BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Revisions of the Commission's Rules Regarding Telecommunications	)))	Case No. TX-2018-0120

AT&T COMMENTS ON PROPOSED RULEMAKINGS

AT&T[1] supports the Commission's continuing effort to modernize and streamline its telecommunications rules. In most instances, the proposed rescissions and amendments will make the Commission's rules more efficient and effective. To that end, AT&T concurs in the comments filed by the Missouri Telecommunications Industry Association ("MTIA") and offers the following additional suggested changes.

Expanding the existing state Lifeline program to support internet broadband access service and creating a new high cost program within the current Missouri Universal Service Fund ("USF") exceeds the Commission's authority under current law and raises significant policy matters. Further, state specific eligible telecommunications carrier ("ETC") requirements beyond those imposed by the FCC could have a negative impact on companies' willingness to serve as an ETC, thus potentially impeding the availability of internet services in Missouri.

Expanding Broadband Internet Service Availability Exceeds the Commission's Current Authority.

AT&T understands and appreciates the need to bring internet service to truly unserved areas and worked with the legislature this year to design a carefully targeted program targeting the availability of internet access - - separate from the current USF and Lifeline programs - - to

[1] Southwestern Bell Telephone Company, d/b/a AT&T Missouri, and its affiliates will be referred to herein as "AT&T."

address identified needs. This bill (HB 1872) has been signed into law and establishes a program targeting the availability of broadband internet in rural areas.

However, the Commission should decline the suggestion here to expand the state Lifeline program to support discounts on internet service. In addition to exceeding the scope of the prior governor's mandate under Executive Order 17-03, the proposal should be rejected because:

(a) The Commission can only act within its statutory jurisdiction. The proposal to expand the Missouri USF to support an internet only service within the state Lifeline and Disabled programs (by expanding the definition of "essential local telecommunications service" to include broadband) exceeds the Commission's current statutory jurisdiction. Section 392.611.1(1) RSMo. currently limits USF support to "local voice service," and nothing else:

> Telecommunications companies shall:
>
> . . . Collect from their end users the universal service fund surcharge in the same competitively neutral manner as other telecommunications companies and interconnected voice over internet protocol service providers, remit such collected surcharge to the universal service fund administrator, and receive, as appropriate, funds disbursed from the universal service fund, which may be used to support the provision of local voice service; (emphasis added)

Missouri law makes clear that broadband internet access is *not* a regulated telecommunications service. Section 392.611.2 RSMo. states:

> Broadband and other internet protocol-enabled services shall not be subject to regulation under chapter 386 or this chapter [Chapter 392, the telecommunications chapter], except that interconnected voice over internet protocol service shall continue to be subject to section 392.550.

The proposed "Missouri USF High Cost Support Rule," set out as 4 CSR 240-31.013, similarly lacks the needed statutory foundation. Current law, at Section 392.248.4 RSMo., provides:

> To facilitate provision of essential local telecommunications service, the commission shall determine whether and to what extent any telecommunications company in the state

> providing essential local telecommunications service in any part of the state, shall be eligible to receive funding. Eligibility shall be determined as follows:
>
> (1) A telecommunications company's eligibility to receive support for high-cost areas from the universal service fund shall be conditioned upon:
>
> (a) The telecommunications company offering essential local telecommunications service, using its own facilities, in whole or in part, throughout an entire high-cost area and having carrier of last resort obligations in that high-cost area; and
>
> (b) The telecommunications company charging a rate not in excess of that set by the commission for essential services in a particular geographic area;

Section 392.248.6 RSMo. also sets out required criteria for the Commission to employ in "determining whether, and to what extent, universal service fund funding is required to facilitate provision of essential local telecommunications service." The proposed High Cost Support rule does not appear to follow the Section 392.248 requirements.

