BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF Missouri

In the Matter of the Petition of VCI Company for Designation as an Eligible Telecommunications Carrier.	)))	Case No. CO-2006-0464

POST-HEARING BRIEF OF AT&T MISSOURI

AT&T Missouri[1] hereby submits its Post-Hearing Brief, in accordance with the Commission's May 4, 2007, Order Setting Briefing Schedule.

I. SUMMARY

VCI Company ("VCI") has not demonstrated that it meets the applicable requirements for designation as an Eligible Telecommunications Carrier ("ETC"). As an overarching principle, there is no public interest to be served by providing federal funds to enable a carrier -- with no Missouri employees or facilities in the ground -- to sell Lifeline telephone service to low-income households at a price far above the Lifeline prices of the underlying ILEC.

More particularly, Commission Rule 3.570(2)(A)(10) (4 CSR 240-3.570(2)(A)(10)) requires that the ETC applicant "commit[] to offer a local usage plan comparable to those offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. Such commitment shall include a commitment to provide Lifeline and Link Up discounts and Missouri Universal Service Fund (MoUSF) discounts pursuant to 4 CSR 240-31, if applicable, at rates, terms and conditions comparable to the Lifeline and Link Up offerings and MoUSF offerings of the [ILEC] providing service in the ETC service area." (emphasis added). VCI's Lifeline rates are nowhere near comparable to AT&T Missouri's Lifeline rates -- the difference

[1] Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri ("AT&T Missouri").

ranges from over 300% (in AT&T Missouri's Rate Group D exchanges) to almost 13,000% (in AT&T Missouri's Rate Group A exchanges).

Second, Commission Rule 3.570(2)(A)(5) (4 CSR 240-3.570(2)(A)(5)) requires that the ETC applicant "demonstrat[e] that the commission's grant of the applicant's request for ETC designation would be consistent with the public interest, convenience and necessity." Granting ETC status to VCI would not be consistent with the public interest. Any benefits are marginal at best and, in any case, they are outweighed by the costs to low-income consumers and the universal service fund.

Third, Section 214(e)(1) of the federal Telecommunications Act requires that, in order to be eligible for universal service support, a common carrier must offer the services supported by federal universal service support mechanisms "either using its own facilities or a combination of its own facilities and resale of another carrier's services."[2] VCI, whose planned provisioning rests virtually exclusively on procuring resold services from AT&T Missouri, fails to meet the federal statutory "own facilities" requirement.

For these reasons, VCI's application for designation as an ETC should be denied.

II. ARGUMENT

A. VCI's Lifeline Rates Are Not Comparable to AT&T Missouri's Lifeline Rates

Commission Rule 3.570(2)(A)(10) (4 CSR 240-3.570(2)(A)(10)) requires that the ETC applicant "commit[] to offer a local usage plan comparable to those offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. Such commitment shall include a commitment to provide Lifeline and Link Up discounts and Missouri Universal Service Fund (MoUSF) discounts pursuant to 4 CSR 240-31, if applicable, at rates, terms and

[2] 47 U.S.C. § 214(e)(1)(A).

conditions comparable to the Lifeline and Link Up offerings and MoUSF offerings of the [ILEC] providing service in the ETC service area." (emphasis added). The Commission's rule stems from the FCC's own requirement applicable to ETC applications filed with that agency.[3]

VCI's rates are not "comparable" to those of AT&T Missouri. Indeed, the question is not even close. AT&T Missouri's Lifeline rates range from 15 cents to $6 (depending on the rate group) while VCI's rates are $19, but more often $29, which includes monthly installments of $10 per-month on the net installation charge of $120, after LinkUp is applied.[4] VCI makes no apologies for the significant difference. Instead, VCI seeks to dismiss the commitment required by the Commission's rule as "inappropriate."[5] The Commission should reject VCI's claim that it need not comply with the rule. It should also conclude that VCI's rates are not comparable to those of AT&T Missouri, because there is no dispute on that factual matter.[6]

VCI's claim that the Commission's comparability rule does not apply to competitive ETCs rests on the sole basis that the "if applicable" clause of that rule is meant to account for the fact that "the cost bases" of competitive ETCs and ILECs "are entirely different."[7] As VCI's witness testified at the hearing, "It says, if applicable. In my mind, if you are comparing apples

[3] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) ("ETC Designation Order"), ¶¶ 32-34. Each ETC must provide "a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area." Id. at ¶ 33. The FCC's "case-by-case" review properly encompasses a comparison of rates. Id. at ¶ 33 & n. 85, citing, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (rel. February 27, 2004) ("Joint Board Recommended Decision"), ¶¶ 35-36; see also, Joint Board Recommended Decision, n. 92 (referencing a dollars and cents comparison of charges between the provider and the underlying ILEC). In any case, as explained above, rate comparability is required by this Commission's rules.

