BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

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In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	
Universal Service	)	

Comments of the Public Service Commission of the State of Missouri

The Public Service Commission of the State of Missouri ("MoPSC") offers the following comments in response to the Federal Communication Commission's ("FCC") Public Notice released August 17, 2005. In the Public Notice, the Federal-State Joint Board on Universal Service ("Joint Board") seeks comment on proposals developed by several Joint Board members and staff regarding proposals to modify the FCC's rules relating to high-cost universal service support. The MoPSC strongly encourages the Joint Board and the FCC to consider comments on proposals to modify rules relating to high-cost universal service support in conjunction with decisions related to implementing a unified intercarrier compensation regime.

I. Discussion of Commonalities Among Plans

A. Benchmark Rates

All proposals discuss a benchmark for rates. The majority of the MoPSC supports the concept of a rate benchmark with the expectation that local consumers would be responsible for the costs of the local network up to a level at which the price of supported services would still be affordable or reasonably comparable pursuant to §254 of the Telecommunications Act. All revenues received by a local exchange carrier and paid by

customers for basic local telecommunications service, including the subscriber line charge, where applicable, should be included in this rate benchmark. The State Allocation Mechanism ("SAM") does not provide specific guidelines on the benchmark, but suggests factors to be considered in developing the benchmark in step 4, or year two of the plan.

The Three Stage Package suggests a uniform approach to costs and revenues to more directly target support to carriers. By establishing a national revenue benchmark, some carriers are not penalized because of high local rates, while others will not benefit from low local rates. Under this methodology, there is no increase in low local rates necessary in order to receive support.

The Holistically Integrated Package ("HIP") and Universal Service Endpoint Reform Plan ("USERP") propose a benchmark rate of 125 percent of the national urban rate. USERP discusses this benchmark in detail. The 125 percent standard represents a multiple of urban cost and is adjusted for intercarrier revenues. Support provided to each state would be sufficient to keep cost within the state at or below the benchmark. The majority of the MoPSC supports a national benchmark as an appropriate methodology for determining the average unit revenue requirement a carrier must recover from customers in order to maintain affordable and reasonable rates.

The MoPSC supports a proposal that promotes reasonable end-user rates and avoids rate shock. Developing national averages (or statewide averages) for costs and revenues would further serve to balance disparities between urban and rural rates. For this reason, it may be appropriate to establish a national average for basic local rates, with a floor and ceiling to minimize any impact to the end-user. It should also be noted,

however, that any national average benchmark rate should include all end-user charges related to basic local service (whether an increase in the SLC, the USF surcharge or some new mechanism). Ultimately, it is the end-user that bears the burden of paying for such subsidies and those burdens should be minimized. Therefore, once a benchmark rate is established and a proposal is selected, the majority of the MoPSC recommends the Commission seek additional analysis from the Joint Board and/or the states as to the impact of achieving that benchmark. Such an analysis should include an analysis of the impact on state and federal USF and on end user rates.

B. Block Grant System

All proposals contemplate some form of block grant system. Under the SAM and the state allocation mechanism of USERP, participating states would be allowed to determine the distribution of its account to eligible telecommunications carriers ("ETCs") and would have responsibility for the ongoing oversight of the funding to ensure continued accountability for the use of the funds. Contributions would still be made to the Universal Service Administrative Company ("USAC"), and USAC would distribute the funds directly to ETCs pursuant to State commission decisions. Similarly, the Three Stage Package also contemplates a "block grant" system. This joint process will ensure accountability for receipt of funds. By transferring decisions related to support distribution to state commissions, the FCC further empowers states to ensure funds are being used to provide quality services at reasonable rates throughout all rural exchanges. This concept is also adopted by HIP as a proposal closely comporting with §254. As noted in the HIP, the "block grant" concept embodies the spirit of cooperative federalism because the FCC would provide guidelines as to what each state receives and how each

state would allocate its disbursement within the state. However, under the HIP, states would have more discretion to distribute the funds in accordance with the federal guidelines. The majority of the MoPSC supports the "block grant" concept of transferring federal universal service accounts to states for oversight and disbursement pursuant to guidelines established by the FCC.

