

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

In the Matter of the Revisions of the Commission’s            )     File No. TX-2018-0120  
Rules Regarding Telecommunications                                )

**VERIZON’S COMMENTS**

Verizon<sup>1</sup> submits these comments pursuant to the April 13, 2018 “Notice of Rulemaking Hearing” setting a July 2, 2018 deadline for comments on the Commission’s proposed telecom rule changes.

**Introduction**

Verizon generally applauds the Commission’s proposal to repeal unnecessary rules and simplify and streamline those to be retained. Such efforts are consistent with the intent of Executive Order 17-03 and, by creating a hospitable business environment, will benefit the state, telecommunications providers, and consumers. However, within the voluminous rule updates are several substantive changes that would impermissibly expand the use of the Missouri Universal Service Fund (“MoUSF”). Adopting those amendments would not only exceed the Commission’s statutory authority, but also significantly increase the size of the fund and the financial burden that MoUSF assessments impose on end users. This is inconsistent with EO 17-03’s stated intent, which is to limit Missouri regulations to those that are “efficient, effective, and necessary,” so as not to “reduce jobs, stifle entrepreneurship, limit innovation, or impose costs far in excess of their benefits,” or “unduly and adversely affect Missouri citizens or customers of the State, or the competitive environment in Missouri” through “ineffective, unnecessary, or unduly burdensome” rules.

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<sup>1</sup> “Verizon” refers collectively to MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services; MCI Communications Services, Inc. d/b/a Verizon Business Services; Verizon Long Distance LLC; Verizon Select Solutions, Inc.; and XO Communications Services, LLC.

The Commission should not promulgate proposed rules 4 CSR 240-31.010(5) and 4 CSR 240-31.013 as presently drafted. Together, they would allow the Commission to disburse MoUSF high cost support to subsidize broadband deployment and interconnected voice over Internet Protocol (“IVoIP”) services without statutory authority to do so. While the goal of increasing broadband deployment in the state is laudable – and several recently-enacted bills will accomplish just that<sup>2</sup> – as detailed below, Missouri law does not authorize expansion of the MoUSF in the manner proposed.

As a creature of statute, the Commission may not exceed its authority by adopting rules that would authorize expenditure of MoUSF funds for purposes beyond those carefully circumscribed by state statute. As the Missouri Supreme Court has held, “[t]he PSC ‘is a creature of statute and can function only in accordance with’ its enabling statutes.” *See State ex rel. MoGas Pipeline LLC v. Mo. PSC*, 366 S.W.3d 493, 496 (Mo. 2012) (finding PSC had no statutory authority to engage as party in FERC proceeding). Thus, “[i]f a power is not granted to the PSC by Missouri statute, then the PSC does not have that power.” *Id.*; *see also Staff of the Missouri Pub. Svc. Comm’n v. Consol. Pub. Water Supply Dist. C-1 of Jefferson County, MO et al.*, 2015 Mo. PSC LEXIS 55, \*7-8 (2015) (“As a creature of statute, the Commission’s authority is limited to what is specifically granted by statute or warranted by clear implication as necessary to implement a specifically granted power.”); *Noranda Aluminum, Inc., et al. v. Union Electric Co. d/b/a Ameren Missouri*, 2014 Mo. PSC LEXIS 882, \*24-25 (2014) (same); *Orler v. Folsom Ridge, LLC et al.*, 2007 Mo. PSC LEXIS 791, \*94-95 (2007) (commission is creature of statute and its jurisdiction, powers and duties are fixed by statute).

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<sup>2</sup> 2018 HB 1872 (<https://house.mo.gov/bill.aspx?bill=HB1872&year=2018&code=R>) created a broadband grant program “to award applicants who seek to expand access to broadband internet service in unserved and underserved areas of the state.” 2018 HB 1880 (<https://house.mo.gov/bill.aspx?bill=HB1880&year=2018&code=R>) eased the path for rural electric cooperatives to provide broadband communications services.

