

Jason Kander

Secretary of State
Administrative Rules Division

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**SECRETARY OF STATE
ADMINISTRATIVE RULES**

Rule Number 4 CSR 240-31.010

COPY

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

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TYPE OF RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, include effective date
☐ Proposed Rulemaking
☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration
☐ Request for Non-Substantive Change
☐ Statement of Actual Cost
☒ Order of Rulemaking

Effective Date for the Order _____

☐ Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:
Section (5), (8), (13), (14), (17), (18), (19), (20), (21), (22)

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JOINT COMMITTEE ON
DEC 18 2013
ADMINISTRATIVE RULES



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Jason Kander
Secretary of State
Administrative Rules Division
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Re: 4 CSR 240-31.010 Definitions

Dear Secretary Kander,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: sections 392.200.2, RSMo Supp. 2012, and 392.248 and 392.470.1, RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

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**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 31 – Universal Service**

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**SECRETARY OF STATE
ADMINISTRATIVE RULES**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 392.200.2, RSMo Supp. 2012, and sections 392.248 and 392.470.1, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-31.010 is amended.

A notice of proposed rulemaking containing the proposed amendment was published in the *Missouri Register* on September 16, 2013 (38 MoReg 1461). Those sections with changes have been reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended October 16, 2013, and the commission held a public hearing on the proposed amendment on October 21, 2013. The commission received timely written comments from the Staff of the Missouri Public Service Commission; the Missouri Cable Telecommunications Association (MCTA); Southwestern Bell Telephone Company, d/b/a AT&T Missouri; CenturyTel of Missouri, LLC d/b/a CenturyLink, Embark Missouri, Inc., d/b/a CenturyLink, Spectra Communications Group, LLC d/b/a CenturyLink, and CenturyTel of Northwest Arkansas, d/b/a CenturyLink (CenturyLink); Cricket Communications, Inc.; and the Small Telephone Company Group and the Missouri Independent Telephone Company Group (collectively STCG). In addition, the following people offered comments at the hearing: Christina Baker representing the Office of the Public Counsel; Barbara Meisenheimer on behalf of the Office of the Public Counsel; Stephanie Bell representing MCTA; Ken Woods on behalf of MCTA; Bob Gryzmala representing AT&T Missouri; Becky Kilpatrick representing CenturyLink; Bill Steinmeier representing Cricket; Brian McCartney representing STCG; Colleen Dale representing the Staff of the Missouri Public Service Commission; and Natelle Dietrich on behalf of the Staff.

The commission considered this particular rule in conjunction with fourteen other rules affecting telecommunications and the Missouri Universal Service Fund. Not all persons offering comments addressed this particular rule.

COMMENT: The Commission's staff indicated it has attempted to review all commission rules relating to ETCs and the MoUSF. Most of those rules have not been revised since they were created in 1998. Aside from the need to update

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the rules, revisions are necessary to bring the state rules in line with recent changes to the federal USF and Lifeline programs. Staff proposed these rulemakings to accomplish five objectives:

1. Consolidate within one chapter of the Missouri rules all requirements pertaining to Eligible Telecommunications Carriers (ETCs) and the Missouri Universal Service Fund (MoUSF);
2. Rescind high-cost support rules;
3. Clarify and codify existing MoUSF Board responsibilities and procedures;
4. Update and clarify Lifeline program requirements; and
5. Update and clarify ETC requirements.

Staff said there are approximately seventy landline and wireless companies in Missouri with ETC status. Companies with ETC status may receive USF funding for participation in the high-cost program or the Lifeline program, or both. The federal USF high-cost program provides financial support to an ETC for the provisioning of voice or broadband service, or both, to high-cost areas. The MoUSF does not currently offer high-cost support. The federal Lifeline program provides similar support to companies for the provision of discounted voice service to qualifying low-income customers. The MoUSF provide financial support to landline phone providers for service to qualifying low-income and disabled customers.