The USERP proponents commented, "States would have first-line responsibility to ensure that all customers have rates that are affordable and comparable." The states' authority to properly allocate funds and ensure affordable, comparable rates may be limited with respect to the states' ability to review the costs and revenues of carriers. For instance, some carriers, such as wireless providers, are not subject to state regulation. Similarly, competitive carriers are subject to minimal regulation. To the extent states determine high cost support payments to competitive carriers, states may be limited in determining the individual need of those carriers. Further, as more and more incumbent services become subject to price cap or price deregulation, state commissions may have less authority to determine the appropriate disbursement of high cost funds. Therefore, the majority of the MoPSC urges the FCC to consider promulgating a rule that would allow states, under "block grant" funding, to review the costs and revenues associated with USF support for the sole purpose of determining the appropriate distribution of funding within the state. This directive would be consistent with the reporting requirements established in the USERP proposal, which require state commission to file annual reports with the FCC that include: 1) A section 254 compliance report, including results of rate comparability surveys; 2) An accountability summary explaining how federal funds have been and are likely to be used by carriers to promote universal service;

3) A broadband report describing the state broadband deployment goals and summarizing progress toward those goals. This last objective becomes most important if funding is expanded to include broadband technology, or considered technologically and competitively neutral. Once again, the FCC may need to promulgate a rulemaking to give state commissions' explicit authority to obtain information needed to compile any required broadband report.

C. Transition Plans

Each proposal contemplates a transition plan, although details vary greatly. The SAM contemplates a six step transition plan over four years, with state allocations of support beginning in June 2009. The purpose of the transition is to phase in impacts of intercarrier compensation reform and the rate benchmark; to allow for consideration and timely adoption of implementation plans by the Joint Board and the FCC; and to allow states time to prepare state plans for FCC review. The Three Stage Package would require new proceedings and comment cycles with no specific timeframes for implementation.

The HIP proposes the state allocation, or "block grants", would begin after a three year transition period. During the transition period, rural carriers would be held harmless and receive at least as much high cost support as during 2004. States would have authority, if explicitly granted by the FCC, during the transition period to find that a carrier should receive less support than historical levels if the carrier's earnings were unreasonably high or if service quality deteriorated below acceptable levels.

Finally, the USERP proposes a gradual transition through the use of a declining hold-harmless mechanism. In the first year, support would be equal to the support

received by the state in the previous year. Each year thereafter, support would decrease by $1 per month per switched line until the hold-harmless provision no longer had any affect. According to the USERP, this provision would allow state commissions to transfer federal support gradually to more needy areas and to implement state USF funds without creating a risk of rate shock.

The MoPSC acknowledges the need for transition plans and supports the concept of reducing rate shock to consumers. As previously stated, the majority of the MoPSC supports the "block grant" concept. However, if it is determined that a declining hold-harmless provision is preferable, the majority of the MoPSC suggests one way to minimize rate shock would be to implement a freeze of support during the transition period with a graduated declining hold-harmless protection. Under this graduated hold-harmless protection, support to any carrier would decrease by a dollar amount per month per switched line until the support reached a pre-determined level. The MoPSC encourages the Joint Board and the FCC to coordinate any transition plan for modifying rules related to high-cost support with any transition plan for achieving a unified intercarrier compensation regime.

II. Discussion of Individual Plans

A. The State Allocation Mechanism: A Universal Service Reform Package

1. State accounts

The State Allocation Mechanism ("SAM") proposal establishes a six step transition plan to be accomplished over four years. The purpose of the transition plan is to work toward a permanent plan beginning June 2009 whereby the FCC would make allocations of Federal Universal Service High Cost and Lifeline/Linkup Funds to

individual state accounts maintained by USAC. As discussed more fully above, the majority of the MoPSC supports a concept of "block grants" for monitoring and distributing support.

2. Method for allocation

The SAM suggests the method of allocation could be based on several factors. For instance, the SAM suggests the method of allocation could be based on the results of a cost model of either embedded or forward-looking costs for the most efficient technology. The majority of the MoPSC supports a methodology that uses a forward-looking economic cost model. The United States Court of Appeals, when reviewing the Commission's directive in the *First Report and Order,* found:

> [F]orward-looking costs have been recognized as promoting a competitive environment which is one of the stated purposes of the Act. The Seventh Circuit, for example, explained, "[I]t is current and anticipated cost, rather than historical cost that is relevant to business decisions to enter markets…historical costs associated with the plant already in place are essentially irrelevant to this decision since those costs are 'sunk' and unavoidable and are unaffected by the new production decision." MCI Communications v. American Tel. & Tel. Co., 708 F.2d 1081, 1116-17 (7th Cir. 1983), cert. denied, 464 U.S. 891 (1983). Here, the FCC's use of a forward looking cost methodology was reasonable. The FCC sought comments on the use of forward-looking costs and concluded that forward-looking costs would best ensure efficient investment decisions and competitive entry. See First Report and Order ¶ 705[1]

