Jason Kander
Secretary of State
Administrative Rules Division

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Rule Number 4 CSR 240-31.130

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

Name of person to call with questions about this rule:
Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010
Email address morris.woodruff@psc.mo.gov

Data Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010
Email address christine.koenigsfeld@psc.mo.gov

Interagency mailing address Public Service Commission, 9th Fl., Gov. Ofc. Bldg., JC, MO

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:
Sections (1), (2), (3), (4)

Small Business Regulatory Fairness Board (DED) Stamp

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JOINT COMMITTEE ON
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ADMINISTRATIVE RULES

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
http://www.psc.mo.gov

Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-31.130 Eligible Telecommunications Carrier Requirements

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, RSMo Supp. 2012, and sections 392.248 and 392.470.1, RSMo 2000

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

Morris L. Woodruff, Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
morris.woodruff@psc.mo.gov

Morris L. Woodruff

Morris L. Woodruff
Chief Regulatory Law Judge

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

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 392.200, RSMo Supp. 2012, and sections 392.248 and 392.470.1, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-31.130 Eligible Telecommunications Carrier Requirements **is adopted.**

A notice of proposed rulemaking containing the proposed rule was published in the *Missouri Register* on September 16, 2013 (38 MoReg 1472). Those sections with changes have been reprinted here. This proposed rule 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 rule 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, Embarq 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

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: Public Counsel reminds the commission that it has a statutory obligation to preserve and advance universal service in this state. To that end, Public Counsel urges the commission to protect elements of such service, such as interexchange service, access to directory assistance, and access to operator services, rather than merely seeking to align Missouri rules with those offered by the FCC. Public Counsel also offers comments about specific provisions of the rules.

RESPONSE: The commission thanks Public Counsel 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 Public Counsel's specific comments in the appropriate rulemaking.

COMMENT: Paragraph (1)(B)4 requires an ETC to certify that it will advertise the availability of its supported service and its price. It also requires the ETC to explain how it intends to advertise and specifically requires the ETC to explain how it will target direct mailings to eligible customers. AT&T Missouri is concerned that while the proposed rule is intended to track the corresponding FCC rule, it varies slightly from that rule. AT&T Missouri proposes alternative language that more closely corresponds to the FCC's rule and also proposes to delete a sentence dealing with direct mail advertising.

RESPONSE AND EXPLANATION OF CHANGE: The additional language AT&T Missouri proposes is helpful in making the commission's rule more closely track the FCC's rule. However, the commission's rule was intended to go beyond the FCC's rule to require an explanation from the ETC about how it will target its direct mailing to customers who are likely to qualify. That is important to avoid sending such direct mail campaigns to customers who are unlikely to qualify for the programs. The commission will incorporate AT&T Missouri's additional language, without deleting the sentence in the rule regarding direct mail advertising.

COMMENT: Paragraph (1)(B)5 requires the ETC to certify that it will comply with the applicable service requirements in 47 CFR 54.201(d)(2). AT&T Missouri contends the correct reference to the federal regulation should be to subsection (d)(1), which deals with service requirements, not subsection (d)(2), which deals with advertising of the available services. Staff suggests that to avoid confusion, the reference be broadened to section 201.

RESPONSE AND EXPLANATION OF CHANGE: The commission thanks AT&T Missouri for pointing out the incorrect reference. The commission will incorporate staff's suggestion and broaden the reference to section 201.

COMMENT: Paragraph (1)(B)11 requires an ETC to commit to maintain a record of customer complaints and to make those complaint records available to the commission's staff upon request. AT&T Missouri complains that this requirement would be very broad and burdensome because it would require the ETC to keep every single complaint and submit information to the state that is not required by the FCC. AT&T Missouri contends the information about complaints required by the FCC is shared with the commission and is sufficient. For that reason, AT&T Missouri asks the commission to delete this paragraph.

RESPONSE AND EXPLANATION OF CHANGE: The commission understands AT&T Missouri's concerns and does not wish to unduly burden ETCs that operate in more than one state by imposing unnecessary Missouri specific requirements that go beyond the similar requirements imposed by the FCC. The commission will delete this paragraph and will renumber subsequent paragraphs accordingly.

