BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

VERIZON'S ADDITIONAL COMMENTS

Verizon[1] submits these additional comments pursuant to the October 17, 2017 "Staff Request for Comments."

I. The Commission Should Not Adopt Proposed Rule 4 CSR 240-31.010(5) Because MoUSF Funds May Not Be Used to Support "Broadband-Only" Service.

Verizon's prior comments in this proceeding detail why Missouri law prevents using the Missouri Universal Service Fund "(MoUSF") to support broadband-only service. *See* Verizon's October 20, 2016, November 15, 2016 and May 1, 2017 comments, attached hereto as **Group Exhibit 1**. However, Staff proposes to do just that by expanding the definition of "eligible local telecommunications service" to include broadband service. *See* Proposed Rule 4 CSR 240-31.010(5). Given the short timeframe for comment, Verizon incorporates its prior filings as though fully restated here, and urges careful review of the case law and statutory authorities discussed therein, which compel rejection of Staff's proposed rule.

Multiple other commenters, including the AT&T companies,[2] CenturyLink,[3] the Missouri Cable Telecommunications Association ("MCTA"),[4] and Level 3 Communications,[5]

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[1] "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; TTI National, Inc., Verizon Long Distance LLC; Verizon Select Solutions, Inc.; and XO Communications Services, LLC.

[2] *See* "AT&T Responses to Staff Questions" (May 1, 2017) at 1-3.

[3] *See* "Comments of CenturyLink" (October 20, 2016" at 2-4; and "Comments of CenturyLink" (April 28, 2017) at 1.

[4] *See* "Comments of the Missouri Cable Telecommunications Association" (October 20, 2016) at 1-6; "Reply Comments of the Missouri Cable Telecommunications Association" (November 15, 2016) at 1-2; "Comments of the

have analyzed Missouri law and reached the same conclusion. And while the Small Telephone Company Group and Missouri Independent Group disagree, they rely on the fact that the Federal Communications Commission ("FCC") made broadband Internet access service a supported service under the federal Lifeline program[6] and ignore that Missouri law differs from federal law in pivotal regards detailed in Verizon's and the other parties' comments.

Key among these is that "broadband" is *not* a local "telecommunications service" under § 386.020(54), R.S. Mo., but an interstate[7] "internet protocol-enabled service" that is exempt from Commission regulation (including the requirements of Chapters 386 and 392) pursuant to § 386.611.2, R.S. Mo. Because broadband is neither jurisdictionally local, nor a "telecommunications service" as defined by Missouri statute, the Commission has no statutory authority to define it as an "essential local telecommunications service," much less to subsidize broadband through MoUSF funds statutorily limited to supporting "essential local telecommunications service."[8] As Verizon has repeatedly noted, as a creature of statute, the Commission may not exceed its authority by expanding statutory definitions beyond their scope, nor by disbursing MoUSF monies to support services beyond those authorized by state statute. *See Orler v. Folsom Ridge, LLC et al.*, 2007 Mo. PSC LEXIS, *94-95 (2007) (commission is creature of statute and its jurisdiction, powers and duties are fixed by statute).

Missouri Cable Telecommunications Association" (April 28, 2017) at 3-7; and "Comments of the Missouri Cable Telecommunications Association" (June 14, 2017) at 2-3.

[5] *See* "Comments of Level 3 Communications" (May 1, 2017) at 1.

[6] *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.

[7] As MCTA previously noted, the FCC has determined that broadband is jurisdictionally *interstate*. *See* MCTA's April 28, 2017 Comments at 5.

[8] Under § 392.248.2, R.S. Mo., MoUSF funds may only be used to support "reasonably comparable essential local telecommunications services," not broadband.

Despite the well-supported legal analysis prohibiting use of MoUSF funds to subsidize broadband-only service, Staff proposes to expand 4 CSR 240-31.010's definition of "essential local telecommunications service" to include "retail broadband service capable of transmitting data to and receiving data from all or substantially all Internet endpoints and meeting the minimum service standards identified in 47 CFR Part 54.408" – that is, *broadband-only service* subject to speed mandates that plainly violate § 386.611.2, R.S. Mo.'s statutory prohibition against Commission regulation of broadband service.

Such a radical reconfiguration and expansion of the MoUSF is likewise inconsistent with Staff's stated objective of "streamlining" Chapter 31 to comply with Executive Order 17-03 (January 10, 2017) ("EO 17-03"). Staff's proposal would not only violate Missouri law, but would complicate and increase the cost of compliance with Chapter 31 to the detriment of the Missouri consumers and businesses that will see their communications bills increase to pay for Staff's proposal, as well as to the disadvantage of the subset of communications providers forced to collect and remit higher MoUSF surcharges to fund this unauthorized change (and perhaps expend resources pursuing a legal challenge thereto). 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.

