

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

In the Matter of a Repository Case in Which to            )  
Gather Information About the Lifeline Program        )        File No. TW-2014-0012  
And Evaluate the Purposes and Goals of the         )  
Missouri Universal Service Fund.                    )

**THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE**  
**REGARDING A STATE HIGH-COST USF FUND**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response Regarding a State High-Cost USF Fund states as follows:

1. On December 18, 2013, the Missouri Public Service Commission (Commission) directed its staff to investigate the possibility of expanding the scope of Missouri's existing Universal Service Fund (USF) by implementing a state high-cost USF fund.
2. On January 10, 2014, the Staff of the Missouri Public Service Commission (Staff) filed a motion asking the Commission to assist it in its investigation by offering interested telecommunications companies and the public an opportunity to answer ten questions about the need for a USF high-cost program and about the structure and funding of such a program. Staff asked that anyone who wished to respond to its questions do so no later than February 14, 2014.
3. On January 15, 2014, the Commission agreed to invite such comments and added an additional question to be addressed by the interested parties.
4. Public Counsel now presents to the Commission its answers to Staff's questions regarding the need for a USF high-cost program. (See Appendix A) These answers have been provided given the time and information that is available to Public Counsel.

5. Public Counsel wishes to note to the Commission that while responses to an informal survey may indicate a high-cost USF program is not necessary, the determination that such a program is necessary cannot be accomplished merely through an informal survey of the various affected parties. If the Commission wishes to make a determination that there is a need to expand the scope of Missouri's existing USF by implementing a state high-cost USF fund, a more formalized process of data gathering, data analysis and evidentiary hearings would be necessary.

**WHEREFORE**, Public Counsel respectfully submits its Response.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the parties of record this 14<sup>th</sup> day of February 2014.

**/s/ Christina L. Baker**

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**Appendix A**  
**The Office of the Public Counsel**  
**Universal High-Cost Fund Survey Comments**  
**TW-2014-0012**  
**February 14, 2014**

**1. Does Missouri need a state high-cost fund? If no, please explain your position.**

The answer to this question is unknown at this time. To fulfill the statutory requirements of Section 392.248, RSMo, it is possible that Missouri may need a State high-cost fund.

In 1998, the Missouri Public Service Commission (Commission) initiated a proceeding to investigate the need for a Missouri Universal Fund. Over a number of years, the Commission conducted 4 phases of the proceeding. Although, a low-income fund component was developed and later implemented, the investigation into the need for a high cost component was never finalized through a Commission order. The evidence from that proceeding is outdated and cannot be relied upon to determine whether there is a current need for a high cost fund component.

The positions offered by the parties in response to this invitation for comment, also cannot be relied upon to determine the need for a State high cost support mechanism. Instead, a more formalized process of data gathering, data analysis and evidentiary hearings would be necessary to make this determination.

**If yes, please address the following questions in your response:**

**a. Why is the existing federal high-cost program insufficient?**

This question cannot be answered at this time. Public Counsel will need to consider the evidence presented by other parties before this can be determined.

**b. How much state funding is needed?**

This question cannot be answered at this time. Generally, the amount of state funding should be only that necessary and sufficient to achieve the statutory directive to ensure the availability and comparability of services determined to be essential local services by the Commission. Public Counsel will need to consider the evidence presented by other parties before this can be determined.

**c. What consequences, if any, are anticipated if the Missouri Commission fails to establish a high-cost fund?**

This question cannot be answered at this time. In 1998, the Commission initiated a proceeding to investigate the need for high cost component of the Missouri USF. However, that component was never finalized through a Commission order. Public Counsel will need to consider the evidence presented by other parties before this can be determined.

## **2. What issues need to be addressed by the Public Service Commission in order to establish a high-cost fund?**

The exact issues to be addressed cannot be determined at this time. But it is expected that the issues that will need to be addressed are much the same as they were during the previous proceeding.

For example, the Commission will need to determine whether and to what extent telecommunications companies providing essential local telecommunications service are eligible to receive funding. Funding is to be competitively neutral and conditioned upon offering facilities based, essential local telecommunications throughout an entire high-cost area, fulfilling carrier of last resort obligations in that high-cost area and charging a rate not in excess of that set by the Commission. In determining the appropriate level of support, the Commission will again need to determine which areas of the State are high cost, what is a just, reasonable and affordable rate for service in those areas and what level of support if any is necessary and sufficient to ensure reasonably comparable essential local telecommunications services.

Public Counsel will need to consider the evidence presented by other parties before this can be determined.

## **3. What service(s) should be supported?**

This question cannot be answered at this time. According to Section 392.248.2, the Commission's authority is limited to providing support for the purpose of ensuring the provision of reasonably comparable essential local telecommunications services throughout the state, including high-cost areas, at just, reasonable and affordable rates.

