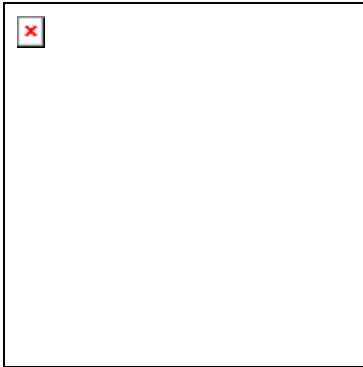


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of an Investigation into
Various Issues Related to the Missouri
Universal Service Fund

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Case No. TO-98-329

REPORT AND ORDER
ESTABLISHING LOW-INCOME/DISABLED FUND

Issue Date: March 21, 2002

Effective Date: March 31, 2002 _

incomes of \$9,999 or less had subscribership levels of just over 86 percent, as of March 2000. The overall average subscribership level at the same time was approximately 10 percent higher. Adoption of the proposed low-income/disabled fund will increase the level of penetration in households made up of low-income ratepayers and, possibly, households with disabled ratepayers. It will maximize the revenues available from federal universal service support programs for low-income and disabled persons.

The plan proposed by Staff would result in a fund of approximately \$4,800,000 which would provide support for a substantial number of low-income and disabled Missouri residents. The resulting assessment on Missouri telecommunication carriers would be approximately 0.27% (0.0027) of net jurisdictional revenue, excluding any fund administration costs. Further, the proposal is designed to support as many customers as possible and does not place undue burdens on qualifying customers seeking assistance.

Consistent with the low-income/disabled fund proposal, the Commission finds that all carriers except payphone providers, shared tenant service providers and carriers with annual net intrastate jurisdictional revenues of less than \$24,000 should be assessed. Although this proposal differs from the Commission's current rule requirement to assess all carriers, exempting these companies from assessment will assist the administration of the Missouri Universal Service Fund and significantly reduce the expense of administration.

The Commission concludes that it is in the public interest to adopt the low-income/disabled fund proposal of the parties. The proposal of the parties adopted by the Commission is as follows:

PURPOSE

The purpose of this proposal is to outline a program to implement assistance to low-income and disabled customers for telecommunications services under the Lifeline and/or Link-up programs funded from the Federal Universal Service Fund and the Missouri Universal Service Fund. One goal established by Missouri Public Service Commission (Commission) Rule 4 CSR 240-31.050(4) is to fashion a program so that the support amount provided by the Missouri Universal Service Fund for services to low-income customers and disabled customers is set at the level necessary to gain the maximum Federal Universal Service support for services to such customers.

BACKGROUND

In discussing the parameters for state Lifeline funding, the Technical Committee (or "Committee") reviewed and compiled information from the current Commission rules and other sources related to the provision of Lifeline service. The following items helped guide the Committee's recommendations in regard to Lifeline service:

Provider Participation

Under the FCC rules all eligible telecommunications carriers must offer Lifeline service. Pursuant to Section 392.248, RSMo Supp. 1999, only telecommunications companies that provide essential telecommunications service can receive support under the state Lifeline program. Neither the state statute nor the rules require such companies to participate; rather, they must apply to the administrator to receive funds. Companies choosing to participate in the Lifeline program shall comply with the requirements of this document.

Definitions and Qualification for Benefits under the Lifeline and Link-up programs

Under 4 CSR 240-31.010(3) a disabled customer is a customer who requests or receives residential essential local telecommunications service and meets the following definition of "disabled" in Section 660.100.2, RSMo 1994.

The term disabled shall mean totally and permanently disabled or blind and receiving federal social security disability benefits, federal supplemental security income benefits, veterans administration benefits, state blind pension pursuant to section 209.010 to 209.160, RSMo, state aid to blind persons pursuant to section 209.240 RSMo, or state supplemental payments pursuant to Section 208.030, RSMo. Section 660.100.2, RSMo 1994.

According to 4 CSR 240-31.010(8) a low-income customer is any customer who requests or receives residential essential local telecommunications service and who has been certified by the Department of Social Services (DSS) as economically disadvantaged by participation in Medicaid, food stamps, Supplementary Security Income (SSI), federal public housing assistance or Section 8, or the Low Income Home Energy Assistance Program (LIHEAP).