Absent the General Assembly adopting legislation authorizing expenditure of MoUSF funds to support broadband, the Commission may not adopt Staff's proposed 4 CSR 240-31.010(5), which violates both Missouri law and EO 17-03.

II. The Commission Should Reject Proposed 4 CSR 240-31.040, Which Is Both Unnecessary and Inconsistent with § 392.248, R.S. Mo.

Verizon's May 1, 2017 comments (included in Group Exhibit 1) included data demonstrating that the number of unsubsidized competitors providing service in Missouri has continued to grow each year, underscoring that there is no need for new state high-cost support on top of the substantial federal USF support provided for high cost areas. *See* Verizon's May 1, 2017 Comments at 2-3. Despite this, Staff has proposed creation of a new high-cost subsidy for customer-specific locations. *See* Proposed 4 CSR 240-31.040. The proposed rule suffers from an array of flaws:

- Proposed 4 CSR 240-31.040 does not comply with § 392.248.4.(1)(a), R.S.Mo.'s requirement that a telecommunications company seeking high-cost support offer service throughout "an entire high-cost area" and "hav[e] carrier of last resort obligations in that high-cost area."

- Proposed 4 CSR 240-31.040 does not comply with § 392.248.4.(1)(b), R.S.Mo.'s requirement that a telecommunications company seeking high-cost support not charge a rate in excess of that set by the commission for essential local telecommunications services.

- Proposed 4 CSR 240-31.040(1)(A) would allow high-cost support for broadband by virtue of allowing iVoIP providers to obtain high-cost support, even though § 392.248, R.S.Mo. only permits high-cost support "to facilitate provision of essential local telecommunications service" and broadband cannot be an "essential local telecommunications service" (*see* discussion in Section I above).

- Proposed 4 CSR 240-31.040(1)(C) would allow high-cost support even when a *non-landline* competitor is already offering service at the subject customer location, wasting precious MoUSF funds subsidizing service at a location where it is already available from a competitor that is not a landline provider.

- Proposed 4 CSR 240-31.040(2) would permit a company to receive Missouri high-cost support even where the requestor elects to require the customer to pay for the extension of facilities.

- Proposed 4 CSR 240-31.040 fails to require a sworn attestation that the applicant is not receiving federal USF support for the same project, and thus would authorize disbursing Missouri high-cost support even when the requestor is receiving federal USF support for the same location, making MoUSF support unnecessary, duplicative and wasteful.

- Proposed 4 CSR 240-31.040 appears to give the Missouri Universal Service Board unilateral discretion to establish an unfettered program budget, which could cause the MoUSF to balloon indiscriminately.
- Proposed 4 CSR 240-31.040 includes no process for interested commenters to comment on an application, or otherwise rebut an assertion that no landline facilities are currently available at the subject location.

As in Section I above, the proposed rule changes, while characterized as responsive to EO 17-03, would impermissibly expand the Commission's authority in violation of Missouri law, to the detriment of service providers and their customers who would be required to fund the improper high-cost support it envisions.

* * *

For the reasons detailed above, as well as in Verizon's, AT&T's, MCTA's and CenturyLink's comments throughout this proceeding, the Commission lacks statutory authority to expend MoUSF funds to subsidize "broadband-only" service, as proposed 4 CSR 240-31.010(5) would permit. Moreover, § 386.611.2, R.S. Mo. prevents the speed mandates incorporated in the proposed rule. Similarly, Staff's proposed 4 CSR 240-31.040 would wastefully dole out new high-cost support in violation of both state law and sound policy, contrary to EO 17-03. The Commission should reject both proposed draft rules.

Dated: October 23, 2017

MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services; MCI Communications Services, Inc. d/b/a Verizon Business Services; TTI National, Inc.; Verizon Long Distance LLC; Verizon Select Solutions, Inc.; and XO Communications Services, LLC

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GROUP EXHIBIT 1

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

VERIZON'S COMMENTS

Verizon[1] responds to Staff's question[2] asking "whether the Missouri Universal Service Fund (MoUSF) can support broadband-only service." The answer is unequivocally "no."

