

Jason Kander

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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SEP 25 2015

SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-28.080

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

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TYPE OF RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, include effective date
☐ Proposed Rulemaking
☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration
☐ Request for Non-Substantive Change
☐ Statement of Actual Cost
☒ Order of Rulemaking

Effective Date for the Order _____

☐ Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Sections (2), (2)(B) and (3) have been amended.

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

AUG 26 2015

ADMINISTRATIVE RULES



Commissioners

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Chairman

STEPHEN M. STOLL

WILLIAM P. KENNEY

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Chief Staff Counsel

Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-28.080 Interconnection Agreements

Dear Secretary Kander,

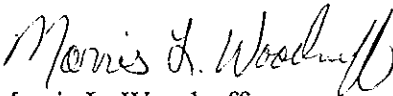
CERTIFICATION OF ADMINISTRATIVE RULE

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.

Statutory Authority: sections 386.040, 386.250, 386.310, and 392.461, RSMo 2000 and 392.450, RSMo Supp. 2013

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

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Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 28 – Telecommunications IVoIP, Video Services

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ADMINISTRATIVE RULES

ORDER OF RULEMAKING

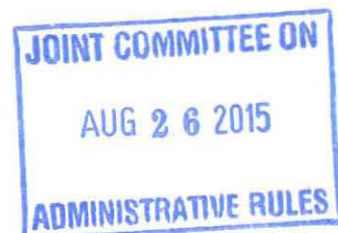
By the authority vested in the Public Service Commission under sections 386.040, 386.250, and 386.310 RSMo 2000, section 392.450 RSMo (Cum. Supp. 2013, and section 392.461, RSMo (Supp. 2014), the commission adopts a rule as follows:

4 CSR 240-28.080 Interconnection Agreements is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2015 (40 MoReg 562). 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 public comment period ended June 29, 2015, and the commission held a public hearing on the proposed rule on July 6, 2015. The commission received timely written comments from the Staff of the Commission (Staff); the Missouri Telecommunications Industry Association (MTIA); Southwestern Bell Telephone Company, d/b/a AT&T Missouri (AT&T); CenturyTel of Missouri, LLC d/b/a CenturyLink, Embarq Missouri, Inc., d/b/a CenturyLink, Spectra Communications Group, LLC d/b/a CenturyLink, and CenturyTel of Northwest Arkansas, d/b/a CenturyLink (CenturyLink); the Missouri Cable Telecommunications Association (MCTA); Verizon; and Level 3 Communications (Level 3). In addition, the following people offered comments at the hearing: Kenneth A. Schiffman, for Sprint Communications Company, LP (Sprint); Leo Bub for AT&T; William D. Steinmeier and Pamela Halleck for Level 3; Stephanie Bell for MCTA; Becky Owenson Kilpatrick for CenturyTel; Richard Telthorst for MTIA; Matthew Feil for Windstream; and Colleen M. Dale and John Van Eschen for Staff.

COMMENT #1: Section 28.080(2) addresses the adoption of an approved interconnection agreement. CenturyLink objects to a provision in the rule that would remove the ability of an Incumbent Local Exchange Carrier (ILEC) to object to a third-party-Competitive Local Exchange Carrier's (CLEC's) adoption of an existing interconnection agreement after the agreement has been in effect



for more than a reasonable amount of time. CenturyLink wants to prevent the adoption of interconnection agreements that have become outdated, and argues the Commission's rule would be contrary to federal requirements. CenturyLink would set a "reasonable" period for adoption at six months before the agreement would expire, not including any extension agreements.

AT&T shares CenturyLink's concerns about allowing for the adoption of expiring interconnection agreements. It would allow for the consideration of such adoptions on a case-by-case basis.

MCTA opposes AT&T's comments and strongly supports the language in the proposed rule that would clarify when an interconnection agreement can be adopted. Level 3 also strongly supports the language in the proposed rule. MCTA and Level 3 explain that the language of the rule does not allow for the adoption of expired agreements, rather it ensures that all agreements that are currently in effect, can be adopted by other competitors.

MTIA specifically takes no position on this question.

