

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

In the Matter of the Application of)	
Assist Wireless, LLC)	
for Designation as an Eligible)	Case No. RA-2011-0384
Telecommunications Carrier in the State of)	
Missouri)	
)	

**RESPONSE OF ASSIST WIRELESS, LLC TO STAFF MOTION FOR
INDEFINITE CONTINUANCE**

COMES NOW Assist Wireless, LLC (“Assist” or “the Company”) and files this Response to the *Staff Motion for Indefinite Continuance* filed in this case on June 7, 2011. Assist opposes the Staff Motion and encourages the Commission to proceed apace with the pending Application of Assist in this matter. Assist further states as follows:

1. Assist Wireless, LLC filed its Application for designation as an Eligible Telecommunications Carrier (ETC) in Missouri on May 27, 2011. Assist seeks ETC designation solely to provide Lifeline and Link Up service to qualifying Missouri customers. It will not seek access to funds from the federal Universal Service Fund (USF) for the purpose of providing service to high-cost areas nor any funds from the Missouri Universal Service Fund. The Company satisfies all of the statutory and regulatory requirements for designation as an ETC in the requested designated service area, and believes and asserts that the public interest would be served by granting this petition.

2. Assist's filing is complete. On June 1, 2011, the Commission issued an *Order Directing Notice and Setting Intervention Deadline* in this case, establishing June 20, 2011 as the intervention deadline in the matter.

3. On June 7, 2011, the Commission Staff filed its *Staff Motion for Indefinite Continuance* in this matter.¹ Staff states that it has been in receipt of "an ever-increasing volume of material concerning assertions of fraud and other illegal activities by some wireless and some wireline ETCs." (*Staff Motion*, page 1, Paragraph 2.) While "Staff has been able to identify certain entities that are known to have engaged in improper activities, at this time it has not been able to conclusively ascertain whether any of these entities is an affiliate of any of the present applicants." (*Id.*)

4. Staff proposes that *all* pending applications for designation as an ETC, by companies that have not been previously designated as ETCs in Missouri, "should be held in abeyance until the Staff can devise an application process that requires potential ETCs to disclose all of its affiliates and contractors, any complaints by any other Commissions, penalty actions or settlements with other Commissions, any State Attorney General, or any federal consumer protection or law enforcement Agency and any other pertinent information." (*Id.*, pages 1-2, Paragraph 3.)

¹ On June 2, 2011, Staff filed a virtually identical *Staff Motion for Indefinite Continuance* in five other pending ETC application cases: TA-2011-0164 (Easy Telephone), TA-2011-0265 (True Wireless), RA-2011-0299 (Global Connection d/b/a Stand Up Wireless), RA-2011-0298 (Assurance Home Phone Services d/b/a Surety Wireless), and RA-2011-0349 (Aegis Telecom d/b/a Off the Hook Telecom).

5. Staff further proposes that the requested “abeyance” should last long enough for it to draft, and for the Commission promulgate, a new rule establishing a new ETC application process. (*Id.*, page 2, Paragraph 3.)

6. While Assist understands and shares Staff’s concerns about fraudulent providers, Staff’s Motion paints with too broad a brush. Assist stands ready and willing to provide, under the protection of the Commission’s rules on confidential information, any and all information Staff desires concerning its affiliations and contracts.

7. To-date, Assist has not received any questions from Staff concerning its affiliates and contractors, complaints in other jurisdictions, or any of the other matters of concern to Staff as outlined in Paragraph 3, on pages 1 and 2, of the *Staff Motion*.

8. Assist submits herewith, as **Exhibit A**, the Affidavit of Byron Young, President of Assist Wireless, LLC, specifically assuring the Commission that Assist has no association or affiliation with any of the companies noted by Staff or in the documents attached as exhibits to the *Staff Motion*.

9. Assist also submits herewith, as **Exhibit B**, a confidential exhibit addressing corporate ownership, officers, affiliates and contracts. Assist would be pleased to provide Staff with any contract Staff wishes to see, under protection of confidentiality.

