

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

In the Matter of Staff’s Review of the Commission’s Chapter 31 Rules	) ) ) )	File No. TW-2017-0078
In the Matter of Staff’s Review of the Commission’s Chapter 28 Rules	) )	File No. TW-2018-0098

**AT&T COMMENTS ON PROPOSED RULEMAKINGS**

AT&T<sup>1</sup> supports the Commission’s effort, pursuant to the governor’s Executive Order 17-03, to make its rules more efficient and effective.

However, expanding the existing state Lifeline program to broadband and creating a new high cost program within the current Missouri Universal Service Fund (“USF”) raise significant policy matters that greatly exceed the scope of the governor’s mandate and exceed the Commission’s authority under current law.

Further, state specific ETC requirements beyond those imposed by the FCC could have a negative impact on companies’ willingness to bid in the upcoming CAF and Mobility Fund auctions, thus potentially limiting the deployment of broadband in Missouri.

While AT&T has not been able to fully study Staff’s proposal, AT&T can offer the following high level views and suggestions at this time:

- AT&T understands and appreciates the need to bring broadband to truly unserved areas and would not necessarily be opposed to the State creating a carefully targeted and designed program - - separate from the current USF and Lifeline programs - - to address identified needs.
- But care needs to be taken in establishing such a program to ensure that it is properly targeted in the most efficient and effective way possible, to ensure that

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<sup>1</sup> Southwestern Bell Telephone Company, d/b/a AT&T Missouri, and its affiliates will be referred to herein as “AT&T.”

the program results in connecting the maximum number of unconnected locations for the least cost to the program. Specifically, any such program should be designed to:

- Target unserved areas that do not have any fixed internet access service at speeds of 10 Mbps download/1 Mbps upload and does not result in merely overbuilding existing private sector providers;
  - Be competitively and technologically neutral;
  - Not result in duplication of other broadband availability support mechanisms, like the federal Connect America Fund (“CAF”), but rather to complement those programs; and
  - Distribute funding using a reverse auction process, awarding support to no more than one recipient per eligible area on the basis of least cost to the program per location.
- And given the widespread benefits broadband brings to society, all sectors of today’s information economy, and government, funding should come from state general revenues, rather than drawing on the limited funds raised from assessments on the shrinking group of landline voice customers.

Given the quick turnaround requested for comments,<sup>2</sup> AT&T respectfully submits the following more detailed comments:

1. The Commission Should Refrain from Expanding the Lifeline Program to Include Broadband. In addition to exceeding the scope of the governor’s mandate under Executive Order 17-03, the Commission should decline the suggestion to expand the state Lifeline program to include broadband because:

- The Commission can only act within its statutory jurisdiction. The proposal to expand the Missouri USF to support a broadband only service within the state Lifeline and Disabled programs (by expanding the definition of “essential local telecommunications service” to include broadband) exceeds the Commission’s current statutory jurisdiction. Section 392.611.1(1) RSMo. currently limits USF support to “local voice service,” and nothing else:

Telecommunications companies shall:

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<sup>2</sup> MoPSC Staff Request for Comments, File No. TW-2017-0078, and Staff Motion to Open New Docket and Request for Comments, File No. TW-2018-0098, both filed its October 17, 2017, request comments by October 23, 2017. AT&T has endeavored to provide a quick reaction to Staff’s proposed rule changes, but reserves the right to provide further comments in these working dockets and in any future formal rulemaking proceedings.

. . . Collect from their end users the universal service fund surcharge in the same competitively neutral manner as other telecommunications companies and interconnected voice over internet protocol service providers, remit such collected surcharge to the universal service fund administrator, and receive, as appropriate, funds disbursed from the universal service fund, which may be used to support the provision of local voice service; (emphasis added)

And Missouri law makes clear that broadband is *not* a regulated telecommunications service. Section 392.611.2 RSMo. states:

Broadband and other internet protocol-enabled services shall not be subject to regulation under chapter 386 or this chapter [Chapter 392, the telecommunications chapter], except that interconnected voice over internet protocol service shall continue to be subject to section 392.550.

To the extent the State wishes to establish a program to bring broadband to truly unserved areas, any such program would need to be fully explored in the legislative process. Issues that need to be considered at the legislative level include the appropriateness of state support for an interstate information service.

