

Robin Carnahan

Secretary of State

Administrative Rules Division

RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

A "SEPARATE" rule transmittal sheet **MUST** be used for EACH individual rulemaking.A. Rule Number 4 CSR 240-33.045Diskette File Name Final Order 4 CSR 240-33.045

Name of person to call with questions about this rule:

Content Marc Poston Phone 573-751-8701 FAX 573-751-9285E-mail address marc.poston@psc.mo.govData entry Sarah Fontaine Phone 573-522-4619 FAX 573-751-9285E-mail address sarah.fontaine@psc.mo.govInteragency mailing address P.O. Box 360 Jefferson City, MO 65102-0360Statutory Authority 386.040, 386.250, 392.240, 392.451 and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004. Current RSMo date 2000Date filed with the Joint Committee on Administrative Rules Exempt per Section 536.024 and 536.037 RSMo 2000 and Executive Order No. 97-97 (June 27, 1997)

B. CHECKLIST guide for rule packets:

☒ This transmittal completed☒ Cover letter☐ Affidavit☐ Small business impact statement☐ Fiscal notes☐ Forms, number of pages _____☐ Authority section with history of the rule☐ Public cost statement _____☐ Private cost statement☐ Hearing date

C. RULEMAKING ACTION TO BE TAKEN

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

D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff _____

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-33.045

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. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

Section (1) is changed as follows:

- By adding to the first sentence after the word “rates” the following language: “that are applicable to the services the customer has ordered or is considering ordering. Such disclosure shall be provided...”
- By deleting the words “at the time of the execution of a service agreement between the company and the customer or at the time the customer otherwise contracts with the company, but in any event” and by deleting the words “the date service is initiated.”
- By adding the words “an agreement for service” so that the newly formed second sentence reads “Such disclosure shall be provided prior to an agreement for service.”
- By adding a last sentence that states “Allowed charges that may vary, depending on the location of the customer or the amount of the customer bill, can simply be identified without specifying the specific dollar amount that would be applied to the customer.”

Section (2) is changed as follows:

- By adding the word “telecommunications” to the beginning of the section before the word “companies.”
- By replacing the word “may” with the word “shall”
- By deleting from the first sentence the words “fee or”, the word “a” before “governmentally mandated”, and the word “fee” after “authorized.”
- By adding the word “specifically” to three places in the section before the word “authorized.”

- By adding the word “it” in (2)(B) between “placing” and “on.”
- By deleting the word “fee” before “charge” in (2)(C).

Section (3) is changed as follows:

- By adding the word “specifically” in two places before the word “authorized.”
- By deleting the words “fees and surcharges” and replacing with the word “charges”
- By deleting the word “separate” and the words “order, decision, ruling or mandate” from the first sentence.
- By deleting the words “or taxes” from the last sentence.

Section (4) is changed as follows:

- By adding the word “specifically” before “authorized.”
- By replacing “fees” with “charges.”
- By changing “Commission” and “Staff” to all lower case.
- By deleting the last sentence.

Section (5) is changed as follows:

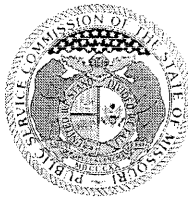
- By adding the words “To challenge the authority or legality of a tariffed charge under this rule, a party shall file a complaint pursuant to 4 C.S.R. 240-2.070.”
- By deleting the words “Based on a complaint”
- By changing “Commission” to all lower case in the second and third sentences.

Section (6) is changed as follows:

- By deleting Section (6) in its entirety and moving it to the end of the rule and renumbering it Section (7).

Section (7) is changed as follows:

- By renumbering Section (7) to Section (6).
- By adding the word “telecommunications” between the words “any” and “company.”



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

August 9, 2005

Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Carnahan,

RE: 4 CSR 240-33.045 Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills

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 9th day of August 2005.

Statutory Authority: 386.040, 386.250, 392.240, 392.451 and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004.

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

Marc Poston
200 Madison
Jefferson City, MO 65102
Phone (573) 751-8701
Email: marc.poston@psc.mo.gov

Sincerely yours,

A handwritten signature in black ink, appearing to read "Cully Dale", is written over a horizontal line.

