

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

In the Matter of Proposed New Rule)	
4 CSR 240-3.570 Regarding Eligible)	
Telecommunications Carrier Designations)	
for Receipt of Federal Universal Service)	Case No. TX-2006-0169
Fund Support)	

COMMENTS OF AT&T MISSOURI

Southwestern Bell Telephone, L. P. d/b/a AT&T Missouri (“AT&T Missouri”) respectfully submits these Comments regarding proposed Rule 3.570 (4 CSR 240-3.570), as published in the Missouri Register on December 1, 2005 (30 Mo. Reg. 2479-2483).

I. SUMMARY OF COMMENTS

The Commission has correctly determined that a rule is needed to “clarify and facilitate the Commission’s determination process” regarding designating eligible telecommunications carriers (“ETCs”) for purposes of receiving federal Universal Service Fund (“USF”) high-cost support.¹ Moreover, in view of the high-cost fund’s alarming growth, the Commission should adopt a rule that replicates the more predictable and rigorous ETC designation process that the FCC has already adopted for ETC applications filed with that agency – as the FCC has urged state commissions to do.

The FCC’s ETC designation process is reflected in its March 2005 ETC Designation Order and resulting Rules 54.202 and 54.209.² AT&T Missouri supports this Commission’s (and

¹ Notice of Finding of Necessity and Opening Case, October 13, 2005, p. 1.

² In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (“ETC Designation Order”); 47 CFR §§ 54.202, 54.209. While the ETC Designation Order became effective June 24, 2005, the effective date of the FCC’s implementing rules was deferred pending approval of the rules’ information collection requirements by the Office of Management and Budget (“OMB”). 70 Fed. Reg. 29960 (May 25, 2005). OMB approval followed on October 14, 2005. 70 Fed. Reg. 66407 (November 2, 2005).

other state commissions') adoption of the FCC's requirements. The FCC has encouraged all state commissions to adopt these requirements, and for good reason. Failing to do so would allow the high-cost fund's burgeoning growth to continue unchecked. This growth must be addressed, because it directly impacts whether the fund can continue to ensure that consumers in rural, insular and high-cost areas will have access to telecommunications services that are comparable to those provided in urban areas, and at comparable prices.³

Consequently, and as explained further below, AT&T Missouri urges the Commission to adopt the FCC's ETC designation requirements as its own, as reflected in the "red-lined" rule that AT&T Missouri submits as Attachment A hereto.⁴

II. BACKGROUND

This rulemaking proceeding presents the Commission with an opportunity to help ensure the long term sustainability of the high-cost fund by adopting a rule that exercises a more rigorous level of scrutiny over ETC applications. It is no secret that the fund's sustainability is a matter of some concern. The FCC has noted the need "to curb growth of the fund due to the increasing number of ETC designations and the increased costs of rural incumbent LECs[.]"⁵ In addition, in comments submitted to the FCC recently, this Commission likewise expressed "concerns about the rapid increase in the size of the fund" and that "as additional carriers receive support from the federal fund, the fund will continue to expand at an alarming rate."⁶ These concerns make it abundantly clear that more exacting scrutiny of ETC applications is needed.

³ 47 U.S.C. Section 254(b)(3).

⁴ The "red-lined" document which is Attachment A reflects AT&T Missouri's suggested edits to the rule as published in the Missouri Register.

⁵ ETC Designation Order, para. 11.

⁶ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of the Public Service Commission of the State of Missouri, September 30, 2005 (in response to the FCC's August 17, 2005, Public Notice) ("Commission's Federal USF Comments"), pp. 11, 15-16.

The FCC's March 2005 ETC Designation Order answers the need for more exacting scrutiny by calling for "a more rigorous ETC designation process" to be applied.⁷ The order provides a detailed framework consisting of specific requirements applicable to requests for ETC designation filed with the FCC. This framework consists of a series of eligibility requirements (Part IV, A of the order), specific public interest criteria (Part IV, B of the order) and annual certification and reporting requirements (Part V of the order). The FCC expressly encouraged states⁸ to adopt its requirements (at the federal level) as recommended "guidelines" in ETC designation cases decided at the state level, so as to ensure that all jurisdictions uniformly employ the same analytical framework: "We encourage state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order."⁹ AT&T Missouri likewise urges the Commission to embrace this call for uniformity, as have other state commissions within the service territories of AT&T Missouri's ILEC affiliates (e.g., Indiana, Michigan).

Adopting the FCC's requirements would also foster several important policies. Specifically, it would "improve the long-term sustainability of the [USF], because, if the guidelines are followed, only fully qualified carriers that are capable of and committed to universal service will be able to receive support."¹⁰ Second, it would "allow for a more predictable ETC designation process."¹¹ Third, it would help "ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported

⁷ ETC Designation Order, para. 2.

