

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

In the Matter of an Investigatory and Repository)	
File to Review Requirements of Eligible)	
Telecommunications Carriers, Review the)	
Sufficiency of the Commission's Rules Concerning)	File No. TW-2012-0012
the Missouri Universal Service Fund and)	
Address Issues Raised in the FCC's Connect)	
America Fund Order Pertaining to the Federal)	
Universal Service Fund in Missouri.)	

THE OFFICE OF THE PUBLIC COUNSEL’S COMMENTS

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Comments states as follows:

Introduction

These comments are substantially the same as those given during the August 29, 2012, Workshop held by the Staff of the Public Service Commission (Staff). Although in these comments Public Counsel expresses concern with the Staff’s proposed revisions to Chapter 31 Rules, Public Counsel does wish to acknowledge and express appreciation for Staff’s efforts to include Public Counsel in this initial phase of the rulemaking process.

Following the Workshop, Staff revised its proposed rule changes related to the definition of disabled customers, the definition and purpose of the Missouri Universal Service Fund and the schedule for carrier remittance of payments to the Missouri Universal Service Fund. Staff’s latest draft addresses Public Counsel’s concerns related to these issues so these comments do not address those portions of the rules.

Background

In 1996 the General Assembly authorized the Missouri Public Service Commission (Commission) to open the local network to local competition, to establish a universal service fund and to establish price cap regulation under certain conditions. This legislation was in response to the Telecommunications Act of 1996 (96 Act) enacted by Congress in January of 1996.

The 96 Act opened all telecommunications markets to competition and at the same time provided for universal service support to preserve and advance universal service. Universal service was not a new concept. It has been a national policy since The Telecommunications Act of 1934 and has been expanded over the years. Lifeline and Linkup services for low income consumers was added in the 1980s, service for hearing impaired consumers was added in the 1990s, and finally the 96 Act included discounts for telecommunications services for schools, libraries and rural health care providers.

Except for the additional provisions related to schools, libraries and rural health care, the 96 Act did not change universal service policy in any significant way. It merely codifies the universal service principle that all consumers shall have a reasonable level of telecommunications service at just, reasonable and affordable rates.

The intent of Congress and the State Legislature was clear. Competition was to be achieved without sacrificing universal service. Lawmakers did not want to see the abandonment or degradation of service with the introduction of competition as had occurred when competition was initiated in other regulated industries such as airlines and other transportation industries.

The reason for specific universal service provisions in both the Federal and State Law is that the development of competition in urban areas can have the effect of deaveraging rates,

placing upward pressure on rates in high cost areas. Low-income consumers have historically demonstrated lower levels of subscribership. Congress established and codified universal service by enacting express provisions to preserve just, reasonable and affordable local rates for low-income consumers and for rural consumers. In essence it set up a regime that permits consumers to share in the benefits of competition even though competition may be slow to develop for those consumers or insufficient to ensure the availability of basic services. It established a framework according to which those consumers would not be left behind.

Comments on 4 CSR 240-31.010(6) and Related Definitions 4 CSR 240-31.010(7) and 4 CSR 240-31.010(13)

It is important to note that universal service must not only be preserved; it must be advanced. The 96 Act requires that the FCC “base policies for the preservation and advancement of Universal Service” on certain principles. 47 U.S.C. Section 254(b). Chief among these principles as is relevant to high cost and low income support is that:

Consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high cost areas should have access to telecommunications and information services including interexchange services and advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. Sec. 254(b)(3) (emphasis supplied)

This requirement applies to both Federal and State jurisdictions:

There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance Universal Service. 47 U.S.C. Sec. 254(b)(5) (emphasis supplied)

The 96 Act leaves considerable discretion to the State as to how it will preserve and advance universal service:

A State may adopt regulations not inconsistent with the Commission’s Rules to preserve and advance universal service...a state may adopt regulations to provide for additional definitions and standards to preserve

and advance Universal service within the state only to the extent that such regulations adopt additional specific, predictable and sufficient mechanisms to support such definitions or standards that do not rely on or burden federal Universal service support mechanisms. 47 U.S.C. Sec. 254 (f)

Thus, the State has considerable discretion to determine the best way for universal service to be preserved and advanced, so long as its rules do not rely on or burden the Federal Universal Service support mechanisms.

