. GRYZMALA: I don't know. I think it  
8   would be the latter, Commissioner.

9           COMMISSIONER HALL: Okay.

10          MR. GRYZMALA: I can't tell you that my legal  
11   conclusion would be that it's a violation but it  
12   certainly is but another indicator.

13          It is certainly but another indicator that  
14   the marketplace is extremely competitive, and these  
15   sorts of obligations are no longer useful or necessary.

16          And this is not like a new experiment, in all  
17   candor. HB 1779 was passed in 2008. We're six years --  
18   five years removed, and detariffing authority and other  
19   freedoms were extended in 2011, and things are moving  
20   along, you know, in our view.

21          A couple of very brief comments, to give  
22   others the opportunity.

23          The matter of operator services directory  
24   assistance and access to interexchange services, they  
25   once were a part of the basic local service definition.

1           The FCC gave us a lot of thought, and it  
2     determined that it was no longer necessary that those be  
3     components of the supported services, and they are no  
4     longer elements of the supported services.

5           We, again, would emphasize that there should  
6     be symmetry for ease of administration and  
7     burdensomeness between the definition of voice telephony  
8     service at the Federal level and the definition of voice  
9     telephony service at the State level.

10          The FCC said in its Connect America Fund  
11     Order -- it's in Footnote 8 in our comments -- we do not  
12     mandate that ETCs provide operator services or directory  
13     assistance. We find the importance of these services to  
14     telecommunications consumers has declined with changes  
15     in the marketplace.

16          With regard to the matter of forms, there is  
17     no prohibition to adopting or we -- we would not have a  
18     hardcore concern with the notion of the Board adopting a  
19     form which folks can use, which, as  
20     Ms. Meisenheimer alludes to, could be placed at Social  
21     Service agencies or the like, a form that would be  
22     acceptable.

23          What we are saying is that we do not want to  
24     be confined to a form which is a Board-established form  
25     and that must be used by all companies.



1 I don't mean to be cryptic, but it's a one-  
2 size-fits-all form.

3 We argued this in the workshops before, and  
4 the arguments are not new, but to sum them up, we are a  
5 multi-state company and we would like to have the option  
6 of using a form in more than one state.

7 We would like to be able to take advantage of  
8 the FCC's rules, which 54.410 does not prescribe that  
9 companies use a specific form.

10 It tells companies what a form, a compliant  
11 form, will contain. I mean, it spells it out in  
12 nauseating detail.

13 So as long as those companies comply with  
14 that rule, they are authorized to put as much -- or they  
15 are authorized to allow differences in format, in  
16 presentation, so long as it complies with the rule,  
17 and it's very, very stiff.

18 JUDGE WOODRUFF: Let me explore that a little  
19 bit more, what you were just explaining here about the  
20 standard form.

21 What Ms. Meisenheimer suggested was that a  
22 standard form be available so that it could be available  
23 in Social Services offices and so forth.

24 Are you saying that the company would -- if a  
25 form such as that were submitted to AT&T, AT&T would

1 accept that in addition to applications that were  
2 submitted on your forms?

3 MR. GRYZMALA: I'm not sure how to bridge the  
4 gap between company flexibility in using the forms that  
5 they would like to put together and placement of Social  
6 Service agencies.

7 I was at the workshop before when this point  
8 was explored, and I don't believe I heard that point  
9 before, so I was just sort of noodleing on it in the  
10 chair over there. I'm not quite sure how that would  
11 work.

12 I would emphasize that our company's primary  
13 desire is that it be allowed the same flexibility in the  
14 use of -- in the devising of its forms as the FCC's  
15 rules allow.

16 And whether the FCC thought this through and  
17 thought, gee, what does this mean, if we're looking to  
18 place forms at Social Service agencies, I can't tell you  
19 that they addressed that. I don't know how they thought  
20 about it, if they did.

21 I do know that they said, we will not require  
22 a one-size-fits-all form. We are going to allow  
23 companies the discretion so long as these forms have  
24 every one of these points in them and that that person  
25 certify under penalty of perjury that I am qualified.

1 That's what we're asking.

2 Proof of eligibility in the recertification  
3 process. There is a rule which would require that  
4 during the recertification -- and the recertification  
5 process is sort of an ongoing annual double-check that a  
6 Lifeline -- or that a Lifeline recipient is still  
7 qualified.

8 And there is a rule in the proposed rules  
9 that says when you do that proof -- when you do that  
10 eligibility, you know, recert, you must obtain at least  
11 every two years proof of eligibility. We would  
12 respectfully request that that rule be withdrawn. It  
13 enacts -- or it exacts the burden, a process, a  
14 procedure that is not in the FCC's rules.

15 Again, this is in our comments in more  
16 detail, but the upshot of the FCC's rules is that one  
17 need only execute a signed certification under penalty  
18 of perjury to eight separate items. We believe that is  
19 sufficient.

20 If it was sufficient for the FCC, it should  
21 be sufficient for the Missouri Commission. Give it  
22 time. It was in the Lifeline Reform Order. It's this  
23 and a number of other measures that were taken in that  
24 order to curve what everyone recognizes was some waste  
25 and fraud and abuse in the system.

1           It would be easy to appreciate that if we are  
2   and all our folks have to take in proof of certi-- proof  
3   of eligibility, it enacts a whole new process, a whole  
4   new procedure that is not in the Federal Rules.

5           And, again, we don't want to be a state that  
6   is out -- you know, too inconsistent with the Federal  
7   rules for our own business reasons for purposes of  
8   administration and what have you.

9           A couple other quick examples and I'm done,  
10   unless you have some questions, Your Honor.

11           There is a rule that says you are to deny or  
12   disconnect or some -- deny or discontinue Lifeline  
13   discounts for incorrect, false or fraudulent information  
14   given to you.

