

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

In the Matter of the Petition of VCI)	
Company for Designation as an Eligible)	Case No. CO-2006-0464
Telecommunications Carrier)	

BRIEF OF VCI COMPANY

I. INTRODUCTION

VCI Company (“Company” or “VCI”), a Missouri certificated local exchange carrier, respectfully requests that the Missouri Public Service Commission (“Commission”) grant its June 8, 2006 petition for designation as an Eligible Telecommunications Carrier (“Petition”) in exchanges served by Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T”). VCI seeks ETC designation only for purposes of obtaining reimbursement for the provision of low-income services, Lifeline and Link-Up, to eligible Missouri consumers.

The record is replete with testimony and documentation demonstrating that the Company meets all the ETC designation requirements set forth in the Telecommunications Act of 1996 (“Act”), Federal Communications Commission’s (“FCC”) rules and Commission rules. In further support of its request for ETC designation, VCI, by its counsel, files this post-hearing brief (“Brief”) in accordance with the Commission’s *Order Directing Specific Briefing and Resetting Briefing Schedule* issued May 23, 2007. In this Brief, VCI provides further legal and documentary support that it meets all applicable state and federal requirements for ETC designation. Based on all of the information provided in these proceedings, the Commission should grant VCI’s Petition.

II.
**HAS VCI COMPANY DEMONSTRATED THAT IT MEETS THE APPLICABLE
STATE AND FEDERAL REQUIREMENTS FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER?**

Yes. The Commission should find that VCI meets all applicable requirements set forth in Federal Law, FCC rules and Missouri Commission rules for designation as an ETC in the Company's designated service area.

In Section A below, VCI establishes that the Company fulfills the prerequisites for ETC designation set forth in Section 214(e) of the Act, FCC rules and similar Commission rules. Section B addresses VCI's compliance with additional requirements for ETC designation promulgated by the FCC in the March 17, 2005 Order and analogous Commission rules. At the Commission's request, VCI provides authority for its position that the Commission has the authority to waive federal requirements for ETC designation. Finally, VCI demonstrates that the Company's designation as an ETC is in the public interest in Section C.

A. Does VCI meet the applicable federal requirements set forth in Section 214(e)(1) of the Telecommunications Act of 1996 ("the Act"), 47 C.F.R. 54.501(d)(1) and (2) and Missouri requirements codified at CSR 240-3.570(2)(A)(6) and (7) and (3)(C)(1)(A)-(I)?

Yes, VCI meets the FCC's requirements under Section 214(e) of the Act, the FCC's rules and similar Commission rule provisions. The Commission should find that the Company has made a reasonable demonstration of its capability and commitment to provide Universal Service in Missouri and thus should be designated an ETC.

1. VCI is a Common Carrier and has Demonstrated that it Will Provide the Nine (9) Services Supported by Universal Service Using a Combination of its Own Facilities and Resale of AT&T's Services and Will Advertise the Availability of Services and Charges Using Media of General Distribution in a Manner Likely to Reach Qualifying Consumers.

The Commission should find that VCI satisfies the requirements of Section 214(e) of the Act, 47 C.F.R. 54.501(d)(1) and (2) as well as Commission Rules Codified at 4 CSR 240-

3.570(2)(A)(6) and (7) and (3)(C)(1)(A)-(I)¹ because it is a common carrier and has demonstrated that it will provide the services supported by Universal Service via a combination of UNE and resale of another carrier's services. The Commission should further find that the Company will advertise the availability of low income services and charges in media of general distribution in a manner likely to reach qualified consumers.

a. VCI is a Common Carrier.

VCI is a Missouri certificated common carrier, currently designated an ETC in California, Colorado, Florida, Idaho, Iowa, Kansas, Louisiana, Michigan, Minnesota, Nebraska, New Mexico, New York, North Dakota, South Dakota, Tennessee, Texas, Utah and Wyoming.² VCI currently is providing the nine (9) services supported by Federal universal service to Lifeline eligible consumers in Florida, Iowa, Louisiana, Michigan, Minnesota, New Mexico, North Dakota, South Dakota, Tennessee, Texas, and Wyoming. No parties to this proceeding have disputed that VCI is a common carrier. Thus, the Commission should find that VCI is a common carrier.

b. VCI will Provide Service Using A Combination of its Own Facilities and Resale of Another Carrier's Services.

VCI is committed to and capable of providing service via resale and UNEs. The Company has a Commission approved interconnection agreement and VCI has made

¹ The Act, FCC rules and analogous Missouri rules provide: A carrier may be designated an Eligible Telecommunications Carrier ("ETC") if it is a 1) common carrier, 2) offers the services supported by Federal universal service mechanisms, 3) using its own facilities or a combination of its own facilities and resale of another carrier's services; and 4) advertises the availability of services and charges using media of general distribution. (47 U.S.C. 214(e)(1)(a)(b); 47 C.F.R. 54.201(d)(1)(2)). The ETC applicant must commit to 1) advertise the availability of services and 2) "publicize the availability of Lifeline and Link-Up service in a manner reasonably designed to reach those likely to qualify for the service consistent with 47 C.F.R. 54.405." (47 U.S.C. 214(e)(1); 4 CSR 240-3.570 (2)(A)(6)(7). A carrier's "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements.... (47 C.F.R. Sec. 54.201(f)). The services supported by Federal universal services are 1) voice grade access to the public switched network; 2) local usage; 3) dual tone multi-frequency signaling or its functional equivalent; 4) single-party service or its functional equivalent; 5) access to emergency services; 6) access to operator services; 7) access to interexchange service; 8) access to directory assistance; and 9) toll limitation for qualifying low-income consumers. 47 C.F.R. Sec. 54.101(a)(1)-(9); 4 CSR 240-3.570(3)(C)(1)(A)-(I).

² Petition, ¶ 5; Johnson 8/24/06 Testimony, p. 2, lines 13-16; Johnson 3/2/07 Testimony, p. 11, lines 2-5.

arrangements with AT&T to obtain UNEs.³ Staff concluded that VCI has made the commitment to provide the supported services.⁴ The Company, through its Petition and Testimony has demonstrated that it will provide the nine (9) services supported by Universal Service and that it commits to compliance with the FCC's rules regarding how an ETC provider must provide service utilizing its own facilities.⁵

The Company illustrated the manner in which it will provide service in compliance with Federal law and, Commission and FCC regulations. At locations near the central office, VCI will utilize UNEs to provide the services supported by Universal Service. Where the customer is located at a distance from the central office, the Company resells the underlying carrier's services.⁶ VCI further testified that it is capable of offering directory assistance, one of the supported services, via its own facilities, which service also fulfills the FCC's prerequisite for facilities-based service.⁷

The Commission should find that VCI has demonstrated that it will provide the nine (9) supported services in compliance with the Act, Commission and FCC rules.

c. VCI will Advertise the Supported Services Via Media of General Distribution and In a Manner Reasonably Designed to Reach Those Qualified for Service.

Where it provides Lifeline service, the Company advertises the availability of and charges for Lifeline and Link-Up service throughout its designated service areas via television advertisements and brochure.⁸ VCI testified that, unlike AT&T, it will advertise the availability

³ Order Approving Interconnection Agreement (Case No. CK-2006-0446, July 11, 2006). Johnson 8/24/06 Testimony, p. 10, line 7- p. 11, line 6.

⁴ Ex. 3, Cecil Rebuttal, p. 5, line 18 – p. 6, lines 17-18; Tr. p. 164, line 9 – p. 165, line 1.

⁵ Ex. 1, Johnson Direct, p. 8, line 13 – p. 9, line 6; p. 11, line 7 – p. 14, line 2; *Transcript of Proceedings, Hearing, April 18, 2007, Volume 2* ("Tr.") p. 127, lines 10-17.

⁶ Tr. p. 53, line 18 – p. 54, line 14.

⁷ Tr. p. 54, line 20 – p. 55, line 13. See also, *In the Matter of Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd. 8776, 8870, ¶ 169 (CC Docket No. 96-45, rel. May 8, 1997).

⁸ Petition ¶¶ 18, 19; Ex. 1, Johnson Direct, p. 9, line 7 – p. 10, line 6; Ex. 2, Johnson Surrebuttal, p. 2, lines 16-22; - 10; Tr. p. 58, lines 5-11.

of and charges for Lifeline services to Missouri consumers in the same manner.⁹ Because television advertisements reach the widest pool of Lifeline and Link-Up qualified consumers, VCI's advertising plan is reasonably designed to reach those likely to qualify for the service.¹⁰ VCI's advertising efforts are consistent with the outreach guidelines in the FCC's June 29, 2004 Lifeline Order.¹¹ The Commission should find that VCI will advertise the supported services throughout its designated area in a manner designed to reach qualified consumers.

d. The Company Will Apply all Required Federal and State Discounts to Its Lifeline and Link-Up Eligible Consumers in Missouri.

FCC and Commission rules require an ETC to pass through all required support to its Lifeline and Link-Up eligible customers.¹² Despite copious evidence to the contrary, AT&T claims that VCI does not intend to comply with this requirement.¹³ Based on the information submitted in these proceedings, the Commission should find that VCI has committed to pass through the required support. The Commission should further find that VCI is entitled to obtain reimbursement from the USAC for all tiers of support that it passes through to Missouri consumers.

To obtain reimbursement for Lifeline and Link-Up support VCI must pass through to its eligible consumers the support set forth 47 C.F.R. 54.403(a)(1)-(4), which consists of 1) a waiver of the subscriber line charge (Tier I); 2) \$1.75 (Tier II); and 3) twice the amount of any state mandated Lifeline support (Tier III). Qualifying customers on Tribal lands receive additional

⁹ Ex. 1, Johnson Direct, p. 9, line 12 – p. 10, line 6; Ex. 2, Johnson Surrebuttal, p. 7, line 12 – p. 8, line 1; Tr. p. 58, lines 5-11; Tr. p. 175, line 23 – p. 176, line 2.

¹⁰ Ex. 1, Johnson Direct, p. 9, line 12 – p. 10, line 6; Ex. 2, Johnson Surrebuttal, p. 7, line 12 – p. 8 line 1.

