

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

In the Matter of Proposed New Rule )  
4 CSR 240-3.570 Regarding Eligible )  
Telecommunications Carrier Designations ) **Case No. TX-2006-0169**  
for Receipt of Federal Universal Service )  
Fund Support )

**COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL**

Supports the proposed rule

The Office of the Public Counsel states to the Missouri Public Service Commission that it generally supports the proposed rule for Eligible Telecommunications Carrier Designations For Receipt Of Federal Universal Service Fund Support. Public Counsel submits that the proposed rule incorporates the key conditions that Public Counsel has sought in cases where wireless companies have sought ETC status.

USF is the customer's money

Missouri's geography, geology, population demography and density and the needs for economic development provide challenges for telecommunications providers, both wireline or wireless. These providers naturally look to every available financial resources to assist them overcome these challenges.

A major resource is the Federal Universal Service Fund which provides support to carriers that provide affordable service to bring and maintain low income customers on the telecommunications network and that serve customers in high cost areas at just reasonable, and affordable rates. While denominated an assessment on carriers, the Universal Service Fund assessment is passed directly through to the ultimate customer as

a direct surcharge on the consumer's bill. The USF is the customer's money essentially held in trust for the benefit of the customers, not the companies. To that end, Public Counsel suggests that it is just and reasonable and consistent with the purposes of the Federal Telecommunications Act of 1996, Section 214, for the Commission to establish conditions for the eligibility to tap these consumer funds to ensure that consumers are the direct beneficiaries of these funds. Missouri's Commission can best fashion conditions for eligibility that reflect the needs and concerns of this state. Public Counsel submits that these proposed rules carry out that purpose and goal.

Proposed rules carry out legislative purpose and the public interest.

Public Counsel has a particular interest to ensure that rural Missouri customers have access to reasonably priced local telecommunications service that will also afford them reasonably priced access to an expanded calling scope. Public Counsel views this as an essential element under Section 214(e)(2): "Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."

Public Counsel asks the PSC to look to Section 392.185, RSMo 2000 for a statement of the applicable public interest, the public purposes and standards to weigh the public interest. Section 392.185, RSMo provides:

The provisions of this chapter shall be construed to:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;

- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
- (7) Promote parity of urban and rural telecommunications services;
- (8) Promote economic, educational, health care and cultural enhancements; and
- (9) Protect consumer privacy.

Rural Missouri is not a high priority target for local service competitive entry. The population size and density deter many providers from investing in local service in rural areas. Yet, the legislature has made the promotion of parity of urban and rural telecommunications services (Section 386.185 (7)), reasonable charges (Section 386.185 (4)), and universally available and widely affordable telecommunications services (Section 386.185 (1)) state goals. Rural Missouri may not reap the full measure of benefits promised in the Federal Telecommunications Act of 1996 and in Senate Bill 507 without creative solutions and creative proposals such as wireless technology.

Rural customers should not be second-class customer with USF dollars.

Public Counsel urges the PSC to adopt these rules to preserve the hard-won service quality, adequacy of service and maintenance standards as well as consumer billing, collection, and complaint rights enjoyed by wireline customers. Public Counsel is concerned about the reliability of wireless technology when the underlying issue is to provide essential basic telecommunications service that connects the rural customer to

work, medical assistance, and the world. While technology should not stand in the way of a designation of an ETC to make telecommunications services available to rural Missouri, Public Counsel does not want Missouri rural customers to become second-class telecommunications customers while the carrier is supported by the customers' federal USF dollars.

#### Bridging the gap for state direction, responsibility, and carrier accountability

Because the Commission does not have direct supervision over the operation of wireless carriers as it does over wireline carriers that gap must be bridged to establish state direction, responsibility, and carrier accountability to the state for these customer funds. These rules establish reasonable limits on the applicant and the process so that the PSC can monitor and ensure that essential telecommunications services are provided in a manner consistent with the protections afforded to wireline customers. The FCC clarified the jurisdiction of state regulatory agencies over carriers that seek ETC designation; now the states have a defined legal basis and a template to evaluate wireless ETC applications and to impose conditions to promote the public interest.

#### Higher bar for service in rural areas

The General Assembly set a higher bar for service in rural areas to prevent competitors from offering second class service and from evading the consumer protections mandated for the incumbents. Section 392.451, RSMo. 2000, certification requirements for CLECs in rural areas, requires that the competitor must provide the same essential services the incumbent provides and must abide by the same service standard, service quality, billing standard, reporting requirements and the same

regulations and rules that govern the incumbent in the same territory. (Section 392.451.1 and .2, RSMo).

Proposed rule incorporate public interest conditions

Public Counsel supports the proposed rule requirements that incorporate the conditions that Public Counsel has sought in the wireless ETC cases:

- Specific details regarding lifeline offerings
- Demonstrate sufficient financial and technical resources to provide adequate service
- Exchange specific service area maps
- Make readily available the terms and conditions of service
- Report to PSC on the use of USF funds for intended purpose for PSC certification purposes
- Adhere to minimum billing disclosures, service quality standards, a formal complaint process, and other customer relations' procedures, such as snap-back provisions.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed, hand-delivered, or transmitted by electronic mail this 28<sup>th</sup> day of December 2005 to the following attorneys of record:

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