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

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| 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 |

# VERIZON'S COMMENTS ON POSSIBLE HIGH COST FUND

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 January 15, 2014 "Invitation to Comment about the Possible Creation of a Missouri Universal Service High Cost Fund."

At this time, Verizon comments only on Question 1, as the remaining questions presume the creation of a Missouri high cost fund ("MO HCF"), which Verizon believes is unwarranted and, indeed, actually would harm consumers. Verizon reserves its right to respond to comments from others and on other issues at a later time.

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

No. As detailed below, voice service is already available to consumers throughout Missouri at affordable rates. Extensive intermodal competition has developed in the state without the creation of a MO HCF,[1] and that robust competition will ensure that affordably-priced voice services continue to be available to Missouri consumers, which is the goal of universal service (*not* to support any specific carrier or subset of carriers). The Commission

[1] According to a 2012 report issued by the National Regulatory Research Institute ("NRRI"), only 21 states have high-cost funds, and as discussed below, several are actively working to reduce or eliminate them. *See NRRI, Survey of State Universal Service Funds 2012* (July 2012) at 3, available on-line at http://www.nrri.org/documents/317330/e1fce638-ef22-48bc-adc4-21cc49c8718d?version=1.1.

should not impose new financial burdens on Missourians to support a fund that would subsidize a small subset of providers that offer services that are readily available today from unsubsidized competitors. Doing so would simply lead to increased rates and less affordable voice service with no consumer benefit.[2]

Moreover, creation of an all new state high-cost fund could run counter to the Federal Communications Commission's ("FCC") recent reforms of the federal universal service system – including major revisions to its high cost support programs. This Commission should not adopt policies contrary to federal guidance on the subject, particularly given Sec. 392.248.1, RSMo's express focus on state consistency with the FCC's universal service policies. The Commission therefore should reject calls for creation of a MO HCF.

## **Discussion**

The communications marketplace has changed radically since the passage of legislation in 1996 authorizing the creation of the Missouri Universal Service Fund ("MO USF").[3] Implementation of those nearly twenty year old universal service policies must be considered in light of numerous developments over the years – including shifts in consumer preferences, the rapid rise of competition, technical innovation and the proliferation of intermodal service providers – that have dramatically changed the communications landscape in Missouri. The widespread and growing availability of wireless, Voice over Internet Protocol ("VoIP") and broadband services has resulted in greater choice and lower rates for consumers. This robust intermodal competition has helped ensure that affordable voice service is available throughout

[2] As the January 10, 2014 "Staff Request for Commission Order" ("Staff Request") astutely noted, creation of a MO HCF will impose a financial burden on end-user ratepayers in Missouri, as "the money that will make up any high-cost fund will come, at least in part, from increased rates to retail customers." Staff Request at 2. In Staff's estimation, "a substantial portion of any assessments will be recovered from retail customers." *Id*.

[3] 1996 S.B. 507.

the state, precluding the need for creation of a MO HCF that would consume MO USF funding to support carriers with carrier of last resort obligations that offer facilities-based essential local telecommunications services throughout an entire high-cost area.[4] Indeed, given the manner in which consumers choose to obtain and use communications services today, use of the MO USF to underwrite the operation of traditional analog wireline networks in additional ways would be unwarranted and counterproductive.

Moreover, creating a new MO HCF is not in the interests of consumers, who ultimately must bear the cost of any such fund. Because the competitive communications marketplace has developed in Missouri without a MO HCF, it is unnecessary now to impose a massive new tax on Missouri consumers to ensure that Missourians have access to affordable voice service. In fact, doing so would risk undermining the state's universal service goals. 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*."[5] Forcing Missourians to pay higher MO USF assessments to fund an unnecessary MO HCF would also violate the Legislature's directive that the Commission's universal service policies "[e]nsure that customers pay only reasonable charges for telecommunications service." Sec. 392.185(4), RSMo. The Commission should strive to avoid this result by not adding to Missourians' financial burden of funding universal

[4] *See* Sec. 392.248.4.(1)(a), RSMo.

