

**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

**COMMENTS OF THE STCG ON PROPOSED LIFELINE RULE REVISIONS  
AND STAFF’S QUESTION WHETHER THE MOUSF CAN SUPPORT  
BROADBAND-ONLY SERVICE**

The Small Telephone Company Group (“STCG”)<sup>1</sup> offers the following comments on the proposed Lifeline Rule revisions of Staff, CenturyLink and AT&T Missouri, as well as Staff’s question whether the Missouri Universal Service Fund (“MoUSF”) can support Broadband-only service:

**Introduction and General Comments on Draft Rule Revisions**

All of the members of the STCG are small Incumbent Local Exchange Carriers (“ILECs”) providing telecommunications services in rural areas of the State of Missouri. All of the STCG members have been designated as Eligible Telecommunications Carriers (“ETCs”) for purposes of participating in both Federal and State Universal Service Funds and, as is relevant to this proceeding, provide Federal and State Lifeline and State Disabled service to qualifying customers.

Representatives of the STCG participated in the informal workshop convened by the Staff earlier this year and provided suggested additions to Staff’s proposed rule revisions. The STCG members support Staff’s efforts to revise the Missouri Commission’s Lifeline rules (i.e., 4 CSR 240-31) to bring those rules into alignment with recent changes to the Federal Lifeline Program.

Some of the more significant changes to the Federal Lifeline Program include:

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<sup>1</sup> Members of the STCG are listed on Appendix A attached hereto.

- 1) Changes in the criteria for eligibility to participate in the program;
- 2) Creation of a National Lifeline Verifier;
- 3) Changes in the way annual recertifications shall be conducted;
- 4) Expansion of the program to cover standalone Broadband service; and
- 5) Creation of a Lifeline Broadband Provider Designation.

While the STCG is generally supportive of Staff's proposed revisions to the Missouri Commission's Lifeline rules, there is a significant issue that should also be addressed in the revised rules proposed by Staff. None of the drafts to date submitted by Staff, CenturyLink, and AT&T Missouri propose to follow the FCC's lead and expand the Missouri Lifeline (and Disabled) Program to cover standalone Broadband service. The STCG believes it is imperative to expand the Missouri Lifeline and Disabled Programs to cover standalone Broadband, as standalone Broadband service has already begun to replace voice service. Standalone Broadband is becoming an important communications service for all customers, including Lifeline and Disabled customers.

In the past, it was not economically viable for STCG members to offer standalone Broadband given the way in which the FCC's cost allocation process and High-Cost Universal Service funding was administered. Now that the FCC has decided to permit Universal Service High-Cost funding for standalone Broadband service in its Lifeline Reform Order,<sup>2</sup> the STCG anticipates its customers will be able to afford, and thus demand, this service. Accordingly, the STCG believes that now is the appropriate time for the Missouri Commission to revise its Lifeline and Disabled rules to expand its definition of Essential Local Telecommunications

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<sup>2</sup> In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, released April 27, 2016.

Service and allow for a discount on standalone Broadband service provided to qualifying Lifeline and Disabled customers.

### **Other Comments on the Draft Rule Revisions**

#### **Staff's Draft Rule Revisions.**

As previously indicated, the STCG agrees with most of the proposed rule revisions contained in Staff's draft. In addition to adding Broadband-only service as a supported service under the Missouri Lifeline and Disabled Programs, the STCG would also suggest that Staff's definition of "Income" (4 CSR 240-31.010(11)) simply reference the Federal rule and not recite the language of the Federal rule. In this regard, the STCG would recommend the definition of "Income" as proposed in the CenturyLink draft.

Also, Staff's draft proposes to revise the MoUSF Lifeline and Disabled funding amount by striking the dollar amount and providing that the amount will be determined by the MoUSF Board. (4 CSR 240-31.120(1)(B)2 and (C)2) The STCG questions whether the MoUSF Board has the authority to determine the amount of the discount for the Lifeline and Disabled customers. It would appear that §392.248.4(2), RSMo., authorizes the Commission to establish the amount of Lifeline and Disabled discounts. Accordingly, the STCG would recommend that the proposed rule revisions state that the MoUSF Lifeline funding will be determined by the Commission. AT&T's draft at 4 CSR 240-31.120(1)(B)2 is a good example of what the STCG believes is more appropriate wording in this regard.

Finally, the Staff's proposed revision regarding Annual Recertification (4 CSR 240-31.120(2)(C)) proposes to mirror the new Federal rule by reciting the correct language. However, the Federal rule is currently subject to request(s) for reconsideration and may change. Accordingly, the STCG would propose that the ETCs' obligation to annually recertify MoUSF

Lifeline Program participants simply reference the Federal rule, so that if the Federal rule changes, the Missouri rule will automatically change with it. In this regard, the STCG supports the proposed language contained in CenturyLink's draft.

