BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of	)	
	)	WC Docket No. 05-337
High-Cost Universal Support	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on Universal Service	)	
	)	

COMMENTS OF THE PUBLIC SERVICE COMMISSION
<u>OF THE STATE OF MISSOURI</u>

The Public Service Commission of the State of Missouri ("MoPSC") offers the following comments in response to the Federal Communication Commission's ("Commission") Public Notice seeking comment on a Notice of Proposed Rulemaking (NPRM) to consider rules governing the amount of high-cost universal support provided to competitive eligible telecommunications carriers (ETCs). The Commission seeks comment on the tentative conclusion to eliminate the current "identical support" rule (aka "equal support rule") which currently provides competitive ETCs (CETCs) with the same per-line high-cost support amounts that incumbent local exchange carriers (ILECs) receive. The Commission also seeks comment on methodologies for determining a CETC's relevant costs for universal service support purposes, and other matters related to how the support should be calculated, including the appropriate reporting obligations.

I. Executive Summary

The MoPSC identifies some basic concepts for reforming the universal service fund. In response to this specific NPRM, the MoPSC supports eliminating the identical support rule and requiring CETCs to file cost data. The MoPSC recommends the Commission reform the existing process for determining costs before attempting to apply or modify such a process to accommodate CETCs. Forward-looking costs should be used in determining cost support for all carriers. A CETC (indeed, all ETCs) should be required to justify the receipt of high-cost support by demonstrating that investment or actions funded by the support (1) achieve the principles of universal service; and (2) would only occur through the receipt of high-cost support. CETCs should not receive Interstate Access Support, Interstate Common Line Support or Local Switching Support. A more defined annual certification process should be developed and required.

II. Overarching Comments

The MoPSC supports comprehensive efforts to reform and stabilize the high-cost portion of the federal Universal Service Fund (USF). Any efforts to achieve sustainability must also continue to meet the goals of the Telecommunications Act of 1996 which offers the following principles for the preservation and advancement of universal service[1]:

A. Quality services at just, reasonable, and affordable rates;

B. Access to advanced telecommunications and information services;

[1] 47 U.S.C. 254(b)

C. Access to telecommunications and information services in all regions of the Nation at rates that are reasonably comparable to rates charged for similar services in urban areas;

D. Equitable and nondiscriminatory contributions by all providers of telecommunications services;

E. Specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service;

In carrying out these universal service principles the Commission should incorporate the following concepts in reforming the USF:

(1) High-cost support should be provided to the least number of carriers and areas necessary to achieve universal service. In achieving this concept, the Commission should consider distributing support in areas smaller than a study area or wire center.

(2) High-cost support should only be provided when universal service principles would not be met without universal service funding. Stated differently, high cost support should cease or simply not be provided if the principles of universal service can still be achieved without such funding.

(3) High-cost support should be based on a carrier's forward looking costs. Carriers should not expect to receive high cost support based on already incurred embedded costs. A forward looking cost method will promote efficient use of scarce and valuable universal service monies.

(4) Any carrier receiving high-cost support should be required to recover a reasonable portion of its costs from its customers. For instance, carriers

should be required to increase basic local rates to a "benchmark" rate in order to receive high cost support. This requirement will lessen the need for and amount of what are portrayed as "governmentally approved or authorized" subsidies (such as the subscriber line charge or USF surcharge).

(5) In order to be truly comprehensive, USF reform should involve all aspects of high cost support, including support currently provided to both incumbent local exchange carriers (ILECs) and competitive ETCs. USF reform should not attempt to preserve existing revenue levels for a particular carrier, technology or study area.

(6) USF reform should include a more defined annual certification process with greater oversight and accountability.

III. Issues Regarding the Identical Support Rule

A. Elimination of the Identical Support Rule

The Commission tentatively concludes at paragraph 12, to eliminate the current identical support rule because it bears no relationship to the amount of money such competitive ETCs have invested in rural and other high-cost areas of the country. The MoPSC has previously filed comments supporting the elimination of the identical support rule[2]. In these previous comments, the MoPSC stated its support for a system where "[a]ny support received should be based on the recipient's cost to serve an area" (page 18, May 2007 comments).

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[2] Comments of the Public Service Commission of the State of Missouri, *In the Matter of High Cost Universal Service Support Federal-State Joint Board on Universal Service.* WC Docket No. 05-337 and CC Docket No. 96-45 (filed May 31, 2007).