Cully Dale
Secretary
Missouri Public Service Commission

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 33—Service and Billing Practices for Telecommunications Companies

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, 386.250, 392.240, 392.451 and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004, the Commission adopts a rule as follows:

4 CSR 240-33.045 is adopted

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2005 (30 MoReg 513-515). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A hearing was held on May 11, 2005 in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Oral testimony and written comments were received during the comment period regarding proposed rule 4 CSR 240-33.045. Written comments were filed on behalf of the Commission's Staff; the Office of the Public Counsel ("OPC"); Sprint Missouri, Inc. and Sprint Communications Company, L.P. (collectively "Sprint"); the Missouri Telecommunications Industry Association ("MTIA"); MCI; Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri ("SBC"); and AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc. and TCG St. Louis, Inc. (collectively "AT&T"). Oral testimony was received during the hearing on behalf of the Commission's Staff, OPC, SBC, Sprint, CenturyTel of Missouri, L.L.C. and Spectra Communications Group, L.L.C. The comments and testimony included support for the rule in whole and in part, and opposition to the rule in whole and in part. The comments and testimony in opposition to the rule, or suggesting modifications to the proposed rule, are responded to below.

COMMENTS: SBC commented that it objects to proposed section 33.045(1) because it would be unreasonable for a company to keep a customer on the line to discuss all non-recurring monthly charges that may appear on a bill. SBC further commented that proposed section 33.045(1) could be interpreted to require disclosure of all possible plans and rates with the customer or to require disclosure of taxes or other non-regulated fees. The Commission's Staff proposed new language to 33.045(1) to address some of SBC's concerns.

RESPONSE: The purpose of the proposed section 33.045(1) is to provide clear, full and meaningful disclosure of all charges and rates applicable to the services a customer is ordering or is considering ordering. The Commission finds that the proposed rule cannot reasonably be interpreted to require a company to disclose charges that do not apply to the service or services the customer is ordering or considering ordering. For items with a fixed rate, the company

should be able to disclose an exact amount without difficulty. For rates that are variable, the company should be able to make the customer aware that there will be charges on the bill such as taxes and federal surcharges. However, the Commission finds that the intent of the rule would be clarified by accepting some of the Staff's proposed changes with modifications. Specifically, the Commission finds that language should be added to clarify that only charges applicable to the services the customer has ordered or is considering ordering need to be disclosed prior to an agreement for service. The Commission further finds that 33.045(1) should be modified to reflect that variable charges can be identified without specifying the specific dollar amount.

COMMENTS: The Commission's Staff commented that the word "may" in 33.045(2) could be interpreted to allow telecommunications companies to misrepresent fees or charges as governmentally mandated or authorized. The Staff suggested changing "may" to "shall."

RESPONSE: The Commission finds the word "may" in 33.045(2) should be replaced with the word "shall" to reinforce the Commission's intent to prohibit fees and charges that are misrepresented as being governmentally mandated or authorized.

COMMENTS: SBC commented that it objects to the phrase "disguising it" from proposed section 33.045(2), and proposes replacing the word "disguising" with the word "misrepresenting." OPC commented that it opposed the change.

RESPONSE: The Commission finds that preventing charges or fees that are disguised or otherwise misrepresented as governmentally mandated or authorized is in the public interest. No changes were made to the proposed rule as a result of these comments.

COMMENTS: SBC commented that 33.045(2) should be modified by adding "telecommunications" before "companies" at the beginning of the section.

RESPONSE: The Commission finds that this change is appropriate.

COMMENT: OPC commented that it would like to ban single line-item surcharges that are not based on governmentally mandated charges, rather than allowing both mandated charges and discretionary charges specifically authorized by government.

RESPONSE: The Commission finds that both mandated government charges and non-mandated but specifically authorized discretionary charges should be allowed. The Commission will clarify this intention by inserting the word "specifically" before the word "authorized" throughout the rule. The Commission will also clarify this intention by deleting the words "order, decision, ruling or mandate" from proposed section (3). For consistency, the Commission will also use the term "charges" throughout the rule in place of the word "fees."

COMMENTS: The Commission's Staff commented that a new section should be added to provide guidance on the placement of the Relay Missouri surcharge on a customer's bill, as provided by Section 209.255 RSMo.

RESPONSE: The Commission finds that the proposed new section is not consistent with the purposes of the proposed rulemaking and will not be added.

COMMENTS: AT&T, MCI, MTIA and SBC commented that proposed section 33.045(4) is unlawful and should be deleted. Sprint commented that proposed section 33.045(4) is not

needed to address upfront disclosures and billing practices, and should be eliminated.

