MISSOURI PUBLIC SERVICE COMMISSION

FEDERAL COMMUNICATIONS COMMISSION

COMMENTS OF THE

PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

The Public Service Commission of the State of Missouri ("MoPSC") submits comments in response to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) and Further Notice of Proposed Rulemaking released on February 9, 2011. The MoPSC previously submitted comments on Section XV of this NPRM while these comments respond to the remainder of the NPRM. In this latest NPRM the FCC has generally established reasonable reform proposals.

The MoPSC has previously submitted comments to the FCC supporting USF and intercarrier compensation reform.[1] The comments submitted in this filing primarily

[1] Some of the more recent MoPSC comments supporting reform efforts include comments filed in April and November 2008 for WC Docket No. 05-337, *In the Matter of High-Cost Universal Service, et al.*

attempt to provide feedback on issues presented in the FCC's latest NPRM where the FCC is seeking state regulatory input; however, these comments also provide some limited input on basic policy issues relating to reform.

EXECUTIVE SUMMARY

These comments are divided into three sections. Section I responds to the FCC's general principles and priorities for reform. In general the MoPSC supports the FCC's principles and priorities; however, the FCC should consider two additional principles as well as a shortcoming in the FCC's reform efforts.

Section II provides input relating to high-cost support reforms proposed by the FCC. This section addresses public interest obligations, ensuring ETCs are appropriately using high-cost support and ways to encourage additional commitments by states to support universal service. The MoPSC recommends initial Connect America Funding support not be limited to states with existing high-cost funding programs.

Section IV addresses intercarrier compensation reform. This section describes the intercarrier compensation reform undertaken by Missouri. The MoPSC recommends the FCC establish a "backstop" approach for states in reforming intercarrier compensation. Initial reform should be limited to simply reaching parity between intrastate and interstate access rates. A minimum of five years should be provided for intrastate access rate parity. Lastly this section discusses various access reform recovery issues associated with intercarrier compensation reform.

I. GENERAL PRINCIPLES AND PRIORITIES FOR REFORM

This section responds to the FCC's cited principles and priorities for reform. The MoPSC recommends two additional principles. The MoPSC supports the FCC's policy to avoid “flash cuts”. In addition this section points out a basic shortcoming in the FCC’s USF reform proposals whereby reforming how the USF is funded is ignored.

A. Additional USF reform principles

The FCC identifies four principles of reforming the federal universal service fund and intercarrier compensation.[2] In addition, the FCC outlines four priorities for USF reform.[3] The FCC’s USF reform efforts need to ensure high-cost USF support is provided to the least number of carriers and areas necessary to achieve universal service for voice services as well as broadband services if the FCC expands USF support for broadband. In addition high-cost USF support should only be provided when universal service principles cannot be met without government funding.[4]

B. Avoid sudden changes or “flash cuts”

The MoPSC supports the FCC’s stated policy to avoid sudden changes or “flash cuts”.[5] Such a policy is important given the significance of the FCC’s proposed reforms and an expectation states may need to take additional action. Throughout the FCC’s NPRM the FCC seeks feedback on various proposals whereby a proposal might be accomplished immediately versus a limited transition period. In addressing such issues, the MoPSC urges the FCC to keep in mind the basic policy of avoiding sudden changes.

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[2] The FCC’s four principles of reforming the USF and ICC are: 1. Modernize USF and ICC for broadband. 2. Fiscal responsibility. 3. Accountability. 4. Market driven policies. (Paragraph 10 in the FCC’s NPRM).

[3] The FCC’s four priorities for reforming USF are: 1. Preserve and advance service. 2. Ensure universal deployment of modern networks. 3. Ensure reasonable rates for voice and broadband services. 4. Limit contribution burden on households. (Paragraph 80 in the FCC’s NPRM).

[4] These additional principles were previously supplied by the MoPSC in prior comments to the FCC in April 2008. WC Docket No. 05-337, *In the Matter of High-Cost Universal Service* and CC Docket No. 96-45 *Federal-State Joint Board on Universal Service.*

[5] This policy is noted in Paragraph 12 of the FCC’s NPRM.

A long term path for reform is preferred so states and companies have adequate time to respond and adjust. States should be given at least five years to achieve parity of intrastate and interstate access rates. During this process eliminating certain federal USF high-cost support programs may complicate this process. Therefore, flash cuts should be avoided.

C. USF reform should include reforming how the USF is funded

A shortcoming of the FCC's USF reform proposals is the failure to minimize the burden placed on households. The MoPSC agrees with the FCC that a top priority for USF reform is limiting the contribution burden placed on households. Unfortunately, the FCC's USF reform proposals appear to provide minimal, if any, reduction in the overall size of the USF. For instance the FCC proposes to use any savings produced from USF reforms measures and redirect such savings to help expand broadband availability. Unless such savings are used to help reduce the overall size of the fund the FCC's failure to address the appropriate contribution mechanism suggests consumers will not see any relief in the years to come. The MoPSC urges the FCC to follow-up and complete prior rulemakings exploring ways to reform USF funding.[6] The FCC needs to provide some limited consumer relief even if the overall size of the fund remains unchanged.

