BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In The Matter of a Repository Case in Which to Gather Information About the Lifeline Program and Evaluate the Purposes and Goals of the Missouri Universal Service Fund	))))))	File No. TW-2014-0012

RESPONSE OF SOCKET TELECOM, LLC TO INVITATION TO COMMENT

COMES NOW Socket Telecom, LLC ("Socket") and submits the following responses to the *Invitation to Comment About the Possible Creation of a Missouri Universal Service High Cost Fund,* issued by the Commission in this docket on January 15, 2014.

In its *Invitation*, the Commission stated that "[a]ny telecommunications company or member of the public that wishes to be heard on this subject may answer any or all of the following questions." Socket respectfully responds to the Commission as follows:

1. **Does Missouri need a state high-cost fund? If yes, please try to address the following questions in your response:**
   - **a. Why is the federal high-cost program insufficient?**
   - **b. How much state funding is needed?**
   - **c. What consequences, if any, are anticipated if the Missouri Commission fails to establish a high-cost fund?**

Missouri does not need a high cost fund. It has not been demonstrated that any carrier needs a high cost fund or that universal service is no longer available or even in jeopardy in Missouri. The fact that no state high-cost fund exists, and that existing provisions in Missouri rules concerning a state high-cost fund have been rescinded[1] are clear indications that the goals of universal service are being met without a state high-cost fund. Additionally, low income support is available for both landline and wireless services.

The statutory intent of the MO USF is to "ensure just, reasonable, and affordable rates for reasonably comparable essential local telecommunications services throughout the state.[2]"

[1] MoPSC File No. TX-2013-0324 (MoUSF and ETC rulemaking).
[2] See Section 392.248.1

Rather than do this through a regulated subsidy mechanism that provides payments to service providers such as a state high cost fund, Missouri has gone in the opposite direction in recent years. At the urging of the incumbent local exchange carriers, the Missouri General Assembly has largely deregulated the telecommunications industry in the state of Missouri. For example, incumbent carrier's retail rates are no longer capped due to price-caps or set based upon audits and earnings reviews. Instead, incumbent local exchange carriers are permitted to set their own retail rates just like competitive local exchange carriers. At the service level, quality of service requirements are also no longer applied to either incumbents or competitors.

Going beyond this deregulation, legislation was passed last year that exempts regulated telecommunications carriers from almost all retail-related regulatory statutes, including carrier of last resort obligations, unless the carrier chooses otherwise and identifies the statutes it elects to be regulated under.[3] This is the broadest deregulation in the nation to Socket's knowledge. Creating a regulated subsidy mechanism such as a state high cost fund that pays service providers at this time is completely inconsistent with these deregulatory trends in Missouri.

As a result of deregulation in Missouri, the Commission has little, if any, oversight into the retail telecommunications services provided by local exchange carriers. Because of this deregulation, the Commission has no authority to ensure any long term benefits from any revenue disbursed through a high cost fund.

At the same time as local services have been deregulated, local exchange carriers or their affiliates are providing an increasingly broad array of additional services over their traditional telecommunications local loop facilities. These services include long distance, broadband, video services, home monitoring, and security services just to name a few. All these services create new revenue streams that support the local exchange carriers and their underlying facilities.

With the broad deregulation of telecommunications rates and services as well as additional revenue sources from new services to support local exchange carriers, Missouri does not need a high cost fund. As Socket does not believe Missouri needs a high cost fund at this time, Socket does not believe there will be any negative consequences if one is not established at this time.

2. What issues need to be addressed by the Missouri Commission in order to establish a high-cost fund?

The first issue that needs to be addressed is the lack of need for a high cost fund.

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[3] While this legislation has been challenged in the courts on technical grounds, new replacement bills are moving on a fast track in the current Legislative session.

Any carrier seeking high cost support must be required to present the Commission with substantial justification for such an alleged need, including analysis of both costs and available revenues. Compelling evidentiary support, subject to a full evidentiary hearing, should be required by the Commission before considering establishing and funding a Missouri high-cost fund.

Prior to creating a high cost fund to subsidize carriers, expanding low income support must also be shown to be an insufficient solution to offset increasing rates to meet high costs. In addition, the availability of wireless services must also be considered prior to deciding to subsidize a carrier to provide essential local services to an area.

