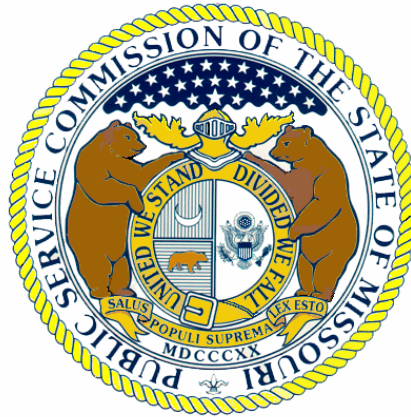


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Petition of VCI Company for
Designation as an Eligible Telecommunications
Carrier

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Case No. CO-2006-0464

REPORT AND ORDER

Issue Date: July 24, 2007

Effective Date: August 3, 2007

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**

APPEARANCES

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David Meyer, Senior Counsel, General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Michael F. Dandino, Deputy Public Counsel, Office of the Public Counsel, Governor Office Building, Post Office Box 2230, Jefferson City, Missouri 65102, for Office of the Public Counsel and the public.

REGULATORY LAW JUDGE: Harold Stearley

REPORT AND ORDER

Procedural History

On June 8, 2006, VCI Company ("VCI") filed a petition seeking designation as an Eligible Telecommunications Carrier ("ETC"). VCI requested this designation pursuant to Sections 214(e)(2) and (e)(6) of the Communications Act of 1934, as amended, Sections 54.101 through 54.207 of the Federal Communications Commission ("FCC") Rules, and Missouri Public Service Commission Rule 4 CSR 240-3.570. VCI requested designation as an ETC in all of the exchanges served by Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri ("AT&T Missouri").

On June 13, 2006, AT&T Missouri submitted its Application to Intervene pursuant to 4 CSR 240-2.075. AT&T Missouri's request was granted on June 26, 2006. An evidentiary hearing was conducted on April 18, 2007.

The singular issue before this Commission, as formulated by VCI, AT&T Missouri, the Office of Public Council ("OPC") and the Staff of the Missouri Public Service Commission ("Staff"), and as adopted by the Commission, is whether VCI has demonstrated that it meets all applicable state and federal requirements for designation as an ETC. However, as the record of this case demonstrates five specific contested issues emerged regarding whether VCI should be granted ETC designation. Those issues are;

- (1) Can the requirements for ETC designation be bifurcated, without seeking forbearance from the FCC, so the company would only have to qualify for receipt of low-income Universal Support Funds (USF) and not qualify for the receipt of high cost support funds?
- (2) Does VCI provide a local usage plan that is comparable to the ILEC, AT&T Missouri?

(3) Does VCI satisfy the “own facilities” requirement for the provision of the designated supported services?

(4) Should the Commission grant waivers of Commission Rules 4 CSR 240-3-570(2)(C) and 4 CSR 240-3.570(3)(C)(3), the “build out” requirements, to provide the supported services to customers making a reasonable request for service.

(5) Is it in the public interest to grant VCI ETC designation?

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. When making findings of fact based upon witness testimony, the Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested to subject matter.

The Parties

1. VCI is a privately held corporation organized under the laws of the State of Washington and is authorized to conduct business as a foreign corporation in the State of Missouri.¹

2. VCI’s principal office is located at 2228 South 78th Street, Tacoma, Washington 98409-9050.²

3. VCI’s stated focus is providing basic local exchange service to low-income consumers qualifying for Lifeline and Link-Up services.³

¹ Hearing Exhibit 1, Prefiled Testimony of Stanley Johnson, p. 1 lines 26-27. See *also* Petition for Designation as an Eligible Telecommunications Carrier in the State of Missouri (“Petition”), p. 1, Section I, paragraph 1, filed June 8, 2006.

² Hearing Exhibit 1, p. 1, lines 4-5. See *also* Petition, p. 1, Section I, paragraph 1, filed June 8, 2006.

³ Hearing Exhibit 1, p. 2, lines 1-3; Transcript p. 46, lines 7-14

4. AT&T Missouri is a limited partnership duly authorized to conduct business in the State of Missouri.⁴

5. AT&T Missouri's principal Missouri office is located at One AT&T Center, 35th Floor, St. Louis, Missouri 63101.⁵

6. AT&T Missouri is a "local exchange telecommunications company" and a "public utility," and is duly authorized to provide "telecommunications service" within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo 2000.⁶

7. The Office of the Public Counsel "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission."⁷ Public Counsel "shall have discretion to represent or refrain from representing the public in any proceeding."⁸

8. The General Counsel of the Missouri Public Service Commission "represent[s] and appear[s] for the commission in all actions and proceedings involving any question under this or any other law, or under or in reference to any act, order,

⁴ AT&T Missouri's Application to Intervene, p. 1, Paragraph 1. *See also* Report and Order *In the Matter of Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri's Revision to its General Exchange Tariff, PSC Mo. No. 35 Regarding Provision of 811 Service*, Case No. IT-2007-0187, issued February 1, 2007. Note: All statutory references are to RSMo 2000 unless otherwise noted.

⁵ *Id.*

⁶ *Id.*

⁷ Section 386.710(2), RSMo 2000; Commission Rules 4 CSR 240-2.010(16) and 4 CSR 240-2.040(2).

⁸ Section 386.710(3), RSMo 2000; Commission Rules 4 CSR 240-2.010(16) and 4 CSR 240-2.040(2). Public Counsel "shall consider in exercising his discretion the importance and the extent of the public interest involved and whether that interest would be adequately represented without the action of his office. If the public counsel determines that there are conflicting public interests involved in a particular matter, he may choose to represent one such interest based upon the considerations of this section, to represent no interest in that matter, or to represent one interest and certify to the director of the department of economic development that there is a significant public interest which he cannot represent without creating a conflict of interest and which will not be protected by any party to the proceeding." *Id.*

decision or proceeding of the commission . . .”⁹

Findings of Fact Regarding ETC Designation Requirements

9. Designation as an ETC is governed by the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”), Title 47 of the United States Code (“U.S.C.”), Title 47 of the Code of Federal Regulations (“C.F.R.”), the Federal Communication Commission’s (“FCC”) Report and Order *In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd. 6371, 2005 WL 646635 (FCC), (March 17, 2005) (herein after the “March 17, 2005 Order”), and Missouri Public Service Commission Rule 4 CSR 240-3.570.¹⁰

10. Section 214(e)(2) of the Act provides:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the

⁹ Section 386.071, RSMo 2000; Commission Rules 4 CSR 240-2.010(8) and 4 CSR 240-2.040(1). Additionally, the General Counsel “if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute in the name of the state all actions and proceedings, authorized by law and directed or authorized by the commission, and to expedite in every way possible, to final determination all such actions and proceedings; to advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof, and generally to perform all duties and services as attorney and counsel to the commission which the commission may reasonably require of him.” *Id.*

¹⁰ See *In re Missouri RSA No. 5 Partnership*, Case No. TO-2006-0172 (2006 WL 2726730 *2); *In re Northwest Missouri Cellular Ltd. Partnership*, Case No. TO-2005-0466 (2006 WL 2726731*2). The Commission recognizes that the recitation of the statutes and regulations concerning ETC designations are also conclusions of law, and will adopt these findings as conclusions in the conclusions of law section of this order.

public interest.¹¹

11. Section 214(e)(1) of the Act provides:

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier);¹² and

(B) advertise the availability of such services and the charges therefor using media of general distribution.¹³

12. The term "facilities" is defined under the Act as being "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."¹⁴ The term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements . . . provided that such facilities meet the definition of the term facilities under this subpart."¹⁵

13. The FCC has further interpreted the "facilities" requirement of Section 214(e)(1)(A) of the Act and concluded that "the statute does not require a carrier to use

¹¹ 47 U.S.C. Section 214(e)(2).

¹² See also Hearing Exhibit 3, Prefiled Rebuttal Testimony of Walt Cecil, p. 4, lines 18-21; *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd. 6371, 2005 WL 646635 (FCC) ¶¶ 7-8 (March 17, 2005) (herein after the "March 17, 2005 Order"); *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776, 1997 WL 236383 (FCC) ¶¶ 24, 150-152, (emphasis on ¶¶ 154 and 169) (Adopted May 7, 1997; Released May 8, 1997) (herein after the "May 8, 1997 Order").

¹³ Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act") Sections 214(e)(1) and 254(c). See also 47 U.S.C. Sections 214(e)(1) and 254(c).

¹⁴ 47 C.F.R. Sec. 54.201(e).

¹⁵ 47 C.F.R. Sec. 54.201(f).

its own facilities (which can include Unbundled Network Elements (“UNEs”)) to provide each of the designated services but, instead, permits a carrier to use its own facilities to provide at least one of the supported services.”¹⁶

14. A common carrier may not receive USF support for services provided to an end user when those services are **solely** provided over facilities obtained through an interconnection agreement with a discount off the underlying carrier’s tariffed rate, i.e. resale or reselling. Consequently, for purposes of universal service, UNEs and UNE-P are considered facilities owned by the carrier leasing the UNEs and resale services are considered facilities owned by the underlying carrier.¹⁷

15. The services that are supported by federal universal support mechanisms under Section 254(c) of the Act are enumerated in the Code of Federal Regulations and Commission’s Rules.¹⁸ These services are:

a) Voice Grade Access to the Public Switched Network. The FCC has concluded that voice-grade access means the ability to make and receive phone calls, within a bandwidth of approximately the 300 to 3000 Hertz frequency range.¹⁹ There is no requirement to support high-speed data transmissions.²⁰

b) Local Usage. “Local usage means the amount of minutes of use of exchange service, prescribed by the Commission, provided free

¹⁶ FCC’s May 8, 1997, ¶¶ 24, 150-169, (emphasis on ¶¶154 and 169).

¹⁷ Hearing Exhibit 3, p. 4, lines 18-22, p. 5, lines 1-8. See also the FCC’s May 8, 1997 Order, ¶¶ 24, 150-169. Thus, VCI, if designated an ETC, could receive federal support for services provided over its own facilities including UNEs, but not for services provided by solely reselling another carrier’s underlying service. Hearing Exhibit 3, p. 5, lines 1-17. If VCI cannot directly receive federal USF support for resale services, then it is not obligated to provide Lifeline eligible subscribers receiving service by resale the low income discounts. *Id.* However, AT&T Missouri indicates that it typically receives Lifeline support on behalf of the reselling CLECs customers and passes that discount through to the reseller via the interconnection agreement – this could allow the discounts to be passed through by VCI to its customers. *Id.*

¹⁸ 47 C.F.R. Sec. 54.101(a)(1)-(9); 47 C.F.R. Sec. 54.101(b); 4 CSR 240-3.570(3)(C)(1).

¹⁹ 47 C.F.R. Sec. 54.101(a)(1).

²⁰ See *In the Matter of Federal-State Joint board on Universal Service*, Report and Order, CC Docket Nos. 96-45, Report and Order in 96-262, 94-1, 91-213, 95-72, FCC 97-420, 13 FCC Rcd. 5318, 1997 WL 797532 (FCC) ¶¶ 15-16 (Adopted, December 30, 1997) (herein after the “December 30, 1997 Order”).

of charge to end users.”²¹ Although the FCC requires an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for which the applicant seeks designation, the FCC has not adopted a specific local usage threshold.²²

c) Dual Tone Multi-Frequency Signaling or its Functional Equivalent. “DTMF is a method of signaling that facilitates the transportation of signaling through the network shortening call set-up time.”²³

d) Single-Party Service or its Functional Equivalent. “Single-party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user’s particular transmission.”²⁴

e) Access to Emergency Services. “Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three digit code “911,” to call emergency services through a Public Service Access Point (PSAP) operated by the local government. Enhanced 911 is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. Access to emergency services includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems.”²⁵

f) Access to Operator Service. “Access to operator services is defined as access to any automatic or live assistance to a

²¹ 47 C.F.R. Sec. 54.101(a)(2). See also Commission Rule 4 CSR 240-3.570(2)(A)(4)(10).

