

## **Missouri Public Service Commission Staff Comments**

### **Chapter 31 Rulemaking**

#### **Preliminary Comments**

The Missouri Public Service Commission Staff (“Staff”) supports this rulemaking’s proposed revisions, rescissions and additions. The regulations contained in Chapter 31 rules are intended to comply with federal and state statutes designed to promote universal service.<sup>1</sup> These statutes direct the Federal Communications Commission (FCC) and state commissions to ensure universal service is available at rates that are just, reasonable, and affordable.<sup>2</sup> The rules identify requirements associated with the Missouri Commission’s role with the federal universal service fund.<sup>3</sup> In addition these rules are responsive to Missouri statutes instructing the Missouri Commission to “...adopt and enforce rules to be implemented by the universal service board, governing the system of funding and disbursing funds from the universal service fund...”<sup>4</sup> Therefore, in this context universal service rules are considered necessary and essential to the welfare of Missouri residents.

#### **Chapter 31 rule proposed rescissions**

Requirements contained in Chapter 31 will be streamlined and consolidated into the proposed Chapter 31 rulemaking. Rule rescission is more appropriate than attempting to amend existing rules given the significant streamlining of these requirements. Listed below are the rules proposed for rescission and where the requirements will be maintained in the proposed Chapter 31 rulemaking:

Staff supports rescinding all of the following rules:

- 4 CSR 240-31.020 (Organization, Powers, and Meetings of the Board). Existing requirements contained in this rule are streamlined into proposed 4 CSR 240-31.011.
- 4 CSR 240-31.030 (The MoUSFA). No requirements contained in this rule need to be carried over to the proposed Chapter 31 rule.
- 4 CSR 240-31.040 (Eligibility for Funding-High Cost Areas). No requirements contained in this rule need to be carried over to the proposed Chapter 31 rule but two new high cost funding proposals are contained in proposed 4 CSR 240-31.013.

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<sup>1</sup> Relevant statutes relating to universal service are contained in 47 U.S.C. 254 and Section 392.248 RSMo.

<sup>2</sup> 47 U.S.C. 254(i). 47 U.S.C.(c)(1) describes universal service as “...an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services....”

<sup>3</sup> The Missouri Commission’s role involves designating companies as eligible telecommunications carriers so that a company may draw financial support from the federal universal service fund; annual certification of high cost support per §54.314 and compliance/administration of the Lifeline program.

<sup>4</sup> Section 392.248.2 RSMo.

- 4 CSR 240-31.060 (The MoUSF Assessment). Existing requirements contained in this rule are streamlined into proposed 4 CSR 240-31.012.
- 4 CSR 240-31.090 (Disbursements of MoUSF Funds). No requirements contained in this rule need to be carried over to the proposed Chapter 31 rule.
- 4 CSR 240-31.100 (Review Procedures for Support Payments). No requirements contained in this rule need to be carried over to the proposed Chapter 31 rule.
- 4 CSR 240-31.110 (Review of Board and MoUSFA Activities). Existing requirements contained in this rule are streamlined into proposed 4 CSR 240-31.011.
- 4 CSR 240-31.120 (Lifeline Program and Disabled Program). Existing requirements contained in this rule are streamlined into proposed 4 CSR 240-31.014.
- 4 CSR 240-31.130 (Eligible Telecommunications Carrier Requirements). Existing requirements contained in this rule are streamlined into proposed 4 CSR 240-31.015 and 4 CSR 240-31.016.

### **Proposed Chapter 31 Rules**

This rulemaking proposes to amend, streamline and rescind certain rules as follows:

- Proposed 4 CSR 240-31.010 (Definitions) amends existing 31.010.
- 4 CSR 240-31.011 (Missouri USF Administration) proposes a streamlined version of regulations currently contained in 4 CSR 240-31.020 and 4 CSR 240-31.110.
- 4 CSR 240-31.012 (Missouri USF assessment) proposes a streamlined version of regulations currently contained in 4 CSR 240-31.060.
- 4 CSR 240-31.013 (Eligibility) proposes a limited form of high cost support and replaces 4 CSR 240-31.040.
- 4 CSR 240-31.014 (Lifeline and Disabled Programs) proposes a streamlined version of regulations currently contained in 4 CSR 240-31.120.
- 4 CSR 240-31.015 (ETC Requirements) proposes a streamlined version of regulations currently contained in 4 CSR 240-31.130(2) and (3).
- 4 CSR 240-31.016 (ETC Application Requirements) proposes a streamlined version of regulations currently contained in 4 CSR 240-31.130(1).

Executive Order 17-03 significantly impacted initial proposed revisions to these rules. This directive requires the removal of ineffective, unnecessary and burdensome regulations and ensures remaining rules are user friendly and not overly burdensome or complex. Staff applied certain concepts to comply with Executive Order 17-03. The proposed rules remove definitions and regulations already specified in federal statutes/rules and Missouri statutes. Lastly, the proposed rules attempt to incorporate less restrictive alternatives by removing minor administrative details and instead referring to the Missouri PSC or Missouri USF websites for such information.

Some parties may oppose proposed rule 4 CSR 240-31.010(4) because it defines the term “essential local telecommunications service” to include a broadband-only service, enabling the Missouri USF to support a broadband-only service. Some parties may also oppose proposed rule 4 CSR 240-31.013 because they oppose the Missouri USF offering any high-cost support.

#### **4 CSR 240-31.010 Definitions**

Staff supports this proposed rule that adds, rescinds and revises definitions. These comments will first briefly discuss the proposed definitions based on whether a definition is being added, rescinded or revised.