II. HIGH-COST SUPPORT REFORMS

This section provides feedback concerning public interest obligations of ETCs. In addition input is provided to ensure ETCs are appropriately using high-cost support by offering suggestions on ways to improve the annual certification process. This section

[6] As an example, the MoPSC filed comments on this issue based on feedback solicited from the Commission's Order on Remand and Report and Order and Further Notice of Proposed Rulemaking issued November 5, 2008 in WC Docket No. 05-337, CC Docket No. 96-45, et al.

also provides comment on how to encourage additional commitments by states to support universal service. The MoPSC urges the FCC to not limit initial Connect America Fund support to states with existing high-cost funding programs.

1. Public interest obligations of ETCs

A. ETC Designation Should Continue to be a Requirement for Any Company Receiving High-Cost Support

Any company seeking high-cost support should be required to demonstrate it meets certain requirements and will abide by certain standards. The current process of involving states in the process of ETC designation for high cost support for voice services seems to work fairly well and should be continued. If the FCC expands high-cost support for broadband services then such a process could easily be expanded for such purposes.

B. Existing MoPSC rules identifying ETC requirements

The FCC seeks comment on public interest obligations for ETCs going forward.[7] The MoPSC currently has rules relating to ETC requirements.[8] These rules identify requirements pertaining to applications for designation as an ETC, service requirements of ETCs, and annual certification filings and were based, to an extent, on the FCC's recommended guidelines. Although some states, as Missouri, have more stringent ETC rules, the FCC should implement federal standards to ensure ETCs bear greater accountability that they are using funding appropriately and providing acceptable and reasonable service. The FCC's NPRM suggests the FCC has essentially concluded high-cost support will be used to ensure universal availability of broadband services.

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[7] Paragraph 92 of the FCC's NPRM.

[8] MoPSC rules 4 CSR 240-3.570; Requirements for Carrier Designation as Eligible Telecommunications Carriers.

Therefore the following public interest obligations should be applied to ETCs for both the providing of voice and broadband services.

C. Require ETCs to track the quality of service provided to customers.

All ETCs should be required to track a limited number of measures demonstrating the quality of service provided to customers. Such tracking should be performed for both voice and broadband services if the FCC expands high-cost support for broadband. A requirement to track a limited number of quality of service measures promotes one of the FCC's basic principles of reform by requiring greater accountability. This requirement also promotes one of the FCC's priorities of reforming USF to preserve and advance universal service. Accountability determinations should not be made by simply monitoring the number of consumer complaints.[9]

In Missouri little, if any, information is available detailing the quality of service provided to customers. Missouri statutes allow all companies to obtain waivers of the MoPSC's quality of service rules.[10] Consequently, no information exists concerning whether an ETC is providing an acceptable quality of service for voice or broadband services. Moreover, no requirements exist in Missouri requiring any companies to even monitor the quality of service provided to customers.

ETCs should be required to track the quality of service provided to customers. At a minimum, ETCs should be required to separately monitor three basic quality of service issues for voice and broadband services: (1) the timeliness of responding to initial service requests, (2) the timeliness of responding to out-of-service conditions and (3)

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[9] The concept of relying on consumer complaints appears to be suggested by the FCC as a primary gauge to monitor the company's broadband quality of service. (Paragraph 116 of the FCC's NPRM)

[10] Section 392.245.5(8) and Section 392.420 RSMo.

trouble reports. ETCs should have the flexibility to devise company-specific quality of service measures adequately demonstrating the company's compliance. Such measures could be worked out between an ETC and the state PSC for voice and broadband services. In addition, ETCs should, at a minimum, be required to submit quality of service results to a state PSC, upon request.

D. Require ETCs to offer voice service as a standalone service and at an affordable rate.

The FCC seeks comment on whether ETCs should be required to offer voice service as a standalone service at an affordable rate.[11] Missouri law requires competitive local exchange carriers (CLECs) to offer basic local telecommunications service as a separate and distinct service.[12] ETCs should not be held to a lesser standard. Stated more simply, ETCs should not require a consumer to subscribe to a bundle of services if a customer solely desires voice service.

E. Broadband speed should be based on actual and not advertised speed.

The FCC is proposing an initial broadband speed of 4 Mbps actual download and 1 Mbps actual upload. Regardless of the specific speed selected by the FCC, the standard should be based on actual rather than advertised speed and should be reviewed every four years, as suggested by the FCC, to determine if the speed is still an appropriate minimum standard.[13]

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[11] Paragraph 99 of the FCC's NPRM.