²² The FCC’s March 17, 2005 Order, ¶¶ 32-34. The March 17, 2005 Order arose out of the FCC’s request to the Joint Board to “review certain of the Commission’s rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.” *Id.* at ¶ 9.

²³ 47 C.F.R. Sec. 54.101(a)(3). See also Commission Rule 4 CSR 240-3.570(3)(C)(1)(A).

²⁴ 47 C.F.R. Sec. 54.101(a)(4). See also Commission Rule 4 CSR 240-3.570(3)(C)(1)(B).

²⁵ 47 C.F.R. Sec. 54.101(a)(5). See also Commission Rules 4 CSR 240-3.570(3)(C)(1)(C) and (D).

consumer to arrange for billing or completion, or both, of a telephone call."²⁶

g) Access to Interexchange Service. "Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network."²⁷

h) Access to Directory Assistance. "Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings."²⁸

i) Toll Limitation for Qualifying Low-Income Consumers. Toll limitation service is defined as either "toll blocking" (a service allowing customers to not allow the completion of outgoing toll calls from their telecommunications channel) or "toll control" (a service allowing customers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month of billing cycle).²⁹

16. In addition to the basic requirements for ETC designation outlined under Section 214(e)(1) of the Act, additional requirements for ETC designation were adopted by the FCC in the March 17, 2005 Order.³⁰ Similar requirements were adopted by the Commission in 4 CSR 240-3.570. These requirements provide that a carrier requesting designation as an ETC must:

²⁶ 47 C.F.R. Sec. 54.101(a)(6). See also Commission Rule 4 CSR 240-3.570(3)(C)(1)(H).

²⁷ 47 C.F.R. Sec. 54.101(a)(7). See also Commission Rule 4 CSR 240-3.570(3)(C)(1)(E).

²⁸ 47 C.F.R. Sec. 54.101(a)(8). See also Commission Rule 4 CSR 240-3.570(3)(C)(1)(G).

²⁹ 47 C.F.R. Sec. 54.101(a)(9); 47 C.F.R. Sec. 54.400(b), (c), and (d). See also Commission Rule 4 CSR 240-3.570(3)(C)(1)(I).

³⁰ The FCC's March 17, 2005 Order, ¶¶ 20-39. Note: these requirements are mandatory for FCC designated ETC's and are codified at 47 C.F.R. 54.202(a)(1)-(5) for any common carrier that is not subject to state commission jurisdiction as delineated in Section 214(e)(6) of the Act. These requirements remain discretionary for state commissions (See the March 17, 2005 Order ¶ 20); however, this Commission adopted similar requirements in 4 CSR 240-3.570.

(A) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. (FCC's March 17, 2005 Order ¶ 21; 47 C.F.R. 54.202(a)(1)(i)(A), 4 CSR 240-3.570(3)(C)(3)(A));

(B) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises. (FCC's March 17, 2005 Order ¶ 21; 47 C.F.R. 54.202(a)(1)(i)(A), 4 CSR 210- 3.570(3)(C)(3)(A));

(C) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

- (1) Modifying or replacing the requesting customer's equipment;
- (2) Deploying a roof-mounted antenna or other equipment;
- (3) Adjusting the nearest cell tower;
- (4) Adjusting network or customer facilities;
- (5) Reselling services from another carrier's facilities to provide service; or
- (6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment. (FCC's March 17, 2005 Order ¶ 22; 47 C.F.R. 54.202(a)(1)(i)(B); 4 CSR 240-3.510(3)(C)(3)(B)).

(D) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area. (FCC's March 17, 2005 Order ¶¶ 23-24; 47 C.F.R. 54.202(a)(1)(ii); 4 CSR 240-3.570(2)(A)(2)). **Note: Missouri's regulations provide for a two-year plan as opposed to the FCC's five-year plan.**

(E) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting

from emergency situations. (FCC's March 17, 2005 Order ¶¶ 25-27; 47 C.F.R. 54.202(a)(2); 4 CSR 240-3.570(2)(A)(4));

(F) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis. (FCC's March 17, 2005 Order ¶¶ 28-31; 47 C.F.R. 54.202(a)(3); 4 CSR 240-3.570(2)(A)(8));

(G) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation. (FCC's March 17, 2005 Order ¶¶ 32-34; 47 C.F.R. 54.202(a)(4). 4 CSR 240-3.570(2)(A)(10)); and

H) Certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. (FCC's March 17, 2005 Order ¶¶ 35-36; 47 C.F.R. 54.202(a)(5), 4 CSR 240-3.570(2)(A)(9)).

Findings of Fact Related to VCI's Application for ETC Designation

17. VCI is authorized to provide local exchange service in California, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, Missouri, New Mexico, North Dakota, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.³¹

18. On March 31, 2006, VCI was granted a certificate to provide basic local telecommunication as a Competitive Local Exchange Carrier ("CLEC") in Missouri by the Commission's order in Case No. CA-2006-0323. The order granting the certificate became effective April 10, 2006.³²

³¹ Hearing Exhibit 1, p. 2, lines 3-7.

³² Hearing Exhibit 1, p. 2, lines 9-10; *In the Matter of the Application of VCI Company for a Certificate of Service Authority to Provide Basic Local Exchange and Exchange Access Service Throughout the State of Missouri and to Classify the Company as Competitive*, Case No. CA-2006-0323; Transcript p. 49, lines 15-18.

19. VCI's Missouri local exchange tariff was approved on July 7, 2006, taking effect on July 9, 2006.³³

20. VCI entered into an interconnection agreement with AT&T Missouri that was filed with the Commission on May 24, 2006 in Case No. CK-2006-0446, and which was approved by Commission order, effective July 21, 2006. The Interconnection Agreement covers resale services and UNEs.³⁴

21. VCI is not yet providing local exchange or exchange access services in Missouri; however, it expects to provide service in Missouri in AT&T Missouri exchanges using a combination of UNEs, consisting of the local loop, ports and transport, provided by AT&T and resale of AT&T's services.³⁵

22. VCI has been designated as an ETC in California, Colorado, Florida, Idaho, Iowa, Michigan, Minnesota, Mississippi, Nebraska, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.³⁶

23. At the time of VCI's application to be designated as an ETC in Missouri, it had applications for ETC designation pending in Georgia, Kansas, Louisiana, and Tennessee.³⁷

³³ Missouri P.S.C. Tariff No. 1, Tariff File Number YC-2006-0878.

³⁴ Hearing Exhibit 1, p. 2, lines 10-12; Transcript p. 49, lines 23-25, p. 50, lines 1-25, p. 51, lines 1-15, p. 124, line 25, p. 125, lines 1-14. See also *In the Matter of the Application of VCI Company for Approval of Its Interconnection Agreement with Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri*, Case No. CK-2006-0446; Petition, p. 3, paragraph 4, filed June 8, 2006.

³⁵ Hearing Exhibit 1, p. 7, lines 10-12, p. 8, lines 19-22, p. 9, lines 1-5; Transcript p. 49, lines 23-25, p. 50, lines 1-25, p. 51, lines 1-15, p. 125, lines 15-25, p. 126, lines 1-8. See also *In the Matter of the Application of VCI Company for Approval of Its Interconnection Agreement with Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri*, Case No. CK-2006-0446; Petition, p. 3, paragraph 5, filed June 8, 2006.

³⁶ Hearing Exhibit 1, p. 2, lines 14-16; Transcript p. 44, lines 16-24.

³⁷ Hearing Exhibit 1, p. 2, lines 16-17; Transcript p. 43, lines 13-19, p. 44, lines 13-20, p. 94, lines 5-18. p. 155, lines 20-25, p. 156, lines 1-8.

24. At the time of VCI's filing of rebuttal testimony, Kansas (Docket 06-VCOT-126-ETC), Louisiana (Docket S-29619), and Tennessee (Docket 06-00126) had approved VCI's applications and granted VCI ETC designation in those states.³⁸

25. VCI has not been denied ETC designation in any state in which is has applied.³⁹

26. VCI has discontinued providing service in the states of Washington and Oregon because the underlying carrier raised the rates it charges for UNEs by approximately twenty-five percent.⁴⁰

27. VCI's business plan for Missouri focuses on providing affordable local exchange services to underserved and unserved market segments, most of which VCI believes are comprised of low-income consumers, many of whom have been disconnected from other carriers.⁴¹

28. If designated as an ETC, VCI represents that it will provide Lifeline⁴² and Link-Up⁴³ services in the service area where AT&T Missouri is a certificated local exchange carrier.⁴⁴

³⁸ Hearing Exhibit 2, Prefiled Surrebuttal Testimony of Stanley Johnson, p. 11, lines 1-5. See also Footnote No. 37.

³⁹ Hearing Exhibit 1, p. 2, lines 21-23.

⁴⁰ Transcript p. 45, lines 2-18, p. 92, lines 4-25, p. 93, lines 1-22.

⁴¹ Hearing Exhibit 1, p. 3, lines 3-8, p. 119, lines 18-25, p. 120, lines 1-4. See also Footnote Number 3.

⁴² "Lifeline," as defined under the Act, "means a retail local service offering: (1) That is available only to qualifying low-income consumers; (2) For which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in Sec. 54.403; and (3) That includes the services or functionalities enumerated in Sec. 54.101 (a)(1) through (a)(9). The carriers shall offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the consumer elects to receive toll limitation, that service shall become part of that consumer's Lifeline service." 47 C.F.R. Sec. 54.401(a). This section further provides: "b) [Reserved]. (c) Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll limitation service from the carrier, where available. If toll limitation services are unavailable, the carrier may charge a service deposit. (d) The state commission shall file or require the eligible telecommunications carrier to file information with the Administrator

29. VCI does not intend to seek or utilize federal high cost funding as an ETC, and will only seek reimbursement from the federal low income support mechanism.⁴⁵

30. VCI asserts that many of the requirements set forth for ETC designation in Commission Rule 4 CSR 240-3.570 apply only to wireless carriers or carriers requesting reimbursement from the federal high cost fund. Consequently, VCI believes that these specific provisions do not apply to its application, and that it should receive ETC designation without meeting those requirements.⁴⁶

demonstrating that the carrier's Lifeline plan meets the criteria set forth in this subpart and stating the number of qualifying low-income consumers and the amount of state assistance. Eligible telecommunications carriers not subject to state commission jurisdiction also shall make such a filing with the Administrator. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart. (e) Consistent with Sec. 52.33(a)(1)(i)(C), eligible telecommunications carriers may not charge Lifeline customers a monthly number-portability charge."

