

RULE TRANSMITTAL (PAGE 1)

MATT BLUNT

**Secretary of State
Administrative Rules Division
RULE TRANSMITTAL**

*Administrative Rules Stamp

COPY

A "SEPARATE" rule transmittal sheet **MUST** be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-3.565
Diskette File Name Final Order of Rulemaking 4 CSR 240-3.565
Name of person to call with questions about this rule:
Content Bob Berlin Phone 573-526-7779 FAX 573-751-9285
Data entry Lesli Belt Phone 573-751-7499 FAX Same as above
Email address bob.berlin@psc.mo.gov
Interagency mailing address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO
Statutory Authority 386.250 Current RSMo date 2000
Date filed with the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority with history of the rule |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages ____ | <input type="checkbox"/> Private cost |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing and comment period |

C. RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST include effective date
- ☐ Proposed Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission
- ☒ Order of Rulemaking (check one) ☒ rule ☐ amendment ☐ rescission ☐ termination
MUST complete page 2 of this transmittal
- ☐ Withdrawal (check one) ☐ rule ☐ amendment ☐ rescission ☐ emergency
- ☐ Rule action notice
- ☐ In addition
- ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).

JCAR Stamp

NOTE: ALL changes **MUST** be specified here in order for those changes to be published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-3.565

1a. Effective Date for the Order

☒ Statutory 30 days

Specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?

☒ YES

☐ NO

1c. If the answer is YES, please complete section F. If the answer is NO, **STOP** here.

F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.

~~(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer text. DO NOT delete the header, however.)~~

In subsection (1) the Commission added a specific deadline for filing of bankruptcy information to the Commission by adding “, *within ten (10) working days of filing bankruptcy* , ”. To clarify and simplify applicability, the Commission added the sentences at the end of subsection (1): “*If Missouri certificated telecommunications companies have certificated affiliates that file bankruptcy, only one of the Missouri certificated telecommunications companies need provide to the Commission the items in Section (1)(A)-(E). The responsibility of providing the information in Section (1)(A)-(E) will fall to the carrier first certificated in Missouri. The certificated company providing these items shall also provide the name(s) of its other Missouri certificated affiliate(s).*”

In subsection (2) the Commission added a specific deadline of 10 days for companies that are receiving transferred customers as a result of bankruptcy court order. The 10 day deadline requires companies to file either an application for service authority or an application for approval to transfer assets. A clarifying sentence describing the 10 day deadline was added: “*An application for service authority or application for approval to transfer assets may be filed before, but shall be filed no more than ten (10) working days after the effective date of, the bankruptcy court’s order approving the transfer of the customers.*”

In subsection (3) the Commission added a 75 day deadline for filing of information to the Commission as to the planned disposition of telecommunications facilities of companies that file for bankruptcy protection. The following clarifying deadline language was added: “, *within seventy-five (75) days after filing bankruptcy* , ”.

In subsection (3) subparagraph (D) the Commission added language clarifying the information that is required by the Commission of bankruptcy-filers concerning the disposition of their facilities: “A statement informing *the commission* of the date when the telecommunications facilities *have been or will be disconnected and removed from the premises of the other telecommunications company and disposed of properly* . ” Delete “...will be properly disposed.”



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

JEFF DAVIS

LINWARD "LIN" APPLING

Missouri Public Service Commission

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WESS A. HENDERSON
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ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

August 31, 2004

Matt Blunt
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt,

RE: 4 CSR 240-3.565 – Procedure for Telecommunications Companies that File Bankruptcy

CERTIFICATION OF ADMINISTRATIVE RULE

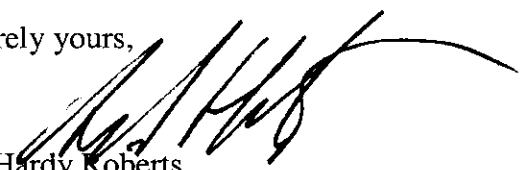
I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission on this 31st day of August 2004.

Statutory Authority: section 386.250.

If there are any questions regarding the content of this order of rulemaking, please contact:

Bob Berlin
200 Madison
Jefferson City, MO 65102
Phone (573) 526-7779
Email: bob.berlin@psc.mo.gov

Sincerely yours,


Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3 – Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Section 386.250, RSMo. 2000, the Public Service Commission adopts a rule as follows:

4 CSR 240-3.565 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 3, 2004 (29 MoReg 730). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended June 2, 2004, and the commission held a public hearing on this proposed rule on June 4, 2004. Natelle Dietrich on behalf of the commission's staff filed comments and testified at the public hearing in support of the proposed rule. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri (SBC), filed written comments and testified on the proposed rule. Michael Dandino of the Office of the Public Counsel testified at the public hearing generally in support of the proposed rule.