State commissions are responsible under federal law for determining which telecommunications companies may be designated as an ETC in their states. In addition, the state commissions are responsible for an annual certification process to allow ETCs to continue to receive high-cost support.

Federal high-cost programs and the Lifeline program have recently been subject to intense criticism and the Federal Communications Commission (FCC) has implemented significant reforms in those programs. The state commissions also have authority to impose additional state-specific requirements on ETCs to ensure compliance with state Lifeline programs so long as those additional requirements do not conflict with federal requirements.

RESPONSE: The commission thanks its staff for its general comments. The commission will address staff's comments about specific rule provisions in the appropriate rulemaking.

COMMENT: The MCTA generally supports the commission's efforts to revise these rules. In particular, it supports the proposed deletion of rules relating to the high-cost component of the MoUSF in recognition of the fact that no such support is currently authorized and is unlikely to be authorized in the future. The MCTA also offered comments about specific provisions of the rules.

RESPONSE: The commission thanks the MCTA for its general comments and will address its comments about specific rule provisions in the appropriate rulemaking.

COMMENT: AT&T Missouri is critical of many aspects of the proposed rule changes. As part of a large company operating in many states, AT&T Missouri wants to see Missouri's rules closely adhere to federal standards imposed by the FCC. AT&T Missouri is concerned that additional state requirements would unnecessarily impose additional regulatory burdens.

AT&T Missouri also explains that recent federal regulatory efforts in this area have been focused on the Connect America Fund (CAF) which is aimed at providing high-cost universal service support for increasing broadband availability in areas lacking a private sector business case for broadband deployment. AT&T Missouri warns against erecting state regulatory barriers to the acceptance of CAF funds to provide service to Missouri customers.

AT&T offered numerous comments about specific provisions of the rules.

RESPONSE: The commission thanks AT&T Missouri for its general comments. The commission will attempt to balance the interests of telecommunications providers in having a streamlined regulatory process against the need to ensure that the USF programs are run efficiently. The commission will address AT&T Missouri's comments about specific rule provisions in the appropriate rulemaking.

COMMENT: CenturyLink generally urges the commission to retain its current rules regarding potential high-cost support from the MoUSF as such support is still authorized by Missouri statute, even though no such program has been established. Furthermore, CenturyLink asks the commission to ensure that the standards imposed by its rules are aligned with and not in excess of those imposed by the FCC. CenturyLink also offered comments about specific provision of the rules.

RESPONSE: The commission thanks CenturyLink for its general comments. The commission will attempt to balance the interests of telecommunications providers in having a streamlined regulatory process against the need to ensure that the USF programs are run efficiently and Missouri consumers are protected. The commission will address CenturyLink's comments about specific rule provisions in the appropriate rulemaking.

COMMENT: Cricket is primarily concerned about the use of electronic forms to collect applications from customers and offers specific comments in that regard.

RESPONSE: The commission thanks Cricket for its general comments and will address its specific comments in the appropriate rulemaking.

COMMENT: STCG represents Missouri's small, mostly rural incumbent telephone companies. STCG would like the commission to consider creation of a state high-cost USF fund. For that reason it asks the commission to retain a portion of the rules relating to such a fund. STCG also offers comments about specific provisions of the rules.

RESPONSE: The commission thanks STCG for its general comments and will address its specific comments in the appropriate rulemaking.

COMMENT: STCG suggests a change to the definition of Eligible Telecommunications Carrier (ETC) found in section (5) of the proposed rule as published in the Missouri Register. As part of its suggestion that the commission retain general “high-cost” language as part of this rule, STCG recommends the commission incorporate mention of the high-cost program into this definition. Staff replied that it wants to rescind the substantive provisions of the rule that relate to the “high-cost” program because no such program currently exists and if such a program were to be implemented the existing regulations are obsolete and would need to be replaced. However, Staff indicated it does not object to STCG’s proposal to retain “high-cost” in the definitional type sections of the regulations while deleting the obsolete substantive regulations that would govern a high-cost program if one is ever implemented.