⁴³ "Link-Up," as defined under the Act, "shall describe the following assistance program for qualifying low-income consumers, which an eligible telecommunications carrier shall offer as part of its obligation set forth in Sections 54.101(a)(9) and 54.101(b): (1) A reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence. The reduction shall be half of the customary charge or \$30.00, whichever is less; and (2) A deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed to the consumer shall be for connection charges of up to \$200.00 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements. (3) For an eligible resident of Tribal lands, a reduction of up to \$70, in addition to the reduction in paragraph (a)(1) of this section, to cover 100 percent of the charges between \$60 and \$130 assessed for commencing telecommunications service at the principal place of residence of the eligible resident of Tribal lands. For purposes of this paragraph, charges assessed for commencing telecommunications services shall include any charges that the carrier customarily assesses to connect subscribers to the network, including facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service. The reduction shall not apply to charges assessed for facilities or equipment that fall on the customer side of demarcation point, as defined in Sec. 68.3 of this chapter." ⁴⁷ C.F.R. Sec. 54.411. This section further provides: "(b) A qualifying low-income consumer may choose one or both of the programs set forth in paragraphs (a)(1) and (a)(2) of this section. An eligible resident of Tribal lands may participate in paragraphs (a)(1), (a)(2), and (a)(3) of this section. (c) A carrier's Link Up program shall allow a consumer to receive the benefit of the Link Up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Link Up assistance was provided previously. (d) An eligible telecommunications carrier shall publicize the availability of Link Up support in a manner reasonably designed to reach those likely to qualify for the support."

⁴⁴ Hearing Exhibit 1, p. 3, lines 9-14. Transcript p. 33, lines 10-25, p. 34, lines 1-11, p. 108, lines 14-18.

⁴⁵ Hearing Exhibit 1, p. 4, lines 9-12. Transcript p. 152, lines 18-25, p. 153, lines 1-25, p. 154, lines 1-15.

⁴⁶ Hearing Exhibit 1, p. 7, lines 2-9. p. 14, line 27, p. 15, lines 1-5; Transcript p. 100, lines 21-25, p. 101,

31. Staff believes that the only sections of Commission Rule 4 CSR 240-3.570(2) and (3) that are applicable to VCI's application are:

- a. 4 CSR 240-3.570(2)(A)5, a demonstration that the commission's grant of the applicant's request for ETC designation is in the public interest;
- b. 4 CSR 240-3 .570 (2)(A)6, a commitment to advertise;
- c. 4 CSR 240-3 .570(2)(A)7, a commitment to provide Lifeline and Link-up discounts;
- d. 4 CSR 240-3 .570(2)(A)8, a statement that VCI will satisfy consumer privacy protection standards as provided in 47 CFR 64 Subpart U;
- e. 4 CSR 240-3 .570(2)(A)10, a commitment to offer a local usage plan comparable to that offered by the ILEC, and more specifically a commitment to provide Lifeline and Linkup rates comparable to the incumbent;
- f. 4 CSR 240-3 .570(3)(A), bill design;
- g. 4 CSR 240-3.570(3)(B), customer service contact information;
- h. 4 CSR 240-3 .570(3)(C) 1, service provisioning commitment
- i. 4 CSR 240-3.570(3)(E), records of customer complaints; and
- j. 4 CSR 240-3.570(3)(F), company contact information.⁴⁷

32. Staff believes that VCI is in compliance with all **applicable** Commission Regulations to be designated as an ETC and recommends the Commission grant VCI's application and that the designation only be for low income support.⁴⁸

lines 1-25, p. 102, lines 1-4, p. 104, lines 7-19, p. 109, lines 6-22, p. 152, lines 18-25, p. 153, line 1.

⁴⁷ Hearing Exhibit 3, Prefiled Rebuttal Testimony of Walt Cecil, p. 5, lines 18-23, p. 6, lines 1-15; Transcript p. 145, lines 19-24, p. 152, lines 5-25, p. 153, lines 1-25, p. 154, lines 1-15.

⁴⁸ Hearing Exhibit 2, p. 1, lines 21-23; p. 2, lines 10-12; Hearing Exhibit 3, p. 6, lines 27-34, p. 7, lines 1-18. Transcript, p. Transcript p. 145, lines 19-24, p. 152, lines 5-25, pp. 153-160, p. 164, lines 9-25, pp.

33. AT&T Missouri's position is that VCI must seek forbearance from the FCC in order to pursue designation for only low income support. AT&T's position is that ETC designation cannot be bifurcated into two categories, i.e. creating a category for only low income support vs. high cost support, without FCC approval. Consequently, AT&T asserts that VCI must meet all federal and state requirements to receive ETC designation.⁴⁹

34. The Commission's decision on the contested issue of whether VCI must seek forbearance from the FCC in order to pursue designation for only low income support is a conclusion of law that the Commission will address in a later part of this order.

Findings of Fact Regarding VCI's Compliance with all ETC Requirements

35. VCI is a common carrier as that term is defined in the Act, because it provides competitive local telecommunications services in several states.⁵⁰

36. VCI represents that it will offer all of the services that are supported by federal universal service support mechanisms under section 254(c) as required by Section 214(e)(1)(A) of the Act.⁵¹

37. VCI represents that it will offer all of the services supported by federal universal service support mechanisms by using a combination of its "own facilities" and resale of another carrier's services.⁵²

165-166, p. 167, lines 1-11, p. 188, lines 5-24.

⁴⁹ Hearing Exhibit 5, Prefiled Surrebuttal Testimony of James, E. Stidham, Jr., p. 1, lines 23-33, p. 2, lines 5-33, p. 3, lines 1-21.

⁵⁰ Hearing Exhibit 1, p. 8, lines 13-17. "[T]he term 'common carrier' or carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy . . .". See 47 U.S.C. Sec. 153(10).

⁵¹ Hearing Exhibit 1, p. 10, lines 7-22, pp. 11-13, p. 14, lines 1-2, p. 18, lines 12-16; Hearing Exhibit 2, p. 2, lines 8-15.

38. VCI represents that use of AT&T Missouri UNEs meets the definition of "facilities" under the Act.⁵³

39. VCI asserts that its combination of resale and UNEs to provide the supported services depends on the ILEC's pricing structure, and that it can satisfy the "facilities" requirement even if it procures all of the USF-supported services, except for one (Directory Assistance) by means of resale.⁵⁴

40. VCI will advertise the supported services in media of general distribution as required in Section 214(e)(1)(B) of the Act.⁵⁵

41. In states where VCI is currently providing service as a designated ETC, VCI advertises the availability of Lifeline and Link-Up service via television advertisements. VCI has developed brochures in English and Spanish which are displayed in government agency offices and offices of organizations that provide services to low-income consumers, such as state departments of social service, housing offices, and food banks. VCI advertises its services in newspapers and fliers in Native American communities and also works directly with some tribal coordinators. VCI's advertising plan is designed to provide notification of the existence of low-income programs to the largest number of Lifeline eligible consumers.⁵⁶

⁵² Hearing Exhibit 1, p. 2, lines 26-27, p. 3, line 1. p. 5, lines 26-27, p. 6 lines 1-14, p. 7, lines 1-9, p. 8, lines 19-20, p. 10, lines 7-22, p. 11, lines 1-27, p. 12, lines 1-27, p. 13, lines 1-27, p. 14, lines 1-2; Transcript p. 118, lines 9-25, p. 119, lines 1-13, p. 127, lines 11-17.

⁵³ Hearing Exhibit 1, p. 8, lines 20-22, p. 9, line 1, p. 10, lines 8-22, p. 11, lines 1-6. See also FCC's May 8, 1997, ¶¶ 24, 150-169 and Transcript p. 54, lines 5-25, p. 55, lines 1-4, p. 118, lines 9-25, p. 119, lines 1-13.

⁵⁴ Transcript p. 54, lines 5-25, p. 55, lines 1-4, p. 118, lines 9-25, p. 119, lines 1-13.

⁵⁵ Hearing Exhibit 1, p. 9, lines 7-25, p. 10, lines 1-6; Hearing Exhibit 2, p. 2. lines 16-25, p. 3, lines 1-12.

⁵⁶ Hearing Exhibit 1, p. 9, lines 12-22.

42. VCI is in compliance with the outreach guidelines adopted by the FCC in its Report and Order released April 29, 2004,⁵⁷ including: 1) utilizing outreach materials and methods designed to reach households that do not currently have telephone service; 2) developing outreach advertising that can be read or accessed by any sizeable non-English speaking populations within a carrier's service area; and 3) coordination of outreach efforts with governmental agencies/tribes that administer relevant government assistance programs.⁵⁸

43. In addition to complying with the basic federal requirements in Section 214(e) of the Act, VCI represents that it will comply with all additional applicable federal and all applicable Commission requirements to qualify for and maintain its ETC status.⁵⁹

44. Commission Rule 4 CSR 240-3.570(1) provides definitions of terms for the Commission's ETC designation requirements outlined in subsections (2) through (5).⁶⁰

45. VCI must comply with the Commission's requirements for ETC designation outlined in Commission Rules 4 CSR 240-3.570(2) through (5), unless otherwise waived by the Commission.⁶¹

⁵⁷ *In the Matter of Lifeline and Link-Up*, Report and Order, WC Docket No. 03-109, FCC 04-87, 19 FCC Rcd. 8302, 2004 WL 912459 (FCC) ¶¶ 41-49 (Released April 29, 2004) (herein after the "April 29, 2004 Order").

⁵⁸ Hearing Exhibit 1, p. 9, lines 24-25, p. 10, lines 1-6.

⁵⁹ Hearing Exhibit 1, p. 10, lines 7-22, pp. 11-13, p. 14, lines 1-2, p. 18, lines 12-16; Hearing Exhibit 2, p. 2, lines 8-15.

⁶⁰ Commission Rule 4 CSR 240-3.570(1).

⁶¹ To the extent that the Commission's Rules for ETC designation apply to commercial radio mobile service ("CMRS") providers or to rural access, those rules would not apply to VCI. Those rules include: 4 CSR 240-3.570(2)(A)(III)—rural access; 4 CSR 240-3.570(2)(B)—CMRS providers; 4 CSR 240-3.570(3)(A)—CMRS providers; 4 CSR 240-3.570(3)(D)—CMRS providers; 4 CSR 240-3.570(4)(C)(1)(C)—rural access; 4 CSR 240-3.570(5)(A)—CMRS providers. To the extent that VCI requests specific waivers of any of the Commission's rules, it must comply with Commission Rule 4 CSR 240-2.060(4) and must provide complete justification setting out good cause for granting the waiver.

Findings of Fact Regarding VCI's Compliance with 4 CSR 240-3.570(2)

46. Commission Rules 4 CSR 240-3.570(2)(A)(1), (2) and (3) all apply to carriers that intend to seek federal high cost support, and VCI maintains that it is not seeking reimbursement from any state or federal high cost fund, and; consequently, should not be required to comply with the requirements set forth in these rules.⁶²

47. Commission Rule 4 CSR 240-3570(2)(A)(4) requires the ETC applicant to demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.⁶³

48. VCI's ability to remain functional in an emergency situation is totally dependent on that of AT&T Missouri, its underlying network based carrier, including the supply of a reasonable amount of back-up power to ensure functionality without an external power source, ability to reroute traffic around damaged facilities, and capability of managing traffic spikes resulting from emergency situations.⁶⁴

49. VCI cannot independently satisfy the requirements of Commission Rule 4 CSR 240-3570(2)(A)(4); however, the Commission's Staff asserts that this rule is inapplicable to VCI.⁶⁵

⁶² Hearing Exhibit 1, p. 7, lines 2-9, p. 14, line 27, p. 15, lines 1-5. Transcript p. 152, lines 18-25, p. 153, lines 1-25, p. 154, lines 1-15.