RESPONSE: The Commission finds that the last sentence in proposed section (4) is unnecessary and will delete that sentence from the rule.

COMMENTS: AT&T, MCI, MTIA and SBC objected to proposed section 33.045(5) and commented that this section purports to allow the Commission to remove any charge that it finds does not comport with the rule without a hearing to determine whether the existing tariff is unlawful or unreasonable. The Staff commented that the rule could be clarified to indicate that removal of an existing tariffed charge would occur only through the Commission's formal complaint procedures.

RESPONSE: The Commission finds that proposed section 33.045(5) does not purport to invalidate existing tariffs without an evidentiary hearing. The rule contemplates following the Commission's complaint procedures and does not predetermine the procedures used by the Commission to resolve a complaint. For clarity, the proposed language of 33.045(5) will be modified to state that challenges to the authority or legality of a tariffed charge shall be filed pursuant to 4 CSR 240-2.070.

COMMENTS: AT&T commented that the last sentence of 33.045(5) is arbitrary and capricious. AT&T contends that if the Commission approves a tariff for one company, then similar tariffs for another company should also be approved unless the Commission can demonstrate why such a tariff is not lawful.

RESPONSE: The Commission's supervision of the public utilities of Missouri is a continuous one and its orders and directives with regard to any phase of the operation of any utility are always subject to change to meet changing conditions, as the Commission, in its discretion, may deem to be in the public interest. Current problems associated with misleading disclosures and misleading billing practices have presented new concerns that may not have existed when the Commission approved an existing tariff charge. Existing tariffs cannot impede the Commission's duty to ensure that every unjust or unreasonable charge made or demanded for any such service or in connection therewith, or in excess of that allowed by law or by order or decision of the Commission, is prohibited and declared to be unlawful.

COMMENTS: SBC commented that it objects to proposed section 33.045(6) because it is duplicative of the rule's title and purpose.

RESPONSE: The Commission finds that section 33.045(6) is helpful in that it clarifies that the Commission's rules establish the minimum requirements and that additional requirements could be implemented by Commission order or by the FCC. However, the Commission finds that the rule is clarified by moving 33.045(6) to the end of the rule since all provisions of this rule are minimum requirements.

COMMENTS: SBC commented that proposed rule 33.045 should be limited to residential customer bills. SBC also commented that proposed section 33.045(7) should be modified by adding the word "telecommunications" before "company" and by adding the word "residential" before "customer." OPC commented that small businesses and most business owners in general struggle with misleading billing and disclosure practices.

RESPONSE: The Commission finds that the rule should apply equally to protect both residential and business customers. The Commission further finds that the proposed rule, as written and as ordered in this order of rulemaking, applies equally to residential and business customer bills. The Commission finds that adding the word “residential” would alter the purpose of this section contrary to the Commission’s objectives. However, the Commission agrees that the word “telecommunications” should appear before “company.”

COMMENTS: AT&T commented that the Commission should not adopt this rule and should instead participate in the current Federal Communications Commission (“FCC”) rulemaking on truth-in-billing practices. SBC commented that the Commission should defer this proceeding until after the FCC resolves its truth-in-billing rules.

RESPONSE: The Commission finds that adopting a Missouri specific rule, instead of relying on the FCC’s rules, is necessary to ensure clear identification and disclosure of charges assessed on Missouri consumers. A Missouri specific rule will provide clarification to the telecommunications industry that misleading billing practices are prohibited under the laws of the State of Missouri. A Missouri specific rule will also help facilitate educated consumer choices and competition in telecommunications. No changes were made to the proposed rule as a result of these comments.

COMMENTS: SBC commented that not all line-items and surcharges are inherently unreasonable if they are not government mandated.

RESPONSE: The Commission finds that the proposed rule prevents charges that are misrepresented as government mandated charges and that the proposed rule does not attempt to predetermine that all line-items and surcharges are inherently unreasonable. No changes were made to the proposed rule as a result of these comments.

COMMENTS: SBC commented that it objects to the proposed rule and that the Commission can litigate any concerns it has about a particular carrier’s charges under existing laws.

RESPONSE: The Commission finds that this proposed rule is a more efficient manner of preventing all telecommunications carriers from placing misleading charges on their bills than could be accomplished through timely and costly litigation on a case by case basis. No changes were made to the proposed rule as a result of these comments.