RESPONSE AND EXPLANATION OF CHANGE: The commission will incorporate the revised language proposed by STCG for this definition.

COMMENT: Section (6) as it exists in the current rule offers a definition of essential local telecommunications services that lists eight services as essential services. The amendment as published in the Missouri Register replaces those eight listed essential services with a reference declaring that essential local telecommunications services is synonymous with “voice telephony service” as defined in section (18) of this rule. The definition of “voice telephony service”, which is also a new provision in the amended rule, matches the definition used by the FCC for federal purposes.

Public Counsel is concerned that the changed definition would eliminate access to basic local operator services, access to basic local directory assistance, equal access to interexchange carriers and, for landline service, one standard white pages directory listing, as essential local telecommunications services.

Public Counsel contends the commission has a statutory obligation to preserve and advance universal service in Missouri. Public Counsel believes the proponents of eliminating access to essential local services from the definition for purposes of eligibility for MoUSF funding should be required to demonstrate that elimination of the services is consistent with Missouri’s universal service goals instead of simply eliminating them in pursuit of uniformity or convenience for telecommunications providers.

Staff explains that the changed definition would alter the services an ETC must provide in order to draw support from the MoUSF. The amendment as published in the Missouri Register would incorporate the standards for essential telecommunications services as established by the FCC. Staff believes it is important to match the federal definition so as not to put basic local telecommunications providers at a competitive disadvantage against wireless

service providers who are subject only to the federal definition. Furthermore, the existing definition is outdated and uses terminology solely applicable to traditional landline carriers.

Staff further explains that changing the definition would not necessarily mean that providers would stop providing the services about which Public Counsel is concerned. Other provisions in the commission's rules require existing and new ETCs to keep the commission informed about whether they provide those services, which will allow the commission to monitor the continued provision of those services.

RESPONSE: The commission agrees with Staff that it is important to keep its definitions consistent with federal definitions when it is appropriate to do so. The commission will not change the definition of essential local telecommunications services beyond the amendment as published in the Missouri Register.

COMMENT: Staff asks the commission to further revise the definition of Federal Universal Service Fund, found in section (8). Staff explains that the proposed definition as published in the Missouri Register fails to reference the high-cost program. Staff would add such a reference to the definition. AT&T Missouri agrees the definition should be changed to reference the Lifeline program and proposes slightly different language that specifically refers to the administration of the program by the FCC. The STCG also proposes a revised definition that incorporates a reference to the high-cost program. Staff supports its proposed definition rather than that proposed by AT&T because the reference to administration by the FCC would ignore this commission's role in administering the fund.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff that AT&T Missouri's proposed definition would ignore the commission's role in administering the fund. The definition proposed by STCG is less succinct than that proposed by Staff. The commission will adopt Staff's revised language for the definition of Federal Universal Service Fund.

COMMENT: AT&T Missouri suggests a change in the definition of "Lifeline Service" found in section (13). It contends the proposed definition does not adequately convey all the elements of the service and proposes that the commission's rule instead simply reference the section of the federal rule that defines "Lifeline Service". If that is done, the commission's definition would always track the federal definition if it is later changed. In the alternative, AT&T Missouri would include the wording of the federal rule as the definition for the commission's rule, recognizing that the commission rule might then have to be changed if the FCC later revises its rule. Staff did not respond to AT&T Missouri's suggestion.

RESPONSE AND EXPLANATION OF CHANGE: The commission accepts and will incorporate the language proposed by AT&T Missouri.