⁶³ Commission Rule 4 CSR 240-3570(2)(A)(4).

⁶⁴ Hearing Exhibit 1, p. 15, lines 15-20.

⁶⁵ Hearing Exhibit 3, p. 5 lines 20-23, p. 6, lines 1-26.

50. VCI represents that granting its request for ETC status is in the public interest, convenience and necessity, as required by 4 CSR 240-3.570(2)(A)(5) because designation of VCI as an ETC will:

- a. increase customer choice in carriers that offer Lifeline and Link-Up services;
- b. ensure that the availability of Lifeline and Link-Up services is widely publicized;
- c. remove obstacles to telephone subscribership for low-income consumers;
- d. contribute to low-income consumers incurring significantly less toll charges;
- e. permit low-income consumers access to premium services;
- f. ensure that low-income consumers have a choice in carriers whose business procedures and processes specifically benefit the low-income consumer; and,
- g. have no affect on the financial status of the universal service fund because VCI cannot possibly increase Lifeline and Link-Up participation rates to 100% and because the Missouri USF reimburses all ETCs equally.⁶⁶

51. AT&T contends that granting VCI's application is not in the public interest because:

⁶⁶ Hearing Exhibit 1, pp. 19-23; Hearing Exhibit 2, p. 2, lines 14-15; p. 6, lines 16-24, p. 7, lines 1-24, p. 8, lines 1-24, p. 9, lines 1-21, p. 10, lines 1-7, p. 11, lines 6-22; Transcript p. 119, lines 14-25, p. 120, lines 1-25, p. 121, lines 1-9, p. 131, lines 2-25, pp. 132-137, p. 138, lines 1-17, p. 144, lines 11-25, p. 145, lines 1-18, p. 165 lines 13-25, p. 166, lines 1-25, p. 167, lines 1-11, p. 168, lines 23-25, p. 169, lines 1-9, p. 193, lines 7-25, p. 194, lines 1-25, p. 195, lines 1-22.

a. there are numerous choices available to consumer in Missouri absent VCI's presence in the marketplace; thus, VCI does not offer "meaningful choice;"

b. data from the Universal Service Administrative Company does not accurately reflect the total number of Lifeline eligible households because the methodology used can double count eligible households, thus the need for VCI's services is hinged upon a count of mythical underserved and unserved potential customers;⁶⁷

c. data from the FCC demonstrates that Missouri has a telephone penetration rate of 96.5%, compared to the national average of 94.6%; again, there is no need for VCI's services;

d. increasing the number of Lifeline subscribers would cause the size of the USF and customer surcharge to greatly increase and would increase costs for the rate payers;

e. VCI's service offerings are not unique because it offers the exact same services as AT&T Missouri;

⁶⁷ Specifically, AT&T's witness, Mr. James E. Stidham, Jr. testified that: "The map of 2005 Lifeline Participation, prepared by the Universal Service Administrative Company, cannot be relied on to accurately capture the total number of Lifeline eligible households. The map overstates this number, and thus it underestimates the "take rate" (a percentage reached by dividing the number of actual participants by the number of all who are eligible). USAC's methodology for determining the number of eligible households is flawed. USAC estimated that 58% of households were receiving assistance through more than one program. Stated simply, if a household participated in more than one program, it was counted as an eligible household more than one time, thereby overcalculating the total number of eligible households, and thus causing a much lower take rate than were the households counted only once in the denominator. For example, the USAC map shows Texas as having a Lifeline take rate of only between 20% and 50% even though Texas has a Lifeline auto enrollment process." Hearing Exhibit 4, p. 12, lines 14-27, p. 13, lines 1-4.

f. designating VCI as an ETC will not lower toll charges billed by another provider; and,

g. offering service to customers that have defaulted with payments to other providers, while also committing not to pursue payments when a customer is in arrears with VCI, decreases social responsibility.⁶⁸

52. The Commission's decision on the contested issue of whether VCI satisfies the requirements of 4 CSR 240-3.570(2)(A)(5) is a conclusion of law that the Commission will address in a later part of this order.

53. VCI will advertise the supported services in media of general distribution as required by 4 CSR 240-3.570(2)(A)(6) and (7).⁶⁹

54. VCI's commitment to provide Lifeline and Link-Up services and discounts in the service area where AT&T Missouri is a certificated local exchange carrier satisfies the remaining requirements of 4 CSR 240-3.570(2)(A)(7) and 47 C.F.R. 54.401 and 47 C.F.R. 54.411.⁷⁰

55. VCI represents that it will comply with all applicable federal and state consumer protection, consumer privacy and service quality standards as required in 4 CSR 240-3.570(2)(A)(8) and 47 C.F.R. 64, Subpart U.⁷¹

⁶⁸ Hearing Exhibit 4, Prefiled Rebuttal Testimony of James E. Stidham, pp. 11-19; Transcript p. 119, lines 14-25, p. 120, lines 1-25, p. 121, lines 1-9, p. 131, lines 2-25, pp. 132-137, p. 138, lines 1-17, p. 144, lines 11-25, p. 145, lines 1-18, p. 165 lines 13-25, p. 166, lines 1-25, p. 167, lines 1-11, p. 168, lines 23-25, p. 169, lines 1-9, p. 193, lines 7-25, p. 194, lines 1-25, p. 195, lines 1-22.

⁶⁹ Hearing Exhibit 1, p. 9, lines 7-25, p. 10, lines 1-6; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12; Transcripts p. 57, lines 24-25, p. 58, lines 1-11. This requirement overlaps with Section 214(e)(1)(B) of the Act. See also Findings of Fact Numbers 38, 39 and 40.

⁷⁰ Hearing Exhibit 1, p. 3, lines 9-14. Transcript p. 108, lines 14-18. See also FOFs Numbers 57, 59, 61, and 62.

⁷¹ Hearing Exhibit 1, p. 15, lines 21-25; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

56. As required by Commission Rule 4 CSR 240-3.570(2)(A)(9) VCI certifies that it acknowledges that the Commission may require it to provide equal access to long distance carriers pursuant to 4 CSR 240-32.100(3) and (4) in the event that all other eligible telecommunications carriers within the designated area relinquish their designations pursuant to section 214(e) of the Act.⁷²

57. As required by 4 CSR 240-3.570(2)(A)(10), VCI's local usage plan must be comparable to the ILEC's, AT&T Missouri's, plan. The rule specifically provides:

(2)Applications for Designation as an ETC.

(A) Each request for ETC designation shall include:

(10) **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 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 incumbent local exchange carrier providing service in the ETC service area.

58. Regarding the comparison of local usage plans, the FCC stated:

We adopt the Joint Board's⁷³ recommendation that we establish a local usage requirement as a condition of receiving ETC designation. **Specifically, we require an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation.** As in past orders, however, we decline to adopt a specific local usage threshold.

The Commission requires an ETC to provide local usage in order to receive universal service high-cost support. In the *First Report and Order*, the Commission determined that an ETC should provide

⁷² Hearing Exhibit 1, p. 18, lines 3-11.

⁷³ Federal-State Joint Board on Universal Service.

some minimum amount of local usage as part of its “basic service” package of supported services, but declined to specify the exact amount of local usage required. **We believe the Commission should review an ETC applicant's local usage plans on a case-by-case basis.** For example, an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area. We also can envision circumstances in which an ETC is offering an unlimited calling plan that bundles local minutes with long distance minutes. The applicant may also plan to provide unlimited free calls to government, social service, health facilities, educational institutions, and emergency numbers. **Case-by-case consideration of these factors is necessary to ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area.**

We encourage state commissions to consider whether an ETC offers a local usage plan comparable to those offered by the incumbent in examining whether the ETC applicant provides adequate local usage to receive designation as an ETC. In addition, although the Commission has not set a minimum local usage requirement, there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status. (citations omitted).⁷⁴

59. In addition to requiring local usage plans be comparable to the ILEC's, Commission Rule 4 CSR 240-3.570(2)(A)(10) also requires the ETC applicant to commit to passing through all applicable state and federal service discounts to its end-user customers, thus reducing the price of access to telecommunications services for the Lifeline and Link-Up eligible customer.⁷⁵

⁷⁴ FCC's March 17, 2005 Order, ¶¶ 32-34.

⁷⁵ Commission Rule 4 CSR 240-3.570(2)(A)(10).

60. VCI will offer flat rate, unlimited local service permitting the customer to make an unlimited amount of local calls within his/her local calling area.⁷⁶

61. VCI will pass through all applicable state and federal service discounts to its end-user customers, thus reducing the price of access to telecommunications services for its Lifeline and Link-Up eligible customer.⁷⁷

62. VCI will use federal low-income support funding exclusively to supplement its provision of low-cost basic local exchange telecommunications service to low-income residential subscribers who are eligible for support under the federal low-income support mechanism.⁷⁸

63. VCI will reduce the price of its services by passing through all applicable state and federal mandated service support for its Lifeline and Link-up customers as follows:⁷⁹

Tier I -	Subscriber Line Charge	\$5.67 ⁸⁰
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⁷⁶ Hearing Exhibit 1, p. 11, lines 19-27; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

⁷⁷ Hearing Exhibit 1, p. 4, lines 3-8, p. 15, lines 6-14. The FCC has determined that Lifeline providers utilize Federal universal service support for the purpose it was intended when the carrier reduces the price of access to telecommunications services for the eligible customer by the amount of that support. *In the Matter of Federal-State Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance* from 47 U.S.C Sec. 214(e)(1)(A) and 47 C.F.R. Sec. 54.201(i), Report and Order, CC Docket No. 96-45, FCC 05-165, 20 FCC Rcd. 15095, 2005 WL 2171410 (FCC) ¶ 26 (Adopted September 6, 2005; Released September 8, 2005)(herein after the "September 8, 2005 Order"). James E. Stidham, Jr., testifying for AT&T Missouri, stated that he believed that VCI did not appear to be complying with the federal "pass-through" rules, however, Stanley Johnson, VCI's President, rebutted this testimony, demonstrating that Mr. Stidham had based this opinion on faulty calculations. Hearing Exhibit 4, p. 8, lines 6-17, p. 9, lines 1-19, p. 10, lines 1-9; Hearing Exhibit 2, p. 5, lines 19-24, p. 6, lines 1-15. See also Transcript p. 92, lines 19-25, p. 93, lines 1-10.

⁷⁸ Hearing Exhibit 1, p. 4, lines 3-8.

⁷⁹ Hearing Exhibit 1, p. 18, lines 18-28, p. 19, lines 1-13; Hearing Exhibit 2, p. 5, lines 19-24, p. 6, lines 1-15. Transcripts p. 28, lines 23-25, pp. 29-30, p. 31, lines 1-21. Transcript p. 84, lines 12-25, p. 85, lines 1-24.