## Discussion

### **A. Section 392.248.2, RSMo Strictly Limits the Use of MoUSF Funds to Supporting “Essential Local Telecommunications Services” and Fund Administration**

Section 392.248.2, RSMo clearly limits the use of MoUSF funds to three enumerated purposes:

Funds from the universal service fund *shall only be used*:

- (1) To ensure the provision of reasonably comparable essential local telecommunications service, as that definition may be updated by the commission by rule, throughout the state including high-cost areas, at just, reasonable and affordable rates;
- (2) To assist low-income customers and disabled customers in obtaining affordable essential telecommunications services; and
- (3) To pay the reasonable, audited costs of administering the universal service fund.

*See* § 392.248.2, RSMo (emphasis added).

Despite § 392.248.2, RSMo’s clear prohibition against using MoUSF funds for any other purposes, proposed rule 4 CSR 240-31.013 would authorize MoUSF expenditures for two additional, unauthorized purposes: (1) extending IVoIP facilities to a specific customer location; and (2) deploying facilities to provide retail broadband service to unserved areas. These purposes plainly do not fall into the third enumerated category, and as discussed below, IVoIP and retail broadband services are not “essential local telecommunications services” under § 392.248, RSMo.

### **B. Retail Broadband and IVoIP Services Are Not “Essential Local Telecommunications Services” Under § 392.248, RSMo**

Section 392.248, RSMo does not explicitly define “essential local telecommunications services,” but a proper interpretation of the statute must acknowledge its repeated references to local exchange carriers, carriers of last resort, and rate-regulated local telecommunications

services. These terms make clear that “essential local telecommunications service” refers to traditional, circuit-switched local exchange voice telecommunications service, not broadband or IVoIP.

For example, §§ 392.248.2 and 392.248.4, RSMo reference regulating the rates for “essential local telecommunications services.” Sections 392.248.4 and 392.248.5, RSMo describe designating “incumbent local exchange telecommunications companies” and “local exchange telecommunications companies” as “carriers of last resort” to provide “essential local telecommunication services.” Under § 386.020(6), RSMo, a “carrier of last resort” is “any telecommunications company which is obligated to offer basic local telecommunications service to all customers who request service in a geographical area defined by the commission and cannot abandon this obligation without approval from the commission” (emphasis added). In turn, the definition of “basic local telecommunications service” is expressly limited to “*two-way switched voice service within a local calling scope as determined by the commission*” that meets a list of standard obligations, many of which have no relevance to broadband or IVoIP. *See* § 386.020(4), RSMo (emphasis added).<sup>3</sup>

Taken together, these provisions confirm that “essential local telecommunications services” are limited to traditional regulated, circuit-switched local voice telecommunications services, not retail broadband services or IVoIP, which are interstate information services whose availability, geographic scope, and rates the Commission has no authority to regulate. Indeed, the Missouri General Assembly has taken pains to clarify that broadband and IVoIP are *not* telecommunications services, much less the traditional regulated, circuit-switched local exchange

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<sup>3</sup> Similarly, the definitions of “incumbent local exchange telecommunications company” and “local exchange telecommunications company” in §§ 386.020(22) and (31), RSMo, (as well as the accompanying definition of “local exchange telecommunications service” in § 386.020(32), RSMo) are limited to traditional, circuit-switched local exchange service and do not encompass retail broadband services or IVoIP.

voice telecommunications services that would qualify as “essential local telecommunications services.” Specifically, §386.020(54)(j), RSMo explicitly excludes IVoIP from the definition of “telecommunications service,” and § 392.611.2, RSMo confirms that broadband is not a regulated local “telecommunications service” under § 386.020(54), R.S. Mo., but an “internet protocol-enabled service” that is exempt from Commission regulation (including the requirements of Chapters 386 and 392). The Federal Communications Commission’s recent reiteration that broadband is an interstate information service only underscores these conclusions.<sup>4</sup>

Because broadband and IVoIP are neither jurisdictionally local nor telecommunications services, the Commission has no statutory authority to subsidize them through MoUSF funds explicitly limited to supporting “essential local telecommunications service.”

