

**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 COMMENTS

Verizon¹ responds to Staff’s question² 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 Orlor 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

⁴ 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.

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.

By: /s/ Deborah Kuhn

Deborah Kuhn
Verizon
205 N. Michigan Ave., 7th Floor
Chicago, Illinois 60601
(312) 894-2354
(301) 282-4710 FAX
deborah.kuhn@verizon.com