

Jason Kander

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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JAN 21 2014

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

Rule Number 4 CSR 240-31.120

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:

Sections (1), (2), (3), (4), (5), (6)

Small Business Regulatory
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JCAR Stamp

JOINT COMMITTEE ON
DEC 18 2013
ADMINISTRATIVE RULES



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

Re: 4 CSR 240-31.120 Lifeline Program and Disabled Program

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:

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

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JAN 21 2014

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

ORDER OF RULEMAKING

COPY

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:

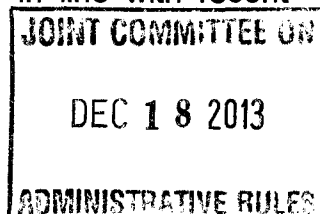
4 CSR 240-31.120 Lifeline Program and Disabled Program is adopted.

A notice of proposed rulemaking containing the proposed rule was published in the *Missouri Register* on September 16, 2013 (38 MoReg 1469). 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, 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 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: Staff explains that subparagraph (1)(C)1.F, as published in the Missouri Register, lists participation in the Federal Supplemental Security Income program as an eligibility criterion for participation in the Disabled Program. Participation in the Federal Supplemental Security Income program also qualifies for participation in the Lifeline program under subsection (1)(A) of this rule. Because participation in the Lifeline program always results in a greater discount than is available through participation in the Disabled program, Staff suggests that the Federal Supplemental Security Income program be removed as a criteria for participation in the Disabled program to ensure that all enrollees who qualify under that criteria are enrolled under the Lifeline program rather than the disabled program.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Staff and will make the proposed change.

COMMENT: CenturyTel suggests that section (1)'s eligibility criteria for the Lifeline program should be explicitly linked to the eligibility criteria for the federal counterparts to those programs as established by the FCC. Doing so would avoid confusion or inconsistency if federal requirement were to change in the future.

RESPONSE: The eligibility criteria for the Lifeline program under the MoUSF already match the criteria established by federal regulations, although they are listed in a different order in the commission's proposed regulation. In addition, paragraph (1)(A)9 of the proposed regulation is a catch-all provision that would incorporate any additional criteria included in future federal regulations. As a result, there is no need to change the rule in the manner proposed by CenturyTel.

COMMENT: The STCG notes that the definition of the Lifeline program in paragraph (1)(B)2 differs from the definition of the Disabled program in paragraph (1)(C)2 in that the Lifeline regulation limits eligibility to “certificated” telecommunications companies, while the Disabled program simply refers to telecommunications companies without the “certificated” limitation. The STCG suggests “certificated” be added to the criteria for the Disabled program.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees the two sections should be in harmony. However, AT&T Missouri explained in an unrelated comment that it is not a “certificated” telecommunications company, instead operating under a state charter that excuses it from having to obtain a certificate. Therefore, the word “certificated” will be removed from paragraph (1)(B)2 and replaced with the word “operating”.

COMMENT: AT&T Missouri and CenturyLink note that subsection (2)(C) requires an ETC to annually recertify a subscriber’s eligibility for participation in the Lifeline program. They are concerned that the commission’s regulation requires the ETC to “submit proof of eligibility” at least once every two years unless the ETC has an automated means of verifying subscriber eligibility or its annual recertification process is administered by the federal universal service fund administrator.

AT&T Missouri and CenturyLink explain that the federal regulations established by the FCC do not require the submission of “proof of eligibility” and instead allow a subscriber to self-certify continued eligibility under circumstances described in the federal regulation. They argue there is no reason to impose additional, state-specific regulations where there has been no suggestion that the FCC’s measures are insufficient.

RESPONSE: The commission believes that the submission of “proof of eligibility” at least once every two years is a reasonable and necessary requirement to protect the integrity of the MoUSF Lifeline program. The commission will not make the change proposed by AT&T Missouri and CenturyLink.

COMMENT: AT&T Missouri is concerned about subsection (2)(D), which requires annual recertification of eligibility under the Disabled program. The rule as proposed would require the ETC to apply the same procedure identified in subsection (2)(C) to Disabled program participants. AT&T would change that provision to simply require the ETC to obtain a signed certification from all Disabled program participants. Staff agrees that there is no need to ask a Disabled participant to submit proof of eligibility every two years because there is no database to verify a disabled consumer’s continued eligibility and FUSFA will not recertify disabled program participants. Staff proposes subsection (2)(D) be modified to recognize those limitations.

