

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

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

**COMMENTS OF AT&T MISSOURI REGARDING STAFF’S PROPOSED “ELIGIBLE  
TELECOMMUNICATIONS CARRIERS” RULE CHANGES**

AT&T Missouri<sup>1</sup> respectfully submits these comments, for the consideration of the Missouri Public Service Commission (“Commission”) and its Staff, regarding changes to the “ETC Rule”<sup>2</sup> which the Staff has indicated it may soon request the Commission to consider in a possible formal rulemaking proceeding.<sup>3</sup>

**I. SUMMARY**

AT&T Missouri recommends that the Commission defer any consideration of Staff’s proposed changes to the ETC Rule. As explained below in more detail, there are four reasons for this recommendation.

First, before proceeding with the host of Staff’s proposed rule changes that would impact at least 60 Missouri telecommunications carriers and wireless providers,<sup>4</sup> the Commission should ask that the Staff demonstrate both that such broad and far-reaching changes are necessary, and that less intrusive regulation is not available. In particular, Staff should demonstrate why the

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<sup>1</sup> Southwestern Bell Telephone Company d/b/a AT&T Missouri (“AT&T Missouri”).

<sup>2</sup> See, 4 CSR 240-3.570, entitled “Requirements for Carrier Designation as Eligible Telecommunications Carriers” (“ETC Rule”).

<sup>3</sup> At present, the Commission has merely docketed a new proceeding and opened a repository file for a “possible rulemaking.” See, Notice of New Proceeding, issued July 13, 2011; Notice Creating a Repository File Regarding a Rulemaking to Modify Requirements for Designation as an Eligible Telecommunications Carrier, issued July 13, 2011. While AT&T Missouri reserves its rights to file further comments should the Commission initiate a proposed rulemaking proceeding in accordance with the requirements of Section 536.021, RSMo, its comments here are directed to the possible rule changes which Staff submitted to the Commission on July 15, 2011.

<sup>4</sup> See, Staff ‘s Submission of Projected Fiscal Impact of the Rule, filed July 15, 2011 (reporting a number of 64 as an “[e]stimate of the number of entities by class which would likely be affected by the adoption of the rule”).

detailed requirements of the current ETC Rule, and Staff's existing discovery, audit and other investigatory and enforcement powers are inadequate to meet Staff's concerns. In all events, Staff should demonstrate how its concerns, which appear to relate to but a small handful of wireless companies and CLECs, can justify imposing new low-income annual reporting and other requirements on ILECs which are now generally exempted from much of the ETC Rule.

Second, to the extent that the Commission finds that less intrusive and overreaching regulation is not available to it and that rule changes applicable to all companies must be proposed in a formal rulemaking, AT&T Missouri suggests that such action await the FCC's guidance in the pending *2011 Lifeline and Link Up NPRM* proceeding. The FCC's conclusions and determinations made in that proceeding will inform the Commission on further activities it should undertake, if any, at the state level. AT&T Missouri urges above all that any rule changes considered by this Commission should be consistent with and no more exacting than those the FCC adopts, so that companies need not wrestle with different compliance requirements.

Third, certain of Staff's proposed ETC Rule changes regarding end user "bill design" and "service provisioning" requirements conflict with recent de-regulatory legislation and should not be considered for this reason.

Finally, several of Staff's proposed ETC Rule changes are at odds with the requirements of the Commission's existing MoUSF Rules (4 CSR 240-31.010, et seq.) and should not be considered for this reason.

**II. THE CURRENT ETC RULE AND STAFF'S EXISTING  
INVESTIGATORY AND ENFORCEMENT TOOLS ARE SUFFICIENT TO  
ADDRESS STAFF'S APPARENT CONCERNS.**

The record established to date in this repository file does not show the specific concerns and reasons for Staff's proposed rule changes. Before proceeding any further, the Commission

should ask that its Staff articulate them.<sup>5</sup> No rule changes should be proposed for Commission consideration absent a clear understanding of the purpose of the changes and a determination that less intrusive regulation is not available.