[5] *See Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2001).

service, which includes not only assessments for the existing MO USF, but also the current 16.4 percent assessment imposed on the interstate portion of their phone bills for the federal USF.[6]

Creation of a MO HCF would also be out-of-step with the universal service reforms that the FCC adopted in 2011. As described below, the FCC undertook a comprehensive overhaul of the universal service system on a nationwide basis; states should be wary of undoing what the FCC accomplished through implementing new state high cost programs. Notably, those federal reforms are properly aimed at assuring and expanding service availability for *consumers*, rather than at assuring continuing levels of support for *particular carriers or a single business model*. The federal reforms are also designed to reduce wasteful or excessive levels of support, and to eliminate funding in geographic areas where one or more unsubsidized competitors are already providing adequate service. Simply, if one provider can make affordable service available to customers without the need for government support, it is unnecessary and wasteful to subsidize another carrier's operations in the same geographic area.

**Evolution of the Communications Marketplace and the Growth of Competition**

As mentioned above, the communications market has changed substantially since the enactment of 1996 S.B. 507 close to twenty years ago. Those policies were established in an era when phone service was provided almost exclusively by a group of incumbent wireline telephone companies operating traditional copper networks. That environment no longer exists, having been replaced by a vibrant competitive market in which consumers have numerous choices for the communications services and technologies they use, and the entities that provide them. Today's consumers obtain and use communications services in vastly different ways, and

[6] *See* Public Notice, "Proposed First Quarter 2014 Universal Service Contribution Factor," DA 13-2388 (rel. Dec. 13, 2013), available on-line at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1213/DA-13-2388A1.pdf.

rely increasingly less on legacy telephone services offered by traditional service providers. Missouri's USF policies must adapt to the significant technological revolutions that have occurred and the explosion of competitive forces that have radically transformed the communications market and the manner in which Missourians purchase and use modern communications services.

After the legislature established Missouri's universal service policies, the FCC published a report on the state of local telephone competition at the new millennium. According to that report, as of December 31, 1999 data, Missouri incumbent local exchange carriers ("ILECs") controlled 3.5 million switched access lines – 97 percent of all local loops – while five competitive local exchange carriers ("CLECs") served the remaining 113,000 lines.[7] Cable telephony and VoIP services were virtually nonexistent. Wireless service was also in its infancy, as wireless carriers served only 34 percent of the state's population.[8]

The ILEC analog wireline-centric world has changed remarkably since then, and today's market conditions are vastly different. As of December 31, 2012, ILECs in Missouri were serving 54 percent *fewer* switched access local lines than they had in 1999 (1.6 million, down from 3.5 million),[9] and non-ILECs had more than quintupled their line count (to 629,000), providing 27 percent of the end user access lines in Missouri.[10]

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[7] FCC, Industry Analysis Division, Common Carrier Bureau, *Local Telephone Competition at the New Millennium* (August 2000), Tables 2 & 4, available on-line at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0800.pdf.

[8] *Id.*, Table 5.

[9] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2012* (November 2013) (*"2012 Local Competition Report"*), Table 9, available on-line at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1126/DOC-324413A1.pdf. Missouri ILECs were also serving 152,000 lines via VoIP service bundled with Internet access services.

[10] *Id.*, Tables 12 and 13.

Cable telephony and other VoIP services have also flourished in the past decade, as have wireless and broadband services. For example, Missouri reported 98 VoIP providers offering service in the state as of the end of 2012.[11] Even more dramatic, as of December 2012, there were more than *triple* as many wireless subscribers in Missouri as there were wireline switched access lines in service (5.7 million vs. 1.8 million).[12] In fact, there were *3.5 times more* wireless phones than the number of local loops provided by ILECs.[13] Stated another way, two-thirds of the 7.5 million voice "lines" in Missouri are wireless.

A Fall 2013 MoBroadbandNow report identifies 139 broadband providers offering service in the state, and states that Missouri met its goal of achieving 95 percent broadband accessibility *two years early*, providing myriad options for consumers seeking broadband connections that could allow them to subscribe to voice services provided over those broadband connections.[14] Clearly, access to voice services no longer depends on the availability of analog voice service over traditional copper networks.

These competitive developments have helped ensure that the state's universal service goals have been met. According to the FCC's 2013 Universal Service Monitoring Report, as of 2012, 97.2 percent of Missouri households had telephone service, exceeding the national average of 95.9 percent[15] (up from Missouri's penetration rate of 95.8 percent in 2000).[16] Additionally,

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[11] *Id.*, Table 17.