15           Well, no one is going to condone false or  
16   fraudulent information being given to anyone. I  
17   don't -- I'm not here to say that we don't like it for  
18   that reason, but it's an overly broad rule.

19           We're not in the business of policing our  
20   customers. We don't know that that matter of  
21   in correction is not even material to the application or  
22   that it can't be cured. Somebody transposed a digit.  
23   Somebody has something wrong. Someone didn't read it  
24   right.

25           These are the kind of rules that again are

1 not at the FCC. There is no FCC counterpart rule that  
2 says you shall deny or discontinue Lifeline discounts  
3 for incorrect information.

4 There is a number of -- there are a number  
5 of rules that relate to the reporting to -- as we  
6 frankly called it during the workshop process -- to  
7 check the bad guys.

8 There are rules in the proposed rules that  
9 would report that the -- that companies report to the  
10 Commission proceedings alleging wrongdoing, that they in  
11 the context of their applications identify every State  
12 and every Federal proceeding or investigation brought in  
13 the last ten years.

14 We would only ask that you look really hard  
15 at those rules, because while they may apply to some ETC  
16 applicants over the years, they certainly don't apply to  
17 the 70 or so companies as a group that receive and work  
18 with the Lifeline system in Missouri.

19 What we don't want to do is to be in a  
20 situation in which all of the rules are magnified to a  
21 certain level because of the existence of a few bad  
22 actors. We recognize that that can always be the case,  
23 but there is also an opportunity to go after those kinds  
24 of folks with focused audits, data requests, and the  
25 Commission has reinforcement tools available to it under

1 its statutes.

2 Again, these are the kinds of rules that we  
3 would be subject to or could be subject to.

4 Again, what I would only say in closing is  
5 that we're a proud member of the telecomp community in  
6 Missouri. We work hard to administer the USF with our  
7 customers and with the Commission, and we're looking  
8 hard to where this world is going to lead us, and to our  
9 way of thinking it's leading us to broadband deployment.

10 We're in a situation where we want that  
11 uniformity because there is very hard business reasons  
12 why it would be useful to have the two.

13 We want Missouri to be able to have  
14 uniformity between those rules for the support that we  
15 would like to receive from the Federal government for  
16 Phase I.

17 Unless there is anything further --

18 JUDGE WOODRUFF: Go ahead.

19 COMMISSIONER HALL: A quick question.

20 I assume that you and your company make the  
21 same arguments in all of the states where you do  
22 business, that you would like to see uniformity with the  
23 Federal guidelines?

24 MR. GRYZMALA: I don't know that. It would  
25 be intuitive but, Commissioner, I have not conferred

1 with my colleagues as to what they've done in other  
2 states, but it would be intuitive. I mean, it is very  
3 important to us, so I would make that assumption.

4 COMMISSIONER HALL: Well --

5 MR. GRYZMALA: Similar arguments. Uniformity  
6 is something that is important to us.

7 COMMISSIONER HALL: Would that answer then --  
8 maybe you can't answer the second one, which is I wanted  
9 to know how successful you've been.

10 I mean, the FCC specifically gives states a  
11 great deal of discretion in a number of the areas that  
12 you've raised this morning, and I assume that most  
13 states take advantage of that to at least some extent.

14 And so if Missouri were to comply -- or  
15 that's the wrong word.

16 If Missouri were to enact -- promulgate rules  
17 that were completely consistent with the Federal rules  
18 but the rest of the states don't, then you don't have  
19 your uniformity, and so I'm trying to figure out what we  
20 should do here in that context.

21 MR. GRYZMALA: To be honest, very candid, I  
22 cannot answer that question. I do not know.

23 I can say --

24 COMMISSIONER HALL: Can Staff address that?

25 JUDGE WOODRUFF: They might.

1 MR. GRYZMALA: I can say that our interest in  
2 Missouri maybe is a little bit different in one sense,  
3 and that is because a number of the rules that were  
4 enacted some years ago -- and it's still a carryover  
5 with some modification in this proceeding -- come out of  
6 the high cost rules that were issued by the 2005 FCC ETC  
7 designation order.

8 Some seven, eight years ago that order was  
9 issued, and there was a movement to have those rules  
10 brought forward and we were involved in that.

11 But I don't know -- I don't know the extent  
12 to which, you know, any other states involved in a  
13 new -- in a new effort to bring its rules current with  
14 the CAF Order.

15 COMMISSIONER WOODRUFF: Thank you.

16 JUDGE WOODRUFF: Thank you, Mr. Gryzmala.  
17 CenturyLink.

18 MS. KILPATRICK: Good morning.

19 Becky Owenson Kilpatrick for Centurytel of  
20 Missouri, LLC, and Embarq Missouri, Inc., Spectra  
21 Communications Group, LLC and CenturyTel of Northwest  
22 Arkansas, LLC, all doing business as CenturyLink.

23 Excuse my voice this morning.

24 I have two quick points. I'm not going to  
25 belabor comments that have already been filed in the



1 docket. But CenturyLink has two overarching concerns in  
2 this matter, and that is to mirror much of what AT&T  
3 discussed in trying to conform Missouri rules to that of  
4 the FCC.

5 I think the Staff has done a pretty wonderful  
6 job up to this point, and there are areas of discrepancy  
7 that have been pointed out in our comments, one of them  
8 being the requirement to provide proof of eligibility  
9 every two years.

10 The second issue that we'd like to raise is  
11 the continued -- the deletion of all of the language  
12 concerning high cost rules.