¹¹ *In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8325 – 8329, ¶¶ 41-49 (WC Docket No. 03-109, rel. April 29, 2004).

¹² 47 C.F.R. 54.401; 47 C.F.R. 54.403; 47 C.F.R. 54.411; 4 C.S.R. 240-3.570(2)(A)(7).

¹³ Ex. 4, Stidham Rebuttal, p. 8, line 6 – p. 10, line 9.

service discounts Tier IV.¹⁴ VCI also must provide Link-Up eligible customers a reduction of up to \$30.00 off of the service connection fee.¹⁵

ETCs generally must utilize Universal Service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended.¹⁶ However, Lifeline support is used for the purpose intended when the carrier passes through that support to reduce the price of access to telecommunications for its eligible customers.¹⁷

Contrary to AT&T's contention, VCI declared in its Petition and further testified that it will pass through all required state and federal support to its Lifeline and Link-Up eligible consumers.¹⁸ After correcting an error in calculating the Subscriber Line Charge applicable in Missouri, the Company proposed the following service discounts:¹⁹

Tier I SLC	\$5.67
Tier II	1.75
Tier III	3.50 ²⁰
Add'l Federal Discount	1.75
Company Discount	3.99
	<hr/>
	\$16.66
Company's Tariffed Rate:	<u>\$29.99</u>
Lifeline rate:	\$19.00

VCI's Link-Up support will be a \$30.00 discount off of the Company's \$150.00 connection fee.

VCI's connection fee is well within the amount contemplated by the FCC's rules.²¹

¹⁴ 47 C.F.R. 54.403(a)(1)-(4).

¹⁵ 47 C.F.R. 54.411(a)(1).

¹⁶ 47 C.F.R. 54.7.

¹⁷ *In the Matter of Federal-State Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S. C. Sec. 214(e)(1)(A) and 47 C.F.R. Sec. 54.201(i);* ¶ 26 (CC Docket No. 96-45, rel. Sept. 8, 2005); Petition, p. 11, ¶ 24.

¹⁸ Petition, p. 11, ¶ 24; Ex. 1, Johnson Direct, p. 18, line 18 – p. 19, line 13; Ex. 2, Johnson Surrebuttal, p. 5, line 19- p. 6, line 15.

¹⁹ Ex. 1, Johnson Direct, p. 5, line 19 – p. 6, line 15. [Note: VCI will revise its tariff to include Lifeline and Link-Up discounts and waivers upon designation as an ETC. See Tr. p. 84, line 11 – p. 85, line 2; Tr. p. 94, line 23- p. 95, line 16.]

²⁰ Petition, p. 13, ¶ 31; Ex. 1, Johnson Direct, p. 19, lines 3 – 13.

²¹ 47 C.F.R. 54.411(a)(2) contemplates that a connection fee may be as high as \$200.00. [Note: While AT&T hints that VCI could increase its subscription fee in the future, the Commission should know that VCI has never increased its Lifeline subscription fee beyond \$150.00 in any state. As a competitive carrier, VCI is cognizant that its rates

By offering the discounts, the Company will obtain Universal Service support from the USAC in the amount of \$9.17, comprised of Tier I support of \$5.67, Tier II support of \$1.75 and Tier III support of \$1.75. VCI is entitled to obtain Tier III support whether or not the Company participates in the MoUSF. Federal rules provide that a carrier may obtain an additional \$1.75 in federal support if it passes through twice that amount in either state mandated Lifeline support *or Lifeline support it otherwise provides to the consumer.*²² A carrier is entitled to generate its own Tier III matching funds “independent of the actions of the state in which it operates” because additional discounts will further reduce service rates.²³ VCI provides the Tier III discount to its customers in every state it serves and has obtained the additional \$1.75 Tier III support reimbursement from the USAC since making application therefor in 2005.

e. The Commission May not Deny VCI’s Petition For the Reason that it is Not Currently Serving Missouri Customers or Because It Might Not Serve Absent ETC Designation.

AT&T would disqualify VCI from ETC designation, on the one hand, because the Company *is not serving* Missouri consumers²⁴ and, on the other hand, because the Company *might not serve* Missouri consumers absent ETC designation.²⁵ Neither of these reasons are appropriate for denial of VCI’s petition. Under *Western Wireless*, VCI need only make a

and charges must be maintained at levels the market legitimately will bear. As an ETC, VCI is aware of the FCC’s limitations on connection fees.]

²² (a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal: ... (3) Tier Three. Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated support or Lifeline support otherwise provided by the carrier, up to a maximum of \$1.765 per month in federal support, will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the carrier certifies to the Administrator that it will pass through the full amount of Tier Three support to its qualifying low-income consumers and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.... (47 C.F.R. 54.403(a)(3)).

²³ *In the Matters of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Western Wireless Corporation, Crow Reservation in Montana; Smith Bagley, Inc.; Cheyenne River Sioux Tribe Telephone Authority; Western Wireless Corporation, Wyoming; Cellco Partnership d/b/a/ Bell Atlantic Mobile, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service, Twelfth Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12,208, 12,253, ¶ 89 (CC Docket No. 96-45, rel. June 30, 2000).

²⁴ Tr. p. 18, line 18; p. 23, lines 18-21; p. 144, lines 6-10.

²⁵ Tr. p. 98, line 19 – p. 99, line 3.

“reasonable demonstration” of its capability and commitment to provide Universal Service. The Commission should find that VCI has reasonably demonstrated its capability and commitment to provide Universal Service in Missouri. The Commission also should determine that whether VCI will serve absent ETC designation is irrelevant to these proceedings.

2. VCI is Not Required to Have a “Track Record” in Missouri As A Condition of ETC Designation.

It is well settled that ETC applicants are not obligated to serve their designated areas prior to ETC designation. The FCC found, in *Western Wireless*, that such a requirement violates Section 253(a) of the Act because it “has the effect of prohibiting the ability of the new entrant to provide intrastate telecommunications service...”²⁶ “has the effect of prohibiting competitive entry” into a market²⁷ and “is not competitively neutral.”²⁸ While states may impose additional designation criteria on ETC applicants, such criteria must be “competitively neutral” and “not so onerous as to effectively preclude an entrant from providing service.”²⁹ The FCC also acknowledged that ETC designation may be crucial to a carrier’s decision to provide service in a state. Uncertainty regarding ETC designation could affect a carrier negatively, causing the carrier to be unable to secure financing or finalize its business plans.³⁰

In lieu of prior service provision, a carrier may make a “reasonable demonstration of its capability and commitment” to provide Universal Service, which may consist of 1) a description of proposed service technology; 2) a demonstration of the extent to which the carrier may otherwise be providing service in the state; 3) a description of the extent to which the carrier has

²⁶ In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, 15 FCC Rcd 15168, 15172, para. 10 (Docket No. 96-45, rel. August 10, 2000).

Section 253(a) of the Act provides that “[n]o state or local statute or regulation, or other state or local legal requirements, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” (47 U.S.C. Section 253(a).)

²⁷ *Western Wireless* at 15173, ¶ 12.

²⁸ *Id.* at 15176, ¶ 21.

²⁹ *Id.* at 15175, ¶ 18.

³⁰ *Western Wireless*, FCC Rcd 15168 *Id.* at 15173, ¶ 13.

entered into interconnection and resale agreements; or 4) a sworn affidavit signed by the representative of the carrier to ensure compliance with the obligation to offer and advertise the supported service.³¹

The Commission, then, cannot require VCI to have a “track record” in Missouri as a condition of ETC designation. Staff recommended approval of VCI’s Petition with full awareness of VCI’s lack of provisioning experience in Missouri.³² In lieu of current service provision, the Commission should find that VCI has made the “reasonable demonstration” required in *Western Wireless* because the Company has 1) described its proposed service technology;³³ 2) described the extent to which it has entered into an interconnection agreement and made arrangements for UNEs³⁴; and 3) committed to compliance with the obligation to offer and advertise the supported service in sworn testimony and its Petition.³⁵

3. VCI Will Serve Missouri Consumers With or Without ETC Designation

AT&T further suggests that it would not be competitively neutral to *grant* VCI ETC status because the Company may not serve in Missouri without Universal Service support.³⁶ AT&T’s suggestion is nonsensical for two reasons. First, the FCC makes clear, in *Western Wireless*, that ETC designation may be an important component of a carrier’s business plan.³⁷ Thus, VCI legitimately could have based its business decision to serve Missouri consumers on the Commission’s decision in this proceeding. In reality, AT&T has presented a non-issue. VCI

³¹ *Id.* at 15177, ¶ 24.

³² Tr. p. 144, lines 6-10.

³³ Petition page 7 ¶ 15, pages 8 – 9, ¶ 17; Ex. 1, Johnson Direct, p. 8, line 19 – p. 9, line 6, p. 11, line 19 – p. 14, line 2.

³⁴ Petition p. 7, ¶ 15; Ex. 1, Johnson Direct, p. 10, line 22 – p. 11, line 6.

³⁵ Petition, p. 9, ¶ 18; p. 10, ¶ 19; Ex. 1, Johnson Direct, p. 9, line 7 – p. 10, line 6; Ex. 2, Johnson Surrebuttal p. 2, lines 16-24; p. 8, line 12 – p. 9, line 1.

³⁶ Tr. p. 98, line 19 – p. 99, line 3; p. 149, line 6 – 150, line 4.

³⁷ FCC Rcd 15168 *Id.* at 15173, ¶ 13.

unambiguously testified that it will provide service in Missouri whether or not it obtains ETC designation.³⁸

In conclusion, the Commission should find that VCI has made a “reasonable demonstration” of its capability and commitment to provide Universal Service in Missouri. The Commission should further find that AT&T’s suggestion that VCI’s designation would not be competitively neutral is without merit.

4. The Commission Should Not Deny VCI’s Petition Because it Cannot Immediately Provide Universal Service in Missouri. Immediate Service Provision is Not Contemplated by Missouri or FCC rules and Requiring Immediate Service Provision Would Violate Section 253(a) of the Act.

In this proceeding, the Commission considers for the first time ETC designation for a carrier not currently serving in Missouri. AT&T insinuates that VCI should be disqualified from designation because it will delay serving Missouri consumers for approximately eight months.³⁹ VCI submits that the Commission should not deny VCI’s petition on the basis of a delay in serving Missouri consumers.