[4] Exh. 4 (Stidham Rebuttal), pp. 7-8.

[5] Tr. at 60; Exh. 2 (Johnson Surrebuttal) at 5.

[6] Tr. at 66 (VCI's witness stating that "[t]hey wouldn't be comparable if the companies were the same company, same type of company"); see also, Tr. at 71-72 (VCI's witness stating: "Do I think my $29 monthly charge and 15 [cents], if the companies were exactly the same, no, that would not be comparable.").

[7] Exh. 2 (Johnson Surrebuttal) at 5.

to apples, if you are looking at ILEC to ILEC, CLEC to CLEC, if applicable. That is how I interpret that."[8]

The "if applicable" clause means nothing of the sort. Instead, as AT&T Missouri sought unsuccessfully to explain to VCI's witness, the phrase merely modifies the passage immediately preceding it in the second sentence of the Commission's rule, which refers to the MoUSF, not the language of that sentence directed to rates, terms and conditions (nor even the sentence preceding it).

The ETC rule as it was originally proposed in December, 2005, would have provided:

> (5) Each request for ETC designation shall include a commitment to offer a local usage plan comparable to those offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. Such commitment shall include a commitment to provide Lifeline and Link Up discounts at rates, terms and conditions comparable to the Lifeline and Link Up offerings of the incumbent local exchange carrier providing service in the ETC service area.[9]

However, Staff's January, 2006, Comments on the proposed rule recommended that the Commission modify the second sentence of the rule "to include a requirement to also offer state low income and disabled discounts."[10] Shown in bold font below is the language Staff proposed to effectuate that intent:

> Such commitment shall include a commitment to provide Lifeline and Link Up discounts **and MoUSF discounts pursuant to Chapter 4 CSR 240-31, if applicable,** at rates, terms and conditions comparable to the Lifeline and Link Up offerings **and MoUSF offerings** of the incumbent local exchange carrier providing service in the ETC service area[11] (emphasis original).

[8] Tr. 62-63.
[9] 30 Mo. Reg. 2480 (December 1, 2005).
[10] Case No. TX-2006-0169, Comments of the Staff of the Missouri Public Service Commission, filed January 3, 2006, at 6.
[11] Case No. TX-2006-0169, Comments of the Staff of the Missouri Public Service Commission, filed January 3, 2006, at 6.

The Commission agreed with Staff's recommendation and adopted its proposed modified language (the first sentence of the rule was adopted intact).[12] Consequently, this language cannot be dismissed. Instead, it applies and there is no justification for declining to apply it to VCI's request to be designated as an ETC.[13]

That being the case, the record leaves no doubt that AT&T Missouri's and VCI's rates simply are not comparable. VCI's witness admitted so.[14] Staff's witness similarly admitted that the two companies' Lifeline rates were "very different" [15] and that, based on the difference, "I would not choose VCI."[16] It is undisputed that the difference in monthly rates ranges from a low of over 300% (in Rate Group D exchanges) to a high of almost 13,000% (in Rate Group A exchanges).[17] In addition, VCI's installation charge is $120 ($150 less a Link-Up discount of $30), as compared to AT&T Missouri's $17.26 ($34.53 less a Link-Up discount of $17.27).[18] The Commission need look no further to determine that VCI has failed to meet the FCC's and this Commission's comparability requirement.