[12] Section 392.455(4) RSMo.

[13] The FCC's NPRM is not entirely clear on the desired time frame for re-evaluating broadband speed. Paragraph No. 119 suggests broadband speed has been essentially doubling every four years; however Paragraph No. 312 suggests broadband speed will not be increased for three years for recipients of the first phase of the CAF. Regardless, four years appears to be a reasonable time frame whereby the FCC should not be attempting to re-evaluate the minimum actual broadband speed more frequently.

2. Ensure ETCs are appropriately using high-cost support.

ETCs receiving high-cost support are annually required to obtain state certification that they are using support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The FCC seeks comment on how to improve this process.[14]

A. The MoPSC's annual ETC certification process

The MoPSC has already taken action in improving the annual certification process. Originally, the MoPSC relied on carrier affidavits certifying the support was used consistent with the Telecommunications Act of 1996. Over the next couple years, the MoPSC increased the requirements for documentation to be provided during the annual certification process. Finally, the MoPSC directed its Staff to complete annual USF certification audits of a random sampling of carriers. This action was taken after criminal activity was discovered related to two ILECs who were defrauding USAC and the federal USF.[15] In brief, the criminal activity resulted in the MoPSC refusing to re-certify these two ILECs until certain conditions were satisfied; however, such activity highlights the need for greater oversight.

The MoPSC's annual certification filing requirements are identified in MoPSC rule 4 CSR 240-3.570(4). Although these requirements vary slightly depending on whether an ETC is an ILEC or a competitive company, companies are required to attest

[14] Paragraph No. 475 of the FCC's NPRM.

[15] *The Staff's Report Regarding the Impact of Criminal Activities on Missouri Telecommunications Consumers* issued August 26, 2005. See also Case No. 05-CR-20 before the United States District Court, Western District of Missouri whereby company management pled guilty to mail and wire fraud based on a conspiracy to defraud both the National Exchange Carriers Association and the Universal Service Administrative Company.

to certain statements.[16] Companies are also required to submit plans or narratives discussing the high-cost support and how it is used. The MoPSC expressly prohibits ETCs to self-certify to the Universal Service Administrative Company for receipt of federal USF.

MoPSC rule 4 CSR 240-3.570(4)(A)4 states the commission or its staff may request additional information regarding the annual certifications. The MoPSC uses this provision to more closely examine a few ETCs each year. These examinations or audits provide an opportunity for the MoPSC Staff to make a field visit to inspect the ETC's facilities. In addition, the MoPSC reviews management control processes, procedures and practices used by an ETC to ensure adequate customer service is provided. Likewise the MoPSC's Auditing Department examines the company's USF-related information and investigates if irregularities exist.

B. Ways to improve the annual certification process

ETCs receiving high-cost support need to be held accountable for appropriately using high-cost support. The FCC should establish federal standards so states that exercise authority over ETCs have the ability to gather information from ETCs ensuring USF support is being used appropriately. This ability includes allowing a state commission to gather information, examine books and inspect facilities as it sees fit.[17] Recipients of high-cost support should be required to provide basic information in the

[16] For example all companies must attest that high-cost support is used consistent with the commission's rules and Telecommunications Act of 1996. ETCs must indicate that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the the ETC's service access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.

[17] The FCC seeks comment on whether states may impose additional obligations on funded providers and if so, whether the state should bear the costs (Paragraph No. 156 of the FCC's NPRM). A state should be allowed to seek additional information from ETCs in the annual certification process and such costs should be borne by the ETC and not the state commission.

annual certification process. This information should include how the company used high-cost support for the past year, how the company plans to use high-cost support for the upcoming year, current rates for voice and broadband services, and a demonstration that the ETC is providing acceptable service. ETC recipients should also provide relevant information concerning service and rates of any partnering companies including how often the ETC uses the services of a partnering company.[18] All information should be submitted with an affidavit executed by an officer of the company attesting to the accuracy of the information.

C. Provide state commissions with the option to be involved in the annual certification process, broadband monitoring obligations and enforcement.

The FCC seeks comment on state involvement in various aspects of the ETC structure. For example the FCC seeks input on whether states should be responsible for enforcement.[19] The FCC also asks about a state's role in the annual certification process for obligations related to USF-supported broadband services.[20] Likewise, the FCC asks if state commissions or the Rural Utility Service should monitor broadband deployment obligations.[21]

State commissions should be given the option to fulfill such expectations. In many states the state commission already is involved in the annual certification process;

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[18] The FCC is proposing high-cost recipients be permitted to partner with another voice provider, such as a satellite or wireless voice provider, to provide voice services in areas where the recipient has not yet built out its network. (Paragraph No. 132 of the FCC's NPRM)

[19] The FCC seeks comment on the role of states in enforcing compliance with federally defined public interest obligations. (Paragraph No. 155 of the FCC's NPRM)

[20] Paragraph 122 of the FCC's NPRM.

