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September 9, 2011

John Van Eschen
Manager, Telecommunications Department
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Re: Case No. TW-2012-0012
Proposed Changes to PSC Eligible Telecommunications Carrier Rules

Dear Mr. Van Eschen:

Thank you for the opportunity to meet with the Missouri Public Service Commission (Commission or PSC) Staff and to provide additional comments on the proposed changes to the PSC's Eligible Telecommunications Carrier (ETC) rule. We believe that the meeting with Staff was productive, and we appreciate the opportunity to offer the following comments on behalf of our clients, the Missouri Small Telephone Company Group (STCG),[1] a group of rural incumbent local exchange companies (ILECs).

The FCC's USF Revisions.

As a threshold matter, the Federal Communications Commission (FCC) is currently engaged in review and revision of the federal Universal Service Fund (USF) High Cost and Lifeline/Linkup programs. Therefore, as a matter of administrative and practical efficiency, it would make sense for the PSC to wait and see what changes the FCC makes to these programs. This would prevent rulemaking changes that become immediately outdated or conflicting, and it would prevent the STCG companies from being required to provide information that is duplicative, obsolete, and/or unnecessary.

[1] See Attachment A.

<u>No Necessity for Changes to ILEC ETC Rules</u>.

It appears that the primary reason for Staff's proposed rulemaking is to address the significant increase in recent applications by wireless companies for ETC designation solely for the purpose of receiving Lifeline and Linkup support. The STCG takes no position as to whether the Commission should revise its rules for wireless applications for ETC designation solely for Lifeline and Linkup support. However, the STCG <u>does not</u> believe the existing process or annual "High Cost Support" filing requirements for ILECs require any changes at this time.

It is important to distinguish between the issues presented by wireless Lifeline/Linkup ETC applications and the annual "High Cost" filings that have been required for many years for small, rural ILECs. The rules for High Cost companies have been in place for over five (5) years. The existing process for High Cost companies is working, and the existing rules provide Staff with sufficient information to complete the annual High Cost ETC certifications for ILEC ETCs. Moreover, there are numerous regulatory and structural safeguards in place for the High Cost process.

<u>Safeguards Are Already in Place</u>.

The STCG companies, unlike competitive ETCs, are already subject to numerous regulatory and structural safeguards prior to receiving "High Cost" USF support. Specifically:

> Recipients of "High Cost" USF support only receive high cost funding <u>after</u> the ILEC ETCs have spent the money.
>
> The ILECs' books and records are kept in accord with the FCC system of accounts.
>
> Annual cost studies are reviewed by NECA and USAC.
>
> Many of these ILECs are subject to independent third party audits.
>
> High cost funding recipients are also subject to random audits by USAC and the MoPSC Staff.

Thus, there are good reasons to treat ILECs differently than competitive ETCs. The STCG companies already provide sufficient information for the Commission's review of their High Cost and Lifeline support. Imposing additional requirements will only create additional burdens without providing any additional or incremental benefits.

<u>ILEC Lifeline Procedures Are Sufficient</u>.

The proposal to require additional ILEC Lifeline information is unnecessary. It is sufficient for ILECs to annually affirm that adequate procedures remain in place. There is no additional benefit to requiring the companies to explain their procedures each year.

All of the STCG companies provided information about their Lifeline verification procedures in response to the PSC's recent 2011 Lifeline audit, so there seems to be little value to repeat that same information year after year.

Increased Costs, Fiscal Impacts, and Regulatory Burdens.

Based on preliminary feedback from some of our clients, we previously suggested $600 per company as the annual fiscal impact. We continue believe that this is a fair estimate for the time being. We will attempt to refine this estimate if needed for any final rulemaking.

Clearly, many of the proposed additional requirements will impose additional time commitments and fiscal impacts on the STCG companies. The STCG companies are "small businesses" and "small telephone companies" as defined by Missouri statute and have limited personnel to focus on regulatory requirements. Accordingly, certain Missouri statutes require any changes that would increase the STCG's regulatory burdens to comply with heightened "small business impact" reviews.

Specifically, Section 536.010 requires that if any proposed rule "affects small business" by causing "direct and significant economic burden upon a small business," then the Commission must consider the availability and practicability of less restrictive alternatives. The Commission must also prepare a small business impact statement to be submitted to the Secretary of State and JCAR along with the rulemaking packet. The proposed rule must also be submitted on the same date to the Missouri Small Business Regulatory Fairness Board. *See* §536.303 RSMo.

Additionally, a relatively new statute, Section 1.310.3 RSMo. (the 2009 "Big Government Get Off My Back Act") places further restrictions on agency rulemakings that affect companies with fewer than 25 full or part-time employees.[2] This Act requires the Commission to:

a. Certify that the proposed rule does not have an adverse impact on small businesses consisting of fewer than twenty-five full or part-time employees;

b. Certify that the rule is necessary to protect the life, health, or safety of the public; or

c. Exempt any small business consisting of fewer than twenty-five full or part-time employees from coverage.

It is unlikely that the proposed rulemaking in its current form could satisfy either (a) or (b). Thus, if the Commission decides to move forward with the proposed rulemaking changes, then it is required to exempt any STCG company with fewer than 25 full or part-time employees.

[2] Some, but not all, of the STCG companies have fewer than 25 full or part-time employees.

If you have any questions about these comments or would like to discuss them further, please feel free to contact me at your convenience.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By: **/s/ Brian McCartney**

Brian T. McCartney

BTM/da
Attachment

ATTACHMENT A

BPS Telephone Company
Citizens Telephone Company of Higginsville, Missouri
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