13 The statute requires that the Commission  
14 promulgate rules concerning a high cost fund in  
15 Missouri, and we believe with changes in the Universal  
16 Service Fund at the Federal level, that it may become  
17 pertinent in the state of Missouri for a high cost fund  
18 to be established, and the rules should remain in place.

19 And that is all I have, unless you have  
20 questions.

21 JUDGE WOODRUFF: I do have a question about  
22 the last item you mentioned, about leaving the rules in  
23 place for the high cost support.

24 I believe Staff's concern was that those  
25 rules are seriously out of date at this point and

1 suggesting that if we were to implement a high cost  
2 system, we would have to redo the rules anyway, so why  
3 not just do away with them.

4 Do you have a response to that?

5 MS. KILPATRICK: I think it would be easier  
6 to amend what exists and not delete it completely from  
7 the rules. I think they're pretty general in form, and  
8 while they may be outdated they're still functional, and  
9 the statute does require that those rules be in place.

10 JUDGE WOODRUFF: Okay.

11 Commissioner Hall, do you have any questions?

12 MS. DALE: (Inaudible.)

13 THE COURT REPORTER: I'm sorry?

14 MS. DALE: I wanted a cite for the  
15 requirement.

16 MS. KILPATRICK: I can get it for you. I  
17 don't have it off the top of my head.

18 JUDGE WOODRUFF: And just to make it on the  
19 record, Staff counsel asked you for a citation to the  
20 statute that requires that those revisions be in place.

21 MS. KILPATRICK: Correct.

22 JUDGE WOODRUFF: Thank you.

23 Cricket Communications.

24 MR. STEINMEIER: Thank you, Your Honor,  
25 Commissioner.

1 Bill Steinmeier on behalf of Cricket  
2 Communications, Inc.

3 I would also like to pay compliments to the  
4 Commission Staff for its arduous efforts in this  
5 process, a process which really has been going on for  
6 about two years, if memory serves me correctly, with the  
7 round table workshop a couple years ago and then hard  
8 work on actual language for a proposed rule a year ago,  
9 all of which got slowed down inexplicably at the  
10 Department of Economic Development this year, and I have  
11 no idea what caused the delay in the process.

12 But in the meantime there probably are some  
13 things in the rule that have become less timely than  
14 they were when the Commission sent it over to Economic  
15 Development almost a year ago.

16 As a general proposition I agree with the  
17 idea that the highest level of symmetry possible between  
18 the Federal and the State rules is highly desirable and  
19 to be preferred.

20 Cricket's specific concerns is set out in our  
21 comments, the shortest set of comments you will need to  
22 read in this proceeding.

23 And that is that since these rules were  
24 proposed a year ago a number of companies, including  
25 Cricket, have developed electronic customer application

1 systems.

2 A year ago the debate was all about paper  
3 forms and Staff's strong desire to have every ETC --  
4 every Lifeline ETC in Missouri use the same generic  
5 paper form.

6 In the meantime, in an effort to reduce the  
7 fraud and abuse problems that had materialized and that  
8 the FCC has acknowledged and been concerned about,  
9 electronic customer application systems have been  
10 developed, which greatly reduce the opportunities for  
11 fraud and abuse in the Lifeline application process.

12 And in the course of the use of one of these  
13 electronic systems -- for example, if someone wants to  
14 apply to Cricket for a Lifeline service, they have to go  
15 to a Cricket store. The application form is on a  
16 tablet, and the tablet will simply not move from one  
17 question to the next if there is an issue or lack of  
18 sufficient information on the previous page.

19 So names and addresses are confirmed against  
20 databases. Proof of eligibility is signified clearly on  
21 the form. You can't get through the process missing  
22 information because of the electronic format, which  
23 greatly reduces the opportunities for fraud and abuse.

24 The bottom line, our concern is to ensure  
25 that the new rule acknowledges the legitimacy and

1 acceptability of electronic customer applications.

2 I would mention since filing our comments and  
3 receiving Staff's comments Staff has proposed possible  
4 alternative language.

5 Staff actually proposed this alternative  
6 language about customer application forms a year ago.  
7 In fact, I think it was October 31st of last year in an  
8 e-mail from John VanEschen to many interested parties.

9 This possible alternative language was put on  
10 the table. Many of us responded to it. I believe there  
11 was unanimity or near unanimity within the ETC industry  
12 that this was highly desirable and, in fact, a much  
13 preferred course to continue the insistence on the  
14 mandatory generic customer application form.

15 In Staff's Appendix A, on page 2 of 5, they  
16 propose a new Section 5, and as I reviewed the rule, I  
17 thought it would fit better as Section 4, I think, but  
18 I'll leave that -- happily leave that to the judge and  
19 the Commission's discretion to decide where new language  
20 ought to fit without disrupting the flow of things.

21 So let's assume for the moment it is to  
22 become Section 5 as it says on Appendix A. 5(b) says  
23 ETCs may use the sample forms or may use their own  
24 company specific Lifeline and disabled application form,  
25 paren, company specific form, close paren.

1           I would add to that, comma, which may be  
2   electronic in format. I think that would take care of  
3   my concerns that nobody can come along later, a couple  
4   years down the road, and say, hey, you're required to  
5   have a form. There is nothing in the rule that allows  
6   an electronic form.

7           If the Commission is looking at and  
8   considering Staff's alternative language on customer  
9   application forms, I would just point out further that  
10   on page 3 of 5, under Subsection 6, the last sentence I  
11   believe really should be precluded by due process of  
12   law.

13           It would say that notwithstanding any  
14   provision to the contrary elsewhere in this chapter the  
15   Board's decision shall be final and the ETC shall change  
16   its company specific form accordingly, appearing to  
17   preclude the possibility of an appeal of a Staff  
18   decision -- or the Board's decision to the Commission,  
19   and I don't think that's appropriate and I don't think  
20   it's lawful and would urge that that sentence be  
21   removed.

