

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 )

Aegis Telecom, Inc. d/b/a Off the Hook Telecom and Assist Wireless, LLC<sup>1</sup> (collectively hereinafter, “Commenters”) respectfully submit 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:

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

...

<sup>1</sup> Aegis Telecom, Inc. d/b/a Off the Hook Telecom, has a low-income ETC application pending before the Commission in File No. RA-2011-0349. Assist Wireless, LLC has a low-income ETC application pending before the Commission in File No. RA-2011-0384.

Commenters appreciate the modifications made by Staff. However, they remain concerned that the rule language provides no *standard* for revocation of ETC status. Since revocation is an extreme sanction, something more than an inadvertent or merely technical “failure to comply with these rules” should be required before ETC status is revoked. Commenters also are 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.

For these reasons, Commenters recommend the following additions (underlined language 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 Commenters’ recent experience responding to Staff Data Requests in their pending application cases,

Commenters believe that the current fiscal note errs on the low-side. It may be that 8 hours at \$75.00 per hour would be a reasonable estimate of in-house compliance costs, but that would not include outside consulting and legal costs that will be required. Commenters 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.).

Commenters also note that the Fiscal Note, under “Pending ETC applicant assumptions”, states that, “no fiscal impact was projected since it is assumed additional information can be obtained from data requests regardless of this rulemaking.” Commenters and their counsel would observe that the “additional information” obtained from Staff Data Requests is new information, and a level of detail of information, not previously required of applicants for low-income ETC designation. This information will be required as part of the ETC application under the proposed, new rules. To that extent, it would appear to represent costs caused by the rule revisions which should be reflected in the Fiscal Note. Commenters required an average of 10 hours of in-house time (at approximately \$75 per hour) to develop the Data Request responses in their application cases, *and* an average of 12 hours of outside legal and consulting services at an average of \$200 per hour. Thus, we believe the Fiscal Note should reflect that the cost of applying for low-cost ETC designation will be increased by an estimated \$3,150.00 per Applicant as a result of the proposed rule changes.

Commenters deeply appreciate the Commission's consideration of these comments.

Respectfully submitted,

***/s/ William D. Steinmeier***

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William D. Steinmeier, MoBar #25689  
William D. Steinmeier, P.C.  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City MO 65110-4595  
Telephone: 573-659-8672  
Facsimile: 573-636-2305  
Email: wds@wdspc.com

COUNSEL FOR AEGIS TELECOM,  
INC. D/B/A OFF THE HOOK TELECOM  
AND ASSIST WIRELESS, LLC

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](mailto:opcservice@ded.mo.gov) and on the General Counsel's office at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov) this 9<sup>th</sup> day of September 2011.

***/s/ William D. Steinmeier***

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William D. Steinmeier