Apart from the record here, it would nevertheless appear that there may be a growing concern among the Staff that certain companies may be compromising the integrity of the MoUSF low-income fund. For example, in June, 2011 Staff requested that the Commission “indefinitely continue or hold in abeyance” five wireless carriers’ low-income-only ETC requests “until the Staff is able to establish a more thorough vetting process for low-income-only [ETC] [a]pplications.”<sup>6</sup> Staff stated:

Since mid-February, the Staff has been in receipt of an ever-increasing volume of material concerning assertions of fraud and other illegal activities by some wireless and some wireline ETCs. The Staff has been able to identify certain entities that are known to have engaged in improper activities, [sic] at this time it has not been able to conclusively ascertain whether any of these entities is an affiliate of any of the present applicants. In addition, the Staff’s investigation to date reveals that some wireless companies subcontract the end-user application process, the wireless handset distribution and the customer contact interface to companies, of whose purportedly improper activities they can disavow any knowledge or participation. The Staff is unequipped, at present to ascertain the veracity of those disavowals.

As the Staff noted in prior pleadings, the review of low-income-only ETC requests are much more intricate than in the past. Due to the relationship and personnel overlap of the companies and their use of common contractors, the review of these applications has become much more time consuming. The Staff believes that all pending applications for designation as an ETC, by wireless and wireline companies that have never been designated as ETCs in Missouri, should be held in abeyance until the Staff can devise an application process that requires potential ETCs to disclose all of its affiliates and contractors, any complaints by any other Commissions, penalty actions or settlements with other Commissions,

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<sup>5</sup> A proposed rule would have to do just that. *See*, Section 536.021.2(1), RSMo provides that “[a] notice of proposed rulemaking shall contain . . . [a]n explanation of any proposed rule or any change in an existing rule, *and the reasons therefor[.]*” (emphasis added)

<sup>6</sup> *See*, Staff Motion for Indefinite Continuance, File Nos. TA-2011-0164, TA-2011-0265, RA-2011-0298, RA-2011-0299, and RA-2011-0349, filed June 2, 2011 (“Staff’s Motion”), at 4.

any State Attorney General, or any federal consumer protection or law enforcement Agency and any other pertinent information.<sup>7</sup> (emphasis added).

AT&T Missouri has no reason to question Staff's view that there is cause for concern with respect to an increasing number of low-income only ETC applications. However, Staff's proposed rule changes sweep too broadly in an attempt to meet these concerns. Equally importantly, many of the proposed changes would not appear to resolve these concerns any better than the current discovery, audit and other investigatory and enforcement tools already available to the Commission.

A fundamental concern of Staff's proposed ETC Rule changes is that they would remove the current rule's general exemption for ILECs and, as one consequence of such changes, would for the first time require ILECs to file detailed annual reports. Specifically, Staff's proposed rule 3.570(1)(C) would affirmatively expand the application of the ETC Rule and make it squarely applicable to ILECs, by including them within the definition of an ETC, as follows:

(C) Eligible telecommunications carrier (ETC) is a carrier designated as such by the Missouri Public Service Commission pursuant to 47 U.S.C. 214(e) in order to receive universal service support. Eligible telecommunications carrier (ETC) shall refer to alternative local exchange carriers, **incumbent local exchange carriers** and commercial mobile radio service providers *[and shall not include incumbent local exchange carriers unless otherwise specified]*.<sup>8</sup>

There is no circumstance of which AT&T Missouri is aware that warrants removing the present general exemption for ILECs. Further, even accepting at face value all of the considerations stated in Staff's June, 2011 Motion directed to the pending ETC applications of wireless carriers, none of these considerations warrant doing so either.

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<sup>7</sup> Staff's Motion, at 2-3.

<sup>8</sup> Bolded text represents proposed additions to the existing rule, while italicized text in brackets represents proposed deletions to the existing rule.

