

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

In the Matter of an Investigation in	)	
Which to Gather Information about the	)	<b><u>Case No. TO-2016-0184</u></b>
Facility Extension Practices of ETCs	)	
Eligible to Receive High Cost USF Support	)	

**STAFF'S FINAL REPORT**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff"),  
through the undersigned counsel, and respectfully states as follows:

On January 15, 2016, the Staff moved to open this investigatory docket.  
Attached is the Staff's Final Report.

**WHEREFORE**, the Staff submits its Final Report.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered,  
transmitted by facsimile or electronically mailed to all counsel of record this  
10<sup>th</sup> day of November, 2016.



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

In the Matter of an Investigation in which to	)	
Gather Information about the Facility	)	File No. TO-2016-0184
Extension Practices of ETCs Eligible to	)	
Receive High Cost USF Support	)	

**Missouri Public Service Commission Staff Report**

The Missouri Public Service Commission Staff (Staff) filed a report in this case on May 31, 2016. The report contains a series of five tentative conclusions and recommendations. Eligible telecommunications carriers (ETCs) with status to receive high cost USF support were encouraged to provide feedback to the report. CenturyLink and small incumbent local exchange companies (Small ILEC ETCs) provided feedback.<sup>1</sup> Overall, CenturyLink and the Small ILEC ETCs produced similar feedback. For the record, and since their responses are not filed in the case file, Staff attaches their responses to this report. The remainder of this report is Staff's summary of the feedback and Staff's reaction. Staff recommends the Missouri Commission close this docket and address issues as described in Staff's reaction to the feedback.

**1. Do you agree or disagree with any of the Staff recommendations contained in this report? Why or why not? These recommendations include:**

- **If an ETC applies construction charges then an ETC be required to establish and maintain a written policy for extending facilities without charge and how constructions charges will be calculated and applied. The policy should be easily ascertainable by the consumer.**

ETCs agree a written policy for extending facilities is desirable; however, ETCs caution on attempting to obtain a one-size-fits-all policy. Any policy needs flexibility and allow for individual circumstances. ETCs point out the cost of extending facilities can vary significantly.<sup>2</sup> Construction charges will also depend on other factors.<sup>3</sup> Variation in factors makes it unreasonable to require an ETC to extend facilities a fixed distance at no charge or apply a fixed rate to extend facilities. CenturyLink states companies have a statutory right for reasonable cost recovery.

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<sup>1</sup> Small ILEC ETCs consists of the Missouri Independent Telephone Group and the Missouri Small Telephone Company Group. FairPoint Communications Missouri, Inc d/b/a FairPoint Communications concurs with their responses.

<sup>2</sup> For instance, cost will depend on such factors as: distance involved, whether facilities extended are broadband-capable or solely for voice, whether facilities are overhead lines or placed underground, whether road bores are needed, type of extended facilities (i.e., cable, fiber, electronics), and whether private easements are needed.

<sup>3</sup> Other factors affecting construction charges include: whether the applicant is a residential or business customer (business customers typically generate more revenue), whether the premise is permanent or non-permanent, whether other new customers can be served by the extension.

**Staff response to feedback:** *A company's written policy for extending facilities should be clear. Staff maintains several existing ETCs have vague policies. As pointed out in Staff's initial report a company policy to apply construction charges if extending facilities represents a prudent company investment is a vague and unclear policy. At this time Staff primarily anticipates addressing unclear and vague company policies on a company-specific basis without Commission involvement unless an acceptable resolution cannot be reached between the Commission Staff and the ETC.*

- **Construction charge revenue should be treated as an advance payment whereby the amount paid in construction charges ultimately flows back to the customer as a monthly credit.**

ETCs disagree. The Small ILEC ETCs claim revenue to be received from the new applicant may never be sufficient to recover the costs of extending service. It makes no sense to impose a rigid policy for extending facilities given the competitive pressure faced by ILECs. Consequently individual ETCs should be given flexibility to have facility extension policies reflecting the unique costs and revenue circumstances of the situation. Small ILEC ETCs state other utilities (i.e., electric, gas, water and sewer) allow for non-refundable construction charges. CenturyLink states the concept of requiring companies to treat construction charge revenue as an advance payment contradicts Missouri statute §392.460.10.<sup>4</sup>

**Staff response to feedback:** *Staff acknowledges other types of utilities may allow for non-refundable construction charges but with one significant difference: ETCs receive federal funding to provide service in high-cost areas while other types of utilities do not. From Staff's perspective, any company, including an ETC, has the right to apply construction charges and retain construction charges if a consumer fails to retain service for a significant period of time. Staff continues to question if it is appropriate for an ETC receiving high-cost support to retain all construction charge revenue if a customer retains service for a significant amount of time. Further discussion is needed before further action is pursued on this issue.*

- **Annually report to the FCC, USAC and state commissions service request quantities as previously described in this report.**

ETCs disagree with this proposal. Existing ETC reporting requirements are already complex and take considerable time and resources to compile. CenturyLink states Staff's recommended reporting information will require a detailed manual study. Small ILEC ETCs question what constitutes a request for service. CenturyLink points out the FCC may modify or eliminate this reporting requirement. CenturyLink also states it is not clear whether the Missouri Commission has the authority to require submission of the data.

