

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

In the Matter of a Repository File Regarding a)
 Rulemaking to Modify Requirements For) File No. TW-2012-0012
 Designation as an Eligible Telecommunications)
 Carrier)

COMMENTS CONCERNING PROPOSED RULE CHANGES

Cricket Communications, Inc.¹ (“Cricket”) respectfully submits the following comments and suggestions to the Missouri Public Service Commission and Staff regarding the draft, proposed rule changes to 4 CSR 240-3.570 that were discussed in a workshop with Staff and industry representatives on August 22, 2011:

Sanctions and Standards -- 3.570 (5):

The original draft, proposed rule changes (first publically circulated on or about July 6, 2011) appeared to allow the Commission to unilaterally revoke the Eligible Telecommunications Carrier (ETC) status of any carrier for “failure to comply this rule.” Specifically, the original proposed language was as follows:

5. Additional Requirements.

...

(C) Allegations of failure to comply with this rule shall be filed with the commission in the form of a formal complaint pursuant to 4 CSR 240-2.070. Resolution of the complaint may result in revocation of the ETC designation.

(D) The commission may revoke ETC designation for any carrier failing to comply with these rules.

¹ Cricket Communications, Inc. has ETC status from the Missouri Public Service Commission for low-income ETC services (not high-cost fund) pursuant to the Commission's Order of March 10, 2010 in MoPSC File No. TA-2010-0229.

(E) The commission shall not certify, by October 1 of each year, any ETC, ~~including incumbent local exchange telecommunications carriers,~~ that fails to comply with these rules.

Based upon informal comments submitted to Staff subsequent to July 6, the draft, proposed rule was changed, on or about July 12, to the following:

(5) Additional Requirements.

...

(C) Allegations of failure to comply with this rule shall be filed with the commission in the form of a formal complaint pursuant to 4 CSR 240-2.070. Resolution of the complaint may result in revocation of the ETC designation.

(D) The commission shall not certify, by October 1 of each year, any ETC that fails to comply with these rules.

While Cricket appreciates the modifications made by Staff, it remains concerned that the rule language provides no standard for revocation of ETC status. Since revocation is an extreme sanction, something more than inadvertent or merely technical “failure to comply with these rules” should be required before ETC status is revoked. Cricket is also concerned that ETC providers be given a reasonable opportunity to cure violations of these rules before a formal complaint is filed, since such a complaint process would be time-consuming and costly to both the Commission and the ETC Respondent. Although the complaint provisions of 4 CSR 240-2.070 would appear to require prior notice of an alleged violation and an opportunity to resolve before a formal complaint is filed, this should be made clear in the ETC rules.

For these reasons, Cricket recommends the following language additions (underlined below) to proposed (5) (C):

(5) (C): Allegations of failure to substantially comply with this rule, including failure to correct any non-compliance, after notice, within a reasonable period of time, or demonstrating a pattern of repeated violations of these rules, shall be filed with the commission in the form of a formal complaint pursuant to 4 CSR 240-2.070. Resolution of the complaint may result in revocation of the ETC designation.

Fiscal Note:

The Staff's proposed fiscal note is based on an assumption that each low-income ETC provider will require 8 hours at \$75.00 per hour to comply with the new or additional provisions of the rule. The rule requires each low-income ETC provider to make an annual filing with the Commission, which is not required under the existing rule. Both internal company resources and outside consulting and legal costs will be required in order to develop these annual filings and need to be reflected in the fiscal note. Based on Cricket's recent experience with responding to the Staff audit of low-income ETC providers, Cricket believes that 8 hours at \$75.00 per hour may be a reasonable estimate of in-house compliance costs, but would not include outside consulting and legal costs that will be required. Cricket would propose to *add* 6 hours at \$200.00 per hour for such outside consulting and legal costs. Thus, a cost of \$1,800 per company would more accurately reflect the new or additional costs caused by the rule revisions (8 hours @ \$75 = \$600, + 6 hours at \$200 = \$1,200, = \$1,800.).

Cricket Communications, Inc. deeply appreciates the Commission's consideration of these comments.

Respectfully submitted,

/s/ William D. Steinmeier

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Dated: September 9, 2011

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the Office of Public Counsel at opcservice@ded.mo.gov and on the General Counsel's office at gencounsel@psc.mo.gov this 9th day of September 2011.

/s/ William D. Steinmeier

William D. Steinmeier