[21] For example, the FCC asks, "…We seek comment on whether either state commissions or RUS could play a role in confirming deployment…." (Paragraph No. 477 of the FCC's NPRM)

therefore, if USF support is expanded to include the provisioning of broadband services then one entity in a given state should continue to perform such functions. Likewise the preferred arrangement should be for the same entity to also have broadband enforcement and monitoring obligations. A state commission should be allowed the option to continue to be involved in the annual certification process as well as be involved with broadband monitoring and enforcement activities.[22] If a state commission continues to be involved in the annual certification process but the FCC decides to assign broadband monitoring and enforcement responsibility to a different entity then a state commission should have access to the broadband-related data and reports filed by the ETC with the FCC or other entity.[23]

The MoPSC anticipates it could accommodate broadband monitoring and enforcement responsibilities if given this option. For instance, the MoPSC is currently monitoring broadband as a result of a directive by a Missouri state legislative committee to produce a broadband-related report by December 1, 2011.[24] Nevertheless, until the FCC clearly establishes the parameters of these additional responsibilities, the MoPSC defers judgment on whether the MoPSC will actually accept such additional responsibilities if given the option.

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[22] If a state commission declines then the FCC should have a default arrangement.

[23] For example, Paragraph No. 116 of the FCC's NPRM suggests an ETC should file broadband metrics with USAC on a quarterly basis. Paragraph No. 461 of the FCC's NPRM suggests ETCs receiving high-cost support file with the FCC a full and complete annual report of their financial condition that is audited and certified by an independent certified public accountant. Such information should be available to a state commission.

[24] On May 13, 2010 the Missouri State Senate Committee on Commerce, Consumer Protection, Energy and the Environment requested the MoPSC engage in a fact finding process related to broadband-related issues in Missouri. This report should address: (1) How to maximize broadband development in Missouri. (2) Assess the current level of high-speed internet access available in Missouri. (3) Identify unserved and underserved areas in Missouri and the barriers to deployment. (4) Recommendations to increase broadband deployment. Case No. TW-2010-0 has been established by the MoPSC to help gather information.

3. How to Encourage Additional Commitments by States to Support Universal Service

Throughout the NPRM the FCC seeks input on how to encourage or require additional commitments to support universal service by states in partnership with the federal government.[25] The FCC's NPRM provides some examples of states that use a state USF for a variety of purposes such as to provide broadband grant programs or alternatively to help assist in intrastate access reform. These comments attempt to provide information about: (1) Missouri's current USF; (2) Missouri's USF could potentially be expanded; and, (3) How the FCC might help the MoPSC decide whether to expand the Missouri USF.

A. Missouri's current USF

Missouri's USF began in 2005 and is currently limited to providing financial assistance to companies providing discounted low-income and disabled services. The Missouri USF provides monthly funding of $3.50 per customer participating in these programs. Currently, approximately 75,000 Missouri subscribers participate and receive discounted voice service in the state's low income and disabled programs.

Funding for the Missouri USF is generated by a retail consumer surcharge collected and remitted to the MoUSF Administrator by telecommunications companies and interconnected VoIP providers.[26] Wireless companies do not contribute to the

[25] Paragraph No. 87 of the FCCC's NPRM. Paragraph No. 546 also raises a similar question on whether the FCC should encourage states to set up a state universal service fund and/or rebalance rates.

[26] A telecommunications company or interconnected VoIP provider with annual Missouri net jurisdictional revenues of $24,000 or less are not required to remit payment to the Missouri USF. Approximately 200 companies and providers currently remit payments to the Missouri USF.

Missouri USF.[27] The Missouri USF surcharge is based on an assessment factor applied to a telecommunications company's or VoIP provider's net jurisdictional revenue as that term is defined by MoPSC rule 4 CSR 240-31.010(12).[28] The current size of the MoUSF is approximately $1.5 million with monthly revenues and expenditures averaging $286,500 and $267,240, respectively.

B. Missouri's USF could potentially be expanded

The Missouri USF could potentially be expanded to provide financial support to companies in the context of access reform. For example, Missouri law allows the Missouri USF to provide funding support "…to ensure the provision of reasonable comparable essential local telecommunications service, as that definition may be updated by the commission by rule, throughout the state including high-cost areas, at just, reasonable and affordable rates."[29] The MoPSC established rules relating to the Missouri USF and how it might be used for high cost support and access reform.[30] These rules provide a simple framework for using Missouri USF for access reform; however, this aspect of the Missouri USF has never been implemented.