⁸⁰ In his direct testimony, Stanley Johnson, VCI's President, identified the Tier I Subscriber Line Charge as being \$6.50. Hearing Exhibit 1, p. 19, line 24. James E. Stidham, Jr., testifying for AT&T Missouri observed that the correct Subscriber Line Charge for Missouri is \$5.67. Hearing Exhibit 4, p. 10, lines 11-28. In surrebuttal testimony, Mr. Johnson noted that he originally misidentified this charge, and provided a new table of calculations incorporating the charge of \$5.67. This correction does not alter VCI's

Tier II -	Federal Discount	\$1.75
Tier III -	State Low-Income Discount	\$3.50
-	Additional Federal Discount	<u>\$1.75</u>
Sub-total		\$12.67
Company Discount		<u>\$3.99</u>
Total Federal, State, Company Discounts		\$16.66

64. VCI has properly identified the subscriber line charge applicable to Missouri and calculated its Lifeline rate to include all applicable state and federal discounts to be passed through to Missouri customers.⁸¹

65. After service discounts, VCI will charge a flat rate of \$19.00 per month to provide basic local exchange service with unlimited local calling.⁸²

66. The \$19.00 per month charge does not include 911 taxes, or state and city taxes.⁸³

67. VCI derives this charge with the following calculation:⁸⁴

\$29.99	from Tariff
+ \$ 5.67	Tier I Subscriber Line Charge
\$35.66	Top Line Rate
- \$16.66	Total Discounts
\$19.00	per month

68. After the \$30.00 discount is passed through from USAC or the FCC, VCI will charge a connection fee of \$120.00 payable at the rate of \$10.00 per month for the first 12-month period of service. Consequently, VCI's eligible customers of Lifeline and Link-up service will be charged \$29.00 per month for the first year of service and \$19.00 per month thereafter.⁸⁵

monthly charge of \$19.00.

⁸¹ Hearing Exhibit 2, p. 2, lines 13-15; Hearing Exhibit 2, p. 5, lines 19-24, p. 6, lines 1-15.

⁸² Hearing Exhibit 1, p. 18, lines 18-28, p. 19, lines 1-13. Transcript p. 28, lines 23-25, pp. 29-30, p. 31, lines 1-6.

⁸³ Transcript p. 33, lines 16-25, p. 34, lines 1-2.

⁸⁴ Hearing Exhibit 2, p.p. 6, lines 1-15. Transcript p. 28, lines 23-25, pp. 29-30, p. 31, lines 1-6.

69. VCI issues its customer bills on the first day of each month for service being provided for that month. Payment is due by the end of that month or the customer faces disconnection. The customer is thereby extended credit for service being received as opposed to requiring advanced payment before service is delivered. Consequently, VCI is not a prepaid provider.⁸⁶

70. VCI's commitment to provide Lifeline and Link-Up discounts and Missouri Universal Service Fund Discounts satisfies that respective portion of the requirements of 4 CSR 240-3.570(2)(A)(10).⁸⁷

71. Staff compared VCI's rates to subscription fees charged by prepaid providers offering similar or identical services to non-lifeline customers. Based upon this comparison Staff reports that: (1) VCI charges a subscription fee of \$120.00 after applying the Link-Up discount of \$30.00; (2) VCI's subscription fee is much higher than the typical prepaid provider whose subscription fees ranged from \$30.00 to \$69.00; (3) VCI's ongoing monthly recurring rate of \$19.00 for service is among the lowest, if not the lowest, when compared to prepaid companies.⁸⁸

⁸⁵ Hearing Exhibit 1, p. 18, lines 18-28, p. 19, lines 1-13. Transcript p. 34, lines 3-18.

⁸⁶ Transcript p. 48, lines 23-25, pp. 49-50, p. 51, lines 1-6, p. 95, lines 17-25, pp. 96-97, p. 98, lines 1-18, p. 104, lines 20-25, p. 105, lines 1-25, p. 106, lines 1-10.

⁸⁷ See Findings of Fact 36, 54, and 61, and their associated footnotes, Footnotes 51, 69, and 75. Commission Rule 4 CSR 240-3.570(2)(A)(10) requires a "commitment" not actual performance. The FCC's March 17, 2005 Order for all ETC applicants, and 47 C.F.R. Sec. 54.202(a)(4), which applies to carriers not regulated by state commissions, require a "demonstration" – not just a commitment, that the ETC applicant offers a local usage plan comparable to the one offered by the ILEC in the service area where it seeks ETC designation.

⁸⁸ Hearing Exhibit 3, p. 3, lines, 10-20, p. 4, lines 1-3. Transcript p. 119, lines 18-25, p. 120, lines 1-4, p. 155, lines 3-19.

72. Staff's position is that VCI's plan, while not identical to AT&T Missouri's, is comparable.⁸⁹

73. AT&T's position with regard to VCI's compliance with 4 CSR 240-3.570(2)(A)(10) is that VCI's local usage plan is not comparable to AT&T's because VCI is not a prepaid service provider and its rates for service must be comparable to AT&T Missouri's rates.⁹⁰

74. The basic local service rates of VCI are much higher than those of AT&T Missouri, as shown in the representative rates set forth in the table below:⁹¹

AT&T Missouri	Group A	Group B	Group C	Group D	Group D 2
Service Rate	\$ 7.15	\$ 10.00	\$ 11.00	\$ 12.00	\$ 13.00
SLC	<u>\$ 5.67</u>	<u>\$ 5.67</u>	<u>\$ 5.67</u>	<u>\$ 5.67</u>	<u>\$ 5.67</u>
End User Cost	\$ 12.82	\$ 15.67	\$ 16.67	\$ 17.67	\$ 18.67
Available Lifeline Discount	\$ 12.67	\$ 12.67	\$ 12.67	\$ 12.67	\$ 12.67
AT&T Lifeline Rate	\$ 0.15	\$ 3.00	\$ 4.00	\$ 5.00	\$ 6.00
VCI Lifeline	\$ 19.00	\$ 19.00	\$ 19.00	\$ 19.00	\$ 19.00
Rate Difference	12,667%	633%	475%	380%	317%

75. Additionally, VCI charges \$120.00, \$150.00 less a Link-up discount of \$30.00, to install Lifeline service, as compared to AT&T Missouri's \$17.26, which is \$34.53 less a Link-Up Discount of \$17.27, to install Lifeline service.⁹²

⁸⁹ Transcript p. 145, line 25, pp. 146-150, p. 151, lines 1-22, p. 154, lines 16-25, pp. 155-156, p. 157, lines 1-20.

⁹⁰ Hearing Exhibit 5, Prefiled Surrebuttal Testimony of James E. Stidham, Jr., p. 3, lines 23-30, p. 4, lines 1-23; Transcript p. 48, lines 7-25, p. 49, lines 1-10 (VCI is not a prepaid provider).

⁹¹ Hearing Exhibit 4, Prefiled Rebuttal Testimony of James E. Stidham, Jr., p. 7, lines 22-26, p. 8, lines 1-4 (including table). Transcript p. 60, lines 17-25, pp. 61-82, p. 83, lines 1-14.

⁹² Hearing Exhibit 4, Prefiled Rebuttal Testimony of James E. Stidham, Jr., p. 8, lines 1-4. See also Findings of Fact Numbers 71-74 and their associated footnotes, Footnote Numbers 86-89.

76. VCI contends that its local usage plan rates are comparable to other competitive ETC's rates.⁹³ VCI, in its brief,⁹⁴ illustrates this comparison in the following table:⁹⁵

Competitive ETC	Retail Rate	Lifeline Discount/Lifeline Monthly Rate	Connection Fee Prorated over 12 Months	Total Monthly Lifeline Rate for 1 st Year of Service	Difference From VCI
VCI Company	\$29.99	\$10.99/\$19.00	\$120.00/\$10.00	\$29.00	N/A
The Pager and Phone Company	\$29.95	\$7.00/\$22.95	\$20.00/\$1.67	\$24.62	-\$4.38
Fidelity Communications Services I, Inc.	\$44.00	\$7.00/\$37.00	\$20.00/\$1.67	\$38.67	+\$9.67
Mark Twain Communications	\$47.60	\$7.00/\$40.60	Unable to find connection fee	\$40.60	+\$11.60

77. The Commission will take official notice of the current tariffs on file for the individual companies listed in VCI's table in Finding of Fact Number 76.⁹⁶

⁹³ Transcript p. 74, lines 8-25, p. 75, lines 1-12, p. 159, lines 23-25, p. 160, lines 1-11, Transcript, Volume 3, Highly Confidential, p. 161-162.

⁹⁴ It is well established legal doctrine that unsworn statements of attorneys or parties, statements in briefs, pleadings, motions, arguments, allegations, or charging documents, as well as articles or exhibits not formally or constructively introduced are not evidence of the facts asserted unless conceded to by the opposing party. *State ex rel. TWA, Inc. v. David*, 158 S.W.3d 232, 236 (Mo. banc 2005) (Judge White Dissenting), *citing to*, *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo. App. 1997); *State v. Smith*, 154 S.W.3d 461, 469 (Mo. App. 2005); *Lester v. Sayles*, 850 S.W.2d 858, 864 (Mo. banc 1993); *State v. Rutter*, 93 S.W.3d 714, 727 (Mo. banc 2002); *State v. Robinson*, 825 S.W.2d 877, 880 (Mo. App. 1992); *State ex rel. Horn v. Randall*, 275 S.W.2d 758, 763-764 (Mo. App. 1955). While not all of this information, as submitted in VCI's brief, was introduced at hearing, other data contained within the table is verifiable by reference to the individual company's tariffs on file with the Commission. Specifically, VCI references Pager and Telephone Company's Tariff, eighth revised p. 35, effective September 1, 2005; Fidelity Communications Services I, Inc.'s Tariff, Section 25, 8th Revised Sheet 1, effective May 2, 2007, and Section 26, 2nd Revised Sheet 2, effective August 17, 2006; and Mark Twain Communications Company's PSC MO. NO. 1 Tariff, Section 22, First Revised Sheet 1, effective May 16, 1999.

⁹⁵ Post-hearing Brief of VCI Company, p. 26.

⁹⁶ See Footnote Numbers 91-93; See also Exhibit 2, p. 5, lines 13-18; Transcript p. 74, lines 8-25, p. 75, lines 1-12, p. 159, lines 23-25, p. 160, lines 1-11, Transcript, Volume 3, Highly Confidential, p. 161-162.

78. The Commission's decision on the contested issue of whether VCI satisfies the requirements of 4 CSR 240-3.570(2)(A)(10) is a conclusion of law that the Commission will address in a later part of this order.⁹⁷

79. Commission Rule 4 CSR 240-3.570(2)(B) applies only to commercial mobile radio service (CMRS) providers that are requesting ETC designation and therefore does not apply to VCI.⁹⁸

80. Commission Rule 4 CSR 240-3.570(2)(C) requires VCI to file a plan outlining the method for handling unusual construction or installation charges.⁹⁹

81. Because VCI does not own, operate or manage a telecommunications network, and has no plans to purchase or construct a network, and because service outside of AT&T's Missouri's existing network coverage in VCI's designated service area cannot be provided at a reasonable cost to the company, VCI seeks a waiver of the requirement to provide a plan outlining the method for handling unusual construction or installation charges as required in 4 CSR 240-3-570(2)(C).¹⁰⁰

82. AT&T's position on VCI's requested waiver of 4 CSR 240-3.570(2)(C) is that this subsection pins down exactly how an ETC plans to handle any charges to customers resulting from extending its network upon reasonable request to provide service throughout the area for which it seeks ETC designation and that there is no exception to an ETC's duty to provide such service based on the ETC's "cost recovery"

⁹⁷ It should be noted that the Office of the Public Counsel ("OPC") did not put on any expert testimony regarding this contested issue. However, in its brief, OPC bases its entire argument against granting ETC designation to VCI upon its claim that VCI's local usage plan is not comparable to AT&T Missouri's.

⁹⁸ Commission Rule 4 CSR 240-3.570(2)(B).