The Commission should not deny VCI’s petition on that ground, first, because neither FCC nor Commission rules require service within a specific time after designation. In fact, the FCC’s rules generally contemplate that carriers can undertake a reasonable amount of time to fulfill certain conditions. For example, a carrier must provide service within a *reasonable period of time*, if the customer is within the applicant’s licenses service area but outside its existing network coverage if certain conditions can be met.⁴⁰

Second, a new market entrant such as VCI needs and should be afforded a reasonable amount of time to upgrade its operations to serve Missouri consumers. The Company needs between five and eight months to train its customer service staff in the products to be offered,

³⁸ Tr. p. 99, lines 1-3. Tr. p. 99, lines 6-19.

³⁹ Tr. p. 23, line 18 – p. 24, line 2.

⁴⁰ 47 C.F.R. 54.202(B).

nuances of ILEC provisioning in Missouri, and state consumer rules and regulations. VCI must develop and schedule advertising and initiate tests in the market.⁴¹ VCI issues a few trial orders to ATT at first, to learn how the underlying carrier bills for its services before instituting mass market advertising.⁴² The Company focuses its attention on one state at a time in a new ILEC service area. Thus, although VCI's Missouri interconnection agreement was approved in 2006, the Company first tested the waters with AT&T in Michigan.⁴³ All of these steps must be completed for the Company, or any competitive carrier, to ensure that customers are provisioned and served properly.

Third, VCI submits that denying the Company's petition for failure to provide immediate service is inconsistent with *Western Wireless* and runs afoul of Section 253(a) of the Act.⁴⁴ Where a carrier is not required to serve customers before designation, as determined in *Western Wireless*, it follows that a carrier should be afforded a reasonable amount of time to prepare to serve customers. Requiring immediate service provision as a condition of ETC designation would have the effect of prohibiting VCI's ability to provide intrastate telecommunications service and have the effect of prohibiting VCI's competitive entry into the Missouri market.

B. Does VCI meet all applicable requirements set forth in the FCC's March 17, 2005 Order as codified at 47 C.F.R. 54.202(a) (1)-(5), and in analogous Missouri rules codified at 4 CSR 240-3.570?⁴⁵

⁴¹ Tr., p. 93, lines 11-23; Tr. p. 116, lines 3-16.

⁴² Tr. p. 106, line 21 – p. 107, line 6.

⁴³ Tr. p. 125, line 18 – Tr. p. 126, line 8.

⁴⁴ In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, 15 FCC Rcd 15168 (Docket No. 96-45, rel. August 10, 2000).

⁴⁵ In sum, an applicant for ETC designation must:

- a) commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service (47 C.F.R. 54.202(a)(1)(i), 4 CSR 240-3.570(3)(C)(3));
- b) commit to provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises (4 C.F.R. 54.202(a)(1)(i)(A), 4 CSR 240-3.570(3)(C)(3)(A));
- c) commit to provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by employing certain suggested methods (47 C.F.R. 54.202(a)(1)(i)(B); 4 CSR 240-3.570(3)(C)(3)(B));

Yes, the Commission should find that VCI meets all relevant requirements set forth in the March 17, 2005 Order and codified in FCC rules, and in analogous Commission rules. Because the Commission adopted its new ETC designation rule, in part, as a result of the FCC's March 17, 2005 Order, VCI first discusses the primary purpose of the FCC's order and its applicability. At the Commission's request, the Company provides authority for the proposition that the Commission may waive Federal requirements for ETC designation. In fact, the Company argues that the Commission need not be concerned about waiver of the FCC's March 17, 2005 guidelines because they are *permissive*, not mandatory.

Second, VCI submits that the Commission should exempt VCI from certain requirements that are practically inapplicable to VCI as a wireline UNE-based carrier. Third, VCI argues that the Commission may designate the Company an ETC for receipt only of low-income Universal Service support. Finally, VCI demonstrates that its local usage plan is comparable to AT&T's in all relevant respects. The Commission should find that the Company complies with the remaining FCC and Commission requirements for ETC designation.

1. The Commission Has the Authority to Develop and Impose Reasonable Requirements for ETC Designation and to Disregard Permissive Federal Requirements for ETC Designation.

Pursuant to the Commission's *Order Directing Specific Briefing and Resetting Briefing Schedule*, VCI provides authority for its contention that the Commission is not obligated to impose all of the requirements found in the March 17 order on VCI. Rather, the Commission has

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- d) submit a multi-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area (47 C.F.R. 54.202(a)(1)(ii); 4 CSR 240-3.570(2)(A)(2));
 - e) demonstrate its ability to remain functional in emergency situations (47 C.F.R. 54.202(a), 4 CSR 240-3.570(2)(A)(4));
 - f) demonstrate that it will satisfy applicable consumer protection and service quality standards 47 C.F.R. 54.202(a)(3), 4 CSR 240-3.570(2)(A)(8));
 - g) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation (47 C.F.R. 54.202(a)(4), 4 CSR 240-3.570(2)(A)(10)); and
 - h) certify its acknowledgement that the Commission may require it to provide equal access to long distance carriers (47 C.F.R. 54.202(a)(5), 4 CSR 240-3.570(2)(A)(9)).

the legal authority to develop and impose requirements for ETC designation consistent with Federal law and can disregard or waive requirements that are permissive rather than mandatory.

a. The Commission has Authority under the Act to Develop its own ETC Requirements Consistent with Federal Law.

The Act provides that the states have the primary responsibility for designating ETC.⁴⁶ The FCC initially determined that state commissions were obligated to designate any ETC that satisfied Section 214(e) of the Act and could not impose additional eligibility requirements for carriers in non-rural areas.⁴⁷ However, the 5th Circuit Court reversed the FCC on this issue, finding that “[n]othing in the statute ...speaks at all to whether the FCC may prevent state commissions from imposing additional criteria on eligible carriers.”⁴⁸ Even so, the 5th Circuit cautioned that such requirements must be reasonable and conform to Federal law. The Court pointed out that states that impose such onerous requirements that no otherwise eligible carrier could receive designation may run afoul of the FCC’s mandate to designate more than one carrier in a non-rural service area.⁴⁹

b. The Commission May Disregard Any of the Guidelines Set forth in the FCC’s March 17, 2005 Order because they are Permissive, Not Mandatory. Waiver is Unnecessary.

In the March 17, 2005 Order, the FCC followed the Fifth Circuit Court’s holding, remaining mindful of states’ rights and states’ primarily responsibility for ETC designation. The

⁴⁶ A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by a State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. (47 U.S.C. Section 214(e)).

⁴⁷ *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 417 (5th Cir. 1999) (“*TOPUC*”).

⁴⁸ *TOPUC*, 183 F.3d 393, 418 (5th Cir. 1999). See also *Recommended Decision* at 10826-10827, ¶ 35; March 17, 2005 Order at 6397, ¶ 16, n171. See also *NPCR, Inc. v. Boyle*, 2006 U.S. Dist. Lexis 88113 at *32 (D. Neb. Dec. 5, 2006) wherein the District Court found that “there is nothing in the Act that gives state public service commissions unfettered discretion with respect to Universal Service Fund designations.”

⁴⁹ *Id.* at 417, n31.

FCC clarified that it had developed additional guidelines for ETC designation that are permissive, not mandatory, stating, “We decline to mandate that state commissions adopt our requirements for ETC designations.”⁵⁰ The FCC explained:

Because the guidelines we establish...are not binding on the states, we reject arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations. We also find that federal guidelines are consistent with the holding of United State Court of Appeals for the Fifth Circuit that nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described in Section 214(e)(1)...[S]tate commissions will continue to maintain flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose.⁵¹

VCI submits that the Commission need not be concerned about waiving the FCC’s guidelines. The guidelines are permissive and thus, pursuant to the FCC, the Commission has the authority to decline to adopt any or all of them. As Staff commented in the Final Order of Rulemaking, “The FCC offered its ETC rules as guidelines to state commissions and encouraged state commissions to adopt additional requirements if necessary to analyze whether an ETC designation is in the public interest.”⁵² A comparison of the FCC’s and Commission’s rules reveals that the Commission exercised flexibility and did not merely adopt the FCC’s rules wholesale in 4 C.S.R. 240-3.570.⁵³

c. The Commission has the Authority to and Should Exempt VCI, on a Common Sense Basis, from ETC Designation Requirements that do not fit its Method of Service Provision or Business Plan.

⁵⁰ March 17, 2005 Order at 6397, ¶ 61.

⁵¹ *Id.*

⁵² *In the Matter of Proposed New Rule 4 CSR 240-3.570 Regarding Eligible Telecommunications Carrier Designations for Receipt of Federal Universal Service Fund Support*, Order of Rulemaking, p. 1 (TX-2006-0169; April 6, 2006).

⁵³ For example, while the FCC requires ETC applicants to submit a five year plan that describes proposed improvements throughout its proposed designated service area, the Commission requires applicants to submit a two (2)-year plan demonstrating that high-cost universal service support will be used for the provision, maintenance and upgrading of facilities and services for which the support is intended. 47 C.F.R. 54.202(a)(1)(ii); 4 C.S.R. 240-3.570(2)(a)(2).

The Commission, then, has the authority to develop its own ETC designation rules and is permitted, but not required to adopt the FCC's guidelines. VCI further submits that the Commission has the authority to and should exempt VCI from those ETC designation requirements that simply do not fit within the Company's business and service plans.

VCI first points out that the March 17, 2005 Order was a high-cost order pertaining primarily to wireless carriers or carriers with facilities in the ground. Neither the FCC nor the Commission appears to have considered the practical application of the additional requirements on carriers that don't fit within the box.

Second, VCI pinpoints the Commission rules that pertain to wireless carriers or carriers requesting high-cost funding and explains why VCI should be exempted therefrom. Finally, VCI identifies Commission rule provisions that pertain to carriers with facilities in the ground and explains why VCI cannot practically comply.

VCI concludes that Commission should take a practical approach to addressing VCI's application by exempting the company from rule provisions that are incongruent with VCI's method of providing service and its plan to obtain only low-income support.