Indeed, when the Commission first adopted the ETC Rule in 2006, the question arose as to whether the rule would generally apply to ILECs. As noted in its Final Order of Rulemaking, the Commission firmly answered that question in the negative:

COMMENT: The staff commented that the rule should be more competitively neutral throughout by removing references to specific types of carriers where possible and replacing those terms with "ETCs" or "carriers." AT&T and CenturyTel commented that removing references to competitive carriers in an effort to make the rule competitively neutral should not enlarge obligations already held by incumbent local exchange carriers in other chapters of the commission's rules. The MITG commented that if the rule is to apply to incumbent ETCs, further procedures are necessary, including an additional rulemaking and additional hearings. The MITG further commented that it would be inappropriate to apply rules suited for competitive ETCs to incumbent ETCs. The STCG commented that expanding the rule to include incumbent ETCs could violate the published notice and fiscal impact requirements under Chapter 536. Spectra and CenturyTel commented that several reasons exist to not broaden the rule to include incumbent ETCs.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the rule should not be expanded to include new obligations on incumbent ETCs. The commission will modify the rule so that incumbent ETCs are only required to comply with existing ETC requirements already applicable to the incumbent ETCs.<sup>9</sup>

Now, as in 2006, no good cause or reason has been advanced to expand the Commission's ETC Rule "to include new obligations on incumbent ETCs." Instead, now, as in 2006, the Commission should ensure that ILECs will only be required "to comply with existing ETC requirements already applicable to the incumbent ETCs."

To the extent that "the review of low-income-only ETC requests are much more intricate than in the past,"<sup>10</sup> the Commission and its Staff already have sufficient tools by which to assess the integrity of ETC requests. First, the present ETC Rule requires that a detailed showing and a number of commitments must be made in all applications. Second, any question or concern arising from the application can be explored by means of data requests submitted to the applicant

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<sup>9</sup> 31 Mo. Reg. 790, 792 (May 15, 2006) (emphasis added).

<sup>10</sup> Staff's Motion, at 2.

(by, for example, Staff or any intervenor), which the applicant is required by law to answer.<sup>11</sup>

The sanctions available to the Commission for any failure to respond to such requests, or for any other abuse of the discovery process, are the same as those allowed by the rules of civil procedure to Missouri circuit courts.<sup>12</sup>

To the extent that the Commission may need to enforce its rules where a carrier has already been designated as an ETC, the same tools, and others, are available to the Commission. Indeed, only two months ago, the Staff directed over thirty data requests to all ETCs, including all ILEC ETCs, on a wide range of subjects (and AT&T Missouri timely responded to them). Additional tools include a requirement that ETCs retain “books and records” and a requirement that these documents shall be subject to “examination and inspection.”<sup>13</sup> AT&T Missouri submits that these tools can and should be directed, as necessary, to individual carriers as circumstances warrant -- as opposed to Staff’s blanket proposal which, among other things, would require each and every ILEC ETC to automatically provide an annual ETC report and affidavit.

In keeping with this view, AT&T Missouri supports the portion of the proposed rule changes that would provide Staff express authority to conduct audits of ETCs to ensure compliance with the Commission’s universal service rules and to monitor and verify the validity and accuracy of ETC data.<sup>14</sup> AT&T Missouri also supports the portion of the proposed rule changes that would require companies to respond in a timely manner to Staff requests for any

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<sup>11</sup> 4 CSR 240-2.090(2).

<sup>12</sup> 4 CSR 240-2.090(1).

<sup>13</sup> 4 CSR 240-3.570(5)(G) (“Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission’s annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission’s annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.”).

<sup>14</sup> See, Staff’s proposed rule 3.570(5)(G).

additional information relevant to demonstrating compliance with obligations associated with high-cost support or low-income support.<sup>15</sup> Having said this, however, such proposed changes simply reinforce precisely why there is no need to expand the Commission's ETC Rule to impose new reporting and other obligations on all ILEC ETCs.