22           It's not clear to me that Staff and Public  
23   Counsel need a specific authority in the next section,  
24   Section 7, in order to have the power to file a  
25   complaint. I think they can do that anyway.

1 But those would be my specific points of  
2 consideration about Staff's alternative language, which  
3 I would agree would be preferable to the mandatory  
4 generic uniform customer application form.

5 A point on that subject that may go to a  
6 question the Commissioner asked Mr. Gryzmala.

7 First of all, to the best of my knowledge  
8 most Lifeline application forms are not generated at  
9 Social Service agency offices. They're generated by  
10 customers applying directly to Lifeline ETC providers  
11 for that service.

12 In some states applications for Lifeline  
13 service are submitted to a State agency or to a  
14 contractor of a State agency and that State agency or  
15 its contractor receives all of the information, verifies  
16 or certifies the customer's eligibility for the Lifeline  
17 program, looks at the eligibility documentation and  
18 certifies that it has done so, establishes that that  
19 customer is now a Lifeline customer, and then that  
20 customer can take that certification to an ETC and get  
21 service, with the Lifeline credit applied to his or her  
22 bill.

23 In Missouri customers do not apply to the  
24 State for Lifeline. They apply to individually ETCs.  
25 And to the best of my knowledge and the latest of my

1 knowledge, in the 29 states in which Cricket provides  
2 Lifeline service, Missouri is the only one where  
3 customers apply directly to the ETC for Lifeline service  
4 and not to a State agency where a mandatory generic form  
5 is required.

6 With that I'll be happy to answer any  
7 questions you have, but would refer you again to the  
8 comments, which were probably shorter than what I just  
9 said, that we filed last week.

10 JUDGE WOODRUFF: Mr. Steinmeier, I just have  
11 a basic question about Cricket.

12 Can you tell me a little bit about Cricket  
13 Communications, what kind of services they provide?

14 MR. STEINMEIER: They provide wireless  
15 telecommunication services pretty much all across the  
16 country. They have been growing since the mid to late  
17 '90s. As I just indicated, provide Lifeline service in  
18 29 states.

19 Lifeline service is not their primary  
20 business. Unlike some, they didn't go into business in  
21 order to provide Lifeline. They were providing wireless  
22 service for a long time before the Lifeline program.  
23 And roughly 10 to 15 percent of their total customer  
24 base is made up of Lifeline customers.

25 JUDGE WOODRUFF: Do they provide prepaid



1 services or both kinds of services?

2 MR. STEINMEIER: Both kinds to the best of my  
3 knowledge.

4 JUDGE WOODRUFF: Okay. Thank you.

5 MR. STEINMEIER: Primarily in St. Louis and  
6 Kansas City in Missouri.

7 JUDGE WOODRUFF: Commissioner Hall.

8 COMMISSIONER HALL: During the rulemaking  
9 process and the workshops related to that, did Cricket  
10 support allowing customers to apply directly with the  
11 ETC as opposed to the State or was that contrary to what  
12 your position was during that process?

13 MR. STEINMEIER: Oh, it's not been an issue.  
14 It's just the way the Missouri program is established is  
15 the customers apply directly to the ETC.

16 COMMISSIONER HALL: And you're comfortable  
17 with that?

18 MR. STEINMEIER: We're fine with that.

19 JUDGE WOODRUFF: You said some states require  
20 application to the State and others --

21 MR. STEINMEIER: Right.

22 In Texas or California, for example, you have  
23 to have a uniform form because they're all -- or it  
24 makes sense to have a uniform form because the  
25 applications are all going to the same place, to an

1 agency that determines eligibility.

2 JUDGE WOODRUFF: Okay.

3 MR. STEINMEIER: Here the company has the  
4 burden of verifying the customer's eligibility. The ETC  
5 provider has that responsibility here.

6 JUDGE WOODRUFF: And that's not unique to  
7 Missouri; there are other states that do it that way  
8 also?

9 MR. STEINMEIER: Yes.

10 JUDGE WOODRUFF: Okay. Thank you.

11 MR. STEINMEIER: Probably more than not.

12 JUDGE WOODRUFF: All right.

13 Well, thank you, Mr. Steinmeier.

14 MR. STEINMEIER: Thank you.

15 JUDGE WOODRUFF: STCG and MITG.

16 MR. MCCARTNEY: Good morning. My name is  
17 Brian McCartney from the law firm of Brydon, Swearengen  
18 and England here in Jefferson City. I'm appearing here  
19 on behalf of 30 small rural telephone companies. We  
20 call ourselves the STCG, or Small Telephone Company  
21 Group.

22 We jointly filed comments with another group  
23 of small telephone companies that is referred to as the  
24 Missouri Independent Telephone Company Group. They're  
25 represented by Craig Johnson, who is here if there are

1 any specific questions for Mr. Johnson on that group.

2 One of the mains reasons that my clients have  
3 been able to provide high-quality service out of these  
4 rural areas, including broadband service, is due to the  
5 Missouri -- or I'm sorry -- the Federal high cost  
6 Universal Service Fund.

7 The area where my clients serve are often  
8 marked by low population, high costs to get out of --  
9 out to these rugged terrains, so it's difficult to serve  
10 and it's hard to do so with what you can receive in the  
11 end-user payments.

12 So there's traditionally been two other  
13 revenue streams used to support that service, the  
14 Federal high cost fund and intercarrier compensation,  
15 which is the amount that telephone companies pay each  
16 other to use their networks.

17 As a result of the FCC's 2011 transformation  
18 order, those Federal revenues are decreasing. The  
19 Federal USF has been capped and intercarrier  
20 compensation is declining.