This rulemaking proposes to add definitions for three terms: “Lifeline program”, “retail broadband service” and “USF”. A definition is proposed for the term “Lifeline program” because the term is used within the chapter and is intended to complement the term “Disabled program” already defined by this chapter. Both terms propose to incorporate the phrase “essential local telecommunications service” as contemplated by Section 392.248.2 RSMo. The proposed definition for “retail broadband service” refers to the minimum service standards identified in 47 CFR Part 54.408 of the FCC’s rules which identify minimum broadband speeds for the Lifeline program.<sup>5</sup> The proposed reference to FCC rules ensures Missouri’s rules remain consistent with federal minimum requirements for broadband service. The acronym “USF” is used extensively throughout the proposed rulemaking and adding it to the definitions section helps to clarify the Commission’s rules.

This rulemaking proposes to rescind thirteen (13) definitions, which Staff recommends can be rescinded without losing clarity for the Chapter 31 rules. Nine of these definitions are proposed for rescission because the terms are not used in the text of this chapter’s proposed rules.<sup>6</sup> The other four definitions are used in this chapter but can be considered unnecessary. For example, the term “household” is used twice but is currently defined by §54.400(h) of the FCC’s Lifeline rules.<sup>7</sup>

Staff supports revising nine existing definitions.<sup>8</sup>

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<sup>5</sup> The current minimum service standard for fixed broadband speed is 10 Megabits per second downstream and 1 Megabit per second upstream.

<sup>6</sup> Nine terms are currently defined but not used in the proposed rulemaking: assessable carrier, federal universal service fund, income, MoUSF, Missouri Universal Service Fund Administrator, toll blocking, toll control, toll limitation and voice telephony service.

<sup>7</sup> In regards to the other three definitions: “Lifeline service” is used twice in the rules but appears unnecessary if the Commission adopts the proposed definition for “Lifeline program”. The term “Federal Universal Service Fund Administrator” is used once and seems unnecessary to define. The term “wireless service” is used once within the context of the latest edition Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service.

<sup>8</sup> The nine definitions are: Board, Commission, Disabled Program, ETC, Essential local telecommunications services, FCC, Interconnected Voice over Internet Protocol, MoUSF website and Net jurisdictional revenue.

### **Using Missouri USF to support a broadband-only service.**

The issue of whether the Missouri USF should be expanded to support broadband service has been under consideration for some time by the Commission Staff, industry and Office of Public Counsel.<sup>9</sup> The definition for the term “essential local telecommunications service” determines the scope of Missouri USF support.<sup>10</sup> Consequently, if the Missouri Commission determines it is appropriate for the Missouri USF to support a broadband-only service then Staff recommends the Commission adopt the definition’s proposed wording. On the other hand, if the Missouri Commission determines it is not appropriate for the Missouri USF to support a broadband-only service then the phrase “...and/or retail broadband service” should not be included in the definition of “essential local telecommunications service”.<sup>11</sup> Interested parties remain divided on whether the Missouri USF should support a broadband-only service.

### **Does Missouri law permit using Missouri USF to support a broadband-only service?**

Pursuant to Section 392.248, RSMo, the Missouri USF is to be used to ensure the provision of reasonably comparable essential local telecommunications services and to assist low income and disabled customers in obtaining affordable essential telecommunications services.<sup>12</sup> The purpose of the Universal Service Board is to “ensure just, reasonable, and affordable rates for reasonably comparable essential local telecommunications services throughout the state...”<sup>13</sup> Additionally, Section 392.248.1 states that “[n]othing in the rules adopted by the commission shall be inconsistent with the support mechanisms established for the federal Universal Service Fund, but the commission may adopt any additional definitions and standards it believes are necessary to preserve and advance universal service in the state of Missouri...”<sup>14</sup>. Section 392.248 also describes how the Missouri Commission should revise the definition for essential local telecommunications service periodically “...with the goal that every citizen of this state shall have access to a wider range of services, that are reasonably comparable between urban and rural areas, at rates that are reasonably comparable between urban and rural areas.”<sup>15</sup>

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<sup>9</sup> The issue was discussed in a July 20, 2016 Chapter 31 rulemaking workshop and has been extensively commented upon in Case No. TW-2017-0078 *In the Matter of Staff’s Review of Chapter 31 Rules*.

<sup>10</sup> Missouri statutes describe using this definition for that purpose. For example, Section 392.248.2(1) in providing instruction on how funds from the Missouri USF may be used states, “To ensure the provision of reasonably comparable essential local telecommunications service, as that definition may be updated by the commission by rule...” Section 392.248.6(1) states the commission shall, “Determine the definition of essential local telecommunications service...” “...with the goal that every citizen of this state shall have access to a wider range of services...”

<sup>11</sup> Adjusting this definition in this way is the key action needed to prevent the Missouri USF from supporting a broadband-only service; however, there are two other adjustments that should be simultaneously made to avoid any potential confusion: (1) Reject the “retail broadband service” definition and (2) Reject proposed rule 4 CSR 240-31.013(2) which contemplates providing Missouri USF high-cost support to expand broadband service to unserved areas.

<sup>12</sup> Section 392.248, RSMo.

<sup>13</sup> Section 392.248, RSMo

<sup>14</sup> Section 392.248.1 RSMo.

<sup>15</sup> Section 392.248.6(1) RSMo.

Based on an open internet order of the FCC, “broadband service satisfies the statutory definition of a telecommunications service: ‘the offering of telecommunications for a fee directly to the public’.”<sup>16</sup> While Missouri’s statutes do not specifically refer to broadband services, Section 392.611, RSMo, specifically exempts broadband services from Commission regulation.<sup>17</sup> In contrast, the statute which creates the Missouri USF, Section 392.248, RSMo, states, “Nothing in the rules adopted by the commission shall be inconsistent with the support mechanisms established for the federal Universal Service Fund, but the commission may adopt any additional definitions and standards it believes are necessary to preserve and advance universal service in the state of Missouri”.