COMMENT: Mimi MacDonald, in SBC's written comments, questioned the requirement that a telecommunications company report on the bankruptcy of an affiliate. SBC stated that if the affiliate is a telecommunications provider in Missouri, the proposed rule requires the affiliate to provide notice. SBC went on to state that if the affiliate is not a telecommunications provider in Missouri, there is no need to advise the commission of the bankruptcy, unless it is the parent company of a competitive local exchange carrier that files for bankruptcy. At the public hearing, there were many commission questions concerning the definition of "affiliate". SBC proposed alternative language changing "affiliate" to "parent" or "parent of its parent". SBC expresses concern that the commission would be "inundated" with paperwork depending upon the definition.

RESPONSE AND EXPLANATION OF CHANGE: Since the proposed rule only requires companies to provide to the commission: a notice that the company or an affiliate has filed bankruptcy; the bankruptcy case number, the bankruptcy filing date; the bankruptcy chapter number; and the bankruptcy court, the commission does not find this information burdensome or requiring large amounts of paperwork to be provided to the commission. However, the proposed rule will be further clarified so that only one certificated telecommunications company affiliate need provide the information.

COMMENT: Mimi MacDonald of SBC, in SBC's written comments, suggested Section (1) of the proposed rule be modified to require a telecommunications company that files bankruptcy to "immediately" notify the commission.

RESPONSE AND EXPLANATION OF CHANGE: The commission considered this comment and agrees that the proposed rule should be clarified to include a timeframe for

providing notice to the commission of bankruptcy filings. The timeframe will ensure the commission has timely notification of actions impacting the telecommunications landscape of Missouri.

COMMENT: Mimi MacDonald of SBC, in SBC's written comments, raised concerns that Section (2) of the rule as proposed could result in customers not receiving telecommunications services for a period of time. SBC suggested the proposed rule be amended to require telecommunications companies to file an application for service authority or transfer of assets within forty-five (45) days after the bankruptcy court enters the order approving the transfer of assets. At the public hearing, Natelle Dietrich, on behalf of the commission's staff, stated that the application process tends to happen much more quickly and suggested the proposed rule be modified to allow no more than ten (10) days after the effective date of the bankruptcy court's order for filing the application. At the public hearing, Ms. MacDonald for SBC responded that bankruptcy orders typically become effective in eleven (11) days. She further commented that companies having to make filings in fifty (50) states may need more time; thus, the recommendation for forty-five (45) days.

RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed the comments and finds that a more limited time for companies to file service authority or transfer of asset applications is in the public interest to ensure customers receive continuous, uninterrupted service. The proposed rule will be modified as proposed by staff and will ultimately allow a company at least twenty-one (21) days to file the application.

COMMENT: Mimi MacDonald of SBC, in SBC's written comments, raised concerns that Section (3) of the rule as proposed does not specify when the telecommunications company filing bankruptcy has to provide the information required by this subsection to the commission. SBC suggested the proposed rule be amended to require the telecommunications company filing bankruptcy to provide the information required in this subsection within seventy-five (75) days of the filing of the petition for bankruptcy relief. At the public hearing, Natelle Dietrich, on behalf of the commission's staff, stated that staff does not object to this suggestion.

RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed the comments and finds that it is appropriate to modify this subsection to include a timeframe for filing the required information. By placing a timeframe on the filing requirements, the commission will receive timely notice of the planned disposition of facilities located on the premises of another telecommunications company. This requirement will also provide timely notice to the telecommunications company, on whose premises the company filing bankruptcy has facilities, as to the disposition of that property.

COMMENT: Mimi MacDonald of SBC, in SBC's written comments, raised concerns that Subsection (D) of Section (3) of the proposed rule fails to ensure that the debtor's personal property will be removed by the debtor and at the debtor's expense. SBC proposed language to require the telecommunications company filing bankruptcy to disconnect and remove its personal property from the premises and dispose of such

personal property properly. At the public hearing, Natelle Dietrich, on behalf of the commission's staff, stated that staff does not object to this suggestion.

RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed the comments and finds that it is appropriate to modify this subsection to include a requirement that the telecommunications company filing bankruptcy be responsible for the removal and disposition of its own property. By adding this requirement, the company that owns the equipment will bear the cost and burden of removing and disposing of its property.