⁸ Section 214(e)(2) of the federal Telecommunications Act of 1996 ("the Act") provides state commissions with the primary responsibility for performing ETC designations. ETC Designation Order, para. 8 & n. 2. Section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission. ETC Designation Order, n. 1.

⁹ ETC Designation Order, para. 58.

¹⁰ ETC Designation Order, para. 58.

¹¹ ETC Designation Order, para. 1.

services throughout the designated service area, and able to provide consumers an evolving level of universal service.”¹² The FCC expressly noted that state decisions regarding ETC status “have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund.”¹³ These policies and their national implications are even more important given the Commission’s own concern about the high-cost fund’s alarming growth rate.

Finally, there is no reason to believe that wireless carriers would find the requirements of the ETC Designation Order to be other than fair, reasonable, and well within their reach. During the recent hearing of an ETC designation case, the wireless ETC applicant characterized the ETC Designation Order as “a thoughtful and good-faith attempt to balance the benefits and the burdens and the need for some important regulation of ETCs, and I think the FCC did a reasonable job.”¹⁴ In sum, this Commission’s adoption of the FCC’s requirements would contribute to a rational, comprehensive, national policy to promote the advancement and preservation of universal service.

III. SPECIFIC SUGGESTIONS REGARDING THE PROPOSED RULE

AT&T Missouri offers the following more specific suggestions and comments regarding portions of proposed Rule 3.570 (4 CSR 240-3.570), and its subparts (1) through (33). Edits offered in light of these suggestions and comments are within Attachment A hereto.

¹² ETC Designation Order, para. 60.

¹³ ETC Designation Order, para. 60.

¹⁴ In the matter of the application of USCOC of Greater Missouri, LLC for designation as an eligible telecommunications carrier pursuant to the Telecommunications Act of 1996, Case No. TO-2005-0384, Hearing on the Merits, October 26, 2005, Tr. at 16.

Subpart (1): The Commission should add a definition that would specify the meaning of a “reasonable request for service.” The circumstances under which a customer would receive, or be denied, the benefits of high-cost support should be clearly stated.¹⁵ AT&T Missouri thus recommends adding the below definition which would follow subpart (1)(E):

(F): A reasonable request for service shall refer to a request for service of a type and quantity that is not in excess of service which is normally requested by like customers and is for service at a location within the carrier’s designated service area.

Subpart (2): This subpart begins a series of provisions, concluding with subpart (8), that would address the requirements governing applications for ETC designation. All go to the heart of the requirements shown in Part IV of the FCC’s ETC Designation Order (i.e., paras. 17-67), and FCC Rule 54.202. While the proposed rule’s various subparts incorporate most of the requirements reflected in the FCC’s order and rule, limited but important modifications need to be made to them.

Subpart (2)(B) is devoted to the applicant’s proffered five-year network improvement plan. The obligations presently stated in the proposed rule are appropriate, that is, to demonstrate how high-cost universal service support will be used to improve coverage, service quality or capacity, including a detailed map of coverage before and after improvements. Moreover, they appropriately complement the requirements of proposed subpart (2)(C), which provides that an ETC request shall include “[a] statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support[.]”¹⁶

¹⁵ ETC Designation Order, paras. 21-22.

¹⁶ See also, ETC Designation Order, para. 23 (“The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support.”).

However, these requirements are short of the detailed requirements adopted by the FCC. AT&T Missouri urges the Commission to incorporate into this subpart the specific obligations stated in paragraph 23 of the ETC Designation Order and FCC Rule 54.202(a)(1)(ii).¹⁷ These requirements are fair and reasonable and should not prove problematic for ETC applicants. Indeed, in referring to the five-year plan requirements established by the ETC Designation Order, a representative of a wireless ETC applicant recently testified that the company could prepare a five-year plan in 30 days.¹⁸

Subpart (2)(B) should thus require the following showing in requests for ETC designation:

- . (B) A five (5)-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 high-cost universal service support will be used to improve coverage, service quality or capacity throughout the service area for which the requesting carrier seeks ETC designation (including a detailed map of coverage area before and after improvements, and in the case of CMRS providers, a map identifying existing tower site locations for CMRS cell towers); the specific geographic areas where the improvements will be made; 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; 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.

Subpart (2)(E) is directed to the required showing “of the carrier’s ability to remain functional in emergency situations.” However, the proposed rule should add text

¹⁷ 47 C.F.R. § 54.202(a)(1)(ii).