Federal statute 47 U.S.C. 254(c) states, “universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.” The FCC’s consideration to include broadband service in universal service programs began in 2009 when Congress directed the FCC to develop a National Broadband Plan that identifies a detailed nationwide strategy for access to affordable broadband service. In 2010, the FCC released its National Broadband Plan noting a large and growing segment of the population did not have access to broadband service. Overall, the FCC observes how broadband service has evolved into an important and essential communications medium. The FCC describes how Americans use broadband for every facet of daily life, from finding a job to finding a doctor, from connecting with family to making new friends, from becoming educated to being entertained. The FCC also mentions how broadband adoption has positive effects on the nation’s job base, economic growth and standard of living.

Expanding the Missouri USF to provide support to a broadband-only service is likely to have minimal impact on Missouri USF support for the Lifeline and Disabled programs. For instance, the Missouri USF already provides implicit support for a service that bundles broadband service with voice service.

Missouri’s statutes are unclear as to whether or not broadband-only service may be supported by Missouri USF. Should the Commission choose to adopt the language as part of this rule revision to include broadband-only services, Staff suggests it would be statutorily permissible.

Staff supports the proposed rule and offers no additional revisions.

#### **4 CSR 240-31.011 Missouri USF Administration**

This rule proposes a streamlined version of regulations currently contained in 4 CSR 240-31.020 and 4 CSR 240-31.110. Section 392.248.1 RSMo directs the Commission to adopt rules “governing the operations of the universal fund and the operation of the universal service

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<sup>16</sup> *In the Matter of Protecting and Promoting the Open Internet*, 30 FCC Rcd. 5601 (2015). Citing 47 CFR 52.5.

<sup>17</sup> Section 392.611, RSMo.

board....” Existing rule 4 CSR 240-31.020 contains many administrative details regarding the operation of the Missouri USF Board. In Staff’s opinion, most, if not all, of these details do not need to be in rules. A more simple approach is to reference the Commission’s website for board ByLaws, board meeting minutes and a sign-up procedure for obtaining advance notice of board meetings.<sup>18</sup> Likewise, existing rule 4 CSR 240-31.110 contains details about the procedures for appealing a decision of the board or Missouri USF administrator. On a practical matter, only decisions by the Missouri USF administrator have been appealed to the board. Consequently, the proposed rule only contemplates an appeal of an action or decision by the Missouri USF Administrator. Staff is unaware if any party has ever desired to appeal board decision or action during the fund’s existence. In this regard, Staff supports the rulemaking as proposed.

#### **4 CSR 240-31.012 Missouri USF Assessment**

Missouri law requires the Missouri Commission to adopt rules governing the system of funding for the Missouri USF.<sup>19</sup> This proposed rule represents a streamlined version of regulations currently contained in 4 CSR 240-31.060. The proposed rule is intended to be more user-friendly through reorganization, use of simplified language and elimination of unnecessary text. The proposed rule maintains existing practices and procedures relating to the Missouri USF assessment. The Missouri USF website contains all details relating to the Missouri USF assessment.<sup>20</sup> Staff anticipates this proposed rule will be non-controversial. Staff supports the proposed rule.

#### **4 CSR 240-31.013 Missouri USF High Cost Support**

This proposed rule replaces 4 CSR 240-31.040 by establishing two forms of Missouri USF high cost support. One form of support is provided within 4 CSR 240-31.013(1) and offers support to help fulfill a service request to a location lacking any landline facilities. The other form of support is described under 4 CSR 240-31.013(2) and offers support to expand the general availability of broadband service. Both forms of proposed Missouri USF high cost support will be separately discussed and are independent of each other.

##### ***Proposed support offered by 4 CSR 240-31.013(1)***

Staff supports establishing the proposed funding offered by 4 CSR 240-31.013(1) which is a simplified version of the Arkansas Extension of Telecommunications Facilities Fund.<sup>21</sup> The need for this type of high cost support in Missouri emerged from a Staff investigation conducted into the facility extension practices of Missouri eligible telecommunications companies.<sup>22</sup> The

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<sup>18</sup> See [Missouri USF Board 1 | Missouri Public Service Commission](#)

<sup>19</sup> Section 392.248.2 RSMo.

<sup>20</sup> See [Missouri Universal Service Fund](#)

<sup>21</sup> The Arkansas fund is described in [Section 9 of the Arkansas Public Service Commission \("Arkansas PSC"\) rules](#). Monthly reports for the Arkansas fund are filed in [Docket No. 02-080-A](#). The Arkansas PSC established this fund in 2002.

<sup>22</sup> Case No. TO-2016-0184; *In the Matter of an Investigation in which to Gather Information about the Facility Extension Practices of ETCs Eligible to Receive High Cost USF Support*.

investigation was initiated after consumers complained of facing high construction charges in order to have the serving telecommunications company extend facilities to provide service. Declining revenue, including reforms to federal high cost USF support, have created concerns for companies in their ability to extend facilities at no charge to consumers. State statutes providing relief for carrier of last resort obligations may also affect a company's facility extension practices whereby more locations may go unserved.<sup>23</sup> Overall, based on Staff's investigation, an increasing number of companies are considering applying construction charges as well as other means to help defray the cost of extending facilities to provide service.

Conceptually, the proposed funding is intended to help fulfill a customer's service request to an unserved location. In this regard, the funding is not available for speculative purposes. A customer requesting essential local telecommunications service to an unserved location must provide assurance to subscribe to the service if facilities are extended to the requested location including the payment of any additional charges or terms applied by the company. This funding is also not intended to duplicate existing landline facilities to the requested location. Consequently, the location must lack landline facilities from any company, including a company not required to have authorization to provide service from the Missouri Commission.<sup>24</sup> The funding is limited to landline companies authorized to provide basic local telecommunications service or IVoIP service.