(1) The FCC's March 17, 2005 Order was Directed at Carriers Requesting High Cost Funding and Wireless Carriers and Did Not Address UNE Based, Wireline Carriers.

The March 17, 2005 Order was issued primarily to develop rules for carriers requesting high-cost funding. In fact, the FCC explicitly states in the March 17, 2005 Order that it asked the Joint Board to review existing high-cost rules and that the Joint Board, consistent with the FCC's directives, "sought comment and held a public forum to address concerns regarding the designation and funding of ETCs in *high-cost areas* [emphasis added]."⁵⁴

⁵⁴ March 17, 2005 Order at 6375, ¶ 9

The March 17, 2005 Order further pertained primarily to wireless carriers. The FCC conceded that “[...]specific requirements as set forth in this Report and Order may be relevant only for Wireless ETC applicants and some may be relevant for wireline ETC applicants....”⁵⁵ In fact, the FCC admits that “portions of this order discuss the ETC framework as it relates to wireless carriers because those are the common carriers that most frequently seek to be designated as ETCs before the Commission.”⁵⁶

It also appears that in the March 17, 2005 Order, the FCC did not give significant consideration to facilities-based carriers without facilities “in the ground.” The Joint Board’s Recommended Decision, on which the March 17, 2005 Order was based, does not address the effect of any recommendations on UNE based providers. The Joint Board mentions UNE based carriers in passing, stating, “As the Commission develops the record in this proceeding, it also should consider the treatment of lines provided by unbundled network element (UNE)-based competitive ETCs....”⁵⁷ The March 17, 2005 Order, which adopted portions of the Recommended Decision, is silent on the topic of how UNE-based providers may satisfy the guidelines.

VCI submits that the March 17, 2005 Order primarily was meant to address the ETC designation process for and funding of carriers requesting high-cost support. The provisions of the March 17, 2005 Order also are congruent with the operations methodologies of wireless, rather than wireline carriers, and carriers with facilities in the ground, rather than UNE- based providers. Both ETC applicants and state commissions are left with the problem of applying the additional designation criteria to ETC applicants that serve customers in a manner not apparently fully contemplated by the FCC or that request low-income support only.

⁵⁵ March 17, 2005 Order at 6377, ¶ 17

⁵⁶ March 17, 2005 Order at 6379, n44.

⁵⁷In the Matter of the Federal-State Joint Board on Universal Service, Recommended Decision, 19 Fcc Rcd 10812, 10848, Para 85 (CC Docket No. 96-45; rel. February 27, 2004). (“Recommended Decision”)

(2) VCI should be Exempted from Certain Missouri Requirements Pertaining Explicitly or Implicitly to Wireless Carriers or Carriers Requesting High Cost Funding as Staff Recommended.

Some Commission rules apply strictly to carriers seeking high-cost support. As Staff testified, “Most of 4 CSR 240-3.570(2) is applicable to a carrier seeking ETC designation to receive high cost support.”⁵⁸ For that reason, Staff determined that VCI should not be subject to rules 4 CSR 240-3.570(2)(A)(1)-(4) and (9).⁵⁹ Staff also pointed out that the Commission’s rules impose requirements on wireless carriers that over and above those applied to other carrier types.⁶⁰ Thus, Staff explained that VCI should not be subject to 4 CSR 240-3.570(2)(B) and (3)(D). For practical reasons, the Commission should concur with Staff’s recommendation. It makes sense that a carrier that does not request high-cost funding should not be required to submit a plan detailing how high-cost funding will be used. VCI also be exempted from sections (2)(B)⁶¹ and (3)(D)⁶² of the rules because 1) wireline carriers are not governed by the consumer code for wireless services and 2) the Company has a tariff on file with the Commission.

(3) VCI Should Be Exempted from Certain Commission Rules Pertaining to True Facilities-Based Carriers as Staff Recommended.

In addition to rules for high-cost or wireless carriers, Staff determined that VCI should not be required to comply with certain rules that the Company submits could only practically

⁵⁸ Ex. 3, Cecil Rebuttal, p. 5, lines 20-21.

⁵⁹ In sum, per Staff, VCI is not subject to:

4 CSR 240-3.570(2)(A)(1)-(3): Intended use of high-cost support, including construction plans, and two (2) year plan demonstrating the use of high-cost support, including maps, list of improvements, and investment in improvements.

4 CSR 240-3.570(2)(A)(4): Ability to remain functional in emergency situations.

4 CSR 240-3.570(2)(A)(9): Statement acknowledging that carrier shall provide equal access if all other ETCs in that service area relinquish their designations.

⁶⁰ Tr. p. 152, lines 5-12.

⁶¹ 4 CSR 240-3.570-3.570(2)(B) requires wireless carriers to commit to abide by the consumer code for wireless service, include a copy of the consumer code as part of the ETC application and file changes to the code with the Commission.

⁶² 4 CSR 240-3.570(3)(D) provides: Within thirty (30) days of receiving ETC status, each CMRS carrier designated as an ETC shall make an informational filing with the commission consisting of a complete description of all of its service offerings. Such informational filings will be amended as service offerings are introduced or modified.

apply to carriers with “facilities in the ground.” As a UNE based carrier, VCI depends on the technical abilities of AT&T-Missouri, which owns, operates, manages and repairs the network and executes emergency plans for that network. Thus, the Company is practically unable to comply with requirements that contemplate true facilities ownership. For this reason, the Commission should concur with Staff’s recommendation.

Even though VCI is a UNE based carrier, AT&T argues that VCI should be subject to sections (2)(C)(2) and (2)(C)(3) of the Commission’s rule, under which VCI would be obligated to publicize the construction of new facilities and extend its networks to serve new customers within their ETC service area upon a reasonable request.⁶³ The reality is that because the Company is a UNE based carrier, VCI has no network. VCI utilizes the network of AT&T and is dependent upon AT&T to construct and extend the network in its service area.⁶⁴ VCI believes that AT&T has extended its network to all consumers physically able to receive service in its service area.⁶⁵

The Commission, then, should take a practical approach to addressing VCI’s Petition. Staff testified that only certain provisions of 4 CSR 3-570 are applicable to VCI⁶⁶ and VCI has committed to compliance with Staff’s designated requirements.⁶⁷ In this case, common sense dictates that the Commission should adopt Staff’s testimony and find that VCI should be subject only to Staff’s designated sections of the Commission’s rules.

⁶³ Ex. 4, Stidham Rebuttal, p. 4, line 7 – p. 5, line 25.

⁶⁴ Petition, ¶ 21, 22; Ex. 1, Johnson Direct, p. 14, lines 14-26; Ex. 2, Johnson Surrebuttal, p. 3, line 23 – p.-4, line 13.

⁶⁵ Tr. p. 109, lines 6-22.

⁶⁶ Ex. 3, Cecil Rebuttal, pp. 5-6; Tr. p. 152, line 5 – Tr. p. 153, line 1.

⁶⁷ Ex. 2, Johnson Surrebuttal, p 2, line 16 – p. 3, line 11..

(4) Federal Law Grants the Commission the Authority to Designate VCI an ETC for Low Income Support Without an FCC Forbearance Order.

AT&T contends that the Commission cannot designate VCI as a low-income only ETC for two reasons: 1) FCC rules do not permit bifurcated ETC proceedings⁶⁸ and 2) the FCC must, first, grant VCI forbearance from high-cost ETC requirements.⁶⁹ AT&T's arguments lack merit, first, because Federal law permits state commissions to limit an applicant's ETC designation. Second, the Commission did not bifurcate these proceedings. Finally, the *TracFone* forbearance order does not obligate VCI to apply for forbearance from high-cost ETC requirements.

(5) Federal Law Permits the Commission to Grant VCI's Request for Low-Income Only Designation Because such Limitation Does Not Contravene Federal Law.

As is discussed in section b. above, the *TOPUC* decision, which was followed by the FCC in the March 17, 2005 Order, provides that state Commissions may develop additional ETC requirements consistent with Federal law. VCI submits that low-income only designation constitutes an additional requirement that the Commission may legally impose on VCI – other states have done so. Furthermore, the USAC has never questioned VCI's ability to make application only for low-income support.

In all of its ETC applications, the Company informs state commissions that it seeks only low-income support and state commissions generally have granted VCI's request without ceremony.⁷⁰ The Kansas Corporation Commission ("KCC") confirmed its authority to limit VCI's designation to low-income support in its order denying Southwestern Bell Telephone L.P.'s request for reconsideration of VCI's ETC designation.⁷¹ First, the KCC determined that

⁶⁸ Ex. 5, Stidham Surrebuttal p. 2, lines 5-17.

⁶⁹ Ex. 5, Stidham Surrebuttal, p. 2, line 19 – p. 3, line 12.

⁷⁰ VCI's orders in the states of Florida, Louisiana, Nebraska, North Dakota, South Dakota, Texas, Utah and Wyoming acknowledge VCI's request for low-income support only or specify low income support.

⁷¹ In Re: Petition of VCI Company for Designation as an Eligible Telecommunications Carrier, *Petition for Reconsideration of Intervener Southwestern Bell Telephone, L.P.* (Docket No. 06-VCOT-1260-ETC, March 19,

the Act provides state commissions with the authority to impose limitations on an applicant's participation in Universal Service fund support so long as such limitation "does not impede the preservation and advancement of universal service, threaten public safety, welfare and continued quality of telecommunications service or fail to safeguard the rights of consumers."⁷² The KCC then held that "...the Commission's designation of VCI as an ETC eligible to obtain only low-income support from the FUSF is within the Commission's authority and will promote universal service for low-income consumers in accordance with universal service principles."⁷³

Based on the *TOPUC* decision and the Kansas Commission's analysis and holding above, this Commission should find that it has the authority to limit VCI's designation as an ETC for receipt of low-income support only.

d. Federal Law and FCC Rules do Not Forbid Bifurcation. But even so, The Commission has not Bifurcated these Proceedings.

AT&T argued for the first time in surrebuttal that designation of VCI for low-income support would constitute bifurcated proceedings in contravention of the FCC's rules. AT&T's argument fails because bifurcation is not prohibited by Federal law or FCC rules, and the Commission did not bifurcate these proceedings.