- The Proposed Expansion Could Financially Impair the Existing State Lifeline Program. Expanding of the Lifeline and Disabled programs to include broadband as an additional supported service could result in undue and increased financial pressures on the fund because of the mismatch between contributing services (i.e., services subject to USF assessments) and supported services (i.e., services receiving subsidies). Currently, assessments fall solely on the state’s diminishing customer base of wireline voice services, the only services for which state law authorizes support. And the FCC has preemptively barred states from imposing any USF contribution requirement on broadband. In its *Open Internet Order*, the FCC stated:

[We] conclude that the imposition of state-level contributions on broadband providers that do not presently contribute would be inconsistent with our decision at the present time to forbear from mandatory federal USF contributions, and therefore, we preempt any state from imposing any new state USF contributions on broadband – at least until the [FCC] rules on whether to provide for such contributions. . . . We . . . are not aware of any current state assessment of broadband providers for state universal service funds.<sup>3</sup>

- Creation of a High Cost Program is premature. Given the considerable amounts of funding the CAF program is directing to Missouri (much of which is still unknown), and the significant improvement to the number of locations unconnected by

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<sup>3</sup>Report & Order on Remand, Declaratory Ruling, and Order, *In the Matter of Protecting & Promoting the Open Internet*, FCC 15-24, ¶ 432, ¶ 432 n.1282 (released Mar. 12, 2015) (the “*Open Internet Order*”). The D.C. Circuit has upheld this order, and several parties have filed a petition for en banc review.

broadband that will get access to broadband as a result, any need for a high cost program cannot yet be determined. Rate of return (“RoR”) and price cap carriers in Missouri currently receive more than \$151M per year in federal CAF support and must make broadband internet access service available to more than 200,000 locations in the state, at speeds identified by the FCC, pursuant to the CAF requirements:

- RoR carriers who voluntarily accepted model-based CAF support are receiving more than \$21M/year in CAF support, or more than \$215M over the 10-year funding period. In total, this program will support more than 21,000 locations in rate of return areas; RoR carriers receiving this support are required to make 25/3 (i.e., 25 Mbps download and 3 Mbps upload) broadband available to more than 6,700 locations in Missouri; 10/1 broadband to more than 7,600 Missouri; and 4/1 broadband to more than 1,900 Missouri locations. They are also required to make 4/1 broadband available to more than 5,400 additional locations upon reasonable request.
- RoR carriers who voluntarily declined model-based support, or who were ineligible for model-based support, receive federal USF high-cost support from the CAF BLS (Broadband Loop Support) mechanism and other legacy mechanisms. In 2016, it appears from USAC support distribution databases that these Missouri RoR carriers received more than \$36M in CAF BLS and related legacy high-cost support. RoR carriers who have less than 80% deployment of 10/1 internet access service must utilize specified percentages of their 5-year forecasted CAF BLS support to deploy 10/1 or faster broadband service in areas where it is lacking, over a 5-year period.
- Certain price cap carriers serving Missouri (CenturyLink, Fairpoint, and Windstream) accepted more than \$93M in CAF Phase II model-based support for Missouri, requiring that they deploy 10/1 internet access to more than 189,000 locations in the state. Their CAF II model-based support will total more than \$562M over the 6-year funding period. Each may also voluntarily accept an optional 7th year of funding. If they do so, their CAF II support will total more than \$656M over 7 years.

The impact these carriers’ efforts will have on broadband availability in Missouri pursuant to the FCC’s CAF program are significant and need to be taken into account before any state high cost program is established. Safeguards must be put in place to avoid the use of scarce public funds being used merely to overbuild the efforts of the private sector providers or duplicate CAF support.

- Care Must be Taken in Designing a State Broadband Program. If a need for state broadband support remains after federal CAF funding, the most effective and efficient

program should be established by the legislature that: ensures that only areas unserved by 10/1 broadband are targeted; does not provide support for areas already receiving federal USF high cost support; provides support to any technology that can deliver the service requirements that funding recipients must meet; is funded via the most appropriate mechanism; and is distributed via a competitively neutral reverse auction in order to maximize the number of unserved locations that get service as a result of the program at the lowest cost to the program per location. Government entities should only be permitted to participate in the reverse auction, if at all, after private sector bidding has concluded, and then only for funding in areas for which no private sector bid was received.

