

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

In the Matter of Staff’s Review of the                    )           File No. TW-2017-0078  
Commission’s Chapter 31 Rules                            )

**COMMENTS OF THE  
MISSOURI CABLE TELECOMMUNICATIONS ASSOCIATION**

COMES NOW the Missouri Cable Telecommunications Association (“MCTA”), by and through counsel, and for its Comments in the above-referenced Docket, respectfully states as follows:

On February 28, 2017, the Missouri Public Service Commission (“Commission”) issued a Notice of Opportunity to Comment in this proceeding. In that Notice, the Commission invited interested stakeholders to address the following questions identified by Staff, relating to the Missouri Universal Service Fund (“Missouri USF”), by May 1, 2017:

- 1) Should the \$6.50 support amount be revised?
- 2) Should the Missouri USF support a broadband-only service?
- 3) Should the Missouri USF provide some form of high-cost service?
- 4) What should be the Missouri USF assessment level?
- 5) Should different assumptions be used to project Missouri USF revenues and expenses?
- 6) Are there any other issues relevant to maintaining the Missouri USF?
- 7) Should the Missouri USF be eliminated? If yes, how and when should it be done? What should be done with any unused funds?

8) Are there any other issues relevant to the future operations of the Missouri USF?

MCTA appreciates the opportunity to provide comments on these important issues.

MCTA's comments are as follows:

**I. Should the \$6.50 support amount be revised?**

Comment: MCTA believes that there is no showing to justify an increase of the Missouri USF support amount.

On August 29, 2014, the Commission issued an order increasing the support amount from \$3.50 to \$6.50 per participating subscriber per month to be effective October 2, 2014.<sup>1</sup> At that time, Commission Staff advised that such an increase was needed to keep pace with basic local service rate increases due to federal USF reforms. Since that time, it is not apparent that rates for stand-alone voice service have increased to necessitate a revision of the support amount. Moreover, in many if not most instances, standalone voice service is subject to competition.

Based on Staff's projections and the current fund balance, the \$6.50 support amount could continue to participants for approximately six years, while at the same time, the Commission could also relieve the assessment burden for all subscribers. In the Staff's Memorandum filed on February 28, 2017,<sup>2</sup> Staff indicated that subscribers in the Lifeline and Disabled programs have significantly declined over the past several years, and while this decline may be easing, Staff estimates subscriber quantities will continue to decline at the rate of 1.25% per month or 15% per year. Staff's Memorandum also indicates that Missouri USF Net Jurisdictional Revenue ("NJR") is declining at the rate of -.41% per month or -4.90% per year.

---

<sup>1</sup> *In the Matter of the Amount Assessed on Companies to Fund the Missouri Universal Service Fund*, File No. TO-2014-0333.

<sup>2</sup> *See*, Staff's Memorandum, EFIS No. 44.

Staff also anticipates that administrative expenses will remain unchanged even though current contracts expire June 30, 2017, assuming the Missouri USF support amount remains at \$6.50. Based on the Staff's Memorandum's conclusions regarding the financial health of the fund, the estimated continued decline of participants in the Missouri Lifeline program, and continued administrative expenses, it appears that keeping the monthly support at its current amount of \$6.50 would allow the Commission to continue providing the Missouri Lifeline support to participants for the foreseeable future while also relieving the assessment burden on all subscribers.

## **II. Should the Missouri USF support a broadband-only service?**

Comment: No, the Missouri USF should not support a broadband-only service. In fact, the Commission does not have the authority to expand the Missouri USF to support a broadband-only service.

On October 20, 2016, MCTA filed comments in this docket explaining that the Missouri USF cannot be expanded to support broadband-only service, for several reasons.<sup>3</sup> MCTA will not repeat those comments here, but they are hereby incorporated herein in their entirety by this reference thereto. MCTA makes the following additional comments.

There is no legal authority for the Commission to use the Missouri USF to support any broadband service—whether “broadband-only” or as part of a bundled offering that includes the services that are supported by the Missouri USF. This is because Missouri law prohibits the Commission from regulating broadband.

---

<sup>3</sup> See, Comments of the Missouri Cable Telecommunications Association, EFIS No. 37, October 20, 2016.