10. Assist respectfully submits that it would be both unfair and unlawful for the Commission to *de facto* amend its rules, by holding Assist’s pending ETC application in abeyance based on vague concerns about other companies, while

it *considers* amending its rules through the normal and lawful rulemaking process. Assist has presented to the Commission all information required by federal law and the rules of the Missouri Public Service Commission and should be entitled to timely consideration of its application by the Commission. Assist reiterates that it is also providing the Commission herewith additional information specifically designed to address the concerns raised by the *Staff Motion for Indefinite Continuance* and stands ready and willing to answer any questions Staff may have.

11. Assist submits that for the Commission to impose an “indefinite continuance” on a Company such as Assist, that has invested precious resources in undertaking an ETC application in full compliance with existing federal and state law, including existing rules and regulations of the Missouri Public Service Commission, would violate Assist’s constitutional rights to equal protection of the law and due process of law.

12. The existing Missouri PSC rules concerning requirements for designation as an Eligible Telecommunications Carrier (ETC) (*i.e.*, 4 CSR 240-3.570) are comprehensive and thorough. Although they track the federal regulations in many respects, the Missouri rules go beyond what is required by the federal regulations. Many other States have not adopted ETC rules of their own but simply rely on the federal rules. The Missouri Commission, on the other hand, very thoroughly and independently analyzed the Eligible Telecommunications Carrier program and carefully implemented enhanced rules, through a deliberate

and thoughtful process, on both ETC and the Universal Service Fund.² For example, the Missouri PSC rules prohibiting self-certification of applicants for Lifeline and Link-Up ETC services [4 CSR 240-3.570(5)(B) and 4 CSR 240-31.050(3)] already protect both the federal and State Universal Service Funds beyond the requirements of the Federal Communications Commission.³ This Commission should trust in the rules it has carefully put into place to properly screen the companies that apply for ETC designation in Missouri, rather than reacting to alleged problems in other jurisdictions by stifling the development of competitive ETC options in Missouri.

13. Low-income customers, the ones that Lifeline and Link-Up are intended to benefit, stand to be hurt the most by the Commission's grant of Staff's Motion. Again, the Missouri PSC already has a thorough, comprehensive ETC process in place (i.e., 4 CSR 240-3.570). While Staff continues its study of the issues, or alleged issues, and prepares its proposed rulemaking, low-income customers will be losing out on the benefits that the Communications Act of 1934, as amended, specifically provided to them, as well as the benefits that multiple competitors in a free market bring to all consumers.

² See, MoPSC Case No. TX-2006-0169, adopting 4 CSR 240-3.570 after a process which included extensive comments filed by interested parties and two days of rulemaking hearing.

³ The Commission specifically upheld these unique Missouri provisions, against arguments that they conflicted with federal law, in Case No. TA-2009-0327 (Petition of TracFone Wireless for Designation as an ETC, *Order Granting Designation* issued August 26, 2009, effective September 5, 2009, *Order Denying Application for Rehearing* issued and effective September 16, 2009) and in Case No. RA-2009-0375 (Application of Nexus Communications d/b/a for Designation as an ETC, *Order Granting Application* issued August 26, 2009, effective September 5, 2009, *Order Denying Application for Rehearing* issued and effective September 16, 2009).

WHEREFORE, having met the requirements for eligibility for designation as an Eligible Telecommunications Carrier (ETC) in the State of Missouri, Assist Wireless, LLC respectfully requests the Commission to deny the *Staff Motion for Indefinite Continuance* of June 7, 2011 and issue an Order granting the Application filed by Assist in this case designating Assist as an ETC for Lifeline and Link Up services in Missouri.

Respectfully submitted,

/s/ William D. Steinmeier

William D. Steinmeier, MoBar #25689
William D. Steinmeier, P.C.
2031 Tower Drive
P.O. Box 104595
Jefferson City MO 65110-4595
Telephone: 573-659-8672
Facsimile: 573-636-2305
Email: wds@wdspsc.com

COUNSEL FOR ASSIST WIRELESS,
LLC

Dated: June 15, 2011

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the Office of Public Counsel at opcservice@ded.mo.gov and on the General Counsel's office at gencounsel@psc.mo.gov this 15th day of June 2011.

/s/ William D. Steinmeier

William D. Steinmeier

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LIST OF EXHIBITS

- Exhibit A Affidavit of Byron Young, President

- Exhibit B Document Addressing Corporate Ownership, Affiliations, Officers
and Contracts of Assist Wireless, LLC
(designated ***“Highly Confidential” (HC)*** under 4 CSR 240-2.135)