4 CSR 240-3.565 Procedure for Telecommunications Companies that File Bankruptcy

(1) Any telecommunications company certificated in Missouri that files bankruptcy or has an affiliate that files bankruptcy shall, within ten (10) working days of filing bankruptcy, provide to the commission:

- (A) A notice that the company or an affiliate has filed bankruptcy;
- (B) The bankruptcy case number;
- (C) The bankruptcy filing date;
- (D) The bankruptcy chapter number; and,
- (E) The bankruptcy court.

If Missouri certificated telecommunications companies have certificated or non-certificated affiliates that file bankruptcy, only one of the Missouri certificated telecommunications companies need provide to the commission the items in Section (1)(A)-(E). The responsibility of providing the information in Section (1)(A)-(E) will fall to the carrier first certificated in Missouri. The certificated company providing these items shall also provide the name(s) of its other Missouri certificated affiliate(s).

(2) If the bankruptcy court approves the transfer of customers to another telecommunications company, a copy of the bankruptcy order shall be provided to the commission with the application for service authority or application for approval to transfer assets. An application for service authority or application for approval to transfer assets may be filed before, but shall be filed no more than ten (10) working days after the effective date of, the bankruptcy court's order approving the transfer of the customers.

(3) If the telecommunications company filing bankruptcy has telecommunications facilities that are located at the premises of another telecommunications company, the company filing bankruptcy shall, within seventy-five (75) days after filing bankruptcy, provide to the commission:

- (A) A statement identifying the telecommunications facilities and their locations;
- (B) A statement identifying the entities with an interest in the telecommunications facilities;
- (C) A statement describing the disposition of the telecommunications facilities and the entity conducting the disposition of the facilities;

(D) A statement informing the commission of the date when the telecommunications facilities have been or will be disconnected and removed from the premises of the other telecommunications company and disposed of properly.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: August 31, 2004

RE: Authorization to File Final Orders of Rulemaking with the Office of the Secretary of State

CASE NO: TX-2003-0389

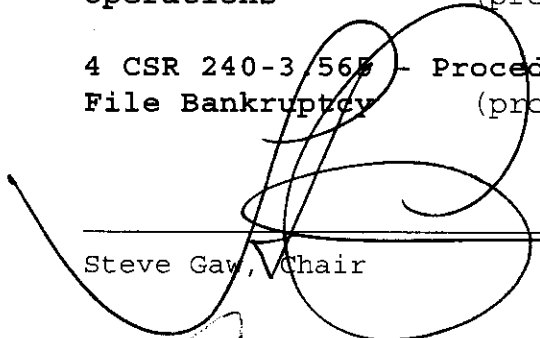
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file with the Office of the Secretary of State, to wit:

4 CSR 240-3.530 - Filing Requirements for Telecommunications Company Applications for Authority to Issue Stock, Bonds, Notes and Other Evidences of Indebtedness (proposed amendment)

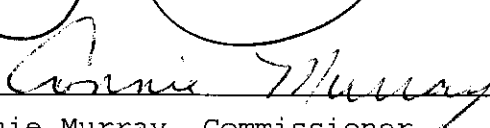
4 CSR 240-3.535 - Filing Requirements for Telecommunications Company Applications for Authority to Acquire the Stock of a Public Utility (proposed amendment withdrawal)

4 CSR 240-3.560 - Telecommunications Procedure for Ceasing Operations (proposed new rule)

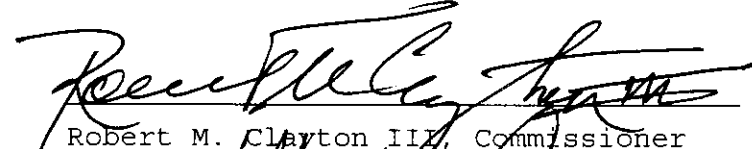
4 CSR 240-3.565 - Procedure for Telecommunications Companies that File Bankruptcy (proposed new rule)



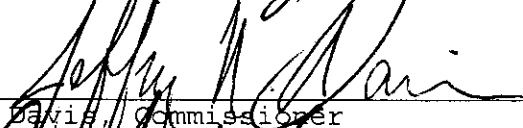
Steve Gaw, Chair




Connie Murray, Commissioner



Robert M. Clayton III, Commissioner



Jeff Davis, Commissioner



Lin Appling, Commissioner