RESPONSE AND EXPLANATION OF CHANGE: The commission will accept the language proposed by staff. That language is less burdensome than the language proposed by AT&T Missouri.

COMMENT: Subsection (3)(A), requires applicants to complete an application form approved by the board. AT&T Missouri contends the rule should allow ETCs to use their own forms so long as those forms comply with FCC established requirements. This is the same argument AT&T Missouri and other commenters made with regard to the proposed amendment of 4 CSR 240-31.020(9).

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. The commission will slightly modify the alternative language proposed by AT&T Missouri to recognize the commission's role regarding the forms.

COMMENT: AT&T Missouri contends subsection (3)(C) should be deleted from the rule. That subsection would require the carrier to deny or discontinue a subscriber's participation in the Lifeline or Disabled program if it is discovered that the subscriber has submitted incorrect, false, or fraudulent information to the carrier. AT&T Missouri believes this section is vague and overbroad in that a subscriber might inadvertently submit incorrect or false information that could be easily corrected and should not be denied participation on that basis. AT&T also contends the section is unnecessary because eligibility requirements and de-enrollment procedures are already established in other provisions of the regulations.

RESPONSE AND EXPLANATION OF CHANGE: The commission disagrees with AT&T Missouri. This subsection is necessary to send a strong message that the submission of fraudulent information when applying for participation in the Lifeline and Disabled programs will not be tolerated. This subsection does not require the carrier to affirmatively investigate fraud, it just requires to carrier to take action when fraud comes to its attention. The commission will not delete subsection (3)(C), but will modify the language to make it clear that subscribers are to be denied participation in the program only for providing fraudulent, not just incorrect or false, information to the carrier.

COMMENT: Section (4) establishes de-enrollment procedures for various situations. Staff explains that the procedures established in the section are intended to track the de-enrollment language established by FCC rule. Rather than have a separate state rule that repeats the requirements of the federal rule, Staff asks that all of section (4) be deleted and a new subsection (2)(G) be added to the rule to reference and require compliance with the federal rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission will make the change proposed by staff. Section (4) as published in the Missouri Register will be deleted. Section (5) as published in the Missouri Register will be renumbered as section (4).

COMMENT: Staff proposes a new section (5) to establish requirements for the application forms to be used to collect Lifeline and Disabled program applications. Staff also proposes to move language from the proposed 4 CSR 240-31.020(9) into this new section. Staff asks that the commission require the use of a standard board-approved form, but if the commission chooses to allow carriers the discretion to use their own forms, Staff offers alternative language for this section.

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 allows ETCs the flexibility to design their own appropriate form. The commission will adopt the alternative language proposed by staff.

COMMENT: At the Hearing, Bill Steinmeier, representing Cricket, challenged the sentence in paragraph (5)(C)6 of the language proposed by staff. That sentence attempts to preclude review of the board decisions about company-specific forms. Mr. Steinmeier contends such a preclusion of the possibility of review would be a denial of due process and would therefore be unconstitutional.

RESPONSE AND EXPLANATION OF CHANGE: Mr. Steinmeier is correct; the board cannot preclude review of its decisions. The commission will not include what staff proposed as paragraph (5)(C)6 in the rule.

COMMENT: Cricket proposes a new section that would allow an ETC to use an electronic version of whatever application form the commission chooses to allow. Cricket explains the advantages of using an electronic form and staff agrees that such forms should be allowed.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the language proposed by Cricket relating to the use of electronic forms.

4 CSR 240-31.120 Lifeline Program and Disabled Program

(1) Lifeline and Disabled Programs Described.

(B) The Lifeline program is funded by the FUSF and the MoUSF. An ETC participating in the Lifeline program shall comply with this rule even if it solely receives only federal support.

2. The MoUSF Lifeline funding is \$3.50 per month per Lifeline subscriber for ETCs operating as a telecommunications company or registered as an IVoIP provider.

(C) The Disabled program is a residential retail service that offers a qualifying disabled customer reduced charges for voice telephony service. The Disabled program is solely administered by the board through these rules and is solely funded by the MoUSF.

1. The Disabled program eligibility criteria include participation in:

- A. Veteran Administration Disability Benefits;
- B. State Blind Pension;
- C. State Aid to Blind Persons;
- D. State Supplemental Disability Assistance;
- E. Federal Social Security Disability.

(2) Carrier Participation Requirements in the Lifeline and Disabled Programs.