In Staff's opinion, the proposed rule's wording could be improved and provide better clarity if 4 CSR 240-31.013(1)(A)(3) is revised. A customer must request service but also be committed to subscribe to the requested service if facilities are extended to the customer's location. If a company intends to apply additional charges or terms as a condition of service then such requirements need to be disclosed to the customer. In turn, the customer must be willing to comply with any additional charges or terms. Based on these considerations, Staff recommends this portion of the rule be revised as follows:

- (A) A company may apply for Missouri USF high cost support to fulfill a customer service request to a location lacking facilities if:
1. The company is certificated to provide basic local telecommunications service or registered to provide IVoIP service;
  2. The company is current on its Missouri USF assessment obligations;
  3. The company has *[received a customer request for essential local telecommunications service to a location lacking landline facilities from any company to provide the requested service;]* **a written agreement indicating the customer's commitment to subscribe to the requested essential local**

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<sup>23</sup> Section 392.460 RSMo. Passage of House Bill No. 339 in 2011 provides carrier of last resort relief which refers to a company's general obligation to have facilities present to reasonably serve all consumers within a telephone exchange.

<sup>24</sup> To further clarify, if the term essential local telecommunications service is defined to include a broadband-only service and a customer is requesting a broadband-only service, the customer's location will not qualify for support if another company offering broadband service who is not required to have Missouri PSC authorization has landline facilities to the location.

**telecommunications service if facilities are extended, including the customer's compliance with additional charges or terms imposed by the company, if any; and,**

4. Applying the board-approved formula identified and explained on the Missouri USF website indicates the location qualifies for Missouri USF high cost support.

In regards to the board-approved formula mentioned in 4 CSR 240-31.013(1)(A)(4), Staff recommends the following formula be used to determine support:

***Missouri USF Support Amount*** = (Total Length of Construction \* \$1.50 per foot) + (Length of boring, if any \* \$15.00 per foot) + (Length of rock cutting, if any \* \$30 per foot) - \$500

This formula applies specified dollar rates to the distance of the route for extending facilities to the customer's requested location.<sup>25</sup> Example: This formula produces \$4,150 in Missouri USF support for extending facilities a total of 2,000 feet and includes 50 feet of boring and 30 feet of rock cutting:

$$(2,000' * \$1.50) + (50' * \$15.00) + (30' * \$30.00) - \$500 = \textbf{\$4,150}$$

The purpose of the \$500 deduction is two-fold: (1) It ensures Missouri USF support is limited to higher-cost facility extensions, and (2) it reflects a common company practice to extend facilities at no charge if distance and/or costs are below a certain amount. Staff recommends the Board cap Missouri USF support to a maximum of \$7,500 per request. A \$7,500 cap is intended to limit the Missouri USF's exposure to paying for extremely costly facility extensions. A \$7,500 cap is a reasonable amount for it enables facilities to be extended 5,000 feet if no boring or rock cutting is involved. The proposed rule also provides the Board with the explicit ability to establish an annual budget for support disbursements and therefore control the overall amount dispersed. Staff recommends an initial annual budget of \$500,000. The current assessment level can be maintained under this budget and this amount should be ample based on expenditures from the Arkansas fund.

A couple of clarifications are necessary if a company is seeking Missouri USF support to simultaneously extend facilities to multiple customer locations in the same area. An application for support must be for facilities extended to provide service to a specific customer. In other words a company should not include in an application for support any facilities dedicated to other customers.<sup>26</sup> If a facility is extended and shared by multiple customers then a company is limited to seeking support for a shared facility for only one customer. For example, a company cannot attempt to apply the distance of the same shared facility in the formula for multiple

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<sup>25</sup> The route for extending facilities will be expected to conform to common industry practices.

<sup>26</sup> For example, if facilities need to be extended 300' for one customer and 200' for another nearby customer, the company cannot submit one application that simply seeks support for 500' of facilities. In this example, the company must apply the formula separately for each customer based on the facilities needed to provide service to that customer.



customers/applications.<sup>27</sup> Essentially, these clarifications generate similar support results regardless of whether a company fulfills multiple service requests to the same area simultaneously or at different times.

The funding does not place any significant requirements or obligations on a company. A company does not have to apply for the funding even though a customer request for service might qualify for support. Likewise, if a company applies for and receives the proposed funding the company retains full discretion on applying extra charges or conditions on the consumer.<sup>28</sup> The only obligation placed on a company is that the service request be fulfilled within 90 days of receiving the support or as otherwise agreed to by the company and customer.

The application process should be relatively easy. An authorized landline company electronically submits a one-page form, as shown in Attachment A, to the Missouri USF Administrator. The Missouri USF Administrator will review the form. If complete, the Administrator will distribute the requested support to the company.<sup>29</sup>

The rulemaking, as currently proposed, creates an arrangement whereby the Board can readily adjust and control the funding. The proposed rule describes the application of a board-approved formula identified and explained on the Missouri USF website. This arrangement provides the Board with the ability to make timely adjustments to how support is determined.

#### ***Proposed support offered by 4 CSR 240-31.013(2)***

The purpose of the support proposed by 4 CSR 240-31.013(2) is to expand broadband service availability. This rule contemplates a process whereby a company simply needs to submit an application to the Commission requesting Missouri USF high cost support to expand the general availability of broadband service. The Commission would consider requests on a case-by-case basis.

The wording of 4 CSR 240-31.013(2) and 4 CSR 240-31.013(2)(A) may be enhanced if they are further revised as follows:

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<sup>27</sup> For example, if a company needs to extend a 700' shared facility to fulfill service requests of two customers in the same area plus install dedicated facilities of 300' to Customer A and 200' to Customer B, the company can only seek support of the 700' shared facility from one of the customers. In other words, a company cannot attempt to apply the 700' distance of the shared facility in two applications for support for Customer A and B, respectively. In this example, support is maximized by applying the 700' shared facility to Customer A resulting in \$1,000 in support  $(((700' + 300') * \$1.50) - \$500 = \$1,000)$  and \$0 for Customer B. Alternatively a company could claim \$0 for Customer A and \$850 for Customer B.