Eligible Services

4 CSR 240-31.010(5) defines "essential local telecommunications services" as follows:

Essential local telecommunications services - Two (2) way switched voice residential service within a local calling scope as determined by the commission, comprised of the following services and their recurring charges:

- (a) Single line residential service, including Touch-Tone dialing and any applicable mileage or zone charges;
- (b) Access to local emergency services including, but not limited to, 911 service established by local authorities;
- (c) Access to basic local operator services;
- (d) Access to basic local directory assistance;
- (e) Standard intercept service;
- (f) Equal access to Interexchange Carriers consistent with rules and regulations of the Federal Communications Commission (FCC);
- (g) One (1) standard white pages directory listing; and
- (h) Toll blocking or toll control for qualifying low-income customers.

Funding Assessments

According to 4 CSR 240-31.060 funding for the Missouri Universal Service Fund for low-

income/disabled support will be from an assessment on the net jurisdictional revenues of each telecommunications company and other nondiscriminatory factors as determined by the Commission. The Committee has determined companies with minimal revenues should not pay into the fund. Specifically, any company with net jurisdictional revenues resulting in an assessment of less than \$1,200 per year should not be required to pay into the fund. This recommendation will simplify the collection of Missouri Universal Service Fund assessments without significantly affecting the size of the Missouri Universal Service Fund. Telecommunications companies with net jurisdictional revenues resulting in an assessment of at least \$1,200 per year will be required to pay into the fund. Rule Change #1 incorporates a proposed change in the Commission rules to implement this qualification.

Application for and Receipt of Funds

To receive funds from the Missouri Universal Service Fund, the telecommunications company must file a written application with the Fund Administrator and must comply with the requirements of 4 CSR 240-2.060 (1) (a)-(h) and 4 CSR 240-2.080. Applications for funds required to assist low-income and/or disabled customers in obtaining essential local telecommunications service shall include information that the company meets the terms defined by Section 3 86.020(5 1), RSMO Supp. 1999, and that the applicant provides service to the low-income and/or disabled customers as defined by Commission rule or procedures. As required by 4 CSR 240-31.050, [in] all requests for funds from the Missouri Universal Service Fund for reimbursement of the benefits provided to customers under these programs, the telecommunications company shall identify the number of low-income and disabled customers served in order to receive support from the Missouri USF and shall maintain records of these customers.

LIFELINE PROPOSAL

Major elements of the Lifeline proposal adopted by the Technical Committee are as follows:

Amount of Assistance under the Missouri Universal Service Fund's Low-Income/Disabled Program

Existing Commission rules require setting the amount of state support to maximize federal funding. This requirement establishes state support of \$3.50 per customer per month which would provide an additional \$1.75 in federal funding. However, the Committee recognizes in some circumstances this amount of support might be greater than the customer rates for those services. The Committee therefore recommends a limit be placed on the amount of support so it is not greater than the customer rates. Rule Change #2 incorporates a proposed change in the Commission rules to implement this limit. Currently, Federal Universal Service funding differs between price-cap and non-price-cap incumbent local exchange companies (ILECs) and between competitive local exchange companies (CLECs) which have been designated eligible telecommunications carriers (ETCs) as compared to CLECs who have not received that designation. The table below illustrates the Lifeline support provided to low-income customers after implementation of the state Lifeline proposal under various circumstances. As indicated in the table, no Federal support is available to disabled customers. The Committee proposes that state funding for disabled customers be set at \$3.50 per customer per month:

	Non-Price-cap ILEC**	Price-cap ILEC	Non-ETC CLEC*	ETC*** ILEC
1. SLC	\$3.50	\$4.35	\$0	\$3.50-\$4.45
2. Additional Federal	\$1.75	\$1.75	\$0	\$1.75
3. Federal Currently Available (Line 1 + Line 2)	\$5.25	\$6.10	\$0	\$5.25-\$6.10
Potential Support (with implementation of Missouri Universal Service Fund):				
4. State-Missouri Universal Service Fund	\$3.50	\$3.50	\$3.50	\$3.50
5. Additional Federal	\$1.75	\$1.75	\$0	\$1.75
6. Potential Low-Income Total Support (Line 3 + Line 4 + Line 5)	\$10.50	\$11.35	\$3.50	\$10.50-\$11.35
7. Disabled Customer Total Support (No Federal Support)	\$3.50	\$3.50	\$3.50	\$3.50

Service Provided Upon Customer's Self Certification

The Commission's rules currently contain general requirements for customers to meet in order to qualify for Lifeline or disabled support. The rules, however, do not currently give guidance on how customers will demonstrate that they meet the requirements. The Committee proposes qualification be accomplished by a self-certification process to be included in the rules. Rule Change #3 contains the proposed self-certification rule. The Committee has developed a sample application letter which is enclosed as Attachment # 1 [not included in this Report and Order].