COMMENT: Paragraph (1)(B)14 requires an ETC to describe, how, if at all, it will provide access to directory assistance, operator, and interexchange service. AT&T Missouri asks the commission to delete this paragraph because the FCC and this commission no longer require ETCs to offer those three services to qualify for ETC status.

RESPONSE: Even though ETCs are no longer required to offer these services, they still may choose to do so. The regulation does not require the ETCs to offer these services, it just requires them to describe how they will do so if they decide to offer them. It is reasonable for the rule to require that information and the commission will not delete the paragraph.

COMMENT: Subsection (1)(C) requires an applicant for ETC status to disclose extensive information about disciplinary actions taken or pending against the applicant and affiliated companies and individuals. AT&T Missouri complains that these requirements go far beyond the requirements of the FCC's regulations and argues that applicants for ETC status should not be subjected to such broad and free-ranging information collection and reporting requirements in the absence of some cause for concern. AT&T Missouri suggests that if the commission has reason to be concerned about some particular applicant it can investigate more thoroughly through the use of data requests or other discovery tools.

RESPONSE: The commission seeks the information that this subsection requires to be disclosed because experience has shown that it is possible for a company that has run into trouble in other jurisdictions to create a new corporate shell and

move onto the next state in line while continuing to abuse the universal service programs. Unless the commission's staff is made aware of a company's history, it cannot hope to protect the Missouri programs against those companies and individuals who have shown a willingness to abuse the programs. The commission will not delete subsection (1)(C).

COMMENT: Paragraph (1)(D)7 requires carriers applying for ETC status to commit to use only a commission-approved application form. AT&T Missouri argues ETCs should be allowed the flexibility to use forms of their own design so long as those forms comply with requirements established by the FCC. Staff believes that a board-approved form is preferable, but offers alternative language if the commission decides otherwise. Staff's alternative would merely require the company to submit a copy of the form they would be using and would not require a commitment from the company to use a particular form.

RESPONSE AND EXPLANATION OF CHANGE: The commission generally agrees with AT&T Missouri. It is appropriate to allow ETCs the flexibility to design and use forms of their own choosing so long as those forms comply with FCC and commission requirements. Staff proposed alternative language that recognizes the ability of ETCs to design their own appropriate form. The commission will adopt the alternative language proposed by staff.

COMMENT: AT&T Missouri contends subparagraph (1)(D)9.B attempts to track the FCC's rule on de-enrollment for non-usage but does not accurately convey the contents of that rule. AT&T Missouri suggests the commission's rule should simply reference the applicable federal rule. Staff agrees with AT&T Missouri's suggestions.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the change proposed by AT&T Missouri.

COMMENT: AT&T Missouri suggests that subsection (1)(F) be modified to clarify that an applicant seeking designation solely for deploying or operating services pursuant to the Connect America Fund or the CAF Mobility Fund is not required to provide the detailed plans required by the paragraphs of that subsection. AT&T Missouri explains that the details required by the subsection are irrelevant to Connect America Fund applications which are aimed at deploying broadband services.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with AT&T Missouri and will adopt the revised language it proposes.

COMMENT: Paragraph (1)(F)6 requires an applicant for ETC designation for high-cost support to provide a detailed description of how it intends to monitor the quality of service it provides. AT&T Missouri challenges that requirement, arguing that the FCC does not include quality of service standards as part of

federal eligibility qualifications for high-cost ETC designation and further, the Missouri legislature has removed the commission's authority over the quality of service provided by competitive telecommunications companies. AT&T Missouri contends the commission should not attempt to re-impose quality of service standards through the back door offered by ETC designation.

RESPONSE AND EXPLANATION OF CHANGE: Even though the commission's authority to regulate regarding service quality issues for competitive companies is now limited, the commission still has an obligation to ensure that universal service funds are provided to companies that are serious about providing a high level of customer service. The commission will not delete paragraph (1)(F)6, but will modify that paragraph to clarify that applicants are not required to monitor their quality of service, but rather, if applicants monitor their quality of service they must describe how they perform such monitoring.

COMMENT: AT&T Missouri objects to section (2) and all its subsections (A) through (O). AT&T Missouri argues that this entire section would impose state requirements on ETCs that differ from the national framework for ETC requirements established in federal regulations by the FCC. AT&T Missouri contends such state requirements would impose additional burdens on ETCs without corresponding benefit. It also warns that ETC's offering services in multiple states will tend to funnel their support to states that do not impose burdensome state-specific requirements on those ETC.

