

**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     )     File No. TW-2014-0012  
the Purposes and Goals of the Missouri Universal     )  
Service Fund     )

**VERIZON'S COMMENTS**

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services (together, "Verizon") respectfully submit these comments in response to the Commission's July 26, 2013 "Notice of Opportunity to Comment" on questions from Staff.

At this time, Verizon comments briefly only on Staff Questions a., d., e. and g. Verizon reserves its right to respond to comments from others at a later time.

**a.     What should be the purposes and goals of the Missouri USF?**

The state legislature has outlined the purposes and goals of the Missouri Universal Service Fund ("MO USF"). Section 392.248.1, RSMo establishes a state Universal Service Board ("Board") "to ensure just, reasonable and affordable rates for reasonably essential local telecommunications services throughout the state," and authorizes the Board to create the MO USF. Section 392.248.2, RSMo limits the use of MO USF funds to three categories: (1) ensuring the provision of reasonably comparable essential telecommunications service (as defined by the Commission) throughout the state at just, reasonable and affordable rates; (2) assisting customers that qualify as low-income or disabled in obtaining affordable essential telecommunications services; and (3) paying the reasonable, audited costs of administering the MO USF.

As a creature of statute, the Commission cannot exceed the authority granted by Section 392.248, RSMo. *See Orlor v. Folsom Ridge, LLC et al.*, 2007 Mo. PSC LEXIS, \*94-95 (2007) (commission is creature of statute and its jurisdiction, powers and duties are fixed by statute). As such, the Commission's goal should be to fulfill the legislative mandates of Section 392.248, RSMo while limiting the financial burden that the MO USF places on the Missouri consumers who must fund it. Customers of Missouri telecommunications companies and interconnected Voice over Internet Protocol ("VoIP") providers must already pay a hefty federal USF surcharge set at 15.1% for the third quarter of 2013.<sup>1</sup> Even given the Federal Communications Commission's efforts to reform the federal Universal Service Fund and combat waste, fraud and abuse in the federal Lifeline program,<sup>2</sup> it is imperative that this Commission also do what it can to prevent unfettered USF growth, particularly given that the incremental burden of higher MO USF surcharges could ultimately force Missourians to scale back or cancel their communications services. As the Fifth Circuit noted years ago, "[b]ecause universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, *thereby pricing some consumers out of the market.*"<sup>3</sup> The Commission should strive to avoid this result by keeping the MO USF in check.

**d. Should wireless carriers be required to contribute to the Missouri USF and also be able to receive Missouri USF support?**

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<sup>1</sup> See Public Notice, "Proposed Third Quarter 2013 Universal Service Contribution Factor," DA 13-1361 (rel. June 12, 2013), available on-line at <http://www.fcc.gov/document/proposed-3rd-quarter-usf-contribution-factor-151>.

<sup>2</sup> See *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*FCC ICC/USF Reform Order*"); *In the Matter of Lifeline and Link Up Reform and Modernization, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("*FCC Lifeline Reform Order*"); see also Staff's July 10, 2013 Report on the Missouri Lifeline Program (filed in this proceeding on July 11, 2013) at 14-16 ("*Staff LL Report*") (discussing *FCC Lifeline Reform Order*).

<sup>3</sup> See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5<sup>th</sup> Cir. 2001).

As noted above, the Commission’s authority is constrained by statute, so it “has no power to adopt a rule, or follow a practice, which results in nullifying the expressed will of the Legislature.” *Orlor, supra*, 2007 Mo. PSC LEXIS at \*94. Under Section 392.248.3, RSMo, the Commission has no authority to require wireless carriers to contribute to the MO USF. Section 392.248.3, RSMo directs that the MO USF “shall be funded through assessments on all telecommunications companies in the state ...” Section 386.020(52) defines “telecommunications company” to include telephone corporations and other entities “owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale in this state.”<sup>4</sup> In turn, Section 386.020 (54)(c), RSMo specifically *excludes* wireless service from the definition of “telecommunications service.” The Commission thus lacks statutory authority to require wireless carriers to contribute to the MO USF.