[12] *Id.*, Tables 9 and 18.

[13] *Id.*

[14] State of Missouri Office of Administration Information Technology Services Division, *Broadband Strategic Report: Building Broadband Access and Adoption in Missouri (Fall 2013)* at 1 and Appendix E, available on-line at http://mobroadbandnow.com/files/2014/01/State-Report_October-2013.pdf.

[15] FCC, Universal Service Monitoring Report 2013 (Data Received Through October 2013), Table 3.7, available on-line at http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/2013_Monitoring_Report.pdf.

as discussed below, voice services are far more affordable today. Not only have the prices of wireless service declined substantially, but VoIP and other intermodal competitors are also providing voice services at attractive rates; indeed, these companies could not succeed if they did not offer consumers competitive prices.

A "high cost" program that would fund legacy technologies and services even though unsubsidized intermodal competitors are already offering service in the same areas ignores today's market realities and is out of sync with the ways in which today's consumers choose to communicate. Because Missourians have access to affordable voice service through a variety of technologies and service providers, there is no need to require consumers to fund a new subsidy to benefit a specific class of service providers. Indeed, such a fund would be inconsistent with the statutory requirement that the MO USF program "not grant a preference or competitive advantage to any telecommunications company." Sec. 392.248.2, RSMo.

The Commission should decline to reshape the state's universal service policies in a manner that is contrary to today's realities, market conditions and federal policy. The data above demonstrate that, due to the fundamental revolution that has altered the way in which individuals communicate, service providers in Missouri face fierce and growing competition from numerous market participants and technologies. Moreover, consumers no longer depend on plain old voice telephone services – instead, they communicate over a variety of networks, including traditional wireline systems, cable company IP networks, analog and digital wireless networks, and broadband connections, and they use a mix of services, applications, and providers to meet their

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[16] FCC, Industry Analysis Division, Common Carrier Bureau, *Telephone Subscribership in the United States* (rel. March 2001), Table 2 (available on-line at http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/subs1100.pdf).

overall communications needs, often substituting text messages, e-mails, social network updates and Twitter feeds for voice communication.

For example, according to CTIA-The Wireless Association, the number of text messages nationwide reached 2.303 trillion in 2013 (and the number of wireless subscriber connections surpassed the U.S. population).[17] Not only has there been explosive growth in text messaging as an alternative to voice conversations, wireless service coverage and adoption is pervasive. According to the National Telecommunications and Information Administration's ("NTIA") National Broadband Map, as of December 31, 2012, 99.8 percent of Missouri's population was served by at least one wireless provider of broadband service, and 96.2 percent of the state's population had access to three or more wireless broadband service providers.[18]

Wireless technology is also increasingly popular among consumers choosing voice communications. The United States Centers for Disease Control and Prevention found that as of December 2012, wireless phones were either the exclusive or predominant form of voice communication in *over two-thirds* (67.2 percent) of Missouri households.[19] In comparison, only 5.9 percent of Missouri households used landline phones exclusively.[20] Low-income individuals are even more likely than higher-income individuals to use wireless service exclusively, proving that wireless services are an effective, affordable alternative to traditional landline services at all

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[17] CTIA Resource Library (entry dated Nov. 25, 2013), available on-line at http://www.ctia.org/resource-library/facts-and-infographics/archive/more-wireless-subscriber-connections-than-us-population.

[18] *See* http://www.broadbandmap.gov/summarize/state/missouri.

[19] Blumberg SJ, Ganesh N, Luke JV, *et al*, *Wireless Substitution: State-level Estimates from the National Health Interview Survey, 2012*, National Health Statistics Report No. 70, National Center for Health Statistics, Centers for Disease Control (December 18, 2013), at Table 2, available on-line at http://www.cdc.gov/nchs/data/nhsr/nhsr070.pdf. 41.4 percent of Missouri households were wireless-only, and an additional 15.8 percent used wireless, rather than landline, telephones for most of their calls.

[20] *Id.*

income levels.[21] Not only is wireless displacing traditional voice services at an increasing rate, but the trend of lower prices (including flat-rate "any distance" pricing) and greater value (*e.g.*, more features and higher broadband speeds) makes wireless services an especially affordable option for obtaining basic voice (and other) services.[22] The explosive growth in the use of wireless services, devices and applications shows that consumers' communications needs are not as well facilitated by traditional wireline networks as they perhaps once were.