<sup>28</sup> For instance, a company receiving the funding can still apply construction charges, an advanced payment, deposit or other conditions on the customer.

<sup>29</sup> Staff has discussed this proposal with the current Missouri USF Administrator. An amendment to the contract with the Missouri USF Administrator will need to be completed if the Commission implements this funding proposal. The turn-around time for the Administrator to distribute support after receiving an application is expected to be relatively short.

(2) Applications **requesting support** to deploy *[facilities to provide retail broadband]* **the broadband component of essential local telecommunications** service to unserved areas.

(A) A company **certificated to provide basic local telecommunications service or registered to provide IVolP service** may submit an application to the commission requesting Missouri USF high cost support to deploy **the broadband component of essential local telecommunications** *[facilities to provide retail broadband]* service.

In Staff's opinion the Missouri USF support should be limited to companies contributing to the Missouri USF. The use of the term "essential local telecommunications service" ensures consistency with Missouri's statutes. The proposed rule's wording to provide financial support for broadband facilities is contingent upon the Commission defining "essential local telecommunications service" to include broadband service.<sup>30</sup>

Both funding proposals are independent of each other in that the Commission could approve one, both or none of the two funding proposals. Both funding proposals are also currently independent of other funding sources. It should be noted that the General Assembly recently passed, and the Governor signed, HB 1872 which establishes a grant program to expand access to broadband internet service in unserved and underserved areas of the state. A copy of the bill is attached as Appendix B. The proposed funding will supplement other funding sources.

#### **4 CSR 240-31.014 Lifeline and Disabled Programs**

This rule proposes to streamline the requirements contained in existing rule 4 CSR 240-31.120. Specifically, this rule identifies enrollment, funding and service requirements for the Lifeline and Disabled programs. Compliance should be easier under the proposed rule versus the existing requirements in 4 CSR 240-31.120. The proposed rule does not maintain any Missouri-specific Lifeline program requirements. The proposed rule eliminates the Missouri-specific Lifeline program requirement for a Lifeline subscriber to submit proof of eligibility at least once every two years.<sup>31</sup> The proposed rule also eliminates rules that have become irrelevant due to recent FCC decisions. For example, existing rule 4 CSR 240-31.120(4) is no longer needed because the FCC now requires any company offering Lifeline service to have ETC status.<sup>32</sup> Existing rules 4 CSR 240-31.120(5) and (6) are unnecessary because

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<sup>30</sup> Failure to include broadband service in the definition for essential local telecommunications service may prevent the Commission from offering Missouri USF broadband support.

<sup>31</sup> 4 CSR 240-31.120(2)(C).

<sup>32</sup> For example, rules relating to a company offering Lifeline service on a resale basis without ETC status are no longer necessary because the FCC stopped the practice (see Third Report and Order, Further Report and Order, and Order on Reconsideration; FCC 16-38; In the Matter of Lifeline and Link Up Reform and Modernization; WC Docket No. 11-42; released April 27, 2016; ¶223).

effective July 1, 2018, all companies applying for Lifeline eligibility are required to use the same standardized Lifeline enrollment form.<sup>33</sup>

The proposed rule simplifies existing requirements for the Disabled program. Perhaps the only significant change to the Disabled program is contained in 4 CSR 240-31.014(1) where program participation is expanded to include any company with a certificate of service authority to provide basic local telecommunications service or any company registered to provide IVoIP service. In other words, the proposed rule eliminates the requirement for a company to have ETC status to participate in the Disabled program. ETC status is a product of the federal requirements. There is no comparable disabled program at the federal level, so relaxing the criteria for company participation in the Disabled program is an attempt to encourage more companies to participate in the program.

The proposed rule describes how the Missouri USF support amount for the Lifeline and Disabled programs is identified on the Missouri USF website. This support amount is on the Application for Support form.<sup>34</sup>

Staff proposes one revision to the proposed rule. Proposed rule 4 CSR 240-31.014(5) should be revised in describing an acceptable Disabled program enrollment form. The proposed rule currently expects a company to substitute the Disabled program qualifying criteria into the Lifeline enrollment form. This expectation is no longer practical because the new standardized Lifeline enrollment form contains a significant amount of text unrelated to the Disabled program. A better approach is to just post a sample Disabled program enrollment form on the Commission's website.<sup>35</sup> Therefore, Staff recommends revising proposed rule 4 CSR 240-31.014(5) as follows:

(5) The enrollment form for the Lifeline program should comply with federal requirements. The enrollment form for the Disabled program may be **similar to the sample form posted on the Commission's website** *[the same form but with the addition of the Disabled program qualifying criteria]*.

Staff supports the proposed rulemaking with this revision.

#### **4 CSR 240-31.015 ETC Requirements**

This proposed rule streamlines requirements currently contained in 4 CSR 240-31.130(2), (3) and (4). The proposed rule does not attempt to expand these requirements but rather reduces requirements and greatly simplifies rule wording. Section (1) of the proposed rule cuts existing

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<sup>33</sup> FCC Public Notice DA-16-161; *Wireline Competition Bureau Provides Guidance on Universal Service Forms for the Lifeline Program*; WC Docket No. 11-42; issued February 20, 2018.

<sup>34</sup> See [Missouri Universal Service Fund](#). This link is to the printable forms portion of the Missouri USF website. The support amount is identified on the Application for Support form.

<sup>35</sup> See [ETC Information | Missouri Public Service Commission](#) for links to the FCC's standardized Lifeline enrollment form and the sample Disabled program enrollment form.

