BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates	)	WC Docket No. 07-135
for Local Exchange Carriers	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Federal-State Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Linkup	)	WC Docket No. 03-109

MISSOURI SMALL TELEPHONE COMPANY GROUP INITIAL COMMENTS

W. R. England, III
Brian T. McCartney
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
Jefferson City, MO 65102-0456
trip@brydonlaw.com
bmccartney@brydonlaw.com
telephone: (573) 635-7166

Craig S. Johnson
JOHNSON & SPORLEDER, LLP
304 E. High Street, Suite 200
Jefferson City, MO 65102
cj@cjaslaw.com
telephone: (573) 659-8734

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I. INTRODUCTION

The Missouri Small Telephone Company Group (MoSTCG)[1] is made up of thirty (30) small telephone companies, each serving between approximately 200 and 15,000 access lines in predominantly rural, high-cost areas within the state of Missouri. The members of the MoSTCG are Eligible Telecommunications Carriers ("ETCs") as defined by the Telecommunications Act ("the Act"),[2] and are "small entities" and "small businesses" as defined by the Federal Communications Commission ("Commission" or "FCC").

The MoSTCG companies provide state of the art broadband and telecommunications service to their customers, and the MoSTCG companies continue to aggressively build out broadband in rural Missouri. Their ability to do so has largely been due to Universal Service support they receive from the federal government and the revenues they receive from Intercarrier Compensation (*i.e*. inter- and intrastate access charges). However, certain proposals in the FCC's February 9, 2011 Notice of Proposed Rulemaking ("NPRM") would negatively impact the MoSTCG companies' ability to continue providing high quality broadband and telecommunications service. In fact, a number of the NPRM's proposals may threaten the small companies' financial viability. Accordingly, the MoSTCG companies support a more cautious and measured approach that will allow near-term reforms to work and take more deliberate steps for long-term reform.

[1] *See* Attachment A.

[2] 47 U.S.C. §153(37).

II. COMMENTS ON THE FCC'S *NOTICE OF PROPOSED RULEMAKING*

A. MANY *NPRM* PROPOSALS WOULD HAVE SERIOUS IMPACTS.

Proposals in the *NPRM* to reduce Universal Service Fund (USF) support and eliminate or drastically reduce intercarrier compensation (ICC) would have substantial adverse consequences on small rural rate-of-return companies. The MoSTCG companies are in the process of accumulating specific data to demonstrate the deleterious effects of these proposals. Because of the short timeframe for comments and significant number of data requests, the MoSTCG companies have not yet completed this process but intend to provide specific data in Reply Comments. In general, the MoSTCG agrees with the Missouri Public Service Commission (MoPSC) Comments which indicate that intrastate access rate reform could place significant pressure on local rates and lead to rate shock.

B. THE FCC SHOULD ALLOW NEAR-TERM STEPS TO WORK.

The MoSTCG urges the FCC to take the immediate actions to address arbitrage. Specifically, the FCC should confirm that interexchange voice over Internet protocol (VoIP) traffic is subject to the same access rates as traditional voice traffic. The FCC should also take steps to curb fraudulent access avoidance schemes and "phantom traffic" by requiring that the calling party number (CPN) as well as additional necessary billing information be provided by the originating and transiting service providers with all traffic. These immediate steps should lessen the pressure on both the USF and intercarrier compensation, and thus they will provide time for orderly reform of these two essential rural revenue streams. The Commission should also consider broadening the base of USF contributors by including broadband service providers in order to more fairly allocate the costs of the USF.

C. UNIVERSAL SERVICE FUND

The Universal Service Fund has been an unqualified success in rural Missouri, and the areas served by the MoSTCG companies enjoy high-quality broadband and telecommunications service as a direct result. Accordingly, the FCC should use caution as it considers reform to ensure that Rural Missouri customers continue to receive high quality service.