Similarly, VoIP services continue to expand rapidly in Missouri. As of December 31, 2012, companies other than traditional ILECs were providing wireline telephone service to 629,000 subscribers in Missouri,[23] 392,000 of which were VoIP subscriptions.[24] Missouri cable operators including Charter, Comcast and Cox are aggressively implementing VoIP services and offering them at attractive prices.[25] In addition to cable VoIP, innovative companies including Vonage, Skype, 8x8, MagicJack and Google offer other VoIP services at attractive prices. For example, Skype users can take advantage of unlimited calling in the United States and Canada for only $2.99 per month, while Vonage offers unlimited local and long distance calling in the

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[21] More than half of adults living in poverty (54.7 percent) and nearly 47.5 percent of those that live near the poverty level resided in wireless-only homes at the end of last year. Blumberg SJ, Luke JV, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2013*, National Center for Health Statistics, Centers for Disease Control (December 20, 2013), at 3, available on-line at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201312.pdf.

[22] Wireless carriers in Missouri offer a plethora of voice and data plans, and often include handsets at little or no cost. For example, according to AT&T's website, the company offers several wireless phones for less than one dollar, together with unlimited voice and texting, that can be combined with various data and unlimited messaging plans. *See* http://attonlineoffers.com/greatoffers/wireless-service#main1.

[23] *2012 Local Competition Report*, Table 15.

[24] *Id.*

[25] *See, e.g.*, http://www.connecttocharter.com/?mrc=ps-ctch-g-e-charter+cable+missouri; http://www.cabletv.com/missouri-comcast.html; http://www.cabletv.com/cox/mo.

U.S., Canada and Puerto Rico for only $24.99 a month (following an even lower-priced three-month trial period).[26]

The widespread availability of broadband services in Missouri has facilitated the growth of these VoIP competitors, and they could not succeed if consumers did not find their services attractive. As noted above, MoBroadbandNow identifies 139 broadband providers in Missouri. As of December 31, 2012, these broadband providers were providing more than 2.75 million high-speed connections (including wireline and wireless) in the state.[27] The number of cable modem high-speed connections in Missouri rose 80 percent between 2005 and 2012, from 323,000 to 581,000.[28] In addition to the *wireless* broadband facilities mentioned earlier, the NTIA's National Broadband Map shows that as of the end of 2012, more than 93 percent of Missouri's population was served by at least one *wireline* broadband provider.[29] These developments provide additional evidence of the range of services and providers available to meet the communications needs of Missouri consumers; unsurprising, given the steady decline in wired access lines. Methods of communication will only continue to evolve as competition drives providers to meet the desires of consumers through deployment of innovative technologies and services.

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[26] *See*, *e.g.*, http://www.skype.com/en/rates/; http://www.vonage.com/plan-finder/United%20States.

[27] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Internet Access Services: Status as of December 31, 2012* (December 2013) ("Internet Access Services 2011") at Table 17, available on-line at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1224/DOC-324884A1.pdf.

[28] *Compare id.* at Table 17 *with* FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of December 31, 2008 (February 2010)* at Table 17, available on-line at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296239A1.pdf.

[29] http://www.broadbandmap.gov/summarize/state/missouri.

**Universal Service Goals Are Already Being Achieved in Missouri**

As explained above, technological and competitive developments have helped ensure that voice service is available and affordable throughout Missouri. Because consumers can readily obtain quality voice services at affordable rates from a variety of service providers using an array of alternative technologies, the notion of "universal service" as requiring continued access to a traditional landline phone is anachronistic, and it would be inappropriate to create a MO HCF to perpetuate this out-of-date concept. After all, most, if not all, of the intermodal service providers in Missouri can and already do provide affordable voice services to consumers without the help of any MO USF support. Because robust competition has evolved without any explicit state-sponsored (and end-user funded) "high cost" support, the Commission should decline the suggestion to implement new and costly MO HCF subsidies that would favor one subset of carriers to the disadvantage of all others. Such subsidies are ultimately unnecessary to achieve the goal of universal service, and creating them would be wasteful.[30]

