MTIA

Missouri Telecommunications Industry Association

RICHARD TELTHORST, CAE
President

September 14, 2012

Mr. Steven C. Reed
Secretary of the Commission
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102

RE: **Case # TO-2012-0364**
Proposed Chapter 31 Rulemaking

Dear Mr. Reed:

Thank you for the opportunity to provide the attached comments on behalf of our association regarding the proposed Chapter 31 rulemaking. We also appreciate the opportunity to have participated in the August 29 workshop to discuss the proposal in detail with the Commission staff and other stakeholders. We believe efforts to work toward consensus prior to the beginning of the formal rulemaking process lead to better public policy outcomes.

Again, thank you for consideration of our comments. Please contact me if the association can be of further assistance on this issue.

Sincerely,

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President

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MO USF REPOSITORY DOCKET (TO-2012-0364)

1 – The Commission should retain the reference to statutory language regarding high cost areas. Although the Commission's current rules do not contain provisions for MoUSF high cost support, high cost support was expressly included in the MoUSF statute at 392.248.2. Accordingly, the "general purpose" language of the rule should track with the statute and maintain the reference to high cost support even though specific provisions on high cost support are being removed later in the rule.

MTIA proposes that the word "currently" be stricken from 31.010(14)'s definition of MoUSF and the subheadings (A), (B), and (C) be retained so that the rule tracks with the statute as follows:

(14) MoUSF-- refers to the Missouri Universal Service Fund, ~~The various purposes for the MoUSF are~~ which was established by section 392.248, RSMo 2000 ~~The MoUSF is currently~~ to be used for the following purposes:

(A) To ensure the provision of reasonably comparable essential local telecommunications service, as defined in this rule, throughout the state including high cost areas, at just, reasonable, and affordable rates;

(B) to assist low-income customers and disabled customers in obtaining affordable essential telecommunications services; and

(C) to pay the reasonable, audited costs of administering the MoUSF.

2 – The Commission should allow ETCs to use an enrollment form which either has been established by the board or which complies with the FCC's rules relating to such forms. As the FCC's rules recognize, carriers should be allowed flexibility in creating enrollment forms, so long as the forms include all of the elements required by the rules.

The Staff's proposed rules refer to a "Board-established" enrollment form in at least three places: first, at proposed rule 31.020(9) ("All ETCs shall use the form established by the board."); second, at proposed rule 31.120(3) ("All

consumers shall complete the application form approved by the board and submit adequate proof of eligibility. A board-approved application shall be required even if a carrier only seeks federal Lifeline support."); and third, at proposed rule 31.130(3)(A)1.C. (stating that an ETC's annual filing must certify that "[t]he company is using a Lifeline and/or Disabled application form approved by the Missouri USF board."). In practice, such a requirement would mean that all ETCs would be required to use a single one-size-fits-all form approved by the board.

MTIA recommends that companies which may wish to use a form tailored to their customers should have that latitude, so long as the form used meets the FCC's threshold requirements. The FCC has allowed companies such latitude, and there is no compelling reason why the commission should embark on a different approach. FCC Rule 54.410(d)(1) states that ETCs' forms (i.e., "eligibility certifications") must provide prospective Lifeline subscribers certain prescribed information; Rule 54.410(d)(2) states that forms must require each subscriber to provide the ETC certain prescribed information; and, Rule 54.410(d)(3) states that the forms must require each subscriber to "certify, under penalty of perjury," to a number of items.[1] These requirements, individually and collectively, are no less sufficient for Missouri's purposes as they are for federal purposes, and so long as ETCs' forms abide by them, the form should not need to be a one-size-fits-all form approved by the board.