The Committee also recommends customers have a maximum time period to submit an application from the date of service initiation and still receive applicable discounts from the service initiation date. The Committee has determined sixty days is a reasonable time period. On the other hand, any customer submitting an application after sixty days of service initiation will receive discounts only on a prospective or going-forward basis. Rule Change #4 contains a proposed rule regarding this provision.

Audit and Review of Customer Eligibility

The Committee had considerable discussion regarding the potential implications for error that could result from the self-certification rule and how those errors could be minimized. As a result of these discussions, the Committee developed both a proposed rule, and some administrative procedures that could effectively address this issue. The proposed rule contained in Rule Change #5 provides the necessary authority for the Fund Administrator to conduct audits of customer eligibility. The administrative procedures developed by the Committee are contained in Administrative Procedure #1 and reflect the Committee's recommendation of how such procedures should be established by the Fund Administrator.

Disqualification of Customers; Procedure; Notice: Reapplication Requirements

If, as a result of the proposed audit of customer eligibility, the Fund Administrator identifies a

customer may not be eligible for the Lifeline or disability support programs, the Committee recommends a procedure to notify customers and to allow them to verify their eligibility before being terminated from the support program. The administrative procedures to accomplish this disqualification process are reflected in Administrative Procedure #2.

Public Information and Outreach

If these telecommunications assistance programs are to accomplish the legislative goals, the customers who are eligible for the programs must be made aware that the programs exist and how to apply for the benefits. ETCs that receive federal funding for Lifeline and Link-up are required to advertise the availability of such services and the charges using media of general distribution. Since these materials may be company specific and targeted to the company's customers and service area, there is a need to develop and make generally available throughout Missouri information about the Missouri Lifeline and Link-up programs. The Committee recommends a rule change be implemented to require telephone companies to provide a prominent description of the availability of Lifeline and Link-up service as part of the statement of rights and responsibilities required under 4 CSR 240-33.060(3). Rule Change #6 contains the proposed rule. Attachment #2 [not included in this Report and Order] provides a sample of the information the Committee feels meets this requirement of prominent notification of the availability of Lifeline and Link-up services.

Developing and implementing a generic public information program designed to reach all Missouri residents should be a cooperative effort by the telecommunications companies with the assistance of the Fund Administrator, the Commission, Office of the Public Counsel (OPC), the Missouri Department of Social Services (DSS) and community based action agencies. The information plan should include a variety of information and media. Responsibilities for these efforts are proposed as follows:

1. The telecommunications industry, Commission Staff, OPC, and DSS should cooperatively develop informational materials for statewide distribution. These materials should include:
 - a. A generic brochure describing the general availability and qualifications for Lifeline and Link-up service. This brochure would be made available to various state, county, local, and non-profit agencies that serve and support those individuals who could be eligible for the programs so these agencies can provide this information at the same time as they are in contact with clients regarding their services. The brochure could also be provided in DSS "welcome packages".
 - b. Non-company specific radio and television Public Service Announcements. OPC will work with the Department of Economic Development to produce and distribute these materials to reach a wide spectrum of Missouri residents.
 - c. Funding for the production of brochures should be reimbursed from the fund, once it is established.
 - d. Attachment #3 [not included in this Report and Order] contains sample informational materials.
2. OPC and the Commission will be responsible for publicizing the establishment of the Missouri Universal Service Fund. Initially it is vital to cast the information and public relations net wide to reach as many qualified customers as possible. It would be effective to "kick-off" the commencement of the program with a news event involving high-ranking state officials, legislators, and social service agencies.
3. The Fund Administrator will, on an annual basis, do a targeted mailing including information about and an application for Lifeline and Link-up service to the list of eligible households. To the extent practical, the list will exclude current Lifeline subscribers.

INITIAL ACTION ITEMS

Missouri Public Service Commission

1. Order resolving the issues related to assessments and method of recovery.
2. Order establishing low-income and disabled funding amounts (\$3.50).
3. Complete rulemaking to adopt proposed rule changes and additions.
4. Approval of company tariffs implementing Lifeline rate changes.