Consistent with federal law, the Missouri state Law creates a Universal Service Board to assure just reasonable and affordable rates and provides that the Board shall create a universal service fund consistent with the rules adopted by the Commission. Section 392.248.1 RSMo. also specifically provides:

...Nothing in the rules adopted by the commission shall be inconsistent with the support mechanisms established for the federal Universal Service Fund, but the commission may adopt any additional definitions and standards it believes are necessary to preserve and advance universal service in the state of Missouri. (emphasis supplied)

Section 392.248.6(1) RSMo. prescribes the method the Commission is to use in determining whether, and to what extent, universal service fund funding is required to facilitate provision of essential local telecommunications service:

The commission shall:

- (1) Determine the definition of essential local telecommunications service no later than three months after the adoption of the essential local exchange telecommunications service definition for the federal Universal Service Fund, and consider revision of the definition on a periodic basis not to exceed every three years thereafter, with the goal that every citizen of this 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 supplied)

The Staff proposes to simply adopt a Federal definition of telephony service as Missouri's definition of essential local service without any demonstration of how doing so is sufficient in meeting the goal established by Section 392.248.6(1).

Commission Rule 4 CSR 240-31.010(6) defines essential local telecommunications services. The current rule includes the following elements which the Staff's proposal would eliminate from the definition:

- (C) Access to basic local operator services;
- (D) Access to basic local directory assistance;
- (F) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission (FCC);

With respect to landline service an additional essential local service element which may be excluded is:

- (G) One (1) standard white pages directory listing.

In comments at the Workshop, Public Counsel expressed concern about the potential elimination of certain elements from the definition and strongly disagreed with redefining the elements of essential local service without considering the importance of the availability of those services to Missouri consumers. It is important to make clear that consistent with the current rules, Public Counsel's focus is on consumers retaining access to interexchange service, access to directory assistance services and access to operator services. Public Counsel is not suggesting that the telecommunications company must offer those services; companies may simply offer customers the ability to access providers of such services. Proponents of the rule change have not demonstrated that access to directory assistance, access to interexchange carrier and access to operator services are no longer basic communications needs.

It is also important to make clear that Public Counsel is in no way suggesting that the Missouri Commission has jurisdiction over the services designated for purposes of Federal Universal Service support. Instead, Public Counsel's point is that Missouri has a distinct and separate obligation to preserve and advance universal service in the State. The Missouri Legislature, in addition to designating authority over universal service matters to the Commission, has prescribed specific goals and methods to guide the Commission. Proponents of eliminating elements such as access to interexchange service, access to directory assistance and access to operator services should be required to demonstrate that elimination of access to the services is consistent with Missouri's stated universal service goals instead of simply eliminating it in pursuit of uniformity or convenience for telecommunications providers. Universal service support should be viewed as an incentive provided to carriers for offering some of Missouri's most vulnerable customers those basic services that we in Missouri believe are essential for communications needs. It is perfectly reasonable to ask companies that are going to be able to give their customers a discount on services that is paid for by other rate payers to provide a little more in the way of services.

Comments on 4 CSR 240-31.020(5) and 4 CSR 240-31.020(6)

Staff proposes to revise 4 CSR 240-31.020(5) and 4 CSR 240-31.020(6) to explicitly direct the Board to follow Missouri Office of Administration (OA) procedures for obtaining administrative and auditing service for the Missouri Universal Service Fund. Public Counsel acknowledges that for the past several contract periods the Board has relied on OA to perform the competitive bid process and the process has worked well. However, the process should not be required by rule. There is a question regarding whether OA is required to perform competitive bid services for the Missouri Universal Service Fund. The Board is not a State agency, instead,

as directed by Section 392.248.1, the Universal Service Board is incorporated as a not-for-profit, public benefit corporation in the manner provided pursuant to Chapter 355 RSMo., except as otherwise provided in Section 392.248.1. During the early years of the Missouri Universal Fund, OA's obligation to assist the Universal Service Board in a competitive bid process was discussed but not definitively resolved. In the event that OA became unwilling or unable to participate in the process, under the Staff's proposed rule, the Board would have less flexibility if not an obstacle to completing a competitive bid process for required services. The Board, subject to Commission oversight, was designated significant discretion under Section 392.248.1. This discretion allows the Universal Service Board flexibility in meeting its obligations in managing the operation of the Universal Service Fund. There is no significant or pressing reason to reduce that flexibility by adopting the proposed rule.

WHEREFORE, Public Counsel respectfully submits its Comments.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By:_____

Christina L. Baker (#58303)

Senior Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-5565

(573) 751-5562 FAX

christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the parties of record this 19th day of October 2012.

/s/ Christina L. Baker