Section 392.611.2, RSMo.,<sup>4</sup> provides: “broadband and other internet-protocol enabled services shall not be subject to regulation under chapter 386 or this chapter.” Although there are certain statutory exceptions to the Commission’s lack of jurisdiction over broadband (found at Section 392.611.3), none of those exceptions apply to confer jurisdiction with respect to the Missouri USF. “As a creature of statute, the Commission only has the power granted to it by the Legislature and may only act in a manner directed by the Legislature or otherwise authorized by necessary or reasonable implication. . . . If a power is not granted to the Commission by Missouri statute, then the Commission does not have that power.”<sup>5</sup>

Under Missouri law, the Commission regulates only “telecommunications service.” Broadband services cannot be encompassed within the definition of “telecommunications service” found in Section 386.020(54). When Section 386.020(54) is construed with Section 392.611.2, it is clear that the definition of “telecommunications service” cannot encompass broadband. To hold otherwise would create an unreasonable and contradictory statutory construction; i.e., that “broadband and other internet protocol-enabled services” are “telecommunications services” and, therefore, subject to Commission regulation even though Section 392.611.2, a more recent enactment than Section 386.020(54), specifically prohibits such regulation.

Moreover, despite recent changes to the Federal Communications Commission’s (“FCC’s”) definition of “telecommunications service,” this Commission does not have authority to include broadband in such a definition. The Missouri definition of “telecommunications service” was enacted long before the FCC’s Open Internet Order. Despite the FCC’s

---

<sup>4</sup> All statutory references are to the Missouri Revised Statutes (2000), as amended, unless otherwise noted.

<sup>5</sup> *Staff of Missouri Pub. Serv. Comm’n v. Consol. Pub. Water Supply Dist. C-1 of Jefferson Cty., Missouri*, 474 S.W.3d 643, 649 (Mo. App. 2015).

reclassification of broadband as a Title II, Common Carrier service, Sections 392.248.1 *et seq.* were enacted before such amendments.

Pursuant to Section 386.250.2, the Commission has jurisdiction over telecommunications companies and telecommunications services, which are defined as services offered by such telecommunications companies between two points within the state—that is, *intrastate* services. According to the FCC, however, broadband Internet access service (“BIAS”) is jurisdictionally an *interstate* service.<sup>6</sup>

If broadband service were to become a supported service of the Missouri USF, then under the state statutes and the Commission’s rules, the Commission would be engaged in regulating the rates, terms and conditions of such service. To accomplish this, the Commission would have to, in effect, include broadband services in the definition of “essential telecommunications service,” or otherwise suggest changes throughout the universal service rules to specifically reference broadband services.<sup>7</sup> Thus, if the Commission were to determine that “essential local telecommunications service” should include broadband, it would necessitate, among other things, that the Commission regulate in some respect the rates, terms and conditions of

---

<sup>6</sup> See *Open Internet Order* at ¶ 431.

<sup>7</sup> See, Section 392.248.2(1) (“Funds from the universal service fund shall only be used to ensure the provision of reasonably comparable essential telecommunications service . . . throughout the state . . . *at just, reasonable and affordable rates* . . . .”); 4 CSR 240-31.040 (Eligibility for funding High Cost Areas) (1) (In order for a telecommunications company to be eligible to receive high cost support from the Missouri Universal Service Fund (MoUSF) it must meet the following requirements: (A) It must charge a rate for essential local telecommunications services no greater than the rate set by the commission as the just, reasonable and affordable rate for that geographic area; (B) It must offer all essential local telecommunications services throughout the entire high cost area and have carrier of last resort obligations in that high cost area . . . ; and 4 CSR 240-31.120 (Lifeline Program and Disabled Program) (Subscriber eligibility criteria; provider certification and remittance requirements; subscriber application).

broadband service, at least among recipients of Missouri USF assistance, and thereby would violate federal and state law.<sup>8</sup>

Furthermore, both federal and Missouri law prohibit this Commission from regulating interstate services, which include broadband service. The FCC has classified broadband as a jurisdictionally interstate service for regulatory purposes.<sup>9</sup> Therefore, similar to such interstate circuit-switched services, broadband service is not subject to state jurisdiction.<sup>10</sup> Moreover, the FCC has said, “should a state elect to . . . regulate the rates of BIAS through tariffs or otherwise, we expect that we would preempt such state regulation as in conflict with the federal regulatory framework or otherwise frustrate federal broadband policies.”<sup>11</sup>

Section 392.248, the Missouri USF enabling statute, provides only for local services to be supported, and broadband by definition is not a local service. Further, Section 392.248.6 limits the Commission’s ability to expand the Missouri USF to include interstate services. The statute specifically requires that the Commission consider only “essential *local* telecommunications services” when promulgating Missouri USF regulations.

