

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

**RESPONSE OF TW TELECOM OF KANSAS CITY LLC TO
INVITATION TO COMMENT**

COMES NOW tw telecom of kansas city llc (“tw telecom”)¹ and submits the following responses to the *Invitation to Comment About the Possible Creation of a Missouri Universal Service High Cost Fund*, issued in this docket on January 15, 2014.

In its *Invitation*, the Commission stated that “[a]ny telecommunications company or member of the public that wishes to be heard on this subject may answer any or all of the following questions.” Eleven (11) questions were then listed. tw telecom respectfully responds to the Commission as follows:

1. Does Missouri need a state high-cost fund? If no, please explain your position.

If yes, please address the following questions in your response:

a. Why is the existing federal high-cost program insufficient?

b. How much state funding is needed?

c. What consequences, if any, are anticipated if the Missouri Commission fails to establish a high-cost fund?

tw telecom Response:

1. No. There has been no demonstration that Missouri needs a state high-cost fund (HCF) or that market penetration of telecommunications services

¹ tw telecom of kansas city llc holds certificates of service authority from the Missouri Public Service Commission to provide basic local exchange, interexchange and non-switched local exchange telecommunications services. See, MoPSC Case Nos. CA-2002-1153 (*Order* effective March 30, 2003), XA-2002-1154 (*Order* effective February 8, 2003) and LA-2003-0001 (*Order* effective February 28, 2003). See also, MoPSC Case Nos. TM-2007-0472, CA-2007-0473 and CN-2008-0363.

throughout the State of Missouri is insufficient. The facts that no state high-cost fund exists, and that MoPSC Staff recommended that existing provisions in Missouri rules concerning a state high-cost fund should be rescinded², are clear indication that the goals of universal service are being met without a Missouri state high-cost fund.

Most telecommunications carriers have already recovered the costs of their network in the years that they have been providing service on that network. There is no need now to create a high-cost fund to compensate them for a network that has been paying for itself for years.

Further, at the urging of the incumbent local exchange carriers, the Missouri General Assembly has largely deregulated the telecommunications industry in the state of Missouri. For example, carriers' retail rates are no longer price-capped nor set based upon audits, earnings and rate reviews. Instead, incumbent local exchange carriers are permitted to set their own retail rates. Similarly, quality of service requirements are also deregulated. Creating a high cost fund at this time would be completely inconsistent with the deregulatory trend that has occurred in Missouri.

As a result of the level of telecommunications deregulation in Missouri, the Commission has little, if any, oversight of the retail telecommunications services provided by local exchange carriers. As a result, the Commission lacks the regulatory authority and tools it would need to adequately oversee a high-cost fund and ensure long-term benefits from any revenues disbursed through a high-cost fund.

² MoPSC File No. TX-2013-0324 (MoUSF and ETC rulemaking), *Staff Comments* (filed October 16, 2013), at pages 3-4.

2. What issues need to be addressed by the Public Service Commission in order to establish a high-cost fund?

tw telecom Response:

It is tw telecom's position that Missouri does not need a high-cost fund. However, if a high cost fund is established, the Public Service Commission needs to ensure the following rules are met in the establishment and disbursement of funds:

- 1) Fund is established for a limited period (suggest 3 years – which is shorter than the current 5-year review period under Section 392.248.6 (2), RSMo) with a mandatory review at the end of this period with regards to necessity of the HCF, burden to the consumer and applicability to current technologies;
- 2) All carriers pay into the fund (discussed in more detail below);
- 3) Carriers are required to meet an earnings and rate test to prove need;
- 4) Fund disbursements are subject to audits and reviews;
- 5) No conflicts arise between federal USF and state high cost fund rules;
- 6) Carriers must show that they are using state high cost funds as a last resort, and all other funding options have been exhausted.

Compelling evidentiary support, subject to a full evidentiary hearing, should be required by the Commission before considering establishing and funding a Missouri high-cost fund. This question is addressed further below.

3. What service(s) should be supported?

tw telecom Response:

If a state high-cost fund were to be created, all services should be supported – local exchange service, broadband, wireless, etc. – provided that the HCF is used exclusively to serve under-served consumers.

4. What type(s) of providers should be able to receive high-cost support?

- a. Should funding be limited to landline providers?
- b. Does a provider need to own facilities? If so, what kind of facilities?
- c. Should wireless or broadband providers be able to draw support?

tw telecom Response:

If a Missouri state high-cost fund were to be created, it is tw telecom's position that all carriers who pay into the fund, should be eligible to receive high-cost support. They would, by definition, be providers that own or lease their own facilities. Some local exchange companies, including large incumbent local exchange carriers and cable companies which also serve substantial urban markets, have raised the argument that they now need state high-cost fund money in order to deploy "broadband" facilities. It is the position of tw telecom that if a high-cost fund is created, it should cover the deployment of broadband services, if the appropriate rules stated above are met, and if all broadband carriers pay into the fund. Even then, companies requesting high cost fund reimbursement must be required to prove that high-cost fund monies are absolutely necessary and that broadband deployment cannot be financed by the carrier in any other manner. The carrier must be required to present the Commission with substantial cost justification for such an alleged need.

5. How should high-cost disbursements be determined? (For example, how will it be determined if an area or provider needs high-cost support, and if so, how much?)

tw telecom Response:

If a Missouri state high-cost fund were to be created, it must be carefully limited in size, balancing the need to provide all Missourians with affordable universal service against the potentially significant and direct economic burden placed on all Missouri customers required to pay into a state HCF. **In order to tailor a state HCF to meet the specific showing of need by individual companies, a “rate case test requirement” would need to be established, as mentioned above.** Any recipient of Missouri HCF funding should be required to show need based upon an analysis of rate-case-quality data.