Once the Commission identifies an area as a high cost area, high cost support should be available to any carrier serving customers in that area. Any carrier receiving such support should be required to make a long-term commitment to providing essential services.

3. What service(s) should be supported?

By statute, the MO USF is limited to supporting "essential local telecommunication services" as that may be defined by the Commission[4]. The Commission just updated its universal service definitions in Case No. TX-2013-0324 and there is no reason to consider any additional change to the definition of essential local service found in 4 CSR 240-31.010(6).

While some carriers may suggest establishing a high cost fund to support constructing broadband networks or supporting broadband services, that was never the statutory intent of the Missouri Universal Service Fund and its high cost support mechanism. Using the MO USF to support broadband services and networks goes well beyond the intent of the fund and the Commission's authority in administering the fund.

If there is going to be a fund to support broadband services, such a fund needs to be supported by all broadband users rather than only by customers of voice providers that are regulated by the Commission. There is no valid policy argument for requiring intrastate voice customers to subsidize broadband services or networks nor is such a funding mechanism economically efficient as it requires customers of one type of service to subsidize customers of another type of service. Users of intrastate voice services may not even have a device that uses a broadband network. Ultimately, the cost of the high cost fund is going to get passed down to the end-users via the MO USF surcharges assessed by telecommunications carriers. The establishment of a high cost fund is likely to be counter-productive to the goal of universal voice service as its establishment is only going to lead to increases in intrastate landline phone bills through increases in the MO USF assessments. As phone bills increase, consumers are going

[4] See Section 392.248.1

to be more likely to cancel their landlines. This will force recipients of high cost support to seek more even more support as their revenues decline. Such a cycle is not sustainable.

At the provider level, recipients of high support from the MO USF are limited to carriers of last resort for essential local telecommunications service by statute[5]. If a fund is created to support broadband services or construct broadband networks, there is no valid policy argument to require a high cost fund recipient to be a carrier of last resort for voice services. If the MO USF is going to be transformed into a subsidy mechanism for broadband services, significant statutory changes need to be made. At a minimum, these changes include removing the requirement to be a carrier of last resort for essential local voice services, changing the funding mechanism to assess broadband providers rather than regulated intrastate voice providers, and requiring a long-term commitment from fund recipients.

4. **What type(s) of providers should be able to receive high-cost support?** *(Should funding be limited to landline providers? Does a provider need to somehow own facilities? If so what type of facilities? Should wireless or broadband providers be able to draw support?)*

Missouri does not need a high cost fund. However, if Missouri does implement a high cost fund, the only carriers that should be eligible to receive high cost support should be carriers that the Commission has the authority to regulate. That would currently limit recipients to local exchange carriers and interexchange carriers. This is necessary so that the Commission can ensure that the high cost funds are truly invested in facilities in areas determined to be high cost in Missouri. Socket does believe as a matter of fairness, carriers that are required to pay into the MO USF should also be able to receive funding from the MO USF.

In the event Missouri does establish a high cost fund, carriers should not be required to completely own their facilities in order to receive high cost funds. For example, if a carrier is leasing unbundled network elements to serve customers in a high cost area, that carrier should be able to receive high cost support. That is consistent with the current statute which only requires a carrier to offer essential local telecommunications services using its own facilities, in whole or in part to receive high cost support[6].

5. **How should high-cost fund disbursements be determined?** *(For example, how will it be determined if an area or provider needs high-cost support and if so, how much?)*

Any carrier seeking funding for serving a high-cost area must be required to present the Commission with substantial cost and revenue analysis demonstrating such an alleged need. Compelling evidentiary support, subject to a full evidentiary hearing, should be required by the Commission before considering establishing and funding such a request. Such a request must

[5] See Section 392.248.4(1)a.
[6] See Section 392.248.4(1)a.

consider a reasonable benchmark rate as well as consider all revenue sources available to the local exchange carrier making the request. Available revenue sources should include all revenues that use the facilities of the local exchange carrier, including revenues of its affiliates. Carriers should not be permitted to include the full cost of the loop facilities and other network expenses into cost studies but take the position that certain revenues that use those facilities are unregulated and cannot be included when analyzing the need for support.