B. Granting VCI ETC Status Would Not Be Consistent With the Public Interest.

Commission Rule 3.570(2)(A)(5) (4 CSR 240-3.570(2)(A)(5)) requires that the ETC applicant "demonstrat[e] that the commission's grant of the applicant's request for ETC designation would be consistent with the public interest, convenience and necessity." This rule

[12] Order of Rulemaking, 31 Mo. Reg. 792 (May 15, 2006) ("The commission agrees and finds that these areas need clarification. The commission will change the rule consistent with staff's proposed revisions.)." See also, id. at 794-795 (reflecting 4 CSR 240-3.570(2)(A)10, as adopted).
[13] For the same reason, Staff's comparison of VCI's rates to prepaid service providers, but not to AT&T Missouri, does not meet the requirements of the rule and is of no help to VCI.
[14] Tr. at 66, 71-72.
[15] Tr. at 147, 154.
[16] Tr. at 154.
[17] Exh. 4 (Stidham Rebuttal) at 7-8.
[18] Exh. 4 (Stidham Rebuttal) at 8.

effectively adopts the FCC's own interpretation of the requirement of the federal Act,[19] applicable to ETC applications filed with that agency and state commissions.[20] VCI has failed to submit competent and substantial evidence demonstrating that granting its application would be consistent with the public interest.[21]

VCI first claims it will provide an alternative to "higher priced pre-paid local service providers."[22] However, the addition of VCI would simply add but one more participant to dozens of CLECs already providing local exchange service in Missouri, including many prepaid CLECs shown on the Commission's website. VCI claims it can provide a customer value that is not already being provided by these market participants, but it is unconvincing.[23] Ultimately, the only material distinction between VCI and these others would be VCI's presence in the market based solely on federally subsidies. That is not good enough, as the Ohio Commission concluded just months ago:

> The Commission finds that it is not in the public interest to utilize public funds for the purpose of subsidizing competition simply for the sake of being able to represent that there is another competitor in a particular exchange. This is especially the case in this situation in which Nexus' connection fee and proposed residential service and subsidized Lifeline rates will be significantly higher than the ILECs' corresponding rates. In support of its decision, the Commission recognizes the growing concern regarding the state of the federal universal service fund due to the rapid growth in federal support distributed to competitive ETCs.[24]

[19] 47 U.S.C. §214(e)(2),(6).
[20] ETC Designation Order, ¶¶ 3, 40, 42, 61.
[21] Exh. 4 (Stidham Rebuttal) at pp. 11-17.
[22] Exh. 1 (Johnson Direct) at 3.
[23] Exh. 4 (Stidham Rebuttal) at 11-12.
[24] Exh. 6: In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts, Case No. 97-632-TP-COI, Finding and Order (October 25, 2006) at 3. VCI attempts to diminish the clear import of this holding by suggesting that "Nexus, unlike VCI, applied for both high cost and low income support." VCI's Response to Exhibit 6, filed May 1, 2007. However, the Nexus application which VCI's May 1 pleading asked be made a part of the record in this case does not establish this. To the contrary, paragraphs 7 and 15 of Nexus' application make clear reference only to Lifeline service. See, Exh. 8 (admitted pursuant to the May 18, 2007, Order Admitting Southwestern Bell Telephone d/b/a AT&T Missouri's Late-Filed Exhibit 6 and VCI Company's Response to the Exhibit into the Record). Regardless, whether Nexus or not Nexus had actually applied for high-cost support in no way undermines the reasons why the Ohio Commission rejected Nexus' request for federal support to provide Lifeline service.

Moreover, any addition in customer "choice" by granting ETC status to VCI comes at a price. The added choice represents but another drain on the federal universal service fund, whose continuing growth continues unabated due in part to the "high hundred millions" low-income portion of the fund.[25] The added choice also provides no incentive to a consumer to try to pay his or her previous provider's telephone bill in a responsible manner. Stated another way, VCI's "no credit check," "no advance payment" and "no deposit" offering would act as a disincentive for a customer to make mutually agreeable arrangements to pay the final bill of a previous provider.[26] Equally troubling, VCI confirmed as correct that if VCI is not paid for its own services, VCI's draw of universal service support over the period of "unpaid" service means that the customer has been "basically receiving service for nothing."[27] While the service may be "free" in that limited sense, it is important to keep in mind that other customers who contribute to the universal service fund would have paid for it. This circumstance distinguishes VCI from "higher priced pre-paid local service providers" that receive no federal subsidies.