Any Missouri USF support for broadband service is unnecessary and would be duplicative of federal programs that currently provide funding for high-cost area deployment. Price cap carriers in the state were offered model-based support for locations lacking broadband

---

<sup>8</sup> Notably, where as here, state law expressly prohibits regulation of broadband, federal law cannot confer such authority on the Commission.

<sup>9</sup> See *Open Internet Order* at ¶ 431.

<sup>10</sup> See Section 386.030 (the Commission has no jurisdiction under Chapter 386 with respect to interstate commerce, except as permitted by federal law.); Section 392.190 states, “the provisions of section 392.190 to 392.530 shall apply to telecommunications service *between one point and another within the state of Missouri* and to every telecommunications company.” (Emphasis added.)

<sup>11</sup> See *Open Internet Order* at ¶ 433 (the FCC forbears from all ratemaking regulations adopted under section 201 and 202.).

service in an amount that totaled \$130,166,581 annually.<sup>12</sup> The price cap carriers accepted \$93,728,312. In addition, rate-of-return carriers in the state were offered model-based support for locations lacking broadband service in an amount that totaled \$36,485,209.<sup>13</sup> The rate-of-return carriers have accepted approximately \$22 million. At this time, both price cap and rate-of-return carriers operating in Missouri have accepted support to fund deployment to approximately 70% of the number of locations eligible for such support. Even for those carriers not accepting model-based support, “frozen” Phase I support and legacy-based federal support have provided considerable assistance.

In light of the foregoing, it appears that the FCC’s programs supporting broadband deployment will prove to be effective in addressing those unserved areas in Missouri. Because the FCC likely will disburse even more funds (e.g., through the auction process) that will support both voice and broadband in unserved high-cost areas, this Commission should wait until more information can be gathered about the effectiveness of these existing programs before it acts to support broadband. Further, the Commission should be careful that it does not create the unintended consequence of inducing carriers to forego federal funding in hopes of receiving state support that may be offered on more favorable terms.

### **III. Should the Missouri USF provide some form of high-cost service?**

Comment: The Missouri USF should not provide high-cost support.

Although authorized by statute since 1996 to create such a fund, the Commission has not done so and should not establish a high-cost fund now. There is no demonstrable need for a state-

---

<sup>12</sup> See Connect America Fund Cost Model Final Results Report: Offer by Carrier and by State, CAF II – Final Adopted Model for Offer of Model-Based Support to Price Cap Carriers – CAM 4.3, FCC (Apr. 29, 2015).

<sup>13</sup> See Alternative Connect America Cost Model Offer of Support: CAF A-CAM Version 2.3.1, Report Version 8.0, Results: Offer by Carrier, FCC (Aug. 15, 2016).

high cost fund, and at no time has any such need been established. Moreover, the Commission itself has proposed repealing the existing state high-cost rules on at least one occasion.<sup>14</sup>

Section 392.248.6(2) requires that, “upon request from an eligible telecommunications company for assistance from the universal service fund for a high-cost area, [the Commission must] determine if the high-cost area qualifies for assistance from the universal service fund.” Determining if an area qualifies for high-cost funding is a threshold issue, distinct from any other statutory consideration, such as determining appropriate service costs or eligibility requirements. A compelling financial need for public subsidy cannot exist in any area where a private-sector business already provides a competing voice service, and funding should be considered only where voice service would be practically unavailable without such support. Therefore, the widespread availability of voice service offered by an unsubsidized competitor is irrefutable evidence that high-cost support is not needed in an area.<sup>15</sup> Moreover, there should be no high-cost support for widely available competitive services, such as business or commercial services.

Consideration of a high cost state fund is unnecessary and out of step with the FCC’s inter-carrier compensation (“ICC”) reform and Connect America Fund (“CAF”) programs.<sup>16</sup> Pursuant to the FCC’s ICC reform program that commenced in 2011, ILECs may charge a monthly Access Recovery Charge (“ARC”) to partially offset a decline in ICC revenue resulting from reductions in intrastate terminating switched access rates.<sup>17</sup> As referred to above, the CAF also has provided frozen Phase I support to price cap ILECs, and provides legacy support to rate-

---

<sup>14</sup> See Docket No. TW-2013-0324.