Missouri Universal Service Fund Board

1. Establish the following administrative procedures for a Fund Administrator:
 - a.) Administrative Procedure# 1 (audits of self-certification)
 - b.) Administrative Procedure #2 (disqualification of customers)
2. Retain independent neutral fund administrator.
 - a.) Issue Request for Proposal
 - b.) Select a Fund Administrator
3. Establish initial assessment amount.

Fund Administrator

1. Gather data for initial estimate of assessment amount. (See Administrative Procedure #3)
2. Establish administrative procedures for accepting applications from companies.
3. Establish general administrative procedures for fund receipt and disbursement.
4. Establish procedures for data exchange for eligibility verification.

Telephone Companies

1. Apply for Missouri Universal Service Fund eligibility.
2. Develop and file tariffs to implement changes to Lifeline service. (See Attachment #4 [not included in this Report and Order] for sample tariff)
3. Develop and file tariffs to implement USF surcharge, if the Commission approves and a company implements recovery of its USF assessment directly from its customers.
4. Internal training of customer contact people as needed.

Other

1. Complete development of outreach materials and get them published.

PROPOSED RULE CHANGES

Rule Change #1 - Modify 4 CSR 240-31.060(5)(B) and 4 CSR 240-31.060(6)(A) as follows:

(B) The Fund Administrator shall submit to the board its determination of the funding requirements, along with its determination of the revenues upon which the assessment shall be made, and the percentage assessment to be made upon the appropriate revenues of each telecommunications company. The percentage assessment will be calculated to exclude the assessment for any company with a resulting assessment of less than \$100 per month or \$1,200 per year.

(A) Notices of assessment shall be sent by the Fund Administrator to every telecommunications company with a minimum assessment of \$100 per month. Such notices will inform the company of the assessment and the payment to be made.

Rule Change #2 - Modify 4 CSR 240.31.050(4) as follows:

(4) Determining Participation for Essential Telecommunications Service: The amount of support provided by the Missouri Universal Service Fund for services to low-income customers and disabled customers will be set at the level necessary pursuant to federal universal service fund rules to gain the maximum federal universal service funding for services for such customers. However, the amount of combined federal and state lifeline support for any customer will not exceed the sum of the federal Subscriber Line Charge (SLC) and the recurring charges for essential local telecommunications services (including the basic service rate, touch calling charge, extended area service additive, and mileage additives, if any).

Rule Change #3 - Add 4 CSR 240.31.050(3)(D) as follows:

(D) Customers who qualify for low-income or disabled support shall certify in writing on an application designed for that purpose that they are eligible for the programs. Such application shall require the applicant to certify under penalty of perjury that the consumer receives benefits from one of the qualifying programs and identify the program or programs from which that consumer receives benefits. On the same document, a qualifying low-income or disabled consumer also must agree to notify the carrier if that consumer ceases to participate in the program or programs. The companies shall rely upon this certification to provide the benefits under these programs until the customer advises the company that they are no longer qualified or until the company is advised by the Administrator that the customer may not be eligible.

Rule Change #4 - Add 4 CSR 240-31.050 (3)(E) as follows:

(E) Any eligible customer submitting an application within sixty days of initiating service will be entitled to the applicable low-income or disabled discounts from the date of service initiation. If applicable, the company may provide either a refund or credit, as determined by the company. Any eligible customer submitting an application after sixty days of initiating service will begin receiving the appropriate discounts on a prospective basis.

Rule Change #5 - Add 4 CSR 240.31.050(3)(F) as follows:

(F) The Fund Administrator shall be authorized by the Board to conduct audits of individual self-certification using records that can be lawfully made available from the administrators of qualifying programs. If as a result of these audits, the Administrator determines that a recipient may not be eligible for low-income or disabled support, the customer shall be required to verify his eligibility for continuing to receive support pursuant to administrative procedures established by the Fund Administrator and approved by the Board.

Rule Change #6 - Add 4 CSR 240.33.060(3)(J) as follows:

(J) Where provided, a prominent description of Lifeline and Link-up services.

PROPOSED ADMINISTRATIVE PROCEDURES

Administrative Procedure #1 – Audits of self-certification

The Fund Administrator shall cooperate with the Missouri Department of Social Services (DSS) to establish a data file containing information on individuals receiving low-income assistance through a qualifying program administered through DSS and procedures for an annual review of the eligibility of the low-income customers receiving benefits under this program. This review shall include audits of a company's customers receiving assistance compared to those persons receiving assistance under DSS administered programs. The Administrator will determine, with approval of the USF Board, the frequency and extent of these audits. Upon request of the Administrator, a company shall provide the Administrator with information necessary to conduct the audit. Upon completion of the audit the Administrator will advise the appropriate participating telecommunications carrier that a customer may not qualify for support. The participating telecommunication company may rely upon a customer's initial self-certification, the audit, and the following disqualification process in making its request for

Missouri Universal Service Fund funds.