CenturyLink's Draft Rule Revisions.

The STCG has no further comment regarding the CenturyLink draft, other than to note that it fails to include Broadband-only service as a supported service under the MoUSF Lifeline and Disabled Program.

AT&T Draft Rule Revisions.

There are a number of instances in AT&T's proposed draft rule where AT&T proposes to limit the Missouri USF Lifeline and Disabled Programs to voice-service only and thus specifically exclude Broadband-only service. As previously noted, the STCG strongly opposes these proposed revisions.

Further, AT&T's proposal to exempt "Broadband service under the Connect America Fund programs" from certain ETC requirements in Rule 4 CSR 240-31.130(2) needs further discussion, as many of the requirements highlighted deal with the provision of "voice telephony service" which, given the FCC's definition, does not include Broadband Internet Access Service, as that is a separately defined term by the FCC. More importantly, if AT&T's intention is to specifically exclude Broadband Internet Access Service from the MoUSF Lifeline and Disabled Programs, then the STCG is opposed to these proposed rule revisions.

AT&T has also proposed a revision to 4 CSR 240-31.030(1) that purports to add limitations on the MoUSF Administrator. The STCG is not opposed to AT&T's proposed language that would prohibit the Administrator's use of any proprietary information it obtains in its capacity as the Administrator for any purpose other than to administer the MoUSF. However,

the STCG does not understand the need for AT&T's additional limitation which proposes that the Administrator shall not provide consulting services to any provider of any Lifeline and/or Disabled services. It seems that the existing prohibition on the Administrator from having any financial interest in a telecommunications company, IVoIP company, wireless carrier or any other provider of voice telephony service would be sufficient to cover the situation AT&T attempts to address.

### **Whether the MoUSF Can Support Broadband-Only Service**

The Missouri Commission has the authority to revise its rules – in particular the definition of Essential Local Telecommunications Service – to cover Broadband-only service, and no further authorization or legislation is needed. Furthermore, concerns of some stakeholders that the Missouri Commission may use the expansion of its Lifeline and Disabled Programs to cover Broadband-only service to regulate (directly or indirectly) Broadband service are ill-founded.

Before beginning a discussion of the Missouri Commission's authority, it is instructive to review the FCC's recent decision extending Federal Lifeline assistance to standalone Broadband service. In its Lifeline Reform Order (the "Order")<sup>3</sup>, the FCC observed that,

“Much like telephone service a generation ago, broadband has evolved into the essential communications medium of the digital economy, continuing to transform the landscape of America even more rapidly and pervasively than earlier infrastructure networks. . . . Access to broadband shortens the distance to high-quality education, meaningful employment, and reliable healthcare. It is now the dominant technology used to communicate, educate, inform and entertain.” (footnote omitted).<sup>4</sup>

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<sup>3</sup> In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, released April 27, 2016.

<sup>4</sup> Id. at ¶12

“Like telephone service in the last century, a broadband connection has become an essential tool for participating in the 21<sup>st</sup> Century economy.”<sup>5</sup>

...

Based upon the record before it, the FCC found that there is ample evidence to conclude that circumstances have evolved where Broadband Internet Access Service (BIAS) should be included as an element of Universal Service pursuant to Section 254(c) and made available to Lifeline participants.<sup>6</sup> In fact, the FCC found that BIAS was such an important element of Universal Service that it also began a transition period to phase out the Lifeline discount for voice-only offerings (except in Census Blocks with only one Lifeline provider).<sup>7</sup>

The STCG believes that the FCC’s rationale for including BIAS in its Lifeline-supported services is equally applicable for Lifeline service in Missouri and will further the goals of the Missouri Legislature.

In 1996, the Missouri Legislature revised Chapter 392 of the Missouri Statutes to add Section 392.185, which provided that the provisions of Chapter 392 should be construed to, among other things,

- (1) promote universally available and widely-affordable telecommunications services;
- (2) maintain and advance the efficiency and availability of telecommunications services;
- (3) promote diversity and supply of telecommunications services and products throughout the State of Missouri;
- (4) ensure that customers pay only reasonable charges for telecommunications services;

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<sup>5</sup> Id. at ¶13

<sup>6</sup> Id. at ¶30 and ¶40

<sup>7</sup> Id. at ¶52

(8) promote economic, educational, healthcare and cultural enhancements;

...

Expanding the MoUSF to provide Broadband-only services for qualifying Lifeline and Disabled customers would promote all of the goals listed above.