As discussed above, Federal law permits the Commission to limit VCI's designation to low-income as the Company has requested. Furthermore, no FCC rule even addresses bifurcation of ETC proceedings. AT&T bases its claim that FCC rules prohibit bifurcated ETC proceedings on the FCC's *failure to act* on a pre-merger SBC/AT&T petition requesting a separate designation process for low income only carriers.⁷⁴ However, in this case, the Commission did not institute a *separate designation process* for VCI. VCI addressed all FCC

2007); *Order Denying Petition for Reconsideration* (April 17, 2007). ("Order denying Petition for Reconsideration"). A copy of the KCC order is attached.

⁷² *Order Denying Petition for Reconsideration*, p. 4, ¶ 6.

⁷³ *Id.* at p. 6, ¶ 9.

⁷⁴ Stidham Surrebuttal, p. 2; Petition of AT&T Corp. for Limited Reconsideration, p. 4 (WC Docket 03-109; July 21, 2004).

and Commission ETC requirements in its Petition and subsequent testimony.⁷⁵ The Company merely encourages the Commission to consider whether certain rule provisions can practically apply to VCI given its service method and business plan.⁷⁶

e. AT&T's Reliance on the FCC's *TracFone* Forbearance Order is Misplaced. VCI Is Not Required to Petition the FCC for Forbearance to Obtain Low-Income Only Designation.

AT&T also argued for the first time on surrebuttal that the FCC's *TracFone* forbearance order obligates VCI to apply for forbearance from the FCC's high-cost rules.⁷⁷ However, the sole effect of the FCC's *TracFone* order was to exempt TracFone from the FCC's facilities-based ETC requirement. As VCI is facilities-based, forbearance is not required. The Kansas Commission reviewed AT&T's forbearance argument in VCI's ETC proceeding and found it without merit. The Commission should find that VCI need not apply for forbearance from high-cost requirements to obtain low-income only designation.

AT&T's argument fails because AT&T misconstrues the purpose of the *TracFone Petition for Forbearance*. TracFone, a wireless carrier, petitioned for forbearance from the FCC's requirement that an ETC provide the supported services, at least in part, over its own facilities because it is a pure reseller.⁷⁸ The effect of the Forbearance Order was to grant TracFone forbearance from the facilities requirement of 47 USC 214(e)(1).⁷⁹ The Forbearance Order did not address forbearance from high-cost ETC requirements.⁸⁰ VCI, unlike TracFone,

⁷⁵ Tr. p. 152, line 5- 153, line 1. Cecil Rebuttal, p. 5, line 18 – p. 6 line 15.

⁷⁶ Petition at pages 10-12, ¶¶ 20-29; Johnson 8/24/06 Testimony, p 14, line 19 – p. 15, line 20; Johnson 3/2/07 Testimony, p. 3, line 19- p. 4, line 13.

⁷⁷ Stidham Surrebuttal, p. 2, line 19- p. 3, line 3.

⁷⁸ FCC Order, *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. Section 214(3)(1)(A) and 47 C.F.R. Section 54.201(i)*, ¶ 1 (CC Docket No. 96-45, rel. September 8, 2005). (Order of Forbearance).

⁷⁹ Order of Forbearance, ¶ 1.

⁸⁰ As AT&T points out, in that proceeding, TracFone voluntarily requested that its support be limited to *Lifeline* after comments critical of TracFone receiving high-cost funding were filed by other carriers. Stidham Surrebuttal, p. 2. In its Reply Comments, TracFone stated that it “would be willing to accept a condition attached to its ETC designation limiting its ETC status to receipt of universal service funds to support its Lifeline program.” *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from*

will provide service using UNEs, in whole and in part, which fits within the FCC's definition of facilities-based service. Thus, VCI need not petition the FCC for forbearance. The Kansas Commission found that AT&T had, indeed, misconstrued the purpose and effect of the *TracFone Forbearance Order* and held that VCI was not required to apply for forbearance from high-cost requirements.⁸¹

Contrary to AT&T's contention, the *TracFone Order* actually supports the proposition that limited ETC designations are not prohibited. TracFone voluntarily requested that its designation (which has yet to be granted) be limited to Lifeline only, and suggested that the FCC need not change its rules to make the limited designation.⁸² The FCC granted TracFone's request for Lifeline only designation, should the carrier be designated, without instituting a rulemaking or addressing AT&T's request for a low-income only proceeding. As the Kansas Commission pointed out, the FCC acknowledges in the *TracFone Order* that ETCs may be granted limited ETC status:

Indeed, if TracFone is ultimately granted limited ETC status, it would be offering Lifeline-eligible customers a choice of providers not available to such consumers today for accessing telecommunications services. *Order Denying Reconsideration*, para. 8, p. 6, quoting *Forbearance Order*.

For all of the reasons set forth above, the Commission should find that VCI need not petition the FCC for forbearance from high-cost requirements to obtain a low-income only ETC designation.

47 U.S.C. Section 214(3)(1)(A) and 47 C.F.R. Section 54.201(i), *Reply Comments of TracFone Wireless, Inc.*, p. 3, n.4 (CC Docket 96-45, August 9, 2004) ("Reply Comments"). In contrast, VCI has requested and the Commission wishes to restrict VCI's designation to *low-income support*, which includes both Lifeline and Link-Up support. VCI believes that the FCC did not designate TracFone for Link-Up support because it is non-facilities based. As a UNE based provider, VCI is facilities-based and thus, is eligible for Link-Up as well as Lifeline support.

⁸¹ *Order Denying Request for Reconsideration*, ¶ 8, pp. 5-6.

⁸² *Reply Comments*, p.3, n.4.

f. VCI Offers a Local Usage Plan Comparable to AT&T's in Compliance with FCC and Commission Rules.

Throughout these proceedings, VCI has demonstrated that its local usage plan meets the FCC's local usage requirement and Staff's interpretation of the Commission's local usage rule provision.⁸³ It is undisputed that the two companies' plans are identical in calling scope.⁸⁴ However, AT&T argues that VCI's Lifeline rate of \$19.00 is not comparable to AT&T's Lifeline rates of \$0.15 - \$6.00 per month.⁸⁵ Staff, in contrast, honored the case-by-case basis language of the *Order of Rulemaking*, reviewed VCI's rates against other CLEC rates and found them to be acceptable.⁸⁶

In this case, the Commission should find that VCI's local usage plan meets the FCC's requirements, which do not contemplate that rates are included as part of the comparability analysis. Second, requiring the Company to provide Lifeline service at rates at or near those of AT&T's would violate the competitive neutrality principle of the Act. Finally, if the Commission must conduct a rate comparison as part of the comparability analysis, it should compare "apples" to "apples," to wit, CLEC rates to CLEC rates. VCI's rates compare favorably to those of other competitive carriers, which satisfies Staff's interpretation of the Commission's rule.

For all of these reasons, the Commission should find that VCI's local usage plan meets the requirements of Commission and FCC rules.

⁸³ 47 C.F.R. 54.202(a)(4): Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

4 CSR 240-3.570(2)(A)(10): A commitment to offer a local usage plan comparable to those offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. Such commitment shall include a commitment to provide Lifeline and Link Up discounts and Missouri Universal Service Fund (MoUSF) discounts pursuant to 4 CSR 240-31, if applicable, at rates, terms and conditions comparable to the Lifeline and Link Up offerings and MoUSF offerings of the incumbent local exchange carrier providing service in the ETC service area.

47 C.F.R. § 54.101(a)(2): Local Usage is defined as amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users.

⁸⁴ Ex. 4, Stidham Rebuttal, p. 7, lines 16-20; Ex. 2, Johnson Surrebuttal, p. 4, line 14 – p. 5, line 18.

⁸⁵ Ex. 4, Stidham Rebuttal, p. 7, line 22- p. 8, line 4.

⁸⁶ Ex. 3, Cecil Rebuttal, p. 3, line 11 – p. 4, line 3. *Order of Rulemaking*, p.8, Staff response to USC comments.

2. The FCC Requires Only that an ETC Applicant Offer Some Amount of Local Usage for a Flat Monthly Fee and Provides that States May Determine an Amount of Local Usage. Service Rates Are Not Part of the FCC's Comparability Analysis.

AT&T insinuates that the FCC includes a rate analysis as part of the determination of local usage comparability⁸⁷; but nothing could be further from the truth. In the *Recommended Order*, the Joint Board referenced the “amount” of local usage and suggested that states may consider how much local usage a carrier offers when designating a carrier as an ETC, “...there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount [*emphasis added*] of local usage as a condition of ETC status.”⁸⁸ The FCC adopted the Joint Board's recommendation in the March 17, 2005 Order, focusing only on the components of a carrier's local usage plan such as calling scope, number of minutes in a plan and offerings of combined local and long distance service.⁸⁹ The fact is that neither the Joint Board nor the FCC either addressed rates or recommended that rates be a component of the comparability analysis in their respective orders.

VCI's local usage plan, which offers customers unlimited local calling within the local calling area for a monthly rate is comparable to AT&T's in accordance with FCC rules and orders.

3. CLECs and ILECs Cannot Have Similar Rates and Charges Because They Have Different Costs of Doing Business.

VCI has testified that CLECs cannot offer service at or near the ILEC rate and remain financially viable.⁹⁰ VCI further testified that CLEC and ILEC rates cannot be fairly compared because the two companies have entirely different cost structures.⁹¹ One significant difference

⁸⁷ Tr. p. 63, lines 8-23.

⁸⁸ Recommended Decision at 10826, ¶ 35.

⁸⁹ March 17, 2005 Order at 6385, ¶ 33.

⁹⁰ Ex. 2, Johnson Surrebuttal, p. 5, lines 6-11.

⁹¹ *Id.*

is that the Company must factor its payments to AT&T-Missouri into its rates and charges.⁹² ILEC rates and charges include, but are not limited to, UNE line charges as high as \$40.00 in certain zones,⁹³ service ordering charges and connection fees.⁹⁴ AT&T need pay no other carrier for the use of its network – it owns the network. Thus, the two companies have different costs of doing business.

4. Requiring CLEC and ILEC Lifeline Rates to Be Similar Would Violate the Competitive Neutrality Principle of the Act. The Commission Would Run Afoul of the FCC’s Mandate to Designate More than One Carrier in a Non-Rural Service Area.