⁹⁹ Commission Rule 4 CSR 240-3.570(2)(C).

¹⁰⁰ Hearing Exhibit 1, p. 14, lines 22-26. Transcript p. 102, lines 13-25, p. 103, lines 1-25, p. 104, lines, 1-19.

concerns. AT&T further notes that VCI's cost recovery concern is sufficiently addressed by Commission Rule 4 CSR 240-3.570(3)(C)(3)(C), which provides: "Where special conditions or special requirements of the customer involve unusual construction or installation costs, the customer may be required to pay a reasonable portion of such costs in accordance with the plan outlining the method for handling unusual construction or installation charges approved by the commission at the time of designation as an ETC."¹⁰¹

83. The Commission's decision on the contested issue of whether VCI satisfies the requirements of 4 CSR 240-3.570(2)(C) or if a waiver will be granted is a conclusion of law that the Commission will address in a later part of this order.

Findings of Fact Regarding VCI's Compliance with 4 CSR 240-3.570(3)

84. VCI represents that it will develop a clear and easily understood bill design as required in 4 CSR 240-3.570(3)(A).¹⁰²

85. VCI represents that it will provide customer service contact information on-line and on billing statements as required by 4 CSR 240-3.570(3)(B).¹⁰³

86. VCI represents it will provide the supported services in Missouri as required by 4 CSR 240-3.570(3)(C)(1), 47 C.F.R. Sec. 54.101(a)(1)-(9), and 47 C.F.R. Sec. 54.101(b) as follows:¹⁰⁴

a) Voice Grade Access to the Public Switched Network. VCI will meet this requirement by providing voice-grade access to the public switched telephone network (PSTN). Through its interconnection arrangements with

¹⁰¹ Hearing Exhibit 4, p. 2, lines 33-35, p. 4, lines 26-30, p. 5, lines 1-25.

¹⁰² Hearing Exhibit 1, p. 16, lines 21-22, p. 17, line 1; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

¹⁰³ Hearing Exhibit 1, p. 17, lines 2-6; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

¹⁰⁴ Hearing Exhibit 1, p. 8, lines 19-22, p. 9, lines 1-5, p. 10, lines 7-22, p. 11, lines 1-27, p. 12, lines 1-27, p. 13, lines 1-27, p. 14, lines 1-2; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

AT&T Missouri, all customers of the company will be able to make and receive calls on the PSTN within the specified bandwidth.¹⁰⁵

b) Local Usage. (Commission Rule 4 CSR 240-3.570(2)(A)(10)). VCI will offer flat rate, unlimited local service permitting the customer to make an unlimited amount of local calls within his/her local calling area.¹⁰⁶ See previous FOF Numbers 57-78.

c) Dual Tone Multi-Frequency ("DTMF"). (Commission Rule 4 CSR 240-3.570(3)(C)(1)(A)). VCI expects to use out-of-band digital signaling and in-band multifrequency signaling that is functionally equivalent to DTMF.¹⁰⁷

d) Single-Party Service. (Commission Rule 4 CSR 240-3.570(3)(C)(1)(B)). VCI will meet the requirement of single-party service by providing its customers with a dedicated message path for all customer calls.¹⁰⁸

e) Access to Emergency Services. (Commission Rule 4 CSR 240-3.570(3)(C)(1)(C) and (D)). VCI will provide all of its customers with access to emergency services by dialing 911 throughout its service areas for which ETC designation is sought through its interconnection agreement with AT&T Missouri in satisfaction of this requirement. VCI will provide its customers access to enhanced 911 service and telecommunications relay service where available and to the same extent that AT&T Missouri, its underlying carrier, provides its customers with access to those services.¹⁰⁹

f) Access to Operator Services. (Commission Rule 4 CSR 240-3.570(3)(C)(1)(H)). VCI will meet this requirement by providing all of its customers with access to operator services provided by AT&T Missouri through its interconnection agreement with AT&T Missouri.¹¹⁰

g) Access to Interexchange Service. (Commission Rule 4 CSR 240-3.570(3)(C)(1)(E)). VCI will meet this requirement by providing all of its customers with the ability to connect with the interexchange carrier of their choice.¹¹¹ VCI will not offer long-distance service.¹¹²

¹⁰⁵ Hearing Exhibit 1, p. 11, lines 7-18.

¹⁰⁶ Hearing Exhibit 1, p. 11, lines 19-27, p. 16, lines 1-20; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12, p. 4 lines 14-22, p. 5, lines 1-18.

¹⁰⁷ Hearing Exhibit 1, p. 12, lines 4-9; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

¹⁰⁸ Hearing Exhibit 1, p. 12, lines 10-18; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

¹⁰⁹ Hearing Exhibit 1, p. 12, lines 21-27, p. 17, lines 7-12; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

¹¹⁰ Hearing Exhibit 1, p. 13, lines 1-7; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

¹¹¹ Hearing Exhibit 1, p. 13, lines 8-15; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

¹¹² Transcript p. 77, lines 13-15, p. 79, lines 12-13.

h) Access to Directory Assistance. (Commission Rule 4 CSR 240-3.570(3)(C)(1)(G)). VCI will meet this requirement by providing its customers with access to directory assistance by dialing "411" or "555-1212."¹¹³

i) Toll Limitation for Qualifying Low-Income Consumers. (Commission Rule 4 CSR 240-3.570(3)(C)(1)(H)). VCI will provide the toll limitation service that AT&T Missouri has the technological capability to provide to requesting Lifeline eligible customers as required free-of-charge.¹¹⁴

87. VCI makes no affirmative representation as to whether it will comply with 4 CSR 240-3.570(3)(C)(1)(F), which requires an ETC to make available to each end-user subscribing to its supported services access to telecommunications relay services by dialing 711; however, VCI represents that it will comply with all applicable Commission requirements to maintain its ETC status.¹¹⁵

88. VCI represents that it is able to comply with the construction and network extensions requirements in 4 CSR 240-3.570(3)(C)(2) and (3)(C)(3)(A)-(D) to the extent that those provisions require publicizing the construction of new facilities that will enhance services in unserved or underserved areas by advertising the availability of Lifeline and Link-Up services in those areas.¹¹⁶

89. VCI represents that it commits to provide service throughout its proposed designated service area to all customers making a reasonable request for service as required by 4 CSR 240-3.570(3)(C)(3).¹¹⁷

¹¹³ Hearing Exhibit 1, p. 13, lines 16-22; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12. Transcript p. 54, lines 5-25, p. 55, lines 1-22.

¹¹⁴ Hearing Exhibit 1, p. 13, lines 23-27, p. 14, lines 1-2; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

¹¹⁵ Hearing Exhibit 1, p. 18, lines 12-16; Hearing Exhibit 2, p. 2, lines 8-15.

¹¹⁶ Hearing Exhibit 1, p. 17, lines 13-18.

¹¹⁷ Hearing Exhibit 1, p. 14, lines 3-7.

90. VCI represents that it will provide service on a timely basis within its designated service area, where its underlying carrier's network already passes the potential customer's premises as required by 4 CSR 240-3.570(3)(C)(3)(A).¹¹⁸

91. Despite its commitments to provide service to all customers making a reasonable request for service, VCI represents that because it does not own, operate or manage a network, whether it is able to serve a particular subscriber is dependent on where AT&T Missouri's network is located or where AT&T builds out its network.¹¹⁹

92. VCI seeks a waiver from having to comply with Commission Rule 4 CSR 240-3.570(3)(C)(3) regarding extension of networks, because VCI contends that these requirements apply only to carriers that have facilities in the ground and have the capability of installing or constructing additional facilities.¹²⁰

93. AT&T Missouri's position is that 4 CSR 240-3.570(3)(C)(3) requires: (1) ETC's to extend their networks to serve new customers upon a reasonable request; (2) this requirement is rooted in 47 U.S.C. Section 214(e)(1); (3) this requirement cannot be waived; and, (4) VCI's commitment to provide service only where the underlying carrier's network already passes the potential customer's premises is insufficient.¹²¹

94. The Commission's decision on the contested issue of whether VCI satisfies the requirements of 4 CSR 240-3.570(3)(C)(3) or if a waiver should be granted is a conclusion of law that the Commission will address in a later part of this order.

¹¹⁸ Hearing Exhibit 1, p. 14, lines 8-13.

¹¹⁹ Hearing Exhibit 1, p. 14, lines 14-22. VCI has asserted that service outside of AT&T Missouri's existing network coverage, in VCI's designated service area, cannot be provided at reasonable cost by the company. See Findings of Fact Numbers 80-82 and their associated footnotes, Footnote Numbers 96-98.

¹²⁰ Hearing Exhibit 2, p. 3, lines 19-25, p. 4, lines 1-13. See also Footnote 116.

¹²¹ Hearing Exhibit 4, p. 2, lines 25-32, p. 3, lines 16-25, p. 4, lines 1-24.

95. Commission Rule 4 CSR 240-3.570(3)(C)(3)(D) requires customer notification when there is no possibility of providing service to the ETC customer.¹²²

96. Commission Rule 4 CSR 240-3.570(3)(D) applies only to commercial mobile radio service (CMRS) providers that are requesting ETC designation and therefore does not apply to VCI.¹²³

97. VCI represents that it will maintain a record of Missouri customer complaints received by the company and filed with the FCC as required by 4 CSR 240-3.570(3)(E).¹²⁴

98. As required by 4 CSR 240-3.570(3)(F), VCI represents that it will notify the Commission of any change in company-designed contracts responsible for customer service, repair, maintenance, answering complaints, and authorizing and/or furnishing refunds to customers and any other informational or tariff filing issues.¹²⁵

Findings of Fact Regarding VCI's Compliance with 4 CSR 240-3.570(4)

99. Commission Rules 4 CSR 240-3.570(4)(A)-(D) and (H) all apply to carriers that intend to seek federal high cost support, and VCI maintains that it is not seeking reimbursement from any state or federal high cost fund, and; consequently, should not be required to comply with the requirements set forth in these rules.¹²⁶

¹²² Commission Rule 4 CSR 240-3.570(3)(C)(3)(D). Consequently, the Commission does contemplate that there may be limited instances where a carrier designated as an ETC will not be able to provide service.

¹²³ Commission Rule 4 CSR 240-3.570(3)(D).

¹²⁴ Hearing Exhibit 1, p. 17, lines 19-23; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12. Commission Rule 4 CSR 240-3.570(3)(C)(4)(F) requires an annual report of these complaints be submitted to the Commission.

¹²⁵ Hearing Exhibit 1, p. 17, lines 24-27, p. 18, lines 1-2; Hearing Exhibit 2, p. 2, lines 16-25, p. 3, lines 1-12.

¹²⁶ Hearing Exhibit 1, p. 7, lines 2-9, p. 14, line 27, p. 15, lines 1-5. Transcript p. 152, lines 18-25, p. 153, lines 1-25, p. 154, lines 1-15. See also Commission Rules 4 CSR 240-3.570(4)(A)-(D) and (H). To the

100. Commission Rules 4 CSR 240-3.570(4)(E)-(G) and (I)-(L) are all applied prospectively after ETC designation approval is granted, and VCI represents that it will comply with all applicable Commission requirements to maintain its ETC status satisfying this requirement at this stage of the designation process.¹²⁷

Findings of Fact Regarding VCI's Compliance with 4 CSR 240-3.570(5)

101. Commission Rules 4 CSR 240-3.570(5)(A)-(F) are all applied prospectively after ETC designation is granted, and VCI represents that it will comply with all applicable Commission requirements to maintain its ETC status satisfying this requirement at this stage of the designation process.¹²⁸

VCI's Additional Representations Concerning its Current Tariff

102. VCI represents that if it is not currently included in its tariff, it will add the company's \$3.99 discount to its tariffs to appropriately reflect the rates of its Lifeline and Link-Up Service offerings.¹²⁹

103. VCI represents that if it is not currently included in its tariff, it will add a provision that requires or binds VCI to offer its customers installment billing of its \$120 connection fee after the Link-up installation charge.¹³⁰

extent that 4 CSR 240-3.570(4)(C)(1)(C) applies to access in rural areas, it may not apply to VCI, should it be designated as an ETC.

