

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

In the Matter of Proposed New Rule)	
4 CSR 240-3.570 Regarding Eligible)	
Telecommunications Carrier Designations)	Case No. TX-2006-0169
for Receipt of Federal Universal Service)	
Fund Support)	

REPLY COMMENTS OF AT&T MISSOURI

AT&T Missouri¹ respectfully submits these Reply Comments regarding proposed Rule 3.570 (4 CSR 240-3.570). AT&T Missouri continues to generally support the proposed rule as originally published² because it incorporates many of the FCC's own requirements governing applications for eligible telecommunications carrier ("ETC") status and is otherwise appropriate.³ However, AT&T Missouri also continues to urge, consistent with its January 3, 2006 Comments, that certain important modifications be made to the proposed rule, so as to incorporate more of the FCC's requirements than the proposed rule reflected, and so as to best advance the purposes and goals of the high-cost Universal Service Fund ("USF"). Staff supports virtually all of these modifications and no party has objected to any of them. Thus, except in certain limited respects discussed below, the Commission should adopt each of them.

As the Commission is aware, Staff's Comments suggested multiple changes to the proposed rule to, as Staff put it, "be more competitively neutral."⁴ More specifically, Staff proposed "removing references to 'competitive carriers,' 'CMRS providers' or 'alternative local

¹ Southwestern Bell Telephone, L. P. d/b/a AT&T Missouri ("AT&T Missouri").

² 30 Mo. Reg. 2479-2483 (December 1, 2005).

³ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) ("ETC Designation Order"); 47 CFR §§ 54.202, 54.209.

⁴ Staff's Comments, p. 2.

exchange telecommunications carriers' and replacing those terms with 'ETCs' or 'carriers.'"⁵ AT&T Missouri does not believe that these changes should be made. The rules as published -- which are directed largely to CLEC and wireless companies -- sufficiently ensure competitive neutrality among all ETC applicants and designees by imposing obligations co-extensive with those already imposed upon ILECs pursuant to current Commission rules or ILEC tariffs. Staff's proposed change in emphasis (though not necessary) presents the new risk that an ILEC could become subject to an obligation pursuant to the proposed ETC rule (if adopted in the form now proposed by Staff) that is different and in conflict with an obligation already imposed by existing rules or tariffs. Staff recognizes that the potential for such inconsistency and conflict must be removed, and AT&T Missouri wholeheartedly agrees.

Thus, AT&T Missouri urges the Commission to retain the framework of the rule as it was originally proposed. However, should the Commission adopt Staff's proposed changes, then the rule must expressly state that in the case of an ILEC, if any duty or obligation is imposed by this rule regarding a subject for which duties and obligations are imposed upon an ILEC either by other Commission rules or ILEC tariffs, the duties and obligations stated in those other rules or tariffs on the subject shall govern, to the exclusion of this rule. AT&T Missouri proposes language to this effect herein.

I. WITH LIMITED EXCEPTIONS, AT&T MISSOURI'S RECOMMENDED CHANGES TO THE PUBLISHED RULE SHOULD BE ADOPTED.

AT&T Missouri's January 3, 2006 Comments, and its proposed "redlined" edits attached to its Comments, recommended that limited, but important changes be made to the rule as published. These recommended changes included the following:

⁵ Staff's Comments, p. 2.

- Including a definition of a “reasonable request for service” (subpart (1)(F));⁶
- Adding further detail to the showing required of an ETC applicant regarding its “network improvement plan” (subpart (2)(B));⁷
- Adding further detail to the showing required of an ETC applicant regarding its “ability to remain functional in emergency situations” (subpart (2)(E));⁸
- Specifically requiring that an ETC applicant demonstrate that the Commission’s grant of its request would be consistent with the public interest, convenience and necessity (subpart (2)(F));⁹
- Clarifying that the ETC applicant should acknowledge that it may be required to provide equal access (subpart (7))¹⁰ and clarifying that an ETC’s annual affidavit should likewise include this acknowledgement (subpart (24)(F));¹¹
- Clarifying that, in responding to a request for service in outlying areas, an ETC should also consider leasing or constructing an additional cell site, a cell-extender, repeater or other similar equipment to provide service (subpart (10)(D)(2)(F));¹²
- Adding specifics to the required network improvement plan “progress updates” associated with an ETC’s annual certification filing (subpart (24)(A));¹³
- Adding specifics to the required “outage” information associated with an ETC’s annual certification filing (subpart (24)(B));¹⁴

⁶ AT&T Missouri’s Comments, p. 5; see also, ETC Designation Order, paras. 21-22.