Second, VCI claims that its designation as an ETC would ensure that the availability of Lifeline service is widely publicized.[28] But since federal and state law already impose advertising obligations on all ETCs, VCI is offering nothing beyond what it is already legally required to do.[29] Moreover, VCI's claim that its advertising would be beneficial to consumers engages in circular reasoning, since the public benefit to be derived from wide publication follows only to the extent that the matter to be widely publicized is beneficial to the public. As AT&T Missouri pointed out, an ETC's "[a]dvertising its rates, including its Lifeline rates, is an obligation a carrier must commit to meet in order to be allowed to be an ETC. It doesn't make

[25] Tr. at 173.
[26] Tr. at 111-112..
[27] Tr. at 132-133.
[28] Exh. 1 (Johnson Direct) at 21.
[29] 47 U.S.C. § 214(e)(1)(B); 4 CSR 240-3.570(2)(A)4.

the carrier's application in the public interest, which is a separate and distinct requirement."[30] Finally, there is no record evidence demonstrating that VCI's television advertisements[31] would be more effective in reaching consumers than AT&T Missouri's own Lifeline outreach efforts.

Third, VCI claims that its designation as an ETC would remove obstacles to a customer's "inability to comply with deposit and past due bill payment requirements."[32] Neither of these circumstances supports VCI. As to deposits, FCC Rule 54.401(c)[33] provides that an ETC "may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available." Thus, where a customer elects toll blocking, the "deposit" obstacle raised by VCI is no longer an obstacle (and, AT&T Missouri cannot and does not require a deposit in this circumstance).[34] As to "past due final bills," VCI's treatment of past due amounts is similar to AT&T Missouri's own treatment of past due amounts, both of which require repayment of outstanding amounts owed in order to reestablish service. However, AT&T Missouri considers on a case-by-case basis allowing a customer to pay their past due bills over several months while having use of telephone service.[35] The record does not reflect a similar accommodation or process on VCI's part.

Fourth, VCI claims that its designation as an ETC would help customers incur significantly less toll charges.[36] But merely because the customer's toll charges don't appear on VCI's bill to that customer doesn't mean that the individual didn't spend the same or more for

[30] Exh. 4 (Stidham Rebuttal) at 15.
[31] Exh. 1 (Johnson Direct) at 21.
[32] Exh. 1 (Johnson Direct) at 22.
[33] 47 C.F.R. § 54.401(c).
[34] Exh. 4 (Stidham Rebuttal) at 15. The FCC, noting that deposits "primarily serve to guard against uncollectible toll charges," found that "consumers who receive toll blocking, which bars the placement of toll calls, should be able to benefit from a rule prohibiting service deposits." In the Matter of Federal-State Joint Board on Universal service, Report and order, 12 FCC Rcd 8776, 1997 FCC LEXIS 5786 (1997), Report and Order, ("FCC Universal Service Fund Order"), ¶ 28.
[35] Exh. 4 (Stidham Rebuttal) at 16.
[36] Exh. 1 (Johnson Direct) at 22.

toll charges billed by another provider that he or she would have spent with VCI. In that case, the end result simply is that the customer has two bills, one from VCI and another from the customer's toll provider.[37] Moreover, although VCI touts that "[t]he majority of VCI's customers experience lower toll charges because these customers elect toll restriction service . . . and utilize prepaid long distance telephone cards[,]"[38] these options are and will remain available to a customer regardless of whether VCI is granted ETC status.[39]

Fifth, VCI claims that it will permit consumers access to premium services.[40] But this is not a benefit consumers can enjoy only if VCI is designated as an ETC. Indeed, since VCI "does not own, operate or manage a network" and it is entirely dependent "on where AT&T Missouri's network is located or where AT&T builds out its network[,]"[41] VCI will simply offer the same premium services already available to customers procuring Lifeline service from AT&T Missouri.[42]

Finally, while VCI claims that its unique business procedures would especially benefit low-income consumers,[43] its procedures are not significant and hardly unique.[44] For example, the time of the month when VCI bills is not as important as when the bill is due to be paid, and VCI offered no hard evidence that its billing at the beginning of the month coincides with the time when "the customer is likely to have funds available."[45] Furthermore, as noted above, VCI offers no more "premium" services than does AT&T Missouri. Additionally, no societal benefit accrues from VCI's representation that it will not pursue collection of final bills from customers

[37] Exh. 4 (Stidham Rebuttal) at 16.
[38] Exh. 1 (Johnson Direct) at 22.
[39] See, e.g., AT&T Missouri, General Exchange Tariff, Section 13.20, regarding Toll Restriction.
[40] Exh. 1 (Johnson Direct) at 23.
[41] VCI's Petition for Designation as an Eligible Telecommunications Carrier in the State of Missouri, ¶ 22.
[42] Exh. 4 (Stidham Rebuttal) at 16.
[43] Exh. 1 (Johnson Direct) at 23.
[44] Exh. 4 (Stidham Rebuttal) at 16.
[45] Exh. 1 (Johnson Direct) at 23.

whose service is disconnected for non-payment. VCI's business decision not to "throw good money after bad"[46] may serve its economic self-interest, but it also perpetuates accumulation of further indebtedness by a consumer who carries unpaid bills from both his or her previous provider and VCI, instead of working out an agreeable payment plan and reconnecting service with the previous provider at the outset.