¹²⁷ Hearing Exhibit 1, p. 18, lines 12-16; Hearing Exhibit 2, p. 2, lines 8-15. See also Commission Rules 4 CSR 240-3.570(4)(E)-(G) and (I)-(L).

¹²⁸ Hearing Exhibit 1, p. 18, lines 12-16; Hearing Exhibit 2, p. 2, lines 8-15. See also Commission Rules 4 CSR 240-3.570(5)(A)-(F). To the extent that 4 CSR 240-3.570(5)(A) applies to CMRS providers, it would not apply to VCI should the Commission designate it as an ETC.

¹²⁹ Transcript p. 31, lines 7-21, p. 95, lines 2-11.

¹³⁰ Transcript p. 72, lines 6-25, p. 73, lines 1-25, p. 74, lines 1-7.

104. VCI represents that its current tariff does not include a provision to address customer situations with how to handle past-due amounts and that it will add such language if granted ETC designation.¹³¹

105. VCI represents that if it is not currently included in its tariff, it will add a provision authorizing the company to impose upon a customer a subscriber line charge of \$5.67.¹³²

106. VCI represents that if it is not currently included in its tariff, it will add provisions spelling out the discounts the customers are entitled to so that the Lifeline rate of \$19.00 per month will be accurately reflected in its tariff.¹³³

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Jurisdiction and Authority

AT&T is a “telecommunications company,” an “incumbent local exchange telecommunications company,” and a “public utility” as defined in Section 386.020(51), (22) and (42), RSMo 2000, respectively, and; consequently is subject to the jurisdiction, control and regulation of the Commission. AT&T Missouri is duly authorized to provide “telecommunications service” within the State of Missouri as defined in Section 386.020(53).

¹³¹ Transcript p. 80, lines 5-25, p. 81, lines 1-17.

¹³² Transcript p. 84, lines 12-25, p. 85, lines 1-2.

¹³³ Transcript p. 130, lines 22-25, p. 131, line 1.

VCI is a privately held corporation organized under the laws of the State of Washington and is authorized to conduct business as a foreign corporation in the State of Missouri. VCI is a “competitive local exchange carrier” authorized to provide “local exchange telecommunications service” and “exchange access service,” as these terms are defined in Section 386.020(9), (31) and (17), respectively, pursuant to its Commission approved certificate of service authority and tariffs.¹³⁴ VCI is subject to the jurisdiction, control and regulation of the Commission,

VCI is not yet providing local exchange or exchange access services in Missouri; however, it expects to provide service in Missouri in AT&T Missouri exchanges using a combination of UNEs, consisting of the local loop, ports and transport, provided by AT&T and resale of AT&T's services. However, pursuant to the FCC's Order *In the Matter of the Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Section 214(e)(1) of the Act does not require a carrier to provide supported services throughout a service area prior to being designated an ETC.¹³⁵

Relevant Statutory Provisions and Commission Rules

The Commission made findings of facts regarding the relevant statutes and rules governing ETC designation. As previously stated, designation as an ETC is governed by the “Act”, Titles 47 of the U.S.C. and C.F.R., the FCC’s March 17, 2005 Order and

¹³⁴ See *In the Matter of the Application of VCI Company for Certificate of Service Authority to Provide Basic Local Exchange and Exchange Access Service Throughout the State of Missouri and to Classify the Company as Competitive*, Case No. CA-2006-0323, Effective April 10, 2006; tariff tracking number YC-2006-0878, effective date July 9, 2007.

¹³⁵ *In the Matter of the Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Report and Order, CC Docket No. 96-45, FCC 00-248, 15 FCC Rcd. 15158, 2000 WL 1801992 (FCC), ¶¶ 1-24 (Adopted July 11, 2000; Released August 10, 2000)(herein after the “August 10, 2000 Order”).

Commission Rule 4 CSR 240-3.570.¹³⁶ All findings of fact throughout this Report and Order reciting the relevant portions of these statutes and regulations are hereby adopted by the Commission as conclusions of law.

The Commission acknowledges that Section 214(e)(2) of the Act emphasizes that it is the state commissions who hold the primary authority to grant ETC designation. The Commission further notes that Section 254 of the Act, provides for Universal Service;¹³⁷ a principal component of federal telecommunications policy that seeks to ensure access to telecommunications services for all Americans. One aspect of Universal Service is the availability of subsidies from the USF created by the Act. Only carriers designated as eligible carriers pursuant to Section 214(e) of the Act may receive such subsidies.¹³⁸

Contested Issues of Law and Their Determination by the Commission

The Commission identified five contested issues of law throughout its fact finding and development of the official record in these proceedings. These issues are determinate to the primary issue adopted by the Commission in this case, which was whether VCI meets all of the necessary requirements to receive ETC designation. These contested issues are:

- (1) Can federal and state requirements for ETC designation be bifurcated by a company seeking designation as an ETC to receive only low-income support USFs without seeking forbearance from the FCC?
- (2) Does VCI provide a local usage plan that is comparable to the ILEC, AT&T Missouri?

¹³⁶ See Finding of Fact Number 9 and corresponding footnote, Footnote Number 10.

¹³⁷ Pub. L. No. 104-104, 110 Stat. 56.

¹³⁸ 47 U.S.C. Section 254(e).

(3) Does VCI satisfy the “own facilities” requirement for the provision of the designated supported services?

(4) Should the Commission grant waivers of Commission Rules 4 CSR 240-3-570(2)(C) and 4 CSR 240-3.570(3)(C)(3), the “build out” requirements to provide the supported services to customers making a reasonable request for service.

(5) Is it in the public interest to grant VCI ETC designation?

Bifurcation and Forbearance Issue

AT&T Missouri argues that VCI must seek forbearance from the FCC in order to pursue ETC designation for only low income support. AT&T’s position is that ETC designation cannot be bifurcated into two categories, i.e. creating a category for only low income support vs. high cost support, without FCC approval.¹³⁹ VCI’s position is that no forbearance is required because beyond the basic requirements for ETC designation contained in 47 U.S.C. Section 214(e), all other requirements outlined by the FCC are discretionary on the part of state commissions.¹⁴⁰ If the Commission decides that VCI must seek forbearance prior to applying for its limited ETC designation, then it must deny VCI’s request.

There is no provision for a bifurcated ETC application process or a low-income only designation in the FCC’s rules.¹⁴¹ However, there is also no preclusion in the relevant statutes, regulations or case decisions that would require VCI to obtain forbearance from the FCC before seeking low-income only ETC designation.¹⁴² The

¹³⁹ It should be noted that while AT&T Missouri made this argument in its pre-hearing position statement and at hearing. It did not repeat this argument in its post-hearing brief and focused on three other arguments instead: comparability of local usage plans, VCI’s alleged failure to meet the federal “own facilities” requirement, and that granting VCI ETC designation would not be in the public interest.

¹⁴⁰ FCC’s March 17, 2005 Order, ¶ 61.

¹⁴¹ Hearing Exhibit 5, p. 2, lines 5-33, p. 3, lines 1-21. AT&T Missouri also cited to the *TracFone Wireless* case in support of its argument. This case is distinguished, however, in Footnote 142, *infra*.

¹⁴² In, *In the Matter of Federal-State Joint Board on Universal Service: Petition of TracFone Wireless, Inc.*

Commission concludes that VCI's application is properly before it to determine the limited designation as an ETC that it seeks.

Comparative Local Usage Plan Analysis

The FCC recommends that state commissions make a case-by-case determination as to whether the applicant for ETC designation has a local usage plan that is comparable to the ILEC and makes no mention of comparing the plan's rates, but rather advocates a multifactor comparison regarding the service that is provided.¹⁴³ The FCC did not, however, set out specific guidelines on how to compare the applicant's local usage plan to that of the incumbent, whereas this Commission did.

VCI may offer a local usage plan with unlimited calling within the customer's local calling area for a flat monthly fee within the same calling scope as AT&T Missouri, but this Commission requires a full comparison between the applicant's plan and the ILEC's, including the rates, terms and conditions of the plans.¹⁴⁴ The Commission's Staff attempted to compare VCI's plan to that of prepaid carriers, where as VCI's president adamantly testified that his company is a "post-paid" provider. VCI attempts to make a comparison of its plan to other ETC providers.

The Commission's Rule is not ambiguous. The comparison of local usage plans is to be made between the ETC applicant and the ILEC, in this case AT&T Missouri.

for Forbearance from 47 U.S.C. Section 214(e)(1)(A) and 47 C.F.R. Section 54.201(l), CC Docket No. 96-45, FCC 05-165, 20 FCC Rcd. 15095, 2005 WL 2171410 (FCC) (Adopted September 6, 2005, Released September 8, 2005), the FCC was asked, by a non-facilities based commercial mobile radio service provider, to grant forbearance from using its own facilities, or a combination of its own facilities and resale of another carrier's services in order to obtain ETC designation to provide only Lifeline service to low-income customers. However, this case was restricted to the determination as to whether Tracfone could be excused from the Act's "own facilities" requirement. No language in this order requires forbearance when seeking to provide services for low-income support only, when a carrier meets the "own facilities" requirement.

¹⁴³ FCC's March 17, 2005 Order, ¶¶ 32-34.

¹⁴⁴ Commission Rule 4 CSR 240-3.570(2)(A)(10).

While the language of 4 CSR 240.370(2)(A)(10) indicates the comparison will be made of the plan's rates, terms and conditions "if applicable," the Commission finds that a comparison of rates in this case is definitely applicable. VCI's connection fee and its rates for its local usage plan are in no way comparable to AT&T Missouri's. The Commission finds the local usage plans not to be comparable, and VCI has not satisfied the requirement embodied in Commission Rule 4 CSR 240.370(2)(A)(10).

"Own Facilities" Issue and Interrelated Waiver Issues

AT&T Missouri argues that 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 federal "own facilities" requirement. AT&T Missouri claims that 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 of USF-supported services as defined by the Act.¹⁴⁵ AT&T Missouri further observes that, throughout these proceedings, VCI never once referenced anything even remotely akin to local loops, switches, transmission systems, and network control systems, i.e. physical components of a telecommunications network.