- Participation Should be Voluntary. Participation in any state Lifeline program, including a Lifeline broadband program, like that established under the federal Lifeline program, should be voluntary (i.e., not impose mandatory obligations to offer state Lifeline discounts on internet access services on any provider who does not voluntarily opt to participate in the state program).
2. Comments on Other Proposed Rules. With regard to the other proposed rule changes,

AT&T notes the following, but reserves the right to provide additional comments upon further review:

- Suggested Clarification to ETC Applicant Criteria. Proposed Section 4 CSR 240-31.070(2)(B)(4) requires an ETC applicant to provide:

. . . the details of any matter brought in the last ten (10) years by any state or federal regulatory or law enforcement agency against any of the individuals, entities, managers, officers, directors, of other companies sharing common ownership or management with the applicant involving fraud, deceit, perjury, stealing, or the omission or misstatement of material fact in connection with a commercial transaction; (emphasis added)

As worded, the proposed criteria appears to inadvertently overlook the applicant itself, but yet is overly broad in that it would require an applicant to perform criminal background checks of all managers, including low-level managers, of any affiliated company. Instead, AT&T suggests wording this criteria similarly to the current rule in order to capture conduct of the applicant and any individuals that would have the ability to exert control:

. . . the details of any matter brought in the last ten (10) years by any state or federal regulatory or law enforcement agency against the applicant, any person or entity that holds more than a ten percent (10%) ownership interest in the applicant, any affiliated company (any company under common management

ownership or control, or that, by contract or other agreement performs any of the functions necessary to the applicant's Lifeline Service) involving fraud . . .  
(underline represents suggested language from existing rule)

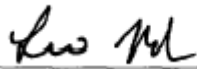
- 4 CSR 240-31.010(5) proposed definition of “essential local telecommunications service” - Notwithstanding AT&T's opposition to the expansion of this definition (see above), AT&T recommends that Staff consider inserting the words “and from” before the words “the public switched network” to make clear that one way (non-interconnected VoIP) would not be eligible for Lifeline or high-cost support.
  
- 4 CSR 240-31.060 ETC requirements – This section of the proposed rules imposes requirements beyond those established by the FCC. Given the need for uniform national rules, AT&T believes that states should not impose additional requirements on ETCs beyond those established by the FCC because the ETC designation is needed for purposes of participation in the *federal* high-cost and/or Lifeline universal service programs administered by the FCC. State specific requirements beyond those imposed by the FCC could have a negative impact on companies' willingness to bid in the upcoming CAF and Mobility Fund auctions, thus potentially limiting the deployment of broadband in Missouri. In addition, AT&T would note:
  - Subsection (3)(A) – since earlier this year, the FCC no longer requires ETCs to file their annual Form 481s with the state commission. Eliminating this requirement would help lessen administrative burdens.
  - Subsection (3)(B) – Once implementation of the Lifeline National Eligibility Verifier is mandatory in a state, use of USAC's uniform national enrollment forms will be mandatory in the state. The state specific form should therefore not be required once the Verifier has been implemented in Missouri.
  - Subsection (3)(C) – The requirements contained in this subsection will also be subject to the Verifier once implemented in the state. At that time, no ETCs will be making eligibility determinations/annual eligibility recertifications for consumers in Missouri. Since the Verifier will be solely responsible for these obligations, the officer certifications in the proposed rules will no longer be necessary.
  - Since 4 CSR 240-31.070 contains the same requirements noted above with respect to ETC applications, AT&T's comments concerning 4 CSR 240-31.060 apply to 4 CSR 240-31.070 as well.
  
- 4 CSR 240 Chapters 28 and 37 Streamlining - AT&T agrees that it is appropriate to eliminate outdated rules and those that duplicate state or federal statutes or federal rules. As Staff recognizes, current statutes and federal rules speak for themselves and duplicating them in the Commissions' rules results in unneeded clutter. AT&T, however, would recommend adding provisions that would:

- Provide a process for seeking extensions of time to file Commission reports. The existing process in 4 CSR 240-28.040(2)(B) works well and should be retained.
- Provide a process for seeking confidential treatment of company data filed in Commission reports. The existing process works well and should be retained.

AT&T commends and appreciates Staff's work in greatly streamlining the Commission's telecommunications rules and AT&T will continue to work with the Commission and other stakeholders as this effort continues.

Respectfully submitted,

Southwestern Bell Telephone Company  
d/b/a AT&T Missouri

BY  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

Copies of this document and all attachments were served on the following by e-mail on October 23, 2017.



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