Finally, imposing ILEC-like rates upon VCI would violate the competitive neutrality principle of the Act. Federal law permits the Commission to impose additional requirements for ETC designation. However, the additional requirements must not violate the competitive neutrality principle of the Act. Such ETC rules may not have the effect of prohibiting competitive entry into a market or be so onerous as to effectively preclude an entrant from providing service.⁹⁵ Because the FCC mandates that a Commission designate more than one carrier in a non-rural service area, additional ETC requirements must not be so onerous that no otherwise eligible carrier could receive designation.⁹⁶

VCI submits that requiring the Company to provide Lifeline service at rates approaching those of AT&T, which it claims range from \$0.15 to \$6.00 per month,⁹⁷ constitutes an onerous requirement. By imposing rate regulation on competitive ETC applicants, the Commission would ensure that VCI would not qualify for ETC status. In fact, the Commission would ensure that no competitive carrier could qualify. Thus, this requirement would violate the competitive

⁹² Tr. p. 67, lines 18-21.

⁹³ Tr. p. 18, lines 20-25.

⁹⁴ VCI’s connection fee is a mechanism by which the Company recovers the costs of provisioning service from the ILEC, including service ordering charges and connection fees.

⁹⁵ See discussion of *Western Wireless* case above.

⁹⁶ *TOPUC*, 183 F.3d 393, 418, n.31.

⁹⁷ In fact, as is discussed in Section C of this Brief, AT&T may upsell its low income consumers with other services and features that increase bills for service beyond these rates.

neutrality principle of the Act. Furthermore, the Commission would “run afoul” of the FCC’s mandate to designate more than one carrier in AT&T-Missouri’s service area.⁹⁸

The inequity of fixing VCI’s Lifeline rates to those of AT&T-Missouri is more evident when VCI’s Lifeline rate (including connection fee) is compared to those of other existing competitive ETCs, at least three of which have tariffed Lifeline rates significantly higher than AT&T-Missouri’s. Two carriers serve Lifeline customers at rates significantly higher than VCI. The difference in rates between VCI and the PAPC is negligible.

Competitive ETC	Retail Rate	Lifeline Discount/Lifeline Monthly Rate	Connection Fee/ Prorated over 12 Months	Total Monthly Lifeline Rate for 1 st Year of Service	Difference from VCI
VCI Company	\$29.99	\$10.99/\$19.00	\$120/\$10	\$29.00	N/A
The Pager and Phone Company ⁹⁹	\$29.95	\$7.00/\$22.95	\$20 ¹⁰⁰ /\$1.67	\$24.62	-\$4.38
Fidelity Communications Services I, Inc.	\$44.00 ¹⁰¹	\$7.00/\$37.00	\$20.00 ¹⁰² /\$1.67	\$38.67	+\$9.67
Mark Twain Communications	\$47.60 ¹⁰³	\$7.00/\$40.60	**Unable to find Connection Fee.	\$40.60	+11.60

5. If the Commission Must Compare Rates Between ETC Applicants and Existing Providers as Part of a Comparability Analysis, the Fair Comparison is CLEC Rates to CLEC Rates.

⁹⁸ The Public Utility Commission of Ohio arguably exceeded its authority under the Act and disregarded the FCC’s mandate to designate more than one carrier in a non-rural carrier area when it denied Nexus Communications’ ETC application. Nexus, unlike VCI, apparently applied for both low-income and high-cost support, which triggered the OPUC’s concerns about the impact of Nexus’s ETC designation on the fund. It is significant that the OPUC denied the Nexus application, in part, because “it should not subsidize competition,” an approach this Commission declined in the USCOC Order because it was concerned about violating competitive neutrality. VCI submits that the OPUC’s denial because of Nexus’ rates also violated competitive neutrality. (See Nexus Ohio ETC Application, Exhibit 7 and Nexus ETC Order, Exhibit 6, pp. 2-3, ¶ 6. See also *NPCR, Inc. v. Boyle*, 2006 U.S. Dist. LEXIS 88113 at *7, *30 (D. Neb. Dec. 5, 2006) wherein the U.S. District court found that the Nebraska Public Service Commission erred as a matter of law in finding that “the purpose of Universal Service is not to promote competition”; See Report and Order, *In the Matter of the Application of USCOC of Greater Missouri, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, pp.13-14. (Case No. TO-2005-0384, May 2, 2007).

⁹⁹ Pager and Telephone Company tariff, eighth revised p. 35, effective September 1, 2005.

¹⁰⁰ While the Pager and Telephone Company does not list a charge labeled “connection fee” in its tariff effective September 1, 2005, the company lists a \$40.00 non-recurring processing fee. The Tariff makes clear that the processing fee applies to Lifeline customers. Link-Up provides the customer with a 50% waiver of the connection fee, up to \$30.00. In this case, the connection fee would be \$20.00.

¹⁰¹ Fidelity Communications Services I, Inc. Tariff, Section 25, 8th Revised Sheet 1, effective May 2, 2007.

¹⁰² Fidelity Communications Services I, Inc. Tariff, Section 26, 2nd Revised Sheet 2, effective August 17, 2006. This installation fee applies to services requested by or provided to the subscriber that require the company to order ILEC services and when the customer keeps his/her telephone number.

¹⁰³ Mark Twain Communications Company, PSC MO. NO. 1 Tariff, Section 22, First Revised Sheet 1, effective May 16, 1999.

If the Commission must review an ETC applicant's Lifeline rates as part of the comparability analysis, the Commission should compare the rates of the ETC applicant to those of the *same kind* of carrier. AT&T-Missouri itself argued that local usage plans should be compared "apples to apples."¹⁰⁴ CLECs and ILECs have different cost bases, business plans and histories and thus the rates of these companies cannot be fairly compared. The true "apples to apples" rate comparison is between the rates of VCI and those of other CLECs.¹⁰⁵ As part of Staff's case-by-case review of VCI's local usage plan, Staff wisely chose to compare VCI's rates to other competitive carriers and found those rates to be acceptable.¹⁰⁶ Staff testified, "The rates are not equal. That does not make them incomparable. I believe the rule allows for an ETC status to be bestowed on VCI."¹⁰⁷ VCI concurs in Staff's rate analysis and its determination that the Company's rates are acceptable. The Commission should likewise find VCI's rates acceptable when compared to similar carriers.

The Commission stated in its recently issued *USCOC Report and Order* that the purpose of the Commission rule is "to guide applicants and the Commission in making a determination of whether it is appropriate to designate an applicant as an ETC," not "to ensure that a wireless carrier can never be designated an ETC."¹⁰⁸ VCI urges the Commission not to use the comparability provision of the rule to ensure that VCI and other competitive carriers cannot be designated as ETCs in AT&T-Missouri's service area. The Commission should find that VCI offers a comparable local usage plan to AT&T and is in compliance with the FCC's and the Commission's requirements on this matter.

¹⁰⁴ Stidham Rebuttal, p. 7, lines 12-13.

¹⁰⁵ Ex. 2, Johnson Surrebuttal, p. 5, lines 4-11.

¹⁰⁶ Ex. 3, Cecil Rebuttal, p. 3, line 10 – p. 4, line 3. Tr.

¹⁰⁷ Tr. p. 150, lines 16-18.

¹⁰⁸ Report and Order, *In the Matter of the Application of USCOC of Greater Missouri, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, p. 23 (Case No. TO-2005-0384, May 2, 2007).

C. VCI's Designation as an ETC is in the Public Interest Because The Company's Policies and Practices Ensure that Low-Income Consumers Get Service and Remain on the Telephone Network, Especially Those Who Cannot Obtain Service from Other Carriers.

In the March 17, 2005 Order, the FCC adopted, and encouraged the states to follow, a cost benefit analysis to determine whether the grant of an ETC designation application is in the public interest.¹⁰⁹ According to the FCC, the public interest test applied to non-rural carriers should not be as rigorous, may involve different factors, and may lead to a different outcome than when applied to rural carriers.¹¹⁰ VCI has provided ample evidence throughout these proceedings that the advantages of its Lifeline offering outweigh any disadvantages. In sum, VCI should be designated an ETC because its policies and practices further the purposes of Universal Service by getting consumers on the telephone network and keeping them connected. VCI reiterates the benefits and advantages of its offering to Missouri consumers below.

1. VCI's Designation Would Lead to Meaningful Consumer Choice and Value Not Provided by Other Carriers, Especially for Unserved or Underserved Consumers.

a. VCI will Serve Unserved Consumers.

VCI testified and Staff agrees that VCI's designation as an ETC is in the public interest because it is an alternative wireline carrier for consumers who are unable to obtain service from other carriers.¹¹¹ VCI stands by its testimony that consumers have contacted the Company from pay telephones to subscribe to its service. These consumers had been disconnected from other carriers and unable to comply with deposit and past due bill requirements. VCI knows this market niche because it has provided service to as many as 60,000 consumers in 10 states, many of whom fall into this category. The Company is unique in serving this market niche.¹¹²

¹⁰⁹ March 17, 2005 Order, ¶¶ 40 and 56.

¹¹⁰ March 17, 2005 Order, ¶ 43, 58, 59.

¹¹¹ Ex. 3, Cecil Rebuttal, p. 7, lines 1-8; Tr. p. 149, line 16- p. 150, line 4; p. 188, lines 8-15.

¹¹² Ex. 1, Johnson Direct, p. 22, lines 4-12; Ex. 2, Johnson Surrebuttal, p. 7, lines 2-11.

b. VCI Will Provide Meaningful Choice and Low-Income Services Currently Not Provided by Other Competitive Carriers.