In the absence of an audit of all participating low-income/Lifeline customers, a participating company may annually, at its discretion, submit a list of its entire Lifeline customer data base to the Administrator for verification with the data provided by DSS. The Administrator shall complete the verification and notify the company of customers who appear from the verification to be ineligible for Lifeline service.

Any adjustments to customer billing and/or company funding levels resulting from these audit/verification procedures will be made on a prospective basis only.

The Fund Administrator shall have access to information and records pertaining to the low-income and disabled customers necessary to audit a company's funding request and to re-verify eligibility through the audit comparison with information provided by the DSS.

Administrative Procedure #2 - Disqualification of Customers

A customer is not required to provide evidence of continued eligibility under these programs to any telecommunications company unless the Administrator has advised the company that the customer may not be eligible. If a customer is receiving benefits and the Administrator notifies the company that the customer may not be eligible for the programs, the company shall send notification to the customer within thirty (30) days of receiving information from the Administrator. In this notice the company will notify customers in writing that unless the customer provides documentation to support its continued receipt of benefits under the program within 35 days, the assistance will be terminated. The termination date will be determined by the telephone company and may be consistent with the normal billing cycle of the telephone company. Attachment #5 [not included in this Report and Order] is an illustrative example of such a notification letter. No additional customer notice is required before termination of benefits. Customers will not be asked by their telephone company to verify their eligibility more frequently than once per year.

If a customer is terminated from the program by the company or advises the company that the customer is voluntarily leaving the program since the customer no longer qualifies, that customer must reapply for the program. A customer reapplying for the program who has been non-voluntarily terminated from the program or who has voluntarily terminated from the program after receiving a notice of termination requiring verification of eligibility within the previous three years may be required to provide verification of eligibility.

Administrative Procedure #3 - Fund Sizing

The Fund Administrator shall utilize carrier subscription information and the information provided by the DSS to estimate the initial number of eligible low-income and disabled customers in Missouri for purposes of-

- (1) sizing the fund;
- (2) calculating the initial assessment rate necessary to cover the estimated fund; and
- (3) maintaining the on-going requirements of the fund.

RULE CHANGES

The low-income/disabled fund proposed by the parties and adopted by the Commission identifies six necessary rule changes. The Commission will, in separate orders, find that each of these rule changes is necessary.

FINDINGS OF FACT: SURCHARGE

While there is no disagreement among the parties on the need for and structure of a low-income/disabled fund, there is some dissension on the question of how telecommunication carriers should recover their assessments from customers. Under the low-income/disabled fund established herein, the assessment on carriers would be approximately 0.27% (0.0027) of net jurisdictional revenue, excluding any fund administration costs. Based upon these findings of fact and the following conclusions of law, the Commission determines that eligible carriers shall recover their assessments from the Missouri Universal Service Fund through an explicit surcharge on bills to end users.

In its determination of which method of recovery (bundled in rates or a surcharge) is appropriate, the Commission will examine two areas: whether the assessment is a normal cost of doing business or common cost; and which method will cause the least market distortion.

Unlike other costs of doing business, the Universal Service Fund assessment will remain constant despite a provider's efficiencies or productivity. A carrier can neither economize on its assessment, nor alter its technology to minimize its assessment. There is nothing a carrier can do that would raise or lower its assessment. It is, therefore, significantly different than normal costs of doing business, which are under the carrier's control to a much greater extent. Further, the assessment is not a common cost. A fundamental characteristic of common cost is the ability to spread the cost among all services. For price-cap companies, this cannot be done since no part of the assessment can be allocated to basic residential services^[2]. Therefore, for price-cap companies at least, the assessment is not a common cost.

If the Commission did not allow a surcharge, market distortions would result and implicit subsidies would be created. In the absence of such a surcharge, a multitude of advantages,

disadvantages and preferences would be created. Three different types of companies (rate-of-return regulated, price-cap, and competitive) would all be treated differently.