1. Proposed Modifications to High Cost Program

The MoSTCG companies are required to serve all customers that request service in their high cost areas. This is sometimes referred to as the carrier of last resort obligation. The regulatory compact between rural rate of return (RoR) ILECs and the FCC as well as the MoPSC contemplates that in return for deploying and maintaining service as the carrier of last resort, all qualifying (and reasonably incurred) investments and expenses will be recovered through a combination of end user rates, intercarier compensation, and USF support. Some of the NPRM proposals to change or reduce high cost support would seriously threaten the MoSTCG companies' ability to continue serving the high cost areas because of their inability to realistically recover these lost revenues through increases in end-user rates. Moreover, many Missouri companies have financed their telecommunications operations and broadband buildout with government loans through the Rural Utilities Service (RUS), and the proposed modifications to eliminate or reduce USF support will negatively impact their ability to meet these financing obligations.

2. Public Interest Obligations of ETCs

High-cost support assists rural, RoR-regulated carriers in meeting their public interest obligations. First, the MoSTCG companies serve as "carriers of last resort" as required by state and federal law.[3] Thus, the MoSTCG companies must serve all customers that request service within their state-defined service areas. Second, the MoSTCG companies must meet service quality standards. The MoSTCG companies take pride in providing excellent quality of service, and a recent Missouri investigation of service quality indicated that the MoSTCG companies continue to monitor their service quality provided to customers.[4] This system has worked well to ensure that rural Missouri customers receive comparable service at comparable rates. The FCC seeks comment on its proposed obligations for broadband service.[5] The MoSTCG believes that the current state process for designating eligible telecommunications carriers (ETCs) is effective. Accordingly, a similar ETC process for broadband support would provide accountability and state and federal oversight.

3. Near-Term Reforms

a. Reduced High Cost Loop Support

The NPRM proposes reducing the percentages of reimbursement for high cost loop support (HCLS) to 55% and 65%.[6] The NPRM's stated rationale is that such a reduction would encourage rural carriers to "expend funds more efficiently and effectively, without jeopardizing universal service."[7] But this arbitrary adjustment is at odds with the language in Section 254 of the Act, which mandates that universal service is to be preserved and advanced to provide access to quality telecommunications and information services in all regions of the nation, especially in rural, insular, and high cost areas. Moreover, the rationale also overlooks the fact that small rural carriers such as

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[3] *See e.g.* Missouri Revised Statute §392.460.
[4] *Investigation into the Quality of Service of Wireline Telecommunications in the State of Missouri*, Case No. TO-2011-0047, *Order Accepting Staff's Report on Its Investigation*, Feb. 23, 2011.
[5] *NPRM* ¶121.
[6] *NPRM* ¶180.

the MoSTCG companies are already operating efficiently as a matter of necessity.

b. Elimination of Corporate Operation Expense Reimbursement

The NPRM proposes to reduce or eliminate corporate operations expenses.[8] The MoSTCG opposes this proposal and concurs with the comments by the National Exchange Carrier Association, Inc. (NECA), the National Telecommunications Cooperative Association (NTCA), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) et al. ("the Rural Associations") which explain that corporate operations activities are essential and related to the provision of affordable and high-quality services in rural areas.

c. Competitive Auctions

The NPRM proposes the use of auctions to determine which carriers receive support and the amount of such support.[9] The MoSTCG companies continue to oppose the use of auctions because such auctions are inappropriate for those areas served by small, rate of return rural companies. First, auctions are not suited for rural areas where operating costs exceed revenues and thus continuing support is required. Second, auctions will discourage future investment by rural companies because auctions would make full recovery of capital investments uncertain. Thus, auctions would contradict the Act's goals of providing predictable, specific, and sufficient USF support. Third, auctions could encourage underbidding, which would negatively impact the high quality of service that rural telephone companies provide to rural America and likely result in a "race to the bottom."

d. Continued Rate-of-Return Regulation

As an alternative approach, the NPRM seeks comment on "limiting the full transition of the

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[7] *Id.*
[8] *NPRM* ¶194.
[9] *NPRM* ¶284.