(b) <u>The Proposed Expansion Could Financially Impair the Existing State Lifeline Program</u>. Expanding of the Lifeline and Disabled programs to include internet access as an additional supported service could result in undue and increased financial pressures on the fund because of the mismatch between contributing services (i.e., services subject to USF assessments) and supported services (i.e., services receiving support). Currently, assessments fall solely on the state's diminishing customer base of wireline voice services, the only services for which state law authorizes support. And the FCC has preemptively barred states from imposing any USF contribution requirement on fixed and mobile broadband internet access services. In its 2015 *Open Internet Order*, the FCC stated:

> [We] conclude that the imposition of state-level contributions on broadband providers that do not presently contribute would be inconsistent with our decision at the present time to forbear from mandatory federal USF contributions, and therefore, we preempt any state from imposing any new state USF contributions on broadband – at least until the [FCC] rules on whether to provide for such

> contributions. . . . We . . . are not aware of any current state assessment of broadband providers for state universal service funds.[2]

In its 2018 *Restoring Internet Freedom Order*, the FCC stated:

> We also make clear that the states are bound by our forbearance decisions today. . . . With respect to universal service, we conclude that the imposition of state-level contributions on broadband providers that do not presently contribute would be inconsistent with our decision at the present time to forbear from mandatory federal USF contributions, and therefore we preempt any state from imposing any new state USF contributions on broadband – at least until the Commission [i.e., FCC] rules on whether to provide for such contributions.[3]

(c) Creation of a High Cost Program is Premature. Given the considerable amounts of federal high-cost funding the FCC is already directing to Missouri to increase access to internet service throughout the state and the newly implemented state rural broadband program, any need for yet another high cost program is unnecessary or at least premature. Rate of return and price cap carriers in Missouri currently receive more than $151 million per year in federal high-cost support and must make broadband internet access service available to more than 200,000 locations in the state, at speeds identified by the FCC, pursuant to the FCC's requirements. The impact these carriers' efforts will have on the availability of internet access services in Missouri pursuant to the FCC's high-cost programs is significant.

Comments on Proposed ETC Rules.

In addition, AT&T respectfully submits the following comments with respect to the other proposed rule changes:

[2]Report & Order on Remand, Declaratory Ruling, and Order, *In the Matter of Protecting & Promoting the Open Internet*, FCC 15-24, ¶ 432, ¶ 432 n.1282 (released Mar. 12, 2015) (the "*Open Internet Order*"). The D.C. Circuit has upheld this order, and several parties have filed a petition for en banc review.

[3] Declaratory Ruling, Report and Order, and Order, *In the Matter of Restoring Internet Freedom*, FCC 17-166, WC Docket 17-108, ¶ 432 (released January 4, 2018) (the "*Restoring Internet Freedom Order*"), appeal filed *sub nom*. Mozilla Corp. v. FCC, No. 18-1051 (D.C. Circuit).

Suggested Clarification to ETC Applicant Criteria.

- Proposed Section 4 CSR 240-31.016(2)(B)(2) requires an ETC applicant to identify:

> . . . all managers, officers, and directors, or any person exerting managerial control over the applicant's day-to-day operations, policies, service offerings, and rates.

As worded, the proposed criteria are overly broad. Large companies employ many, many managers (including low-level managers) with various responsibilities over different aspects of a company's "day-to-day operations, policies, service offerings, and rates." Instead, AT&T suggests limiting this requirement to a company's "officers and directors."

- Proposed Section 4 CSR 240-31.016(2)(B)(2) requires an ETC applicant to provide:

> . . . the details of any matter brought in the last ten (10) years by any state or federal regulatory or law enforcement agency against any of the individuals, entities, managers, officers, directors, of other companies sharing common ownership or management with the applicant involving fraud, deceit, perjury, stealing, or the omission or misstatement of material fact in connection with a commercial transaction; (emphasis added)

As worded, the proposed criteria appears to inadvertently overlook the applicant, but yet is overly broad in that it would require an applicant to perform criminal background checks of all managers, including low-level managers, of any affiliated company. Instead, AT&T suggests wording this criteria similarly to the current rule in order to capture conduct of the applicant and any individuals that would have the ability to exert control:

> . . . the details of any matter brought in the last ten (10) years by any state or federal regulatory or law enforcement agency against the applicant, any person or entity that holds more than a ten percent (10%) ownership interest in the applicant, any affiliated company (any company under common management ownership or control, or that, by contract or other agreement performs any of the functions necessary to the applicant's Lifeline Service) involving fraud . . . (underline represents suggested language from existing rule)

Essential Local Telecommunications Definition.

- 4 CSR 240-31.010(5) proposed definition of "essential local telecommunications service" - Notwithstanding AT&T's opposition to the expansion of this definition (see above), AT&T recommends that Staff consider inserting the words "and from" before the words "the public switched network," so that the definition would read: "Voice telephone service which provides voice grade access to and from the public switched network including access to 911-related emergency services to the extent

implemented by a local government and/or retail broadband service." This revision would make clear that one way (non-interconnected VoIP) would not be eligible for Lifeline or high-cost support.