First, under traditional rate-of-return regulation, non-price-cap companies will be able to recover all of their assessments as a prudent (in fact, mandatory) expenditure. Second, price-cap companies are allowed by statute to recover half of their assessment from any rates other than basic local residential service.^[3] Price-cap companies could recover this half of their assessment from the services they offer that are least competitive (such as switched access). Missouri statutes allow price-cap companies to request reimbursement of the other half from the Missouri Universal Service Fund. If a price-cap company does not get reimbursement from the Missouri Universal Service Fund, it may be unable to pass the cost onto consumers.

Third, competitive companies can theoretically place all of their assessment in any rate except switched access rates. But as a practical matter, a competitive company will be influenced by the need to attract customers and may not be able to pass through its assessment. It is common for a competitive company to price below incremental cost in an effort to expand the existing customer base for a single product or a bundle of products. Thus, competitive companies may be unable to pass their assessment onto the customers.

Because of these differences, any funding mechanism that is not based on a surcharge will necessarily create competitive advantages and disadvantages for different companies. Accordingly the Commission will mandate an explicit end-user surcharge.

The Commission next turns to the question of whether the surcharge will be billed as a uniform percentage or on a per-line basis, and concludes that it will be based on a uniform percentage amount.

Allowing carriers to pick and choose between a percentage basis and a per-line basis would raise a number of problems. First, it could lead to customer confusion regarding the surcharge. Second, the option of a per-line surcharge could also decrease the competitive neutrality of such a surcharge. Third, a per-line surcharge may appear inequitable if single-line residential customers must pay the same amount per line as large business users with high volumes of toll services. Finally, a per-line surcharge would probably require a different system of recovery to be used for local exchange carriers who could administer a per-line charge and interexchange carriers who could not. Thus, a percentage-based surcharge would be easier to administer and would ensure all companies apply the surcharge in the same manner. If the surcharge were based on a per-line basis, it would be more difficult to determine whether the surcharge was being collected correctly or whether costs were being improperly shifted from one consumer group to another.

Consistent with the Commission's promulgated rules,^[4] the surcharge will be based on revenues from the preceding year with the resulting percentage assessment applied to current revenues. The rules specify that assessments are to be based on "net jurisdictional revenues from the preceding calendar year or for some shorter time period as may be

determined by the Commission.”^[5] Using the preceding calendar year’s revenue is more objective than using current revenues, because it uses a known amount. If current revenues were to be used, projections would be required, and projections are inherently less accurate and more easily manipulated than actual historic data. Furthermore, it will be administratively more simple to use the preceding year’s revenues than current revenues.

Just as requiring all carriers to recover their assessments through a surcharge will ensure consistency among carriers, so too will requiring that all carriers consistently describe the surcharge on customers’ bills. The Commission concludes that all companies should be consistent in describing the surcharge as the “Missouri Universal Service Fund.”

Because there are rule changes needed, and because there are administrative matters that the Missouri Universal Service Fund Board needs to address, the

Commission will establish in a later order the dates on which assessments are to begin, and on which carriers may begin adding the surcharge to customers' bills.

CONCLUSIONS OF LAW: SURCHARGE

In establishing the funding mechanism for the Missouri Universal Service Fund, the Commission is guided by two principles: that it not be inconsistent with federal statutes, administrative rules, or court decisions concerning provision of essential local telecommunications service^[6]; and that it must be funded in a manner that does not grant a preference or competitive advantage, or cause prejudice or disadvantage, to any telecommunications company^[7].

With respect to the first principle, the United States Fifth District Court of Appeals has held that, for the federal Universal Service Fund, an explicit surcharge is the only permissible method of recovery:

We hold that permitting this method of cost recovery [i.e., recovery through access charges] countermands Congress's clear legislative directive, as we articulated in [earlier cases]....^[8]

In response to this decision, the FCC rendered a Fifteenth Report and Order regarding Universal Service,^[9] and addressed the mandate from the Fifth Circuit Court of Appeals:

Consistent with the *Interstate Access Support Order*, we amend the Commission's rules to require that all incumbent LECs, including rate-of-return carriers, recover universal service contributions only through end user charges.

Pursuant to §254(f) of the Act, this Commission is prohibited from adopting regulations inconsistent with the FCC's rules to preserve and advance universal service. Section 254 is not solely directed to the FCC. In interpreting this section, and specifically the portion relating to support mechanisms, the FCC stated:

[R]ecognizing the vulnerability of implicit support to competition, Congress directed the Commission and the states to take the necessary steps to create universal service mechanisms that would be sustainable in a competitive environment. To achieve this end, Congress directed that universal service support "should be explicit and sufficient to achieve the purposes of [section 254]

[10]
....