21 So even though those revenue streams are  
22 going down our investment in plant is going to continue  
23 to increase. We must continue to get service out to  
24 these customers.

25 So for that reason we think that the

1 Commission should keep its options open to consider a  
2 State high cost fund. That was part of the statutory  
3 purpose of the fund. We don't think that the Commission  
4 should close the door on that at this point.

5 So our position is a little different than  
6 some of the other folks that have come before us. We  
7 think it's all right to get rid of some of the specific  
8 rules, but we don't think that you should throw out the  
9 baby with the bath water. We think the baby is the  
10 purpose section of that reason. It's right up front and  
11 it's in our comments.

12 So we believe that ought to be retained, but  
13 we agree that many of the other rules that follow it are  
14 outdated and inapplicable to current situation today, so  
15 I think that it will be okay to eliminate those, but we  
16 do -- we agree with Public Counsel that the statutory  
17 purpose for the USF -- Missouri USF includes high cost.  
18 We don't believe it's in the rule that was sent over to  
19 the Secretary of State.

20 So I believe that that statutory language  
21 ought to be included with the rule language to say that  
22 one of the statutory purposes is for high cost.

23 A couple of other smaller issues.

24 We think that the toll limitation service  
25 ought to be defined. That ought to track with the

1 Federal rule, and as part of that toll control and toll  
2 blockage should be retained because they are part of the  
3 definition of toll limitation service.

4 We believe that 31.130, Subsection 3, should  
5 be streamlined to allow small companies to file their  
6 Form 40 once. Those forms have essentially the same  
7 information that is required by the rule. That would  
8 make the rule just a little bit easier to follow.

9 It's something that we're filing. They were  
10 filed last week. So they're going to be continued to be  
11 filed here at the Commission. So the Commission should  
12 be getting that information anyway through the Federal  
13 forms.

14 The last item. We believe that the  
15 confidential status of the filing should be retained.  
16 Our clients have been filing these for a number of years  
17 now. The Commission always treats them as confidential,  
18 and I think that's by statute. It's also by the  
19 practice through EFIS. It's automatically treated as  
20 highly confidential. So I think that practice should be  
21 maintained in the new rule.

22 And those are my comments, so if you have any  
23 questions.

24 JUDGE WOODRUFF: Thank you.

25 Commissioner Hall.

1 COMMISSIONER HALL: I don't have any  
2 questions. Thank you.

3 JUDGE WOODRUFF: Thank you.

4 Mr. Johnson, did you want to make any  
5 separate comments?

6 MR. JOHNSON: No, Your Honor. I appreciate  
7 the opportunity but I don't need to do that.

8 JUDGE WOODRUFF: Okay. That's all of the  
9 prefiled written comments that I've received other than  
10 Staff's.

11 Is there anyone else here in the room who  
12 wanted to make any written or oral comments here today  
13 that I haven't given an opportunity yet?

14 All right. Then we'll move to Staff.

15 MS. DALE: I'm Colleen Dale,  
16 Telecommunications Senior Counsel, and with me I have  
17 Natelle Dietrich.

18 Ms. Dietrich has some prepared remarks, and  
19 then both she and I will be available for Commissioner  
20 and bench questions.

21 JUDGE WOODRUFF: Okay.

22 MS. DIETRICH: Natelle Dietrich, Director of  
23 Tariffs, Safety, Economic and Engineering Analysis for  
24 the Commission.

25 Staff submitted written comments on

1     October 16, so I will not repeat all that was said  
2     during those comments, but I would like to focus on a  
3     few key points before responding to specific comments of  
4     other stakeholders.

5             To be clear, we are talking about multiple  
6     funds, a Federal high cost fund, a Federal Lifeline  
7     fund, a State high cost fund, which to date has not been  
8     implemented, and a State Lifeline disabled fund.

9             I thought it might be helpful to provide a  
10    brief history of USF.

11            The Universal Service Fund has been around  
12    for almost 30 years. Section 254 of the Federal  
13    Telecommunications Act, more specifically 47 U.S.C. 254,  
14    establishes the principles of universal service, and  
15    Section 214(3) establishes the provision of universal  
16    service.

17            Congress contemplated a Federal State  
18    partnership related to universal service. Specifically  
19    Section 214(3) discusses the State role in the  
20    designation of eligible telecommunications carriers,  
21    those carriers who are authorized to receive Federal  
22    Universal Service Funds.

23            And in Section 254(f) when it says, quote, a  
24    State may adapt regulations not inconsistent with the  
25    FCC's rules to preserve and advance universal service,

1 end quote.

2 As it relates to the Federal USF, you were  
3 asked not only to execute carriers as eligible  
4 telecommunications carriers, indicating they are  
5 authorized to receive Federal high cost and Lifeline  
6 support, but you were also asked to annually certify  
7 that the carriers have used and will use the high cost  
8 funds, almost \$106 million in Missouri, for the purposes  
9 intended by Congress and the FCC.

10 Although not required by the FCC, based on  
11 both allegations and settlements related to waste, fraud  
12 and abuse, the Missouri Commission has also asked of  
13 that Staff to annually make a recommendation on the  
14 continued eligibility of carriers receiving Lifeline  
15 support, another \$34 million in Federal funding and over  
16 \$2 million in State funding.

17 So we are not only talking about the Federal  
18 USF Fund. We are also talking about the Missouri  
19 Universal Service Fund. We are talking about carriers  
20 being held responsible and accountable for receiving  
21 this money, and more importantly, each of you are being  
22 asked to verify and/or certify that the carriers will  
23 and continue to abide by the principles of universal  
24 service.

25 When the FCC began the annual certification



1 process several years ago, carriers were only required  
2 to submit to State commissions an affidavit stating they  
3 were using the fund as intended.

