

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

In the Matter of a Proposed Rulemaking to )  
Amend 4 CSR 240-3.570, Requirements )  
for Carrier Designation as Eligible )  
Telecommunications Carriers )

Case No. TX-2007-\_\_\_\_

**MOTION FOR FINAL ORDER OF RULEMAKING**

COMES NOW the Staff of the Missouri Public Service Commission, by and through its Office of General Counsel, pursuant to section 536.016 RSMo. (2000), and for its Motion for Final Order of Rulemaking states as follows:

1. Section 536.016 provides that a state agency shall propose rules based upon “substantial evidence upon the record and a finding by the agency that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority.”

2. Pursuant to statutory authority and public interest requirements, Staff recommends the Commission amend the existing rules governing annual USF certification submissions to provide more guidance on content.

3. Attached as Exhibit A is the Staff’s notarized affidavit concerning the necessity for this rulemaking. Exhibit B is a draft of a proposed rule for the Commission’s consideration.

4. The Commission’s authority to promulgate the rule, in addition to its general authority under Section 386.250(2) RSMo. (2000) to supervise telecommunications companies, is supported by a series of decisions by the Federal Communications Commission. In March 2005, the FCC released a Report and Order (ETC Order) addressing the minimum requirements for a telecommunications carrier to be designated as an “eligible telecommunications carrier” or

“ETC”.<sup>1</sup> The FCC “encourage[d] state commissions to require ETC applicants over which they have jurisdiction to meet these same conditions and to conduct the same public interest analysis outlined in this report and Order.” The FCC “further encourage[d] state commissions to apply these requirements to all ETC applicants in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.” States that desire rural (and non-rural) incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§54.301, 54.305, and/or 54.307 and/or part 36, subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>2</sup> The Commission adopted the existing rule at 4 CSR 240-570 (4) to fulfill these directives, effective June 20, 2006. Now, the Staff recommends the Commission consider amending that rule, to provide guidance on the annual certification process.

WHEREFORE, the Staff respectfully requests that the Commission issue a Final Order of Rulemaking to amend 4 CSR 240-3.570, Requirements for Carrier Designation as Eligible Telecommunications Carrier, to provide more guidance on the content for annual certification filings.

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<sup>1</sup> *Report and Order*. In the Matter of Federal-State Joint Board on Universal Service. CC Docket No. 96-45 (March 17, 2005).

<sup>2</sup> 47 C.F.R. 54.314

Respectfully submitted,

**/s/ David A. Meyer**

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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 5th of July 2007.

**/s/ David A. Meyer**

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

**AFFIDAVIT OF   Natelle Dietrich**

STATE OF MISSOURI            )  
  )   ss:  
COUNTY OF COLE            )

Natelle Dietrich, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she participated in the preparation of this affidavit and accompanying proposed rulemaking amendment, and states that the information therein is true and correct to the best of her knowledge and belief.

On April 6, 2006, the Commission approved the final order of rulemaking for 4 CSR 240-3.570, setting standards for ETC designation and certification for competitive carriers ("CETCs"). The rulemaking included a few requirements for incumbent local exchange carriers ("ILECs"). Since that time, Staff has had discussions with Commissioners about making the rule more competitively neutral and also about providing more accountability in the annual certification process.

The proposed rulemaking amendment provides guidance on the content required for the annual certification filing.

  
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NATELLE DIETRICH

Subscribed and affirmed before me this      5      day of      July      2007.

I am commissioned as a notary public within the County of Callaway, State of Missouri

and my commission expires on     9-21-10  



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

  
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NOTARY PUBLIC

**Title 4—DEPARTMENT OF  
ECONOMIC DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 3—Filing and Reporting  
Requirements**

**Proposed Amendment**

**4 CSR 240-3.570 Requirements for Carrier Designation as Eligible Telecommunications Carriers**

*PURPOSE: This proposed amendment codifies the incumbent local exchange carrier annual USF certification requirements.*

**(4) Annual Certification Filing Requirements [for ETCs].**

**(A) Requirements applicable to all ETCs, including incumbent local exchange carriers (ILECs)**

*[All ETCs, including incumbent local exchange telecommunications carriers that receive federal high-cost support, shall, b]*

**1. By August 15 of each year, all ETCs, including ILECs, shall submit an affidavit executed by an officer of the company attesting that federal high-cost support is used consistent with the commission's rules and the Telecommunications Act of 1996. The affidavit will be accompanied by documentation of support received and costs incurred.**

**2. All ETCs, including ILECs, in non-rural areas of Missouri shall, in conjunction with the annual high-cost certification process, assist the commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.**

**3. All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the ETC or ILEC.**

**4. The commission or its staff may request additional information regarding the annual certification.**

**5. Questions regarding the appropriate documentation [for ETCs] should be directed to the commission's Telecommunications Department.**

**(B) Requirements applicable to ETCs**

**1. ETCs seeking certification by October 1 of each year shall, no later than June 15 of each year, set up a meeting with the Telecommunications Department staff and the Office of the Public Counsel to review and discuss the ETC's proposal for the two (2)-year improvement plan. The meeting shall include a discussion of the proposed plan and any changes to the plan that would improve coverage, service quality or capacity in unserved or underserved areas in the Missouri service area in which ETC designation was granted.**

**[1]A. A two (2)-year improvement plan shall include progress updates on any previously submitted plan. The two (2)-year improvement plan shall include, with specificity, proposed improvements or upgrades to the carrier's network on a wire center-by-wire center basis throughout its proposed designated service area and address all of the separate components addressed in the initial plan, set forth in (2)(A)2. above.**

[2]B. Reports on unfilled service requests and customer complaints for the previous year and how the two (2)-year improvement plan may address such requests and complaints.