Adopting a mechanism for recovery other than an explicit surcharge on end user billings would be inconsistent with the Fifth Circuit's decisions, the Telecommunications Act of 1996, and the FCC's rules.

The second principle, again, is that funding the Missouri Universal Service Fund must be done in a manner that is competitively neutral. Section 392.248.2, RSMo 2000, states that:

The Commission shall adopt and enforce rules to be implemented by the universal service board, governing the system of funding and disbursing funds from the universal service fund in a manner that does not grant a preference or competitive advantage to any telecommunications company or subject a telecommunications company to prejudice or disadvantage.

If the Commission did not allow a surcharge, market distortions would result and implicit subsidies would be created. The only manner in which the Commission can comply with this statute is to establish an end-user surcharge. In the absence of such a surcharge, a multitude of advantages, disadvantages and preferences are created.

Because the assessment is not a cost of doing business and cannot be treated as a common cost, allowing carriers to recover their assessments in their rates will result in market distortions. Customers will not base their decisions to purchase an optional service on the actual cost of that service, but rather on the cost of that service plus the portion of the Missouri

Universal Service Fund assessment that that provider has added to the rate for that service. This is, by definition, a distortion of the market. A mandatory Missouri Universal Service Fund surcharge will be competitively neutral since all carriers would apply the same Missouri Universal Service Fund assessment rate in the same manner.

The application of a mandatory surcharge will also prevent the problems that could arise if the price-cap companies seek to recover part of their assessments from the fund itself. Section 392.248.3 states that a price-cap company may raise rates (except residential basic local telecommunications) to recover half of its Missouri Universal Service Fund assessment and “seek to have the remaining fifty percent of its assessment under this section included in its funding requirements under this section.” As discussed in the findings-of-fact section, it is possible that a price-cap company could raise its rates to recover half of its Missouri Universal Service Fund assessment and seek to draw the other half from the fund. As a result, Missouri’s competitive local exchange companies, interexchange carriers, and other non-price-cap companies could end up paying all of their own assessment plus half of the price-cap companies’ assessment. Implementation of a mandatory surcharge will avoid this unfair result. With a mandatory surcharge, the price-cap companies will receive full recovery of the Missouri Universal Service Fund assessment, thus eliminating the possibility that they may seek recovery for part of their assessment from the fund itself.

CONCLUSIONS OF LAW: LOW-INCOME/DISABLED FUND

The low-income/disabled fund proposal of the parties as adopted by the Commission is consistent with the Missouri Universal Service Fund statute^[11] and with the Commission’s Missouri Universal Service Fund rules.^[12] Specifically, funds for the Missouri Universal Service Fund can be used to assist low-income customers and disabled customers in obtaining affordable essential local services,^[13] and funds from the Missouri Universal Service Fund can be used to pay reasonable, audited costs of administering the Missouri Universal Service Fund.^[14]

IT IS THEREFORE ORDERED:

1. That a Missouri Universal Service Fund is established to provide assistance to low-income customers and disabled customers as described herein.
2. That the Commission will establish in a later order the dates on which assessments are to be made, and on which carriers may begin adding the surcharge to customers' bills.
3. That this order shall become effective on March 31, 2002.

BY THE COMMISSION

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Simmons, Ch., concurs, concurrence to follow;
Murray, Lumpe and Forbis, CC., concur;
Gaw, C., dissents, dissent to follow;
certify compliance with the provisions of
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 21st day of March, 2002.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation into Various)
Issues Related to the Missouri Universal) **Case No. TO-98-329**
Service Fund.)
)

CONCURRING OPINION OF CHAIRMAN KELVIN L. SIMMONS

I agree with the decision of the majority to proceed with the implementation of the Missouri State Universal Service Fund as set forth by the Missouri General Assembly in Senate Bill 507. This fund will assist low income and disabled Missourians to receive basic telephone service and I agree the fund is needed in Missouri. I believe the majority reaches the right decision based on the intent of the legislature and is carrying out our statutory obligation. Although I concur with the decision of the majority I do have some reservations, which, while a concern, do not reach the level that, would cause me to dissent.