The MoPSC anticipates it may take one to two years of additional work before the Missouri USF can provide any financial support to companies conducting access reform. Many details need to be worked out in order to use the Missouri USF for access reform

[27] The MoPSC lacks any regulatory authority over wireless companies. In addition, Missouri law does not specifically authorize wireless carriers to contribute to the Missouri USF.

[28] The Missouri USF assessment is currently .0029 (or .29%). Missouri "net jurisdictional revenues" are retail revenues whereas wholesale revenues are excluded from the Missouri USF assessment.

[29] Section 392.248.2(1) RSMo.

[30] MoPSC rule 4 CSR 240-31.040 Eligibility for Funding-High Cost Areas. This rule provides requirements for determining the eligibility of telecommunications companies for USF for high cost areas. This funding could be used for access reform as suggested by MoPSC rule 4 CSR 240-31.040(6)(B).

including soliciting bids for a new Missouri USF administrator with expanded duties. The last time the MoPSC entertained how high-cost support might be provided by the Missouri USF was approximately ten years ago after a divided and protracted proceeding.[31]

C. How the FCC Might Help the MoPSC Decide Whether to Expand the Missouri USF

On a practical basis, Missouri's USF could only be expanded for access reform purposes. The Missouri USF could not legally be used as a broadband grant program. As will be discussed in the next section, the FCC should attempt to address as many issues as possible related to access reform. For example, the FCC should establish a backstop schedule for reducing intrastate access rates. The FCC should also make specific decisions related to how the federal USF will be modified. Based on the FCC's USF reform decisions the MoPSC should ultimately receive a forecast of the estimated future federal USF high cost disbursements for each company currently receiving high cost support in Missouri. If the FCC intends to try and reward states by structuring the first phase of the Connect America Fund (CAF) then specific information should be provided to the MoPSC quantifying how Missouri funding could be enhanced.[32]

Companies with Missouri intrastate access rates should be required to submit plans with the MoPSC on how they intend to comply with the FCC's access reform directives. Each company's plan should identify anticipated rate adjustments for not

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[31] Case No. TO-98-329, *In the Matter of an Investigation into Various Issues Related to the Missouri Universal Service Fund.* In a March 2002 decision, the MoPSC declined to act after conducting a hearing on testimony regarding a high cost fund.

[32] Paragraph 544 of the FCC's NPRM seeks comment on ways the FCC could structure the first phase of the CAF to reward states that take action to advance the FCC's broadband goals.

only intrastate access rates but also any other services. Such plans will help the MoPSC evaluate the need to expand the Missouri USF for access reform. A state commission should have the authority to adjust such plans as long as such adjustments do not conflict or frustrate the FCC's decisions.

4. Phase One Connect America Funding Should Not be Limited to States with High-Cost Funding Programs

The FCC is considering limiting initial support from the new CAF to states that have engaged in access reform, created a state USF for high-cost purposes or provided funding for broadband.[33] Presumably this consideration is an attempt to reward states that have taken such action.

Initial CAF funding should not be dependent on how much a state shares in high-cost support. Ultimately states without significant access reform but in need of broadband deployment may not receive any initial CAF funding. Such an approach appears to stray from the FCC's stated priorities. Instead the FCC should simply focus on the priorities established for USF reform such as ensure funding preserves and advances service as well as ensure funding provides for universal deployment of modern networks.

There are some additional considerations that must be taken into account before a decision to provide initial CAF funding. States without a high-cost USF may rush to put such a fund together in order to try and qualify for funding. This approach may ultimately produce state high-cost funds that do not actually provide support as intended. State laws may also prevent a state from having a state USF or limit the use of a state

[33] For example, Paragraph No. 270 of the FCC's NPRM asks, "We seek comment on whether we should limit eligibility for CAF support in this first phase to states that have engaged in access charge reform and/or prioritize support to states that have established high-cost universal service or other broadband support mechanisms…." Likewise Paragraph No. 297 states, "…We could, for example, limit support in the first phase of the CAF program to states that have taken or are taking measures to reduce intrastate switched access rates…."

USF. For example, some states may not have the legal authority to establish a state USF. Further, Missouri law does not allow the MoPSC to use the Missouri USF for a broadband grant program. Such states should not be penalized by correlating initial CAF funding to a state's effort to expand broadband.

If the FCC attempts to correlate CAF funding to a state's access reform efforts, the FCC may find it difficult to distinguish between acceptable and unacceptable state reform efforts. States vary in their approaches to access reform and states will also vary in the status of achieving parity between intrastate and interstate access rates. For example, as will be discussed in the next section, Missouri has initiated some reforms for access rates. Other states are probably working on access reform as well but it remains unclear if such efforts will be sufficient to qualify for CAF funding.