RESPONSE: The commission has an obligation under state and federal law to ensure that ETCs operate honestly and efficiently. The requirements imposed by section (2) are necessary to accomplish that goal. The commission will not delete section (2).

COMMENT: If the commission chooses not to eliminate section (2) entirely, AT&T Missouri also challenges several subsections of that section. Subsection (2)(C) requires an ETC to make voice telephony service available to all subscribers in the ETC's service area upon reasonable request. AT&T Missouri points out that the FCC's rules no longer require an ETC to provide service to all subscribers in its service area. Instead, the federal regulation now requires the ETC applicant to certify that it will comply with the service requirements applicable to the support it receives. That distinction is important because the service obligations now differ if the ETC is seeking funding under the FCC's *Connect America Fund Order*.

Staff also recognizes the problem with this subsection. It proposes to correct the problem by limiting the service requirement to those ETCs receiving universal service funding for the provision of voice telephony or Lifeline services, thereby exempting funding under the *Connect America Fund Order*.

RESPONSE AND EXPLANATION OF CHANGE: The commission will amend subsection (2)(C) by revising the subsection in the manner proposed by staff,

with some modifications to make it clear that the ETCs are not required to provide wireless service and that this requirement does not apply to IVoIP providers.

COMMENT: In reviewing subsection (2)(E), the commission notes that it requires compliance with "these rules". That is an inexact term and should be replaced with the more exact "this chapter".

RESPONSE AND EXPLANATION OF CHANGE: The commission will make that change.

COMMENT: Subsection (2)(H) requires an ETC to maintain an intrastate tariff, wireless information filing or publically available website to display all rates, terms, conditions, or other provisions regarding the company's voice telephony services. AT&T Missouri argues this provision exceeds the commission's authority under state law in that telecommunications companies are only required to publish their prices on a website, not other terms or conditions. The commission has even less authority over IVoIP service providers. For that reason, AT&T Missouri urges the commission to delete this subsection.

RESPONSE AND EXPLANATION OF CHANGE: The commission disagrees with AT&T Missouri. The requirement that an ETC at least maintain a website describing the prices it offers is not burdensome and provides customers with a means of comparing services between providers. The commission will not delete subsection (2)(H), but will modify the rule to clarify that ETCs are required to post only prices and not the terms, conditions, or other provisions of the services they offer. The commission will also clarify that this provision does not apply to IVoIP providers.

COMMENT: Subsection (2)(J) requires an ETC to notify the commission's staff of any proceeding initiated against the company by federal or state authorities alleging that the company has violated any state or federal universal service program requirement. AT&T Missouri argues this provision exceeds the commission's authority to make reasonable inquiry into the operations of ETC and urges the commission to delete the subsection.

RESPONSE AND EXPLANATION OF CHANGE: The commission seeks the information that this subsection requires to be disclosed because it may only become aware of problems at a company when federal authorities or authorities from another state take action against that company. Unless the commission's staff is made aware of enforcement actions by other authorities against a company, it cannot hope to protect the Missouri programs against those companies and individuals who have shown a willingness to abuse the programs. The commission will not delete subsection (2)(J), but will clarify that this provision does not apply to IVoIP providers.

COMMENT: Subsection (2)(M) requires an ETC to cooperate and comply with periodic audits and requests for information by the commission's staff to monitor compliance with this chapter. AT&T Missouri would limit that requirement to compliance with the MoUSF requirements of the chapter, arguing that ETCs are already subject to significant audit requirements at the federal level.

RESPONSE: This subsection does not attempt to create any new audit authority for the commission. Rather, it requires an ETC to cooperate and comply with such audits and requests for information designed to monitor compliance with this chapter of the commission's rules. AT&T Missouri's proposed modification would limit the commission's authority to monitor compliance with some of the provisions of this chapter. The commission must have the ability to monitor compliance with all provisions of its rule. The commission will not make the change proposed by AT&T Missouri.