I am concerned that the statute that governs the collection of the surcharge (Section 392.248.3, RSMo 2000) may be somewhat ambiguous as to whether or not price cap companies should be assessed and not their customers. Here lies some confusion; the statute provides that a price cap company may raise any rate, except the rate for residential basic local telecommunications service, to recover half of its Missouri Universal Service Fund assessment. Raising the rate for basic local service to recover a portion of the fund assessment would create an implicit subsidy. It is not clear whether the legislature meant to preclude recovery from residential customers in any fashion, or whether it simply meant to preclude the creation of another implicit subsidy. The decision of the majority clearly does not run afoul of the plain wording of the statute because it does not allow a price cap company to raise basic local rates to recover its assessment. I do not know whether it runs afoul of the intent of the legislature because it allows recovery from residential basic local customers.

Secondly, I too am concerned about the Commission's decision as it relates to the high cost fund. I believe that the Commission will address this issue in future proceedings but for the purpose of today's decision we have not tackled the subject in this order.

I respectfully concur.

Respectfully submitted,

Kelvin L. Simmons, Chairman

Dated at Jefferson City, Missouri,
on this 22nd day of March, 2002.

on the company not the consumer. Furthermore, it specifically prohibits the cost being assessed to the residential consumer. The order of the Commission today is directly contrary to this stated and implied intent. While arguments certainly exist from a policy standpoint both in favor of and against the majority decision, this Commission should not ignore the statutory language on this subject in rendering its decision.

There may be confusion resulting from this decision about the oversight and collection of the fund. The order leaves questions to be answered about the calculation of the assessment on the consumer. It is unclear how this calculation is to be made – whether the percentage will vary from company to company and what if any amounts for administration costs might be kept by telecommunications companies. Additionally, there appears to be dual jurisdiction stated in the proposal quoted in the decision between the Commission and the fund administrator in complaints about the fund. This should be addressed either in the decision or in a subsequent order or rule.

The Commission's decision also does not deal with the issues tried before the Commission regarding the high cost fund. Much testimony was presented regarding this portion of the fund. It is my understanding that the Commission will further examine the need and the possible uses of the high cost fund in this state in a continuation of this case. The parties do not argue that rates for basic local service in Missouri were unreasonable. Furthermore, there is little if any evidence to show that prices for basic local service in Missouri are higher in rural areas than in urban and suburban regions today. There is an assumption that higher than average access rates among the small rural ILEC's help prevent significant increases in the local basic rates of customers of these rural telco's which might otherwise occur because of higher costs affiliated in servicing populations with low density. However, if this Commission acts to reduce such access rates in the future, the policy established by the Legislature of having just, reasonable and affordable local basic rates throughout the state may not be possible without the implementation of the high cost portion of the universal service fund.

Since the Commission currently has a case investigating access rates it is important that the Commission continue to work on this portion of the fund in the event the fund is needed to carry out the intention of the Missouri General Assembly.

Substantial evidence was presented regarding the disparity between essential local

telecommunications services in rural Missouri and metropolitan areas. Particularly disturbing is the great difference in calling scopes between rural regions and metropolitan regions, especially the differences in the number of individuals, businesses and essential services accessible without a toll call. The Legislature made it clear that this Commission was responsible to ensure just, reasonable, and affordable rates for reasonably comparable essential local telecommunications services throughout the state. In fact, the Legislature said it more than once. It is my hope that further proceedings regarding the universal service fund will provide an opportunity to provide more equitable access to comparable local basic telecommunications services in Missouri. I look forward to hearing more from the parties on this subject.

Respectfully Submitted,

Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 21st day of March, 2002.

[1] 4 CSR 240-31.010 (8). Unless otherwise noted, all statutory citations are to RSMo 2000.

[2] Sections 392.245.4 and 392.248.3

[3] Section 392.248.3

[4] 4 CSR 240-31.060(3)

[5] Id.

[6] Section 392.248.11, RSMo 2000

[7] Section 392.248.2, RSMo 2000

⁸ Comsat Corp. v. F.C.C., 250 F.3d 931, at 939 (5th Cir. 2001).

[9] In the matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price-cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers subject to Rate-of Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No, 00-256; CC Docket No 96-45; CC Docket No. 98-77; CC Docket No. 98-166 respectively, released November 8, 2001.

[10] Id., at 123

[\[11\]](#) Sec. 392.248

[\[12\]](#) 4 CSR 240-31, as will be amended with the rule changes identified herein.

[\[13\]](#) Sec. 392.248.2.2

¹⁴ Sec. 392.248.2.3