III. INTERCARRIER COMPENSATION REFORM

This section describes intercarrier compensation reform undertaken by Missouri. These comments recommend the FCC establish a "backstop" approach for intercarrier compensation reform. Initial intercarrier compensation reform should be limited to simply reaching parity between intrastate and interstate access rates. A minimum of five years should be allowed to achieve parity. Finally, these comments respond to various access reform revenue recovery issues associated with intercarrier compensation reform.

1. Intercarrier Compensation Reform Undertaken By Missouri

The FCC seeks comment on the status of intrastate access reform, as well as different approaches and best practices of states that have undertaken intrastate access reform. Missouri is cited in the FCC's NPRM as a state that has attempted to lower intrastate switched access rates.[34] The MoPSC's acknowledges the underlying description of Missouri's access reform within Brian Benison's letter is technically correct but incomplete. Missouri's access reform efforts are more fully described within these comments.

Mr. Benison's letter identifies only one form of access reform for Missouri. This access reform is new and somewhat modest. For example House Bill No. 1750 added Section 392.605 to the state's Revised Statutes effective August 2010. The access reform contemplated under House Bill No. 1750 is for a carrier to reduce intrastate access rates by a total of eighteen percent of the difference between intrastate and interstate access rates in three equal installments. The first six percent reduction was to occur by March 2011 while the second and third reductions will occur by March in the succeeding two years. In this regard, Missouri's access reform helps decrease the difference between intrastate and interstate access rates but it can still leave significant rate differentials.

Missouri's access reform does not require all carriers to reduce intrastate access charges. For example, only the top five largest incumbent local exchange companies are required to reduce intrastate access rates. Small incumbent local exchange carriers with less than 25,000 lines are excluded from the access reform mandate.[35] In addition a few limited competitive local exchange carriers (CLECs) have a similar exclusion.[36]

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[34] Footnote No. 819 of the FCC's NPRM cites a letter from Brian J. Benison, Director – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 05-337, GC Docket No. 09-51 (filed October 25, 2010). Page 14 of Mr. Benison's letter describes his understanding of Missouri's access reform efforts.

[35] There are 43 ILECs in Missouri. Therefore House Bill 1750 requires access reductions for 5 ILECs but no access reductions are required for 38 ILECs.

[36] Section 392.605.2 RSMo provides a list of specific criteria for a CLEC to be excluded from the access reform mandate (i.e., provide basic service to at least 60% of subscribers using their own facilities; 90% of customers are located in counties with third class classification, been offering service as of December 31, 2009, and so forth). A CLEC must meet all the criteria in order to be excluded. The exclusion also only

Another form of access reform has been available for price cap regulated companies since 1996.[37] For instance, a price cap regulated ILEC can increase basic local rates by up to $1.50 per year and use this increased revenue to offset switched access rate reductions.[38] This rate rebalancing is completely optional for price cap regulated companies which has resulted in a few, but not all, companies taking advantage of it.

Perhaps not technically considered access reform, Missouri law does contemplate other adjustments to switched access rates. For example, a price cap regulated company is required to make annual adjustments to its basic local exchange rates and switched access rates based on changes to the Consumer Price Index.[39] This mechanism is a two-edge sword whereby the index has been either positive or negative. There have been instances whereby a price cap ILEC has elected to not increase switched access rates even though the CPI is positive.[40]

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applies to exchanges served by the CLEC as of December 31, 2009; therefore exchanges served by the CLEC after this date are under the access reform mandate.

[37] A small ILEC can elect to qualify for price cap regulation by providing notice to the MoPSC if a CLEC or a VoIP provide is authorized to provide service in any part of the ILEC's territory. Alternatively a small ILEC can qualify for price cap status if at least two wireless carriers are providing wireless service in any part of its service territory. (Section 392.245.2 RSMo). To date only 5 out of 43 ILECs have elected price cap regulation.

[38] Section 392.245.8 and 9 RSMo. This rate rebalancing provision has been available since 1996 where rate rebalancing was limited to four adjustments. In 2008 this four year adjustment limitation was removed.

[39] In 2008 Missouri law changed the index to simply the Consumer Price Index. Prior to 2008 price cap companies had the option of using the telephone service component of the Consumer Price Index or alternatively by the change in the Gross Domestic Product Price Index minus the productivity offset established for telecommunications servce by the FCC and adjusted for exogenous factors.

[40] Section 392.245.4(a) RSMo. This statute does contain an additional provision that allows a price cap carrier to waive the requirement to reduce rates if the CPI is negative and use such revenue losses to benefit local ratepayers in specific exchange(s) including but not limited to expanded calling scopes.

2. The FCC Should Establish a "Backstop" Approach for Intercarrier Compensation Reform

The FCC's NPRM identifies two general options for states in reforming intercarrier compensation. [41] One option is for states to remain responsible for reforming intrastate access charges while the second option relies on the FCC to establish a methodology which states would then work with the FCC to implement. The MoPSC prefers the second option. Assuming the FCC's initial goal of intercarrier compensation reform is for parity between intrastate and interstate access rates then the FCC should set a schedule for achieving that objective. States should be allowed to accelerate intrastate access reform; however, a state should not be allowed to delay access reform. Therefore the FCC's schedule for reducing intrastate access rates should automatically apply unless a state wants to somehow accelerate access reform.