VCI will provide consumers with meaningful choice in carriers and with services not currently provided by other Missouri carriers. The Commission should not be persuaded by AT&T's argument to the contrary.¹¹³

First of all, the fact that VCI has customers demonstrates that consumers believe VCI offers "meaningful choice" and "value."¹¹⁴ Second, VCI offered evidence that other competitive wireline carriers do not appear to be providing Lifeline and Link-Up service in Missouri.¹¹⁵ Moreover, by granting VCI's application, the Commission will allow those customers, who for what ever reason cannot receive service from AT&T, the ability to receive service from a postpaid provider that offers Lifeline and Linkup discounts-today those customers must receive service from prepaid providers in order to get the Lifeline and Linkup discounts. Finally, VCI testified that wireless service is not a panacea for low-income consumers because consumers who exceed their minutes have large phone bills, plans with significant minutes can be expensive and wireless handsets can be cost prohibitive.¹¹⁶ The upshot is that some consumers prefer simple, wireline service¹¹⁷ and should have access to that service provided by VCI.

c. VCI will be an Additional Competitive Lifeline and Link-Up Provider Helping to Close the Gap in Low-Income Household Telephone Penetration.

By designating VCI an ETC, Missouri would increase the pool of providers that can close the gap in the state's low-income telephone penetration rate. In the Lifeline Order, the FCC expressed concern that Lifeline and Link-Up programs were undersubscribed at a time of

¹¹³ Ex. 4, Stidham Rebuttal, pp. 11, 14.

¹¹⁴ Ex. 1, Johnson Direct, p. 21, lines 11-14; Ex. 2, Johnson Surrebuttal, p. 7, lines 9-11.

¹¹⁵ Ex. 2, Johnson Surrebuttal, p. 8, line 22 – p. 9, line 17.

¹¹⁶ Tr. p. 120, lines 5 – 15; Tr. p. 126, line 9- p. 127, line 1.

¹¹⁷ Tr. p. 117, lines 7-13.

increasing poverty rates.¹¹⁸ Second, FCC statistics reveal that the telephone penetration rate among Missouri's *low-income households* as of March 2005 was 83.7%, several points below the national average of 86.4%.¹¹⁹ AT&T's argument that Missouri's telephone penetration rate compares favorably to the national average fails credibility in light of these statistics.¹²⁰

d. VCI's Choice of Advertising by Television is Unique, Exceeds the FCC's Advertising Guidelines, Increases Awareness of Low-Income Telephone Programs and Leads to Increased Subscription of Low-Income Telephone Programs.

VCI's advertising program is designed to reach the largest possible population of potentially eligible consumers. AT&T's attempt to denigrate the importance of VCI's advertising plan as a mere requirement of all ETCs is unpersuasive.¹²¹ To VCI's knowledge, the company is unique in publicizing low-income telephone programs by television advertisement, which it has found to be the most effective communications medium available. In VCI's experience, widespread advertising leads to increased participation rates in low-income programs for all carriers and to increased telephone penetration rates in Missouri.¹²²

e. VCI Understands its Customer Base and Implements Policies and Procedures that Benefit the Low-Income Consumer.

Over five years of service provision, VCI has developed policies and procedures that benefit the low-income consumer including early billing, education about long distance alternatives and service subscription without deposits, credit checks or high up-front payments. Thus, VCI facilitates consumer subscription to Lifeline service, timely consumer bill payment

¹¹⁸ Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109 at ¶¶ 1, 11 (FCC 04-87, April 29, 2004).

¹¹⁹ Universal Service Monitoring Report, CC Docket No. 98-202 (2006) (Data received through May 2006) ("Monitoring Report"). This document may be accessed on the FCC's web site at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269251A1.pdf.

¹²⁰ Ex. 4, Stidham Rebuttal, p. 13, lines 19-23.

¹²¹ Ex. 4, Stidham Rebuttal, p. 14, line 25 – p.15, line 3.

¹²² Ex. 1, Johnson Direct, p. 21, line 16 – p. 22, line 2; Ex. 2, Johnson Surrebuttal, p. 7, line 12- p. 8, line 1.

and low or non-existent long distance telephone charges. Each of VCI's policies and procedures is discussed below.

(1) Early Billing

VCI bills its customers at the beginning of the month which facilitates timely customer bill payment. AT&T counters that the bill due date is more relevant than the date of billing.¹²³ However, VCI knows that its customers receive assistance payments on the first of the month and are more likely to pay bills received at or near that time.¹²⁴ Contrary to AT&T's contention, VCI has found that early billing leads to timely bill payment, no matter when the bill is due. Thus, more customers remain on the network.¹²⁵

(2) Toll Bill Reduction/Elimination Education

VCI actively educates its customers about methods of reducing toll bills, recommending toll restriction service and the use of prepaid telephone cards.¹²⁶ Toll limitation substantially reduces local toll and long distance telephone charges, and prepaid long distance calling cards eliminate toll bills completely. AT&T does not successfully dispute the link between VCI's consumer education program and toll bill reduction.¹²⁷ There is no evidence in the record that AT&T similarly educates its low-income consumers.

(3) Elimination of Financial Obstacles to Service

VCI eliminates financial obstacles to service subscription because the Company does not perform credit checks or collect customer deposits under any circumstances.¹²⁸ AT&T cannot rebut VCI's testimony that deposits and large up-front fees pose obstacles to low-income

¹²³ Ex. 4, Stidham Rebuttal, p. 17, lines 1 - 11.

¹²⁴ Ex. 1, Johnson Direct, p. 23., lines 5-14; Ex. 2, Johnson Surrebuttal, p. 8, lines 2-6; Tr. p. 38, lines 21-25.

¹²⁵ Ex. 2, Johnson Surrebuttal, p. 8, lines 2-7.

¹²⁶ Ex. 1, Johnson Direct, p. 22; lines 17-26; Ex. 2, Johnson Surrebuttal, p.8, lines 16-21; Tr. p. 38, line 25 – p. 39, line 1.

¹²⁷ Ex. 4, Stidham Rebuttal, p. 16, lines 13-20.

¹²⁸ Ex. 1, Johnson Direct, p. 22; lines 4-12; Ex. 2, Johnson Surrebuttal, p. 8, lines 16-20.

telephone subscription, especially as the FCC agrees that deposits are obstacles.¹²⁹ AT&T attempted, unsuccessfully, to minimize the importance of VCI's no-deposit policy, implying that deposits are only collected as security for long distance charges.¹³⁰ However, as VCI testified, a local only carrier may choose to collect deposits as security for dial around surcharges, third-party calling, and excessive 411 usage. Furthermore, toll blocking is not effective immediately, making VCI vulnerable to long distance charges even if a customer subscribes to toll blocking.¹³¹ VCI's "no deposit, no credit-check" policies, then, truly benefit low-income consumers by eliminating obstacles to service subscription. AT&T does not offer its low-income consumers the same benefits.¹³²

(4) VCI's Simple Service Eliminates Features and Charges the Low-Income Consumer Cannot Afford.

VCI has testified that it keeps telephone service simple by offering flat rated, unlimited local exchange service and a few custom calling features.¹³³ VCI also advises consumers not to subscribe to services and features that the customer cannot afford, such as voice mail and vertical services, services that others in the customer's household may overuse.¹³⁴ VCI offers calling features, but does not actively promote or induce its customers to purchase them.¹³⁵ Less than 1% of VCI's customers subscribe to vertical services.¹³⁶

The Commission should bear in mind that while AT&T may offer low-income consumers a low *monthly* rate for basic service, it may bolster its business by upselling the customer other, less affordable services. The vast majority of VCI's customers receive a monthly phone bill with

¹²⁹ The FCC stated in the Universal Service Order, "Service deposits, which primarily serve to guard against uncollectible toll charges, deter subscribership among low-income consumers and thus run counter to the principle in section 254(b)(3) that low-income consumers should have access to telecommunications services." *Lifeline Report and Order* at 8794, ¶ 28.

¹³⁰ Tr. p. 77, line 16- p. 79, line 2.

¹³¹ Tr. p. 79, lines 2-17.

¹³² Ex. 4, Stidham Rebuttal, p. 15, lines 18-23.

¹³³ Ex. 1, Johnson Direct, p. 23, lines 5-14.

¹³⁴ Tr. p. 35, line 8 – p. 36, line 3. Tr. p. 117, line 7- p. 118, line 8.

¹³⁵ Id. at p. 117, line 25 – p. 118, line 8.

¹³⁶ Tr. p. 35, lines 17-22; Tr. p. 117, lines 7-13.

one, affordable, tariffed rate for monthly service.¹³⁷ There is no evidence as to the total cost of services provided by AT&T to its Lifeline and Link-Up customers in this proceeding.

(5) VCI will have minimal impact on the Missouri State and Federal Universal Service Funds.

VCI's typical Lifeline customer is one who has previously been a customer of and disconnected from another carrier, such as AT&T.¹³⁸ VCI testified that approximately 78% of the 50,000 customers it serves in other states were formerly customers of the LEC, thus VCI's impact on the fund will be minimal.¹³⁹ In that case, VCI steps into the shoes of the incumbent and the low-income support is merely transferred from the LEC to VCI. Thus, no additional demand is made on the federal low-income fund.¹⁴⁰ Staff considered the impact VCI's designation would have on the Universal Service Fund in recommending approval of the Petition.¹⁴¹

To show how minimal VCI's impact is consider the following. VCI testified that 78% of its customers were former ILEC customers and that the Company has 55,000 customers or an average of 5,500 in each of 10 states.¹⁴² If VCI maintains 5,500 Missouri customers and obtains \$9.17 per customer per month from the federal USF, VCI's annual impact on the Federal USF is minuscule compared to the size of the USF:

$$\begin{array}{rcl} 5,500 \times \$9.17 \times 12 & = & \$605,220 \\ & 78\% = & \underline{\$472,071} \\ \text{Net impact} & & \$133,149 \end{array}$$

AT&T appears to argue that the Commission should not designate VCI an ETC because VCI's designation would increase Missouri take rates to 100%, with corresponding exponential

¹³⁷ Tr. p. 35, line 24 – p. 36, line 3.

¹³⁸ Petition, ¶ 46-48; Ex. 1, Johnson Direct, p. 4, line 21-p. 5, line 8.

¹³⁹ Tr. p. 131, lines 9-14.

¹⁴⁰ Ex. 1, Johnson Direct, p. 4, line 23 – p. 5, line

¹⁴¹ Tr. p. 16, line 20 -17, line 6; Tr. p. 166, line 25- p. 167, line 1.