ETC requirements down to five requirements. Staff does not expect these requirements are controversial but will briefly comment about each requirement nonetheless:

- An ETC must conduct business using the company name or “doing business as” name authorized by the Missouri Commission. This requirement can be considered a Missouri-specific requirement because the FCC allows an ETC to use brand names. In Staff’s opinion, the FCC’s approach to company names is too lax because the FCC allows an ETC to conduct business under a different name without any significant notice to regulatory agencies.<sup>36</sup>
- An ETC must maintain current company contacts in EFIS. This requirement helps ensure the ETC can be contacted by the Commission or its Staff if necessary.
- An ETC must provide a copy to the manager of the Commission’s Telecommunications Department any finding by a state or federal authority that the company has violated universal service fund program requirements. The requirement simply enables Staff to be better informed about company compliance issues with USF program requirements.
- An ETC will not self-certify to the federal USF administrator for receipt of federal USF unless the FCC has preempted such state commission authority. This requirement pertains to the annual high-cost certification process contemplated by ¶54.314 and ensures such certification is obtained through the Missouri Commission unless preempted.
- An ETC will cooperate and comply with periodic audits and/or requests for information by the Commission Staff to monitor compliance with this chapter. This requirement clearly establishes an ETC’s willingness to provide information demonstrating compliance with USF-related regulations.

Staff anticipates all other portions of proposed 4 CSR 240-31.015 will be non-controversial with perhaps the exception of the ETC annual filing requirement.<sup>37</sup> The proposed rule simply maintains the existing requirements associated with this annual filing but some parties have previously been critical of the required attestation by a company officer of the company’s compliance with USF requirements. This attestation is not burdensome to a company and is not required to be lengthy, it can easily fit on one page. The information helps ensure a company is complying with USF program requirements.

Staff recommends two revisions to this proposed rule. Staff recommends the Commission delete 4 CSR 240-31.015(3)(A) and (B) under “Annual filing requirement”. The proposed 4 CSR 240-31.015(3)(A) requires the annual filing to include a copy of the company’s Form 481 report. The FCC has decided to have ETCs submit Form 481 solely to the Universal Service Administrative Company (USAC) whereby USAC has been instructed

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<sup>36</sup> 4 CSR 240-31.130(1)(D)(2); The only FCC requirement is for the ETC to identify any branding in its annual filing per §54.313(a)(8) for high-cost USF recipients and §54.422(a)(1) for Lifeline providers.

<sup>37</sup> This additional information is identified in proposed 4 CSR 240-31.015(3)(C).

to enable state commissions to have easy access to the Form 481 reports.<sup>38</sup> 4 CSR 240-31.015(3)(B) requires a company to submit a copy of the company's Lifeline enrollment form with the company's annual filing. As previously discussed the use of a mandated standardized Lifeline enrollment form will eliminate the need for a company to submit a copy of the form. Staff further recommends Section (3) be renumbered accordingly. With these revisions, Staff supports the proposed rule.

#### **4 CSR 240-31.016 ETC Application Requirements**

FCC rules contemplate an arrangement whereby a state commission may grant eligible telecommunications carrier (ETC) status to a company.<sup>39</sup> Such status enables the company to receive high-cost and/or Lifeline support from the federal USF. Proposed rule 4 CSR 240-31.016, identifies the requirements for applying for ETC status. Potential applicants should find the proposed rule to be easier to comprehend than the existing ETC application requirements currently identified in 4 CSR 240-31.130(1), because it solely identifies Missouri-specific ETC application requirements. Existing rule 4 CSR 240-31.130(1) attempts to combine Missouri and federal ETC application requirements. The existing rule is confusing because most ETC applicants are applying for ETC status in multiple states and simply want to know how to adjust their ETC application for Missouri.

Overall, the proposed rule does not add any new ETC application requirements. Many existing requirements have not been retained. Existing requirements remaining in the proposed rule generally have been simplified for improved understanding.

Staff supports the proposed rule but offers one revision. Staff suggests 4 CSR 240-31.016(2)(B)7 be deleted. Requiring an ETC applicant to submit a copy of Lifeline and/or Disabled enrollment forms is not necessary if all companies will be required to use a standardized Lifeline enrollment form and if ETC status is no longer a requirement for a company to participate in the Disabled program. Staff further recommends Subsection (2)(B) be renumbered accordingly. With these revisions, Staff supports the proposed rule.

#### **Summary**

Staff supports the proposed rulemaking with the following revisions:

- **Revise 31.013(1)(A)(3) to read:**  
(3) The company has a written agreement indicating the customer's commitment to subscribe to the requested essential local telecommunications service if facilities are extended, including the customer's compliance with additional charges or terms imposed by the company, if any; and,

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<sup>38</sup> Report and Order; In the Matter of Connect America Fund; WC Docket No. 10-90; FCC 17-87; released July 7, 2017; ¶15-16.

<sup>39</sup> §54.201(b).

- **Revise 31.013(2) and 31.013(2)(A) to read:**
  - (2) Applications requesting support to deploy the broadband component of essential local telecommunications service to unserved areas.
    - (A) A company certificated to provide basic local telecommunications service or registered to provide IVoIP service may submit an application to the commission requesting Missouri USF high cost support to deploy the broadband component of essential local telecommunications service.
- **Revise 31.014(5) to read:**
  - (5) The enrollment form for the Lifeline program should comply with federal requirements. The enrollment form for the Disabled program may be similar to the sample form posted on the Commission's website.
- **Delete 31.015(3)(A) and (B).**
- **Delete 31.016(2)(B)7.**

*(Note: Deleting these last two rule subsections will also require renumbering within the subsection.)*

## Application for Missouri High-Cost Support Missouri Universal Service Fund



Company Name	
Street or P.O. Box	
City, State, Zip	

Name of Consumer Requesting Service	
Street Address of Location to be served	
City, State, Zip	

Facility Extension Information	Distance (feet)	Rate per foot	Total
Distance lacking facilities		\$1.50	
Distance of boring, if any		\$15.00	
Distance of rock cutting, if any		\$30.00	
<b>Subtotal total</b>			
			-\$500
<b>Missouri USF Support Request (<i>Total of above</i>)</b>			

<b>Select Payment Method</b>	Electronic Funds Transfer	Paper Check Mailed to Address Above	
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**I certify:**

- The customer has signed a written agreement to subscribe to the requested essential local telecommunications service if facilities are extended to provide service.
- The customer's location lacks facilities from any landline provider to provide the service.
- Agree to comply with all Missouri high-cost support requirements.