3. Limit Initial Intercarrier Compensation Reform to Simply Reaching Parity between Intrastate and Interstate Access Rates

The FCC seeks comment on the suggestion to reduce intrastate rates to interstate levels and then reassess the status of intercarrier compensation before finalizing any further transition.[42] The MoPSC supports this recommendation. Reaching parity between intrastate and interstate access rates will be a significant achievement in Missouri.[43] The revenue impact and projected rate adjustments required for all services

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[41] Paragraph Nos. 42, 534 and 535 of the FCC's NPRM.

[42] Paragraph No. 555 of the FCC's NPRM.

[43] Missouri has been criticized as having some of the highest intrastate access rates in the country. The validity of such claims remains uncertain; however, Missouri's intrastate access rates are available for review at http://www.psc.mo.gov/telecommunications/industry-information/access.pdf . Parity of intrastate and interstate access rates might also be a worthwhile goal for most other states as noted in Footnote 145 within the FCC's NPRM that "…only a few states have moved to complete parity...."

has yet to be fully evaluated. Initially limiting intercarrier compensation reform to achieve this simple and clear goal is a prudent approach.

4. Allow Minimum of Five Years for Intrastate Access Rate Parity

The FCC seeks comment on whether four years is enough time for states to take action on reforming intercarrier compensation.[44] The FCC should allow gradual reductions to intrastate access rates. Local rates will likely need to be increased in order to compensate for reductions in intrastate switched access revenue. Representatives of small ILECs in Missouri suggest parity may require local rates to significantly increase.[45] Although such calculations are preliminary and have not been scrutinized, the data suggests a four year time table may require local rates to increase an average of $3.81 per year or $15.22 overall. Such increases are significant and it would help consumers if local rate increases are spread over a longer time period. Therefore, the MoPSC recommends the FCC's timeline for reaching parity should be a minimum of five years.[46] A slightly longer time frame than proposed by the FCC should help minimize rate shock to consumers but still move intercarrier compensation reform along in a timely manner.

5. Access Reform Recovery Issues

Section XIV of the FCC's NPRM outlines a host of issues relating to developing a recovery mechanism as carriers reduce intrastate access rates and consequently experience reduced revenues. The MoPSC will respond to some of the issues and concepts presented in this portion of the FCC's NPRM.

[44] Paragraph No. 548 of the FCC's NPRM.

[45] For example, parity may require a small Missouri ILEC's local rates to double from an average of $16.27 to $31.49 (these rates include the current subscriber line charge) in order to maintain revenue neutrality.

[46] In prior comments to the FCC the MoPSC stated, "…the Commission should allow at least five years for carriers to reach parity with interstate terminating rates…." Comments of the Public Service Commission of the State of Missouri for Case No. WC Docket No. 05-337, et al. November 2008.

A. Recovery Does Not Need to Ensure Revenue Neutrality[47]

Carriers in Missouri have pricing flexibility for most, if not all, services. For example all companies have customer-specific pricing for any retail business service.[48] All companies have complete pricing flexibility for packages of services that includes at least one telecommunications service.[49] In Missouri, thirty-eight incumbent local telephone companies are still under rate-of-return regulation; however, fourteen of these companies are classified as telephone cooperatives and have complete pricing flexibility for all services except switched access services. Two ILECs are under price cap regulation and have unlimited pricing flexibility for non-basic regulated telecommunications services. Three of the largest ILECs operating in Missouri are classified as competitive companies and essentially have complete pricing flexibility for all services, including residential basic local rates.[50]

B. Benchmark Rates Should be Established for Local Service and Other Services

If the FCC intends to provide federal funding for intercarrier compensation reform then funding should be provided when there is a demonstration that rates will exceed a certain threshold or benchmark. Benchmark rates make sense because a carrier should not be allowed to simply rely on federal funding for revenue recovery. Imputing

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[47] Paragraph 568 of the FCC's NPRM.

[48] Section 392.200.8(3) RSMo.

[49] Section 392.200.12 RSMo.

[50] An ILEC can receive classification as a competitive company if 55% of its exchanges have been declared competitive. An exchange can receive competitive status if two unaffiliated companies are providing service in the exchange whereby one company can be a wireless company and the other company must be providing voice service using whole or in part facilities owned by the company or an affiliated company. A competitive ILEC is limited to raising basic local rates in "noncompetitive exchanges" so such rates do not exceed the company's statewide average basic local rates in competitive exchanges. Section 392.245.5 RSMo.

benchmark revenues to a carrier maintaining artificially low rates will reduce a carrier's funding and should provide an adequate incentive for the carrier to raise rates to benchmark rate levels. Benchmark rates should be separately established for residential and business local service. In addition, benchmark rates should be established for broadband and other non-regulated services that use the network.