In addition, high cost support should not be available where unsubsidized competitors are currently providing the same services. When the government provides a subsidy to one company that is participating in even a marginally-competitive market, it distorts the overall competitive marketplace to the ultimate detriment of all consumers. The creation of a state HCF with explicit subsidies for only certain companies would place actual and potential competitors that do not receive these same subsidies at a market disadvantage. Any non-subsidized competitor will be more reluctant to attempt to compete with a carrier whose basic costs of service are being subsidized and whose end-user rates are artificially depressed by the availability of state high cost funding. This will ultimately deny customers the benefits of competitive entry.

In the event a competitive carrier enters an area where high cost support is available, any high cost support funding must be portable between carriers so that any carrier serving customers in an area that is determined to be high cost is eligible to receive high cost support. No carrier or class of carriers such as incumbent local exchange carriers should be given preferential treatment or given the first opportunity to receive high cost funding.

6. What state(s), if any, have a state high-cost fund that Missouri should strive to mirror?

Socket does not take a position on this question at this time.

7. Should an attempt be made to limit the size of the fund? *(For instance should the fund's total annual disbursement amount be capped? Should the fund have a sunset provision or phase-out provision?)*

Socket does not believe Missouri needs a high cost fund at this time. If the Commission does implement a fund, every effort should be taken to minimize the size of the fund to only the size necessary to support essential local services as that is currently defined and only in truly high cost areas where funding is absolutely necessary.

Socket would also suggest having the fund sunset in three or fewer years. Given rapid technological advances in the telecommunications market, which will continue to provide even more competitive alternatives to Missouri customers, a sunset provision is appropriate. These technological advances may very well obviate any perceived, continuing need for a state HCF. The current five year review period set forth in the statutes is too long given the rapid technological changes of the industry.

8. What accountability requirements, if any, should be established to ensure a company is appropriately using state high-cost support?

Missouri does not need a high cost fund. However, if Missouri does start a high cost fund, recipients should be regulated to ensure that they invest the high cost fund receipts into the high cost area and provide service for a long time period. This should include regular audits to ensure that recipients are held accountable for the use of the funds and that the receipt of ongoing funds is truly necessary.

In addition, the Commission should establish quality of service standards that address performance and installation requirements for recipients. It is important that the installation requirements take into account the difference between the length of time it will take to install retail service if the carrier has to install a drop or other facilities to serve the customer as opposed to the length of time it will take to turn up retail service if the carrier already has facilities to the customer's location. For example, if the construction of drop facilities is required, the installation will take longer and therefore, the installation requirements should reflect that. A carrier that is overbuilding with new facilities should not be penalized for needing additional installation time to construct new facilities as compared to incumbent that already possesses a ubiquitous network.

9. Is there a need to revise how the Missouri USF is funded to accommodate a high cost fund?

a. Should the base of services assessed to support the MoUSF be expanded?
b. What exemptions should exist (e.g. Lifeline, Wholesale)?
c. Should the MoUSF assessment be based on revenues or the services (connections) provided, or some other measure?

As a policy matter and based on fairness and competitive neutrality, all companies participating in Missouri's competitive voice communications markets should contribute to a state HCF, if one were established. This would include wireline, wireless, cable, VoIP, and satellite providers. There is no valid public policy reason to exempt certain types of providers while burdening legally regulated providers. Requiring contributions from all market competitors would minimize the inherent regulatory distortion of the competitive marketplace caused by a state HCF by not favoring one particular technology over another and by ensuring the broadest possible funding source for the fund. The Commission (and Missouri Universal Service Board) should avoid favoring one technology over another or imposing discriminatory regulatory burdens on one class of providers, but not another. Changing to this funding mechanism would require a statutory change.

Wholesale revenues should not be assessed MO USF and it should remain assessed on retail revenues only.

10. What revisions, if any, are needed to Missouri statutes if the Missouri Commission intends to implement a high-cost fund?

Socket does not believe Missouri needs a high cost fund to support essential local services at this time and therefore does not believe any revisions Missouri statutes are necessary other than possibly removing the provisions related to the high cost fund. Before the Commission proceeds with establishing a high cost fund to support broadband services or broadband networks, the Legislature would need to revise the statutes.

11. Is there anything else you would like to tell the Missouri Public Service Commission about implementation of a high-cost fund?

Not at this time.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 14th day of February, 2014, by email transmission.

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