CAF to a subset of geographic areas, such as those served by price cap companies, while continuing to provide ongoing support based on reasonable, actual investment to smaller, rate-of-return companies."[10] This alternative appears to recognize that rate-of-return regulation is still an effective and efficient method of distributing universal service support. In Missouri, RoR regulation has allowed the MoSTCG companies to bring broadband service to their rural service territories, while "incentive" and price cap regulation have been much less successful in building out broadband. The 2007 Missouri Broadband Report stated, "A more in-depth analysis of out-state Missouri suggests that small, rural telecommunications carriers have been more aggressive in offering broadband to customers throughout their service territories than their larger rivals."[11] The MoSTCG companies support the continued use of rate-of-return regulation and support based on actual, reasonable investment rather than a cost model or auction.

D. INTERCARRIER COMPENSATION

1. Per-Minute Compensation

The NPRM seeks comment on whether intercarrier compensation reform should "transition away from per-minute intercarrier compensation."[12] The MoSTCG believes that per-minute intercarrier compensation, at a reformed or unified rate, continues to provide an appropriate mechanism for recovering the costs incurred by rural carriers to provide a network that is used by other carriers. Per-minute compensation sends an appropriate price signal to recognize that there is a cost to provide the network, and those that use more of the service (and impose the most cost) should pay more, just as with other utility services such as electricity, natural gas, and water. On the other

[10] *NPRM* ¶401.
[11] 2007 Missouri PSC Commissioners' Report on Missouri Broadband Availability by Commissioners Robert M.

hand, eliminating intercarrier compensation would send a distorted price signal (*i.e*. carriers may use rural networks for free).

The costs to build and maintain rural networks are the same no matter what type of "minutes" are being delivered to those rural networks. For example, a VoIP call terminated on the Public Switched Telephone Network (PSTN) requires the same elements of the PSTN as any other call, regardless of technology.[13] Rural carriers should be allowed to continue using intercarrier compensation charges in order to appropriately allocate the costs of rural networks, and reform should produce adequate intercarrier compensation rates that are neutral for the various types of technology used to generate calls that terminate on the PSTN.

Again, there is a cost to using rural networks, and per minute compensation continues to be an appropriate way to help pay for building and maintaining those networks. Per minute ICC serves the purpose of supporting everyone's use of the nationwide network. The MoSTCG companies are very small and serve high-cost and sparsely-populated areas. Moreover, the MoSTCG companies have carrier of last resort obligations, as they are required to serve all customers in their service areas. Per-minute ICC helps provide RoR carriers with a meaningful opportunity to recover their prudently incurred expenses as well as earn a reasonable return on their investments.

2. Reducing IntraLATA Access Rates to InterLATA Access Rate Levels

The NPRM seeks comment on whether the Commission should "reduce intrastate rates to interstate levels and then reassess the status of intercarrier compensation before finalizing the

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Clayton, III and Steve Gaw, issued Sept. 18, 2007.

[12] *NPRM* ¶509.

[13] *See* Montana PSC Comments, dated April 18, 2011, pp. 3-4.

transition."[14] The MoSTCG supports the voluntarily reduction of intrastate access rates to interstate levels over a reasonable period of time. However, this transition must be accompanied by a reasonable revenue recovery mechanism to avoid excessive rate increases and negative impacts on Missouri's small rural telephone companies. Today, a combination of three revenue streams allows small RoR carriers to provide service in high cost areas: (1) end user rates; (2) intercarrier compensation; and (3) Universal Service Fund support. If the Commission takes unilateral action to reduce one or more of these revenue streams without an overall examination of the RoR carriers' earnings, then it must ensure revenue neutrality. Thus, it is essential to include an appropriate revenue recovery mechanism to allow a deliberate and measured transition.

