BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Rulemaking to	)	
Amend 4 CSR 240-3.570, Requirements	)	Case No. TX-2008-0007
For Carrier Designation as Eligible	)	
Telecommunications Carriers.	)	

AT&T MISSOURI'S COMMENTS

AT&T Missouri[1] respectfully submits these comments in response to the Commission's proposed amendments to its "annual certification" rules. 32 Mo. Reg. 1910-12 (October 1, 2007). More specifically, the amendments relate to the process governing the Commission's annual certifications to the FCC in connection with the high-cost portion of the federal Universal Service Fund ("FUSF"), and they focus on the underlying annual certifications furnished to the Commission by eligible telecommunications companies ("ETCs") to whom high-cost support has been provided.

AT&T Missouri suggests that limited, but important, modifications be made to the proposed amendments. First, the proposed "annual affidavit" requirement applicable to all ETCs (including competitive ETCs and ILEC ETCs) should be made applicable only to ETCs that actually receive high-cost support, not to ETCs which do not receive such support. (4 CSR 240-3.570(4)(A)1). Second, the proposed "no greater than necessary" requirement that would be applicable to an ETC's investments funded by high-cost support should be withdrawn. The question of what constitutes a reasonable high-cost expenditure is governed by specific federal criteria that are already correctly replicated in the Commission's present rules and which adequately address the propriety of any given expenditure. (4 CSR 240-3.570(4)(B)4; 4 CSR 240-3.570(4)(C)2).

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

Proposed 4 CSR 240-3.570(4)(A)1 -- The proposed "annual affidavit" requirement applicable to all ETCs (including competitive ETCs and ILEC ETCs) should make clear that the affidavit is required only from ETCs that actually receive high-cost support. *See*, 4 CSR 240-3.570(4)(A)1. In its present form, the proposed rule is ambiguous in that it could be read to apply to ETCs which do not receive support.

Federal law states that "[a] carrier *that receives support* shall use that support only for the provision, maintenance and upgrading of facilities and services for which the support is intended."[2] The FCC's "state certification" rules similarly require that states "file an annual certification with the Administrator and the [FCC] stating that all federal high-cost support *provided to such carriers* within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[3] (emphasis added). The Commission's current rules likewise require that ETCs demonstrate that their "receipt" of high-cost support was appropriately used.[4]

AT&T Missouri does not take issue with the Commission's desire to secure comfort from ETCs, by means of an affidavit, that the Commission's own certification to the FCC rests on a firm foundation. However, given the federal law intended to ensure that high-cost funds actually provided to ETCs are appropriately spent, there is no reason to require an affidavit from an ETC, such as AT&T Missouri, which does not receive any high-cost funds. Furthermore, the Commission's own rules should be internally consistent on the point. Finally, as a practical matter, one cannot account for funds it has not been given.

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[2] 47 U.S.C. § 254(e). (emphasis added).

[3] *See*, 47 C.F.R. § 54.313 (regarding state certification of support for non-rural carriers); 47 C.F.R. § 54.314 (regarding state certification of support for rural carriers). (emphasis added).

[4] 4 CSR 240-3.570(4)(C) ("ETCs shall submit a demonstration that the receipt of high-cost support was used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted."). (emphasis added).

Consequently, AT&T Missouri recommends that proposed rule 4 CSR 240-3.570(4)(A)1 should incorporate the phrase "provided to it" in the following manner:

> By August 15 of each year, all ETCs, including ILECs, shall submit an affidavit executed by an officer of the company attesting that federal high-cost support provided to it is used consistent with the commission's rules and the Telecommunications Act of 1996. The affidavit will be accompanied by documentation of support received and costs incurred.

Proposed 4 CSR 240-3.570(4)(B)4 and 4 CSR 240-3.570(4)(C)2 -- The proposed rules, applicable to all ETCs (including ILECs) seeking annual certification would require them to state that investments (both incurred and estimated) "were no greater than necessary to provide consumers in the ETC's service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas." *See*, proposed 4 CSR 240-3.570(4)(B)4; 4 CSR 240-3.570(4)(C)2. These proposed rules should be withdrawn. The question of what constitutes a reasonable high-cost expenditure is governed by specific federal criteria that are already correctly replicated in the Commission's present rules. These criteria adequately address the propriety of any given expenditure.

As noted earlier, Section 254(e) of the federal Act requires that an ETC receiving support must use it only for "the provision, maintenance and upgrading of facilities and services for which the support is intended."[5] This requirement is also established in the Commission's current rules governing both the showing required by applications for designation as an ETC[6] and the showing required of an ETC seeking annual certification.[7] FCC Rule 54.101 and the Commission's current rules also identify each of the services which are supported by the federal

[5] 47 U.S.C. § 254(e). (emphasis added).

[6] 4 CSR 240-3.570(2)(A)2 ("Each request for ETC designation shall include: . . . [a] two (2)-year plan demonstrating, with specificity, that high-cost universal service support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.") (emphasis added).

[7] 4 CSR 240-3.570(4)(C) ("ETCs shall submit a demonstration that the receipt of high-cost support was used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted."). (emphasis added).

universal service fund.[8] These authorities address the extent to which a particular expenditure may be regarded as reasonable.

The reasonableness of expenditures must also be assessed by considering the extent to which the services resulting from the expenditures "are reasonably comparable to those services provided in urban areas." The "reasonably comparable" standard is established by Section 254(b)(3) of the Act[9] and it is also established in the Commission's current rules governing both the showing required by applications for designation as an ETC[10] and the showing required of an ETC seeking annual certification.[11]

The foregoing federal statutes and FCC and Commission rules already provide the proper framework for assessing the reasonableness of expenditures, and the "no greater than necessary" standard is not stated in any of them. Questions regarding the reasonableness of any given expenditure can and should be addressed by considering whether the expenditure is appropriate in light of these existing statutes and rules. Moreover, erecting a "no greater than necessary" standard would place a needless and unwarranted chill on ETCs' otherwise worthwhile high-cost expenditures due to the fear that their expenditures, though appropriate under federal law, might nevertheless be second-guessed under a different, and undefined, standard.

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[8] 47 C.F.R. § 54.101(a); 4 CSR 240-3.570(3)(C)1.

[9] 47 U.S.C. § 254(b)(3) ("The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles: . . (3) Access in rural and high cost areas. Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas . . . .").

[10] 4 CSR 240-3.570(2)(A)2.A.III ("Access in rural and high-cost areas--consumers in all regions of Missouri, including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas[.]"). (emphasis added).

[11] 4 CSR 240-3.570(4)(C)1.C ("Access in rural and high-cost areas--consumers in all regions of Missouri, including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."). (emphasis added).

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on all counsel of record by e-mail on November 1, 2007.


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