COMMENT: STCG proposes a change to the definition of MoUSF found in section (14) of the rule as published in the Missouri Register. The amendment as published would remove a reference to the high-cost program since no such program has ever been implemented as part of the MoUSF. STCG asks that the high-cost program remain in the definition in case the commission later decides to implement such a program. Staff replies that it wants to rescind the substantive provisions of the rule that relate to the “high-cost” program because no such program currently exists and if such a program were to be implemented the existing regulations are obsolete and would need to be replaced. However, Staff indicated it does not object to STCG’s proposal to retain “high-cost” in the definitional type sections of the regulations while deleting the obsolete substantive regulations that would govern a high-cost program if one is ever implemented.

RESPONSE AND EXPLANATION OF CHANGE: The commission will retain the reference to the “high-cost” program in the definition.

COMMENT: MCTA and AT&T recommend a modification of the definition of “net jurisdictional revenue” in section (17). Both are concerned about the definition of wholesale revenue which all agree is to be excluded from the definition of net jurisdictional revenue. AT&T proposes language that would clarify the first part of the definition enough to eliminate the need to define wholesale revenue in the second part of the definition. Staff did not respond to the suggestions of either MCTA or AT&T.

RESPONSE AND EXPLANATION OF CHANGE: The language proposed by AT&T is simpler while still effectively defining net jurisdictional revenue. The commission will adopt that language.

COMMENT: MCTA points out that newly proposed section (18) refers to the term “toll limitation” service, but does not define that term. MCTA also advises the commission to not delete the definitions of “toll blocking” and “toll control” from the current regulation. MCTA recommends the commission adopt a definition of toll limitation that is consistent with the definition established by the FCC. Staff agrees with MCTA’s suggestions.

RESPONSE AND EXPLANATION OF CHANGE: The commission accepts MCTA’s suggestion. The definition of “toll blocking” and “toll control” will not be removed from the rule. However, they will be renumbered as sections (18) and (19). The commission will also adopt the definition of “toll limitation service” proposed by MCTA and will number it as section (20). That also means the definition of “voice telephony service” will be renumbered as section (21) and the definition of “wireless service” will be renumbered as section (22).

4 CSR 240-31.010 Definitions.

(5) Eligible telecommunications carrier (ETC) — is a carrier designated as such by the Missouri Public Service Commission pursuant to 47 U.S.C 214(e) and 47 CFR Part 54 Subpart C. ETC designation allows a carrier to receive FUSF support from the high-cost and/or Lifeline programs and Missouri-approved telecommunications carriers to receive MoUSF support from the high-cost, Lifeline or Disabled programs.

(8) Federal Universal Service Fund (FUSA) - The federal fund that provides funding to companies for the high-cost program and the Lifeline program.

(13) Lifeline Service – Means a non-transferable retail service offering for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in 47 CFR 54.403; and that provides qualifying low-income consumers with voice telephony service as specified in 47 CFR 54.101(a). Toll limitation service does not distinguish between toll and non-toll calls in the pricing of the service. If an eligible telecommunications carrier charges Lifeline subscribers a fee for toll calls that is in addition to the per month or per billing cycle price of the subscribers' Lifeline service, the carrier must offer toll limitation service at no charge to its subscribers as part of its Lifeline service offering.

(14) MoUSF – refers to the Missouri Universal Service Fund, which was established by section 392.248, RSMo 2000 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.

(17) Net jurisdictional revenue – Net jurisdictional revenue means all retail revenues received from end-user customers resulting from the provision of intrastate regulated and IVoIP services, but shall not include revenue from payphone operations, taxes and uncollectibles.

(18) Toll blocking—Toll blocking is a service provided by carriers that lets customers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(19) Toll control—Toll control is a service provided by carriers that allows customers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(20) Toll limitation – “Toll limitation service” denotes either toll blocking service or toll control service for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, “toll limitation” service denotes both toll blocking service and toll control service.

(21) Voice telephony service — refers to voice grade access to the public switched network or its functional equivalent; minutes of use for local service

provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying Lifeline consumers. Toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service.

(22) Wireless service — refers to commercial mobile radio service as identified in 47 CFR Parts 20 and 24.