3. Bill-and-Keep or $0.0007 Compensation Rates

The NPRM seeks comment on suggestions to move ICC to a "bill-and-keep" or, alternatively, an extremely low $0.0007 per minute compensation mechanism.[15] The MoSTCG believes that these proposals are unreasonable and confiscatory.[16] Bill-and-keep would eliminate a substantial part of rural RoR carriers' revenue recovery mechanism by allowing other carriers to use rural networks for free. Likewise, the artificially designed $0.0007 rate would not cover the MoSTCG companies' costs of billing for the traffic, much less any reasonable costs for the use of their networks. In Missouri, the MoPSC has approved reciprocal compensation rates for many small rural companies that are significantly higher than the $0.0007 rate. Thus, imposing bill-and-keep or a $0.0007 rate would be confiscatory and would discourage network investment. Some type of

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[14] *NPRM* ¶555.
[15] *NPRM* ¶530.
[16] *See* MoSTCG April 1, 2011 Comments, pp. 5-6.

appropriate per-minute ICC rate should be maintained in order to ensure competitive neutrality and provide cost recovery for rural networks.

4. Legal Authority to Impose Reciprocal Compensation Rates

The NPRM seeks comment on its authority to reduce intercarrier compensation paid by CMRS providers.[17] In Missouri, the Missouri PSC has established reciprocal compensation rates for wireless carriers after lengthy arbitrations under Section 251 and 252 involving many of the MoSTCG companies.[18] It would be unlawful and unreasonable to reduce these arbitrated rates absent any evidence or information about the costs of Missouri's rural carriers. Once intrastate and interstate access rates are unified, there should be no further rate reductions to favor wireless carriers. In Missouri, wireless carriers already have an enormous local calling scope, as the MTA essentially divides the state into two "local" areas.

The NPRM also asks if it has authority to apply section 251(b)(5) to all telecommunications traffic exchanged with LECs, including intrastate and interstate access traffic.[19] The question itself recognizes the legal uncertainty around the proposition, and the MoSTCG agrees with the Rural Associations that this would not be a prudent course of action. As a matter of law, significant questions have been raised about the FCC's authority.[20] As a practical matter, this suggestion would be complicated and unnecessary, and it would lead to delay and litigation.

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[17] *NPRM* ¶511.
[18] *In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA, Inc.*, Case No. TO-2006-0047, *Arbitration Order*, issued March 23, 2006.
[19] *NPRM* ¶¶512-22.
[20] *See e.g.* Comments of the Massachusetts Department of Telecommunications and Cable, dated April 15, 2011, stating at pp. 20-21 that the Commission "does not have legal authority to override state access charge regimes."

5. Gradual Reductions to Parity between Intrastate and Interstate Rates.

The Missouri Public Service Commission recommends that the FCC allow gradual reductions to intrastate access rates in order to prevent sudden increases in local rates.[21] Accordingly, the MoPSC recommends that the FCC's timeline for reaching parity should be a minimum of five years. The MoSTCG agrees with the MoPSC, as this will allow additional time to absorb rate reductions.

6. Benchmark Rates

The NPRM seeks comment on a proposal to set a benchmark rate for residential service at $19.50.[22] After including the subscriber line charge (SLC) and other fees, this rate approaches $30. As noted by the MoPSC, this would represent a significant rate increase for the customers of many small rural Missouri telephone companies.[23] The NPRM points out that some rural company local rates are lower than rates in urban areas, but the NPRM does not recognize that the calling scopes in many rural areas are significantly smaller. Because rural calling scopes are smaller, many rural subscribers incur greater long distance charges to place calls to schools, health care facilities, and government offices. As a result, the total bills for rural customers (including both local and long distance calling) may be comparable to or higher than the bills of urban customers, and the proposal to establish a nationwide benchmark does not take into account local calling scopes. Therefore, the FCC may wish to consider establishing a separate rural benchmark.

Additionally, in the event the Commission decides to adopt a benchmark rate, then the MoSTCG concurs with the MoPSC's recommendation of a minimum five-year transition period in

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[21] Missouri Public Service Commission Comments, dated April 18, 2011, p. 20.
[22] *NPRM* ¶575.
[23] Missouri Public Service Commission Comments, dated April 18, 2011, p. 20.

order to minimize rate shock to consumers.