4 As noted in our comments, two Missouri  
5 companies were involved in criminal conduct. Without  
6 getting into all of the details, since they are  
7 contained in Commission records, during the guilty plea  
8 in the United States District Court, Western District of  
9 Missouri, the record noted that certain individuals,  
10 quote, known to the United States Attorney entered into  
11 an agreement whereby they would seek to defraud two  
12 entities, the National Exchange Carriers Association and  
13 the Universal Service Administrative Company, end quote.

14 These activities caused the Federal Universal  
15 Service Fund to pay several million dollars more to  
16 these carriers than they otherwise would have received.

17 It was such activities that caused this  
18 Commission to strengthen its requirements for USF,  
19 requiring companies to provide additional information in  
20 support, demonstrating Universal Service Funds were, in  
21 fact, used for the purpose intended.

22 As the Commission is aware, recent  
23 allegations have also been raised related to the  
24 Lifeline program, and Staff and the Commission have  
25 addressed these issues through increased requirements on

1 Lifeline recipients.

2 As previously stated, Congress and the FCC  
3 allow states to expand requirements related to the USF,  
4 as long as those additional requirements are not  
5 inconsistent with Federal requirements and do not  
6 provide burdens on carriers such that the purposes of  
7 universal service are stifled.

8 Staff continues to support the proposed rules  
9 with revisions as proposed in our written comments and  
10 as will be discussed today.

11 The rules are designed to ensure  
12 accountability, to provide the Commission the assurances  
13 it needs as it designates and certifies ETCs and are not  
14 unduly burdensome.

15 In fact, the proposed rules codify provisions  
16 and requirements we currently apply today through either  
17 existing rules or the discovery process.

18 There have been comments suggesting the rules  
19 go beyond FCC requirements or beyond the Commission's  
20 jurisdictions in the state law, citing such things as  
21 state laws that relieve the carriers from quality of  
22 service reporting.

23 However, the State statute also allows the  
24 Commission continued jurisdiction over federally  
25 designated items such as USF.

1           So the rules say such things as describe the  
2   process you used to monitor quality of service, and if  
3   you do monitor it, provide limited information with your  
4   annual certification.

5           The proposed rules do not mandate or  
6   prescribe a monitoring process. They just ask for  
7   limited information.

8           Staff approached the proposed rulemaking with  
9   a balanced approach. The need to provide proof of  
10   accountability without being overly burdensome.

11          You have also heard comments about exempting  
12   certain services, such as services reported by the  
13   Connect America Fund, from various requirements.

14          CAF, or the Connect American Fund, is high  
15   cost funding. So again, you are being called upon to  
16   certify that carriers use the funding for the purposes  
17   intended.

18          The rules are designed to provide  
19   accountability for high cost and Lifeline funding.

20          In fact, I point you to the FCC press release  
21   included in AT&T's written comments.

22          Bullet 2 says the cap recipients, quote,  
23   demand accountability. In order to receive Connect  
24   American Fund support carriers must demonstrate that  
25   they are deploying broadband to their customers. These

1 networks must meet performance criteria that enable the  
2 use of common applications, such as distance learning,  
3 remote health monitoring, VoIP, two-way high quality  
4 video conferencing, Web browsing and e-mail, end quote.

5 So while the services may be different, the  
6 philosophy remains the same, accountability,  
7 accountability, accountability.

8 This may be a good point to inform you of  
9 Staff's role with Universal Service Funds.

10 As you are aware, Commission Staff and OPC  
11 Staff serve as staff for the Missouri Universal Service  
12 Board, but you may not know that several years ago I was  
13 appointed to the Staff of the Federal/State Joint Board  
14 on Universal Service. I was recently reappointed for  
15 another term.

16 I was a Staff member of the Federal/State  
17 Joint Conference on Advance Telecommunications Services  
18 and a member of Governor Nixon's MObroadbandNow Task  
19 Force initiative. Dana Parish of the Commission Staff  
20 serves on the NARUC working group on Lifeline services.

21 My point, we have worked for years on  
22 Universal Service Fund issues. We have worked closely  
23 with other states and the FCC, and the FCC is aware of  
24 our requirements and has reviewed such things as our  
25 Board-approved Lifeline customer application form.

1                   Now to address the specific comments. I  
2    don't plan to discuss each and every comment or  
3    suggestions by each stakeholder but only focus on a few  
4    things.

5                   Not commenting on a specific issue does not  
6    mean Staff supports that comment but that issue is  
7    either adequately addressed in Staff's written comments  
8    or I've addressed it in our more general comments today.

9                   A few carriers recommend the Commission  
10   retain the rules pertaining to a State high cost fund.  
11   Staff continues to support rescision of these rules which  
12   are over 15 years old.

13                  As commenters have noted, FCC funding has  
14   changed as a result of recent reforms, but that does not  
15   mean a State high cost fund is the answer.

16                  Staff recommends that if carriers are  
17   interested in pursuing a high cost fund, the Commission  
18   hold workshops or open a contested case to fully explore  
19   the need.

20                  Staff would specifically like to note that  
21   even if the Commission decides today that a State high  
22   cost fund is needed and the current outdated rules are  
23   sufficient, there is much to be done.

24                  There is no high cost money in the state of  
25   Missouri. An assessment will need to be developed after

1 determining the amount of funding that is needed.

2 In addition, an RFP will need to be developed  
3 and issued for a fund administrator. The current fund  
4 assessment and contractor are for the State Lifeline/  
5 disabled program only.

6 AT&T suggests the definition of FUSF be  
7 modified. Staff supports its proposed modification to  
8 the definition in our written comments, not AT&T's  
9 proposed modification.

