

**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 CenturyLink

Comes now, CenturyLink¹ and submits the following comments on the rule changes proposed by Staff of the Missouri Public Service Commission (Commission), as well as comments filed by other participants in this matter. Further, CenturyLink submits its response to Staff's request to address whether the Missouri Universal Service fund (MoUSF) can support broadband-only service.

Introduction

CenturyLink supports the edits and changes provided previously to the Staff and submitted as "Attachment B" to Staff's request for comments. CenturyLink also generally supports the edits and changes provided previously to the Staff by AT&T and submitted as "Attachment C" to Staff's request for comments. However, CenturyLink does not support the edits and changes provided previously to the Staff by Trip England and submitted as "Attachment D" to Staff's request for comments, to the extent that those edits and changes have inserted the term "Broadband" in the rule provisions for MoUSF and have provided the Commission with broad authority to regulate Broadband in the distribution of MoUSF funding. The changes made in Attachment D simply lump Broadband under the Commission's existing voice program that includes rules and

¹ "CenturyLink" includes CenturyTel of Missouri, LLC d/b/a CenturyLink; Spectra Communications Group, LLC d/b/a CenturyLink, Embarq Missouri, Inc. d/b/a CenturyLink and CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink.

regulations that simply cannot apply to Broadband. While CenturyLink believes there is some potential for supporting Broadband services in the Commission's state Lifeline program, it believes that it is a limited opportunity because of the Federal Communications Commission's (FCC) preemption of Broadband regulation in its Open Internet Order.² CenturyLink suggests that if Lifeline support for Broadband is enabled in Missouri, it must be a voluntary option that does not confer jurisdiction over Broadband to the state contrary to state and federal laws.

As a preliminary matter, CenturyLink would suggest that Staff's amendments to Chapter 31 (of 4 C.S.R. 240) consistently adopt the language in the FCC's amendments to the Lifeline program. The most efficient way to do this is to simply reference the FCC's rules by citation to them, and not be copying those rules into Chapter 31. As is common in these matters, the FCC can and will amend its rules governing the Lifeline program and by simply citing the governing rule instead of republishing it, changes will not have to be made as frequently to the state rules to bring them into alignment with the FCC rules. Both CenturyLink and AT&T have made a number of edits to the Staff's proposed changes reflecting this suggestion, and CenturyLink urges the Staff and Commission to adopt these changes.

Broadband Jurisdiction

Section 392.611.2 RSMo generally prohibits the Commission from exercising jurisdiction over Broadband services in Missouri either under Chapter 386 or Chapter 392 of the Revised Statutes of Missouri. Further, the FCC's Open Internet Order

² In the Matter of Protecting and Promoting the Open Internet, Federal Communications Commission, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28 (Mar. 12, 2015) ("Open Internet Order").

clearly preempts states from imposing regulations on Broadband to the extent that it would conflict with the FCC’s forbearance and other provisions in the order, even in the setting of Lifeline support.³ And the FCC very specifically noted that states cannot impose mandatory Universal Service Fund contributions on broadband internet access services.⁴ Thus, any jurisdiction that the Commission may exercise over Broadband has been severely limited through state statute and the FCC’s Open Internet Order. That being said, it is clear that the FCC is moving its Lifeline support to broadband Internet access services (BIAS) over the next 5 years.⁵ And it is understandable that Missouri is starting to question the future and direction of its own Lifeline program, which up to now has been focused on providing consumers with access to voice services in concert with the FCC. Including BIAS as a Lifeline service may make sense, but changes to the Commission’s Lifeline enabling statutes are likely needed in order to provide support for broadband-only service in Missouri.

Both § 386.020(54)(h), RSMo, which Staff has noted specifically excludes “electronic publishing services” from the definition of telecommunication service and 4 C.S.R. 240-31.010(6) & (21), which defines “essential local telecommunications services” and “voice telephony services” as basic local voice services only, will require amendments to permit the inclusion of BIAS in the Commission’s Lifeline service

³ Open Internet Order, ¶¶ 432-433. Essentially, the FCC granted forbearance with regard to many of the obligations applicable to telecommunications services under Title II of the Communications Act, including rate setting, tariffs, entry and exit regulation and unbundling.

⁴ *Id.* at ¶ 490 n.1477.

⁵ Lifeline Third Report and Order, Further Report and Order, and Order on Reconsideration, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Apr. 27, 2016) (“Lifeline Third Report and Order”).

program. Whatever steps the Commission takes, it must be careful to avoid the application of statutes and regulations to BIAS in a way that results in regulation by the Commission in contravention of the Open Internet Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of October, 2016, a copy of the above and foregoing Comments of CenturyLink was served via email to each of the following:

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