⁷ AT&T Missouri’s Comments, pp. 5-6; see also, ETC Designation Order, para. 23; 47 C.F.R. § 54.202(a)(1)(ii).

⁸ AT&T Missouri’s Comments, pp. 6-7; see also, ETC Designation Order, para. 25; 47 C.F.R. § 54.202(a)(2).

⁹ AT&T Missouri’s Comments, pp. 7-8; see also, ETC Designation Order, paras. 3, 40, 42, 61; 47 U.S.C. § 214(e)(2); 47 U.S.C. § 214(e)(6).

¹⁰ AT&T Missouri’s Comments, pp. 8-9; see also, ETC Designation Order, para. 35; 47 C.F.R. § 54.202(a)(5).

¹¹ AT&T Missouri’s Comments, pp. 11-12; see also, ETC Designation Order, para. 69; 47 C.F.R. § 54.209(a)(8).

¹² AT&T Missouri’s Comments, p. 9; see also, ETC Designation Order, para. 22; 47 C.F.R. § 54.202(a)(1)(i)(B)(6).

¹³ AT&T Missouri’s Comments, pp. 9-10; see also, ETC Designation Order, para. 69; 47 C.F.R. § 54.209(a)(1).

¹⁴ AT&T Missouri’s Comments, pp. 10-11; see also, ETC Designation Order, para. 69; 47 C.F.R. § 54.209(a)(2).

- Clarifying that an ETC, in its annual certification filing, must provide information on how many service requests were unfulfilled and information regarding how the ETC attempted to provide service in these cases (subpart (24)(C));¹⁵
- Including in the required annual affidavit a statement that the ETC has used support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended (subpart (24)(F));¹⁶

At the Commission's January 6 public hearing, Staff noted AT&T Missouri's recommendations, and testified that it objects to only two of them.¹⁷ First, with respect to the "outage" information associated with an ETC's annual certification filing (subpart (24)(B)), Staff suggested that the proposed rule "require detailed information on outages consistent with Commission Rule 4 CSR 240-3.550 as opposed to AT&T's suggestion."¹⁸ AT&T Missouri agrees that Staff's suggestion sufficiently meets the need to add specifics to the outage reporting requirements, and that the reference to the Commission's already existing rule on the matter meets that need.

Second, Staff stated that it viewed as unnecessary any need for the required annual affidavit to include a statement that the ETC has used support only for "provision, maintenance, and upgrading" supported facilities and services (subpart (24)(F)) so long as the Commission were to adopt a requirement that the affidavit include a statement that "federal high-cost support is used consistent with the commission's rules and the Telecommunications Act of 1996[.]" as Staff's January 3 Comments recommended.¹⁹ While it is certainly the case that Staff's general

¹⁵ AT&T Missouri's Comments, p. 11; see also, ETC Designation Order, para. 69; 47 C.F.R. § 54.209(a)(3).

¹⁶ AT&T Missouri's Comments, p. 12; see also, 47 U.S.C. § 254(e).

¹⁷ Tr. 9-10; see also, Tr. 57 (testifying, in response to Commissioner Gaw's question regarding the details of the ETC applicant's proposed network improvement plan, that "AT&T made some suggestions, which we do not object to, where they're making it even more specific").

¹⁸ Tr. 10.

¹⁹ Tr. 11; Staff's Comments, Attachment, p. 8.

language is all-encompassing, AT&T Missouri nonetheless maintains that its proposed language should be added to the rule. AT&T Missouri's proposed language reflects a very specific and critically important element of an ETC's universal service law obligations,²⁰ and its inclusion in the Commission's ETC rule would better foster regulatory and legal compliance regarding how the ETC has actually spent the high-cost funds it has received.