Further, in its NPRM on TELRIC, the Commission stated:

> Forward-Looking Cost. **A forward-looking costing methodology considers what it would cost today to build and operate an efficient network** (or to expand an existing network) that can provide the same services as the incumbent's existing network. The benefit of a forward-looking approach is that it gives potential competitors efficient price signals in deciding whether to invest in their own facilities or to lease the incumbent's facilities. That is, if construction of new facilities by a

[1] Iowa Utils. Bd., et al. v. FCC, 219 F.3d 744 (8th Cir. 2000).

> competitive LEC would cost less than leasing facilities at prices based on FLEC, the efficient result is for the new entrant to build its own facilities. Assuming that the modeling method is accurate, **a forward-looking cost approach more closely approximates the costs that would exist in a competitive market than does an historical cost approach by revealing potential efficiencies that might not otherwise be apparent.** (footnotes omitted, emphasis added.)[2]

The SAM suggests the allocation of USF could be based on a rate benchmark. The MoPSC position on this issue was discussed in detail under Section I of these comments. The SAM also suggests the allocation methodology be based on the number of consumers in the state that are eligible for Lifeline and Linkup support based on federal criteria. Finally, the SAM suggests the allocation of USF be based on the intercarrier compensation reform plan adopted by the FCC. While it is not clear whether the SAM is suggesting the FCC incorporate all factors, or any combination of factors, it is the MoPSC's opinion that any allocation methodology for federal USF must be based on the intercarrier compensation reform plan adopted by the FCC. To make a decision on the future of USF prior to, or without also, considering the ultimate intercarrier compensation reform plan would result in piecemeal decisions that may have conflicting results.

B. Three Stage Package for Universal Service Reform

The Three Stage Package employs a short-term stage to make various changes to rationalize and simplify existing rural support mechanisms; a mid-term stage to modify the manner in which support is determined for rural carriers and a long-term stage to provide a unified approach to universal service. While some concepts of the Three Stage

[2] *Notice of Proposed Rulemaking*, In the Matter of Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173. September 10, 2003.

Package are discussed in other areas of the comments, following are some specific thoughts on this proposal.

1. Stage One – Short-term plan

A. Combine Study Areas

As part of Stage One, all study areas of a single company within a state would be combined into one study area for universal service purposes. After consolidation, high-cost support would be based on cost data for the entire combined study area. The majority of the MoPSC supports this concept. In Missouri, CenturyTel, Inc. operates two separate legal entities with five distinct study areas: Spectra (SAC 421151), Central Missouri (SAC 429784), Belle-Hermann (SAC 429785), Southern Missouri (SAC 429786) and Southwest Missouri (SAC 429787). These study areas cover noncontiguous exchanges in all four of Missouri's Local Access and Transport Areas (LATAs) and are a product of mergers over the past several years. Under current USF rules, funding for some study areas is based on the underlying costs of the acquired company, not on the company as it exists today. Funding for the remaining study areas is based on the price cap formula. While it is difficult to estimate the impact of consolidating the study areas since it is unknown whether the company would elect price cap status for the consolidated study area, it is reasonable to assume there would be a change in funding. Support would be provided based on the structure of the company today (whether applying an embedded or forward-looking methodology), not on the structures of companies that no longer exist.

B. Move Large Carriers to the Model

Stage One also requires all rural carriers serving 100,000 lines or more within a