The amount of funding any carrier is eligible to withdraw from the Missouri HCF should be limited to support for only those customers of that carrier that do not have competitive or substitutable alternatives. In addition, any carrier receiving monies from a Missouri HCF should be required to demonstrate that it has first made reasonable efforts to obtain funding from other sources and no other funding alternative is available. Further, *any carrier seeking to receive money from the HCF should be required to show:*

- An absolute need for HCF monies in order to build-out a portion of the system that is essential to achieving universal service;
- That it is using the money for the express purpose approved by the Commission and the Missouri Universal Service Board.

In addition, it is vitally important to consumers and market-participants alike that any high-cost fund not depress competition or result in unfair subsidization. **No Missouri HCF monies should be distributed to serve any area where competitive telecommunications services are already available.**

Any non-subsidized competitor will be more reluctant to attempt to compete with another provider when the other provider's basic costs of service are being subsidized because the provider's end-user rates are artificially depressed by the availability of state HCF funding.

The Commission must be able to ensure that consumers are not unfairly subsidizing excessive earnings of a provider receiving HCF monies. Any recipient of Missouri HCF funding should be required to show need based upon an analysis of rate-case-quality data.

6. What state(s), if any, have a state high-cost fund that Missouri should strive to mirror?

tw telecom Response:

tw telecom does not take a position on this question at this time.

7. Should an attempt be made to limit the size of the fund? (For example, should the fund's total annual disbursement amount be capped? Should the fund have a sunset provision or a phase-out provision?)

tw telecom Response:

If a Missouri state high-cost fund were to be created, the Commission should make every effort to limit the size, scope and duration of that fund. **The imposition of a hard cap or size limit on any Missouri HCF** would avoid uncontrollable and explosive

growth in the fund, a result that Missouri end users cannot afford. The Commission must bear in mind that any new, state High-Cost Fund (HCF) would require most, if not all, Missouri consumers to pay more for their telecommunications services. This HCF “tax” would be passed along to customers by every telecommunications carrier required to make payments into the HCF, through rates that are essentially deregulated in Missouri. This imposes an additional economic burden on Missouri consumers which should not be taken lightly by the Commission.

In addition, any state HCF should sunset in three (3) years. Given rapid technological advances in the telecommunications market, which will continue to provide even more competitive alternatives to Missouri customers, a sunset provision is appropriate. These technological advances may very well obviate any perceived, continuing need for a state HCF.

8. What accountability requirement, if any, should be established to ensure a company is appropriately using state high-cost support?

tw telecom Response:

See tw telecom Response to Question 5, above. In addition, any recipient of monies from a Missouri HCF must be regularly audited and be accountable to the Missouri Universal Service Board (USB) for its use of such monies. Oversight by the Missouri USB must ensure that funds are used as required and that such use is consistent with the stated purpose of the Missouri HCF. Any recipient of Missouri HCF monies should be required to provide a detailed, annual, sworn certification of need.

9. Is there a need to revise how the Missouri USF is funded to accommodate a high-cost fund?

a. Should the base of services assessed to support the MoUSF be expanded?

b. What exemptions should exist (e.g. Lifeline, Wholesale)?

c. Should the MoUSF assessment be based on revenues or the services (connections) provided, or some other measure?

tw telecom Response:

As a policy matter and based on fairness and competitive neutrality, all companies participating in Missouri's competitive communications markets should contribute to a state HCF, if one were established. This would include wireline, wireless, cable, VoIP and satellite providers. There is no valid public policy reason to exempt certain types of providers while burdening legally regulated providers. Requiring contributions from all market competitors would minimize the inherent regulatory distortion of the competitive marketplace caused by a state HCF by not favoring one particular technology over another and by ensuring the broadest possible funding source for the fund. **The Commission (and Missouri Universal Service Board) should avoid favoring one technology over another or imposing discriminatory regulatory burdens on one class of providers, but not another.**

Wholesalers should be considered non-exempt as it relates to their retail revenues.

If the Commission were to determine that contributions to a state USF should be based on a carrier's relative share of its total intrastate retail service revenue (rather than on end-user customers), the Commission should take care to ensure that payments from non-facilities-based contributors are not less than contributions from facilities-based carriers. There is no valid public policy reason for penalizing facilities

and carriers that construct and utilize their own facilities and, therefore, the strong bias in any collection methodology for USF funding against facilities-based carriers must be eliminated.

10. What revisions, if any, are needed to Missouri's statutes if the Public Service Commission intends to implement a high-cost fund?

tw telecom Response:

tw telecom does not take a position on this question at this time.

11. Is there anything else you would like to tell the Missouri Public Service Commission about implementation of a high-cost fund?

tw telecom Response:

In one state in which tw telecom provides service, the administrative requirements of the state high-cost fund have become extremely burdensome and have created a paperwork nightmare. Personnel from tw telecom spend many hours, at a cost to the company of \$3,000 to \$4,000 per month, dealing with the state HCF, including responding to requests for funding. This is one of the ways in which a state High-Cost Fund (HCF) would require most, if not all, Missouri consumers to pay more for their telecommunications services. These HCF administrative costs must be passed along to customers by every telecommunications carrier required to make payments into the HCF, through rates that are essentially deregulated in Missouri. This imposes an additional economic burden on Missouri consumers which should not be taken lightly by the Commission.

WHEREFORE, tw telecom of kansas city llc respectfully submits its comments in response to the Commission's *Invitation to Comment About the Possible Creation of a Missouri Universal Service High Cost Fund*, issued in this docket on January 15, 2014, and commends to the Commission careful consideration of these comments.

Respectfully submitted,

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February 14, 2014