ETC Requirements.

- 4 CSR 240-31.015 ETC requirements – This section of the proposed rules imposes requirements beyond those established by the FCC. Given the need for uniform national rules, AT&T believes that states should not impose additional requirements on ETCs beyond those established by the FCC because the ETC designation is needed for purposes of participation in the *federal* high-cost and/or Lifeline universal service programs administered by the FCC. State specific requirements beyond those imposed by the FCC could have a negative impact on companies' willingness to serve as an ETC, thus potentially impeding the availability of internet services in Missouri. In addition to the concerns noted above regarding ETC applicant criteria, AT&T would note:

    - Subsection (3)(A) – since earlier this year, the FCC no longer requires ETCs to file their annual Form 481s with the state commission. Eliminating this requirement would help lessen administrative burdens.
    - Subsection (3)(B) – Once implementation of the Lifeline National Eligibility Verifier is mandatory in a state, use of USAC's uniform national enrollment forms will be mandatory in the state. The state specific form should therefore not be required once the Verifier has been implemented in Missouri.
    - Subsection (3)(C) – The requirements contained in this subsection will also be subject to the Verifier once implemented in the state. At that time, no ETCs will be making eligibility determinations/annual eligibility recertifications for consumers in Missouri. Since the Verifier will be solely responsible for these obligations, the officer certifications in the proposed rules will no longer be necessary.
    - Since 4 CSR 240-31.016 contains the same requirements noted above with respect to ETC applications, AT&T's comments concerning 4 CSR 240-31.060 apply to 4 CSR 240-31.016 as well.

Comments on Other Proposed Rules.

AT&T agrees that it is appropriate to eliminate outdated rules and those that duplicate state or federal statutes or federal rules. Current statutes and federal rules speak for themselves and duplicating them in the Commissions' rules results in unneeded clutter. AT&T, however, would recommend retaining provisions that would:

- Provide a process for seeking extensions of time to file Commission reports. The existing process in 4 CSR 240-28.040(2)(B) works well and should be retained.

- Provide a process for seeking confidential treatment of company data filed in Commission reports. The existing process works well and should be retained.

In addition, Proposed rule 28.013(2)(B) provides for the adoption of "approved interconnection agreements whose original term has expired, but which remain in effect pursuant to term renewal or extension provisions." AT&T Missouri has previously opposed this type of provision because FCC rules do not require an incumbent LEC to make an interconnection agreement available for adoption indefinitely[4] and the proposed rule prejudges all such adoptions as appropriate. Rather, the rules require an agreement to be available only "for a reasonable period of time after the approved agreement is available for public inspection."[5] AT&T has instead suggested that such requests be considered on a case-by-case basis taking into account the facts and circumstances in that particular case and would reiterate its request to remove the provision regarding adoption of expired agreements.

But if the Commission determines it appropriate to retain this provision, it is essential that the Commission also retain the current process set out in CSR 240-28.080(2) under which a carrier can object to the adoption of one of its agreements (as also recommended by MTIA). Retaining this language would provide an orderly process for carriers to take any such disputes to the Commission for determination on the appropriateness of the requested adoption.

[4] 47 C.F.R. § 51.809(c), entitled "Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act," states:

> Individual interconnection, service or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for inspection under section 252(f) of the Act.

[5] *BellSouth Telecomms., Inc. v. Universal Telecom, Inc*., 454 F.3d 559, 560 (6th Cir. 2006) ("The right to adopt an existing interconnection agreement contains several limitations, one of which is time. Under a regulation promulgated by the Federal Communications Commission (FCC), an entrant seeking to adopt an approved agreement must do so within 'a reasonable period of time after the approved agreement is available for public inspection,' 47 C.F.R. § 51.809(c), which is to say a reasonable time after the state commission has approved the underlying agreement, 47 U.S.C. § 252(e)(1), (h)").

Conclusion

AT&T commends and appreciates Staff's work in greatly streamlining the Commission's telecommunications rules. While AT&T has expressed concerns with certain proposed rule changes, it remains willing to work with the Commission, its Staff and other stakeholders to further this valuable effort.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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