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July 3, 2007

Mr. Gregory A. Steinhoff, Director
Department of Economic Development
301 West High Street
Jefferson City, Missouri 65101

FILED
August 28, 2007
Data Center
Missouri Public
Service Commission

Re: Proposed amendment to 4 CSR 240-3.570 (Requirements for Carrier Designation as Eligible Telecommunications Carriers)

Dear Mr. Steinhoff:

The Public Service Commission proposes to publish an amendment to modify the Commission's existing annual federal Universal Service Fund certification submission requirements. Please find enclosed a copy of the Proposed Amendment and Public Entity Cost Affidavit for your signature. Please review and sign the Affidavit at your earliest convenience so that the Commission may proceed with publishing. As you can see by the Affidavit we have prepared, we do not believe the proposed rule will have a fiscal impact greater than \$500 in the aggregate to any Missouri agency or political subdivision.

The Commission's authority to promulgate the original rule, in addition to its general authority under Sections 386.040, 386.250, 392.451 and 392.470 RSMo. (2000) to supervise telecommunications companies, is supported by federal statutory provisions. Specifically, 47 U.S.C. §214(e)(2) provides state commissions with the primary responsibility for designating carriers that are eligible to receive funds for high-cost support from the federal Universal Service Fund ("ETCs", or eligible telecommunications carriers). The Federal Communications Commission, in implementing the federal requirements, issued a Report and Order providing states with suggested guidelines to make their designations, and included language encouraging states to make their processes competitively neutral.¹

This amendment is being proposed to provide guidance on certain annual certification requirements, making the requirements applicable to both competitive and incumbent local exchange carriers. The amendment also clarifies the Commission's ability to decline to

¹ Report and Order, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46 (Adopted February 25, 2005), page 10, para. 19.

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recertify an ETC. It is designed to make the existing rule more competitively neutral and provides more accountability in the annual certification process.

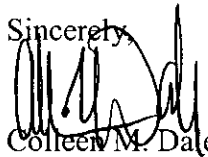
Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rulemaking in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving an owner of real property of all economically beneficial use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated.

Adopting the proposed rulemakings does not implicate the takings clause of the U.S. Constitution, because the proposed rulemaking does not involve the taking of real property.

The Commission has also performed the small business analysis required by Section 536.300, RSMo Supp. 2006. Our analysis accompanies this letter.

Please let me know if you have any questions concerning this proposed rule amendment.

Sincerely,



Colleen M. Dale

Secretary of the Missouri Public Service Commission
(573) 751-4255

**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting
Requirements**

Proposed Amendment

4 CSR 240-3.570 Requirements for Carrier Designation as Eligible Telecommunications Carriers

PURPOSE: This proposed amendment codifies the incumbent local exchange carrier annual USF certification requirements.

(4) Annual Certification Filing Requirements [for ETCs].

(A) Requirements applicable to all ETCs, including incumbent local exchange carriers (ILECs). *[All ETCs, including incumbent local exchange telecommunications carriers that receive federal high-cost support, shall, b]*

1. By August 15 of each year, **all ETCs, including ILECs, shall** submit an affidavit executed by an officer of the company attesting that federal high-cost support is used consistent with the commission's rules and the Telecommunications Act of 1996. The affidavit will be accompanied by documentation of support received and costs incurred.

2. **All ETCs, including ILECs, in non-rural areas of Missouri shall, in conjunction with the annual high-cost certification process, assist the commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.**

3. **All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the ETC or ILEC.**

4. The commission or its staff may request additional information regarding the annual certification.

5. Questions regarding the appropriate documentation *[for ETCs]* should be directed to the commission's Telecommunications Department.

(B) Requirements applicable to ETCs

1. ETCs seeking certification by October 1 of each year shall, no later than June 15 of each year, set up a meeting with the Telecommunications Department staff and the Office of the Public Counsel to review and discuss the ETC's proposal for the two (2)-year improvement plan. The meeting shall include a discussion of the proposed plan and any changes to the plan that would improve coverage, service quality or capacity in unserved or underserved areas in the Missouri service area in which ETC designation was granted.

[1]A. A two (2)-year improvement plan shall include progress updates on any previously submitted plan. The two (2)-year improvement plan shall include, with specificity, proposed improvements or upgrades to the carrier's network on a wire center-by-wire center basis throughout its proposed designated service area and address all of the separate components addressed in the initial plan, set forth in (2)(A)2. above.

[2]B. Reports on unfilled service requests and customer complaints for the previous year and how the two (2)-year improvement plan may address such requests and complaints.

[(C)]2. ETCs shall submit a demonstration that the receipt of high-cost support [was] **will be** used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

[(I)]A. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:

[A.](I) Quality and rates—quality services should be available at just, reasonable, and affordable rates;

[B.](II) Access to advanced services—access to advanced telecommunications and information services should be provided in all regions of the state;

[C.](III) Access in rural and high-cost areas—consumers in all regions of Missouri, including those in rural, insular and high-cost areas will 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 that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

[(D)]3. ETC shall submit a demonstration that high-cost support was used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that such support was used in addition to any expenses the ETC would normally incur.

4. ETCs shall submit a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ETCs service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.

[(E)]5. ETCs shall submit an affidavit signed by an officer of the company certifying that the ETC continues to comply with the approved consumer code for wireless service recognized by the Cellular Telecommunications and Internet Association (CTIA) and/or applicable service quality standards and consumer protection rules, certifying that the ETC continues to be able to function in emergency situations, continues to offer a local usage plan comparable to that offered by the incumbent local exchange telecommunications carrier in the relevant service areas (if applicable), and continues to acknowledge that it shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(3) of the Telecommunications Act of 1996.