COMMENT: Section (3) establishes annual filing requirements for ETCs. CenturyLink argues that because the FCC already requires companies to annually certify their compliance with Lifeline program requirements, similar requirements by the commission at the state level are redundant. For that reason, CenturyLink proposes to eliminate subparagraphs (3)(A) 1.A,B,C,D,E,F, and G, as well as paragraph (3)(A)4 from this rule. The commission's staff agrees that paragraph (3)(A)4 is redundant and should be eliminated from the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission is required to annually certify ETCs in this state for continued participation. It is reasonable for the commission to collect the information necessary to make that determination. The commission will not eliminate subparagraphs 3)(A) 1.A,B,C,D,E,F, and G, as requested by CenturyLink. The commission will eliminated subsection (3)(A)4 as recommended by its staff. Other subsections will be renumbered accordingly.

COMMENT: Subparagraph (3)(A)1.B requires all Lifeline ETCs to annually certify compliance with all Missouri Lifeline Program and Disabled Program procedures. AT&T Missouri points out that not all ETCs participate in the MoUSF supported Lifeline and Disabled programs. For that reason AT&T Missouri would add the modifier "applicable" to subparagraph (3)(A)1.B.

RESPONSE AND EXPLANATION OF CHANGE: AT&T Missouri's proposed modification is appropriate. The commission will make that change.

COMMENT: Subparagraph (3)(A)1.C requires all Lifeline ETCs to annually certify that they are using an application form approved by the board. As previously discussed, several commenters oppose the requirement to use a specific application form approved by the board.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees it is appropriate to allow ETCs the flexibility to design and use forms of their own choosing so long as those forms comply with FCC and commission requirements. AT&T Missouri proposes alternative language for this subsection but staff suggests the subsection be entirely eliminated if use of a mandated form is not required. Instead, staff would create a new paragraph 8 that would require the ETC to submit a copy of the form it uses in Missouri. The commission will eliminate subparagraph (3)(A)1.C. renumber the subsequent subparagraphs, and insert a new paragraph (3)(A)8.

COMMENT: Paragraph (3)(A)2 requires all ETCs to state whether they offer access to interexchange, directory assistance and operator services. AT&T Missouri and STCG ask the commission to delete this paragraph because the FCC and this commission no longer require ETCs to offer those three services to qualify for ETC status.

RESPONSE: Even though ETCs are no longer required to offer these services, they still may choose to do so. The regulation does not require the ETCs to offer these services, it just requires them to indicate whether they do offer them. It is reasonable for the rule to require that information and the commission will not delete the paragraph.

COMMENT: Paragraph (3)(A)5 and its subparagraphs require ETCs to disclose details about the number of subscribers they serve. Several commenters addressed aspects of this subsection. First, staff recommends that part (3)(A)5.C(I) be eliminated as redundant of federal requirements. CenturyLink and AT&T Missouri would go further; contending that all additional subscriber reports required by paragraph (3)(A)(5) are redundant of federal requirements, they urge the commission to eliminate that paragraph.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with CenturyLink and AT&T Missouri. There is no need to duplicate the filing requirements imposed by federal regulations. The commission will eliminate paragraph (3)(A)5 in its entirety and will renumber subsequent paragraphs accordingly.

COMMENT: Staff suggests that paragraphs (3)(A)6 and (3)(A)7 are unnecessary and should be eliminated. Staff proposes to replace these paragraphs with a new subparagraph (3)(A)1.H by which the ETC would certify compliance with the requirements of subsections (2)(J) and (K). AT&T Missouri agrees that paragraph (3)(A)7 should be eliminated and proposes alternative language for paragraph (3)(A)6 to confine its scope.

RESPONSE AND EXPLANATION OF CHANGE: The commission will eliminated paragraphs (3)(A)6 and (3)(A)7 as proposed by staff and replace them with a new subparagraph (3)(A)1.H.

COMMENT: Subsection (3)(B) requires an ETC receiving high-cost support to a submit a variety of additional information each year to the commission for consideration when the commission is deciding whether to recertify the company as an ETC for the next year. The STCG contends the commission should modify this subsection in light of recently promulgated federal reporting requirements. Essentially, the STCG would have the commission eliminate the substantive informational requirements of its regulation and instead have the ETCs file a copy of the report they are required to file with the FCC.

