



Missouri Telecommunications Industry Association

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RICHARD TELTHORST, CAE
President

Missouri Public
Service Commission

November 2, 2009

Steven C. Reed, Secretary
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102

RE: Case No. GW-2010-0120

**In the Matter of a Repository File for
Materials Relating to the Underground
Facility Damage Prevention Project**

Dear Secretary Reed:

On behalf of the member companies¹ of our association, I am writing regarding our initial comments to the Commission's proposed revisions to Chapter 319, RSMo that would grant the Commission authority over contractors and utilities that are responsible for damage to underground facilities. In general, the proposal as now drafted appears to be overreaching in many respects, duplicative of existing processes, and unnecessarily burdensome to regulated utilities. I have outlined our primary concerns with various provisions of the proposed legislation below.

As noted at the October 21 roundtable, revised section 319.040.2, RSMo, establishes a presumption of negligence for the "failure of any underground facility owner **to respond** to a notice of intent to excavate" under the provisions governing Missouri One Call. This provision is vague and would allow this negative presumption without establishing exactly what a "failure to respond" might be. Establishing a presumption of liability under such vague terms where mere accusations might amount to proof of liability is unacceptable.

Proposed section 319.055, RSMo establishes requirements for additional reporting to the Commission, both annually and in "real-time". Reporting requirements add very real costs to utility operations. The requirement to collect and maintain data and then conform them to a report format that the Commission dictates takes significant employee time – time that would be better spent performing far more necessary functions.

As you know, the telecommunications industry has been relieved of routine reporting requirements by the legislature and it seems contrary to that directive to impose new

obligations under this legislation without a clear demonstration of need. Further, the proposed change sets a date of February 28 for the annual reporting requirement instead of including it as part of the April annual report. There is no logical reason to require separate reporting dates. Finally, the proposed requirement to mandate "real-time" reporting is clearly duplicative of the Commission's requirements for real-time outage reporting, again adding unnecessary compliance costs.

Proposed section 319.060, RSMo establishes performance measures and quality assurance programs for contractors that provide locating services to utilities. As mentioned at the October 21 roundtable, utilities have every reason to ensure that contractors performing location services are as accurate and reliable as possible and it is clearly unnecessary to add regulatory oversight to our private contracting activities.

Proposed section 319.065, RSMo establishes a "review board" that would provide advice and recommendations to the Commission on various issues concerning damage to underground facilities. In our opinion, this new review board is completely unnecessary and duplicative of other existing public and private sector resources. Under the proposal, the PSC would have ultimate decision-making authority and has staff and attorneys that are capable of providing any necessary advice and recommendations.

Further, if staff and Commission attorneys could not handle the assigned duties of this review board, there is no reason not to utilize the expertise of the staff and board of the Missouri One Call System. A new review board would simply add unnecessary costs to regulation; costs that are generally left to utilities to pay. Finally, the "duties" of this review board are only vaguely spelled out in the authorizing statute and staff's assertion that they could further define those duties by rule is unlawful. Administrative boards only have the authority assigned to them by statute and that authority *cannot* be broadened via a rulemaking.


Proposed section 319.070, RSMo establishes a requirement that, on a going-forward basis, underground facilities must be installed in such a manner that the electronic locating equipment can determine where those facilities are. It is unknown at this time whether this will add any significant costs to our operations.

While we understand the Commission's desire to prevent significant damage to underground facilities, we are hard-pressed to endorse the Commission's assumption of authority over a system that is well established and functioning efficiently. The Missouri One Call board has done an excellent job overseeing excavators and working with utilities to increase the accuracy of locating facilities.

Adding yet another layer of administrative oversight will only result in additional costs to regulated companies. If the Commission's main concern is the number of incidents where damage occurs to gas utility facilities, the Commission should use its existing authority to enact rules governing gas safety that would address this concern rather than imposing additional, costly, and ultimately unnecessary regulation on all regulated utilities.

We appreciate the opportunity to participate in the review of this proposal and look forward to our continued work on the issue.

Sincerely,



Richard Telthorst, CAE
President

C: Chairman Robert M. Clayton III
Commissioner Jeffrey Davis
Commissioner Kevin Gunn
Commissioner Terry M. Jarrett
Commissioner Robert S. Kenney

¹MTIA is a not-for-profit trade association that represents the interests of Missouri's telecommunications providers. Current member companies include: Alma Communications Company, AT&T Missouri, BPS Telephone Company, CenturyLink Companies of Missouri, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Citizens Telephone Company, Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, FairPoint Communications, Farber Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Cooperative, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Corporation, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, Missouri Network Alliance, MoKan Dial, Inc., New Florence Telephone Company, New London Telephone Company, Northeast Missouri Rural Telephone Company, Northwest Missouri Cellular, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Otelco, Inc., Ozark Telephone Company, Peace Valley Telephone Company, Inc., Rock Port Telephone Company, Seneca Telephone Company, Socket Telecom, LLC, Steelville Telephone Exchange, Inc., Stoutland Telephone Company, Verizon Communications, Verizon Wireless and Windstream Communications.