B. Submission of a Competitive ETC's Own Cost Support

The Commission tentatively concludes at paragraph 13, to require a competitive ETC to file cost data showing its own per-line costs of providing service in a supported service area in order to receive high-cost universal service support. The MoPSC agrees with this tentative conclusion. Whenever possible, a carrier's high cost support should be based on its own costs, preferably costs based on a forward-looking cost method.

The Commission seeks comment on whether or not basing support on a carrier's own costs will be competitively neutral. The Commission has defined the principle of competitive neutrality as:

> Competitive Neutrality -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.[3]

Basing each carrier's support on its own costs is competitively neutral. As long as all providers have an opportunity to present their own costs and to compete for the opportunity to provide "universal service", no company will be unfairly advantaged or disadvantaged. Without the identical support rule, government bodies designating carriers as ETCs will have the opportunity to weigh the proposed benefits caused by the support against the amount of high cost support directly related to the cost of the specific carriers. In this case, no carrier will reap a potential windfall or be caused financial distress based on support dependent on the costs of an unrelated carrier.

[3] *Report & Order In the Matter of Federal-State Joint Board on Universal Service,* FCC 97-157, CC Docket 96-45, found online at http://www.fcc.gov/wcb/tapd/universal_service/fcc97157/sec03.html

The Commission, at paragraph 14, seeks comment on the type of high-cost support information a competitive ETC should be required to submit. The MoPSC recommends the Commission reform the existing process for determining cost before attempting to apply or modify an existing process to accommodate competitive ETCs. Forward-looking costs are preferred over historical, embedded or sunk costs because forward-looking costs more closely approximate a competitive market, leading to efficient outcomes and the best "bang for the buck" for high cost support.

The federal courts and the Commission have both expressed benefits of a forward looking cost methodology. The United States Court of Appeals, when reviewing the FCC'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[4]

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

[4] 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.)[5]

Regardless of the type of high-cost support information a competitive ETC is required to submit, a competitive ETC (and, indeed, all ETCs) should be required to demonstrate investments would not have occurred without high-cost support. In order to receive ETC designation, the MoPSC requires the carrier to provide a statement as to how its proposed plans would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur[6]. The Commission should, at a minimum, require a similar attestation.

Furthermore, the Commission adopted a requirement in its March 2005 ETC Order[7], in Paragraph 21, that ETCs must "[submit] a formal network improvement plan that demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity *that would not otherwise occur absent the receipt of high-cost support*." (emphasis added) Clearly, the Commission should strive to continue to make sure that high cost support only occurs when absolutely necessary to promote the principles of universal service.

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[5] 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.

[6] Missouri Public Service Commission rule 4 CSR 240-3.570(2)(A)3.G.

[7] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC-05-46. Rel. March 17, 2005.

The MoPSC concurs with the Commission's tentative conclusion, at paragraph 23, that competitive ETCs should not receive Interstate Access Support and Interstate Common Line Support. In a similar manner, competitive ETCs should also not receive Local Switching Support. The MoPSC agrees with the rationale contained in the NPRM that competitive ETCs are able to recover such revenues from end users with little or no regulatory oversight. The Commission should also evaluate whether such support should be maintained for incumbent LECS. Many carriers now offer broadband, video and other services that generate additional revenue streams for the carrier using facilities supported by USF. These revenue streams raise questions regarding the need to maintain Interstate Access Support, Interstate Common Line Support and Local Switching Support for any carrier and should be considered when evaluating a carrier's need for support.

C. Other Issues

The Commission, at paragraph 26, seeks comment on the sufficiency of the existing use certification with respect to competitive ETCs and specifically if these certifications provide sufficient protection against misuse of high-cost support by competitive ETCs. Current procedures are insufficient. Prior MoPSC comments have noted indictments and guilty pleas with respect to conspiracies to defraud the universal service fund[8]. Current procedures make it extremely difficult to uncover such conspiracies; therefore, the MoPSC recommends carriers be held accountable through strict oversight. A more defined annual certification process should be developed and

[8] See Comments of the Public Service Commission of the State of Missouri, WC Docket No. 05-195, In the Matter of Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, pages 5-7.

required. Certification processes should be standardized so that USAC, NECA, state commissions and/or the Commission review the same substantive information prior to releasing USF support. All entities involved in the certification process should be required to share information with each other upon request so that all may effectively evaluate the carrier for recertification.

Respectfully submitted,

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