The Commission May Not Use the MoUSF to Support "Broadband-Only" Service

Notably, Staff did not itself propose rule changes that would permit using MoUSF funds to support "broadband-only service." Instead, its inquiry appears to stem from an assertion by certain rural carriers that "it is appropriate to expand the Missouri Lifeline and Disabled program to cover Broadband service as well." *See* Attachment D to Staff's Proposed Rules (e-mail from Trip England to multiple recipients). Attachment D offers no supporting legal analysis – nor could it, as Missouri law does not authorize the Commission to use MoUSF funds to subsidize "broadband-only" service.

A. "Broadband-Only" Service Is Not a "Telecommunications Service" Under Missouri Law

Staff asks whether the Commission could construe § 386.020(53), R.S. Mo.'s definition of "telecommunications service" to encompass "broadband-only" service given that the FCC recently concluded that high-speed internet connections could be regulated as

[1] "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.

[2] *See* "Staff Request for Comment" (September 13, 2016) ("Staff Request") at ¶ 3.

"telecommunications services" under Title II of the federal Telecommunications Act. Staff Request at ¶ 3.

As a creature of statute, the Commission may not exceed its authority by expanding statutory definitions beyond their scope, nor by disbursing MoUSF monies to support services beyond "essential local telecommunications service" (discussed further below). *See Orler v. Folsom Ridge, LLC et al.*, 2007 Mo. PSC LEXIS, *94-95 (2007) (commission is creature of statute and its jurisdiction, powers and duties are fixed by statute). Under the suggested reinterpretation of "telecommunications service," "broadband-only" service would suddenly become a telecommunications service subject to the panoply of statutory and administrative rule requirements imposed on telecommunications services. But Missouri law states that broadband is *not* a regulated telecommunications service. To the contrary, § 392.611.2, R.S. Mo. confirms that broadband is an internet protocol-enabled service *not* subject to Commission regulation.[3] As Staff appears to observe (Staff Request at ¶ 3), the Missouri legislature would need to amend existing law before such an interpretation would be permissible.

B. "Broadband-Only" Service Is Not an "Essential Local Telecommunications Service" Under Missouri Law

Even if "broadband-only" service could be deemed a "telecommunications service" under § 386.020(53), R.S. Mo. (and it cannot), the Commission still could not use MoUSF funding to subsidize it because § 392.248, R.S. Mo. only permits MoUSF support for "essential local telecommunications services." Staff asks whether broadband service is "essential" (Staff Report at ¶ 3), but the appropriate question is whether "broadband-only" service is an "essential local

[3] By referring to "[b]roadband *and other* internet protocol-enabled services" (emphasis added), § 392.611.2, R.S. Mo. makes clear that broadband is one of several categories of internet protocol-enabled service that the Commission is prohibited from regulating.

telecommunications service," since § 392.248.2, R.S. Mo. states that MoUSF funds may only be used to ensure the provision of such services (and to pay for the administration of the MoUSF).

The Commission's codified definition of "essential local telecommunications service" is explicitly limited to *voice* services: "This phrase is synonymous with *voice* telephony service as defined by 4 CSR 240-31.010[(21)[4]]." *See* 4 CSR 240-31.010(6) (emphasis added). 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). Under no stretch does "broadband-only" service meet this definition – it is neither "voice" nor "local," nor provides voice grade access to the public switched network and 911.

Section 392.248, R.S. Mo. references regulation of the rates for "essential local telecommunications services" (§392.248.2) and the designation of carriers of last resort to provide them (*see* §§ 392.248.4 and 392.248.5, R.S. Mo.), only confirming that "essential local telecommunications services" are 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. *See* § 392.611.2, R.S. Mo. For example, § 392.248.5, R.S. Mo. states that "the *incumbent local exchange telecommunications company* shall be designated as a carrier of last resort for essential local telecommunications service," and that a "*local exchange telecommunications company*" may relinquish its carrier of last resort obligations where the

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[4] Staff's proposed rule revisions would correct the existing rule's erroneous reference to 4 CSR 240-31.010(<u>18</u>), which is the definition of "toll blocking." *See* Staff Request, Attachment A.

Commission has designated more than one carrier of last resort. The definitions of "incumbent local exchange telecommunications company" and "local exchange telecommunications company" in §§ 386.010(22) and (31), R.S. Mo., respectively (as well as the accompanying definition of "local exchange telecommunications service" in § 386.010(32), R.S. Mo.) are limited to traditional local exchange *voice* service and do not encompass "broadband-only" services.

* * *

For the reasons detailed above, the Commission lacks statutory authority to expend MoUSF funds to subsidize "broadband-only" service. The Commission should reject any proposed rule modifications that would result in: (1) treating "broadband-only" service as a "telecommunications service" under § 386.020(53), 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: October 20, 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.