state to have support determined similar to non-rural carriers pursuant to the FCC's High Cost Model. According to the proposal, however, rural carriers moved to this model would not be subject to "statewide averaging" of costs under current models. Statewide averaging for costs and/or rates is discussed more fully below. In this section, the comments will focus on the concept of requiring rural carriers serving 100,000 lines or more to have support determined similar to non-rural carriers. In Missouri, this concept will impact the calculations of three companies: CenturyTel of Missouri and Spectra Communications Group, LLC, d/b/a CenturyTel with over 400,000 access lines between the two companies and Sprint with over 200,000 access lines. Both companies are considered rural companies for USF support. (It should be noted that certain CenturyTel study areas are considered non-rural and receive USF support under the hold harmless provisions. However, for the most part, the company is considered rural.) In contrast, SBC, with over 2 million access lines, is a non-rural company receiving no high cost support. Although SBC serves the larger metropolitan areas of the state, many SBC exchanges are similarly situated to rural exchanges of CenturyTel and Sprint and support should be allocated accordingly. Therefore, the majority of the MoPSC supports either the concept of classifying companies with over 100,000 lines as "non-rural" for USF calculation purposes or supports a concept of tying support to rural and non-rural areas or exchanges as opposed to rural and non-rural carriers. Either concept will ensure that support goes only to the areas or carriers that cannot obtain efficiencies of scale and scope and should reduce the impact on the fund.

2. Stage Two – Mid-Term Plan

As previously stated, the majority of the MoPSC supports a forward-looking cost

methodology. However, the majority of the MoPSC also supports the idea of comparing calculated costs to available revenues. If costs exceed revenues or an established revenue benchmark, excess costs would be eligible for federal support. Further, as suggested in the Three Stage Package, federal support would only be based on a percent (in this discussion - 76 percent) of excess costs. The majority of the MoPSC supports the concept of support tied to a lesser percentage of excess costs as opposed to carriers receiving 100 percent of costs above any state or national averages.

3. Stage Three – Long Term Plan

A. Unified System

The Three Stage Package states, "Differences in treatment between rural and non-rural carriers between incumbents and new entrants, and between technologies should be eliminated." While the MoPSC has stated in comments in other dockets that it supports competitive and technological neutrality, it has some reservations with a unified system to support high-cost areas. While all carriers contributing to the fund should be able to receive needed support from the fund, the majority of the MoPSC is concerned that a process that continues to base the level of support on the incumbent carrier's costs (whether averaged or not) will serve to continue to expand the size of the fund beyond control. Therefore, as discussed elsewhere, the majority of the MoPSC supports some limitations on the costs used to determine the support competitive carriers receive.

B. Limitations on Growth in Fund

As discussed above, the majority of the MoPSC has concerns about the rapid increase in the size of the fund. Therefore, the majority of the MoPSC supports the Three Stage Package proposal to limit the fund (and associated "block grants") to changes in the

GDP-CPI index. This adjustment would limit the growth in the size of the fund to the growth in inflation for five years. After that period, the FCC would consider future adjustments as needed. The majority of the MoPSC suggests any future adjustments contemplated by the FCC be reviewed by the Joint Board and put out for comment.

C. A Holistically Integrated Package

This package contains elements of the various other proposals and relies heavily on the NARUC Intercarrier Compensation proposal submitted in the record. Many of the MoPSC's issues are discussed in other portions of these comments. Once again, the MoPSC would like to take the opportunity to state that any modification to FCC rules relating to high-cost universal service support should be considered and resolved consistent with decisions related to a unified intercarrier compensation regime as these two issues are largely intertwined.

The majority of the MoPSC supports the principle adopted by the HIP whereby support for high costs rural areas would not be based on whether an area is served by a "rural" or "non-rural" carrier, but whether the area receiving the support is rural or non-rural.

D. Universal Service Endpoint Reform Plan

The USERP has two components, one addressing support for wireline incumbent local exchange carriers and a second addressing support to competitive eligible telecommunication carriers.

A. Costs

This plan anticipates that support to carriers would come from a mix of state and federal universal service funds. Federal support would be provided where average costs

are so high that states cannot attain comparable and affordable rates through state efforts. The plan generally proposes embedded costs, but claims costs could be limited in ways that reduce incentives for wasteful spending. The plan also proposes including additional costs not currently considered when calculating high cost support. While this "modified embedded" approach moves closer to determining the cost for an efficient network, the majority of the MoPSC supports a forward-looking approach to determining costs as discussed more fully above.

B. Federal Support to States

The USERP creates a second federal support program (Part II support) that recognizes that state USF programs can impose significant burdens on ratepayers. Part II support would be provided to states in which an explicit high-cost fund would impose undue burden on state ratepayers. After performing calculations using standardized assumptions, support would be provided if the state telecommunications customers' contribution level is greater than $2 per month. While this proposal is designed to reduce burdens on rate payers, it seems circular. Customers pay USF surcharges; high cost support is provided to keep rates reasonable and comparable; state support is provided in areas where federal support is not sufficient to keep rates reasonable and comparable; Part II USF support is received because state contribution levels exceed $2 per month; customer surcharges increase to cover the Part II Support. While the impact of implementing Part II USF support may be minimal, the ultimate goal should be to maintain the size of the fund while minimizing rate shock to consumers.