RESPONSE: The commission is not persuaded by the STCG's argument. It is reasonable for the commission to require ETCs to submit additional information for the commission's consideration apart from information that is submitted under federal regulation. The commission will not make the change proposed by the STCG,

COMMENT: Paragraph (3)(B)3 requires an ETC receiving high-cost support to explain how the company monitors the quality of service it provides for voice telephony services. Staff suggests this subsection be modified by replacing "voice telephony services" with "its supported services." Staff explains this change will allow it to learn whether an ETC that is receiving only high-cost support for provisioning of broadband service is monitoring the quality of service it is providing.

AT&T Missouri also addresses paragraph (3)(B)3, arguing that the commission has no authority to regulate the quality of service provided by ETCs. In the alternative, AT&T Missouri suggests the section be modified to exclude ETCs that receive only high-cost support for provisioning of broadband service from the requirements of the subsection.

RESPONSE AND EXPLANATION OF CHANGE: The commission generally agrees with staff. The paragraph does not require an ETC to monitor the quality of service it provides, but it is important to know whether an ETC is monitoring that quality of service. The commission will modify the paragraph to clarify that requirement.

COMMENT: The STCG is concerned about subsection (3)(C). That subsection states that an ETC submitting information to the commission under section (3) may ensure confidentiality by classifying the filing as confidential. The STCG proposes that the subsection be changed to provide that such filing will be automatically deemed confidential and treated accordingly.

RESPONSE AND EXPLANATION OF CHANGE: The commission is persuaded by the STCG's argument. All such filings should be treated as confidential without any special request by the company. The commission will modify the subsection accordingly.

COMMENT: Subsection (4)(A) requires ETCs to comply with applicable laws, regulations, and procedures of the federal government as well as other states in which they have ETC status. AT&T Missouri asks that this subsection be stricken as being beyond the authority of the commission.

RESPONSE AND EXPLANATION OF CHANGE: The commission cannot enforce the laws and regulations of the FCC, but it can certainly expect ETCs to comply with those laws and regulations. The commission will not delete subsection (4)(A), but will remove references to the laws of other states.

COMMENT: Cricket comments that it strongly supports subsection (4)(D), which allows the commission to grant waivers from any provision of these rules.

RESPONSE: The commission thanks Cricket for its comment.

4 CSR 240-31.130 Eligible Telecommunications Carrier Requirements

(1) Application requirements for Eligible Telecommunications Carrier (ETC) designation.

(B) All ETC applications shall contain the following information regarding the company's proposed provisioning of voice telephony service:

1. A description of the service the applicant will offer;

2. An identification of the applicant's proposed service area;

3. An explanation of how the applicant will offer services using its own facilities or a combination of its own facilities and resale of another carrier's services, including a description of the applicant's own facilities as that term is defined in 47 CFR 54.201. If an applicant is seeking ETC designation solely for Lifeline purposes and does not comply with the own-facilities requirement, the applicant shall provide:

A. A statement confirming that subscribers will have 911 and E911 access; and

B. A copy of the applicant's Federal Communications Commission (FCC) - approved compliance plan. Unless otherwise specified by the FCC, an applicant's compliance plan shall adequately address the information specified in the FCC's Public Notice DA 12-314 released February 29, 2012 for WC Docket Nos. 09-197, 11-42;

4. A statement certifying the applicant will advertise the availability of its supported service and its price, using media of general distribution. The applicant shall also provide an explanation of how the applicant will advertise. The availability of Lifeline service shall be publicized in a manner reasonably designed to reach those likely to qualify for the service. If an applicant intends to advertise its service by direct mail then the company shall explain how it will target those mailings to consumers reasonably likely to qualify for the service. An applicant shall provide examples of advertising, including direct mail advertising, when available.

5. A certification that the applicant will comply with the applicable service requirements in 47 CFR 54.201);

6. A demonstration of the applicant's ability to remain functional in emergency situations, including a description of available back-up power, and a description of how the applicant will reroute traffic around damaged facilities and how it will managing traffic spikes resulting from emergency situations;

7. A statement that the applicant will satisfy applicable consumer protection, consumer privacy, and service quality standards. This statement shall include a list of those specific standards the applicant deems applicable. A wireless applicant shall include a statement that it will comply with the Cellular

Telecommunications and Internet Association's Consumer Code for Wireless Service;