In its recent rulemaking proceeding, TX-2013-0324, the Commission adopted a Federal definition of telephony service as Missouri's definition of essential local service. Public Counsel opposed the change raising concerns that consumers might lose access to important services including access to basic local operator services, access to basic local directory assistance, equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission (FCC) and, with respect to landline service, a standard white pages directory listing. If the Commission should decide to pursue an investigation into the need for a high-cost USF, it should use that proceeding to evaluate the effect of the recent rulemaking on customer services and reconsider its decision to change Missouri's definition of essential local service if necessary.

Public Counsel will need to consider the evidence presented by other parties before this can be determined.

## **4. What type(s) of providers should be able to receive high-cost support?**

This question cannot be answered at this time. Currently Section 392.248 conditions the receipt of high cost support on a carrier being a telecommunications company. Public Counsel will need to consider the evidence presented by other parties before this can be determined.

**a. Should funding be limited to landline providers?**

This question cannot be answered at this time. Funding should be limited as to be consistent with Missouri law. Currently Section 392.248 conditions the receipt of high cost support on a carrier being a telecommunications company. Section 386.020, RSMo, defines the terms telecommunications company and telecommunications service in a manner that would exclude wireless providers and voice over internet providers from receiving universal service support:

(52) "Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state;

(53) "Telecommunications facilities" includes lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service;

(54) "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

- ...
- (c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;
- ...
- (j) Interconnected voice over internet protocol service;

However, Public Counsel will need to consider the evidence presented by other parties before this can be determined.

**b. Does a provider need to own facilities? If so, what kind of facilities?**

This question cannot be answered at this time. However, a telecommunications company does need to utilize facilities consistent with Section 386.020.

**c. Should wireless or broadband providers be able to draw support?**

This question cannot be answered at this time. However, per Section 386.020 as discussed above, wireless and broadband service providers are excluded from receiving universal service support.

**5. How should high-cost disbursements be determined? (For example, how will it be determined if an area or provider needs high-cost support, and if so, how much?)**

This question cannot be answered at this time. The method for determining high cost disbursements should be consistent with Section 392.248. Generally, disbursements should be the difference between the cost of serving the high-cost area offset by the just, reasonable and affordable rate revenue and offset by adjustments that reflect other subsidies and other revenues generated from the use of all joint and common facilities.

In the previous investigation into the need for a high-cost USF, Public Counsel supported calculating costs and revenue offsets at a study area level. Public Counsel will need to consider the evidence presented by other parties before making a determination on the exact costing method, revenue offsets and level of support.

**6. What state(s), if any, have a state high-cost fund that Missouri should strive to mirror?**

This question cannot be answered at this time. Public Counsel will need to consider the evidence presented by other parties before making a determination on this issue.

**7. Should an attempt be made to limit the size of the fund? (For example, should the fund's total annual disbursement amount be capped? Should the fund have a sunset provision or a phase-out provision?)**

This question cannot be answered at this time. Public Counsel will need to consider the evidence presented by other parties before this can be determined.

**8. What accountability requirement, if any, should be established to ensure a company is appropriately using state high-cost support?**

This question cannot be answered at this time. Public Counsel supports using an annual review process similar to that used to review the use of Federal Universal Service support. However, Public Counsel will need to consider the evidence presented by other parties before this can be determined.

**9. Is there a need to revise how the Missouri USF is funded to accommodate a high-cost fund?**

This question cannot be answered at this time. Public Counsel opposed the use of a customer surcharge to fund the Missouri Universal Service Fund. However, if the Commission continues to use a customer surcharge, a high cost component could be integrated into the current surcharge mechanism in a manner similar to that used currently to fund the low-income component. Public Counsel will need to consider the evidence presented by other parties before this can be determined.

**a. Should the base of services assessed to support the MoUSF be expanded?**

This question cannot be answered at this time. Public Counsel will need to consider the evidence presented by other parties before taking this can be determined.

**b. What exemptions should exist (e.g. Lifeline, Wholesale)?**

This question cannot be answered at this time. Public Counsel will consider the evidence presented by other parties before this can be determined.

**c. Should the MoUSF assessment be based on revenues or the services (connections) provided, or some other measure?**

This question cannot be answered at this time. Public Counsel will consider the evidence presented by other parties before this can be determined.

**10. What revisions, if any, are needed to Missouri's statutes if the Public Service Commission intends to implement a high-cost fund?**

This question cannot be answered at this time. Public Counsel will need to consider the evidence presented by other parties before this can be determined.

**11. Is there anything else you would like to tell the Missouri Public Service Commission about implementation of a high-cost fund?**

Public Counsel's comments have been provided given the time and information that is available.

While responses to an informal survey may indicate a high-cost USF program is not necessary, the determination that such a program is necessary cannot be accomplished merely through an informal survey of the various affected parties. If the Commission wishes to make a determination that there is a need to expand the scope of Missouri's existing USF by implementing a state high-cost USF fund, a more formalized process of data gathering, data analysis and evidentiary hearings would be necessary.