### **C. The Commission Must Modify Proposed Rule 4 CSR 240-31.010(5)’s Definition of “Essential Local Telecommunications Service”**

As detailed above, Missouri law does not support adoption of a definition of “essential local telecommunications service” that would circumvent the statutory limits contained in § 392.248, RSMo by encompassing retail broadband and IVoIP. Unless and until the General Assembly amends Missouri law to authorize using MoUSF funds to subsidize IVoIP and retail broadband, proposed rule 4 CSR 240-31.010(5) must be revised as follows:

*([6](5)) Essential local telecommunications service[s]—[This phrase is synonymous with “voice telephony service” as defined by 4 CSR 240-31.010(18).] **Local circuit-switched ~~V~~voice telephone service which provides voice grade access to the public switched network including access to 911-related emergency services to the extent implemented by a local government and/or retail broadband service.***

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<sup>4</sup> The Federal Communications Commission recently reaffirmed that broadband internet access service is not only jurisdictionally interstate, but an “information service,” rather than a “telecommunications service.” See *In the Matter of Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, FCC 17-166 (January 4, 2018) at ¶¶ 26, 199.

**D. The Commission Should Reject Proposed Rule 4 CSR 240-31.013(2), Which Impermissibly Would Allow Expenditure of MoUSF Funds to Subsidize Broadband**

Proposed rule 4 CSR 240-31.013(2) would allow the Commission to award MoUSF high cost support for the deployment of facilities for “retail broadband service.” As detailed above, this is impermissible because MoUSF funds may only be used to subsidize “essential local telecommunications services,” not broadband deployment.

The proposed rule cites three sources of authority: Sections 392.200.2, 392.248, and 392.470.1, RSMo. However, none authorizes expenditure of MoUSF funds to support broadband. Section 392.200.2, RSMo sets forth general requirements for the non-discriminatory provision of adequate telecommunications service at just and reasonable rates. It does not address the MoUSF or retail broadband service in any manner. Section 392.470.1, RSMo permits the Commission to impose certain conditions on telecommunications companies, including those regarding intercarrier compensation, but similarly does not address the MoUSF or retail broadband services. Finally, as detailed above, § 392.248, RSMo does not allow using MoUSF funds to support broadband deployment.

Beyond this important threshold concern, the proposed rule is devoid of any standards governing applications for MoUSF broadband support or the Commission’s review thereof. The rule states only that the Commission “may consider such requests on a case-by-case basis.” See proposed Rule 4 CSR 240-31.013(2)(B). It does not prohibit “double-dipping” by applicants also receiving *federal* USF support or state broadband grants under the new program created by HB 1872 for the same facilities. Nor does it define “unserved area”; establish minimum standards for the financial stability of the applicant; require applicants to demonstrate that the costs of their proposed project are reasonable or that there are willing customers in the area for

which deployment is planned; or establish any accountability process to ensure that the funds are used for the purposes sought. This lack of any codified standards would leave the program open to abuse, with Missouri telecommunications consumers forced to pay for the accompanying increase in the size of the MoUSF.

To remedy this, the Commission should strike proposed rule 4 CSR 240-31.013(2) in its entirety.

**E. The Commission Should Strike the IVoIP Reference from Proposed Rule 4 CSR 240-31.013(1)(A)(1)**

As noted above, Section 392.248.2, RSMo permits MoUSF support only for “essential local telecommunications services.” Section 386.020(53)(j), RSMo makes clear that IVoIP is *not* a telecommunications service. As such, it is not an essential local telecommunications service, and MoUSF subsidies may not be disbursed to support facilities for IVoIP service. To address this, the Commission must revise proposed rule 4 CSR 240-31.013(1)(A)1. as follows:

1. The company is certificated to provide basic local telecommunications service ~~or registered to provide IVoIP service;~~

**Conclusion**

The Commission’s effort to modernize and streamline its rules is a commendable one. However, it is equally important that the rule revisions be consistent with Missouri law, and that the Commission adhere to the limits of its statutory authority. The appropriate course to expand the MoUSF to support IVoIP and broadband is to ask the Missouri General Assembly to amend state statute to authorize it. *See MoGas, supra*, 366 S.W.3d 493 at 499 (if PSC believes it beneficial to Missourians to be a party to FERC proceedings, it “should apply to the legislature for authority....”). Unless and until the General Assembly takes such action, proposed rules 4 CSR 240-31.010(5) and 4 CSR 240-31.013 must be revised as reflected herein.

Dated: July 2, 2018

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