AT&T Missouri also notes that in apparent response to AT&T Missouri's "equal access" recommendation, Staff has since suggested a further edit regarding the nature of the equal access commitment required to be made by an ETC applicant. Specifically, AT&T Missouri had recommended that proposed subpart (7) reflect that the ETC applicant should acknowledge that it "may be required to" provide equal access (instead of "shall" provide, as was stated in the rule as proposed).²¹ Staff later recommended that the rule require an ETC applicant to acknowledge that equal access shall be provided pursuant to 4 CSR 240-32.100(3) and (4).²² These rules provide that intraLATA equal access presubscription will be conducted as ordered by the Commission, and that interLATA equal access presubscription shall be conducted in accordance with the FCC's requirements as set forth in two 1985 FCC orders.

AT&T Missouri has no objection to including Staff's more recently proposed language. Its reference to the Commission's current rule would remove the conflict that would be caused by the mandatory language originally published, and appropriately eliminates the sweeping mandate to provide equal access, as the published rule proposes.

²⁰ See, 47 U.S.C. § 254(e) ("A carrier that receives such support shall use that support only for the provision, maintenance and upgrading of facilities and services for which the support is intended.").

²¹ AT&T Missouri's Comments, pp. 7-8.

²² Staff Submission in Response to Requests From the Missouri Public Service Commission, January 9, 2006 ("Staff's Submission"), Attachment, p. 4.

In all respects other than the limited instances noted above, AT&T Missouri urges the Commission to adopt the changes it has recommended to the rule as published. No party to this proceeding has objected to these AT&T Missouri recommended changes.

AT&T Missouri emphasizes two particularly important changes. The first is AT&T Missouri's recommendation to include language in the rule that would specifically require an ETC applicant to demonstrate that the Commission's grant of its request would be consistent with the public interest, convenience and necessity (subpart (2)(F)). No one has challenged the legal precedent and public policy grounds that AT&T Missouri advanced in support of including such a requirement,²³ and Staff expressly agreed that the public interest showing should be included in the rule.²⁴

The second has to do with Staff's recommendation in favor of a "two-year" network improvement plan, rather than a "five-year" plan as is proposed in the rule as published. The Commission should not acquiesce to a more abbreviated plan. The purpose of the five-year plan is to demonstrate the applicant's ability and willingness to provide the supported services "throughout the service area for which the designation is received."²⁵ Experience has shown that a plan of shorter duration would merely reflect the specifics of an intended build-out covering only a portion of the area for which designation is sought. This "half a loaf" provides no assurance that any additional build-out for the remainder of the designated area will ever be accomplished or, even if it will, that the details of the build-out will be acceptable to the

²³ AT&T Missouri's Comments, pp. 7-8; see also, ETC Designation Order, paras. 3, 40, 42, 61; 47 U.S.C. § 214(e)(2); 47 U.S.C. § 214(e)(6).

²⁴ Tr. 223 (Staff indicating that the "public interest standard" is "expected under the ETC order. And under AT&T's comments we've agreed that it should be added.").

²⁵ 47 U.S.C. § 214(e)(1) (emphasis added).

Commission (a determination which should be made before, not after, ETC designation is granted).

II. LANGUAGE SHOULD BE INCLUDED IN THE PROPOSED RULE TO ENSURE THAT THE RULE DOES NOT IMPOSE ANY OBLIGATIONS UPON ILECS INCONSISTENT WITH EXISTING COMMISSION RULES AND APPLICABLE TARIFFS.

The published rule is directed primarily to competitive ETCs, i.e., CLECs or wireless providers. However, Staff has since proposed removing references to “competitive carriers,” “CMRS providers” and “alternative local exchange telecommunications carriers” and replacing those terms with “ETCs” or “carriers.”²⁶ Whether the rules ultimately impose upon competitive ETCs certain requirements already applicable to ILECs (such as quality of service obligations)²⁷ or, on the other hand, whether the rules ultimately impose obligations upon all ETCs regardless of type of carrier, may appear at first glance to be a relatively innocuous choice in draftsmanship. Both approaches could well ensure competitive neutrality among all ETCs.