For these reasons, MTIA recommends that the above-mentioned rules be modified in a manner consistent with the FCC's rules. Proposed rule 31.020(9) should state: "All ETCs shall use the form established by the board or a form which complies with 47 CFR 54.410." Proposed rule 31.120(3) should state: "All consumers shall complete the application form approved by the board or a form which complies with 47 CFR 54.410 and submit adequate proof of eligibility." The following second sentence of this proposed rule should be deleted: "A board-approved application shall be required even if a carrier only seeks federal Lifeline support." Finally, proposed rule 31.130(3)(A)1.C. should state that an ETC's

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[1] *See*, Lifeline Reform Order, WC Docket No. 11-42, et al., FCC 12-11, rel. February 6, 2012 ("*Lifeline Reform Order*"), at Appendix A.

annual filing must certify that "[t]he company is using a Lifeline and/or Disabled application form approved by the Missouri USF board or a form which complies with 47 CFR 54.410."

3 – The Commission should retain language about its flexibility to grant variances and waivers of its MoUSF Rules. The current language allowing the Commission to grant variances or waivers of the MoUSF rules has been deleted from 31.050(5). This language should be retained, and it may fit best with the general language on the Board's powers. Therefore, the MTIA recommends that the existing language on variances and waivers be maintained and added as 31.020(11):

(11) The commission may grant a waiver of, or variance from~~, this provision or from~~ any provision of 4 CSR 240-31.010 through 4 CSR 240-31.110 for good cause, upon request or upon its own motion. A party wishing to obtain a waiver or variance shall file an application with the commission setting out the reason for its request.

4 – Incorrect reference in proposed rescission of 31.050. The proposed rescission of 31.050 states, "This rule is replaced by proposed rule 4 CSR 240-31.070 . . ." This appears to be a typographical error and should be 31.120 rather than 31.070. Therefore, the MTIA suggests the following edit to correct this typographical error:

240-31.050 should be amended to read, "This rule is replaced by proposed rule ~~4 CSR 240-31.070~~ 4 CSR 240-31.120 . . ."

5 – Delete redundant language in proposed revision to 31.060. The proposed revision to 31.060 refers to both "registered IVoIP providers" and "certificated telecommunications carriers" in addition to "all assessable carriers". This appears redundant and could be streamlined by simply referencing "assessable" carriers. Therefore, the MTIA suggests that 31.060(E) be revised as follows:

(E) If the commission approves an assessment adjustment, it shall notify all ~~registered IVoIP providers and certificated telecommunications carriers. The MoUSFA shall also notify all~~ assessable carriers of a change in the assessment. Notice should be provided to carriers at least sixty days in advance of any change to the assessment.

6 – The Commission should revise its proposed recertification rules 31.120(2)(B),(C), and (D) to track federal requirements and for easier reading. First, the words "certificated and registered" should be deleted from 31.120(2)(B)6 because they appear redundant. Second, the customer recertification provisions in 31.120(2)(C) and (D) should be combined and streamlined so that they track federal requirements and for ease of reading. The MTIA recommends 31.120(2)(B),(C), and (D) be revised as follows:

(2) Carrier Participation Requirements in the Lifeline and Disabled Programs.

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(B) An ETC shall demonstrate compliance with all of the following requirements:

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6. Any [~~certificated or registered~~] ETC must be current in all filing requirements and other MoPSC required assessments prior to receipt of support payments from the MoUSF.

(C) An ETC shall annually recertify a subscriber's continued eligibility for participation in the Lifeline or Disabled program. A subscriber shall submit ~~proof of eligibility~~ annual recertification forms in accordance with the ETC's verification procedures ~~at least once every two years~~ unless an ETC has an automated means of verifying subscriber eligibility or alternatively a carrier's annual recertification process is administered by the FUSFA.

~~(D) If a household participates in the disabled program but the qualifying disabled customer is not listed as the voice telephony subscriber then the ETC shall annually make an inquiry to the voice telephony subscriber as to whether the qualifying disabled customer remains within the household.~~

7 – The Commission should eliminate proposed rule 31.120(2)(F)3, which would impose upon ETCs a resale provisioning rule more appropriately directed to resellers' own compliance.