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

VERIZON'S REPLY COMMENTS

Verizon[1] 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.[2] MCTA's reasoning parallels Verizon's initial comments[3] and Verizon endorses and concurs in MCTA's comments.[4]

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.[5] Verizon agrees.

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[2] *See* "Comments of the Missouri Cable Telecommunications Association" (October 20, 2016) at 1-6 ("MCTA Comments").

[3] *See* "Verizon's Comments" (October 20, 2016) at 1-6 ("Verizon Comments").

[4] Verizon also joins in MCTA's observation that the FCC has expressly preempted imposing MoUSF surcharges on broadband connections. MCTA Comments at 6.

[5] *See* "Comments of CenturyLink" (October 20, 2016) at 2-4 ("CenturyLink Comments").

II. <u>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.</u>

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.[6] 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.

[6] *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").

STCG 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."[7] *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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[7] 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"[8] – 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)[9]]." *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.[10]

* * *

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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[8] 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.

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

[10] 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

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BEFORE THE PUBLIC SERVICE COMMISSION
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<u>VERIZON'S COMMENTS</u>

Verizon[1] submits these comments pursuant to the Commission's February 28, 2017 "Notice of Opportunity to Comment." Verizon once again urges the Commission to reject proposals to use Missouri USF ("MoUSF") funds to support "broadband-only" service, which Missouri law does not authorize. Verizon also recommends against creation of a high-cost fund.

I. <u>The Commission May Not Use the MoUSF to Support "Broadband-Only" Service.</u>

Verizon filed comments detailing why Missouri law prohibits the Commission from using the MoUSF to support "broadband-only" service in this docket on October 20, 2016 and November 15, 2016. Rather than repeat those recent comments here, Verizon appends its earlier briefs as **<u>Exhibits 1 and 2</u>** hereto. As noted therein, as a creature of statute,[2] the Commission may not exceed its authority by disbursing MoUSF funds to support services not authorized by statute. Section 392.611.1(1), R.S. Mo. makes clear that MoUSF assessments are to be used "to support the provision of *local voice service*" (emphasis added), not broadband. Moreover, under Missouri law, broadband is an unregulated Internet protocol-enabled service,[3] not a "telecommunications service" defined in § 386.020(54), R.S. Mo. for which MoUSF support is

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[2] *See Orler v. Folsom Ridge, LLC et al.*, 2007 Mo. PSC LEXIS, *94-95 (2007) (commission is creature of statute and its jurisdiction, powers and duties are fixed by statute).

[3] *See* § 392.611.2, R.S. Mo.

permissible. Before the Commission could use the MoUSF in this manner, the Missouri legislature would need to amend existing law expressly to authorize it.

II. <u>The Commission Should Not Create a High Cost Fund ("HCF").</u>

In February 2014, Verizon filed comments in File No. TW-2014-0012 explaining that a high cost fund is unnecessary in Missouri because competition has flourished, making affordable voice services widely available in the state without imposing additional fees on Missourians to subsidize certain providers. A copy of those comments is attached hereto as **<u>Exhibit 3</u>**. As Verizon noted then, extensive intermodal competition has developed in the state without the creation of a MO HCF, and robust competition will ensure that affordably-priced voice services continue to be available to Missouri consumers, which is the goal of universal service (*not* to support any specific carrier or subset of carriers).

Since those 2014 comments, the presence of unsubsidized competitors in Missouri has grown, only underscoring that there is no need to create a high-cost fund, particularly given the substantial federal USF support for high cost areas. For example, consider the following comparison of Missouri data from the end of 2012 (the most recent available as of Verizon's 2014 comments), and the end of 2015 (the most recent year available now):

Missouri Data	Year End 2012	Year End 2015
ILEC-served switched access and VoIP lines	1.7M[4]	1.25M[5]
Non-ILEC served switched	629K[6]	766K[7]

[4] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2012* (November 2013) (*"2012 Local Competition Report"*), Table 9, available on-line at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1126/DOC-324413A1.pdf.

[5] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Voice Telephone Services: Status as of December 31, 2015* (November 2016) (*"2015 Voice Service Report"*; available on-line at https://apps.fcc.gov/edocs_public/attachmatch/DOC-342357A1.pdf), Supplemental Table 1, available on-line at https://www.fcc.gov/voice-telephone-services-report (click link for "State-Level Subscriptions").

[6] *2012 Local Competition Report*, Table 9.