However, in taking the latter course, Staff’s recommended rule changes in some cases present conflict with the Commission’s currently existing rules and/or ILEC tariffs. If the Commission proceeds to accept Staff’s change in approach, it is extremely important that the Commission add appropriate language to the rule to ensure that there are no conflicts between the obligations that would be imposed upon ILECs by the ETC rule and those imposed upon ILECs by existing rules (e.g., Chapters 2, 3, 32 and 33 of the Commission’s rules) and tariffs.

²⁶ Staff’s Comments, p. 2.

²⁷ The FCC has observed that “nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1).” ETC Designation Order, para. 61, citing, *Texas Office of Public Utility Counsel v. FCC*, 183 F. 2d 393, 418 (5th Cir. 1999).

For example, the rule as published would require that “[a] competitive ETC” must acknowledge Staff inquiries related to informal complaints about denial or discontinuance of service “within twenty-four (24) hours.” Staff’s recommendation to substitute “[a]n ETC” for “[a] competitive ETC” causes the rule to become applicable to ILECs. This presents conflict because existing Commission Rule 33.110(3)(A) allows “one (1) business day” for the same type of inquiry. Staff has since sought to correct the conflict by suggesting that the time frame allowed in the ETC rule be “one (1) business day.”²⁸

The proposed rule would also require “[a]ll competitive carriers designated as ETCs” to make special arrangements in the case of “special” or “unusual” construction, under which one mile of facilities would be provided to the customer by the ETC at no charge (subpart (10)(D)(3)(A)). However, Staff recommended substituting the phrase “[a]ll ETCs” for the above-quoted phrase.²⁹ This change in course presents conflict with ILEC tariffs. In the case of AT&T Missouri’s tariffs, generally speaking, there is no charge for line extensions of 5/10 mile along public highways and 2/10 mile on private property.³⁰ This conflict has not been resolved.

These conflicts could be avoided if the Commission were to adopt the structure of the rule as it was originally published -- which focused on “competitive ETCs” or “CMRS ETCs” -- and not apply the rule to ILEC ETCs. However, if the Commission adopts Staff’s proposed revisions, then the risk of any actual or potential conflicts with other Commission rules and/or ILEC tariffs must be eliminated. Staff recognizes this, and stated that it “recommends a generic statement be added to 4 CSR 240-3.570 to clarify that in the even [sic] there is a discrepancy for ILECs or CLECs between 4 CSR 240-3.570 and another commission rule, the other commission

²⁸ Staff’s Submission, Attachment, p. 5.

²⁹ Staff’s Comments, Attachment, p. 3.

³⁰ See, Supplemental Submission of AT&T Missouri, January 9, 2006, Attachment (General Exchange Tariff, Section 5, entitled “Construction Charges”).

rule contains the applicable requirement.”³¹ That proposed revision does not resolve the potential conflict, as it does not address potential inconsistencies with an ILEC’s tariffs.³² Accordingly, AT&T Missouri recommends that the following language be added to the proposed rule:


In the event that any requirement is imposed by this rule relating to a subject that is addressed by another Commission rule or effective tariff, then the requirement imposed by the other Commission rule or effective tariff shall apply, to the exclusion of the requirement stated in this rule.

III. CONCLUSION

For the foregoing reasons, AT&T Missouri respectfully requests that the Commission consider and incorporate into its proposed rule AT&T Missouri’s proposed suggestions and edits.

Respectfully submitted,

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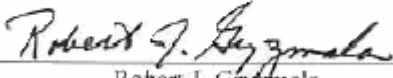
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³¹ Staff’s Submission, Attachment, p. 4. Staff also testified that the Commission’s existing rules should “take precedent over the ETC rule in case there are some discrepancies.” Tr. 7.

³² A company’s effective tariffs, like the Commission’s rules, have the force and effect of law. Laclede Gas Co. v. Public Service Commission of Missouri, 156 S.W. 3d 513, 521 (Mo. App. W.D. 2005) (noting that a tariff has “the same force and effect as a statute directly prescribed from the legislature”) (further citation omitted).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on January 17, 2006.


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