7. Non-Regulated Revenue

The NPRM seeks comment on including non-regulated revenues (e.g. broadband or video service) in calculating recovery for intercarrier compensation reform.[24] If the FCC opts to include these revenues, then it must also include the non-regulated costs of providing these services.

E. REVENUE RECOVERY MECHANISM

The NPRM recognizes that intercarrier compensation revenues represent a significant portion of rural carriers' regulated revenue.[25] Therefore, it is imperative to design an appropriate revenue recovery mechanism for any revenues lost as a result of intercarrier compensation reform. Under the existing regulatory process, revenue recovery mechanism must allow small, rural rate-or-return carriers to remain revenue neutral. Otherwise, the changes could result in a regulatory taking and threaten the viability of the small carriers.

Both the Missouri and federal Constitutions prohibit the confiscation of a public utility company's property by depriving the utility from receiving reasonable compensation for the use of its facilities and services. The Supreme Court has explained, "If the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments."[26] Thus, the MoSTCG member companies have a constitutional right to a fair and reasonable return upon their investment in rural telecommunications networks. The Commission and the MoPSC have a legal responsibility to ensure that the small rural

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[24] *NPRM* ¶577.
[25] *NPRM* ¶567.
[26] *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308, 109 S.Ct. 609, 102 L.Ed.2d 646 (1989).

ILEC's network facilities are not utilized in a manner that is confiscatory.[27] Accordingly, the FCC cannot disturb a small rate-of-return ILEC's revenue streams that have been approved by the Commission or the MoPSC without providing a replacement because this would be clearly confiscatory.

A Commission order that deprives small rural rate-of-return carriers of existing revenues stream generated by lawful rates would amount to a taking of property without due process of law.[28] Therefore, outside of a rate case that examines all relevant factors, any government action to reduce the rates for a company's regulated revenues requires a revenue recovery mechanism to make the small rate-of-return regulated companies whole (*i.e.* revenue neutral).

F. NETWORK INTERCONNECTION AND RELATED ISSUES

1. POI and Network Edges

The NPRM invites comment on network "edge" and POI proposals.[29] The MoSTCG companies should not be required to transport traffic outside of their rural exchange boundaries.[30] The FCC's 2008 FNPRM proposed modified "Edge" rules for local and extended areas service (EAS) calls by rural rate-of-return carrier customers that would limit transport obligations to the rural ILEC's service area. The 2008 modifications to the "Edge" proposal were an improvement that would limit a rural rate-of-return carrier's responsibility for transport beyond its service area. However, any network "Edge" proposal must clarify with absolute certainty that small rural ILECs are not required to transport traffic outside of their rural local serving areas.

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27 *Smith v. Illinois Bell*, 270 U.S. 587, 591-92, 46 S.Ct. 408, 70 L.Ed 747 (1926).

28 *U.S. Const*. Amend. XIV and *Mo. Const*. Art. I, § 10. *See Lightfoot v. City of Springfield*, 236 S.W.2d 348 (Mo. 1951); *Bowling Green v. Straube*, 227 S.W.2d 666 (Mo. banc 1950).

29 *NPRM* ¶¶680-81.

30 *See* MoSTCG Comments in CC Docket No. 01-92, Oct. 25, 2006, pp. 11-12.

2. Transiting Traffic

The FCC seeks further comment on transit traffic rules and rates.[31] The MoSTCG believes that the FCC should establish rules to ensure that transit rates charged by intermediate carriers are no higher than rates for similar transport and termination functions. Accordingly, the FCC should prohibit transit carriers from charging rates that are higher than their reciprocal compensation rates for local transit traffic or access rates for interexchange transport traffic.[32] *See* STCG July 20, 2005 Reply Comments.

