FILED
December 19, 2013
Data Center
Missouri Public
Service Commission

MEMORANDUM

TO: Morris L. Woodruff, Secretary

DATE: December 18, 2013

RE: Authorization to File Final Order of Rulemaking with the Office of Secretary of State

CASE NO: TX-2013-0324

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Final Order of Rulemaking with the Office of the Secretary of State, to wit:

Rule 4 CSR 240-3.570 – Requirements for Carrier Designation as Eligible Telecommunications Carriers
Rule 4 CSR 240-31.010 - Definitions
Rule 4 CSR 240-31.020 – Organization, Powers and Meetings of the Board
Rule 4 CSR 240-31.030 – The MoUSFA
Rule 4 CSR 240-31.040 – Eligibility for Funding – High Cost Areas
Rule 4 CSR 240-31.050 – Eligibility for Funding – Low-Income Customers and Disabled Customers
Rule 4 CSR 240-31.060 – The MoUSF Assessment
Rule 4 CSR 240-31.065 – Collection of MoUSF Surcharge from End-User Subscribers
Rule 4 CSR 240-31.070 – Receipt of MoUSF Funds
Rule 4 CSR 240-31.080 – Applications for MoUSF Funds
Rule 4 CSR 240-31.090 – Disbursements of MoUSF Funds
Rule 4 CSR 240-31.100 – Review Procedures for Support Payments
Rule 4 CSR 240-31.110 – Review of Board and MoUSFA Activities
Rule 4 CSR 240-31.120 – Lifeline Program and Disabled Program
Rule 4 CSR 240-31.130 – Eligible Telecommunications Carrier Requirements

Robert S. Kenney, Chairman

Stephen M. Stoll, Commissioner

William P. Kenney, Commissioner

Daniel Y. Hall, Commissioner

Jason Kander

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-31.020

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 (5), (6), (9)

Small Business Regulatory Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON
DEC 18 2013
ADMINISTRATIVE RULES

Commissioners
ROBERT S. KENNEY
Chairman
STEPHEN M. STOLL
WILLIAM P. KENNEY
DANIEL Y. HALL

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

JOSHUA HARDEN
General Counsel
MORRIS WOODRUFF
Secretary
WESS A. HENDERSON
Director of Administration and Regulatory Policy
CHERLYN D. VOSS
Director of Regulatory Review
KEVIN A. THOMPSON
Chief Staff Counsel

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

Re: 4 CSR 240-31.020 Organization, Powers and Meetings of the Board

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:

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 392.200.2, RSMo Supp. 2012, and sections 392.248 and 392.470.1, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-31.020 is amended.

A notice of proposed rulemaking containing the proposed amendment was published in the *Missouri Register* on September 16, 2013 (38 MoReg 1463). 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, 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: Sections (5) and (6) would require the board to follow procedures established by the Office of Administration in completing a competitive bid process in obtaining certain services. Public Counsel is concerned that the board may not always be required to follow the procedures established by the Office of Administration and should not reduce its flexibility by establishing a rule requiring such procedures. The commission's staff responded to Public Counsel's concerns by indicating the mandatory "shall" should be changed to a permissive "may" to preserve the board's flexibility in obtaining needed services.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify sections (5) and (6) in the manner suggested by Public Counsel and Staff.

COMMENT: New Section (9), as published in the Missouri Register, allows the Missouri Universal Service Board to establish a form for ETCs to use to enroll end-users in the Lifeline or Disabled programs. The regulation also requires all ETCs to use the form established by the board.

Staff believes that the second part of that section more appropriately fits in a subsequent rule, 4 CSR 240-31.120, and proposes to move it there. No commenter objected to moving that language.

Several commenters argue that the board should not require the ETCs to use the form it establishes. AT&T Missouri contends that rather than mandate use of a specific form, the board should allow ETCs to design their own forms that comply with FCC rules relating to such forms. That would allow companies that operate in multiple states to use a single form for each state and for state and federal purposes. CenturyLink and the STCG echo AT&T Missouri's contention that the rule should allow ETCs the flexibility to design and use their own forms, so long as those forms comply with FCC requirements. CenturyLink also offers suggestions on revisions to the current generic form.

Public Counsel supports the requirement to use a mandated form, contending that having a single form would be more efficient and would allow social service agencies and customers to become more familiar with the forms needed to obtain the service.

Finally, there is an error in the section. The word "center" should be replaced with "carrier" in referring to an ETC.

RESPONSE AND EXPLANATION OF CHANGE: The commission will delete those portions of the definition that staff proposed to move to 4 CSR 240-31.120, as that portion of the rule is no longer needed because the commission is not mandating the use of a standard form. The commission will replace "center" with "carrier".

The commission agrees with the commenters, 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. The commission will adopt the alternative language slightly modified from that proposed by AT&T Missouri.

4 CSR 240-31.020 Organization, Powers and Meetings of the Board

(5) The board shall adopt procedures, including a competitive bid process, to retain an independent neutral MoUSFA, who shall be responsible for the day-to-day operations of the MoUSF. Rather than adopt its own procedures, the board may follow the procedures established by the Office of Administration in completing a competitive bid process. The board shall also adopt procedures to provide, among other things, for the periodic review of the MoUSFA and the opportunity to re-bid the contract for the MoUSFA no less frequently than every five (5) years. The board may establish other procedures as needed to facilitate the orderly administration of the MoUSF.

(6) The board may establish procedures, or may follow the procedures established by the Office of Administration, in completing a competitive bid process to retain the services of an accounting firm to audit the MoUSF on an annual basis, to complete the board's state and federal tax filings, and to perform other accounting duties it may require. The board may choose more than one (1) such firm to perform the duties under the contract, assigning different tasks to each accounting firm. The board shall also adopt procedures to periodically review the work of the accounting firm(s) and to re-bid the contract(s) no less frequently than every five (5) years.

(9) The board may establish a form for Eligible Telecommunications Carriers (ETCs) to use to enroll end-users in the Lifeline or Disabled programs and shall post a generic acceptable form on its website. All ETCs shall use the form established by the board or a form that complies with 47 CFR 54.410(d), and commission requirements as described in 4 CSR 240-31.120(5).