Moreover, the Missouri Legislature specifically directed the Commission to adopt rules governing the operations of the State Universal Service Fund and, in doing so, further provided that “nothing in the rules adopted by the Commission shall be inconsistent with the support mechanisms established for the Federal Universal Service Fund.” (Section 392.248.1, RSMo.) It could reasonably be argued that by not expanding the Missouri Lifeline Program to include BIAS, the Missouri Commission would be acting in a manner that is inconsistent with the Federal Lifeline Program.

In establishing and administering the MoUSF, the Legislature has directed the Missouri Commission to,

“Determine the definition of Essential Local Telecommunications Service . . . and consider revision of the definition on a periodic basis . . . , with the goal that every citizen of the State shall have access to a wider range of services, that are reasonably comparable between urban and rural areas, at rates that are reasonably comparable between urban and rural areas.” (emphasis added) (Section 392.248.6(1), RSMo.)

Accordingly, the Missouri Commission, through rulemaking, may expand its definition of Essential Local Telecommunications Service to cover Broadband-only service. In that regard, the STCG would recommend that the Missouri Commission adopt the FCC’s definition of BIAS as follows:

“A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet end points, including any capabilities that are incidental to and enable the

operation of the communications service, but excluding dial-up Internet Access Service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set for in this part.”<sup>8</sup>

This definition of BIAS fits well with Missouri’s existing law which defines “telecommunications services” as,

“The transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, “information” means “knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds or any other symbols.”<sup>9</sup>

Clearly, Broadband Internet Access Service involves the “transmission of information by wire, radio, optical cable, electronic impulses, or other similar means . . .”, as envisioned by the Missouri statute. Equally clearly, BIAS is not one of the enumerated services that the Missouri statute specifically states are not telecommunications services, such as the rent, sale, lease or exchange of customer premise equipment; answering and paging services; Commercial Mobile Radio Services (CMRS); services provided to hospitals, hotels, motels and other entities offering temporary lodging; private telecommunications system; cable television service; installation and maintenance of inside wire; electronic publishing services; or Interconnected Voice Over Internet Protocol service (IVoIP).<sup>10</sup>

Those stakeholders that fear the Missouri Commission may attempt to regulate Broadband Internet Access Service as a result of including it as a supported Lifeline or Disabled service are protected by the specific language in Section 392.611.2, RSMo., which states,

“Broadband and other Internet protocol-enabled services shall not be subject to regulation under Chapter 386 or this Chapter, except that

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<sup>8</sup> 47 CFR, Section 8.2

<sup>9</sup> Section 386.020(54)

<sup>10</sup> Section 386.020(54), RSMo.



interconnected voice over internet protocol service shall continue to be subject to Section 392.550. . . . As used in this section, “other internet protocol-enabled services” means any services, capabilities, functionalities, or applications using existing internet protocol, or any successor internet protocol, that enable an end-user to send or receive a communication in existing internet protocol format, or any successor Internet protocol format, regardless of whether the communication is voice, data or video.”

Thus, while the Commission is authorized to (and should) include BIAS as a supported service under its State Lifeline and Disabled Program, the Commission is clearly prohibited from “regulating” such service.

In light of the foregoing, the STCG submits that the Commission has the lawful authority to expand its Lifeline and Disabled programs to cover Broadband-only service by revising its definition of Essential Local Telecommunications Service. Moreover, the STCG believes this expansion is consistent with FCC’s Order and PSC statutes and should be implemented for the benefit of Missouri’s low income and disabled customers.

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ATTORNEYS FOR THE STCG

## APPENDIX A

BPS Telephone Company  
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Craw-Kan Telephone Cooperative, Inc.  
Ellington Telephone Company  
Farber Telephone Company  
Fidelity Telephone Company  
Goodman Telephone Company  
Granby Telephone Company  
Grand River Mutual Telephone Corporation  
Green Hills Telephone Corporation  
Holway Telephone Company  
Iamo Telephone Company  
Kingdom Telephone Company  
KLM Telephone Company  
Lathrop Telephone Company  
Le-Ru Telephone Company  
Mark Twain Rural Telephone Company  
McDonald County Telephone Company  
Miller Telephone Company  
New Florence Telephone Company  
New London Telephone Company  
Northeast Missouri Rural Telephone Company  
Orchard Farm Telephone Company  
Oregon Farmers Mutual Telephone Company  
Ozark Telephone Company  
Peace Valley Telephone Co., Inc.  
Rock Port Telephone Company  
Seneca Telephone Company  
Steelville Telephone Exchange, Inc.  
Stoutland Telephone Company