If Staff has concerns that any companies are compromising the integrity of the MoUSF program, a swift and thorough audit of those companies would be the most effective method to resolve those concerns, regardless of whatever responses these companies may have provided in their annual reports. On the other hand, Staff's new annual reporting and other requirements that would apply to all ETCs are onerous and burdensome and not sufficiently targeted to resolve Staff's apparent concerns.

In sum, there is no need for new and detailed rules and reporting requirements to now be made applicable to all ETCs, including those ILECs which are in no way involved in or implicated by Staff's apparent concerns. AT&T Missouri respectfully suggests, therefore, that the Commission not commence a rulemaking proceeding, and instead, direct its Staff to demonstrate whether and how the tools presently available to it are insufficient to allay its apparent concerns.

**III. THE COMMISSION SHOULD DEFER ANY RULEMAKING  
PROCEEDING PENDING GUIDANCE FROM THE FCC'S 2011 LIFELINE AND  
LINKUP NPRM PROCEEDING.**

If the Commission nevertheless determines that it must initiate a rulemaking proceeding to alter the present ETC Rule, AT&T Missouri suggests that the Commission await doing so until it receives guidance forthcoming from the FCC, which initiated the *2011 Lifeline and Link*

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<sup>15</sup> See, Staff's proposed rule 3.570(5)(I).

*Up NPRM* proceeding this past March.<sup>16</sup> In this proceeding, the FCC intends to address several of the same concerns regarding the Lifeline and Link Up programs as the Commission's Staff has raised.

In particular, the FCC's *NPRM* sought and has since received public comment on, among other things, proposed reforms to significantly bolster protections against waste, fraud, and abuse, to control the size of the program, to strengthen program administration and accountability, and to improve enrollment and outreach efforts. Before the Commission embarks on its own rulemaking, it should consider the measures that the FCC will adopt (or decline) so that the Commission may proceed in a more informed way, and so that both the Commission's and the FCC's rules may be as consistent and harmonious with one another as is practicable. AT&T Missouri understands that the FCC intends to rule on many of these proposed reforms by late October of this year.<sup>17</sup>

#### **IV. CERTAIN OF STAFF'S PROPOSED RULE CHANGES CONFLICT WITH RECENT LEGISLATION AND SHOULD NOT BE CONSIDERED.**

The Staff's proposal to generally apply all portions of the ETC rule to ILECs has other faults. For instance, the proposed changes would impose obligations that, due to recent legislation, have previously been lifted in favor of some companies, including AT&T Missouri.

For example, subsections (A) and (B) of current Commission rule 3.570(3), which presently do not apply to ILECs, impose "bill design" and "customer service contact

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<sup>16</sup> Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011) ("*2011 Lifeline and Link Up NPRM*").

<sup>17</sup> The ruling would likely be prompted by the November 4, 2010, Recommended Decision of the Federal-State Joint Board on Universal Service, which addresses the FCC's eligibility, verification, and outreach rules for Lifeline and Link Up, and which also recommends that the FCC take into consideration the issues of broadband, overall fund size, and prepaid wireless Lifeline service as it moves forward with universal service reform. *See*, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10J-3A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10J-3A1.pdf); *see also*, 47 U.S.C. § 254(a)(2) (requiring the FCC to complete any proceeding to implement recommendations made by the Joint Board "within one year after receiving such recommendations").



information” requirements on bills sent by ETCs to their end user customers. However, making these provisions applicable to ILECs, by including ILECs within the definition of an ETC in Staff’s proposed rule 3.570(1)(C), would run counter to Section 392.245.5(8), RSMo, which was enacted in 2008 as part of HB 1779. Under this statute, the legislature has determined that AT&T Missouri and other ILECs which have been deemed competitive “shall not be required to comply with customer billing rules” established by the Commission.