(D) An ETC shall annually conduct an inquiry for any household participating in the disabled program if the qualifying disabled customer is not listed as the voice telephony subscriber. The inquiry shall be limited to whether the qualifying disabled customer remains within the household.

(G) An ETC shall comply with de-enrollment requirements identified in 47 CFR Section 54.405 for the Lifeline program and Disabled program.

(3) Consumer Eligibility for the Lifeline and Disabled programs.

(A) All consumers shall complete an application form which complies with 47 CFR 54.410 and with commission requirements as described in 4 CSR 240-31.120(5), and shall submit adequate proof of eligibility. An application shall be required even if a carrier only seeks federal Lifeline support.

(C) A subscriber's participation in the Lifeline or Disabled programs shall be denied or discontinued if it is discovered the subscriber has submitted fraudulent information to the carrier.

(4) Requirements for a Company offering Lifeline or Disabled Service on a resale basis without ETC status.

(A) Any company offering Lifeline and/or Disabled service solely on a resale basis and without ETC status shall comply with all requirements identified in this chapter and 47 CFR Part 54 Subpart E.

(B) The company shall provide the following information to the manager of the commission's Telecommunications Unit:

1. Certification via affidavit by an officer of the company that the company will comply with all requirements associated with the Lifeline or Disabled programs within 4 CSR 240-31 and 47 CFR Part 54 Subpart E as if the company has ETC designation.

2. Contact information including address, email and direct phone number for the primary individual employed by the company for ensuring compliance with 4 CSR 240-31 and 47 CFR Part 54 Subpart E.

3. A copy of the consumer application enrollment form the company intends to use to sign-up customers to the Lifeline and/or Disabled programs.

4. Full and complete responses to information identified in 4 CSR 240-31.130(1)(B)1, 2, 4, 7, 8, 11 and 12; (C) and (D).

(C) Companies intending to offer Lifeline and/or Disabled service solely on a resale basis and without ETC status shall provide the information in subsection (B) at least thirty (30) in advance of offering such services. Any company already offering such services on the effective date of this rule must provide such information within thirty (30) days of the effective date of this rule.

(D) The company shall annually submit, no later than July 1 of each year, all information required in 4 CSR 240-31.130(3)(A) in the commission's Electronic Filing and Information System.

(5) Requirements for Lifeline and Disabled Application Forms

(A) The board will provide sample Lifeline and Disabled application forms (sample forms) to be placed on the commission's website and the MoUSFA website.

(B) ETCs may use the sample forms or may use their own company-specific Lifeline and Disabled application form (company-specific form).

(C) If a company uses a company-specific form, the following requirements shall apply:

1. The company-specific form shall comply with all requirements of 47 CFR 54.410(d) and this rule.

2. The company-specific form shall comport with any FCC-approved compliance plan applicable to that company.

3. The company-specific form shall clearly delineate all customer obligations and provisions and all acknowledgements that must be provided subject to penalty of law.

A. Customer obligations, provisions and acknowledgements shall be in a font that is at least as large as the font used in the majority of the company-specific form.

B. Customer obligations, provisions and acknowledgements shall receive no less emphasis of importance than is provided for the majority of the language in the company-specific form.

4. The ETC shall provide a method, whether on the form or in another format, to allow commission staff, upon request, to easily verify that the customer is providing, and the ETC is reviewing appropriate documentation of customer eligibility.

5. Neither the commission, nor the board, shall be considered as endorsing or approving the company-specific form.

6. Nothing in this section shall preclude the staff or the Office of the Public Counsel from filing a complaint related to the Lifeline and Disabled application form used by any ETC.

(6) Electronic Lifeline and Disabled Application Forms

(A) ETCs may use an electronic Lifeline and/or Disabled application form.

(B) If a company uses an electronic form, the following requirements shall apply:

1. The electronic form shall comply with all requirements of 47 CFR 54.410(d) and this rule.

2. The electronic form shall comport with any FCC-approved compliance plan applicable to that company.

3. The electronic form shall clearly delineate all customer obligations and provisions and all acknowledgements that must be provided subject to penalty of law.

A. Customer obligations, provisions and acknowledgements shall be in a font that is at least as large as the font used in the majority of the form.

B. Customer obligations, provisions and acknowledgements shall receive no less emphasis of importance than is provided for the majority of the language in the form.

4. An ETC using an electronic form shall, upon request, provide to Staff, or the Office of the Public Counsel, a print-out, or a demonstration, of its electronic customer application form.