The proposed rule would state: "The reseller shall inform the ETC of the date all information in paragraph 2 above has been provided to the commission staff. The ETC shall not initiate wholesale Lifeline service to the reseller until 30 days after this date or if notified by the commission staff within the 30-day time period to not initiate wholesale Lifeline service to the reseller."

Under current law, the Commission already has a full range of penalty and

forfeiture tools available to it to address a reseller's failure to comply with the Commission's rules and orders. *See, e.g.*, Sections 386.570-386.600, 392.360, RSMo. Thus, the Commission can take appropriate action should a reseller fail to timely provide the manager of the Commission's Telecommunications Unit the information reflected in proposed rule 31.120(2)(F)2. Incident to its authority to take such action is the authority to direct that a reseller not submit any further Lifeline provisioning requests to an ETC absent explicit Commission approval.

On the other hand, ETCs have no practical means available to them to control resellers' conduct. Nor would it be either simple or practical for ETCs to implement such requirements as the proposed rule would impose on them. Lifeline orders typically are submitted to companies electronically. To prevent a reseller's Lifeline service request from being processed would require the development and funding of a means to institute additional systems logic, plus development and funding of an ongoing administrative process to lift an indicator to allow the processing of Lifeline orders once the ETC receives notification from the Commission to do so. These significant efforts and costs would not be offset by any meaningful benefit. AT&T Missouri, for example, currently provisions only a paltry number of resold Lifeline lines (less than 260 such lines for fewer than 6 resellers).

8 – <u>The Commission should delete proposed rule 31.120(3)(C) which refers to the reference to "incorrect, false, or fraudulent" information because it is redundant and would also place ETCs in the position of policing undefined standards</u>. First, proposed rule 31.120(3)(A) already requires "adequate proof of eligibility", and proposed rule 31.120(4) establishes ETC procedures for "de-enrollment" of participants that no longer meet eligibility criteria. Therefore, the language in 31.120(3)(C) is redundant and unnecessary. Second, the proposed "incorrect, false, or fraudulent" language would place ETCs in the position of policing inconsistent and undefined standards. Therefore, the MTIA proposes that 31.120(3)(C) be deleted in its entirety.

~~(C) A subscriber's participation in the Lifeline or Disabled programs shall be denied or discontinued if the subscriber submits incorrect, false or fraudulent information to the carrier.~~

9 – To cure any potential for confusion, proposed de-enrollment rule (31.120(4)), should mirror the FCC's own de-enrollment rule (54.405(e)) to the greatest extent possible, except that references to a subscriber's "temporary address" should be removed from the rule, as similar rules initially announced by the FCC have not become effective and are unlikely to do so.

Part (A) of proposed rule 31.120(4)(A) is clear on its face. It would provide a subscriber 30 days following the date of the ETC's "impending termination notification" to submit acceptable proof of continued eligibility consistent with applicable annual re-certification requirements. If a subscriber failed to do so, de-enrollment would follow, without more. Part (D) of the proposed rule, however, is not at all so clear. It would state, in pertinent part: "De-enrollment for failure to re-certify. If a Lifeline or Disabled subscriber fails to respond to the ETC's attempts to obtain applicable re-certifications then the ETC shall provide the subscriber with written notification of impending termination." This language makes it unclear as to whether but *another* notice to the subscriber would be required after the 30-day period has expired and the subscriber has failed to adequately respond to the ETC's "impending termination notification" to submit acceptable proof of continued eligibility.

The potential for confusion between the proposed rule and the FCC's own rule in this and perhaps other instances could easily be cured if the proposed de-enrollment rule were to simply mirror the FCC's own currently effective de-enrollment rule (which does not include references to a subscriber's "temporary address," as explained in the following section). At a minimum, however, proposed rule 31.120(4)(D) should be modified to merely state: "De-enrollment for failure to re-certify. If a Lifeline or Disabled subscriber fails to respond to the ETC's attempts to obtain applicable re-certification, or fails to provide the annual one-per-household re-certification as required by 47 CFR 54.410(f), then the ETC shall de-enroll the subscriber within five business days after the expiration of the 30-day response period."