Nor does it appear that VCI will demonstrably advance universal service in Missouri. Rather, previous and ongoing efforts to advance universal service already have produced enviable results. According to the FCC, "[t]he number and percentage of households that have telephone service represent the most fundamental measures of the extent of universal service."[47] Missouri's telephone penetration rate stands at 96.5%, well above the 94.6% average and that of most states.[48] While VCI suggests that Missouri's low-income telephone penetration rate as of March, 2005, was only 83.7%,[49] there is no evidence that VCI's provision of telephone service anywhere has caused an increase in any state's low-income penetration rate (as opposed to, for example, a mere shift in the customer's underlying carrier). In any event, no public interest is served where but a minute incremental increase in penetration rate is driven by service targeted to households in the lowest income bracket (under $10,000)[50] and which costs far more than that of the underlying ILEC (by a range of 317% to 12,667%).[51]

[46] Tr. at 114.
[47] Telephone Subscribership in the United States (Data through July 2006), released January, 2007), p. 1 (accessible via http://www.fcc.gov/wcb/stats).
[48] Tr. at 169; Exh. 4 (Stidham Rebuttal) at 13, citing, Telephone Subscribership in the United States (Data through July 2006), released January, 2007), p. 8, Table 2, "Telephone Penetration by State."
[49] Exh. 2 (Johnson Surrebuttal) at 10.
[50] Exh. 2 (Johnson Surrebuttal) at n. 20.
[51] Exh. 4 (Stidham Rebuttal) at 8.

C. VCI Has Failed to Demonstrate that It Will Provide USF-Supported Services Over its "Own Facilities," Either in Whole or in Part.

Section 214(e)(1)(A) of the federal Act requires that, in order to be eligible for universal service support, a common carrier must offer the services supported by federal universal service support mechanisms "either using its own facilities or a combination of its own facilities and resale of another carrier's services."[52] VCI fails to meet the federal "own facilities" requirement.

The FCC has interpreted the term "own facilities" to mean that "a carrier that offers any of the services designated for universal service support, either in whole or in part, over facilities that are obtained as unbundled network elements pursuant to section 251(c)(3) and that meet the definition of facilities . . . , satisfies the facilities requirement of section 214(e)(1)(A)."[53] The FCC has interpreted the term "facilities" to mean "any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 254(c)(1)."[54] Physical components used in transmission or

[52] 47 U.S.C. § 214(e)(1)(A). This requirement of federal law is no less binding upon the Commission than the FCC. While the FCC has general authority to waive its rules for good cause, it has no authority to waive a statutory provision. In the Matters of Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service. Order, 15 FCC Rcd 7197 (1999), Order,¶ 6, citing, 47 C.F.R. § 1.3 (regarding FCC authority to waive its rules); In the Matter of Federal-State Joint Board on Universal Service, 15 FCC Rcd 7170 (1999), Memorandum Opinion and Order, ¶ 13 (denying the state of Washington's request that the Commission revisit or waive applicability of the statutory definition of a "telecommunications carrier" to include the Washington network within the meaning of the term for purposes of the schools and libraries mechanism, stating that "[w]e lack the authority to waive a statutory provision"). This is consistent with 47 U.S.C. § 160, enacted in 1996, which directs the FCC to forbear from applying any provision of the Communications Act, as amended, if the Commission determines that application of the statute is not necessary to ensure just and reasonable conduct or to protect consumers, and is consistent with the public interest. If the FCC had authority to waive statutory requirements, Congress would not have needed to confer on it forbearance authority. It follows that inasmuch as the FCC cannot waive federal statutory requirements, nor can state commissions. Nor is there any provision allowing an agency other than the FCC the authority to waive the FCC's rules. 47 C.F.R. § 1.3.

[53] FCC Universal Service Fund Order, ¶ 154; 47 C.F.R. § 54.201(f).