As mentioned above, "universal service" is a *service*, not a *network*, and requires only that all customers be able to obtain basic voice service from *some* provider, using *some* network – not to obtain voice service exclusively from an ILEC, over its legacy analog wireline network. High cost programs almost exclusively subsidize *one* set of competitors (ILECs) and *one* technological model (legacy analog copper networks). Since Sec. 392.248.4.(1)(a), RSMo requires that a qualified recipient of high cost support must be a facilities-based carrier with carrier of last resort obligations throughout an entire high cost area, most, if not all, intermodal providers would not qualify. Moreover, supporting the limited subset of providers that could

[30] It would also likely violate Sec. 392.185(3), RSMo's directive to "[p]romote diversity in the supply of telecommunications services and products throughout the state of Missouri" by disadvantaging intermodal competitors.

qualify under this standard would disadvantage the dozens of unsubsidized providers that are already competing with – and must continue to compete with – the subsidized companies.

Even if the Commission could legally expand the scope of supported entities (and under the statute, it may not), subsidizing multiple providers in the same area would be wasteful and contrary to the FCC's recent universal service reforms.

**The FCC's Universal Service Reforms**

Given that Sec. 392.248.1, RSMo prohibits the Commission from adopting any rules "inconsistent with the support mechanisms established for the federal Universal Service Fund," a discussion of the FCC's universal service reforms is relevant. Even if that were not the case, as a pure policy matter, the Commission should assess any proposal to create a MO HCF in light of the FCC's comprehensive overhaul of the nation's universal service and intercarrier compensation systems in its 2011 *USF/ICC Transformation Order*.[31]

In that order, the FCC concluded that significant reforms were necessary because the existing universal service programs were "based on decades-old assumptions that fail to reflect today's networks, the evolving nature of communications services, or the current competitive landscape."[32] The FCC found that existing universal service policies were "outdated" and "ill-equipped" to address the modern telecommunications world in which consumers have access to and increasingly prefer to obtain voice services from a variety of providers, not just traditional narrowband wireline system operators.[33] The FCC acknowledged that its existing rules had the effect of directing funds to recipients "in ways that may no longer make sense in today's

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[31] *See Connect America Fund*, WC Docket No. 10-90, *et al*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*"), *petitions for review pending sub nom. Direct Communications Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

[32] *USF/ICC Transformation Order*, at ¶ 6.

[33] *Id.*, ¶¶ 6, 9.

marketplace.[34] It also found that the current fund mechanisms did not ensure that carriers' uses of the funds were prudent and efficient, and lacked accountability.

The FCC's policy statements are equally relevant to the MO USF. The FCC has sought to modernize the federal approach to universal service and implemented meaningful reforms on a nationwide basis. The Commission can best achieve the state's universal service policy goals by harmonizing its efforts and policies with those of the FCC. Indeed, as the FCC's comprehensive solution for universal service reform is implemented, the MO USF will no longer be needed, much less will there be any justification to create a new state USF subsidy program in the form of a MO HCF.

Addressing the flaws it identified in the existing universal service program, the FCC's *USF/ICC Transformation Order* re-purposed traditional universal service programs to promote the universal availability of voice service over modern fixed and mobile networks that are capable of providing voice and broadband services.[35] The FCC also designed its reforms to eliminate waste and inefficiency, improve incentives for rational investment and operation by recipients, and ensure better accountability.[36] By controlling the size of federal support programs, the FCC also aimed to provide support "that is sufficient but not excessive so as to not impose an excess burden on consumers and businesses who ultimately pay to support the Fund."[37]

Some of the FCC's reforms will be implemented over a transition period, while others will require further decisions regarding implementation details. A cornerstone of the FCC order

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[34] *Id.*, ¶¶ 6, 287.

[35] *Id.*, ¶¶ 1, 5, 17.

[36] *Id.*, ¶¶ 7, 11, 195, 286-289.