[7] *2015 Voice Service Report,* Supplemental Table 1.

access and VoIP lines		
VoIP providers	98[8]	166[9]
Wireless subscribers	5.7M[10]	6M[11]
Percentage of occupied housing units with telephone service	97.2%[12]	97.2%[13]
Percentage of households with wireless-only service	41.4%[14]	55.8%[15] *data as of August 2016

The data show that even without a MO HCF, competition has continued to grow in the three years since Verizon filed its 2014 comments, with the majority of households in the state choosing to abandon landline phone service altogether. There is no justification for imposing higher MoUSF fees on Missourians in order to create a high cost fund when the competitive market is operating as it should.

* * *

Verizon urges the Commission to reject proposals to create a MO HCF, or to use the MoUSF to subsidize broadband, which would violate state law.

[8] *2012 Local Competition Report*, Table 17.

[9] *2015 Voice Service Report,* Supplemental Table 2, available on-line at https://www.fcc.gov/voice-telephone-services-report (click link for "State-Level Provider Counts").

[10] *2012 Local Competition Report*, Table 18.

[11] *2015 Voice Service Report*, Supplemental Table 1.

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

[13] FCC, Universal Service Monitoring Report 2016 (Data Received Through September 2016), Table 6.6, available on-line at https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf.

[14] Blumberg SJ, Ganesh N, Luke JV, *et al, Wireless Substitution: State-level Estimates from the National Health Interview Survey, 2012*, National Health Statistics Report No. 70, National Center for Health Statistics, Centers for Disease Control (December 18, 2013), at Table 2, available on-line at http://www.cdc.gov/nchs/data/nhsr/nhsr070.pdf.

[15] *National Health Interview Survey Early Release Program, 2012,* National Center for Health Statistics, Centers for Disease Control and Prevention (rel. August 2016), at Table 1, available on-line at https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201608.pdf.

Dated: May 1, 2017

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 TTI National, Inc.

By: *_/s/ Deborah Kuhn*

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[Exhibits 1 and 2 to Verizon’s May 1, 2017 Comments are already included in Group Exhibit 1]

VERIZON EXHIBIT 3

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Repository Case in Which to Gather Information About the Lifeline Program and Evaluate the Purposes and Goals of the Missouri Universal Service Fund	))))	File No. TW-2014-0012

VERIZON'S COMMENTS ON POSSIBLE HIGH COST FUND

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services (together, "Verizon") respectfully submit these comments in response to the Commission's January 15, 2014 "Invitation to Comment about the Possible Creation of a Missouri Universal Service High Cost Fund."

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

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

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

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

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

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

Discussion

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

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

[3] 1996 S.B. 507.

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

Moreover, creating a new MO HCF is not in the interests of consumers, who ultimately must bear the cost of any such fund. Because the competitive communications marketplace has developed in Missouri without a MO HCF, it is unnecessary now to impose a massive new tax on Missouri consumers to ensure that Missourians have access to affordable voice service. In fact, doing so would risk undermining the state's universal service goals. As the Fifth Circuit noted years ago, "[b]ecause universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, *thereby pricing some consumers out of the market*."[5] Forcing Missourians to pay higher MO USF assessments to fund an unnecessary MO HCF would also violate the Legislature's directive that the Commission's universal service policies "[e]nsure that customers pay only reasonable charges for telecommunications service." Sec. 392.185(4), RSMo. The Commission should strive to avoid this result by not adding to Missourians' financial burden of funding universal

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

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

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

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

<u>Evolution of the Communications Marketplace and the Growth of Competition</u>

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

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

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

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

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

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

[8] *Id.*, Table 5.

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

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

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

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

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

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[11] *Id.*, Table 17.

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

[13] *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

[20] *Id.*

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

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

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

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

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

[24] *Id.*

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

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

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

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

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

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

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

Universal Service Goals Are Already Being Achieved in Missouri

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

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

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

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

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

The FCC's Universal Service Reforms

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

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

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

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

[33] *Id.*, ¶¶ 6, 9.

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

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

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

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

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[34] *Id.*, ¶¶ 6, 287.

[35] *Id.*, ¶¶ 1, 5, 17.

[36] *Id.*, ¶¶ 7, 11, 195, 286-289.

[37] *Id.*, ¶ 57.

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

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

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

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

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

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

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

41 *Id.*, ¶¶ 24, 27, 170, 280-281.

42 *Id.*, ¶¶ 27, 197, 235-241.

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

44 *Id.*, ¶ 237.

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

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

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

<u>State Commission Responses to the FCC's Reforms</u>

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

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[45] *Id.*, ¶ 795.

[46] *Id.*, ¶ 849.

[47] *Id.*, ¶¶ 539-544.

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

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

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

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

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

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

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

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

Conclusion

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

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

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