¹⁸ In the matter of the application of USCOC of Greater Missouri, LLC for designation as an eligible telecommunications carrier pursuant to the Telecommunications Act of 1996, Case No. TO-2005-0384, Hearing on the Merits, October 26, 2005, Tr. 122, 174.

that would expressly require the further detail required by the FCC's ETC Designation Order and rules.¹⁹ Proposed subpart (2)(E) should thus read as follows:

(E) A demonstration of the carrier's ability to remain functional in emergency situations, including a demonstration that the carrier 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; and

A new **subpart (2)(F)** should specifically reference the requirement that an ETC applicant must demonstrate "that the Commission's grant of the request for ETC designation would be consistent with the public interest, convenience and necessity." A public interest requirement applies as a matter of federal law, and the proposed rule should account for it. Moreover, the addition of a public interest requirement provides the Commission with flexibility to address each ETC request on an individual basis, taking changed circumstances into account.

Section 214(e)(2) of the federal Act includes a public interest analysis. It provides that "[u]pon 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, so long as each additional requesting carrier meets the [eligibility] requirements of paragraph (1)." (emphasis added). Moreover, the FCC has reaffirmed that an applicant for ETC designation must demonstrate that granting its request is consistent with the public interest, convenience and necessity regardless of whether the applicant

¹⁹ ETC Designation Order, para. 25; see also, 47 C.F.R. § 54.202(a)(2) (stating that the carrier's application must include a demonstration that the carrier "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").

seeks designation in an area served by a rural or non-rural carrier.²⁰ This Commission has likewise held that “in order to be granted ETC status in the non-rural areas, an [ETC applicant] must also show that the designation will be, ‘consistent with the public interest, convenience and necessity.’”²¹ Consequently, a new subpart (2)(F) should expressly require:

(F) A demonstration that the Commission’s grant of the applicant’s request for ETC designation would be consistent with the public interest, convenience and necessity.

Subpart (7), which relates to the ETC applicant’s “equal access” acknowledgement, should be modified to mirror the correct legal requirement. The proposed rule, as presently drafted, would provide that each ETC designation request “shall include a statement that the requesting carrier acknowledges it shall provide equal access if all other ETCs in that service area relinquish their designations pursuant to section 214(e) of the Telecommunications Act of 1996.” (emphasis added). However, the FCC’s ETC Designation Order provides that “applicants should acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area.”²² The FCC specifically declined to impose a general equal access requirement, determining instead that “we will decide whether to impose any equal access

²⁰ 47 U.S.C. § 214(e)(2), (6); see also, ETC Designation Order, para. 3 (“We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier.”); para. 40 (“Under section 214 of the Act, the commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity.”); para. 42 (“We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.”); para. 61 (“Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.”).

²¹ In the Matter of the Application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TO-2003-0531, Amended Report and Order, November 30, 2004, p. 27.

²² ETC Designation Order, para. 35. (emphasis added).

requirements on a case-by-case basis.”²³ This Commission’s rule should do the same, particularly inasmuch as the Commission’s present rules provide that intraLATA equal access presubscriptions will be conducted as ordered by the Commission and that interLATA equal access presubscription will be conducted as ordered by the FCC. 4 CSR 32.100(3), (4).

Subpart (10)(C) would require all carriers designated as an ETC to “publicize the construction of all new facilities that will expand the service area or enhance services in unserved or underserved areas so that consumers are aware of the improved service in the area.” This provision need merely be clarified to delete the suggestion that an ETC’s “service area” can be expanded, since the service area is defined by the order granting ETC designation. Accounting for this deletion, which would not affect the intent of the passage, would result in the following subpart (10)(C):

(C) All carriers designated as an ETC shall publicize the construction of all new facilities that will expand or enhance services in unserved or underserved areas so that consumers are aware of the improved service in the area.

Subpart (10)(D)(2) has to do with the steps an ETC must take in order to respond to a service request. For purposes of greater clarity and uniformity, subsection (F) should reflect the greater particularity stated in the FCC’s ETC Designation Order and Rule 54.202(a)(1)(i)(B)(6)²⁴ to require that the ETC:

F. Employ, lease or construct an additional cell site, a cell-extender, repeater, or other similar equipment to provide service.