*[(F)]*6. ETCs shall submit a report of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the Federal Communications Commission in the previous twelve (12) months for which the company has knowledge. Such report shall include, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any. If the commission finds the ETC's resolution of complaints is not satisfactory or if a particular type of complaint is recurring without being satisfactorily addressed, then the commission may decline to certify the ETC during the annual certification process.

[(G)] An application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC.

(H) All ETCs, including incumbent local exchange telecommunications carriers, in non-rural areas of Missouri shall, in conjunction with the annual high-cost certification process, assist the commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.

(I) All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the ETC or incumbent local exchange telecommunications carrier.

(J) Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission's annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.

(K) All records required by this rule shall be preserved for at least two (2) years.

*(L)]*7. ETCs, or carrier requesting ETC designation, shall promptly furnish requested information, including financial information, related to its designation as an ETC to the commission, its staff or the Office of the Public Counsel.

(C) Requirements applicable to ILECs

1. ILECs seeking certification by October 1 of each year shall, no later than August 15 of each year:

A. Submit a narrative discussing the use of the high-cost support as follows:

(I) Provision: A general description of any construction plans with start and end dates, populations affected by construction plans and estimated budget amounts, if applicable.

(II) Upgrade: The geographic areas for any improvements, start and completion date for each improvement, estimated investment for each project that is supported by high-cost funding, estimated population that will be served as a result of the improvements, if applicable.

(III) Maintenance: A general description of any on-going maintenance that is supported by high-cost funding, if applicable.

2. Submit a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ILECs service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.

3. Submit a demonstration that the receipt of high-cost support was used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

A. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:

(I) Quality and rates—quality services should be available at just, reasonable, and affordable rates;

(II) Access to advanced services—access to advanced telecommunications and information services should be provided in all regions of the state;

(III) Access in rural and high-cost areas—consumers in all regions of Missouri, including those in rural, insular and high-cost areas will 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 that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(5) Additional Requirements.

(A) Each CMRS provider shall submit to the commission a letter reflecting a change to the name and/or change, deletion or addition of a trade name under which the ETC will be doing business in the state of Missouri, attaching, as applicable, an amended Certificate of Incorporation, Fictitious Name registration or an amendment thereof. The CMRS provider shall modify its current informational filing, as required in subsection (3)(D) to reflect the new name and shall attest that no revisions are being made, except for the name change.

(B) ETCs shall not self-certify to the Universal Service Administrative Company for receipt of federal universal service funds.

(C) ETCs, including incumbent local exchange telecommunications carriers, shall not willfully make any false entry in any business record of any kind kept by it, nor shall it willfully destroy, mutilate, alter or by any method falsify any such record, nor shall it willfully neglect or fail to make full, true and correct entries in such records of all facts and transactions appertaining to its business, nor shall it falsify any statement to the commission.

(D) Allegations of failure to comply with this rule shall be filed with the commission in the form of a formal complaint pursuant to 4 CSR 240-2.070. Resolution of the complaint may result in revocation of the ETC designation.

(E) The commission shall not certify, by October 1 of each year, any ETC, including incumbent local exchange telecommunications carriers, that fails to comply with these rules.

(F) *[ETCs shall submit to the commission staff, by August 15, 2006, a statement of compliance with 4 CSR 240-3.570. All carriers with requests for ETC designation pending as of the effective date of this rule shall submit, within thirty (30) days of the effective date of the rule, any missing information required by 4 CSR 240-3.570 or a statement that all required information was previously submitted as part of the request for ETC designation.]* **An application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC.**

(G) **Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission's annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.**

(H) **All records required by this rule shall be preserved for at least two (2) years.**

AUTHORITY: sections 386.040, 386.250, 392.451 and 392.470, RSMo 2000. Original rule filed Oct. 31, 2005, effective June 30, 2006.*

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 392.451, RSMo 1996; and 392.470, RSMo 1987.*

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: July 3, 2007

Rule Number: 4 CSR 240-3.570

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Natelle Dietrich

Phone Number: 573-751-7427

Email: Natelle.dietrich@psc.mo.gov

Name of Person Approving Statement: Colleen Dale

Please describe the methods your agency considered or used to reduce the impact on small businesses (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

Many of the carriers directly affected by the proposed amendment are small businesses. An industry workshop was held to discuss proposed language. A follow-up meeting was held with incumbent local exchange carriers to further refine language since they are the carriers largely affected by the proposed amendment. Additional emails and telephone conversations resulted in an amendment that was less stringent and codified existing processes, as opposed to incorporating new requirements.

Please explain how your agency has involved small businesses in the development of the proposed rule.

An industry workshop was held to discuss proposed language. A follow-up meeting was held with small business affected by the proposed amendment. A follow-up meeting was held with incumbent local exchange carriers further refine language. Additional emails and telephone conversations resulted in an amendment that was less stringent and codified existing processes, as opposed to incorporating new requirements.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

None expected.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

Incumbent local exchange carriers, competitive local exchange carriers and wireless providers that have received eligible telecommunications carrier designation will be required to comply, but they will not be adversely affected since they are not being required to do anything more than current processes.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

None expected.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Incumbent local exchange carriers, competitive local exchange carriers and wireless providers designated as eligible telecommunications carriers.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes ___ No x

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.