[54] FCC Universal Service Fund Order, ¶ 151; 47 C.F.R. § 54.201(e). The FCC's rules likewise emphasize that for purposes of meeting the "own facilities" requirement, an ETC applicant must specifically show that the "facilities" are comprised of "physical components of the telecommunications network that are used in the transmission or routing" of supported services. 47 C.F.R. § 54.201(e) ("For the purposes of this section, the term facilities means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part."); 47 C.F.R. § 54.201(f) ("For the purposes of this section, the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term "facilities" under this subpart."). (emphasis added).

routing include, for example, "local loops, switches, transmission systems, and network control systems."[55]

It is undisputed that VCI has no facilities "in the ground."[56] More to the point, it "does not own, operate or manage a network" and it is entirely dependent "on where AT&T Missouri's network is located or where AT&T builds out its network."[57] Prior to the April 18 hearing, VCI spoke only vaguely about how it would meet the federal "own facilities" requirement, indicating only that it would "provide services either over its own facilities or via a combination of resale of the ILEC services and UNEs."[58] Evidence adduced at the hearing provided more insight into VCI's actual intentions -- and these intentions are fatal to its request for ETC designation.

At the hearing, VCI posited that under the FCC's rules, "you can resale all of [the nine USF-supported services] but one" and still be considered a "facility owner."[59] Upon further inquiry, VCI's witness confirmed that Directory Assistance is the only service typically provided over its "own network" (i.e., AT&T Missouri's network),[60] particularly in areas where the underlying ILEC's wholesale network elements are priced at a higher level than the ILEC's resold service. As VCI's witness explained, while AT&T Missouri's resold Lifeline rates range from 15 cents to $6 across its various rate zones, "[i]n a lot of states, other states it could be as low as $4 in Zone 1 and as high as $40-something in say Zone 5."[61] He also stated that "[t]he resale line in most places are [sic] $12 or $13, most ILEC[s] charge me."[62]

VCI's offering of Lifeline service under a scenario in which VCI would procure all of the USF-supported services (except for Directory Assistance) by means of resale does not meet the

[55] FCC Universal Service Fund Order, n. 380.
[56] Exh. 2 (Johnson Surrebuttal) at 4.
[57] VCI's Petition for Designation as an Eligible Telecommunications Carrier in the State of Missouri, ¶ 22.
[58] Exh. 1 (Johnson Direct) at 10.
[59] Tr. at 54.
[60] Tr. at 55.
[61] Tr. at 118.
[62] Tr. at 119.

federal "own facilities" requirement. VCI does not commit to actual facilities -- whether its own or those of the underlying ILEC -- that constitute "physical components of the telecommunications network that are used in the transmission or routing"[63] of USF-supported services. VCI never once referenced, for example, anything even remotely akin to "local loops, switches, transmission systems, and network control systems."[64]

VCI's attempt to hang its "own facilities" hat on Directory Assistance is of no avail. For one thing, its mere offering of Directory Assistance capability is not tantamount to its provision of physical transmission or routing facilities. In any case, VCI also testified that its Directory Assistance will actually be the Directory Assistance "of other carriers."[65] The offering of all but one USF-supported services via resale, and the availability of other carriers' Directory Assistance services, does not suffice under the federal "own facilities" rule.

In these regards, it is especially important to understand that the FCC interpreted the "own facilities" requirement to include an ILEC's unbundled network elements largely due to two considerations: first, that unlike a pure reseller, a UNE-based carrier "bears the full cost of providing that element, even in high cost areas,"[66] and second, to ensure "competitive neutrality" by not denying USF funding to UNE-based competitors who would otherwise find it cost-

[63] FCC Universal Service Fund Order, ¶ 151. On the one hand, the FCC rejected the suggestion that "facilities" be defined as including both loop and switching facilities (id. at ¶ 153), but on also rejected the suggestion that a billing office would meet the facilities definition for purposes of Section 214(e)(1). Id. at ¶ 152.
[64] FCC Universal Service Fund Order, ¶ 154.
[65] Exh. 1 (Johnson Direct) at 13. (emphasis added).
[66] FCC Universal Service Fund Order, ¶ 162.

prohibitive to serve rural areas.[67] Neither of these considerations applies here. As indicated above, VCI has no intention to limit resold service deployment to the rural areas for which it was meant.