Subpart (24) details the information required to be submitted to the Commission each August 15 by each competitive carrier designated as an ETC. While the proposed

²³ *See id.*

²⁴ ETC Designation Order, para. 22; 47 C.F.R. § 54.202(a)(1)(i)(B)(6).

rule's text draws extensively from the language of the FCC's ETC Designation Order and FCC Rule 54.209,²⁵ still there are some important clarifying details in the order and FCC rule that should be added to the proposed rule. The FCC concluded that its detailed regulations "are reasonable and consistent with the public interest and the Act . . . [and] further the Commission's goal of ensuring that ETCs satisfy their obligation under section 214(e) of the Act to provide supported services throughout their designated service areas."²⁶ Adding the further details utilized by the FCC to this Commission's proposed rule will avoid any dispute as to whether the Commission's annual reporting requirements are co-extensive with those applicable to ETCs designated by the FCC.

Consequently, while proposed **subpart (24)(A)** would merely require that a competitive ETC provide "[p]rogress updates on its five (5)-year improvement plan[.]" additional detail required by the FCC should be added, as follows:

(A) Progress updates on its five-year improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;²⁷

Second, **subpart (24)(B)** would require submission of "[d]etailed information on outages in its network for the past year[.]" AT&T Missouri recommends adding the more particular requirements as stated by the FCC, as follows:

(B) Detailed information on outages in its network for the past year; as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

- (i) At least ten percent of the end users served in a designated service area; or
- (ii) A 911 special facility, as defined in 47 CFR 4.5(e).

²⁵ ETC Designation Order, paras. 68-72; 47 C.F.R. § 54.209(a).

²⁶ ETC Designation Order, para. 70.

²⁷ ETC Designation Order, para. 69; 47 C.F.R. § 54.209(a)(1).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

- (a) The date and time of onset of the outage;
- (b) A brief description of the outage and its resolution;
- (c) The particular services affected;
- (d) The geographic areas affected by the outage;
- (e) Steps taken to prevent a similar situation in the future; and
- (f) The number of customers affected;²⁸

Third, **subpart (24)(C)** would require submission of “[d]etailed information on how many requests for service from potential customers were unfulfilled for the past year[.]” This is useful information, but even more valuable would be the addition of the further information required by the FCC, as follows:

Detailed information on how many requests for service from potential customers were unfulfilled for the past year, and information detailing how it attempted to provide service to those potential customers, as set forth in subsection (10)(D) above;²⁹

Finally, **subpart (24)(F)** specifies each of the matters about which the Commission would require ETCs to certify in an affidavit. In large part, these matters correspond to the FCC’s own certification requirements.³⁰ However, AT&T Missouri recommends that one matter be clarified and that another be added.

The rule as presently drafted would require certification that the ETC “continues to provide equal access.” However, as explained earlier, the FCC has decided not to impose a general equal access requirement, determining instead that “we will decide whether to impose any equal access requirements on a case-by-case basis.”³¹ Consistent with its comments regarding that subpart, AT&T Missouri recommends modifying subpart (24)(F) to require that the ETC acknowledge that it may be required to provide

²⁸ ETC Designation Order, para. 69; 47 C.F.R. § 54.209(a)(2).

²⁹ ETC Designation Order, para. 69; 47 C.F.R. § 54.209(a)(3). The above reference to subsection (10)(D) of the proposed rule has been substituted for the FCC’s like language found at 47 C.F.R. § 54.202(a)(1)(i).

³⁰ ETC Designation Order, para. 69; 47 C.F.R. § 54.209(a)(5),(6) and (7).

³¹ ETC Designation Order, para. 35.

equal access “in the event that no other ETC is providing equal access within the service area.” This is the same certification required to be made annually by FCC-designated ETCs.³²

Competitive ETCs should also certify that all federal high-cost support provided to it have been used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” The quoted language draws verbatim from the portion of Section 254(e) of the Act that speaks to the allowed uses of support. The FCC’s rules also require that states file an annual certification stating that “all federal high-cost support provided to ETCs within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³³ Given the federal statutory obligation, and the certification duty already placed on the states by the FCC, it is appropriate that the ETC make its own certification to the Commission as part of its annual filing.

In sum, after accounting for each of the foregoing suggestions, Subpart (24)(F) should be restated to require the following form of affidavit:

(F)An affidavit signed by an officer of the company certifying that the competitive ETC has used support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, continues to comply with the applicable service quality standards as identified in section (12) above and consumer protection rules as identified in section (6) above, continues to be able to function in emergency situations, continues to offer a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas, and continues to acknowledge that it may be required to provide equal access in the event that no other ETC is providing equal access within the service area.

³² ETC Designation Order, para. 69; 47 C.F.R. § 54.209(a)(8).

³³ 47 C.F.R. § 54.313(a); 47 C.F.R. § 54.314(a).

IV. CONCLUSION

For the foregoing reasons, AT&T Missouri respectfully requests that the Commission consider and incorporate into its proposed rule AT&T Missouri's proposed suggestions and edits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on January 3, 2006.


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