2. [(C)] ETCs shall submit a demonstration that the receipt of high-cost support *[was]* **will be used** only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

[1]A. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:

(I)[A]. Quality and rates—quality services should be available at just, reasonable, and affordable rates;

(II)[B]. Access to advanced services—access to advanced telecommunications and information services should be provided in all regions of the state;

(III)[C]. Access in rural and high-cost areas—consumers in all regions of Missouri, including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

3. [(D)] ETC shall submit a demonstration that high-cost support was used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that such support was used in addition to any expenses the ETC would normally incur.

**4. ETCs shall submit a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ETCs service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.**

5. [(E)] ETCs shall submit an affidavit signed by an officer of the company certifying that the ETC continues to comply with the approved consumer code for wireless service recognized by the Cellular Telecommunications and Internet Association (CTIA) and/or applicable service quality standards and consumer protection rules, certifying that the ETC continues to be able to function in emergency situations, continues to offer a local usage plan comparable to that offered by the incumbent local exchange telecommunications carrier in the relevant service areas (if applicable), and continues to acknowledge that it shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(3) of the Telecommunications Act of 1996.

6. [(F)] ETCs shall submit a report of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the Federal Communications Commission in the previous twelve (12) months for which the company has knowledge. Such report shall include, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any. If the commission finds the ETC's resolution of complaints is not satisfactory or if a particular type of complaint is recurring without being satisfactorily addressed, then the commission may decline to certify the ETC during the annual certification process.

*[(G) An application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC.*

*(H) All ETCs, including incumbent local exchange telecommunications carriers, in non-rural areas of Missouri shall, in conjunction with the annual high-cost certification process, assist the commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.*

*(I) All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the ETC or incumbent local exchange telecommunications carrier.*

*(J) Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission's annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.*

*(K) All records required by this rule shall be preserved for at least two (2) years.]*

**7. [(L)]** ETCs, or carrier requesting ETC designation, shall promptly furnish requested information, including financial information, related to its designation as an ETC to the commission, its staff or the Office of the Public Counsel.

**(C) Requirements applicable to ILECs**

**1. ILECs seeking certification by October 1 of each year shall, no later than August 15 of each year:**

**A. Submit a narrative discussing the use of the high-cost support as follows:**

**(I). Provision:** A general description of any construction plans with start and end dates, populations affected by construction plans and estimated budget amounts, if applicable.

**(II). Upgrade:** The geographic areas for any improvements, start and completion date for each improvement, estimated investment for each project that is supported by high-cost funding, estimated population that will be served as a result of the improvements, if applicable.

**(III). Maintenance:** A general description of any on-going maintenance that is supported by high-cost funding, if applicable.

**2. Submit a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ILECs service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.**

**3. Submit a demonstration that the receipt of high-cost support was used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.**

**A. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:**

**(I). Quality and rates—quality services should be available at just, reasonable, and affordable rates;**

**(II). Access to advanced services—access to advanced telecommunications and information services should be provided in all regions of the state;**

**(III). Access in rural and high-cost areas—consumers in all regions of Missouri, including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.**

**(5) Additional Requirements.**

(A) Each CMRS provider shall submit to the commission a letter reflecting a change to the name and/or change, deletion or addition of a trade name under which the ETC will be doing business in the state of Missouri, attaching, as applicable, an amended Certificate of Incorporation, Fictitious Name registration or an amendment thereof. The CMRS provider shall modify its current informational filing, as required in subsection (3)(D) to reflect the new name and shall attest that no revisions are being made, except for the name change.

(B) ETCs shall not self-certify to the Universal Service Administrative Company for receipt of federal universal service funds.

(C) ETCs, including incumbent local exchange telecommunications carriers, shall not willfully make any false entry in any business record of any kind kept by it, nor shall it willfully destroy, mutilate, alter or by any method falsify any such record, nor shall it willfully neglect or fail to make full, true and correct entries in such records of all facts and transactions appertaining to its business, nor shall it falsify any statement to the commission.

(D) Allegations of failure to comply with this rule shall be filed with the commission in the form of a formal complaint pursuant to 4 CSR 240-2.070. Resolution of the complaint may result in revocation of the ETC designation.

(E) The commission shall not certify, by October 1 of each year, any ETC, including incumbent local exchange telecommunications carriers, that fails to comply with these rules.

*[(F) ETCs shall submit to the commission staff, by August 15, 2006, a statement of compliance with 4 CSR 240-3.570. All carriers with requests for ETC designation pending as of the effective date of this rule shall submit, within thirty (30) days of the effective date of the rule, any missing information required by 4 CSR 240-3.570 or a statement that all required information was previously submitted as part of the request for ETC designation.]*

**(F) An application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC.**



**(G) Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission's annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.**

**(H) All records required by this rule shall be preserved for at least two (2) years.**

*AUTHORITY: sections 386.040, 386.250, 392.451 and 392.470, RSMo 2000.\* Original rule filed Oct. 31, 2005, effective June 30, 2006.*

*\*Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 392.451, RSMo 1996; and 392.470, RSMo 1987.*