10 In Staff's opinion AT&T's proposed definition  
11 is an attempt to limit the Commission's jurisdiction and  
12 role with respect to the Federal Universal Service Fund.

13 Again, Congress and the FCC envision a State/  
14 Federal partnership which should not be limited through  
15 a definition.

16 AT&T recommends provision of 4 CSR  
17 240-31.130(1) not apply to certain carriers. Staff  
18 opposes any qualifications or limitations on this  
19 section.

20 This section of the rule describes the  
21 requirements for a carrier applying for ETC designation.  
22 The Commission needs specific detailed information about  
23 carriers, many of which are carriers that typically do  
24 not do business in Missouri or at least do not conduct  
25 business subject to the Commission's limited oversight.

1 This information is currently requested through the DR  
2 process.

3 Should a carrier seeking ETC designation find  
4 that certain of the provisions are not applicable, it  
5 can seek a waiver of the rule as part of its ETC  
6 application. Carriers currently do quite successfully  
7 under existing rules.

8 4 CSR 31.130(1)(B)(5) references FCC Rule 47  
9 CFR 54.201.(d)(2). AT&T suggests the cite should be  
10 changed to 47 CFR 54.201(d)(1). To avoid confusion  
11 Staff recommends the cite simply be changed to 47 CFR  
12 54.201.

13 AT&T suggests 4 CSR 240-31.130(1)(D)8.B  
14 should be revised to reference the reenrollment process  
15 in 47 CFR 54.403(3)(3).

16 Staff agrees the provision should be revised  
17 as proposed by AT&T; however, notes that the correct  
18 citation should be 47 CFR 54.405(e)(3) as reflected in  
19 the AT&T Footnote 9, page 16.

20 AT&T suggests certificated be removed from  
21 various sections of the proposed rules, while the Small  
22 Telephone Company Group suggests it be added.

23 Staff would like to point out that the  
24 Commission's official records identify AT&T as a  
25 certificated carrier. So for purposes of the

1 rulemaking, Staff suggests the term "continue" to be  
2 used.

3 The Missouri Cable Telecommunications  
4 Association, MCTA, talks about applying the State USF  
5 actually equally to CMRS providers. In other words, if  
6 wireless providers receive money from the fund, they  
7 should contribute to the fund.

8 While Staff does not disagree with this  
9 concept, Staff would like to point out that the  
10 Missouri Universal Service fund only applies to  
11 telecommunications companies according to  
12 Section 392.248 and Voice Over Internet Service  
13 Providers, according to Section 392.550.

14 Pursuant to the definition of  
15 telecommunications services in Section 386.020, a  
16 telecommunications company includes corporations  
17 providing telecommunications services.

18 Wireless services are specifically excluded  
19 from the definition of telecommunications service in  
20 386.020(54)(c); thus, wireless providers are excluded  
21 from both contributing and receiving MoUSF.

22 This is one example of the issues that should  
23 be explored should a State high cost fund be  
24 implemented. In other words, it may be appropriate to  
25 propose a statutory change to expand the MoUSF to



1 accommodate changes and technologies over the past 20 to  
2 30 years.

3 MCTA suggests 4 CSR 240-31.060(4) be modified  
4 to recognize not all carriers charge end users a USF  
5 surcharge.

6 Staff does not object to the proposed  
7 revision to allow collection of the assessment in  
8 another manner; however, Staff opposes the additional  
9 language which allows carriers to refer to the USF  
10 surcharge as, quote, a State regulatory charge or fee,  
11 end quote.

12 Previous experience has demonstrated that  
13 carriers use this language to assess other unrelated  
14 charges under the guise of being approved by the State  
15 Commission.

16 The Small Telephone Company Group recommends  
17 the Commission define toll limitation and not delete the  
18 definition of toll blocking and toll control. Staff  
19 agrees with these recommendations.

20 Cricket recommends the Commission allow for  
21 electronic customer Lifeline applications. Staff  
22 proposed a similar concept in its comments and supports  
23 its proposal.

24 However, Staff would like to add Cricket's  
25 proposed language at 4 CSR 31.120(5)(D), which requires

1 carriers to provide either a hard copy or a  
2 demonstration of the electronic form to Staff or OPC  
3 upon request. This language could be inserted as a  
4 subparagraph at the end of proposed rule 4 CSR  
5 31.120(5).

6 Today OPC proposed rule changes -- or  
7 suggested that the proposed rule changes change services  
8 that will be required to access the State fund in a  
9 specifically mentioned IXC operator services directory  
10 assistance white pages.

11 Without going into all of the details, I  
12 would refer you to Staff's written comments, pages 4 to  
13 6, as to why we continue to support the definition of  
14 voice telephony.

15 OPC also commented about the RFP process  
16 related to the Board. The current rules say that the  
17 Board shall adopt a procedure. The proposed rules were  
18 simply trying to provide clarity as to what that  
19 procedure would be when it comes to a competitive bid  
20 process.

21 Staff is fine with changing shall to may. In  
22 other words, the Board may use the OA guidelines, that  
23 type of thing.

24 Today AT&T talked about the provision that  
25 requires a carrier to discontinue the discount for

1 customers when they become aware of errors, fraud,  
2 et cetera.

3 The rule does not say that the company has to  
4 police their customers. What it says is they disconnect  
5 when they become aware of.

6 It's quite possible that Staff would become  
7 aware of a customer not qualifying when we do our  
8 periodic audits. So if we would become aware of it, the  
9 rule is simply attempting to provide a means for the  
10 carrier to disconnect that customer.

11 Commissioner Hall asked about AT&T and its  
12 actions in other states. While I can't specifically  
13 address what AT&T has done in other states, I can  
14 provide you some insight as to what other states have  
15 done.