It is no answer that Staff’s proposed rule 3.570(3)(A) would be limited on its face to compliance with “federal billing” requirements. That is because Section 392.245.5(8) requires compliance with the “Truth-in-Billing regulations established by the Federal Communications Commission[.]” Additionally, the limitation would still be inconsistent with newly enacted HB 338, which amends Chapter 392 of the Missouri statutes to add a new Section 392.461, RSMo. Subsection (1) of new Section 392.461 allows any telecommunications company, upon notice to the Commission, to exempt itself from Commission rules “which include provisions already mandated by the Federal Communications Commission[.]” The FCC’s Truth-in-Billing regulations are mandated by the FCC.

Finally, making rule 3.570(3) (A) and (B) applicable to ILECs, by including ILECs within the definition of an ETC in Staff’s proposed rule 3.570(1)(C), would run counter to Section 392.420, which was modified by the enactment of HB 1779 in 2008 to allow “billing standards” waivers. As a consequence of this legislation, the Commission has acknowledged AT&T Missouri’s having opted to waive the application of virtually all of rule 33.040 (entitled “Billing and Payment Standards for Residential Customers”), all of rule 33.045 (entitled

“Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills”), and rule 33.080(1) (regarding company identification on residential customer bills).<sup>18</sup>

Subsections (C) of current Commission rule 3.570(3) also imposes a multitude of “service provisioning” requirements. Making its provisions applicable to ILECs, by including ILECs within the definition of an ETC in Staff’s proposed rule 3.570(1)(C), would run counter to Section 392.245.5(8), RSMo, under which the legislature has determined that AT&T Missouri and other ILECs which have been deemed competitive, “shall not be required to comply with . . . network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels established by the [C]ommission.”

Making subsections (C) of current Commission rule 3.570(3) applicable to ILECs would also run counter to Section 392.420. As a result of the 2008 legislation modifying that statute, the Commission has acknowledged AT&T Missouri’s having opted to waive the application of all of rule 32.060 (entitled “Engineering and Maintenance”), all of rule 32.070 (entitled “Quality of Service”) and all of rule 32.080 (entitled “Service Objectives and Surveillance Levels”).<sup>19</sup>

Finally, making rule 3.570(3)(C) applicable to ILECs would be inconsistent with newly enacted HB 338. Subsection (2) of newly added Section 392.461 allows any telecommunications company, upon notice to the Commission, to exempt itself from Commission rules “which relate to [t]he installation, provisioning or termination of retail service.”

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<sup>18</sup> See, In the Matter of a Notice of Southwestern bell Telephone Company d/b/a AT&T Missouri for Waiver of Commission Rules and Statutes Pursuant to Section 392.420, RSMo, Case No. IE-2009-0082, Order Concerning Election of Waivers, November 10, 2008.

<sup>19</sup> *Id.*

In sum, Staff’s proposed ETC Rule changes regarding end user “bill design,” “customer service contact information” and “service provisioning” requirements conflict with the spirit and letter of recent de-regulatory legislation and should not be considered for this reason.

**V. SEVERAL OF STAFF’S PROPOSED RULE CHANGES ARE  
INCONSISTENT WITH THE COMMISSION’S EXISTING MOUSF RULES AND  
SHOULD NOT BE CONSIDERED.**

Rule 3.570(4) presently imposes a high-cost support annual certification filing requirement upon all ETCs, including ILECs. Staff’s proposed rule 3.570(4)(A) and (C) would expand the scope of the rule – and thus, the annual certification filing – to include “low-income support.” But certain of the Staff’s proposed changes are inconsistent with the Commission’s existing MoUSF Rules and should not be considered for this reason. No obligations under the MoUSF rules need or should be enlarged, and certainly not by means of adding them to the separate ETC Rule.

For example, Staff’s proposed rule 3.570(4)(C)1 would require that a company officer submit an affidavit attesting to a number of matters. One such attestation is that “[t]he company uses a MoUSF Board approved Lifeline application form.” *See*, proposed rule 3.570(4)(C)1.F. But that requirement is unnecessary and redundant in that existing Commission Rule 31.050(3)(D) already requires that “[i]ndividuals who qualify for low income or disabled support shall complete a board-approved application.”