Similarly, the Commission may not allow the use of MO USF funds to subsidize wireless services, which are not “reasonably essential local telecommunications services” as defined in 4 CSR 240-31.010(6). While Section 392.248.2(1), RSMo authorizes the Commission to update the definition of “reasonably essential local telecommunications services” over time, the Commission is still subject to the constraints of Section 386.020(32), RSMo (which defines “local exchange telecommunications service” as “telecommunications service between points within in exchange”) and 386.020(54)(c) (which, as noted above, expressly excludes wireless service from the definition of “telecommunications service”). Therefore, the Commission cannot expand its definition of “reasonably essential local telecommunications services” to wireless services. As the Commission itself has held, it has “only such powers as are expressly conferred

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<sup>4</sup> Pursuant to Section 392.180, RSMo, the definitions in Section 386.020, “apply to and determine the meaning of all such words, phrases and terms as used in Sections 392.190 to 392.530.”

upon it by the statutes and powers reasonably incidental thereto,” and “the lawfulness of its actions depends directly on whether it has statutory power and authority to act.” *Orler, supra*, 2007 Mo. PSC LEXIS at \*94. As such, “the Commission ‘cannot, under the theory of ‘construction’ of a statute, proceed in a manner contrary to the plain terms of the statute.’” *Id.*

To require wireless carriers to contribute to the MO USF, or to use MO USF funds to subsidize wireless services, would be a direct violation of the limitations Sections 386.020 and 392.248, RSMo place on the Commission’s authority. Moreover, it would be bad public policy. Customers of wireless providers that are investing heavily in deploying the latest technology without the benefit of state subsidies should not be compelled to subsidize the networks of other carriers (whether wireline or wireless). Carriers should recover their costs from their own customers.

**e. Should the Lifeline program be expanded in Missouri to ensure qualifying low-income consumers have access to broadband service? If yes, how should the program be expanded?**

For the reasons discussed above with respect to Question d., the Commission cannot (and should not) expand the Lifeline program in Missouri to subsidize broadband services. Nothing in Section 392.248, RSMo authorizes the Commission to expand the Lifeline program to cover broadband services, or to revise its definition of “reasonably essential local telecommunications services” to encompass information services such as broadband.

Moreover, Section 392.248.1, RSMo prohibits the Commission from adopting any rules that are “inconsistent with the support mechanisms established for the federal Universal Service Fund.” Despite the urging of some carriers, the FCC has *not* expanded its Lifeline definition to include broadband.<sup>5</sup> *See FCC Lifeline Reform Order at ¶ 323 and FN 882* (“we decline to

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<sup>5</sup> Instead, the FCC launched a “Low-Income Broadband Pilot Program” to develop data on the subject. *FCC Lifeline Reform Order at ¶ 323 and FN 882*.

amend the definition of Lifeline at this time to include broadband”); 47 C.F.R. 54.401 (definition of Lifeline), *see also* 47 C.F.R. 54.101(a) (supported services for rural, insular and high cost areas limited to voice telephony); 47 U.S.C. 254(f) (states cannot adopt regulations inconsistent with FCC’s rules). Any attempt to expand the Missouri Lifeline program to subsidize broadband service would directly controvert state and federal legislative intent. Moreover, customers of other carriers should not be required to subsidize broadband services offered by their competitors.

Implementation of the FCC’s National Broadband Plan<sup>6</sup> is already underway. To the extent the Commission wishes to encourage broadband deployment in Missouri, it might consider working with providers to develop innovative ways to promote investment in the areas of the state that may require it. For example, supporting tax incentives to stimulate broadband deployment in unserved areas could drive broadband investment. Creating and supporting public-private partnerships such as those facilitated by Connected Nation (<http://www.connectednation.org/>) is another option.<sup>7</sup> The Board should focus on exploring economic incentives and innovative public-private partnerships, rather than saddling Missouri ratepayers with additional MO USF assessments.

**g. Should the Missouri USF support amount of \$3.50 be increased, decreased or remain the same?**

As noted in the discussion of Question a. above, the incremental burden of higher MO USF surcharges could force Missourians to scale back or cancel their communications services, ultimately impeding the goal of universal service. For this reason, the Commission should not

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<sup>6</sup> The plan is available on-line at <http://www.broadband.gov/download-plan/>.

<sup>7</sup> *See* <http://www.connectednation.org/>. Connected Nation “works with a variety of national, state and local organizations and leading IT companies to promote broadband access, adoption, and use throughout the United States.” *See* <http://www.connectednation.org/programs>. Connected Nation’s website reflects 14 affiliated state programs. *Id.*

consider increasing the amount of MO USF support. If anything, the Commission should strive to decrease the amount over time if there is insufficient data to support maintaining the current \$3.50/month subsidy.

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