RESPONSE: The commission finds that the language of the proposed rule appropriately protects the interests of all carriers. CenturyLink's rigid six-month-before-expiration rule would unreasonably deny carriers the right to compete on level ground with another carrier who might be operating under a more favorable interconnection agreement that could remain in effect for an extended period after its expiration date. AT&T's proposal to consider such adoptions on a case-by-case basis is more reasonable, but in fact that is what the language in the proposed rule would allow. If one of the parties objects to the proposed

adoption, they would still have an opportunity to obtain a determination from the commission pursuant to section 28.080(2)(D). The commission will not modify the provisions of the rule in response to these comments.

COMMENT #2: In a separate comment about section 28.080(2), CenturyLink proposes new language to make it clear that adoptions of interconnection agreements are subject to the notice and objection provisions of 20.080(2)(D) before they become effective. MTIA offers slightly different language for the same purpose. No other comment responded to the CenturyLink and MTIA proposals.

RESPONSE AND EXPLANATION OF CHANGE: Some modification is necessary to clarify that adoption notices are subject to the objection provisions of (2)(D). But recognition that the notice and objection provision of (2)(D) applies to all adoption notices also requires adjustment to the provision in the subsection that says adoptions will become effective on the date they are properly submitted to the commission. An adoption notice cannot be allowed to be effective on the date it is submitted and still be subject to objection because it cannot go in and out of effect depending upon whether an objection is filed. As a result, the commission will modify the rule to provide that the adoption will be effective on the date allowed by the commission in its order approving the adoption.

COMMENT #3: AT&T urges the Commission to modify section 28.080(2) to prevent third parties from adopting an amendment to an interconnection agreement without the consent of both parties to the adoption. AT&T says change is needed to conform to recent changes to federal law that would

eliminate the pick and choose option in favor of an all or nothing approach that requires the adopting party to take the entire interconnection agreement without grabbing parts from other agreements. To accomplish this modification, AT&T asks the Commission to strike "or amendment" from the first sentence of the section so that it would apply only to approved interconnection agreements. MTIA supports the same modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that an interconnecting carrier cannot pick and choose only portions of an interconnection agreement and the proposed rule is intended to comply with that requirement. The commission will clarify the rule to make it clear that adoption of an interconnection agreement is all or nothing. Rather than delete "or agreement" from the rule, that purpose can be accomplished by changing the "or" to "any" so that the rule will allow for the adoption of an interconnection agreement and any amendments to that agreement, without implying that amendments could be adopted apart from the interconnection agreement as a whole.

COMMENT #4: AT&T and MTIA propose to modify subsection 28.080(2)(B), which establishes the procedure the Commission will follow when an adoption request signed by two parties is received. The rule as proposed allows such agreements to be filed in EFIS as an informal submission, which would not open a case file. AT&T and MTIA believe that competing companies need to receive notice of such agreements and would add language to the section to require the Commission to open a new file to either approve or reject the adoption, just as it

would if only one party to the agreement had filed an application for approval of the adoption under subsection 28.080(2)(C).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the rule to establish a case for consideration of such interconnection agreements.

COMMENT #5: MTIA proposes a new section 28.080(3) that would require the incumbent local exchange carrier that is a party to an interconnection agreement to file a notice of the termination of the agreement in the case file in which the agreement was approved.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will add the new section.

4 CSR 240-28.080 Interconnection Agreements

(2) An adoption of an approved interconnection agreement and any amendment that has been previously approved by the commission can be requested by either company by submitting a letter to the secretary of the commission. Approved interconnection agreements whose original term has expired, but which remain in effect pursuant to term renewal or extension provisions, will be subject to adoption for as long as the interconnection agreement remains subject to the renewal or extension provision. Any adoption is subject to objection pursuant to subsection (2)(D). The adoption will be effective on the date allowed by the commission in its order approving the adoption.

(B) If both parties have signed the signature page to the adoption the request shall be electronically filed in EFIS. Upon receipt of an adoption request signed by both parties, the commission shall open a new file and issue notice of the filing of the request. Thereafter, the commission shall expeditiously approve or reject the adoption.

(3) Termination of Interconnection Agreements – The incumbent local exchange telecommunications company that is a party to any interconnection agreement that is terminated shall notify the Secretary of the commission of its termination by filing a letter in the case in which the agreement was approved.