<sup>15</sup> MCTA reserves comment at this time on what would constitute a relevant area for high-cost funding and the appropriate benchmark rate for essential local telecommunications service.

<sup>16</sup> See Connect America Fund *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663 (2011) (USF/ICC Transformation Order and/or FNPRM), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>17</sup> USF/ICC Transformation Order, paras. 36-37.



of-return regulated ILECs, and otherwise for any otherwise eligible revenue not recovered by the ARC.<sup>18</sup> Further, any state high-cost fund created by the Commission would support voice-only service, for the reasons discussed above. The purpose of such fund is limited to providing for “reasonably comparable essential local telecommunications service, as that definition may be updated by the commission by rule, throughout the state including high-cost areas, at just, reasonable and affordable rates.”<sup>19</sup>

#### **IV. What should be the Missouri USF assessment level?**

Comment: The Commission’s rule concerning Missouri USF Assessment, 4 CSR 240-31.060, requires the fund balance to be “within a target range of five (5) to nine (9) months’ worth of Missouri USF expenses, or as otherwise determined by the MoUSF Board.” Since January 2014, as shown in Staff’s Missouri USF Assessment Scenario, the fund has maintained a balance significantly above the target range. Staff’s projection shows that the fund would operate in excess of its target range for the next six years even at an assessment rate of 0%, finally reaching parity within that target range from June 2023 until October 2023. Further, because subscribership in the state Lifeline and Disabled programs is decreasing at a rate of 15% annually, the Commission should not increase the Missouri USF assessment level. In fact, the Commission may want to consider reducing the cost burden on all consumers by lowering or eliminating the Missouri USF assessment.

#### **V. Should different assumptions be used to project Missouri USF revenues and expenses?**

Comment: MCTA does not dispute Staff’s assumptions concerning projected Missouri USF revenues and expenses. Staff’s findings show that net jurisdictional revenues continue to

---

<sup>18</sup> *Id.* at para. 37.

<sup>19</sup> Section 392.248.2(1).

decline; presumably, this decline is the result of customers opting for voice services that are not subject to assessment and also a reduction in the cost of certain assessed services as a result of competition. With respect to expenses, administrative expenses are likely to remain unchanged because the nature of the fund administrator's and board's duties remain unchanged.

**VI. Are there any other issues relevant to maintaining the Missouri USF?**

Comment: MCTA is not aware of any other relevant issues.

**VII. Should the Missouri USF be eliminated? If yes, how and when should it be done? What should be done with any unused funds?**

Comment: MCTA has no position on whether the Missouri USF should or should not be eliminated.

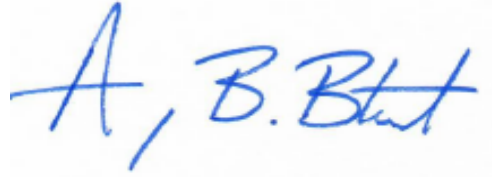
**VIII. Are there any other issues relevant to the future operations of the Missouri USF?**

Comment: MCTA believes that the focus should be on maintaining a healthy fund balance and the projected solvency of the fund through 2023, and how this presents an opportunity for the Commission to reduce the cost burden on all consumers by lowering or eliminating the Missouri USF assessment. The fund is healthy enough to continue to provide consistent Missouri Lifeline support to participants for the next six (6) years, and as Staff estimates that Missouri Lifeline participants continue to decline, the remaining balance could provide a sufficient glide-path through the possible end of the program.

WHEREFORE, MCTA respectfully submits these comments for the Commission's consideration, and hopes that they will be useful in studying these issues regarding the Missouri USF.

Respectfully submitted this 28<sup>th</sup> day of April, 2017.

MISSOURI CABLE TELECOMMUNICATIONS  
ASSOCIATION

A handwritten signature in blue ink that reads "A. B. Blunt". The signature is written in a cursive style with a large, stylized "A" and "B".

Andrew B. Blunt  
Executive Director  
P.O. Box 1185  
Jefferson City, MO 65102  
[andy@statehouse-strategies.com](mailto:andy@statehouse-strategies.com)