**CERTIFICATION:** To the best of my knowledge, information, and belief, I hereby certify that the information reported above is consistent with 4 CSR 31 rules. I further recognize that any intentionally false statement or declaration made herein is punishable under Section 575.060 as a class B misdemeanor.

Signature		Submit form online to <a href="mailto:mousf@centralbank.net">mousf@centralbank.net</a> or mail to: MoUSF Administrator P.O. Box 752 Jefferson City, MO 65102-0752
Printed Name		
Title		
Telephone #		
Email		

Contact MoUSF administrator @ (573) 634-1319

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1872**  
**99TH GENERAL ASSEMBLY**

5686S.10T

2018

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**AN ACT**

To amend chapter 620, RSMo, by adding thereto nine new sections relating to broadband internet service.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 620, RSMo, is amended by adding thereto nine new sections, to be  
2 known as sections 620.2450, 620.2451, 620.2452, 620.2453, 620.2454, 620.2455, 620.2456,  
3 620.2457, and 620.2458, to read as follows:

**620.2450. 1. A grant program is hereby established under sections 620.2450 to**  
2 **620.2458 to award grants to applicants who seek to expand access to broadband internet**  
3 **service in unserved and underserved areas of the state. The department of economic**  
4 **development shall administer and act as the fiscal agent for the grant program and shall**  
5 **be responsible for receiving and reviewing grant applications and awarding grants under**  
6 **sections 620.2450 to 620.2458. Funding for the grant program established under this**  
7 **section shall be subject to appropriation by the general assembly.**

8 **2. As used in sections 620.2450 to 620.2458, the following terms shall mean:**

9 **(1) "Underserved area", a project area without access to wireline or fixed wireless**  
10 **broadband internet service of speeds of at least twenty-five megabits per second download**  
11 **and three megabits per second upload;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.



12           (2) "Unserved area", a project area without access to wireline or fixed wireless  
13 broadband internet service of speeds of at least ten megabits per second download and one  
14 megabit per second upload.

          620.2451. Grants awarded under sections 620.2450 to 620.2458 shall fund the  
2 acquisition and installation of retail broadband internet service at speeds of at least twenty-  
3 five megabits per second download and three megabits per second upload, but that is  
4 scalable to higher speeds.

          620.2452. Applicants eligible for grants awarded shall include:

- 2           (1) Corporations, or their affiliates, registered in this state;
- 3           (2) Incorporated businesses or partnerships;
- 4           (3) Limited liability companies registered in this state;
- 5           (4) Nonprofit organizations registered in this state;
- 6           (5) Political subdivisions; and
- 7           (6) Rural electric cooperatives organized under chapter 394 and their broadband  
8 affiliates.

          620.2453. An eligible applicant shall submit an application to the department of  
2 economic development on a form prescribed by the department. An application for a grant  
3 under sections 620.2450 to 620.2458 shall include the following information:

- 4           (1) A description of the project area;
- 5           (2) A description of the kind and amount of broadband internet infrastructure that  
6 is proposed to be deployed;
- 7           (3) Evidence demonstrating the unserved or underserved nature of the project  
8 area;
- 9           (4) The number of households that would have new access to broadband internet  
10 service, or whose broadband internet service would be upgraded, as a result of the grant;
- 11           (5) A list of significant community institutions that would benefit from the  
12 proposed grant;
- 13           (6) The total cost of the proposal and the timeframe in which it will be completed;
- 14           (7) A list identifying sources of funding or in-kind contributions, including  
15 government funding, that would supplement any awarded grant; and
- 16           (8) Any other information required by the department of economic development.

          620.2454. 1. At least thirty days prior to the first day applications may be  
2 submitted each fiscal year, the department of economic development shall publish on its  
3 website the specific criteria and any quantitative weighting scheme or scoring system the  
4 department will use to evaluate or rank applications and award grants under section

5 **620.2455. Such criteria and quantitative scoring system shall include the criteria set forth**  
6 **in section 620.2455.**

7 **2. Within three business days of the close of the grant application process, the**  
8 **department of economic development shall publish on its website the proposed unserved**  
9 **and underserved areas, and the proposed broadband internet speeds for each application**  
10 **submitted. Upon request, the department shall provide a copy of any application to an**  
11 **interested party.**

12 **3. A broadband internet service provider that provides existing service in or**  
13 **adjacent to the proposed project area may submit to the department of economic**  
14 **development, within forty-five days of publication of the information under subsection 2**  
15 **of this section, a written challenge to an application. Such challenge shall contain**  
16 **information demonstrating that:**

17 **(1) The provider currently provides broadband internet service to retail customers**  
18 **within the proposed unserved or underserved area;**

19 **(2) The provider has begun construction to provide broadband internet service to**  
20 **retail customers within the proposed unserved or underserved area; or**

21 **(3) The provider commits to providing broadband internet service to retail**  
22 **customers within the proposed unserved or underserved areas within the timeframe**  
23 **proposed by the applicant.**

24 **4. Within three business days of the submission of a written challenge, the**  
25 **department of economic development shall notify the applicant of such challenge.**