VCI argues that it is committed to and capable of providing service via resale and UNEs. VCI has a Commission approved interconnection agreement and VCI has made arrangements with AT&T to obtain UNEs. At locations near the central office, VCI will utilize UNEs to provide the services supported by Universal Service. Where the customer is located at a distance from the central office, the Company resells the

¹⁴⁵ 47 C.F.R. Section 54.201(e).

underlying carrier's services. VCI further testified that it is capable of offering directory assistance, one of the supported services, via its own facilities, and as the Commission's findings of fact demonstrate, this meets the outer boundaries of the FCC's prerequisites for facilities-based service.¹⁴⁶

While VCI may technically comply with the basic FCC requirements for providing the USF supported services by utilizing a mixture of its "own facilities" or a combination of its "own facilities" and resale of another carrier's services, this does not end the analysis of this crucial factor. The FCC, and this Commission, adopted additional requirements for approval of ETC status involving the development and expansion of physical facilities within the designated service area which demonstrate the ETC applicant's/provider's commitment to provide the USF supported services.¹⁴⁷

The FCC requires all ETC applicants to demonstrate their commitment to the provision of the supported services by actually providing those services to customers requesting them in their service area and by submitting a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation.¹⁴⁸ Specifically, the FCC requires the submission of a five-year plan that describes with particularity the proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area, and a demonstration of how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each

¹⁴⁶ See Findings of Fact Numbers 11-13 and 37-39.

¹⁴⁷ See Finding of Fact Number 16.

¹⁴⁸ FCC's March 17, 2005 Order ¶¶ 21-24; 47 C.F.R. 54.202(a)(1)(ii), 4 CSR 240-3.570(2)(A)(2).

project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements.

Similarly, this Commission adopted Rules 4 CSR 240-3.570(2)(A)(2), requiring the submission of a two-year plan similar to that of the FCC's specifications; 4 CSR 240-3.570(2)(C), requiring ETC's to extend their networks to serve new customers upon a reasonable request; and 4 CSR 240-3.570(3)(C)(3), requiring the applicant to submit a plan outlining the method for handling unusual construction or installation charges.

VCI's position is that the federal five-year plan requirement and the Commission's two-year plan requirement are inapplicable to it because it only intends to offer low-income support services. VCI seeks a waiver of 3.570(2)(C) arguing that because it does not own, operate or manage a telecommunications network, and has no plans to purchase or construct a network, that it will have no unusual construction or installation charges. VCI also seeks a waiver of 3.570(3)(C)(3) again claiming that because it has no network whether it is able to serve a particular subscriber is dependent on where AT&T Missouri's network is located or where AT&T builds out its network. VCI also freely admits that it cannot provide service outside of AT&T Missouri's existing network coverage at reasonable rates.

AT&T's position is that these rules are not waiveable because of the mandate for service provision in 47 U.S.C. Section 214(e)(1) and because the purpose of these rules is to pin down exactly how an ETC plans to handle any charges to customers resulting from extending its network upon reasonable request to provide service throughout the

area for which it seeks ETC designation.¹⁴⁹ AT&T argues that VCI's cost recovery concern is sufficiently addressed by Commission Rule 4 CSR 240-3.570(3)(C)(3)(C). This rule is intended to allow an ETC a method to recover the expenses of build-out when it would be unreasonable for the carrier to absorb them itself. AT&T Missouri points out that "reasonable request for service" refers to a request for service of a type and quantity that is not in excess of the service which is normally requested by like customers and is for service at a location within the carrier's designated service area.¹⁵⁰ Thus, according to AT&T Missouri, VCI's statement that it will provide service only where the underlying carrier's network already passes the potential customer's premises is insufficient.¹⁵¹

While the Commission has already concluded that VCI could seek ETC designation for low income support and thus 4 CSR 240-3.570(2)(A)(2) could be deemed inapplicable at the Commission's discretion, AT&T's position regarding 47 U.S.C. Section 214(e)(1) is well taken. This section of the Act expressly mandates that to receive ETC designation a carrier **must** provide the supported services throughout the service area for which the designation is received. The Commission has the authority to waive 4 CSR 240-3.570(2)(C) and 4 CSR 240-3.570(3)(C)(3); however, the Commission notes that once again VCI is trying to reside on the outside fringes of what this Commission requires for ETC designation. The purpose of these limited "build-out" requirements directly relates to the carrier's commitment to provide the supported services in the designated service area.

¹⁴⁹ Hearing Exhibit 4, p. 2, lines 25-35, p. 3, lines 16-25, p. 4, lines 1-30, p. 5, lines 1-25. See also Findings of Fact Numbers 82 and 93, and their corresponding footnotes, Footnote Numbers 99 and 119.

¹⁵⁰ See 4 CSR 240-3.570(1)(E).

¹⁵¹ Hearing Exhibit 4, p. 2, lines 25-32, p. 3, lines 16-25, p. 4, lines 1-24.

VCI is making the most minimal commitment to satisfy the “own facilities” requirement for the provision of services. The Commission’s rules offer a cost recovery mechanism for build-out to reach customers making a reasonable request for service, and even offer a mechanism for accounting for the fact that there may be instances where there is no possibility of providing service to given customers.¹⁵² Curiously, at hearing VCI asserted that it believes that AT&T has already extended its network to all customers physically able to receive service in its services area,¹⁵³ which negates its reasons or any need for seeking these waivers – assuming, of course, that it intends to follow through on its commitment to provide service to any customer in AT&T’s service area making a reasonable request for service. Because VCI is attempting to dodge all high-cost requirements for constructing any type of network, and dodge the build-out requirements to extend service to other low-income users within the same service area for which it seeks its designation, the Commission concludes that VCI fails to demonstrate an adequate commitment to provide the supported services to the low-income population in Missouri for which it seeks ETC designation.

The Commission also notes that VCI’s track record with discontinuing service in the states of Washington and Oregon does not bode well for supporting its representations that it is committed to provide service in Missouri. Additionally, VCI was granted a certificate to provide basic local telecommunication and switched exchange access service in Case No. CA-2006-0323. The certificate became effective April 10, 2006. At the time of hearing, April 18, 2007, VCI admitted that it was not providing service in Missouri. Pursuant to Section 392.410.6, Cum Supp. 2005, because VCI had

¹⁵² 4 CSR 240-3.570(3)(C)(3)(C) and (D).

¹⁵³ Transcript p. 109, lines 6-25, p. 110, lines 1-19.

not provided any service, VCI's certificate of service authority became null and void on April 10, 2007. While the provision of these services is not required prior to receiving ETC designation, the fact that VCI did not follow through on its commitment to provide these services prior to its certificate becoming nullified also does not speak well to its commitment to provide services as an ETC.

Commission Rule 4 CSR 240-2.060(4) requires a party requesting a waiver of a Commission rule to provide complete justification setting out good cause for granting the waiver. Good cause "generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law."¹⁵⁴ Similarly, "good cause" has also been judicially defined as a "substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties."¹⁵⁵ Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given "must be real not imaginary, substantial not trifling, and reasonable not whimsical."¹⁵⁶ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.¹⁵⁷

While VCI may have barely satisfied the most liberal reading of the "own facilities" requirement, the Commission finds that VCI has not provided complete justification and has not established good cause to have its request for the rule waivers

¹⁵⁴ *Black's Law Dictionary* 692 (6th ed. 1990).

¹⁵⁵ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective "ordinary person" standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm'n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) ("[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.")

¹⁵⁶ *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

¹⁵⁷ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

granted. Given the specifics of VCI's application, the Commission would require compliance with these rules to ensure VCI's commitment to provide the supported services to its targeted customer population in the service area in which it seeks ETC designation. The Commission denies VCI's request to waive, or find inapplicable, the requirements of Commission Rules 4 CSR 240-3.570(2)(C) and 4 CSR 240-3.570(3)(C)(3).

Public Interest Analysis

Section 214(e)(2) of the Act emphasizes that state commissions hold the primary authority to grant ETC designations upon request so long as the commission finds that such designation is consistent with the public interest, convenience and necessity.¹⁵⁸ In the FCC's March 17, 2005 Order, the FCC set forth its public interest analysis for ETC designations stating that it included "an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering."¹⁵⁹

The FCC added that it encouraged state commissions to require ETC applicants over which they had jurisdiction to meet these same conditions and conduct the same public interest analysis, applying these requirements to applicants in a manner consistent with the principle that universal service support mechanisms and rules be

¹⁵⁸ A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. Section 214(e)(2) of the Act.

¹⁵⁹ FCC's March 17, 2005 Order, ¶ 18.

competitively neutral.¹⁶⁰ The FCC further stated, "[S]ection 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law . . . [and] . . . [f]urthermore, state commissions, as the entities most familiar with the service area for which ETC designation is sought, are particularly well equipped to determine their own ETC eligibility requirements."¹⁶¹

The parties' positions regarding whether VCI's request for ETC designation was in the public interest were outlined in detail in the Commission's findings of fact.¹⁶² The Commission concludes that granting VCI ETC designation is not in the public interest.¹⁶³ VCI has not demonstrated that its offered services would benefit Missouri customers or significantly increase the penetration rate of households with telephone service. VCI has not demonstrated that the impact ETC designation would have on the USF, even if minimal, is offset by any benefit the provision of its service would contribute. VCI has not demonstrated any unique advantages it might provide over its competitor's services. In fact, VCI has not demonstrated that it has a comparable local usage plan to that of the incumbent.

This Commission also does not limit its public interest analysis to the three criteria articulated by the FCC. This Commission weighs heavily any applicant's demonstrated commitment to provide services to customers and any societal benefits

¹⁶⁰ *Id.* at ¶ 19.

¹⁶¹ *Id.* at ¶ 61.

¹⁶² See Findings of Fact Numbers 50-51.

¹⁶³ The Commission notes it found the testimony of AT&T's expert, Mr. Stidham, more credible than VCI's President's testimony on this issue.

the provision of such services may promote within this state. For reasons already stated, VCI has not demonstrated an adequate commitment to providing the USF supported services in Missouri.

Finally, VCI's policy of not pursuing the collection of delinquent bills, or final bills, does not promote a societal benefit of encouraging individual customer responsibility. VCI's policy serves to perpetuate further indebtedness by customers who carry unpaid bills from a both a previous provider and VCI, as opposed to working out agreeable payment plans and/or reconnecting service with the previous provider. It also serves to encourage customers to abandon providers or to jump from provider to provider intentionally leaving their bills unpaid. While this policy may serve VCI's own economic self-interest, not to "throw good money after bad" in terms of collection costs, it creates a situation where VCI can collect USF support while leaving a trail of disconnected and indebted customers in its wake. This policy does little to advance telephone penetration rates in Missouri and serves only to enrich VCI.

Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. After applying the facts, as it has found them, to its conclusions of law, the Commission has reached the following decision.

While it doesn't appear that FCC forbearance would be required for VCI to be granted ETC status to seek only low income support, and while many of the federal

requirements for ETC designation are considered to be discretionary for state commissions, VCI's application fails for a number of reasons. There is not competent and substantial evidence in the record as a whole to support a grant of ETC designation to VCI because: (1) VCI's local usage plan is not comparable to the ILEC's plan; (2) VCI has not demonstrated an adequate commitment to provide the USF supported services to customers in Missouri; and, (3) granting VCI ETC designation has not been demonstrated to be in the public interest.

For the reasons cited herein, the Commission will deny VCI's application to designate it as an eligible telecommunications carrier.¹⁶⁴

IT IS ORDERED THAT:

1. VCI Company is hereby denied designation as an eligible telecommunications carrier to receive federal universal service fund support for all of the exchanges serviced by Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri.
2. This order shall become effective on August 3, 2007.

¹⁶⁴ Because the Commission is denying VCI's application in total, it does not need to specifically rule on its requested waivers in its ordered paragraphs, although the Commission noted that it would not grant those waivers.

3. This case shall be closed on August 4, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', with a stylized, cursive script.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw,
Clayton, and Appling, CC., concur
and certify compliance with the
provisions of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 24th day of July, 2007.