Staff’s proposed rule 3.570(4)(C)1.G would also require an officer’s affidavit to attest that “[t]he company requires Lifeline applicants to submit proof of eligibility.” But existing Commission rule 31.050(3)(D) merely requires that customers provide “documentation of participation” in the applicable program, and that companies “develop a process for recording the type of documentation received.” Rule 31.050(3)(D) specifically allows companies to “rely

upon [the] application and documentation of participation.” To require that telecommunications companies demand “proof” of participation would be flatly inconsistent with the companies’ existing right to “rely upon” the application and supporting documents provided them by Lifeline applicants. Such a requirement, previously rejected in the MoUSF rule context, cannot be instituted within the context of a different rule.

Proposed rule 3.570(4)(C)1.H would also require an officer’s affidavit to attest that “[t]he company has conducted an annual verification process within the past twelve months to ensure [continued Lifeline eligibility].” But the Commission’s existing rule 31.050(3)(D) already speaks to the verification process in some detail, requiring that companies “shall establish state procedures to verify a customer’s continued eligibility” and that a “copy of the telecommunications company verification procedures shall be made available to the commission staff and/or the office of public counsel for review within thirty (30) days of request.” Once again, there is no need for the Staff’s proposed changes to the ETC rule to address this subject.

Moreover, Staff’s proposed rule change is incompatible with a “rolling” verification process, permitted by the current MoUSF rule, in which an ILEC performs a MoUSF verification for each customer on the anniversary date of that customer’s service (as does AT&T Missouri). To remove the potentially inconsistent application of rules, the proposed ETC Rule change should simply be withdrawn.

For similar reasons, Staff’s proposed rule 3.570(4)(C)2 is altogether unnecessary. That proposed rule would require that the company “explain [its] annual verification process” and “provide results from the company’s most recent annual verification efforts.” Since, as explained above, the Commission’s existing rule 31.050(3)(D) already requires that a “copy of the telecommunications company verification procedures shall be made available to the

commission staff and/or the office of public counsel,” there is no reason for any company to have to “explain” the process each year and it would be inconsistent with rule 31.050(3)(D) to require that it do so. Moreover, the existing MoUSF rule does not require any company to gather and tender “results” from the company’s verification efforts. Thus, the Staff’s proposed rule change should be withdrawn to avoid potential conflict with the MoUSF rule.

Staff’s proposed rule 3.570(4)(C)3 would require that companies identify the number of Lifeline complaints they receive and how they resolved them. Such tasks are not at all required by the existing MoUSF rule. Moreover, it would be unduly burdensome and unreasonable to impose such requirements on companies like AT&T Missouri, which do not “categorize” complaints as “Lifeline”-related. Nor is it of any benefit to the Commission or its Staff for AT&T Missouri to explain how each and every such complaint was resolved.

Staff’s proposed rule 3.570(4)(C)5 would ask for data that companies are already providing. The proposed change would require that companies “[i]dentify the number of Lifeline subscribers served . . . for each month during the past twelve months.” This proposed change is wholly unnecessary because companies receiving low-income support are *already* required by rule 31.050(2)(A) to “report the number of low-income customers . . . receiving discounted services supported by the Missouri Universal Service Fund (MoUSF) to the Fund Administrator on a monthly basis[.]”

In short, there is no reason for the Staff to propose changes to the ETC Rule that would overlap with or expand obligations imposed by the existing MoUSF rules. Doing so would simply invite confusion and interpretive disputes. Additionally, should there be any questions regarding a company’s compliance with the MoUSF rules, the rules provide a remedy in that current rule 31.050(2)(C) requires companies to maintain records to document compliance with


the MoUSF rules and to make those records available to the Commission or Fund Administrator upon request.

In sum, several of Staff's proposed ETC Rule changes are at odds with the requirements of the Commission's existing MoUSF Rules and should not be considered for this reason as well.

WHEREFORE, AT&T Missouri respectfully submits these comments on the Staff's proposed changes to the Commission's ETC rule.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 9<sup>th</sup> day of September, 2011, to each of the following:

  
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