

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

In the Matter of Staff’s Review of the Commission’s            )     File No. TW-2017-0078  
Chapter 31 Rules    )

**VERIZON’S REPLY COMMENTS**

Verizon<sup>1</sup> submits these reply comments pursuant to the Commission’s October 25, 2016 “Notice of Opportunity to Reply” and urges the Commission to reject proposals to use MoUSF funds to support “broadband-only” service, which Missouri law does not authorize.

**I.     The Missouri Cable Telecommunications Association and CenturyLink Correctly Recognize that the Commission May Not Use the MoUSF to Support “Broadband-Only” Service.**

The Missouri Cable Telecommunications Association (“MCTA”) provided cogent and well-reasoned legal analysis detailing why Missouri law does not authorize the Commission to use MoUSF funds to support “broadband-only” services.<sup>2</sup> MCTA’s reasoning parallels Verizon’s initial comments<sup>3</sup> and Verizon endorses and concurs in MCTA’s comments.<sup>4</sup>

CenturyLink likewise explained that existing law does not allow the Commission to expend MoUSF funds to support “broadband-only” services, and that the legislature would need to enact statutory changes before such action would be permissible.<sup>5</sup> Verizon agrees.

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<sup>1</sup> “Verizon” refers collectively to MCImetro Access Transmission Services LLC 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 TTI National, Inc.

<sup>2</sup> See “Comments of the Missouri Cable Telecommunications Association” (October 20, 2016) at 1-6 (“MCTA Comments”).

<sup>3</sup> See “Verizon’s Comments” (October 20, 2016) at 1-6 (“Verizon Comments”).

<sup>4</sup> Verizon also joins in MCTA’s observation that the FCC has expressly preempted imposing MoUSF surcharges on broadband connections. MCTA Comments at 6.

<sup>5</sup> See “Comments of CenturyLink” (October 20, 2016) at 2-4 (“CenturyLink Comments”).

**II. Neither the Small Telephone Company Group nor the Missouri Independent Group of Telephone Companies Offers Credible Legal Support for Using MoUSF Funds to Support “Broadband-Only” Service.**

The Small Telephone Company Group (“STCG”), in whose filing the Missouri Independent Group of Telephone Companies (“MITG”) joined, attempts to justify adoption of rule modifications permitting expenditure of MoUSF funds to support “broadband-only” service by arguing that since the FCC deems broadband Internet access service (“BIAS”) a supported service under the federal Lifeline program, Missouri should fund “broadband-only” service through the MoUSF.<sup>6</sup> STCG ignores the clear limitations of Missouri law, which prevent the Commission from taking such action.

**A. Under Missouri Law, “Broadband-Only” Service Is Not a “Telecommunications Service.”**

STCG asserts that the definition of “telecommunications service” in § 386.020(54), R.S. Mo. is broad enough to encompass “broadband-only” service, but ignores that pursuant to § 386.611.2, R.S. Mo., “broadband” is not a regulated “telecommunications service,” but an “internet protocol-enabled service” exempt from Commission regulation. The Commission has never interpreted Missouri’s definition of “telecommunications service” to encompass broadband (which would have required broadband service provider certification, tariffs, regulatory assessments, MoUSF contributions, etc.), and STCG offers no plausible basis for ignoring § 386.611.2, R.S. Mo.’s express language in favor of a strained and historically-unsupportable interpretation of § 386.020(54), R.S. Mo.

**B. Missouri Law Does Not Authorize the Commission to Expend MoUSF Funds to Support “Broadband-Only” Service.**

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<sup>6</sup> See “Comments of the STCG on Proposed Lifeline Rule Revisions and Staff’s Question Whether the MOUSF Can Support Broadband Service,” (October 20, 2016) at 6-9 (“STCG Comments”).