8. A description of all rates, terms, conditions, and provisions applicable to the proposed voice telephony service to be supported, in whole or part, as Lifeline or Disabled service, including any overage or additional minute charges. The applicant shall state whether this information will be maintained in a tariff or wireless informational filing with the commission, or on a publically available website;

9. An explanation of how the applicant intends to provide service throughout the proposed service area, including areas where the applicant lacks facilities or network coverage;

10. A description of how the applicant will ensure service will be provided in a timely manner to requesting customers;

11. A commitment to remit required, collected 911 revenues to local authorities;

12. A demonstration that the applicant is financially viable and technically capable of providing voice telephony service; and

13. A description of how, if at all, the applicant will provide access to directory assistance services, operator services, and interexchange services.

(D) All ETC applications shall contain the following information and commitments regarding the applicant's proposed participation in the Lifeline or Disabled program:

1. Certification that all funding will flow through to the subscriber of the applicable program;

2. A commitment that the applicant will solely conduct business using the name or "DBA" under which the commission granted ETC designation. This commitment shall also include a statement the applicant will not use additional service or brand names;

3. A commitment that the applicant will comply with all requirements associated with the Lifeline program contained in 47 CFR Part 54 Subpart E;

4. A commitment that the applicant will comply with all requirements contained in this chapter, whether funded solely through the FUSF or through the FUSF and the Missouri Universal Service Fund (MoUSF);

5. A statement indicating whether the applicant intends to seek support from the MoUSF. If so, the applicant shall state whether it intends to participate in the Disabled program;

6. A demonstration of how the applicant will ensure that the full amount of Lifeline or Disabled support will be passed through to the qualifying low-income consumer;

7. A copy of the Lifeline and/or Disabled Application form(s) to be used by the applicant.

8. An explanation of how the applicant will initiate Lifeline or Disabled service to a subscriber, including:

A. How it will ensure a subscriber meets eligibility requirements;

B. How it will determine if a subscriber's identity and primary address are correct; and

C. How it will ensure that only one Lifeline or Disabled discount is received per household;

9. If the applicant does not assess or collect a monthly fee for Lifeline service, it shall explain how it will comply with the following requirements:

A. The applicant will not receive universal service support until the subscriber activates the service; and

B. De-enrollment for non-usage as provided in 47 CFR 54.405(e)(3).

10. An explanation of how the applicant intends to annually verify a customer's continued eligibility for the Lifeline or Disabled program, including what action will be taken if a subscriber fails to adequately respond or is no longer eligible for support; and

11. A statement indicating whether the applicant intends to use agents or independent contractors who are not employees of the applicant to sign-up subscribers to the Lifeline or Disabled program. If non-employees are going to be used then the applicant shall supplement this statement by committing to take responsibility for them and their activities as if they were legally employees of the applicant. In addition, the applicant shall explain how it will monitor such personnel to ensure compliance with all applicable laws and rules concerning the Lifeline or Disabled programs.

(F) Any application seeking ETC designation for the intended purpose of receiving federal high-cost support, excluding applications for designation solely for the purpose of deploying or operating services pursuant to either the Connect America Fund or the CAF Mobility Fund established by the FCC's *Connect America Fund Order*, 26 FCC Rcd. 17663 (2011)", shall provide the following additional information:

1. A statement that the applicant will comply with all requirements of 47 CFR Part 54 Subpart C;

2. An explanation of how granting ETC status is in the public interest;

3. A five-(5)-year plan describing specific proposed improvements or upgrades to the applicant's network throughout its proposed service area. This plan shall include a description of the intended use of the high-cost support, including detailed descriptions of any construction plans with start and end dates, populations affected by construction plans, existing tower site locations for wireless cell towers, and estimated budget amounts. The plan shall demonstrate that universal service support shall be used to improve coverage, service quality, or capacity throughout the Missouri service area for which the requesting carrier seeks ETC designation including:

A. A detailed map of coverage area before and after improvements and in the case of wireless providers, a map identifying existing cell tower site locations;

B. The specific geographic areas where improvements will be made;

C. The projected start date and completion date for each improvement;

D. The estimated amount of investment for each project that is funded by high-cost support;

E. The estimated population that will be served as a result of the improvements;

F. If an applicant believes that service improvements in a particular wire center or census block are not needed, an explanation of its basis for this determination and a demonstration of how funding will otherwise be used to further the provision of supported services in that area; and