The record evidence similarly demonstrates that VCI's purchase of AT&T Missouri's Lifeline service on a resold basis falls far short of the full cost of providing Lifeline service via network elements. As VCI admitted, AT&T Missouri's resold Lifeline rates are no more than half of the network element costs it typically incurs in other states.[68] It is also important to note that the resale discount to which VCI would be entitled is applied to a Lifeline rate that is already reduced by the applicable Lifeline discounts. As Staff correctly noted, AT&T Missouri "receives Lifeline support on behalf of the reselling CLEC customers and passes that discount on to the reseller."[69]

The FCC has determined that it is appropriate "to deny pure resellers universal service support because pure resellers receive the benefit of universal service support by purchasing wholesale services at a price based on the retail price of a service -- a price that already includes the universal service support payment received by the incumbent provider."[70] Indeed, were it otherwise, "a reseller that also received Lifeline support could recover twice: first because the

[67] FCC Universal Service Fund Order, ¶ 164; see also, id., at ¶ 24 ("We interpret the term 'facilities' in section 214(e)(1) to mean any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 254(c)(1). We conclude that our adoption of this interpretation strikes a reasonable balance between adopting a more expansive definition of 'facilities,' which would undermine the Joint Board's recommendation to exclude from eligibility a carrier offering universal service exclusively through resold services, and adopting a more restrictive definition of 'facilities,' which we fear would thwart competitive entry into high cost areas.").

[68] Tr. at 118-119.

[69] Exh. 3 (Cecil Rebuttal) at 5. For this reason, VCI erred in opining that AT&T Missouri would "win" by the Commission's granting ETC status to VCI "because you sell me a line a for [sic] low-income consumer at a higher price than you can charge them." Tr. at 66-67. While that may or may not be true where VCI purchases from AT&T Missouri the network elements needed for "a line," it certainly is not true in the case of a resold line, because AT&T Missouri's rate to the CLEC applies the resale discount to the already-discounted Lifeline retail rate.

[70] FCC Universal Service Fund Order, ¶ 161.

benefit of the Lifeline support is reflected in the wholesale price and second because the reseller also receives payment directly from the fund for the Lifeline customer."[71]

In sum, it appears that for all practical purposes VCI intends to provide service on virtually a pure resale basis, not by means of its "own facilities." ETC status should be denied for this reason. Should the Commission nevertheless rule otherwise, it should at a minimum conclude that VCI can receive no more than the lesser of the Lifeline support given to AT&T Missouri or the resold service price charged VCI by AT&T Missouri, so as to prevent potential double recovery. The FCC took essentially the same approach in the UNE context, concluding that a CLEC serving "exclusively through the use of unbundled network elements will receive the lesser of the total amount of support given to the ILEC or the price of the unbundled network elements to which it obtains access."[72]

[71] Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), Order, 2005 FCC LEXIS 4965, ¶ 12. In TracFone, the FCC found that the wireless reseller seeking forbearance from the "own facilities" requirement would not receive a double recovery because its wholesale providers are not subject to Section 251(c)(4) resale obligations. Id. Here, however, AT&T Missouri is subject to these obligations relative to VCI. See also, FCC Universal Service Fund Order, ¶ 179 ("If pure resellers could be designated eligible carriers and were entitled to receive support for providing resold services, they, in essence, would receive a double recovery of universal service support because they would recover the support incorporated into the wholesale price of the resold services in addition to receiving universal service support directly from federal universal service support mechanisms. Making no finding with respect to the first two criteria, we conclude that it is neither in the public interest nor would it promote competitive market conditions to allow resellers to receive a double recovery. Indeed, allowing such a double recovery would appear to favor resellers over other carriers, which would not promote competitive market conditions. Allowing resellers a double recovery also would be inconsistent with the principle of competitive neutrality because it would provide inefficient economic signals to resellers.").

[72] FCC Universal Service Fund Order, ¶ 174, nn. 417, 441.

III. CONCLUSION

AT&T Missouri respectfully submits that VCI's Petition for Designation as an ETC should be denied.

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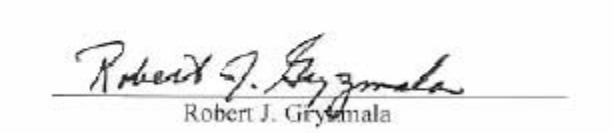
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on June 4, 2007.



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