3. Disputes Regarding Rating and Routing of Traffic

The FCC seeks comment on issues regarding the rating and routing of traffic.[33] The MoSTCG has previously addressed this issue and urged the Commission to ensure that rural ILECs are not forced to pay for transport costs beyond their network boundaries. Under Sprint's proposal, wireless carriers would not establish any facilities or pay any transport costs associated with serving in MoSTCG exchanges. For example, Sprint urges the Commission to find that rural LECs have the obligation to treat Sprint's numbers as "local" in the absence of a direct interconnection, and Sprint claims that it is prevented from providing local wireless services to many rural areas within its coverage due to the lack of resolution of this issue.

The MoSTCG strongly disagrees. First of all, nothing has prevented Sprint from establishing local facilities in rural areas. If Sprint were serious about serving rural areas, then Sprint could have accomplished this goal years ago by either: (a) building its own facilities, or (b) establishing agreements with other carriers. What Sprint really seeks is to force small rural ILECs and their

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[31] *NPRM* ¶¶683.
[32] *See* MoSTCG Reply Comments in CC Docket No. 01-92, filed July 20, 2005, pp. 16-17 and Initial Comments in CC Docket No. 01-92, filed Nov. 20, 2008, pp. 11-12.

limited customer base to bear Sprint's costs of doing business in rural areas. Sprint should invest its own money in rural areas or establish agreements for the transport of its traffic rather than try and shift its costs to rural companies. Wireless carriers are successfully competing in Missouri and have significant revenues and market share. Wireless carriers should be expected to pay their fair share of network costs. Accordingly, carriers that choose to interconnect indirectly with rural ILEC networks should bear the costs of transport beyond the rural ILEC's service area.[34]

4. IntraMTA Rule

The FCC seeks comment on whether the intraMTA rule should be eliminated.[35] The MoSTCG believes that such a change would not be appropriate until all intercarrier compensation rates are unified. Currently, CMRS providers already receive a preferential treatment with an enormous "local" calling scope. In Missouri, the state is roughly divided into two large MTAs. At some point, CMRS traffic has to be considered as interexchange traffic.

III. CONCLUSION

The MoSTCG supports common sense reform of Universal Service support and intercarrier compensation. Such reform should maintain per minute intercarrier compensation and allow small rural carriers to continue operating under rate-of-return regulation. Reductions in access rates should be accompanied by a predictable and sufficient revenue recovery mechanism. Interconnection policies should ensure that carriers choosing to interconnect indirectly bear their fair share of network costs.

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[33] *NPRM* ¶684, fn 1099; ¶686.
[34] *See* MoSTCG Reply Comments in CC Docket No. 01-92, July 20, 2005, pp. 10-14.
[35] *NPRM* ¶¶685.

Respectfully submitted,

By: **/s/ Brian T. McCartney__________**

W. R. England, III
Brian T. McCartney
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
Jefferson City, MO 65102-0456
bmccartney@brydonlaw.com
telephone: (573) 635-7166
facsimile: (573) 634-7431

Craig S. Johnson
JOHNSON & SPORLEDER, LLP
304 E. High Street, Suite 200
Jefferson City, MO 65102
cj@cjaslaw.com
telephone: (573) 659-8734

Attorneys for the MoSTCG

ATTACHMENT A

Alma Communications Company
BPS Telephone Company
Chariton Valley Telephone Corporation
Choctaw Telephone Company
Citizens Telephone Company of Higginsville, Mo.
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Telephone Company
Goodman Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corp.
Green Hills Telephone Corp.
Iamo Telephone Company
Kingdom Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
Mark Twain Rural Telephone Company
McDonald County Telephone Company
Miller Telephone Company
MoKan Dial, Inc.
New Florence Telephone Company
Northeast Missouri Rural Telephone Company
Oregon Farmers Mutual Telephone Company
Otelco, Inc. Mid Missouri Division
Ozark Telephone Company
Peace Valley Telephone Co., Inc.
Rock Port Telephone Company
Seneca Telephone Company
Steelville Telephone Exchange, Inc.