10 – The Commission's proposed rules should not require companies to follow up on a subscriber's "temporary address." Similar rules initially announced by the FCC have not taken effect and are unlikely to do so. The Missouri Commission's proposed rule 31.120(4)(D)3 would require that de-enrollment of a Lifeline subscriber would follow where a subscriber who relies on a temporary address "fails to respond to the ETC's address re-certification attempts pursuant to 47 CFR 54.410(g)." The rule emulates FCC rules which were initially announced in its *Lifeline Reform Order*. For example, Rule 54.410(g), as announced in the *Lifeline Reform Order*, stated that an ETC "must recertify, every 90 days, the residential address of each of its subscribers who have provided a temporary address as part of the subscriber's initial certification or re-certification of eligibility." FCC Rule 54.405(e)(4), as announced in the *Lifeline Reform Order*, stated that an ETC must de-enroll a Lifeline subscriber who " relies on a temporary address and fails to respond to the carrier's address re-certification attempts."[2]

However, MTIA understands that the rules did not receive Office of Management & Budget approval, and thus have not become effective. Instead, the FCC withdrew its request for OMB approval of the rules in the face of strong opposition -- in the form of Petitions for Reconsideration from the United States Telecom Association, TracFone Wireless, Inc., Sprint Nextel Corporation and General Communication Inc., among others -- citing a plethora of reasons why adopting such rules would be unreasonable and unwise.[3] For these reasons, proposed rule 31.120(4)(D)3 should be withdrawn in its entirety.

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[2] *See*, *Lifeline Reform Order*, at Appendix A.

[3] *See* -- USTelecom's PFR, at 2-4: http://apps.fcc.gov/ecfs/document/view?id=7021906157
TracFone's PFR, at 22-24: http://apps.fcc.gov/ecfs/document/view?id=7021906225
Sprint's PFR, at 2-6: http://apps.fcc.gov/ecfs/document/view?id=7021906052
GCI's PFR, at 3-8: http://apps.fcc.gov/ecfs/document/view?id=7021906170

11 – The Commission should change the April 1 deadlines to July 15 in order to be more consistent with the revised federal filing dates. The FCC has changed the filing deadlines for many of its new requirements to July. Therefore, the MTIA recommends that the April 1 deadlines be revised to July 15 in order to be more consistent (and follow) the FCC's July filing deadlines. Specifically, the MTIA suggests that 31.130(2), (3) and (4) be amended to replace "April 1" with "July 15".

(2) ETC Requirements:

(A) An ETC shall not self-certify to the FUSFA for receipt of FUSF. Any ETC seeking annual certification to receive support pursuant to the high-cost, Lifeline or Disabled program shall seek certification through the commission by ~~April 1~~ July 15 of each year;

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(3) Annual Filing Requirements for ETCs.

(A) All ETCs, including an ETC solely receiving Lifeline support, shall annually submit, no later than ~~April 1~~ July 15 of each year in order for an ETC to continue to receive Lifeline support for the following calendar year, the following information to the Missouri Commission's Electronic Filing and Information System:

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(B) All ETCs receiving high-cost support shall submit, no later than ~~April 1~~ July 15 of each year in order for an ETC to continue to receive high-cost support for the following calendar year, the following additional information with the company's annual filing to the commission's Electronic Filing and Information System:

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(4) Annual Filing Requirements for Resellers of USF.

All resellers of USF shall annually submit, no later than ~~April 1~~ July 15 of each year, all information required in Section (3)(A) above in the commission's Electronic Filing and Information System. Failure to submit the required information will result in the commission staff filing a complaint to cease wholesale Lifeline service to the reseller.