C. Proposed Benchmarks for Residential and Business Local Service Rates

The FCC seeks feedback on selecting a benchmark rate.[51] Missouri recently completed a study to determine the weighted statewide average rate of nonwireless basic local telecommunications service. This study determined the average rates for local service applied by ILECs and CLECs as of August 28, 2010,[52] producing an average rate of $17.11 for residential local service and $34.35 for business local service. These rates simply reflect the rate for basic local service along with any applicable extended area service charges. The rate does not include the subscriber line charge or any other surcharges.

The $17.11 residential average rate is comparable to the proposed $19.50 residential rate cited in the FCC's NPRM.[53] The proposed $19.50 residential rate appears to be based on a proposal from a state that has already rebalanced rates for access reform. Absent more information including reviewing proposed benchmark rates from other states that have already completed access reform, the MoPSC recommends a benchmark

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[51] Paragraph Nos 573-578 of the FCC's NPRM.

[52] Order Determining Statewide Average Rate and Closing Case, Case No. TO-2011-0073, *In the Matter of the Determination of the Weighted Statewide Average Rate of Nonwireless Basic Local Telecommunication Services*, issued January 26, 2011.

[53] Paragraph No. 575 of the FCC's NPRM cites the proposal by the Nebraska Rural Independent Companies.

rate somewhere in the $17.11 to $19.50 range for residential local service, not including the subscriber line charge. In Missouri, only two ILECs have an average local residential rate higher than $17.00.[54]

D. *A Recovery Mechanism Should Evaluate Total Company Regulated and Non-regulated Revenues.*[55]

The FCC notes how a significant portion of rate-of-return carriers' costs are allocated to regulated services even though non-regulated services increasingly have been provided using that same network, and have accounted for an increasing percentage of revenue. The MoPSC agrees non-regulated revenues (i.e. broadband revenues and video revenues) should be a consideration in evaluating recovery in the context of intercarrier compensation reform. Consequently, if federal funding is to be provided to help a company reform rates associated with intercarrier compensation, then a company should be required to adequately demonstrate that non-regulated service rates are maximizing contributions to recovering network costs. Such an approach may also warrant consideration of eliminating attempts to separate costs.

E. Do Not Increase the Subscriber Line Charge Cap

The FCC seeks comment on the concept of increasing the subscriber line charge cap as a means to help offset intrastate access revenue reductions.[56] The subscriber line charge and the monthly local service rate are the two main rates associated with basic local service. The cap for the subscriber line charge should not be increased. A $6.50

[54] For a complete list of the average rates of companies in Missouri see Appendix C of the Staff Report filed on January 19, 2011 in Case No. TO-2011-0073.

[55] This issue is raised in Paragraph 569 of the FCC's NPRM.

[56] Paragraph 545 of the FCC's NPRM.

subscriber line charge is more than the monthly rate for local telephone service for many small Missouri ILECs.[57] Increasing the subscriber line charge cap may simply increase this rate disparity. Greater accountability might also be promoted if companies are forced to only consider raising local service rates rather than increasing the subscriber line charge.

SUMMARY

In summary, the MoPSC supports efforts to reform high-cost USF and intercarrier compensation. In reforming high-cost support, the MoPSC has offered suggestions concerning public interest obligations of ETCs. The FCC should also ensure ETCs are appropriately using high-cost support and consequently the MoPSC is offering recommendations for improving the annual certification process. The MoPSC has provided input regarding Missouri's existing USF and how the FCC might help the MoPSC decide whether to expand the Missouri USF for high-cost support. Initial Connect America Fund support should not be limited to states that have taken certain actions such as provide funding for broadband or engaged in access reform.

The FCC should establish a backstop approach for intercarrier compensation reform. Initial intercarrier compensation reform should be limited to simply reaching parity between intrastate and interstate access rates. States should have a minimum of five years to reach parity. Carriers should not be guaranteed revenue neutrality. Benchmark rates should be established for local service and other services. A revenue recovery mechanism should evaluate total company regulated and non-regulated revenues. The MoPSC recommends the FCC not increase the subscriber line charge cap.

[57] For instance in data gathered for Case No. TO-2011-0073, 8 out of 43 ILECs have monthly local service rates of $6.50 or less.

Respectfully submitted,

John Van Eschen
Manager, Telecommunications Dept.
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-5525
John.vaneschen@psc.mo.gov

Colleen M. Dale
Senior Counsel
Missouri Bar No. 31624
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4255 (Telephone)
cully.dale@psc.mo.gov

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