26 **5. The department of economic development shall evaluate each challenge**  
27 **submitted under this section. If the department determines that the provider currently**  
28 **provides, has begun construction to provide, or commits to provide broadband internet**  
29 **service at speeds of at least twenty-five megabits per second download and three megabits**  
30 **per second upload, but scalable to higher speeds, in the proposed project area, the**  
31 **department shall not fund the challenged project.**

32 **6. If the department of economic development denies funding to an applicant as a**  
33 **result of a broadband internet service provider challenge under this section and such**  
34 **broadband internet service provider does not fulfill its commitment to provide broadband**  
35 **internet service in the unserved or underserved area, the department of economic**  
36 **development shall not consider another challenge from such broadband internet service**  
37 **provider for the next two grant cycles, unless the department determines the failure to**  
38 **fulfill the commitment was due to circumstances beyond the broadband internet service**  
39 **provider's control.**

**620.2455. 1. The department of economic development shall give first priority to grant applications that serve unserved areas.**

**2. The department of economic development shall give secondary priority to grant applications that demonstrate the ability to receive matching funds that serve unserved areas, whether such matching funds are government funds or other funds.**

**3. The department shall give third priority to grant applications that serve underserved areas.**

**4. The department of economic development shall use a quantitative weighing scheme or scoring system including, at a minimum, the following elements to rank the applications:**

**(1) Financial, technical, and legal capability of the applicant to deploy and operate broadband internet service;**

**(2) The number of locations served in the most cost-efficient manner possible considering the project area density;**

**(3) Available minimum broadband speeds;**

**(4) Ability of the infrastructure to be scalable to higher broadband internet speeds;**

**(5) Commitment of the applicant to fund at least fifty percent of the project from private sources;**

**(6) Length of time the provider has been operating broadband internet services in the state;**

**(7) The offering of new or substantially upgraded broadband internet service to important community institutions including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;**

**(8) The offering of service to economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;**

**(9) The ability to provide technical support and training to residents, businesses, and institutions in the community of the proposed project to utilize broadband internet service;**

**(10) Plans to actively promote the adoption of the newly available broadband internet service in the community; and**

**(11) Strong support for the proposed project from citizens, businesses, and institutions in the community.**

**620.2456. 1. The department of economic development shall not award any grant to an otherwise eligible grant applicant where funding from the Connect America Fund has been awarded, where high cost support from the federal Universal Service Fund has**

4 been received by rate of return carriers, or where any other federal funding has been  
5 awarded which did not require any matching fund component, for any portion of the  
6 proposed project area, nor shall any grant money be used to serve any retail end user that  
7 already has access to wireline or fixed wireless broadband internet service of speeds of at  
8 least twenty-five megabits per second download and three megabits per second upload.

9 2. No grant awarded under sections 620.2450 to 620.2458, when combined with any  
10 federal, state, or local funds, shall fund more than fifty percent of the total cost of a project.

11 3. No single project shall be awarded grants under sections 620.2450 to 620.2458  
12 whose cumulative total exceeds five million dollars.

13 4. The department of economic development shall endeavor to award grants under  
14 sections 620.2450 to 620.2458 to qualified applicants in all regions of the state.

15 5. An award granted under sections 620.2450 to 620.2458 shall not:

16 (1) Require an open access network;

17 (2) Impose rates, terms, and conditions that differ from what a provider offers in  
18 other areas of its service area;

19 (3) Impose any rate, service, or any other type of regulation beyond speed  
20 requirements set forth in section 620.2451; or

21 (4) Impose an unreasonable time constraint on the time to build the service.

620.2457. By June thirtieth of each year, the department of economic development  
2 shall publish on its website and provide to the general assembly:

3 (1) A list of all applications for grants under sections 620.2450 to 620.2458 received  
4 during the previous year and, for each application:

5 (a) The results of any quantitative weighting scheme or scoring system the  
6 department of economic development used to award grants or rank the applications;

7 (b) The grant amount requested;

8 (c) The grant amount awarded, if any;

9 (2) All written challenges.

620.2458. The department of economic development shall develop administrative  
2 rules governing the eligibility, application and grant award process, and to implement the  
3 provisions of sections 620.2450 to 620.2458. Any rule or portion of a rule, as that term is  
4 defined in section 536.010, that is created under the authority delegated in this section shall  
5 become effective only if it complies with and is subject to all of the provisions of chapter  
6 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and  
7 if any of the powers vested with the general assembly pursuant to chapter 536 to review,  
8 to delay the effective date, or to disapprove and annul a rule are subsequently held

9 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**  
10 **after August 28, 2018, shall be invalid and void.**

Section B. Pursuant to section 23.253 of the Missouri sunset act:

2 (1) The provisions of the new program authorized under sections 620.2450, 620.2451,  
3 620.2452, 620.2453, 620.2454, 620.2455, 620.2456, 620.2457, and 620.2458 shall sunset  
4 automatically three years after the effective date of sections 620.2450, 620.2451, 620.2452,  
5 620.2453, 620.2454, 620.2455, 620.2456, 620.2457, and 620.2458 unless reauthorized by an act  
6 of the general assembly; and

7 (2) If such program is reauthorized, the program authorized under sections 620.2450,  
8 620.2451, 620.2452, 620.2453, 620.2454, 620.2455, 620.2456, 620.2457, and 620.2458 shall  
9 sunset automatically six years after the effective date of the reauthorization of sections 620.2450,  
10 620.2451, 620.2452, 620.2453, 620.2454, 620.2455, 620.2456, 620.2457, and 620.2458; and

11 (3) Sections 620.2450, 620.2451, 620.2452, 620.2453, 620.2454, 620.2455, 620.2456,  
12 620.2457, and 620.2458 shall terminate on September first of the calendar year immediately  
13 following the calendar year in which the program authorized under sections 620.2450, 620.2451,  
14 620.2452, 620.2453, 620.2454, 620.2455, 620.2456, 620.2457, and 620.2458 is sunset.

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