C. Rural and Non-rural

The USERP would apply to all companies and would eliminate the present

support mechanism where support is determined by the type of carrier, not whether the area or exchange is rural on non-rural. This proposal would also eliminate the concept that, in a situation where exchanges are acquired, support levels are determined by the status and costs of the previous carrier, not the current owner of the exchange. Both concepts are consistent with MoPSC statements elsewhere in these comments.

D. Non-participating States and the Federal Overlay

The USERP briefly addresses the role of state universal service programs. This portion of the proposal causes perhaps the most concern for the majority of the MoPSC. The Missouri Commission has conducted several proceedings and workshops to analyze issues surrounding the implementation of a Missouri Universal Service Fund (MoUSF). In order to bring Missouri intrastate access rates to a level closer to interstate rates, over $308 million in revenues would have to be replaced through end-user rate increases or subsidies from a MoUSF assuming it is determined that revenue neutrality should be guaranteed. For one small, rural Missouri company, this could result in an increase of over $40 to monthly basic local rates. Such an example is indicative of the huge rate disparities (and presumably disparities in costs and revenues) among Missouri carriers. In addition to issues related to implementing a state fund to offset revenue losses from access reform (as related to a unified intercarrier compensation regime), there are also issues with Missouri statutes and carriers' abilities to recover assessments through end user surcharges. These are just a few of the issues the MoPSC and the MoUSF working group have struggled with over the years.

Although the USERP does not require a state fund, it suggests the FCC develop a judicial remedy to individual customers in this circumstance. The USERP suggests the

FCC may operate a state-specific universal service program with a supplemental universal service charge that applies only in one state. Support due the state would then be allocated directly by the FCC to carriers and that state would not exercise its authority in allocating federal support. Since the majority of the MoPSC supports a unified approach and supports the "block grant" program, this type of "penalty" would be counterintuitive to the overall objectives of cooperative federalism.

E. Competitive ETCs

The USERP proposes to continue the present portability policy for wireline competitive ETCs ("CETCs"), but would modify the cost calculations for wireless support. The USERP suggests that wireless and wireline networks have different cost characteristics that should lead to different calculation methodologies. As further noted, wireless rates apply to a geographic area that does not follow the same boundaries as the incumbent's local calling scope. While the majority of the MoPSC generally supports the USERP proposal to fund support to wireless carriers using a different methodology than wireline carriers, the majority of the MoPSC does not support the proposal to sunset wireless funding in five years if wireless carriers continue to contribute to the fund. Further, the majority of the MoPSC would suggest that funding to wireline CETCs should not continue to be based on the incumbent's costs unless a national or statewide average is developed as supported in these comments. Much like wireless carriers, wireline CETCs have different cost characteristics and CETC rates apply to a different geographic area than the incumbents' calling scopes.

As previously discussed, the majority of the MoPSC recognizes that as additional carriers receive support from the federal fund, the fund will continue to expand at an

alarming rate. However, if the various concepts as discussed in these comments are implemented, the fund size should stabilize and only grow with the rate of inflation. Also, as previously noted, the majority of the MoPSC generally supports the concept that all carriers contributing to the fund should receive support from the fund.

E. Summary

In summary, the MoPSC supports modification to the high-cost fund consistent with efforts to achieve a unified intercarrier compensation regime. The majority of the MoPSC supports the following concepts as discussed in these comments:

- "Block grants" - promotes cooperative federalism whereby the FCC would establish support guidelines to be implemented by states in the most efficient manner within the state.
- A forward-looking cost methodology.
- National or statewide averaged costs and revenues to more directly target support to those areas with high costs.
- A benchmark rate that must be achieved prior to receiving USF support.
- A cap that limits the support per line to a percentage of any additional costs above a cost benchmark.
- Analysis of the impact of a benchmark rate on state and federal USF and end user rates.
- A freeze of per line support during any transition period with a graduated decreasing hold harmless provision that reduces support to a pre-determined level.
- A plan that combines all study areas of a single company within a state into one

study area for USF purposes.

- A plan that targets support to rural areas instead of rural companies.

Respectfully submitted,

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