G. A statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support, and that such support will be used in addition to any expenses the ETC would normally incur;

4. A reasonable plan outlining the method for handling unusual construction or installation charges;

5. A statement that the applicant will use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended; and

6. A description of how the applicant intends to monitor, if at all, the company's quality of service. This description includes, but is not limited to monitoring:

A. The timeliness of providing service.

B. The timeliness of restoring out-of-service conditions.

C. The amount of trouble experienced with the applicant's service.

D. The amount of outages experienced with the applicant's service.

(2) ETC Requirements:

(C) If an ETC, other than a provider of IVoIP service, offers voice telephony service, then that ETC shall make such service available to all subscribers in the ETC's service area upon reasonable request.

(E) Any ETC participating in the federal high-cost support program shall comply with all requirements identified in 47 CFR Part 54 Subpart D and this chapter;

(H) An ETC, other than a provider of IVoIP service, shall maintain an intrastate tariff, wireless informational filing or a publically available website to display all rates concerning the company's voice telephony services;

(J) An ETC, other than a provider of IVoIP service, shall notify the manager of the commission's Telecommunications Unit of any proceeding initiated by a state or federal regulatory authority alleging the ETC or any person or entity identified in section (1)(C) above is violating any state or federal universal service program requirements. Such notice shall also be required if any allegations of fraud, tax evasion or the commitment of a felony by the ETC or such person or entity are made. Notice shall be made within thirty (30) days of the initiation of the proceeding and shall be in written format either via letter or electronic means. This notice shall explain the allegations, cite the proceeding and provide contact information for subsequent questions about the proceeding. If possible, the notice shall also provide an electronic link or electronic access to any public documents associated with the proceeding. The ETC shall subsequently forward any final decisions regarding the proceeding made by any state or federal agency or court within 30 days of releasing the decision;

(3) Annual Filing Requirements for ETCs.

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

1. A certification by an officer of the company, under penalty of perjury, that:

A. The company complies with each of the annual certification requirements identified in 47 CFR 54.416(a);

B. The company complies with all applicable Missouri Lifeline and Disabled program procedures as identified in 4 CSR 240-31.120;

C. The company complies with all requirements associated with the National Lifeline Accountability Database as identified in 47 CFR 54.404 when implemented;

D. The company's Lifeline service continues to meet the criteria set forth in 47 CFR 54.401;

E. For any company not assessing or collecting a monthly fee from its Lifeline subscribers, the company complies with the service activation and service de-enrollment requirements identified in 47 CFR 54.407(c) and 47 CFR 54.05(e)(3), respectively; and

F. The company's Missouri operations solely use the name of the company as recognized by the commission for ETC designation in all marketing and other USF-related materials including filings with the FUSFA and the FCC;

G. The company has complied with the notification requirements of 4 CSR 240-31.130(2)(J) and (K).

2. A statement indicating whether the company offers access to interexchange services, directory assistance services and operator services.

3. A copy of the annual report required by 47 CFR 54.422;

4. If an ETC provides Lifeline discounted wholesale services to a reseller then the ETC shall identify the reseller;

5. The electronic address of any web site(s) whereby the company maintains information regarding the company's Lifeline service offering; and

6. A copy of the Lifeline and/or Disabled Application form(s) the ETC uses in Missouri.

(B) All ETCs receiving high-cost support shall submit, no later than July 1 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:

1. An officer of the company shall certify under penalty of perjury that:

A. All federal high-cost support provided to the company within Missouri was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended;

B. Wireless ETCs must also certify continued compliance with the latest edition of the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service; and

C. The company is able to function in emergency situations as contemplated by 47 CFR 54.202(a)(2).

2. A copy of the company's annual reporting information as required by 47 CFR 54.313.

3. An explanation of how the company monitors, if at all, the quality of service provided by the company for its supported service(s). This explanation includes whether the company monitors the timeliness of providing service and remedying out-of-service conditions.

4. Identify the applicable study area code(s) of the company's high-cost service area in Missouri.

(C) Filings by an ETC pursuant to this section shall be confidential

(4) ETC Compliance.

(A) ETCs shall maintain full compliance with all ETC requirements identified in this chapter and in 47 CFR 54.