STGC fails to explain how the FCC’s interpretation of federal law would authorize the Commission to “rewrite” Missouri law and disregard the statutory restriction that MoUSF funds may only be used to support “reasonably comparable essential local telecommunications services.”<sup>7</sup> *See* § 392.248.2, R.S. Mo. As MCTA aptly noted, the FCC has definitively confirmed that broadband is jurisdictionally interstate (*see* MCTA comments at 4), and thus is neither “local” nor subject to this Commission’s jurisdiction. And while STGC attempts to rely on cherry-picked portions of § 392.185, R.S. Mo. to argue that expanding the Lifeline program to support “broadband-only” services would promote the statute’s goals, it ignores that those goals are listed in a section of Ch. 392 that applies to regulated telecommunications services (entitled “Regulation Under State Public Service Commission Law”), as made clear by the subsections of the statute that STGC excises:

- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
- (7) Promote parity of urban and rural telecommunications services ...

STGC similarly omits reference to § 392.190, R.S. Mo., which clarifies that § 392.248.2, R.S. Mo. applies only to “telecommunications service between one point and another within the state of Missouri” (not to broadband, an interstate, Internet protocol-enabled service) and “telecommunications companies,” which are “telephone corporations” providing intrastate telecommunications service. *See* § 386.020(52), R.S. Mo.

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<sup>7</sup> While not pertinent here, MoUSF funds may also be used to pay the costs of the fund’s administration. *See* § 392.248.2(3), R.S. Mo.

**C. “Essential Local Telecommunications Service” Does Not Include “Broadband-Only” Service.**

STGC asserts that § 392.248.6(1), R.S. Mo. allows the Commission to adopt rule changes expanding its definition of “essential local telecommunications service” to include broadband Internet access service as defined by the FCC (STGC Comments at 7), but truncates its quotation of the statute to excise references to “*local exchange* telecommunications service”<sup>8</sup> – that is, local voice service. *See* § 392.248.6(1) and (4), R.S. Mo. The Commission’s codified definition of “essential local telecommunications service” acknowledges and underscores this: “This phrase is synonymous with *voice* telephony service as defined by 4 CSR 240-31.010[(21)]<sup>9</sup>.” *See* 4 CSR 240-31.010(6) (emphasis added). “Broadband-only” service is neither “local exchange” nor “voice” service, and the Commission lacks statutory authority to expand the definition of “essential local telecommunications service” to encompass it.<sup>10</sup>

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For the reasons detailed above, as well as in Verizon’s, MCTA’s and CenturyLink’s initial comments, the Commission lacks statutory authority to expend MoUSF funds to subsidize “broadband-only” service, as STGC and MITG advocate. The Commission should reject any proposed rule modifications that would result in: (1) treating “broadband-only” service as a

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<sup>8</sup> As Verizon’s October 20, 2016 Initial Comments noted, Section 392.248.4 and 5., R.S. Mo. reference regulation of the rates for “essential local telecommunications services” and the designation of carriers of last resort to provide them, only confirming that “essential local telecommunications services” are statutorily limited to *voice* services defined in 4 CSR 240-31.010(21), and do not extend to “broadband-only” services that the Commission, by statute, has no authority to regulate.

<sup>9</sup> Staff’s proposed rule revisions would correct the existing rule’s erroneous reference to 4 CSR 240-31.010(18), which is the definition of “toll blocking.” *See* Staff Request, Attachment A.

<sup>10</sup> The Commission’s administrative rules define “voice telephony service” as “voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying Lifeline consumers.” *See* 4 CSR 240-31.010(21).

“telecommunications service” under § 386.020(54), R.S. Mo.; (2) treating “broadband-only” service as an “essential local telecommunications service” under 4 CSR 240-31.010(6); or (3) using MoUSF funds to subsidize “broadband-only” service (including via expansion of the Missouri Lifeline and Disabled program). Such actions would violate Missouri law.

Dated: November 15, 2016

**MCImetro Access Transmission Services LLC  
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 TTI National, Inc.**

By: /s/ Deborah Kuhn

Deborah Kuhn  
Verizon  
205 N. Michigan Ave., 7<sup>th</sup> Floor  
Chicago, Illinois 60601  
(312) 894-2354  
(301) 282-4710 FAX  
[deborah.kuhn@verizon.com](mailto:deborah.kuhn@verizon.com)