[37] *Id.*, ¶ 57.

was the creation of the Connect America Fund ("CAF"), which will ultimately replace all existing high-cost support mechanisms, underscoring the impropriety of Missouri considering creating a MO HCF. The FCC capped the amount of CAF funding at $4.5 billion annually (in implementing Phase II of the CAF, the FCC intends to make another approximately $1.75 billion of funding available[38]), froze the amount of legacy high-cost support provided to price cap carriers pending the development of a new cost model, limited reimbursement for certain expenses, and established processes for phasing out or reducing certain high-cost programs over time.[39] These changes are intended to rationalize and target federal support on a more granular level, by directing funds only to areas where subsidies are truly needed. In the long run, the FCC intends to rely on a competitive bidding system to choose the most efficient universal service providers and technologies.

Three principles embraced by the FCC warrant particular attention. First, the FCC reforms are properly aimed at assuring and expanding service availability for *consumers*, not at ensuring the continuing existence of support for particular carriers or business models.[40] Second, the FCC ruled that the CAF will not be used to provide funding support in areas where there is an unsubsidized competitor providing affordable voice and broadband service. Funding will instead be directed to areas where providers would not deploy and maintain network facilities absent receipt of a subsidy. According to the FCC, providing universal service support

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[38] *See* FCC Encyclopedia, *Connect America Cost Model Illustrative Results, Version 4.0 Announcement Public Notice*, available on-line at http://www.fcc.gov/encyclopedia/connect-america-cost-model-illustrative-results.

[39] The FCC also established a Mobility Fund to promote mobile voice and broadband services in unserved areas.

[40] The FCC flatly rejected the concept that current recipients are entitled to continued support. "Indeed, there is no statutory provision or Commission rule that provides companies with a vested right to continued receipt of support at current levels, and we are not aware of any other, independent source of law that gives particular companies an entitlement to ongoing USF support." *Id.*, ¶ 293.

in areas where another service provider that does not receive government subsidies is offering quality service "is an inefficient use of limited universal service funds."[41] If affordable service is already available through an unsubsidized provider, it is not necessary or desirable to subsidize another carrier's operation. Third, the FCC sought to "ensure fairness by reducing high-cost loop support for carriers that maintain artificially low end-user voice rates."[42] The FCC expects such carriers to recover more of their costs from their end user customers, and explained that it is inappropriate to provide subsidies to carriers that are charging their customers local service rates that are lower than a prescribed benchmark level, which will be set at "the national average of local rates plus such state regulated fees."[43] As the FCC noted, "[d]oing so places an undue burden on the Fund and consumers that pay into it."[44]

Given that the Missouri Legislature enacted Sec. 392.248 with an eye towards consistency with federal universal service rules and policies, the FCC's reforms militate against creation of a MO HCF. The federal reforms are intended to assure and expand service availability for consumers, which is consistent with the MO USF's goal of "universally available and widely affordable telecommunications services." Sec. 392.185(1), RSMo. However, the FCC has chosen a modern means of meeting that objective, and is implementing reforms intended to reduce wasteful or excessive levels of support of the sort that creating a MO HCF would perpetuate. By creating an integrated package of universal service and intercarrier compensation reforms, and establishing mechanisms that will provide carriers sufficient recovery for revenue reductions, the FCC concluded that "states will not be required to bear the burden of

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41 *Id.*, ¶¶ 24, 27, 170, 280-281.

42 *Id.*, ¶¶ 27, 197, 235-241.

43 *Id.*, ¶ 238. The state fees will include state subscriber line charges, universal service fees and mandatory extended area service charges.

44 *Id.*, ¶ 237.

establishing and funding state recovery mechanisms" to compensate carriers for changes resulting from those reforms.[45] To ensure that the universal service program in Missouri conforms to the new national guidelines, the Commission should incorporate these same principles in its administration of the MO USF and reject demands for creation of a MO HCF.

It bears emphasis that the FCC did not contemplate that state funding mechanisms would serve as a vehicle for replacing any monies subject to the federal reforms. Instead, the FCC's *USF/ICC Transformation Order* provides several means through which carriers can recover reductions in traditional federal USF funding and intercarrier compensation revenues (from both interstate *and* intrastate services). Carriers are expected to first look to limited recovery from their own end users by increasing retail rates (subject to a residential rate ceiling). Additional support is available through CAF funding and a federal replacement access recovery charge ("ARC").[46] The FCC also established a waiver process available to individual rural ILECs that are negatively affected by the USF reforms, through which a carrier can obtain an exemption from some or all of the reforms based on a showing of good cause.[47]

Accordingly, the Commission should focus on eliminating excesses in the existing MO USF, and soundly reject calls for creation of a MO HCF.