COMMENTS: SBC commented that it is confusing to place a rule addressing both residential and business customers between two rules that only address residential customer bills.

RESPONSE: The Commission finds that the placement of the rule at 33.045 does not create confusion because Chapter 33 applies to both residential and business customers unless otherwise specified. No changes were made to the proposed rule as a result of these comments.

COMMENTS: SBC commented that the rule should clearly be limited to “regulated” services because the Commission lacks the authority to require disclosure of non-regulated items.

RESPONSE: The Commission finds that the proposed rule does not attempt to extend the Commission’s authority over unregulated services, but only attempts to prohibit misleading billing practices appearing on the telephone bills of companies providing intrastate

telecommunications services in the State of Missouri. No changes were made to the proposed rule as a result of these comments.

COMMENTS: SBC and AT&T commented that the proposed rule reaches beyond the Commission's authority and jurisdiction. SBC further commented that the proposed rule should be limited to intrastate telecommunications services provided by telecommunications companies over which the Commission has jurisdiction.

RESPONSE: The Commission finds that the proposed rule does not reach beyond the Commission's authority and jurisdiction. § 386.250 RSMo 2000 and 47 U.S.C. § 152(b) give the Commission the authority to adopt rules which prescribe the conditions on billing for intrastate telecommunications or in connection with intrastate telecommunications. No changes were made to the proposed rule as a result of these comments.

COMMENTS: SBC commented that there is not sufficient evidence to demonstrate that existing bills are insufficient to protect consumers.

RESPONSE: The OPC commented that consumers cannot understand their bills and that the public wants to have the ability to make an intelligent decision when comparing their existing service to the service of other companies. The Commission finds that the proposed rule offers protections for Missouri's consumers not provided for under the current rules and statutes. No changes were made to the proposed rule as a result of these comments.

COMMENTS: SBC commented that the right to bill a line item is a right protected by the First Amendment of the United States Constitution.

RESPONSE: The Commission finds that the proposed rule will not violate the First Amendment because the proposed rule is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. No changes were made to the proposed rule as a result of these comments.

COMMENTS: SBC commented that the Commission is preempted by the FCC because the FCC has stated that non-misleading line items are permissible.

RESPONSE: The Commission finds that the rule is consistent with decisions of the FCC. No changes were made to the proposed rule as a result of these comments.

4 CSR 240-33.045 Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills

(1) All telecommunications companies shall provide a clear, full and meaningful disclosure of all monthly charges and usage sensitive rates that are applicable to the services the customer has ordered or is considering ordering. Such disclosure shall be provided prior to an agreement for service. This disclosure shall be in addition to the itemized account of monthly charges during the customer's first billing period for the equipment and service for which the customer has contracted, as required by 4 CSR 240-33.040(8). Allowed charges that may vary, depending on the location of the customer or the amount of the customer bill, can simply be identified without specifying the specific dollar amount that would be applied to the customer.

(2) Telecommunications companies shall not include on a customer's bill any charge misrepresented as governmentally mandated or specifically authorized by:

- (A) Disguising it;
- (B) Naming, labeling or placing it on the bill in a way that implies that it is governmentally mandated or specifically authorized; or
- (C) Giving it a name or label that is confusingly similar to the name or label of a governmentally mandated or specifically authorized charge.

(3) Governmentally mandated or specifically authorized charges include, but are not limited to, separately identified charges to recover costs associated with any monthly charge mandated or specifically authorized by federal, state or local government. These monthly charges shall be identified on the customer's bill in easy to understand terms and in a manner consistent with their purpose or applicability.

(4) Companies imposing separately identified charges that appear to be governmentally mandated or specifically authorized charges shall provide, upon request by the commission staff, such federal, state or local government order, decision, ruling, mandate or other authority on which it relies in placing such a charge on the customer's bill.

(5) To challenge the authority or legality of a tariffed charge under this rule, a party shall file a complaint pursuant to 4 C.S.R. 240-2.070. The commission may order removal or modification of any charge it finds does not comport with this rule. Nothing in this rule will preclude the commission from suspending or rejecting company tariffs when similar or identical tariffs have been approved for other companies.

(6) Any telecommunications company that serves as a billing agent for another entity shall not be held liable for any violation of this rule for that portion of the customer bill that relates to that other entity.

(7) This rule establishes minimum requirements for clarity in billing separately identified charges.