¹⁴² Tr. p. 131, lines 9-14.

increases in the MoUSF and surcharge.¹⁴³ This alarmist argument is without foundation in reality given VCI's testimony about the percentage of its customers that are former LEC customers. The Commission should not be persuaded that calamity will ensue if it approves VCI's ETC Petition, the Company cannot possibly increase the Lifeline and Link-Up participation rate to 100%¹⁴⁴ Moreover, VCI has indicated that it does not intend to draw immediately from the Mo USF. That is, VCI will fund the state discounts itself.

For all the reasons cited above, VCI's designation as an ETC is in the public interest. The Commission should find that VCI's designation is in the public interest because VCI will ensure that Missouri low-income consumers are brought on the network and the Company's policies and procedures will keep them connected, all without taxing the state or federal Universal Service funds. The advantages of VCI's Lifeline service offerings to Missouri consumers far outweigh any disadvantages. Thus, VCI should be designated at ETC.

III. CONCLUSION

As shown above, VCI meets the federal and state requirements for ETC certification. The Commission should approve VCI's application in order to increase the Lifeline/Linkup options available to low income consumers.

¹⁴³ Ex. 4, Stidham Rebuttal, p. 14.

¹⁴⁴ Ex. 1, Johnson Surrebuttal, p. 11.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served via email to all counsel of record this 4th day of June, 2007:

/s/ Roger W. Steiner

Attorney for VCI Company

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Brian J. Moline, Chair
Robert E. Krehbiel
Michael C. Moffet

In the Matter of the Application In Re:)
Petition of VCI Company for Designation) Docket No. 06-VCOT-1260-ETC
As an Eligible Telecommunications Carrier.)

ORDER DENYING PETITION FOR RECONSIDERATION

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for decision. Having examined its files and records, and being duly advised in the premises, the Commission denies the Petition for Reconsideration (Petition) of Southwestern Bell Telephone, L.P. (SWBT).

1. On May 31, 2006, VCI Company (VCI) filed its application requesting designation as an eligible telecommunications carrier (ETC) in the exchanges served by SWBT for the purpose of receiving low-income federal universal service support.¹ After considering the Application and the Report and Recommendation of Commission staff (Staff) dated February 8, 2007, the Commission granted VCI's Application by its Order of February 27, 2007, (Order) limiting VCI's participation in federal universal service fund (FUSF) support solely to low-income FUSF support.

2. On March 19, 2007, SWBT timely filed its Petition. SWBT sought reconsideration because the Order "improperly and illegally bifurcates the ETC application process and the subsequent receipt of FUSF funds into 'high cost' and 'low-

¹ Petition for Designation as an Eligible Telecommunications Carrier in the State of Kansas (Application), p. 1.

income only’ designations in contravention of the FCC’s rules and the 1996 [Telecommunications] Act.”² SWBT maintained that VCI, as an ETC, necessarily qualified for high-cost and low-income support and that the Commission did not possess the authority to create a “bifurcated ETC status”. In support of its proposition, SWBT cited the *Lifeline Order*³ wherein, according to SWBT, the Federal Communications Commission (FCC) rejected AT&T Corp’s alleged suggestion for an ETC process which would permit a carrier to obtain “low-income only” ETC status. SWBT also cited the FCC’s *TracFone Order*⁴ in which the FCC removed the requirement that TracFone must use its own facilities to provide service and limited TracFone’s FUSF support to “low-income only” support. SWBT apparently believed it is significant that the FCC did not designate TracFone as an ETC in the *TracFone Order*.⁵

3. It was, therefore, the opinion of SWBT that VCI must first seek forbearance from the FCC, as TracFone did, before the Commission could designate VCI as a “low-income only” ETC. It followed, then, according to SWBT, that the Commission could not relieve VCI from the Commission’s quality improvement plan requirements.⁶

² Petition, ¶ 6.

³ Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109, FCC 04-87, rel. April 29, 2004 (*Lifeline Order*).

⁴ Order, *In the Matter of Federal-State Joint Board on Universal Service Petition of TracFone Wireless, Inc., for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. 54.201(i)*. FCC 05-165, rel. Sep. 8, 2005 (*TracFone Order*).

⁵ Petition, ¶¶ 7 – 9, citing f.n. 4 of the *TracFone Order*, reach reads, “We note that this grant of forbearance does not establish TracFone as an ETC. We will address TracFone’s petitions for ETC designations in subsequent orders.

⁶ *Id.*, ¶ 11.

4. In its opposition to SWBT's Petition,⁷ VCI insisted that limiting its participation in the FUSF to low-income-only support does not amount to bifurcation. VCI also disagreed with SWBT's assertion that VCI was required to obtain forbearance of high-cost requirements from the FCC, as TracFone supposedly did. VCI explained that it was necessary for TracFone to seek forbearance from the FCC because TracFone was a non-facilities based wireless carrier. Unlike TracFone, VCI will provide supported services using UNEs and resold services. In light of its limitation to low-income-only participation in the FUSF, VCI asserted that waiver by the Commission of its quality improvement plan requirements was proper.⁸

5. In its response to SWBT's Petition,⁹ Staff agreed with VCI that limited participation in FUSF support, at the request of VCI, did not "bifurcate" the ETC process. Rather, Staff maintained that the limitation was a common sense approach to addressing VCI's application and that the Commission may waive ETC requirements it imposes, such as the quality improvement plan requirements.¹⁰

6. The Commission disagrees with SWBT's assertion that the Commission cannot establish what SWBT perceives as a "bifurcated ETC status that neither Congress nor the FCC intended or sanctioned."¹¹ The federal Communications Act of 1996 (FTA) gives the state commissions the primary responsibility under FTA section 214(e) to

⁷ VCI Company's Opposition to Southwestern Bell Telephone, L.P.'s Petition for Reconsideration, filed March 29, 2007.

⁸ *Id.*, ¶¶ 12, 13 and 18, respectively.

⁹ Staff's Response to the Petition for Reconsideration (Staff Response), filed March 29, 2007.

¹⁰ *Id.*, ¶¶ 7 – 8.

¹¹ Petition, ¶ 7.

designate carriers as ETCs.¹² It is the opinion of the Commission that it may, under the authority of section 214(e) of the FTA and at the request of the applicant, limit the applicant's participation in the FUSF support as long as such limitation does not impede the preservation and advancement of universal service, threaten public safety, welfare and continued quality of telecommunications service or fail to safeguard the right of consumers. The Commission is of further opinion that, with this grant of authority by the FTA, it may impose lawful requirements upon ETCs, or waive same as circumstances dictate.

7. The Commission also disagrees with SWBT's assertion that the *Lifeline Order* supports its Petition. Indeed, the FCC declared that states have the authority to establish their own LifeLine/Link-Up programs that provide additional support to low-income consumers. Further, the FCC continued to recognize that states possess the flexibility to determine the most appropriate outreach mechanisms for consumers as long as they are reasonably designed to reach those likely to qualify for Lifeline/Link-Up.¹³ Contrary to SWBT's assertions in its Petition,¹⁴ paragraph 54 of the *Lifeline Order* does not support SWBT's opposition to a "bifurcated" ETC application process. The language of that paragraph clearly demonstrates that AT&T's proposition was not only inconsistent with the law but also unrelated to "bifurcated" proceedings:

¹² E.g., Memorandum Opinion and Order, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338, rel. Jan. 22, 2004, at ¶ 6.

¹³ *Lifeline Order*, ¶¶ 5 and 44, respectively. It is worth noting that the federal Lifeline/Link-Up program provides low-income consumers with discounts of up to \$10 off of the monthly cost of telephone service and up to \$25 discounts for low-income consumers living on tribal lands. *Id.*, ¶ 4. The differing discounts appear to be the sort of "bifurcation" of FUSF support which SWBT so soundly opposes.

¹⁴ Petition, ¶ 8.

We agree with the Joint Board that we should decline to establish rules that would provide Lifeline/Link-Up support directly to carriers that are not ETCs. Contrary to AT&T's assertion, establishing such rules would be inconsistent with section 254(e), which states that only ETCs may receive universal service support. Extending Lifeline/Link-Up universal service support to carriers that do not satisfy the requirements for designation as an ETC could also serve as a disincentive for other carriers to comply with their ETC obligations.¹⁵

Furthermore, the Commission does not share SWBT's belief that it was significant that the FCC did not designate TracFone as an ETC in the *TracFone Order* for the simple reason that TracFone did not request ETC designation in that proceeding¹⁶ as VCI did in its Application here.

8. SWBT also misconstrues the *TracFone Order* as standing for the proposition that VCI must obtain forbearance from the FCC before obtaining ETC status as a "low-income only" ETC.¹⁷ TracFone sought forbearance by the FCC from the facilities requirement for ETC designation for Lifeline support only. VCI meets the facilities requirement for ETC designation through the use of SWBT-provided UNEs in provision of its services.¹⁸ Thus, contrary to SWBT's claims, VCI does not need to seek forbearance from the FCC, as TracFone did, of the facilities requirement for ETC designation for low-income support only. Furthermore, it is clear that the FCC envisioned limited ETC participation in FUSF support:

Indeed, if TracFone is ultimately granted limited ETC status, it would be offering Lifeline-eligible consumers a choice of

¹⁵ *Id.*, ¶ 54, footnotes omitted.

¹⁶ *TracFone Order*, ¶ 2, "Contemporaneously with its Petition [here], TracFone filed with the Commission petitions for ETC designation for several states."

¹⁷ Petition, ¶ 10.

¹⁸ 47 C.F.R. 54.201(f).

providers not available to such consumers today for accessing telecommunications services.¹⁹

9. In short, the Commission's designation of VCI as an ETC eligible to obtain only low-income support from the FUSF is within the Commission's authority and will promote universal service for low-income consumers in accordance with universal service principles.

10. SWBT's Petition for Reconsideration is, therefore, denied.

IT IS, THEREFORE, BY THIS COMMISSION ORDERED THAT:

A. The Petition for Reconsideration of Southwestern Bell Telephone, L.P. is denied.

B. This is a final order. If any party files a petition for judicial review, a copy of the petition shall be served upon the Commission's Executive Director.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com

Dated: APR 17 2007

ORDER MAILED

APR 18 2007

 Executive
Director

Susan K. Duffy, Executive Director

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¹⁹ *TracFone Order*, ¶ 15.