**State Commission Responses to the FCC's Reforms**

In contrast to the suggestion to expand the MO USF to create a new MO HCF, several states have taken action to stabilize and *reduce* state universal funds – particularly following the FCC's comprehensive reforms. For example, the Colorado Public Utilities Commission has opened a rulemaking and proposed to eliminate funding support from the state "high cost" fund

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[45] *Id.*, ¶ 795.

[46] *Id.*, ¶ 849.

[47] *Id.*, ¶¶ 539-544.

in geographic areas where there is "effective competition."[48] This is consistent with the FCC's intention to eliminate universal service subsidies in areas where an unsubsidized competitor is providing service. In another instance, the staff of the Arizona Corporation Commission cited the "FCC's expansive and preemptive actions" in the *USF/ICC Transformation Order* as a basis for recommending that the Commission terminate an ongoing proceeding that had been considering proposals to expand the scope and size of a state USF. The New York Public Service Commission approved an industry settlement limiting the state USF to four years and capping it at $4 million per year (after an initial year disbursement of $5 million).[49] The fact that New York, which has a population over three times Missouri's *(*but like Missouri, also contains large rural areas), established such a relatively small program provides additional confirmation that creating a new MO HCF is inappropriate.

Following adoption of the FCC's *USF/ICC Transformation Order*, the Public Utility Commission of Texas ("PUCT") commenced a series of proceedings to reduce the amount of support distributed to all eligible service providers through the Texas High Cost Universal Service Plan ("THCUSP"). The PUCT is addressing large[50] and small[51] ILECs separately, but generally intends to reduce the amount of support all carriers receive from the state fund each

[48] *In the Matter of the Proposed Rules Regulating Telecommunications Providers, Services, and Products, 4 Code of Colorado Regulations 723-2*, Docket No. 12R-862T, Decision No. C12-0898-1, Notice of Proposed Rulemaking (August 6, 2012).

[49] *Proceeding to Examine Issues Related to a State Universal Service Fund*, New York Public Service Commission, Case 09-M-0527, Order Adopting Phase II Join Proposal (August 17, 2012).

[50] *See, e.g., Rulemaking to Consider Amending Subst. R. §26.403, Relating to the Texas High Cost Universal Service Plan and Subst. R. §26.412, Relating to the Lifeline Service Program*, Project No. 39937, Order Adopting the Repeal of *§26.403, New §26.403 and Amendment to §26.412 as Approved at the June 13, 2012 Open Meeting*. The PUCT estimated that these changes will reduce the amount of support payments by $16 million in 2013, and $96 million per year by January 2017. It is also anticipated that the surcharge will decline as well, as the size of the fund shrinks.

[51] *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to P.U.C. Subst. R. 26.404,* Order, August 30, 2013.

year over several years, while providing companies the opportunity to recover some or all of the reductions through increases in residential basic local service rates. In addition, recent amendments to the Texas statutes require additional reforms of the state universal service programs. One amendment requires automatic, phased reductions in support for medium-size ILECs (companies with more than 31,000 access lines), with a mechanism to prove up financial need to allow for continuing support.[52]

This Commission should likewise strive to reduce (and ultimately, to eliminate) the MO USF and the burdens it places on ratepayers, not create an additional subsidy program in the form of a MO HCF.

## Conclusion

The Commission should strive to harmonize the MO USF with the universal service policies adopted by the FCC, in recognition of the significant changes that have occurred in the industry over the past twenty years. The Commission should reject any proposal to create a new high cost fund to dole out unwarranted subsidies when unsubsidized service providers are already offering voice services at reasonable rates throughout the state.

[52] Acts 2013, 83rd Leg., R.S., ch. 751 (SB 583), § 1 (amended subsec. (b) and added subsecs. (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q)); (V.A.C.S. art. 1446c-0, Sec 56.023(f), (h), and (i).)

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**MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services**

By: _/s/ Deborah Kuhn_

Deborah Kuhn
Verizon
205 N. Michigan Ave., 7th Floor
Chicago, Illinois 60601
(312) 894-2354
(301) 282-4710 FAX
deborah.kuhn@verizon.com