12 – The Commission should revise the prohibition against using a name or d/b/a change in 31.130(2)(F). As this provision is written, it appears to prohibit an ETC from ever changing its name or d/b/a, even when it follows the requirements of 31.130(2)(M). Therefore, the proposed rule should be revised as follows:

(F) An ETC shall solely conduct business using the name or "DBA" under which the commission granted ETC designation and no additional service or brand names, unless the ETC properly files for a name or "DBA" change pursuant to 4 CSR 240-31.130(2)(M). Use of other or additional names such as brand or service names shall be prohibited;

13 – The Commission should revise the recordkeeping requirements in 31.130(2)(K)to make them consistent with the Commission's existing rules on utility company books and records located in 4 CSR 240-10.010. Although many of Missouri's ETCs are based in Missouri, some ETCs doing business in Missouri maintain their books and records outside of the state as allowed by 4 CSR 240-10.010. Therefore, the proposed rule should be revised to harmonize it with the Commission's rules on books and records.

(K) An ETC shall comply with record keeping requirements as identified in 47 CFR 54.320 for the high-cost program and 47 CFR 54.417 for the Lifeline program. ETCs shall keep all books and records associated with ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records available to the commission or its staff consistent with 4 CSR 240-10.010 of the Commission's rules ~~within the state at any time upon request. Reasonable time, not to exceed thirty (30) days, will be permitted to assemble and deliver records to the location where they are to be reviewed;~~

14 – The Commission should delete the burdensome new requirements to make monthly reports of new and de-enrolled subscribers in proposed rule 31.130(3)(A)4 by deleting 31.130(3)(A)4.B and C. This proposed requirement would be burdensome and unnecessary for both larger carriers and smaller carriers. Therefore, the MTIA believes that it should be removed.

4. For each month within the last twelve months the company's Missouri Lifeline and Disabled subscribership quantities:

A. Total Lifeline and Disabled subscribers;

~~B. New Lifeline and Disabled subscribers activated during the month;~~
~~C. Existing Lifeline and Disabled subscribers de-enrolled during the month from the Lifeline or Disabled program based on the following criteria:~~
~~i. De-enrolled for non-usage of the Lifeline service;~~
~~ii. De-enrolled for failing to re-certify; and~~
~~iii. De-enrolled for other reasons;~~

15 – The Commission should remove the vague and undefined requirement in 31.130(3)(B)3 for a "demonstration the company is providing acceptable voice telephony service including the timeliness of providing service and remedying out-of-service conditions." First, this "demonstration" does not appear to be required by the FCC. Second, this proposed requirement is vague and undefined, as it provides no parameters or procedures for the "demonstration" or definitions of "acceptable voice telephony service". Third, the references to "timeliness" and "out-of-service conditions" appear to address quality of service and other rules that either do not apply or have been waived by most ETCs in Missouri. Therefore, the MTIA suggests that this provision should be deleted.

~~3. A demonstration the company is providing acceptable voice telephony service including the timeliness of providing service and remedying out-of-service conditions.~~

16 – The Commission should delete the reference in 31.130(4) requiring compliance with the laws, rules, and procedures of other states because this does not apply to the vast majority of ETCs and goes beyond the jurisdiction of the Commission. Many of Missouri's incumbent local exchange carriers only operate within the state of Missouri. Thus, it does not make sense to require these Missouri-based ETCs to "maintain good compliance with the laws, rules, and procedures for other state commissions [and] the state administrators . . ." This requirement also appears to exceed the Commission's jurisdiction. Finally, the requirement for "good compliance" is vague. Therefore, the MTIA recommends that this provision be revised as follows:

4) ETC Compliance.

(A) ETCs shall maintain full compliance with all ETC requirements identified in this chapter and in 47 CFR 54. ETCs shall also ~~maintain good compliance~~ comply with the laws, and rules ~~and procedures for other state commissions, the state administrators,~~ of the FUSFA and the FCC.