16 There are some states where the state laws do  
17 not allow those states to designate ETCs. As such they  
18 defer all actions to the FCC.

19 There are some states that have not elected  
20 to enforce Federal laws. As an example, it kind of used  
21 to be a joke that Mississippi, since it didn't enforce  
22 any kind of accountability, had funds -- or they were a  
23 state where the Federal funds skyrocketed because it was  
24 easy to just go in there and get by with whatever you  
25 wanted.

1           There are states such as Missouri, Kansas,  
2   Nebraska, Florida, Pennsylvania that have proactively  
3   pursued aggressive USF accountability.

4           As was mentioned, there are some states that  
5   have the ability to work directly with the Department of  
6   Health and Senior Services agency in the State and  
7   verify eligibility.

8           We have had conversations with our equivalent  
9   of -- I don't know what their name is now, DSS, DHSS,  
10   and at this time we've not been able to reach any kind  
11   of agreement as to how they could help us. We cannot  
12   access their databases to ensure that a customer  
13   qualified, that type of thing.

14           And as previously stated, through our work  
15   with the FCC the FCC is aware of our processes and  
16   requirements and to my knowledge has not expressed any  
17   concern, and they did specifically approve the Board  
18   approved customer application form that we are using.

19           And with that, this ends my prepared  
20   comments, and we would be glad to answer any questions  
21   that you have.

22           JUDGE WOODRUFF: Commissioner Hall, do you  
23   have any questions?

24           COMMISSIONER HALL: Yes.

25           So Staff recommends that the Commission

1 rescind all rules related to the high cost support, and  
2 I think I understand why that is your position.

3           There appear to be other parties in the room  
4 that would like to keep those rules in place. I think I  
5 understand their position. What I don't understand is  
6 what is the harm from your perspective on keeping those  
7 rules in place?

8           MS. DIETRICH: Well, as the Small Telephone  
9 Company Group said, they were supportive of leaving it  
10 in the purpose. I don't know that we would have any  
11 issues with that.

12           It's all of the rules that prescribe what has  
13 to be done to receive funding under the high cost fund,  
14 and those are just so outdated, and having done a lot of  
15 rulemakings I disagree that it would be easier to just  
16 modify than to start from scratch.

17           Things have changed so much over the past  
18 15 years. Technology has changed. It may require  
19 statutory revisions. As I mentioned, wireless are not  
20 able to contribute or receive from the fund. That may  
21 be something that the Commission or the Legislature  
22 wants to explore. And so it just seems that it would be  
23 easier to start from scratch.

24           In addition, as I noted in my comments, it  
25 would require either workshops or a contested case.

1 Back when the rules were originally implemented and the  
2 Commission was considering a high cost fund, there  
3 were -- if I remember correctly, it was either three or  
4 four hearings trying to figure out how to make it work  
5 and it just was not workable.

6 So it seems like it would be easier to take a  
7 fresh start and first of all make sure that there is a  
8 need for a high cost fund and then make revisions based  
9 on that, propose a rule based on that.

10 COMMISSIONER HALL: Okay. Thank you.

11 JUDGE WOODRUFF: What would it take to  
12 implement a State high cost fund? Would we have to go  
13 back to the Legislature for additional authorization?

14 MS. DALE: I believe it's almost certain that  
15 you would, because you would have to address the  
16 wireless issue.

17 JUDGE WOODRUFF: Right now wireless is not  
18 included? Is that --

19 MS. DIETRICH: Right.

20 MS. DALE: Right. They don't contribute.  
21 They don't receive funding.

22 And I think that with the changes in  
23 technology you would have to -- the Commission would  
24 have to look at whether or not it wanted to deploy wire  
25 line technology in, whereas one of the commenters

1     stated, areas where it's not a viable business  
2     opportunity.

3                 So if it's not viable to put wire line there,  
4     is fixed wireless an option? Is mobile wireless an  
5     option? We don't know.

6                 There is nothing in the rules and in the  
7     statute that allows the Commission that kind of  
8     discretion simply because those options really didn't  
9     exist back when the statute was created.

10                JUDGE WOODRUFF: That was 1996?

11                MS. DALE: I believe so.

12                And at this time, even with fixed wireless,  
13     the battery technology was so insufficient that it  
14     didn't meet the standards -- the quality of service  
15     standards that the Commission had in place at that time.

16                JUDGE WOODRUFF: So basically the Commission  
17     hasn't looked at this since 1996?

18                MS. DALE: No.

19                JUDGE WOODRUFF: That even predates me.

20                MS. DALE: And let me say that while I think  
21     that it's true that the Commission shall promulgate  
22     rules, it's not necessarily that the Commission shall  
23     promulgate rules to affect participation in a fund that  
24     doesn't exist.

25                JUDGE WOODRUFF: Okay.

1 Anything else, Commissioner?

2 COMMISSIONER HALL: No, I don't. Thanks.

3 JUDGE WOODRUFF: Thank you.

4 All right. I believe that takes care of  
5 comments from everyone who is here in the room, so with  
6 that we will adjourn. Thank you.

7 WHEREIN, the Rulemaking Hearing was  
8 concluded.

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CERTIFICATE OF REPORTER

I, Patricia A. Stewart, RMR, RPR, CCR, a  
Certified Court Reporter in the State of Missouri, do  
hereby certify that the testimony that appears in the  
foregoing transcript was taken by me to the best of my  
ability and thereafter reduced to typewriting by me;  
that I am neither counsel for, related to, nor employed  
by any of the parties to the action in which this  
hearing was taken, and further that I am not a relative  
or employee of any attorney or counsel employed by the  
parties thereto, nor financially or otherwise interested  
in the outcome of the action.

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Patricia A. Stewart

CCR No. 401

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