**Staff response to feedback:** *The FCC may modify or eliminate this reporting requirement. Staff agrees the prudent approach is to postpone further action on this recommendation in order to allow time for the FCC to take action. If this matter is ultimately pursued Staff acknowledges*

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<sup>4</sup> §392.460.10 describes how incumbent local exchange carriers have the right to require payment where costs of extending facilities are not economically reasonable.

*greater clarity is needed on how terms are defined. In addition, consideration needs to be given to the burden placed on ETCs to track and report information. Despite these considerations any ETC should expect some degree of accountability as a condition of receiving funding.*

- **If an ETC does not apply construction charges then the ETC should make a certification statement in the ETC's annual filing to the FCC, USAC and state commissions.**

Small ILEC ETCs disagree with this proposal. If an ETC is able to extend service without applying construction charges then the company will not have unfulfilled service requests. The Small ILEC ETCs question the significance of this certification. Record keeping may be burdensome in order for companies to determine if the certification statement can be made.

***Staff response to feedback:** Staff fails to understand the burden placed on an ETC to make a simple statement as to whether the company attempted to apply construction charges during the prior twelve months. Inconsistencies exist in how companies report unfulfilled service requests. Consequently this type of statement can be useful in evaluating a company's reporting unfulfilled service requests.*

**2. Does the Missouri Commission have authority to impose these requirements on ETCs? Explain why or why not.**

Yes according to Small ILEC ETCs but only if the requirement is not inconsistent with the requirements imposed by the FCC and is not unnecessarily burdensome or contrary to other state law limitations. As an example, Small ILEC ETCs indicate prohibiting ETCs from charging a non-refundable construction charge is inconsistent with §392.611.1 which excludes the Missouri Commission from imposing regulations on retail telecommunications services. CenturyLink states §392.460.10 provides ILECs with the right to apply construction charges and the FCC has not required ETCs to offer voice telephony service throughout their service territory.

***Staff response to feedback:** Staff acknowledges the Missouri Commission is limited in such authority so any Missouri Commission rule shall not be inconsistent with the FCC's universal service fund requirements and not unnecessarily burdensome. Staff notices no feedback references §392.611.3 which indicates a company will not be exempt from any Missouri Commission rule established under authority delegated to the state commission under federal statute, rule or order including but not limited to universal service funds. Further evaluation and additional feedback is needed on the interaction of §392.611.3 with other identified Missouri statutes.*

**3. Do you anticipate companies will be more likely to apply construction charges more often in the future? Why or why not?**

Small ILEC ETCs are unsure. CenturyLink "yes" for reasons expressed in Question No. 4.

**4. Will recent FCC reforms have a significant impact on facility expansion and the application of construction charges? If so, explain.**

Small ILEC ETCs and CenturyLink point out FCC reforms to federal high-cost support and intercarrier compensation will have a detrimental impact on ETCs and an ETC's ability to extend facilities at no charge.

*Staff response to feedback:* Feedback to Question Nos. 3 and 4 suggest companies are more likely to apply construction charges in the future.

**5. Should Missouri consider providing some form of limited financial assistance similar to the Arkansas Extension of Facilities Fund to help respond to service requests where the company lacks facilities? Why or why not?**

Small ILEC ETCs are unfamiliar with Arkansas fund. Nevertheless, the Small ILEC ETCs recommend the Missouri take a "clean slate" approach to possible revisions to Missouri rules and Missouri statutes. If pursued, the Small ILEC ETCs will actively participate in such a process. CenturyLink recommends consideration of a facility extension fund that could assist customers with the payment of construction charges when facilities will not otherwise be available and the ETC cannot economically construct the facilities based on reasonably expected revenues.

*Staff response to feedback:* Presumably a clean slate approach may begin by rescinding existing Missouri rules relating to a high-cost fund and perhaps revising Missouri statutes. *Rescinding all existing Missouri Commission rules pertaining to a high-cost fund may be appropriate in the rulemaking contemplated in pending working docket Case No. TW-2017-0078. In order to not delay the pending rulemaking Staff recommends any consideration of having the Missouri USF provide some form of limited financial assistance for construction charges be postponed until after the pending rulemaking has completed.*